Ph.D in Public Policy and Administration
Core Knowledge Area Module Number 5:
Democratic Governance

Student: James Lhotak
Faculty Mentor: Dr. Dale Swoboda
Faculty Assessor: Dr. Dale Swoboda

Walden University
September 14, 2007
KAM V, Democratic Governance, Breadth Abstract

Direct Democracy Part I: A Choice compares, contrasts, analyzes, evaluates, and synthesizes seminal direct democracy literature in terms of its historical development, its theoretical development, its relationship with representative democracy, and several typologies and models. The paper concludes that a proper evaluation of direct democracy requires a more balanced approach than traditional proponents and opponents typically provide.
KAM V, Democratic Governance, Depth Abstract

Direct Democracy Part II analyzes the present state of direct democracy literature thematically through an annotated bibliography and analysis. The paper concludes that recent direct democracy literature presents a more positive view of direct democracy than traditional literature suggests. However, the present state of research is such that replication and further analysis is required.
Direct Democracy Part III introduces direct democracy concepts and implications to graduate students by presenting a 12-week graduate-level course on direct democracy. The paper concludes that while a more balanced approach to direct democracy and its implications has been achieved by the course, a great deal of research remains to be completed.
Ph.D in Public Policy and Administration
Core Knowledge Area Module Number 5:
Democratic Governance

Part I (Breadth Component), Direct Democracy: A Choice

Student: James Lhotak
Faculty Mentor: Dr. Dale Swoboda
Faculty Assessor: Dr. Dale Swoboda

Walden University
September 14, 2007
Table of Contents

Introduction.......................................................................................................................... 1

Why Study Direct Democracy? ............................................................................................ 1

Organization of this Paper .................................................................................................... 2

On Democracy Generally ..................................................................................................... 3

Historical Evolution of Direct Democracy .......................................................................... 4

Athenian Ecclesia .................................................................................................................. 4

Roman Plebiscites .................................................................................................................. 7

Swiss Landsgemeinden ........................................................................................................... 8

New England Town Meetings .............................................................................................. 11

Theoretical Basis of Direct Democracy ................................................................................. 12

Modern Context ................................................................................................................... 12

Rousseau ................................................................................................................................ 14

Habermas: The Public Sphere (Public Opinion) replaces the General Will ....................... 18

John Stuart Mill—Problems of an Educated Citizenry and the Tyranny of the Majority ...... 20

Instruments of Direct Democracy ........................................................................................ 23

Sample Typology of Direct Democracy ............................................................................... 25

Models of Direct Democracy ............................................................................................... 27

Conclusion ............................................................................................................................ 34
Introduction

Direct democracy is a process in which citizens can directly vote on public policy issues within a predetermined framework. Fundamentally, direct democracy challenges the traditional representative model of democracy where the role of citizens is simply the election of their representatives. The role of representatives in a democracy therefore becomes central to defending representative democracy generally. Elected representatives are viewed with two lenses: one lens postulates that representatives simply reflect their constituencies as an average member; the other lens postulates that representatives are the most wise and just among their constituencies based merely on the results of a popular election. Within the representative democracy model, this distinction has led to the delegate versus advocate debate, where representatives either vote based on the preferences of their constituency as the people’s delegate or they vote based on their own best judgments as the people’s advocate. Under the advocate model, citizens are presumed to lack the time, intelligence, will, or requisite information needed to make public policy decisions. Direct democracy, in contrast, postulates that citizens are in the best position to vote in their own best interests, and it aligns more closely with the delegate model. Many scholars, such as Broder (2000), believe that direct democracy and representative democracy are incompatible models. This paper will argue that they are complementary.

Why Study Direct Democracy?

The use of direct democracy instruments has been increasing internationally, nationally, and among the American states and local governments (see Kobach, 1993). The reason for this evolution is unclear. Is it caused by simple voter apathy as expressed by a general decreasing trend of voter participation in Western democracies? Is it caused by a lack of trust in governmental institutions and politicians generally? Is it caused by political market failure and a
lack of political responsiveness? Or, is it caused by the increased levels of voter education and technological advances? What is clear is that direct democracy has vast implications for government—it is not only a force of political change; it is a force for political and legal legitimacy (see Walker, 2003). Critics argue that direct democracy is dangerous or even antithetical to representative democracy. Proponents argue that it is a complimentary mechanism designed to fight the excesses, corruption and special interest influences within the representative system. The truth is in between these two positions. That is to say, direct democracy can play a vital role in educating the citizenry as an expression of popular sovereignty, while at the same time, the legal process can protect the interests of the people generally, and representative governments and special interests (including minority interests) in particular from any electoral excesses or abuses. Studying direct democracy will enable politicians and public administrators to steer towards that middle course thereby forging the instruments of direct democracy into a strong force for positive social change. The purpose of this paper is to provide the background information and theoretical foundation necessary to develop a twelve-week, graduate level course on direct democracy towards that aim.

Organization of this Paper

This paper will begin with a general discussion of how direct democracy evolved concurrently with democracy generally and will explore four historical examples. This will provide the background necessary to explain the theoretical evolution of direct democracy in its modern iteration. Next, this paper will examine the theoretical justification for direct democracy through the eyes of Jean Jacques Rousseau’s social contract theory and the idea of popular sovereignty. Then, this paper will turn to one of the strongest arguments against direct democracy as seen through the eyes of John Stuart Mill’s theory of representative government—
specifically the fear of tyranny by the majority. From general theory, this paper will progress into an examination of some common instruments and typologies of direct democracy. This background will provide a springboard into an examination of some of the most prominent models of direct democracy. Finally, this paper will comment on the implications of direct democracy and set the stage for a more detailed examination of these principles in the depth section, which will bring the discussion up to date with the current state of the academic literature.

On Democracy Generally

Early writings on democracy began with Herodotus in a debate regarding the establishment of a new government in Persia. According to Graubard (1973), the central themes of the debate between monarchy, oligarchy, and democracy were that “governments are not immutable, that they are chosen, that their selection ought to depend in considerable measure on their prospective utility, and that reasonable men may differ about such matters” (p. 653). Herodotus concluded that while democracy guarantees equality before the law, it tended to disintegrate into tyranny. Plato did not hold a high opinion of democracy because he believed that partisanship was a necessary result of the conflict between the rich and the poor. As a result, Plato believed that a just society was not possible when there were extremes of wealth and poverty (Graubard, p. 654). Plato’s early writings preferred aristocracy based on merit in the spirit of philosopher-kings. However, Plato later stated that the ideal government would be a blend of monarchical and democratic elements (see Laws, book III, 694-701). Aristotle synthesized the work of Herodotus and Plato by postulating that the best form of government would combine features of a democracy with those of an oligarchy. While this solution evolved into the representative model of democracy later actualized by the creation of the American
republic, it imposed wealth, birth, and ability as qualification requirements to an ideal “polity.” This explains why representative government became analogous to democracy generally. Rousseau’s social contract theory reintroduced the concept of direct democracy through the idea of popular sovereignty. As a result, representative democracy presently competes with direct democracy for viability and legitimacy.

Historical Evolution of Direct Democracy

Athenian Ecclesia

According to the literature, there are four primary historic examples used to define the context and boundary conditions of direct democracy within its modern iteration: (a) Athens, (b) Rome, (c) Switzerland, and (d) the New England town meetings of the early colonial period. The first example of direct democracy was in Athens. Thucydides (The Peloponnesian War, Book II, 35-46) described Athenian democracy in the post-Pericles Era as a model of civic virtue based on capacity as the major requirement for office holding. However, Thucydides noted that Athens floundered when challenged by war with Sparta, so in his view, democracy was seen as militarily vulnerable. Thucydides described democracy as resulting in “violence, excess, partisanship, greed, and a lust for power” (Graubard, 1973, p. 653).

How did Athenian democracy evolve? In approximately 507-506 B.C., a power struggle between two aristocratic factions—Cleisthenes and Isagoras—escalated due to the election of Alcmaeon, a relative of Cleisthenes, to the archonship of Athens. Isagoras, the former archon, took over the Acropolis and expelled 700 families from Athens, including Cleisthenes, with the assistance of king Cleomenes of Sparta (see Buckley, 1996, p. 128). However, when Isagoras tried to dissolve the Boule of 400 (aristocratic council), the people revolted and besieged the Acropolis for three days. The result was a truce under which the Isagoras and the Spartans left
Athens. Upon his return, Cleisthenes proposed democratic reforms that balanced aristocratic power with middle class interests. The concept of democracy (“democratia”) developed out of the concept of political equality (“isonomia,” see Buckley, 3006, p. 141), which was the basis of Cleisthenes’s reforms. According to Buckley (2006, p. 128), the reforms allowed the “ordinary” people of the assembly to decide “all major political decisions” and enfranchised others (such as mercenaries, alien residents, and others whom lost their citizenship due to political purges) with the possibility of Athenian citizenship.

Prior to the proposed legislation, four separate tribes controlled Athenian politics by means of an aristocratic council. Cleisthenes’ reforms were based on the creation of 10 new geographically representative and economically-based divisions (i.e., nobility of the inland city or “astu,” shepherds of the hills or “mesogieia,” and fisherman of the coast or “paralia”) that replaced four tribally-based factions. The 10 new divisions were themselves the creation of additional reforms that replaced local aristocratic bodies with 139-140 artificially created demes. Each deme had its own constitution, elected leader, and an assembly that included all members of the deme over the age of 18 (see Buckley, 2006, p. 133). These deme-assemblies were training grounds for Ecclesia (assembly) members. In short, demes were the building blocks of the Athenian democracy on the local level that were analogous to the present day jurisdictions that comprise a republican form of government. These new divisions formed the basis of the Ecclesia and the Boule of 500.

The Boule of 500 administered the work of government through the committee system whose members were chosen by lot and usually consisted of approximately ten men. A steering committee that consisted of “fifty men from each of the ten tribes, with each deme within the tribe supplying its prescribed quota of tribal councillors according to its size” prepared the
agenda to be brought before the Ecclesia and controlled the various committees (Buckley, 2006, p. 252). The 50 councilors, who were subject to a background check and had to be over 30 years old, were either chosen by lot or directly elected by each of the 10 tribes. The chosen members could be selected only once in their lifetime. The tribe that controlled the steering committee changed 10 times each year by lot. Boule members at large could be selected only twice in their lifetime.

The Ecclesia, or assembly, consisted of about 5000 citizens and was open to all males over 18. Issues before the Ecclesia included new laws, religion, the confirmation of officials, food supplies, defense, impeachment proceedings, public notice of inventories of estates confiscated by the state, inheritance succession issues, ostracism, etc. Lot determined the precedence of each issue. As Buckley (2006) noted, accountability was an important element of the Ecclesia, as demonstrated by impeachment and recall provisions (including ten-year ostracisms) that applied to “any citizen” (p. 258). Ecclesia sessions and their agendas were promulgated at least four days in advance. So, in short, the Boule of 500 administered day to day government affairs, 50 of the Boule of 500’s leaders controlled the steering committee that planned the agendas for the Ecclesia, and all of the adult males over 18 would meet approximately weekly as an assembly to dispose those issues. Even so, it must be noted that the aristocracy controlled a great deal of power over religious, military, and judicial affairs through nine Archons (executives) and the life-tenured council of the Areopagus, which consisted of all archons with more than one year of service.

In essence, direct democracy consolidated political power in Athens under Cleisthenes who used that power to reduce historic aristocratic dominance. Representative democracy, in contrast, was a tool used to realign regional political domination between factional interests in a
manner analogous to the development of the bicameral legislature in the United States.

Representative democracy reorganized political power by disbursing it so that each political unit was more diverse, although fundamentally it was political power that became more diverse through increased representation. So, direct democracy and representative democracy were born concurrently in the case of Athens. Efforts to divorce these two concepts fail to acknowledge this concurrent historical development.

*Roman Plebiscites*

The second example of direct democracy was Rome. Rousseau suggested that in response to racially based immigration problems among three tribes, geographically based subdivisions (urban and rural) replaced the racially based political subdivisions. In effect, these subdivisions became the first defense against a “tyranny of the majority.” Under the geographic system, migration became a problem that required frequent adjustments by means of the famous Roman census. As a result, six class-based subdivisions replaced the geographically based subdivisions. In short, the system of political subdivisions in Rome increased in complexity and became difficult to manage. In the beginning, Rome was not a pure democracy because property ownership was required in order to vote. Rousseau stated, “Those who had nothing at all, and could be numbered only by counting heads, were regarded as of absolutely no account” (*Social Contract*, trans. 1992, p. 429). It was this same class-based system that later disregard such property requirements and allowed the “proletarians” to vote. According to Rousseau, the class-based system was the first to “degrade” the rich to equal political status with the poor. In short, Rome allowed everybody to vote. Rousseau explained, “No law received its sanction and no magistrate was elected, save in a curia, a century, or a tribe, it follows that no citizen was
excluded from the right of voting, and that the Roman people was truly sovereign both dejure and de facto” (Social Contract, trans. 1992, p. 430).

This system evolved into a two-stage voting system in which the people first chose who would vote in their behalf by lot and then the people would vote to approve the winner as their official delegate. This election process, which required public notice and was not held on holidays, was typically conducted on different days in order for people to make an informed choice, but later the custom changed and they were conducted on the same day to save time. At first, votes were conducted publicly and declared verbally. However, secret ballots (tablets) evolved because of the perception that votes were corrupted by purchase from special interests.

The importance of Rome with respect to direct democracy is that in its later period, representative democracy replaced it as the favored method of democratic participation. That is to say, as the magnitude of government expanded and populations increased, it became increasingly difficult for direct democracy-type rule.

Swiss Landsgemeinden

The third example of direct democracy most often discussed in the academic literature is the Swiss example. Direct democracy in Switzerland began in 1291 when several independent oligarchial cantons formed a defensive confederation in a federal charter called the Bundesbrief. Kobach (1993, p. 16) described these cantons as using “a heavy-handed approach in dealing with the peasantry.” Even so, Kobach noted that Swiss peasants had more freedoms and rights than their European counterparts did because they directly participated in the military. In 1294, the first Landsgemeinde, an assembly of all adult males eligible to vote, was held in Schwyz, and it was this assembly that evolved into a tradition of direct democracy in Switzerland. Votes were counted by a show of hands and attendance was mandatory in these assemblies, which varied in
size (up to 10,000, see Kobach, 1993) depending on the size of the canton. According to Kobach, civil unrest and guild empowerment also led to the expansion and entrenchment of democratic processes in Switzerland. In short, direct democracy in Switzerland evolved because historically, the peasants themselves played a rather large role in defending their cantons so local oligarchies relied on them for their survival. By the early fifteenth century, the referendum was used as a means of deciding which joint policies would be implemented on the league or republic levels. As a result, despite geographical barriers and linguistic differences, the commitment to direct democracy helped unify Switzerland and these Landsgemeinde continue to the present day.

War institutionalized and refined the cultural heritage of direct democracy in Switzerland. For example, the Swabian War of 1499 freed the Swiss from Habsburg control in 1513 and a thirteen-canton confederacy was formed that required that central decisions be taken back to each commune ad referendum et instruendum, where free men would decide. This is the first use of the term referendum. Later, in 1797, France invaded Switzerland and Napoleon instituted a new constitution on the Swiss. Although Napoleon instituted universal manhood suffrage, the Swiss later added property qualifications. Under the constitutional arrangement, Swiss cantons lost some of their political autonomy and as a result, in 1798, the French put down several rebellions. In 1802, the Swiss approved a new constitution by their first national referendum. This was the first use of a referendum to ratify a constitution. The problem was that under the rules, abstentions counted as affirmative votes. Even though the Swiss voted 72,500 in favor and 92,500 against, the 167,000 abstentions resulted in ratification. For this reason, the first referendum lacked the legitimizing force that it has today. The first referendum on constitutional approval set a precedent and as a result, referendums became the generally accepted means to create or amend later Swiss constitutions.
The Swiss also provided us with the first use of an optional legislative referendum, in which citizens could challenge routine laws by petition. These began in 1830 and their use gradually spread. As a result, referendums began to replace both communal assemblies and landsgemeinden. Interestingly, the context in which Jean-Jacques Rousseau (1712-1778) experienced direct democracy in Geneva was underdeveloped when he concluded that direct democracy was only appropriate for small states. In the period beginning in approximately 1830, religious conservatives realized that they could benefit from the use of referendums. As a result, efforts to extend suffrage began to take hold. Religious strife, civil war (Protestant Revolution), and the Constitution of 1848 enabled both the referendum and the initiative on a federal level, including obligatory referendums for constitutional amendments.

Implementation was not without difficulty because problems such as voter intimidation, voter registration exclusions, and gerrymandering appeared. Some initiatives and referendums were only applicable on a local level and there was a struggle by aristocratic elements to limit the use and application of direct democracy efforts in general. This situation was not resolved until 1891 when the constitutional initiative for partial revision (analogous to a constitutional amendment process) was established on the federal level. It was through this development that policy formation based on adversarial interest groups first appeared (over tariffs). Prior to World War I, Switzerland found itself at the center of the socialist-Marxist movement and proportional representation was approved by referendum in 1918.

Today, referenda results are considered binding and can only be overturned by subsequent referenda. The government can pass legislation even if such legislation failed to pass by referendum. Most significantly, the Supreme Court cannot declare a referendum unconstitutional unless it is procedurally insufficient. The mechanism used to protect against the
tyranny of the majority is a double majority vote requirement to pass direct democracy measures. According to Kobach, the four types of referendums allowed on a federal level in Switzerland today are: (a) obligatory referendums on constitutional amendments, (b) constitutional initiatives, (c) optional or facilitative referendum on legislation, and (d) optional treaty referendums (p. 42). The significance of the Swiss example is its impact on the development of direct democracy instruments and procedures.

*New England Town Meetings*

The fourth example of direct democracy is the New England town meetings. The first permanent settlement in New England was the Plymouth Colony in Massachusetts in 1620, a colony founded by the Pilgrims whom had left the Church of England to form one of their own. According to Zimmerman, the Plymouth Colony was ruled by a council and governor; but by 1631 it allowed certain residents to “make such orders…for the convenient and comfortable living as they shall find necessary” (1986, p. 19). So, although these residents were governed by the Plymouth Colony, they were allowed to “elect a board of selectmen authorized to call town meetings” (Zimmerman, 1986, p. 19).

In 1628, the Massachusetts Bay Company’s charter specified a “governor, deputy governor, and 18 assistants who were empowered to hold a General Court, admit freemen, elect officers, and enact laws” (Zimmerman, 1986, p. 19). This charter failed to specify the nature of town governments. As a result, “folkmoots,” which were informal, yet compulsory gatherings of freemen, governed town affairs. While attendance and participation included all the town males, only freemen (originally only shareholders of the colony) could vote. Voting later expanded to include men that were granted freedom but the number of voters was relatively small. Beginning in 1633, as governance became more complex, constables and elected executives began to
replace the folkmoots as governing town authorities. Even so, town meetings were a consistent part of the New England life and they continue today. According to Zimmerman (1986), New England town meetings today have attendance rates that range from 1% to 25% of the population, depending in large part on the population of the particular jurisdiction (attendance varies inversely with the size of the town). A town official prepares an agenda of items for consideration and calls for town meetings. However, citizens can include additional agenda items by means of an initiative petition. Voting methods vary in these meetings, but in order to protect voters from “recriminations” for controversial issues, secret ballots were frequently used (Zimmerman, 1986, p. 20).

Theoretical Basis of Direct Democracy

Modern Context

Three theorists provide the foundation for understanding direct democracy within its modern iteration: Jean-Jacques Rousseau, John Stuart Mill, and Jürgen Habermas (whom will be discussed later). Rousseau’s social contract theory provided the theoretical rationale for direct democracy, whereas both Habermas and Mill focused on concerns that came from its practice. Levin (1973) described the context and historical development of the social contract theory (that was only popularized by Rousseau) as a communal form of social organization that had its genesis in ancient Greece. In Levin’s view, despite minor distinctions between the terms of the agreement (i.e., covenant, compact, or contract), the social contract theory views humanity as free agents (in contrast to humanity as mere expressions of “divine” will) bound by mutual agreement rather than force (p. 251). The context of the social contract theory was an idealized past called the “state of nature,” which Levin called a “Golden Age of peace and equality, obviously superior to anything that replaced it” (p. 252). Religious beliefs played an important
role in popularizing the idealized state of nature particularly with respect to a compact based on divine will, as demonstrated by the covenant between both God and Noah, and God (through the Ten Commandments) with the Hebrews. In reality, life without the social contract is by definition, barbarism—unfettered competition for survival. The divine right of kings to rule through primogeniture replaced the divine right of God, and according to Levin, the Glorious Revolution of 1688 later repudiated the divine right of kings. Popular sovereignty reemerged as a dominant paradigm because of this repudiation.

This historical evolution of the social contract theory sets the context for the modern view of the social contract as described by Locke and Rousseau. Levin distinguishes Rousseau from Locke by the contractual terms; unlike Rousseau, who believed that the people did not have a right to determine the terms of the contract, Locke believed that the people did have such a right. For Locke, the social contract was an instrument to fight against tyranny. For Rousseau, the social contract was a revocable contract that was merely a means of “social cohesion guaranteed by the General Will” (Levin, 1973, p. 259). According to Levin, by the end of the eighteenth century European belief in the social contract (in anything other than idealistic terms) began to decline (p. 261). Hume’s 1748 essay Of the Original Contract justified the decline on the basis that there was no evidence historically for the existence of the contract and that government “was formed by violence, and submitted to by necessity” and that contract was only accepted gradually (Levin, p. 261). The American Revolution embodied of the principles of the social contract within the state and federal constitutions of the colonial period. Presently, the utilitarian beliefs in government by consent and respect for individual rights have reduced the impact of the social contract theory. According to Levin, the theory is “no longer in favor” (p. 263). If Levin is
correct, then the academic and political resistance to direct democracy is easily understood—or at least rationalized.

Rousseau

As Levin demonstrated, the social contract as a theory had a long evolutionary history that peaked with the works of Rousseau, whom reinvigorated and popularized its debate. Rousseau believed that because he had the right to vote on public affairs he also had a duty to study public affairs. He stated, “Man is born free; and everywhere he is in chains…social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions” (Social Contract, trans. 1992, p. 387).

While participation is conventionally defined as voting for representatives, direct democracy mechanisms are frequently viewed as supplementary mechanisms. Rousseau was primarily concerned with the problem of maintaining freedom and self-preservation within the context of absolute state power, inequality, and the forces of civil corruption represented by the pursuit of luxury (wealth). He stated:

   The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. (p. 391)

Rousseau defined democracy as rule by the “whole people or the majority of the people, so that more citizens are magistrates than are private individuals” (Social Contract, trans. 1992, p. 410). As an ideal form, Rousseau believed that democracy was an aberration against the natural order because it was “unimaginable that the people should remain continually assembled to devote their time to public affairs” (Social Contract, p. 411). Rousseau concluded, “There never has been a real democracy, and there never will be” (Social Contract, p. 411).
Even if such a form of government could in fact exist, Rousseau posed several assumptions that make implementation improbable (Social Contract, trans. 1992, p. 411). First, small states are required for realistic communication. Second, “thorny issues,” such as those relating to business, will not be addressed because of “manners.” Third, an unsustainably large degree of economic and political equality is required to maintain a democracy. Finally, the competition for luxury (i.e., wealth) will “make them [citizens] slaves to one another, and one and all to public opinion.”

Rousseau noted that republics were the typical response to these challenges. In his view, republicanism evolved because popular sovereignty was universal. Democratic or popular governments are constantly trying to reinvent themselves and change form because of popular opinions and as a result, they are more likely to have civil unrest and civil war. Rousseau concluded, “Where there a people of gods, their government would be democratic. So perfect a government is not for men” (Social Contract, trans. 1992, p. 411). His greatest fear was that private interests could corrupt citizen legislators against the general will of the people—a concern that is echoed today.

Rousseau classified representative government as a form of aristocracy, not as a democracy. The method of determining who will participate in the affairs of state is the election in a popular government. The law should regulate this process, in Rousseau’s view, in order to avoid dissolution into a hereditary aristocracy. Rousseau stated that in a representative government, “all the citizens are born magistrates; but here the magistracy is confined to a few, who become such only by election” (Social Contract, trans. 1992, p. 411). Aristocracy, in Rousseau’s view was a good thing because the “wisest should govern the many, when it is assured that they will govern for its profit and not their own. There is no need to multiply
instruments, or get twenty thousand men to do what a hundred picked men can do even better” (Social Contract, p. 412). However, Rousseau conceded that private corporate interests (that he called “particular wills”) had undue influence in such a system and tended to circumvent the general will of the people—again, a concern that is echoed today particularly with respect to direct democracy. Interestingly, Rousseau later described these same corporate interests as a counter-balance to state power (Social Contract, p. 418).

Rousseau described a good state by high citizen participation and a bad state by citizen apathy and greed (Social Contract, trans. 1992, p. 421). Popular sovereignty and its expression through the general will could not be delegated in Rousseau’s view. He stated, “Every law the people has not ratified in person is null and void—is, in fact, not a law” (Social Contract, p. 422). So, with respect to representative governments, the people are free only during the election. Freedom in a representative system is, in Rousseau’s view, illusionary.

According to Rousseau, residence constituted consent to the social compact because opposition to such contract by a group of citizens only marginalizes them as “foreigners among citizens” (Social Contract, trans. 1992, p. 426). Rousseau defined consent as accepting that citizens are obligated to conform to the general will and not that they must accept any particular law. Dissenters were included into the social compact through their vote by this method. Rousseau stated, “Each man, in giving his vote, states his opinion on that point; and the general will is found by counting votes” (Social Contract, p. 426). In short, the general will was based on majority opinion because, when it was not, according to Rousseau, “liberty is no longer possible” (Social Contract, p. 426). Even so, majorities can range between simple majority rule and unanimous rule; the people can modify them based on local conditions and political expediency (Social Contract, p. 427). Rousseau proposed two rules to determine how extensive the majority
vote should be: “grave and important” matters must be closer to unanimity and, when speed was needed, “a majority of one vote should be enough” (*Social Contract*, p. 427). These same concerns arise when discussing the appropriate use of direct democracy.

Although Rousseau believed that nobody is above the law, he also believed that people should not be allowed to propose law—they should only be allowed to approve law as proposed by magistrates (*Origin of Inequality*, trans. 1992, p.323-324). The problem, in Rousseau’s view, was that man by nature was equal (accepting some differences in physical and mental abilities) but that society corrupted him and made him unequal through the competition for power and wealth. Rousseau’s solution to this problem was the incorporation of the “general will” in terms of popular sovereignty. Rousseau’s “body” analogy helps us understand the implications of popular sovereignty specifically in a direct democracy context. Rousseau’s body analogy is as follows:

The body politic, taken individually, may be considered as an organized, living body, resembling that of a man. The sovereign power represents the head; the laws and customs are the brain, the source of the nerves and seat of understanding, will and senses, of which the Judges and Magistrates are the organs; commerce, industry, and agriculture are the mouth and stomach which prepare the common subsistence; the public income is the blood, which a prudent economy, in performing the functions of the heart, causes to distribute through the whole body nutriment and life; the citizens are the body and members, which make the machine live, move and work; and no part of this machine can be damaged without the painful impression being at once conveyed to the brain, if the animal is in a state of health. (*On Political Economy*, trans. 1992, p. 368)

In the case of pure form of direct democracy, the sovereign power is the people—the people are the head, the people are the brain, the people are the will and senses, the people are the organs, the people are the mouth and stomach, the people are the blood—in short, the people as expressed by the general will through the vehicle of popular sovereignty, will have the responsibility and the duty to participate in their perpetuation and survival. The social contract
was simply a tool to control the problems created by private interests (or the particular wills) in
the name of justice (which to Rousseau means political and economic equality). Habermas later
refined the fundamentals of the social contract into a coherent 20th century construct.

Habermas: The Public Sphere (Public Opinion) replaces the General Will

Rousseau’s notion of popular sovereignty as expressed by the general will was refined by
Habermas’s idea of a public sphere that evolved from (a) the rise of the middle class, (b) the end
of the feudal system, (c) the rise of capitalism, (d) the rise of the welfare state, and (e) the
industrial revolution (particularly the printing press). Habermas defined the bourgeois public
sphere as an extension of the private economy (based on the unit of analysis of the family) into
the public realm of commercial economics based on individual autonomy (the private sphere).
As private economic interests grew, government influence expanded into the public sphere
because it needed to promulgate the rules of law and promote public policies to establish control
over economic activities, which were fundamental to state power. So, the rules of society were
not merely determined by individual autonomy, they were determined by the decree of nation-
states. Under the feudal system, no such public sphere was acknowledged; a fact that was
rationalized based on divine will arguments generally and assumptions of popular ignorance in
particular. The public sphere began in England as a part of a civil discourse that resulted in a
standardized exchange system, the easement of libel laws resulting in free discourse, and cabinet
government that gave the people (property owners) some say in the affairs of government. By the
American Revolutionary Period, these themes matured into various declarations of rights and
constitutions based on self-regulating free market principles. In Habermas’s view, constitutional
forms equated the general will with public law based on reason (1991, p. 81). In essence,
Habermas’s public sphere was capitalism incarnate—a free marketplace of political, social, and economic action.

In Habermas’s view, two problems with the public sphere became apparent. First, when a state violated the principle of universal access to public discourse by de facto exclusion, a condition referred to as political disenfranchisement today, the public sphere was corrupted. Second, when public opinion became “judgment that lacks certainty, whose truth would still have to be proven,” reason was sacrificed and the public sphere was once again corrupted (Habermas, 1991, p. 89). Public disenfranchisement and the need to measure outcomes in order to increase certainty and reason are two justifications for direct democracy. According to Habermas, it was because of the second reason that Hegel believed that the general will could only be expressed through academic or scholarly opinion. As was the case in feudal society, the average person was considered incompetent to participate in the public sphere. Theoretically, civil (minority) rights solved the first problem and public education solved the second problem. Marx asserted that the assumption of equal opportunity and universal accessibility were fictitious and as such, he viewed the public sphere as corrupt (Habermas, 1991, p. 124). When institutions responded to these problems, in Marx’s view, the people had to fight against the powerful institutionalized interests in a class struggle to solve the problem. In short, the notions discussed thus far are fundamental not only to democracy generally, but to both capitalism and socialism in particular—direct democracy bridges the gap between these opposing worldviews.

The public sphere described by Habermas roughly equated with that of Rousseau’s general will with a market-orientated twist. The major difference between the two perspectives is that Habermas focused on the economic basis of the public sphere whereas Rousseau focused on the economics incidentally as social and cultural aspects of the human condition defined in terms
of justice. Public opinion was the result of this marriage of ideas. Because of his father’s involvement with the Nazi Party in World War II Era Germany, Habermas believed that this discourse (public sphere) could be corrupted into extreme forms by governments if the public discourse was insufficient or irrational. Indeed, Habermas viewed the public sphere as a political confrontation between the people and government—the medium of this confrontation was “public use of their [the public] reason” (1991, p. 27). This led to the problem of who votes and participates—issues of prime concern with respect to direct democracy.

However attractive theoretically, Habermas’s ideal of the public sphere was unrealistic. Habermas stated, “Citizens entitled to services relate to the state not primarily through political participation, but by adopting a general attitude of demand—expecting to be provided for without actually wanting to fight for the necessary decisions” (1991, p. 211). In short, voter behavior limits reasoned participation in government. If this assertion were true, direct democracy efforts would be problematic within the public sphere model. If, however, this assertion were incorrect or overstated—that is to say that citizens are either well or substantially well informed and actively participate or substantially participate, then the public sphere model could apply to direct democracy. Habermas’s solution to the problems resulting from the corruption of the public sphere was communicative action, a theory of deliberative politics as a psychosocial model of quasi-rational decisionmaking.

John Stuart Mill—Problems of an Educated Citizenry and the Tyranny of the Majority

John Stuart Mill was concerned about two major aspects of representative democracy. The first problem was the representative body itself due to low intelligence informed by mere popular opinion. The second problem was the danger of class-based legislation passed by the numerical majority (i.e., the working poor). Traditionally these problems were solved through
restricted suffrage. According to Mill, pure democracy is “the government of the whole people by the whole people, equally represented” (*Representative Government*, trans. 1992, p. 370). In practice, Mill asserted that democracy was “government of the whole people by mere majority of people, exclusively represented” (*Representative Government*, p. 370). In an ideal sense, Mill argued that proportional representation was prerequisite to a “really equal democracy” (*Representative Government*, p. 370). Mill also argued that the process of choosing representatives was flawed and undemocratic. In party politics, for example, representatives were chosen based on popular support—a method that could be incongruent with the general will. In practice, Mill pointed out that the elected representative tended to be either the first person who stepped up to the plate and looked appealing, the first person identified and selected by local leaders, or the least objectionable candidate.

These concerns are still valid today and they justify direct democracy as an alternative or supplement to representative democracy. For example, Mill’s ideas regarding both the problems of the tyranny of the majority and the problem of representative qualifications regarding intelligence fit the theory of direct democracy. While proportional representation is one mechanism that is able to deal with these two issues, direct democracy efforts are the ultimate expressions of proportional representation. The strength of direct democracy lay in that it is not merely limited in scope to one of representative choice—it extends proportional representation to policy choice through referenda and initiatives. It is possible that the general will is best determined by direct democracy mechanisms instead of either virtual representation or proportional representation. Of course, Mill was primarily concerned with how representatives were selected in an ideal democracy.
Mill was also concerned with representative quality and class-based legislation. More specifically, problems arise due to poor citizen intelligence and class-based legislation passed by those citizens. In short, the education of the average voter becomes a major obstacle to the ideally rational voter model of direct democracy with respect to decision-making. Protections of minority rights become a second critical issue. Even so, on utilitarian grounds, direct democracy seems to be the best mechanism suited to achieve the objectives of the greatest happiness principle. Namely, as Mill stated, “That actions are right in proportion as they tend to promote happiness, wrong as they tend to produce at the reverse of happiness. By happiness is intended pleasure, and the absence of pain; my unhappiness, pain, and aggravation of pleasure” (Representative Government, 1992, p. 448). Education and equity issues are two of the greatest concerns of direct democracy opponents.

So, what do these historical and theoretical foundations mean with respect to direct democracy today? Direct democracy evolved from the consensus that the people should have a role in their government based on the both the theory of popular sovereignty and consent of the governed. In the early American experience, idealizations of the Greek, Roman, Swiss, and New England town meetings evolved first as a tool to bestow legitimization to state actions regarding constitutional and charter approval. However, during the Progressive and Populist Era, direct democracy’s role changed fundamentally—it became a tool to express popular dissatisfaction with the representative system generally, and special interests and corruption in particular. Its evolution could also be seen as a natural counter-reaction to the problems of faction and party (i.e., boss) politics and the belief that the common man had little true power, despite the widespread belief that they were the theoretical source of that political power. Prior to the civil rights era, the theoretical concern against the tyranny of the majority practically meant tyranny of
the educated elites and their property rights and high social status from the uneducated masses. But, as the industrial revolution took hold, the uneducated masses became, in fact, educated and self aware—they wanted better working conditions and the ability to influence the public policy. In short, their newfound sense of self was expressed by the Progressive and Populist movements generally, and direct democracy in particular. With this background in mind, we must next consider the instruments and then typologies of direct democracy.

**Instruments of Direct Democracy**

One of the most important questions about direct democracy is its effectiveness in different size jurisdictions. Theoretically, the larger a geographic region becomes, the harder it is to gather citizens in any discussion-type forum to make such decisions. Of course, this traditional criticism should be distinguished from the modern iteration of direct democracy in which citizens’ vote for propositions concurrently with certain elections. Indeed, one of the criticisms of direct democracy is that as a mechanism, it is not based on informed debate or compromise, as is the case in a legislative setting. This assertion has merit. However, it can and should be challenged. At any rate, as the number of citizens and the complexity of government increases, the probability of successful direct democracy efforts theoretically decreases. As a result, some have historically asserted that direct democracy in larger jurisdictions is either not possible or problematic. John Adams put it this way, “In a large society inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step then, is to distribute power from the many to a few of the most wise and good” (Oberholtzer, p. 13). However, this conclusion is by no means a foregone historic conclusion because examples of direct democracy, such as in Switzerland, had participation memberships approaching 10,000.
people (see Koback, 1993). In modern times, advances in technology make it possible to implement direct democracy instruments on a larger scale than ever before considered.

Before exploring the three primary instruments of direct democracy in detail, some background is in order. First, there are no universally accepted instruments of direct democracy. That is to say that each jurisdiction decides if any particular instrument can be used and under what conditions. As a result, direct democracy instruments are subject to highly diverse implementation practices. For example, petition requirements for proposing direct democracy measures vary greatly from jurisdiction to jurisdiction. Second, the structure of a particular government has a large role in determining how such instruments are operationally defined and implemented. For example, in the American context, referendums can be a method of constitutional change (constitutional referendum or initiative) or they can be designed to change a particular law (statutory referendum or initiative). Direct democracy instruments in communist, socialist, or even parliamentary nations can be viewed in an entirely different context procedurally and practically. For example, in communist countries, direct democracy can be used as a tool of party legitimization rather than mere democratic expression.

There are three traditional direct democracy instruments—the referendum, initiative, and the recall. The first instrument provides that the people can vote on some particular law or proposed law—this is called a referendum. Since there are two ways that a referendum can be initiated, one by petition from the people and the other by request of the legislature or government, there are two basic types of referenda (see Waters, 2003, p.11). The first type of referenda is when the citizens decide to vote on some measure already enacted into law by petition in order to either stop the measure from going into effect or to approve it so that it can stay in effect. This type of a measure is called a popular referendum—a matter requested by the
people. The second type of referenda is when the legislature or government decides that a measure should be approved by the people before going into effect. This type of measure is called a *legislative referendum*. A variation of the legislative referendum occurs when the legislature or government submits a proposed law to the people not for approval or rejection, but for some special insight as to the general will. This type of referenda is called an *advisory referendum*. The second instrument provides that the people can vote on some law of their own creation—this is called an *initiative*. There are two ways to conduct an initiative (see Waters, 2003, p. 11). First, they can be placed directly before the people for a vote to determine if it should go into effect—this is called a *direct initiative*. Second, they can be required to be placed before the legislature for “final consideration” before going into effect—this is called an *indirect initiative*. In order to clarify the distinction between referenda and initiatives, recall that referenda relate to changes in present law whereas initiatives propose new laws. The third instrument provides that the people can force a public official’s term of office to expire prior to the next election—this is called a *recall*. These instruments roughly equate with Magleby’s typology, which consists of four types of direct legislation: direct initiatives, indirect initiatives, popular referendums, and propositions submitted by the legislature (1984, pp. 35-36). LeDuc (2003) provides a similar typology, adding separate categories for treaties and questions of self-determination. LeDuc also points out that the major problem with such typologies is a lack of mutual exclusiveness (p. 34).

**Sample Typology of Direct Democracy**

Having defined what constitutes direct democracy and the major instruments of direct democracy, this paper will next consider several typologies of direct democracy. That is to say, it will explore in descriptive terms the great variety of direct democracy instruments that we see
today. This section is significant since the instruments of direct democracy, as previously discussed, vary considerably. It should be noted that, each jurisdiction decides for itself if direct democracy instruments are to be approved for use, which forms they will take, and which procedures will be required. It should also be noted that most democracies have used direct democracy instruments on the local level (see Kobach, 1993).

Zimmerman (2001, pp. 6-14) proposed an excellent example of a comprehensive typology of direct democracy. Zimmerman begins with the American example and defines his typology of sixteen types of referenda in legalistic functional terms. A *constitutional* or *charter referendum* ratifies some proposed amendment to a constitutional or charter provision and is initiated by either a legislative body or citizen petition. A *statutory referendum* either approves or rejects some state or local law. An *automatic referendum* results from some constitutional or charter provision that a certain question must be automatically placed on the ballot. A *mandatory referendum* requires that certain governmental actions, such as amending a constitution or charter provision, issuing bonds, or establishing debt ceilings must be referred to the people. An *optional referendum* proposes some particular legislative issue to the people for consideration at the request of a legislative body. An *acceptance referendum* is used by local government to refer a certain law or charter (usually a municipal corporation) to the state legislature, who will decide if the law should be applied statewide level or only locally if approved by a local referendum. A *market basket referendum* allows voters to choose from more than one form of a single referendum. A *periodic local option referendum* is a referendum conducted on the local level (usually for moral purposes such as liquor licenses) that is pre-authorized by state law. The *opt-out referendum* is used to exempt a particular jurisdiction from some state law only if such exemption is authorized by the legislature in advance. A *specific issue initiative-referendum* is
used to allow citizens in a local jurisdiction to put a certain predetermined issue on the ballot by petition. A general initiative-referendum is used to allow citizens to place any general issues on the ballot at the state or local levels. A protest referendum is used when citizens are allowed to suspend the implementation of some state or local law until such law is submitted to the voters for approval or rejection and is initiated by petition. A farmer referendum is used specifically for farming issues. An advisory referendum is a non-binding initiative placed on the ballot either by petition or by legislative action in order to “consult” with the people. A postal referendum is a mail-in referendum. A town meeting referendum is used to choose who will represent a town in meetings when the entire town cannot be present. Zimmerman’s typology demonstrates the great diversity in the many types of referendum and initiatives. Despite the utility of Zimmerman’s typology, the major weakness of the typology is that referendums and initiatives were treated homogenously as a single group and not as distinctly different forms.

Models of Direct Democracy

Models of direct democracy attempt to describe how direct democracy works theoretically. No single model has been universally accepted; instead, different models are useful for different research purposes. According to Walker (2003, pp. 16-17) three most important models of direct democracy are the rational choice model, the institutional model, and the delegate model. Under the rational choice model, voters participate in their own rational and self-enlightened interests. Under the institutional model, legislators must respond to institutional constraints and incentives created by direct democracy efforts. Under the delegate model, the views of voters determine in large part the actions of legislators. The focus of this paper will now turn to a brief description of several additional models.
Walker’s (2003) general theory of referendum politics focused on a direct democracy from a socialist or Marxist perspective and combined elements of elite theory, power theory, and rational decision-making. Walker stated, “The theoretical heart of this work is a rational, bargaining framework that takes place between elites in different institutional settings who have the option of using the referendum device to resolve disputes” (p. 3). The importance of Walker’s model was the realization that direct democracy was not a one-way relationship between the people and their electorate. Indeed, political actors often used the legitimacy conferred on policy issues by a referendum to gain their preferred policy outcomes—outcomes that may not have been achievable otherwise. To put it another way, political actors can use direct democracy strategically for their own purposes. Direct democracy can also be used as a bargaining mechanism between elites or to change institutional power structures. One of the more disturbing aspects of Walker’s work is the recognition that ethnic majorities can use direct democracy efforts to legitimize their policy preferences in a manner adverse to ethnic minorities. Hence, there is room to question the presumed legitimacy of direct democracy in certain cases as evidenced by various court appeals.

LeDuc (2003) focused on the European experience and identified three major political functions in a referendum based on how they were used. Essentially, referenda can be viewed as the “recourse of the prince, recourse of the citizens, or recourse of the parties” (pp. 47-48). The importance of this distinction cannot be overemphasized—especially within the present domination of politics by political party machines in the United States. LeDuc’s work leads one to conclude that direct democracy efforts go beyond leaders and constituencies to incorporate political parties and a host of special interests. If one extends this argument to multijurisdictional and federal systems, the complexity of direct democracy increases substantially.
Qvortrup (2005) was a proponent of A. V. Dicey’s (1835-1922) theory of the referendum as the people’s veto. Qvortrup argued that direct democracy could not replace representative democracy (p. 44). Instead, direct democracy had a distinct role analogous to the president’s role with respect to congress in the United States—the ability to say, “No” under certain conditions. In short, government should be held accountable to the people. Qvortrup argued through the eyes of Locke that since the people voluntarily delegate their sovereignty to their representatives, such sovereignty could be revoked. This is a direct challenge to constitutionalists and federalists. In a very real sense, American Populism provided that direct democracy efforts (and term limits) were an effective check and balance of arbitrary and capricious governmental powers—government corruption, if you will. What Dicey proposed was that elements of direct democracy and representative democracy could be merged to solve these problems. Qvortrup stated that such a merger could “facilitate the political education of the voters as well as creating an incentive for Parliament to address the concerns of the electorate” (p. 46). Accordingly, the major problem according to Dicey was the lack of checks and balances. Interestingly, Dicey argued that direct democracy was an answer to a more insidious problem—party tyranny—which was the result of a political “majority out of proportion to its real power” (p. 48). This argument holds special relevance when the majority of citizens do not participate in their government or vote. It is important to recognize that Dicey did not believe that direct democracy should replace representative democracy and he was one of the first to recognize the inherent educational value of voter participation in direct democracy issues. That is, if voters could determine laws, government officials would see the need to educate the citizenry and as a result, the rationality of the people would increase. While Dicey referred only to the referendum and not the initiative, he pointed out that legitimate problems could arise if referenda were overused.
Zimmerman (2001) proposed a theory of cooperative lawmaking that used a new type of referendum that allowed legislative bodies to modify a proposed referendum before it was submitted to the public for approval or rejection. Zimmerman’s theory was based on the acknowledgement that under traditional representative democracy, citizen participation was limited to the choice of their representatives, after which their responsibility for public policy issues ended. In other words, popular sovereignty is, for practical purposes, an illusion. One solution to this problem is congruent with Zimmerman’s goal to merge the theory of representative democracy with the theory of direct democracy in a manner that presumes legislative superiority and yet acknowledges that direct democracy efforts are an important check—or citizens veto, if you will—on legislative power.

Zimmerman’s theory, however, assumed a level of legislative sincerity to incorporate citizens’ views that was problematic at best. Many researchers, such as Gerber, Lupia, McCubbins, and Kiewiet (2001), have pointed out that direct democracy directly challenges legislative authority and as a result, government actors frequently make enforcement of direct democracy measures impossible, thus subverting the will of the people. It is important to note that Zimmerman was talking about direct democracy specifically in the American context; his goal was to standardize to the extent possible direct democracy as implemented in the fifty states. In Zimmerman’s view, one of the most problematic issues relating to direct democracy is excessive spending by special interests that under the present law cannot be limited by the state (see Supreme Court, *First National Bank v. Bellotti*, 1978).

Zimmerman proposed his framework in order to implement his theory of cooperative lawmaking in any given state. Two points seem to have widespread support. First, states should create constitutions and charters that provide an explicit authorization or enabling statute for
Direct democracy instruments. Second, the constitutional provisions and enabling statutes must provide for the rules under which direct democracy measures can be initiated, who can initiate those measures, and how the process will be conducted. The major processes involve the application process, petition requirements, verification procedures, titling and summary requirements, voter information pamphlet requirements, ballot procedures, and amendment and repeal provisions. Zimmerman’s ideas differ from the practice of many jurisdictions because of the belief that enabling statutes and constitutional provisions should expressly encourage citizen participation to the maximum extent possible and that the results of such direct democracy measures should be self-executing. These additions are significant, especially given the ability of legislatures, executives, and bureaucracies to co-opt implementation and enforcement through mechanisms such as the denial of funding. A second major contribution of Zimmerman’s model is the acknowledgement that explicit and clear ethical and legal standards, such as codes of ethics, conflict of interest statutes, open meeting requirements, freedom of information requirements, disclosure requirements, whistleblower protection, and other mechanisms of internal and external control, should be addressed in the enabling statutes as well. If one adds to Zimmerman’s ethical and legal standards strict penalties for violations, the model adds a great deal to the direct democracy literature.

Broder (2001, p. 21) proposed a model of direct democracy based on the belief that it subverted representative democracy, which “is not something to be discarded so casually.” Broder began from an apparent contradiction; that while the people generally believed that politicians were corrupt, they seemed to exempt their particular politicians from that corruption. Fundamentally, the basis of Broder’s model is a lack of trust in the people. According to Broder, voters would violate minority rights and a corrupt initiative industry would purchase their votes.
to pass direct democracy measures. Broder asked, “Is California the model we want for our nation? (p. 21)” In short, direct democracy subverts republican government. While Broder’s argument has merit, it is important to recall that while the Constitution does contain the “guarantee clause,” that guarantees every state a republican form of government, in 1912, the Supreme Court (Pacific States Telephone and Telegraph Company v. Oregon) ruled that it had no standing to decide if protest referendums or popular initiatives violated this guarantee clause. In their view, this was a political question. This is the greatest weakness of Broder’s theory. Since the Supreme Court ruled that the government could not limit expenditures of interest groups in direct democracy campaigns, a second major element of Broder’s theory—that interest group expenditures should be limited—is a moot point. Finally, Broder assumed that money corrupted the process and that money mattered more to direct democracy than it does to representative government—again, a weakness in his theory. Boehmke (2005, p. 3) shows, for example, that “initiative states have almost 30 percent more interest groups and over 40 percent more citizens groups making them more representative than noninitiative states.” Surely, direct democracy states are more politically diverse than non-direct democracy states.

Despite these weaknesses, Broder’s theory has its good aspects. First, it questioned the rational voter model by asserting that people may not be either motivated or educated sufficiently to vote in an informed manner. As such, voters relied on advertising because traditional voting cues such as political party were largely absent. Even so, in California voter information packets and independent voter guides are available to the average voter from a variety of sources, which mitigates the problem of education. Cronin (1999, p. 87) summed it up best. He stated, “How competent, informed, and rational are ballot voters? Not as competent as we would like them to be, yet not as ill informed or irrational as critics often insist.” Second, Broder’s theory implied an
important need; one echoed by Zimmerman. Whenever direct democracy was implemented, the issue of checks and balances should be considered. Third, minority rights should be respected. Broder’s assertions were sometimes overstated. For example, Cronin (2001, p. 123) argued, “Voters in direct democracy elections have also shown that most of the time they too will reject measures that will diminish rights, liberties, and freedoms for the less well-represented or less-organized segments of society.” In addition, many if not most of the propositions that have adversely affected minority rights have been overturned by the courts.

Fundamentally, models of democracy range between a pure direct democracy and a representative democracy. Broder’s model aligns towards the representative side of the continuum whereas Zimmerman’s model aligns towards the pure democracy side. However, the range is less than one would suspect and most academics accept a hybrid system of some sort. That is, direct democracy is not a zero sum gain in its competition with representative democracy.

In this spirit, Cronin (1999) proposed a model of direct democracy called “sensible” democracy. Under the sensible democracy model, Cronin acknowledged that the traditional pros and cons with respect to direct democracy and representative democracy were difficult to prove and that the evidence suggested that the effects were much less than anticipated by critics or proponents. The essential elements of Cronin’s model are as follows: direct democracy is aligned with legislative superiority with respect to the majority of laws; direct democracy enhances the principle of majority rule but also respects minority rights; direct democracy is a mechanism of last resort; direct democracy decreases influence of special interest groups, money, and secrecy; direct democracy is based on general distrust of both the people and the legislature; direct democracy is used by a limited pool of largely ambivalent and skeptical voters who vote only on
their “pet” issues; direct democracy improves the legislative process; and finally direct democracy requires procedural protections to make it responsive yet intentionally difficult to use. Cronin focused on the avoidance of ballot clutter, petition signature requirements, voter information packet requirements, titling requirements, legal construction requirements, and other practical matters. According to Cronin, the positive aspects of direct democracy should be balanced with mechanisms specifically designed to mitigate the negative aspects. For example, voter information packets are one mechanism used to address uninformed electorates and voter confusion. Cronin’s argument extends the argument posed by Butler and Ranney (1994, p. 13) that referendums are useful as a supplement to representative democracy.

Conclusion

In order to understand these models, an examination of direct democracy’s pros and cons is in order. This examination is problematic because they argue from extreme values; that is, the pure forms of each end of the direct democracy versus representative democracy spectrum. As a result, these arguments do not reflect the reality of direct democracy as practiced and therefore leave little room for compromise. For example, direct democracy is subject to state approval. Even in states like California, where widespread use of direct democracy is widely accepted, most legislation is passed through the legislative process. The use of direct democracy is limited to state and local jurisdictions in accordance with their unique histories and beliefs. Additionally, direct democracy is exclusively the voluntary domain of the states—there are no federal direct democracy devices used in America today. Internationally, the use of direct democracy is growing, but generally limited in scope. Therefore, representative democracy still reigns as champion of the people’s cause and will remain so for the near future. With this in mind, this
paper will conclude with the arguments in favor of direct democracy, the arguments opposed to
direct democracy, and finally, a more balanced view.

Arguments in favor of direct democracy pose that direct democracy is good because it
empowers the citizens to participate in their government and is of intrinsic educational value by
fostering civic virtue that is a fundamental prerequisite to democracy. Direct democracy is a
safety valve for legislative inaction and deadlock, irresponsiveness, or irresponsibility; it is a
mechanism of last resort. Direct democracy is an additional check and balance on the
representative system—a peoples veto. Direct democracy is a method of fighting special interest
influences. Direct democracy fosters reform, party influence, majority rule, and has a distinct
legitimization role on public policies thus created. In short, direct democracy poses that the
people are in the best position to judge what is in their best self-enlightened interests—it is a
mechanism of ensuring legislative accountability beyond the mere approval or disapproval of
candidates.

Arguments in opposition of direct democracy pose that direct democracy is bad because it
challenges and weakens traditional representative democracy. Direct democracy is unable to
compromise or bargain and it is detrimental to minority rights. Direct democracy delays
lawmaking and negatively affects the ability of legislators to conduct public policy in the
people’s best interests. Direct democracy is fundamentally flawed because the people simply do
not have the motivation or expertise to understand complex public policy issues and as such, it
results in poor, short-term, and inflexible public policy that can have vast unintended
consequences and hidden costs. Direct democracy is not the best expression of the general will
because most citizens simply do not participate and party cues are largely absent. In short,
legislators are in the best position to judge between competing interests what is in the people’s best interests—to act otherwise would be irresponsible and dangerous.

A more balanced view of direct democracy poses that direct democracy has a legitimate role in representative democracy as an expression of the will of the people, but because of some real-world practical issues regarding citizen understanding and participation, its use has been limited to states by choice. Direct democracy is subject to judicial review and as a result, minority rights are protected. Direct democracy enhances voter participation and understanding mildly, but in view of the trend towards nonparticipation in voting, it is an important supplement to representative democracy and in the long-term, it should be considered a good thing. Direct democracy is a mechanism of last, not first resort and it increases the number of special interests in a given state.

Direct democracy is a good instrument of deliberate choice—it responds to political market failure in a way that no other mechanisms can. In short, direct democracy makes government more diverse and inclusive—thus more responsible. Ultimately, direct democracy distributes political and economic power to The People, whom are eager to wield it. This paper, Part I of Direct Democracy: A Choice has introduced direct democracy in general terms. The following section, entitled Part II of Direct Democracy: A Work in Progress, will develop the ideas presented in this paper in more detail and bring them up to date by means of an annotated bibliography of recent academic literature on the subject and subsequent analysis.
References


Ph.D in Public Policy and Administration
Core Knowledge Area Module Number 5: Democratic Governance

Part II (Depth Component), Direct Democracy: A Work in Progress

Student: James Lhotak
Faculty Mentor: Dr. Dale Swoboda
Faculty Assessor: Dr. Dale Swoboda

Walden University
September 14, 2007
# Table of Contents

Introduction .................................................................................................................................................. 1

Annotated Bibliography .............................................................................................................................. 2

Analysis ...................................................................................................................................................... 18
  Introduction ............................................................................................................................................. 18
  Interest Groups and the Role of Money .................................................................................................... 18
  Minority Rights ......................................................................................................................................... 23
  Voter Competency ..................................................................................................................................... 27
  Policy Impact ............................................................................................................................................ 29
  Judicial Scrutiny ....................................................................................................................................... 33

Conclusion .................................................................................................................................................. 34

References .................................................................................................................................................. 35
Introduction

Direct Democracy: A Choice synthesizes the historical development and theoretical basis of direct democracy, describes its typical instruments, analyzes several typologies and models of direct democracy in utilitarian terms, and concludes that critics and proponents alike should take a more balanced approach with respect to direct democracy’s positive and negative characteristics. In pursuit of that goal, Direct Democracy: A Work in Progress analyzes the present state of direct democracy literature thematically through an annotated bibliography and analysis. Five major areas of concern emerge from this process: (a) the role of interest groups and money, (b) the impact on minority rights, (c) the question of voter competency, (d) policy impact, and (e) judicial scrutiny. In each area, the present academic literature builds on, refines, and moves beyond the traditional literature. As such, Direct Democracy Part II is particularly relevant to the study of direct democracy. For example, Boehmke’s (2002) work demonstrates that direct democracy states have more numerous and greater interest group diversity than non-direct democracy states. Feld and Kirchgassner’s (2001) work demonstrates the fiscally constraining impact of direct democracy on government generally. Taken together, these findings suggest that a central conclusion of Direct Democracy Part I is supported. Specifically, direct democracy redistribute political and economic power in a manner that makes such governments more diverse and inclusive as demonstrated by the numerical increase in political interest groups and their diversity, as well as the fiscally constraining impact of direct democracy generally (based on voter preferences). Direct Democracy Part II concludes that while taken as a whole, the recent direct democracy literature presents a more positive view of direct democracy than traditional literature suggests, the present state of research is such that replication and
further analysis is required—particularly in different locations and under different operational contexts.

Annotated Bibliography


Boehmke (2002) constructs a model that measures interest group diversity based on preexisting data and tests two related hypotheses: first, that the presence of direct democracy instruments in a state increases the absolute number of interest groups, and second that the presence of direct democracy instruments in a state increases the diversity of such interest groups. The traditional academic literature distinguishes between two major types of interest groups, namely, economic groups and citizen groups. Boehmke makes three explicit assumptions regarding these groups: (a) citizen groups use direct democracy more effectively than economic groups, (b) economic groups tend to favor traditional lobbying mechanisms, and (c) economic groups have more resources available to use the direct democracy process, but when mobilized, citizen groups can find the necessary resources to use the process. Boehmke constructs his model by controlling for three factors. First, the number of interest groups tends to increase over time. Second, states with larger budgets have more interest groups. Finally, government spending, political stability, and state economic capacity all correspond positively with the number of interest groups. Boehmke fails to account for population, however. Boehmke finds that the average number of interest groups increased significantly in direct democracy states to a 5% significance level. Using a regression analysis to test his model, Boehmke also finds that the presence of direct democracy increases interest group diversity. Specifically, he found that citizen interest groups increased in initiative states by 29% and that economic interest groups
increased by 12%. The strength of this article is its methodological and statistical rigor, which reinforce its central conclusions admirably. Boehmke successfully incorporates present theory into his model and finds clear support for his hypotheses.


Buchanan and Kyklos (2001) argue that direct democracy, such as in Switzerland, should be embraced by classical liberals because it limits the size of government. Additionally, the perceived excesses of direct democracy—specifically those relating to minority rights—can be limited by enforceable constitutional checks and balances. The authors begin with a description of the historically based elitist fear of the people and its present day residual effects. In the authors’ view, collective action as represented by direct democracy should be limited through constitutional structures. The authors call this democracy within constitutional limits. In pursuit of this argument, Buchanan and Kyklos state, “It seems clear that something akin to a bill of rights would be constitutionally set down, some listing of rights that are beyond the purview of any referenda” (2001, p. 239). In sum, Buchanan and Kyklos pose that direct democracy limits the size of government and is a socially and economically stabilizing force even on a federal level; so long as it is not divorced from constitutionalism as a mechanism of controlling its perceived excesses. The major contribution of this article is that it provides for a specific mechanism to limit direct democracy excesses. This mechanism—constitutional limitations—could be used to address the concerns of opponents of direct democracy.

Feld and Kirchgassner (2001) study Swiss direct democracy on the canton and local levels and conclude via a complex regression analysis that the presence of direct democracy decreases government expenditures and revenues on both levels of government and reduces the public debt on the local level. The relationship, in the authors’ views, is causal. The authors use pre-existing data from 26 Swiss cantons between 1986 and 1997, and 1990 data from 134 local communities to conduct their analysis, which begins with a short discussion of the “decentralization of competencies” (i.e., fiscal devolution) as a context for the study. To test the null hypothesis that economic policy outcomes do not differ significantly between representative forms and direct democracy forms of government, the authors controlled for several institutional variables, demographic variables, and political variables in their analysis and found that the hypothesis must be rejected. The rationale for the inclusion of these variables is both the greatest strength and greatest weakness of the study because it adds depth to the analyses but in the process, it introduces error and decreases the use of the model. The secondary hypothesis, that direct democracy outcomes result in lower spending and revenue levels than those in a parliamentary process, is supported by the data. Finally, the authors’ analysis extends to incorporate the present literature, which generally supports the study’s findings. However, the authors’ conclusion that direct democracy causes increased technical efficiency, better economic performance, and higher public satisfaction, while interesting, does not necessarily follow from their research. Most importantly, the authors conclude that direct democracy should be implemented on the sub-federal level within the European Union. The inclusion of two peer-
reviews and a commentary from a panel discussion of the paper adds legitimacy to the paper (both its strengths and limitations). In sum, the authors achieve their purpose of showing a positive relationship (in their view) between direct democracy and fiscal conservatism.


Gerber and Phillips (2003) study the impact of interest group endorsements on development ballot initiatives in San Diego between 1996 and 1998 by conducting a multivariate analysis that examines the relationships between economic self-interests, geography, interest groups endorsements, public goods provision, and patterns of voter support. The dependent variable in the study is the percent of the vote by precinct in favor of various development propositions. The authors divide both the independent and control variables into five models—an economic voting model, a distance voting model, an endorsement voting model, a local endorsement model, and a public goods model—each relating to a particular hypothesis. The authors find that support for pro-development ballots increases as the distance from the development increases, that planning organization and environmental endorsements increase support for pro-development ballots, that planning board endorsements increase support for pro-development ballots inversely related to distance, that environmental endorsements increase support for pro-development ballots independent from distance, and that the provision of public goods increases pro-development ballot support. The most important aspect of this research is that it contradicts the traditional research that sees support for pro-development ballots in terms of fixed demographic and economic variables. Secondarily, the authors find support for a higher level of voter sophistication than is usually attributed to them when it comes to developmental
Direct Democracy Part II

ballot propositions. In short, the authors’ research is well considered, clearly delineated, and particularly relevant with respect to the current state of the academic literature.


Graglia (2000, ¶1) argues that government is dangerous because it leads to “an exaggerated appraisal of one’s wisdom and goodness as compared to those qualities in others” and that government grows “far beyond what justifies its existence and therefore to limit human freedom unnecessarily.” In pursuit of the goal of limiting government, Graglia proposes that the American system should be made more democratic by the decentralization of policymaking, the adoption of direct democracy measures, and the limitation of the policymaking power of judges. The author’s discussion is compelling in many respects and is worth reading. However, the work is conservatively biased. Despite this weakness, the author achieves his purpose and presents his views clearly and convincingly. The most important aspect of this work is the author’s proposition that direct democracy is not merely a mechanism of governmental reform as in the Progressive era; it is an additional check on governmental power.


Hajnal, Gerber, and Louch (2002) assess the assertion that direct democracy threatens minority rights by examining the outcomes of direct democracy in California between 1978 and
2000 and comparing these to the outcomes from seventeen *Los Angeles Times* exit polls. The most important aspect of this work is its creative approach to a problem that has been severely neglected by the academic literature, most of which assumes without proof that the relationship is hostile as an axiom. The authors admit that the most significant weakness of the study is that it does not include the opinions of nonvoters. The authors define the dependent variable in terms of voting on the winning side of a particular measure and the independent variables in terms of ethnicity—Black, Latino, or Asian Americans. Additionally, the authors include control variables of voter characteristics for age, gender, income, education, region, party registration, and ideology. Finally, the authors control for the margin of victory to reduce the impact of outliers. Upon analysis, the relationship between voter characteristics and winning-side outcomes is found to be weak—explaining little of the variation. Overall, every ethnic group is found to be on the winning side at least 50% of the time. In sum, White voters are more successful by only 2%. Even so, when ballot initiatives were by definition hostile to minority rights (such as public benefits to illegal immigrants for example), Whites were on the winning side 71% of the time, Blacks were on the winning side 64% of the time, Asians were on the winning side 56% of the time, and Latinos were on the winning side only 40% of the time. The authors conclude, “that there is little overall anti-minority bias in the system of direct democracy (2002, p. 174).


Judicial Approaches to Direct Democracy (2005) argues that judges should use a mixed model of judicial scrutiny that ranges within a continuum of great deference and heightened scrutiny based on the legitimizing effects of such legislation on present law. Traditionally, the
judiciary has given little thought to the source of direct democracy, and as such, it often treats direct democracy cases as they would any other case. According to the author there are three major approaches to judicial interpretations: the purposive approach (based on author’s intent), the textual approach (based on the literal meaning of the words), and the no-difference approach. Presently, judges prefer to determine the enactors’ intent in order to interpret such legislation. The author successfully argues that such attempts are futile because in the case of direct democracy, determining such intent is problematic. In order to solve this problem, the author proposes that judges should mitigate the negative effects of direct democracy while at the same time accept that it is and can be a positive force for change as an expression of popular will.

Under the author’s proposed model, when direct democracy efforts “enhance the legitimacy or operation of law,” a greater deference standard should be applied (p. 2766). When direct democracy efforts are likely to “taint the law,” greater scrutiny should be applied (p. 2766). When direct democracy efforts have little or no effect (or ambiguous) on present law, popular participation should be ignored as no consequence. Finally, when direct democracy efforts conflict with present law (especially with respect to minority rights) judges should exercise strict scrutiny (p. 2766). This model places the judiciary squarely in the role of the arbitrator of the public good as expressed through direct democracy cases. The author successfully achieves the express purpose of the article, which is to break the “paradigm that direct legislation should be treated uniformly” (p. 2769).

Hoesly (2005) argues that direct democracy efforts in Oregon have not lived up to the “ideals of its creators and the hopes of today’s citizens” because of its negative impact on both state and local budgeting and minority rights (p. 1248). Central to Hoesly’s argument is the assertion that industrialized direct democracy efforts—those started by powerful special interest groups and corporate interests—have superseded the traditional idea of grassroots direct democracy. In Hoesly’s view, corporate interests dominate the process of direct democracy in Oregon because they spend more money in opposition to direct democracy efforts that threaten their perceived economic positions than they spend on aggregate political campaigns within the state. On the other hand, special interest groups such as the anti-tax lobby and the education lobby—called *faux populists* by Hoesly—have also damaged state and local fiscal stability. This occurs because their efforts reduce legislative flexibility over the budget process by denying tax rate increases, or because their efforts mandate programs without specifying funding sources. While some special interest groups, such as the term-limit lobby, pose a general threat to executive, legislative, and judicial independence, Hoesly argues that one direct democracy device in particular—the recall—is a direct threat to judicial independence and that it should be eliminated. In order to confront these challenges, Hoesly proposes several possible improvements that would enhance direct democracy efforts in Oregon. First, direct democracy efforts should be limited to the extent possible to general elections. Second, direct democracy efforts that propose to amend the state constitution should require a supermajority or successive vote for passage and should be strictly limited to a single subject in accordance with the constitutionally mandated separate vote requirement. Third, Oregon should pass subject matter
limitations on direct democracy efforts—specifically those that threaten minority rights, the judiciary, or fiscal stability. Finally, the judiciary should be exempt from the recall device. While this article is thoughtful and well documented, it is narrowly partisan in its approach. Specifically, it defines minority rights expressly in terms of gay rights and same-sex marriage and it fails to acknowledge the legitimate use of direct democracy efforts with respect to taxation and government spending. In sum, this work is an obvious attempt to insert a political agenda into future judicial discourse as evidenced by both its publication in the California Law Review and by its hyper-excessive and frequently unnecessary documentation (more than half of the article). Despite this limitation, the author’s discourse acknowledges the limitations of such reform measures in realistic and practical terms, and as such, the paper is worthy of consideration on its merits.


Kriesi (2004) counters the argument that citizens are not sufficiently qualified to participate meaningfully in political decisionmaking because they are not interested and poorly informed. Kriesi argues that citizens can meaningfully participate because policy choices are simplified and pre-structured in terms of elite arguments and voting cues. Kriesi approaches the problem from a sociologist background—one that is refreshing and adds a great deal to the quality of debate. Psychologically, there are two models of opinion formation: a heuristic model based on both shortcuts and learning cues, and a systematic model based on reasoned argument. Which of these models will dominate depends on two factors: motivation and competence. To study these models, the author examines federal Swiss data from 148 propositions between 1980
and 2000 and surveys taken by 79,000 voters during that period. Kriesi finds that voter opinions about the key arguments of a direct democracy campaign explain 40% of the variance in voter preferences (2004, p. 10). While some voters have clear preferences based on their own firm opinions, of the voters who have no clear opinion, party affiliation is the greatest indicator of voting preference. The greatest weakness of this study is that the author fails to present his methodology and data clearly enough for replication.


Kruse (2001) addresses the problem of misleading advertising with respect to direct democracy instruments and the assumed detrimental impact on women, minorities, the poor, and the less educated. The author argues that anti-false speech statutes should be used to solve this problem on the state level. In pursuit of this goal, the author examines the constitutionality, applicability, and practicality of using such statutes, and proposes a model statute to circumvent such problems from a liberal perspective. Although the goal is laudable, the major problem with the author’s approach is that the Washington State Supreme Court held that these statutes are unconstitutional based on first amendment arguments. At present, the Supreme Court has not ruled specifically on any of these cases. In short, they are little enforced and substantially symbolic. Seventeen states have anti-false speech statutes and the author presents these in their entirety. The author essentially argues against the holding of the Washington Supreme Court, and attempts to construct model legislation in order to meet constitutional muster primarily using the compelling state interest and narrowly tailored standards. Under the first amendment, controlling political speech as expressed through advertising is problematic at best,
unconstitutional at worst. The author’s hypothetical arguments aside, application of the model law represents a slippery slope argument that would have a profoundly negative effect on free speech. Kruse succeeds in clearly identifying the major legal issues involved in such legislation and as such, the author achieves her purpose. It may indeed be an issue ripe for adjudication by the Supreme Court. Even so, the precedents of current law indicate that they would probably fail constitutional muster.


Lupia and Matsusaka (2004) create a masterful work of integration on the present state of direct democracy research in four areas: voter competency, the role of money, policy impact, and benefit distribution. Noting over 70% of Americans reside in a city or state that has direct democracy available, the authors attack some popular misconceptions regarding direct democracy (2004, p. 463). On the question of voter competency, the authors note that the major insight has been that people make their choices based on very simple kinds of information—voting cues such as interest group endorsements, party affiliation, etc. As a result, “common stereotypes about voter incompetence rely on shaky theoretical and empirical foundations” (2004, p. 470). On the question of money, business interests tend to be defensive whereas citizen interests tend to be offensive, yet it costs more for business groups to defend their interests than it costs citizen groups to achieve their policy preferences. On the question of policy impact, under game theory, direct democracy affects policy even if it is not used because governmental actors change their behavior in response to them—an indirect effect. As a result, direct democracy tends to promote fiscal and social conservatism. However, the authors point out that it may actually be a “median reverting” institution (2004, p. 474). Research also suggests that
direct democracy enhances efficiency, citizen happiness, and better economic growth. To their credit, the authors state that these results should be viewed “with some caution” out of generalizability concerns (2004, p. 475). Even so, the authors’ state, “…Every [emphasis added] such study to date points to higher-quality (or no worse) decisions when the institutions of direct democracy are available” (2004, p. 475). With this in mind, it is difficult to rationalize the problem of political and bureaucratic resistance implementing direct democracy measures. This problem, however, may be exacerbated because organizations that pass direct democracy measures tend to disband after the ballot is passed. On the question of benefit distribution, the criticism of special interest influence is, according to the authors, circumstantial and not supported by the evidence. However, according to the authors, this is the weakest area in the academic literature. In short, Lupia and Matsusaka’s work is an integrative work filled with up-to-date references.


Mendelsohn and Cutler (2000) identify a gap in the academic literature regarding direct democracy—how it works in governmentally sponsored campaigns in countries with little history of direct democracy. The authors use a rolling cross-section methodology (which shows opinion dynamics) to study a 1992 constitutional referendum in Canada. The authors ask if referendums increase political knowledge, politicization, political efficacy, and political intolerance. Using an index of political knowledge based on a series of five questions, the
authors’ found that the campaign reduced the gap between the generally informed and the poorly informed by about 25%. Even though political interest (politicization) increased during the campaign, but the authors conclude that it was likely to be a function of media attention. Political efficacy (i.e., having “no say” in government) increased, but it was likely the result of an awareness of the referendum’s existence. Finally, the results of studying intolerance were simply inconclusive. The authors confide that their conclusions need to be retested using better measures. This study demonstrates that direct democracy is a multi-faceted phenomena and that traditional assumptions require new methods of operationalization in order to make any generalizable conclusions.


Switzerland has direct democracy on the federal and cantonal level and has a parliamentary form of government. Papadopoulos (2001) argues that direct democracy as experienced in Switzerland affects both politics and public policy by creating political “noise” that forces elites to modify their behavior with “defense mechanisms and other protective barriers, as a form of risk management, to cope with the uncertainty caused by referendums emanating from below” (Papadopoulos, 2001, p. 37). In this view, elites respond by trying to prevent or moderate direct democracy efforts based on their form. In the author’s view, referenda function as a mechanism for citizen control of public policy—*sins of commission*. On the other hand, initiatives function as a mechanism of promotion—*sins of omission*. Governmental actors attempt to preempt or at least reduce the probability that their legislation will be subject to future referenda in two ways: the co-optation of opposing political parties by including them as part of
the governing coalition, and negotiation with interest groups likely to respond to such legislation with a referendum. There are many points at which this can occur, for example, during the legislation drafting stage, during committee meetings, or by formal amendment in parliament. Initiatives are different, in the author’s view because the stakeholders have less “blackmail potential” than they do in the case of referenda (2001, p 39). Since initiatives are by nature less likely to be co-opted, government actors tend to respond after they are proposed by formal responses (such as a new law), informal responses (such as the repeal or modification of an existing law), or counter-projects (such as constitutional amendments). As a result, many initiatives are withdrawn before they are officially placed on the ballot. These responses, in the author’s view, demonstrate that direct democracy is a pluralistic, integrative, and majoritarian mechanism that is integral with—not independent from—governmental action. That insight is the author’s most important contribution to the academic literature. Even so, government actors sometimes fail to prevent or moderate referenda or initiatives successfully and as such, direct democracy is a deterrent of governmental action as well. As a result, elites view direct democracy as a threat to good government and a restriction on state power. In sum, Papadopoulos contends that this short-term negative view should be seen in light of the long-term virtues.


Tolbert (2003) proposes that direct democracy is not a mere safety valve mechanism as many hypothesize; it is an adaptation mechanism of institutional realignment related to periods of high demographic and economic change. Tolbert conducts a historical analysis of direct
democracy and concludes that while the progressives viewed direct democracy as a catalyst for change, fundamentally direct democracy has practical origins in terms of a loss of majority (i.e., Caucasian) control based. This is based on the perceived over responsiveness of state legislatures to minorities generally and increased economic uncertainty in particular. Tolbert postulates that during the Progressive Era, the source of economic uncertainty was the transition from an agrarian economy to an industrial economy, whereas today, the source of economic uncertainty is the transition from an industrial economy to a post-industrial economy. Tolbert tests this two-stage model of institutional alignment by analyzing two decades of state data from the 1999 National Conference of State Legislatures on nine specific reforms: (a) term limits, (b) supermajority tax requirements, (c) voter approval of tax increases, (d) open primaries, (e) blanket primaries, (f) campaign contribution limits, (g) public financing of political campaigns, (h) electronic filing requirements of campaign contributions, and (i) exclusive use of mail ballots. The dependent variable for the study is the average number of state political reforms, which is regressed against several explanatory independent variables such as racial composition, economic change (measured in terms of income inequality), party competitiveness, public opinion (measured in terms of liberalness or conservativeness), and if the legislatures were professional (verses part-time citizen legislatures). The major weakness of the study is that the data are utterly absent—the reader must rely exclusively on the researcher’s integrity and sound judgment. Tolbert concludes, “The use of direct democracy is a strong and statistically significant predictor of governance policy adaptation, even controlling for other factors” (Tolbert, 2003, p. 485). Tolbert’s findings are interesting and insightful in many respects. However, the conclusions reach beyond the data presented and include a great deal of conjecture. Despite this weakness, Tolbert’s work is well considered and can be refined by future research.

Zhen (1987) argues that direct democracy should be instituted incrementally in the rural villages of Communist China as it has been for urban residents based on both official party doctrine and constitutional arguments. The central government first approved urban and rural committees based on the principle of voluntary participation in 1953 as an organizing mechanism for self-government. However, such committees would be divorced from administrative power, which remains the responsibility of the Chinese Communist Party and the People’s Congress. In practice, however, these organizing committees were not implemented in rural areas. In 2001, the People’s Congress passed an in-principle only draft *Organic Law on the Villager Committees* to address this problem and there appears to be substantial debate as to the details of implementation. The stated goal of this draft legislation is for the rural residents to “administer their own affairs in accordance with the law” (Zhen, 1987, p. 27). Zhen maintains that the government should pass the law based on present political acceptability, leaving the more controversial aspects for a later time. Fundamentally, Zhen believes that the process of rural direct democracy will necessitate a learning curve and practical adjustments as the people gain practical experience. In order to make the argument more palpable to representative government in China, Zhen proposes that grass-roots level self-government is inherently part of the communist tradition and that Standing Committee, the State Council, and the People’s Congress remain fundamentally in control of state affairs. To put in another way, according to Zhen, direct democracy compliments representative democracy generally and the Chinese governmental structure in particular. The major strength of this article is the window into the
application of direct democracy in Communist China, which is essentially a town meeting approach.

The present state of recent academic literature on direct democracy is varied yet underdeveloped. As a result, a great deal of analysis remains to be completed. The following section will provide a thematic framework for such an analysis.

Analysis

Introduction

Recent academic literature on direct democracy remains in its infancy. Even so, five areas of concern emerge from this annotated bibliography: the impact of direct democracy on interest groups, minority rights, voter competency, public policy, and the need for judicial scrutiny. This section will analyze and synthesize the recent direct democracy literature within the context of the more general state of direct democracy literature as described in Direct Democracy Part I.

Interest Groups and the Role of Money

The concern over interest groups and the impact of money in democracies are rooted in elite and power theories of government—they are also inseparable from the remnants of historical class struggles. Such a long history suggests that the concern will never stray far from the public sphere. During the Populist and Progressive Eras, the powerful economic interests of the railroad companies demonstrated the evils of such concentrated wealth and power in the eyes of the public. With this background and history, it is easy to understand the basis of Broder’s (2001) subverted democracy model. Generally, it is popularly assumed that special interest influence, and in particular the impact of money, are negative influences to be controlled or mitigated to the extent possible. The courts have made it impossible to do so in the sense that
money has become equated with free political speech, and as such, it is inviolable. This popular assumption is frequently extended to direct democracy; the role of special interests and money in direct democracy campaigns is popularly assumed negative. In short, money buys direct democracy outcomes. However, as Magleby pointed out, this is “typically not the case” (1984, p. 147).

What is clear from the traditional literature is that both the size and diversity of special interests are higher in those states that practice direct democracy. This is true for both corporate interest groups as well as citizen interest groups. For example, Boehmke (2005, p. 3) found that “initiative states have almost 30 percent more interest groups [corporate interest groups] and over 40 percent more citizens groups [grass roots interest groups], making them more representative than noninitiative states.” Thus, the popular assumption becomes that grass roots interest groups are good, while corporate interest groups are bad. In Boehmke’s view, direct democracy increases citizen groups more than corporate interest groups. Generally, the traditional literature poses that citizen groups are more effective in passing direct democracy measures, whereas corporate interest groups are more effective in defending the passage of direct democracy measures that are harmful to their interests. However, as Cronin (1999) suggests, money is only one factor in determining direct democracy outcomes. Cronin (1999, p. 116) concludes, “The side with more money does not necessarily prevail.” As a result, while the traditional literature has provided generalities in terms of the impact of money and special interest influence, the current academic debate is trying to refine, quantify, and re-examine these previously assumed relationships. In short, the traditionally negative view of special interest influences and the role of money in particular are under siege.
According to Hoesly (2005), powerful special interests have superseded the traditional grass roots models in Oregon. Hoesly calls these special interest groups *faux populists* because, in his view, they do not really represent the will of the people. As a result, Hoesly views these interests as detrimental to state and fiscal stability because they have successfully used direct democracy campaigns to limit government spending and have used it to mandate spending without providing for funding. According to Hoesly, there are two major reasons for the negative aspects of direct democracy: corporate capture and interest group capture. Corporate capture is when paid signature gathering campaigns replace the traditional grass roots campaigns and spending increases dramatically. For example, Hoesly states, “In each election between 1996 and 2000, more money was spent on Oregon ballot measures than all campaigns for statewide office combined” (2005, p. 1204). According to Hoesly (2005, p. 1205), opponents win 80% of the time when they outspend the proponents. A second manifestation of corporate capture is the counter-initiative, where a similar but business friendly initiative, is proposed. In many cases, such a tactic confuses voters into voting against both propositions. However, because the proposition with the most votes supersedes other similar propositions, business interests may prevail simply because more voters approve of the counterproposition than the original proposition. Interest group capture, according to Hoesly, is the manipulation of public opinion by ideologues that pass laws that do little good for most voters. The problem with this approach is that each individual defines good and bad interests in terms of their unique political perspective. For example, conservatives may view tax-limiting propositions as a positive development, whereas liberals may view them as a negative development. A second characteristic of special interest capture is that wealthy and influential individuals sometimes dominate the process. It is in this context that Hoesly defines faux populists; for example, Douglas Bruce’s used a
Republican mailing list in Colorado to pass a “draconian Taxpayer’s Bill of Rights” (2005, p. 1208). Again, this approach is problematic because good and bad are sometimes viewed as relative terms. In short, while Hoesly uses extensive documentation, most of the arguments advanced are rhetorical and ideologically driven; quantitative evidence that demonstrates any type of illegality or abuse is utterly absent.

Hoesly’s observations in Oregon point out one exceptionally important gap in the literature—false and misleading advertising in proposition campaigns. Kruse (2001) appropriately addresses this gap by exposing the problem, describing several states statutes used to address the problem, and proposing model legislation designed to pass constitutional muster. Although creative and laudable, it is unclear if any of Kruse’s proposals will achieve the desired results because the Washington State Supreme Court found them unconstitutional based on first amendment grounds. In short, Kruse argues that the ruling should be overturned because there is a compelling state interest in prohibiting false and misleading speech. The most important implication of Kruse’s work is that the problem is serious and consequential. However, Kruse fails to acknowledge that information is readily available for voters from a variety of resources such as voter information packets. Additionally, because interest group endorsements seem to make a substantial difference as part a complex system of voter cues, Kruse’s arguments may be overstated.

Interest group endorsements are precisely the area that concerns Gerber and Phillips (2003). Studying interest group endorsements and ballot outcomes in developmental propositions in San Diego from 1996 to 1998, Gerber and Phillips found that interest group endorsements—particularly environmental and planning organizations’ endorsements—related positively with ballot passage. The combined effect of economic interests, distance from public benefit, and
endorsements accounted for 80% of the variation in passage the rates of developmental propositions (Gerber & Phillips, 2003, p. 632, table 1). In contrast, demographic and local economic variables alone accounted for only 20% of the variation (p. 636). The most important implication of Gerber and Phillips’ work is that voters appear to be better informed and more sophisticated than previously suggested by the literature. However, because the study focused on development ballot propositions, Gerber and Phillips’ findings may not be generalizable to propositions generally and more research is clearly needed.

Lupia and Matsusaka’s (2004) masterful work of integration describes the influence of money in terms of utility. That is to say, that business interests use it defensively whereas citizens groups use it offensively. Lupia and Matsusaka state, “Contemporary discussions of American democracy are preoccupied [emphasis added] with the role of money” (2004, p. 470). In their view, the primary popular concerns are twofold: corruption and policies adverse to the “public interest” (2004, p. 470). In general terms, Lupia and Matsusaka describe the popular consensus that spending to defeat a measure was more effective than spending to pass a measure. So, it would appear that business interests defined as defensive in nature can use their resources to effectively eliminate or at least mitigate the negative influences on their legitimate business interests. However, because interest groups are so diverse and because there are so many other determinants, this is not necessarily true. Indeed, Lupia and Matsusaka point out that according to Gerber, the “primary reason for promoting initiatives is to send a signal to the legislature, not to achieve passage of the measure” (2004, p. 471). Lupia and Matsusaka conclude, “The spending evidence also suggests why the initiative process does not lead to policies contrary to the wishes of the majority…without preexisting public support, the financial resources of
business are ineffective in changing the status quo, and the financial resources of most citizen groups are too scarce to bring about much change” (2004, p. 472).

In short, elite and power theories, as well as class conflict, dominate theories of special interests groups influence and the role of money. What is less clear is what the implications are for expanded diversity of those interests. Identifying this trend is a primary concern of Boehmke (2002), who makes four assumptions: citizens groups use direct democracy more effectively than business (economic) groups, business groups prefer traditional lobbying approaches, businesses have more resources available to use direct democracy, and citizens groups can mobilize the resources when necessary. Boehmke finds that states with direct democracy had 12% more economic interest groups and 29% more citizen interest groups than non-direct democracy states.

The implication is clear: direct democracy increases the number of interests groups within a state, but it increases the number of citizen interest groups more than the number of business interest groups. So, if we assume that grass roots interest groups are “good” whereas business interest groups are “bad,” as popularly presumed, then direct democracy increases the power of the average citizen more than the power of economic elites. Finally, since business interests are already strongly associated with the representative system through traditional lobbying, it is difficult to conclude that direct democracy is any “better or worse” for their interests. In sum, the concern over the influence of money in direct democracy campaigns is overstated.

Minority Rights

Democracy is based on the concept of majoritarianism. Traditionally, however, elites have feared the will of the common people because of the belief that they are uneducated. Even Rousseau believed that decisionmaking power to approve law should reside in the magistrates
and that the people were obligated to participate by proposing laws (*Origin of Inequality*, trans. 1992, p. 323-324). Buchanan and Kyklos (2001, p. 236) state,

> Beneath such fear is the presumption that collective decisions, those that motivate action for the collectivity as a unit, should best be made by an elite of the relatively enlightened, by those who are somehow superior in their truth judgments, who will, indeed choose for the people that which is best for him.

While the degree to which a law is passed on majoritarian grounds can be adjusted (such as with supermajority requirements) is significant, it is popularly believed that the rights of minorities should be protected in any democratic system. As Buchanan and Kyklos point out, bills of rights are one way to protect those minority rights. Over the years, the minority rights have become equated with the rights of ethnic minorities, and direct democracy is popularly viewed as being adversarial to minority rights. Cronin (1999, p. 98) concludes,

> Voters in some states have occasionally used these devices to express nativism, racism, and sexism against specific minority groups. Yet the overall record suggests that American voters have in most cases approved measures protecting or promoting minority rights, almost as often as institutions of representative government, with which they must be compared.

Compounding the problem of proving that a negative relationship exists between direct democracy and minority rights is the ever-expanding term “minority.” For example, the most popularly cited example of direct democracy efforts that trample minority rights are related to the attempts to define marriage as a union between a man and a woman. This is seen as hostile to gay rights—a relatively new group to be included as a minority interest. In short, minority rights began as class distinction, evolved into an ethnic distinction, and today, it has been extended to a sexual preference distinction. So, today, the term minority can be applied to any special class acknowledged by the court for special protections.
On a more general level, Tolbert (2003) asserts that the Populist and Progressive Eras’ increasing use of direct democracy was more a function of demographic and economic change than a fight against corruption. In Tolbert’s view, white Americans perceived that the government was over responsive to the needs of ethnic minorities and that they faced increasing competition with minorities economically due to the transition from an agrarian to an industrial society. In Tolbert’s view, the motive and effect of Populist and Progressive Era direct democracy efforts was covertly racist. Tolbert extends this argument into the current era direct democracy efforts because of similar demographic and economic change—illegal immigration and the transition from an industrial economy to a post-industrial or information age society. In any case, the popular assumption that direct democracy negatively affects minority rights, while clearly historically accurate (voting rights for example), needs further research because most propositions hostile to minority rights have been overturned in the courts. As an optional approach to protecting minority rights, the most important contribution of Buchanan and Kyklos (2001) is that they propose that state and local governments can use bills of rights to restrict the subject matters of direct democracy propositions.

The present qualitative and theoretical approach to minority rights is problematic and falls prey to rhetoric and unfounded assertions. Two researchers have attempted to quantify the relationship. First, Mendelsohn and Cutlre (2000) attempted to quantify the increase in intolerant attitudes in their study of a 1992 Canadian Constitutional referendum. The authors concluded, “Despite the constant invitation of political leaders, Canadians did not become more hostile towards other groups. On those measures that did show movement, there was a tendency towards the more tolerant position” (1999, Conclusions, number 4). Even so, Mendelssohn and Cutlre (2000) warned that their conclusions needed to be re-tested using different measures. In short,
the authors believed that their conclusion might not be generalizable. Second, Hajnal, Gerber, and Louch (2002) examined the impact on minority rights between 1978 and 2000 based on seventeen separate Los Angeles Times exit polls. While clearly Los Angeles can be viewed as an outlier culturally, it was expected that this would be the best place to find evidence of a negative relationship between direct democracy outcomes and minority preferences. This study was by far the best methodologically and demonstrated high sample sizes and rigorous statistical analyses. The authors found that the relationship between ethnicity and being on the winning side of a proposition was weak. In sum, they found little evidence of an overall anti-minority bias. However, as the authors point out, very few direct democracy propositions impact minority rights. When they do, they tend to harm Latino rights the most. Several important points followed from the authors’ work. First, White “yes” votes differed from Black “yes” votes by 13%, Latinos by 10%, and Asians by 9%. In contrast, the average difference between conservative and liberal was 26%. Second, whites do not dominate because they are not homogeneous. The authors report as an example that in the six minority targeted propositions Whites were split by 63% (blacks, 64%; Latinos, 63%; Asians, indeterminate). Based on this evidence, minority rights expressed as being on the winning side of propositions are protected and there is no evidence of a systemic bias. Again, this does not take into account that courts frequently overturn propositions that are hostile to minority interests. Despite this evidence, more research—specifically replication or the examination of different data sets—is clearly needed.

This is especially true in the area of false and misleading advertising in direct democracy campaigns, which Kruse (2006) asserts is most detrimental to the interests of women, minorities, the poor, and less educated. Minority rights can also be viewed in terms of rural and urban communities. Zhen (2001), for example, argues that direct democracy in China should be applied
on a rural level, just as it has for the urban level. Finally, the balance between minority rights and majoritarian interests using direct democracy continues today. For example, in recent developments, the Swiss People’s Party and the Federal Democratic Union have started the signature gathering process (100,000 signatures are required) of proposing a constitutional amendment to ban the construction of minuets on mosques with the goal of completing the signature requirement by November of 2008 (see Dietrich, 2007; Cage, 2007). The referendum is reported to be related to the perceived threat of 340,000 Muslim immigrants representing approximately 5% of the Swiss population in light of recent Muslim rioting in France and similar protests and riots in other European countries that were related to the controversial publication of a cartoon of the Muslim Prophet Muhammad in Denmark.

**Voter Competency**

Cronin (1999) suggests that the traditional debate on voter competency revolves around two assertions. On one hand, proponents suggest that if people are intelligent enough to vote for their representatives then they are intelligent enough to vote on issues. On the other hand, opponents suggest that voters lack sufficient knowledge or motivation to vote on issues. In any case, it seems clear that voter confusion is an issue and that many voters do not vote on ballot propositions. Additionally, the fact that placement on the ballot in certain positions (i.e., first) increase the probability of passage demonstrates some degree of voter drop-off or confusion. As Cronin suggests, voters are confused between 10-30% of the time (1999, p. 73). As a result, since some voters are confused and others simply do not vote on ballot propositions, proposition voters may be less representative than the general voting public. Of course, the same can be said of voters generally, since traditional voter participation is generally appalling as well. The traditional literature suggests that those voters who do vote on ballot propositions are more
knowledgeable or rely on other cues such as interest groups endorsements. Cronin (1999, p. 87) concludes, “How competent, informed, and rational are ballot voters? Not as competent as we would like them to be, yet not as ill informed or irrational as critics often insist.”

Lupia and Matsusaka (2004) synthesize the present state of literature regarding voter competency admirably. Based on the general observation that voters lack basic political information, it would appear that voters are incompetent. Yet, researchers frequently find that citizens are more competent than presumed by direct democracy opponents. So, a cursory review suggests that more research is needed. However, Lupia and Matsusaka state, “The key insight on which this literature [i.e., that citizens are informed] builds is that people base most of their decisions, even complex and important ones, on very simple kinds of information” (2004, p. 468). So, it appears that the voter decision making process is physiologically based on social cues as well as on rational decisionmaking. In public administration terms, voter decisionmaking is analogous to Lindblom’s (2005) “Muddling Through” model.

Based on prior research conducted by Lupia, proposition voters fall into three categories: uninformed voters, model citizens, and those citizens aware of interest group preferences and endorsements. Lupia and Matsusaka state, “The central finding is that voters in the second and third categories vote in very similar ways, whereas voters in the first category vote differently” (2004, p. 468). After supporting this conclusion with additional supporting research, Lupia and Matsusaka note that the next appropriate question is to ask what conditions affect voter competency. Central to answering this question is the source of voters “advice.” That is, is the advice from reliable sources or is it from misleading sources. In sum, theoretically at least, the quality of voters’ decisions will depend on the quality of the information and voting cues they receive. It is in this context in which Kruse’s (2001) work on misleading advertising should be
viewed. Finally, Lupia and Matsusaka note that in many cases, even experts are not as knowledgeable as expected. If this assertion is true, then direct democracy could be viewed as no better or at least no worse than representative democracy. That is to say that there is no reason to believe that representatives are different than average citizens in the use of cues and simplifying constructs in their decisionmaking process.

Kriesi (2004) supports this thesis from a sociologist perspective in his study of Swiss direct democracy that examined 79,000 surveys relating to 148 propositions from 1980-2000. Kriesi finds that voter opinions about the key arguments of a direct democracy campaign explain 40% of the variance in voter preferences (2004, p. 10). Gerber and Phillips (2003) similarly conclude, from their study of interest group endorsements in development initiatives in San Diego from 1986-2000, that interest group endorsements are a primary determinant of voter preference in development initiatives. Finally, Mendelsohn and Cutlre (2000) conclude that direct democracy campaigns in Canada reduced the gap between knowledgeable and poorly informed voters by 25%. The implications of this present academic research are clear: citizens are substantially capable of making rational self-interested decisions on direct democracy propositions based on voter cues and simplifying constructs. The major obstacle to self-enlightened citizens is the degree of truth, quality of the information, and the cues that they receive. As Kruse’s (2001) analysis on the use false speech statutes to combat false or misleading advertising demonstrates, this is an extremely difficult public policy problem.

**Policy Impact**

Traditional literature regarding the policy impact of direct democracy is primarily theoretical in nature. Most of the literature equates money with influence and assumes that economic interests prevail over grass roots efforts because of the availability of superior
resources. Even so, grass roots efforts bring different resources to bear, such as volunteers. Future research is also likely to challenge the traditional view. For example, researchers such as Gerber (1999) argue that there are two different policy impacts that result from direct democracy campaigns. The first impact is direct, where, for example, a specific direct democracy campaign results in a policy change upon passing (or failing) at the ballot. The second impact is, in contrast, indirect; that is to say, that the mere possibility of a direct democracy campaign can affect policy changes by changing political behavior. On one hand, Gerber (1999, p. 120) concludes that the direct influence of direct democracy favors grass roots campaigns over economic campaigns. On the other hand, Gerber (1999, p. 135) concludes that the indirect influence of direct democracy tends to be directed towards the interests of the median voter and that successful measures reflected citizen interests whereas unsuccessful measures reflected economic interests.

While the traditional literature usually assumes perfect implementation and enforcement of direct democracy measures, the reality is very different. Geber, Lupia, McCubbins, and Kiewiet (2001, p. 110) conclude, “The policy impact of most initiatives reflects a compromise between what electoral majorities and government actors want.” Based on this conclusion, a researcher could conclude that partisanship impacts direct democracy measures. Traditional literature however, does not make such a conclusion. For example, Cronin (1999, p. 2001) argues that based on prior research, direct democracy is partisan-neutral; that is to say that it favors neither a distinctly liberal nor conservative bias. Finally, Boehmke (2005, p. 91) finds support for the notion that direct democracy expands the circumstances under which a policy can be adopted within a given state (i.e., the adoption hypothesis) and that direct democracy campaigns tend to spread to other direct democracy states (i.e., the diffusion hypothesis).
The present academic literature expands on this foundation. Lupia and Matsusaka (2004) suggest from their review of the literature that direct democracy affects public policy by its mere availability and is median reverting as suggested by Gerber (1999). However, in contrast to Gerber’s work, Lupia and Matsusaka cautiously conclude that direct democracy presently tends to promote fiscal conservatism, enhances government efficiency, and even enhances citizen happiness. Refining Gerber’s (1999) arguments, Lupia and Matsusaka conclude that implementation of direct democracy measures varies considerably in that they either take full effect, are reinterpreted, or are ignored.

In contrast to Gerber’s (1999) work, Feld and Kirchgassner (2001) find support for a fiscally conservative bias in direct democracy efforts in their study of canton and local direct democracy in Switzerland. Specifically, within the context of devolution, direct democracy decreases government expenditures and reduces public debt on the canton and local levels. As a result, Feld and Kirchgassner recommend that direct democracy should be implemented on the local level within the European Union member states. Feld and Kirchgassner’s work implies that direct democracy is better suited for local jurisdictions, but future research is necessary with respect to federal level direct democracy. However, given the few nations outside of Switzerland that allow for this practice, such research will be necessarily problematic. Graglia (2000), in contrast, views fiscal conservativism as an end in itself. In short, in Graglia’s view, direct democracy’s most important function is to limit the scope of government.

Tolbert (2003) views direct democracy in terms of a response to periods of high demographic and economic change. Tolbert (2003, p. 474) states, “Today, use of ballot initiatives by state electorates may be partially understood as constraining state legislatures’ perceived overresponsiveness to ethnic and racial minorities.” As a result, in Tolbert’s view,
Direct democracy efforts focus on governmental reform and fiscal policies—a focus that Tolbert calls *institutional realignment*. Tolbert’s contribution to the present literature is related to an area that is often neglected by researchers—context. That is to say that direct democracy measures are related to state history, state of development, economics, socioeconomic conditions, party competitiveness, public opinion, and the degree to which states have professional (as opposed to part-time citizen) legislatures.

Papadopoulos (2001, p. 37) argues that direct democracy “from below” (i.e., grass roots) creates political “noise” that forces elites to modify their behavior with “defense mechanisms and other protective barriers, as a form of risk management, to cope with the uncertainty…” As a result, elites try to prevent or moderate the impact of direct democracy efforts. Recall that, according to Papadopoulos, referenda functions as a mechanism for citizen control of public policy—*sins of commission*. On the other hand, initiatives function as a mechanism of promotion—*sins of omission*. Governmental actors attempt to preempt or at least reduce the probability that their legislation will be subject to future referenda in two ways: the co-optation of opposing political parties by including them as part of the governing coalition and negotiation with interest groups likely to respond to such legislation with a referendum. The major significance of Papadopoulos’s work is that elites view direct democracy as a threat to their interests and act accordingly. For example, many propositions originate in legislatures and other elite groups (this is especially true internationally). Additionally, stakeholders frequently negotiate the texts of propositions early in the process. In sum, direct democracy instruments are initiated in a political environment.
Judicial Scrutiny

One area frequently neglected by the present academic literature is the relationship between constitutional and statutory law and direct democracy. Hoesly (2005) addressed concerns of the truthfulness of direct democracy advertising—a problem of significance to be sure. Hoesly acknowledges, yet disregards, the First Amendment as the limiting factor under present law with respect to limiting false speech in direct democracy campaigns. It is here that the arguments from the Harvard Law Review (2005) become particularly relevant. The present standard of judicial scrutiny (or rather lack of a standard) is insufficient and borders negligence. In essence, the Harvard Law Review suggests that the solution to this problem is to create a variable range of judicial scrutiny for direct democracy cases based on its legitimizing effects on present law. Recall that, under the proposed model, when direct democracy efforts “enhance the legitimacy or operation of law,” a greater deference standard should be applied (p. 2766). When direct democracy efforts are likely to “taint the law,” greater scrutiny should be applied (p. 2766). When direct democracy efforts have little or no effect (or ambiguous) on present law, popular participation should be ignored as no consequence. Finally, when direct democracy efforts conflict with present law (especially with respect to minority rights) judges should exercise strict scrutiny (p. 2766). If the Supreme Court were to accept this proposal for a variable scrutiny standard of direct democracy efforts, then efforts to prevent false or malicious speech regarding direct democracy could pass constitutional muster if they were narrowly tailored to address the compelling state interests in fair ballot initiatives. On the other hand, because constitutional amendments are typically conducted by referendum, one can argue that judges should give substantial deference to direct democracy propositions because the source is fundamentally different from statutory law.
Conclusion

In conclusion, the present state of the academic literature has built on the foundation of traditional literature and has improved upon it. Substantial progress has been made with respect to quantitative analysis and these analyses have challenged many of the traditional notions—particularly stigmas—of direct democracy. As a whole, the academic literature present a much more positive view of direct democracy than traditional literature suggests. Even so, it may be too early to discount some of the traditional criticisms of direct democracy. That is to say that the present state of the direct democracy academic research is in adolescence. A great deal of research and analysis remains to be completed. The greatest area of need is study replication under different contexts and environments. This paper, Part II of Direct Democracy: A Work in Progress has developed the ideas presented in Part I of Direct Democracy: A Choice in detail and has brought the direct democracy debate to its current state of development. The following section, entitled Part III of Direct Democracy: A 12 Week Graduate-level Course, will synthesize the direct democracy literature presented in Part I and Part II with the express purpose of presenting the concepts and ideas to graduate students.
References


Kruse, B. (2001). The truth in masquerade: Regulating false ballot proposition ads through anti-


Ph.D in Public Policy and Administration
Core Knowledge Area Module Number 5:
Democratic Governance

Part III (Application Component), Direct Democracy: A 12 Week Graduate-level Course

Student: James Lhotak
Faculty Mentor: Dr. Dale Swoboda
Faculty Assessor: Dr. Dale Swoboda

Walden University
September 14, 2007
Table of Contents

Application Introduction ........................................................................................................ 1
Class Introduction and Overview ........................................................................................ 1
Textbooks / Supplementary Materials ................................................................................ 2
Learning Objectives ............................................................................................................. 2
Participation Requirements ................................................................................................. 3
Assignments ........................................................................................................................ 5
  Qualitative Critical Analysis / Review ............................................................................... 6
  Quantitative Critical Analysis / Review ............................................................................. 6
Grading Policy / Rubrics ...................................................................................................... 6
  Discussion Questions (each) ............................................................................................... 6
  Critical Analyses: Democracy Derailed / Qualitative and Quantitative Articles .......... 7
Important Due Dates .......................................................................................................... 7
Class Schedule .................................................................................................................. 7
  Week 1: Introduction and Background Information Week ............................................. 7
    Statement of purpose ..................................................................................................... 7
    Reading assignment ...................................................................................................... 8
    Discussion questions .................................................................................................... 9
  Week 2: A Social Contract? ............................................................................................. 9
    Statement of purpose ..................................................................................................... 9
    Reading assignment ...................................................................................................... 10
    Discussion questions .................................................................................................... 10
Week 3: Instruments / Typology Week

Statement of purpose

Reading assignment

Discussion questions

Week 4: Educated Citizens?

Statement of purpose

Reading assignment

Discussion questions

Week 5: Populist Paradox: Interest Group Influence and the Power of Money and Volunteer

Statement of purpose

Reading assignment

Discussion questions

Week 6: Minority Rights, Money, and the Media

Statement of purpose

Reading assignment

Discussion questions

Week 7: The Law Matters

Statement of purpose

Reading assignment

Discussion questions

Week 8: Popular Issues Week

Statement of purpose

Reading assignment
Discussion questions .................................................................................................................. 19

Week 9: Case Studies: California .................................................................................................. 20
  Statement of purpose.................................................................................................................. 20
  Reading assignment .................................................................................................................. 20
  Discussion questions .................................................................................................................. 20

Week 10: Case Studies: Oregon .................................................................................................. 21
  Statement of purpose.................................................................................................................. 21
  Reading assignment .................................................................................................................. 21
  Discussion questions .................................................................................................................. 21

Week 11: Implementation? ......................................................................................................... 22
  Statement of purpose.................................................................................................................. 22
  Reading assignment .................................................................................................................. 22
  Discussion questions .................................................................................................................. 23

Week 12: Afterthoughts .............................................................................................................. 24
  Statement of purpose.................................................................................................................. 24
  Reading assignment .................................................................................................................. 24
  Discussion questions .................................................................................................................. 24

Concluding Thoughts ............................................................................................................... 25

References.................................................................................................................................. 26
Application Introduction

Recall that Direct Democracy: A Choice concludes that a proper evaluation of direct democracy requires a more balanced approach than traditional proponents and opponents typically provide and that Direct Democracy: A Work in Progress concludes that recent direct democracy literature presents a more positive view of direct democracy than traditional literature suggests. The purpose of Direct Democracy Part III: A 12 Week Graduate-level Course is to present direct democracy concepts and their implications to graduate students by means of a 12-week graduate-level course on direct democracy. This paper will next present a schedule, learning objectives, assignments, reading materials, instructor’s readings, and discussion questions for that purpose. The course is intensely practical and exceptionally diverse in its approach and builds on the materials in presented in Direct Democracy Part I and Part II, which is the source of instructor’s class notes.

Class Introduction and Overview

Direct democracy is a mechanism that can be used by average citizens to propose and vote on new laws (initiative), approve or invalidate present laws (referendum), or remove their representatives prior to the expiration of their term of office (recall). Fundamentally, direct democracy challenges the notion of representative government because the people can make and pass laws of their own creation bypassing the traditional legislative process, overturn laws passed by the traditional legislative process, or remove public officials from office without waiting for an election. Within the American context, either direct democracy is viewed as a Populist tool to control the excesses of special interests and government corruption generally, or it is viewed as a threat to representative government and minority interests. In either case, direct democracy fundamentally changes the power structure of those jurisdictions that choose to wield it. This 12-
week course will present direct democracy in its totality—from its historical and theoretical development to its application and impact in fact, in theory, and in law.

Textbooks / Supplementary Materials

The following textbooks are available at www.barnesandnoble.com for the prices indicated:


Total approximate cost: $172.80

Learning Objectives

The learning objectives for the course are as follows:

1. Describe the historical development of direct democracy (week 1).

2. Describe the idea of popular sovereignty as expressed by Rousseau’s social contract theory and its implications for direct democracy (week 2).
3. Describe the instruments and mechanics of direct democracy (week 3).

4. Evaluate and assess the implications and issues concerning an educated citizenry and direct democracy (week 4).

5. Describe and evaluate the role of interest groups and money and resources in direct democracy (week 5).

6. Critically evaluate and assess direct democracy’s impact on minority rights (week 6).

7. Critically evaluate and assess the impact of money and the media on direct democracy (week 6).

8. Describe and evaluate some of the major legal precedents regarding direct democracy (week 7).

9. Describe and critically evaluate some of the most popular direct democracy issues and their significance (week 8).

10. Compare, contrast, and evaluate the regionally based historical evolution of direct democracy in California and Oregon specifically in terms of the evolution of popular issues addressed by such instruments (weeks 9 and 10).

11. Describe, analyze, and evaluate implementation issues relevant to direct democracy (week 11).

12. Synthesize the direct democracy literature by evaluating Cronin’s sensible democracy model and proposed direct democracy safeguards (week 12).

Participation Requirements

Participation is sixty percent of your grade. The primary purpose of participation is to provide evidence that you have read and understood the course readings on an advanced (i.e.,
academic) level. Specifically, your postings must thoughtfully, compare, contrast, analyze, evaluate, conceptualize, synthesize, and re-conceptualize (when appropriate or necessary) the reading materials. In pursuit of this goal, appropriate citations from the readings are required. An example of an inappropriate use of references is the “plugged-in” reference, in which the author uses a reference that is simply not related or incompatible with his or her purpose. Additional and appropriate citations from self-identified supplementary materials are encouraged as evidence that you have gone “above and beyond” minimum requirements. The secondary purpose of participation is to learn from the process of relating to and interacting with your colleagues. Each week will consist of two discussion questions and participation is worth five points. Posting requirements are intended to give you time to complete the reading, while providing the time necessary for thoughtful discussion. In pursuit of these goals and for the sake of consistency, the response to the first discussion question is due each Thursday and the response to the second discussion question is due each Friday. These initial responses achieve the first purpose of participation.

The second purpose of participation—learning through thoughtful interaction—is achieved by responding to the postings of your colleagues. Responses to class discussions are due each Saturday and counter-responses due each Sunday. Earlier postings are encouraged to foster debate, but do not post for posting’s sake—be thoughtful and academic at all times. Early postings are especially helpful in resolving scheduling conflicts such as work, vacation and leisure plans, etc. Each discussion question is worth 2 ½ points: two points for your primary response and one half point for your first response to the postings of any of your colleagues.

Your first response postings should challenge or supplement your colleagues’ propositions thoughtfully and at least two separate responses are required for each for each
discussion question. In order to encourage debate, these postings will be graded liberally; so long as they are thoughtful and constructive, they will be given full credit. However, simple agreement or disagreement is, not considered thoughtful or constructive. Make every effort to respond to colleagues that have not had the benefit of a response first. An equally acceptable counter response is a global integrating response—one that identifies and discusses important themes in the class discussion. Counter postings are optional, but keep in mind that it is here that the joy of debate truly begins.

Finally, your postings should be professional in appearance and tone. So, do not fall into the trap of taking the responses of your colleagues personally—challenging fundamental views and beliefs is inherently integral to the learning process. If you are unable to post as required, inform the instructor.

Assignments

The primary purpose of the following assignments is to foster a sense of critical analysis and review that is habitually second nature. The assignments will do this specifically within the context of direct democracy. The secondary purpose of the following assignments is to foster a sense of comfort and confidence with the academic literature—both qualitative and quantitative. The tertiary purpose of these assignments is to integrate and reinforce your knowledge of direct democracy and its present state of development. The final purpose of these assignments is to develop the skill of reducing your analyses to a manageable form and size. That is to say, “Keep it pithy!”
Qualitative Critical Analysis / Review

The first assignment will consist of a 3-5 page critical analysis of a self-selected qualitative peer-reviewed academic article. This assignment is worth ten percent of your grade and is due at the end of week 4.

Quantitative Critical Analysis / Review

The second assignment will consist of a 3-5 page critical analysis of a self-selected quantitative peer-reviewed academic article. This assignment is worth ten percent of your grade and is due at the end of week 8.


The final assignment will consist of a 6-8 page critical analysis of Broder’s (2000) work, Democracy Derailed. This assignment is worth twenty percent of your grade and is due at the end of week 11. The rationale used to select this book is its complimentary nature with respect to the course materials. Specifically, whereas most textbooks focus on description, theory, and present academic debates resulting from direct democracy’s practice, Broder’s work describes direct democracy from a journalistic (i.e., key-person interview) perspective and challenges many academic assertions. As a result, Broder’s work has a distinctly practical street-level approach that provides special insights that require close academic scrutiny.

Grading Policy / Rubrics

Discussion Questions (each)

Response (2 points)

Was the posting content well-considered (1 point)?

Was the posting completed on time (1/3 point)?

Does posting answer the question asked (1/3 point)?
Does posting use references appropriately (1/3 point)?

Peer Response (1/2 point)

Full credit will be given if the posting is thoughtful and constructive.

Simple agreement or disagreement specifically is not considered thoughtful or constructive.

**Critical Analyses: Democracy Derailed / Qualitative and Quantitative Articles**

Quality of Analysis (10 / 5 points)

Summary of Author’s major points and themes (4 / 2 points)

Demonstrates integration and higher level thinking (2 / 1 points)?

Supplemental and supportive references from course readings (2 / 1 points)

APA Format and grammar (2 / 1 points)

**Important Due Dates**

*Week 3, Day 7 (Sunday): Online Quiz Due*

*Week 4, Day 7 (Sunday): Qualitative Critical Analysis Due*

*Week 8, Day 7 (Sunday): Quantitative Critical Analysis Due*

*Week 11, Day 7 (Sunday): “Democracy Derailed” Critical Analysis Due*

**Class Schedule**

*Week 1: Introduction and Background Information Week*

*Statement of purpose.*

The purpose of this week is to introduce the subject of direct democracy through an exploration of the historical context for the development of direct democracy from Athens, Rome, Switzerland, and the New England town meetings through the Progressive and Populist Eras and into the present day. Upon completion, the student will be able to
analyze, synthesize, and evaluate, the historical development of direct democracy within the general context of a republican form of government.

An important theme of the direct democracy literature is that, within the American context, its early development was restrained because of a fear of tyranny—the tyranny of the majority—in the early American period. As a result, the system of checks and balances trumped the development of direct democracy. However, direct democracy became a legitimizing tool used to express popular consent through the ratification of constitutional amendments. This trend became generally accepted during the Civil War Era and in particular with the expansion of the American Republic into the West. However, adverse and changing economic condition during the Populist and Progressive Era’s caused apathy within the body politic. Citizens expressed this apathy through the distrust of government based on the perception of political corruption caused by excessive special interest influences. As a result, many viewed government responsiveness to the plight of average Americans as insufficient. Direct democracy was one response created to address these perceived problems and inequities.

Reading assignment.

1. Week 1 Instructors Notes (Breadth, *On Democracy Generally, Athenian Ecclesia, Roman Plebiscites, Swiss Landsgemeinden, and New England Town Meetings*).


Discussion questions.

DQ1: Cronin suggests that the right to petition replaced the doctrine of instructed representativeness by 1860. What was the impact of this change on the development of both representative and direct democracy?

DQ2: How did the delegate- verses-trustee model dispute (Cronin, p. 27) impact the development of representative and direct democracy.

DQ3: Based on Water’s list of statewide reforms (page 7), assess the validity of the Progressive Era pros and cons of direct democracy as presented by Cronin (pp. 10-12).

DQ4: In your view, are representative democracy and direct democracy models compatible or incompatible? What rationale justifies your view?

DQ5: In your view, is republican government incompatible with direct democracy?

DQ6: Cronin (p. 54) describes the defects of legislatures during the early Progressive and Populist Era’s within the context of citizen trust. Compare and contrast Cronin’s description with today’s legislature and analyze the implications.

DQ7: Critically assess the historical development of direct democracy on the present state of direct democracy.

DQ8: Is direct democracy a revolution or a restoration (Cronin, p. 56)?

Week 2: A Social Contract?

Statement of purpose.

The purpose of this week’s readings is to provide the student with a comprehensive understanding of the idea of popular sovereignty as expressed by Rousseau’s social contract theory and its implications for direct democracy.
Reading assignment.

1. Week 2 Instructor Notes, (Breadth, *Theoretical Basis of Direct Democracy*)
2. Ritter and Bondanella (1988), Backgrounds, pp. 177-190.

Discussion questions.

Instructor: note that students choose two of three questions that include DQ3 with the two additional questions chosen by instructor each term in order to achieve class diversity.

DQ1: To what extent did Rousseau’s background influence the development of the social contract? Does this relationship affect the generalizability and validity of social contract theory?

DQ2: To what extent and under what conditions does the social contract justify direct democracy? Given the present state of the development of direct democracy, do Rousseau’s conclusions still apply?

DQ3: Based on careful theoretical consideration of *On Social Contract*, should the vision of direct democracy in its modern iteration be “abandoned, adjusted, or intrepidly sought?” (p. 84). What has changed since Rousseau’s time?

DQ4: According to Rousseau, the social contract is an attempt to reconcile the competing forces of cooperation and self-preservation (p. 92). Does direct democracy reconcile these forces in a similar manner? Is the contract revocable? Is direct democracy a mechanism of partial or selective revocation of the social contract? How does the notion of tyranny fit in?
DQ5: If the doctrine of popular sovereignty is accepted as an axiom, on what basis can political and bureaucratic resistance to direct democracy efforts be justified?

DQ6: Rousseau states, “…it is never certain that a particular will is in conformity with the general will, until after it has been submitted to the free vote of the people” (p. 109). Do you agree or disagree? Analyze the implications for direct democracy based on your assessment.

DQ7: According to Rousseau (p. 124) government “grows slack in proportion as magistrates multiply.” So, in Rousseau’s view, government should shrink as population expands because when it does not, it represents the corporate will instead of the general will. Assess the validity of this proposition based on modern day direct democracy.

DQ8: Rousseau postulates four conditions necessary for democracy: small states, simple moral habits, equality of rank and fortunes, and little or no luxury (see. p. 126). Critically assess direct democracy within the context of these four ideal conditions.

DQ9: Rousseau states, “…the moment a people gives itself representatives, it is no longer free; it no longer exists” (p. 145). Why does Rousseau say this? Critically assess the validity of his statement.

DQ10: Rousseau states,

These assemblies, whose only purpose is the preservation of social treaty, should always be opened with two propositions which can never be suppressed, and which come up for the vote separately. The first: Does it please the sovereign to preserve the present form of government? The second: Does it please the people to leave the administration in the hands of those who are presently in charge of it? (p. 148)
Critically assess Rousseau’s statement. To what extent, if any, does direct democracy answer these two propositions?

DQ11: Rousseau states,

When a law is proposed in the assembly of the people, what they are being asked is not precisely whether they approve or reject the proposal, but whether or not it is consistent with the general will that is their own; each expresses his opinion on this point by casting his vote, and the declaration of the general will is derived from the counting of votes. (p. 151)

Critically assess Rousseau’s statement.

DQ12: Rousseau was concerned that particular wills would replace the general will (see p. 152). Would Rousseau approve or disapprove of direct democracy on this basis?

*Week 3: Instruments / Typology Week*

*Statement of purpose.*

The purpose of this week is to introduce the instruments of direct democracy—the initiative, the referendum, and the recall—in their current forms. The readings will focus on direct democracy as practiced within various states and localities. The goal is to place direct democracy as practiced within its various theoretical contexts.

*Reading assignment.*

1. Week 3 Instructors Notes (Breadth, *Instruments of Direct Democracy*, Sample *Typology of Direct Democracy*, and *Models of Direct Democracy*)


Discussion questions.

Instructor note: students choose two of three questions that include DQ6 with the two additional questions chosen by instructor each term in order to achieve class diversity.

DQ1: Critically assess the general process of state initiatives and referenda. What factors explain variations in state requirements? What common themes emerge from the process?

DQ2: In your opinion, is direct democracy a positive force for social change or a negative force of social change? Why or why not? Support your arguments.

DQ3: Critically assess the recall process as described by Cronin (see in particular the pros and cons, pp. 133-139). Which, if any, arguments are under or over stated? Based on your analysis, is the recall process a positive or negative force for social change?

DQ4: Review The Publication of Initiatives and Voter Guide, Fiscal Impact and Pro/Con Argument Information chart in Waters (pp. 24-26). What general conclusions follow from an analysis of the data? Are there any reasons for concern with respect to any of the state procedures? What would an “ideal” process look like?

DQ5: Review the Subject Limitations and Popular Referendum Limitations sections in Waters (pp. 18-19). Which restrictions stand out as necessary and proper? Which
restrictions stand out as arbitrary and capricious? Why? What generalizations, if any, follow from the data?

DQ6: Analyze one of the twenty-six states historically reviewed by Waters (Chapter 4: State-by-State History and Overview, pp. 37-458). Based on your analysis, is the present state of development of direct democracy in that particular state sufficient or deficient? What themes emerge from your analysis? What, in your view, are the legal provisions that stand out as most significant?

DQ7: Review Amending Initiative Statutes and Veto Authority and Legislative and Executive Power to Change or Repeal Statutory Initiatives (Waters, 2003, p. 27). What themes emerge from an analysis of the data? What are the major implications for direct democracy in practice that result from these powers?

Week 4: Educated Citizens?

Statement of purpose.

The purpose of this week’s reading is to provide the background information necessary for the student to identify and critically assess the major propositions surrounding the issue of voter competency. The reading this week is light in order to give extra time to complete the qualitative analysis.

Reading assignment.

1. Week 4 Instructors Notes (Breadth, John Stuart Mill—Problems of an Educated Citizenry and the Tyranny of the Majority; Depth, Voter Competency)
3. Cronin (1999). Chapter 4, The Question of Voter Competence (pp. 60-89)
Discussion questions.

Instructor note: students choose two of three.

DQ1: Based on Cronin’s analysis, which elements of society, if any, are overrepresented or underrepresented in direct democracy voting? What factors contribute to these trends? Critically assess Cronin’s perspective in terms of voter outcomes. Based on your analysis, is voter competence a problem?

DQ2: What is the impact of signature gathering requirements on the types of issues likely to be approved for a ballot? What are the implications of the various tactics used to gather such signatures? Is there a positive or negative impact on direct democracy that results from the use of such tactics?

DQ3: In your view, are voters either competent or incompetent enough to vote on direct democracy measures? What is your rationale? Support your arguments.


The purpose of this week’s reading is to critically evaluate and apply Gerber’s theory of interest group influence. The readings, although substantial, go quickly because they are clear and concise. Chapters 7 and 8 are optional in order to reduce the reading workload. Note that the major themes and research findings they cover are sufficiently summarized in the last chapter.

Reading assignment.

1. Week 5 Instructors Notes (Depth, Interest Groups and the Role of Money).

Choice), Chapter 3 (Direct Legislation Hurdles), Chapter 4 (Group Characteristics and Resources), Chapter 5 (Motivations and Strategies), and Chapter 8 (The Populist Paradox: Reality or Illusion?).

Discussion questions.

DQ1: Critically describe and evaluate Gerber’s major theme(s). Instructor: see p. 6 paragraph 3.

DQ2: Theoretical application of Gerber’s direct and indirect influence models (Chapter 2): First, choose a theoretical issue and describe the legislative situation as you envision it. Next, put yourself in the position of the director of a hypothetical interest group with a specific position on the theoretical issue. Finally, apply Gerber’s model in terms of strategic (see table on p. 38) and tactical goals necessary to achieve your organizations position objectives. What are your prospects for success under Gerber’s model (Chapter 8)? What hurdles to you foresee in achieving your objective (Chapter 3)? What resources do you require (Chapter 4)? What forms of influence would you favor?

Week 6: Minority Rights, Money, and the Media

Statement of purpose.

The purpose of this week’s readings is to analyze the arguments relating to the role of money and the media (refining the work in week 5) in direct democracy as well as to critically evaluate the impact of direct democracy on minority rights generally.

Reading assignment.

1. Week 6 Instructors Notes (Depth: Interest Groups and the Role of Money, Minority Rights)


**Discussion questions.**

Instructor note: Instructor Chooses three questions to insure class variety and the students answer any two.

DQ1: Water’s (2003, p. 4) states that during the Populist Era, powerful interests opposed the initiative and referendum because they “were concerned that blacks and immigrants would use the process to enact reforms that were not consistent with the beliefs of the ruling class.” Analyze the assertion that the initiative and referendum threaten minority rights in light Water’s observation and this week’s readings.

DQ2: Based on the readings, critically assess the impact of money and the media on direct democracy campaigns. Specifically, are the levels of spending conducted by various interest groups harmful to democratic values generally? If so, how? How could these effects, if any, be mitigated in light of first amendment protections?

**Week 7: The Law Matters**

**Statement of purpose.**

The purpose of this week’s readings is provide the student with a sampling of the legal precedents relating to direct democracy, provide the opportunity to read at least one
direct democracy case in total, and evaluate the cases relevance and implications for
direct democracy generally. While short, Water’s work will require a considerable degree
of synthesis and evaluation. On this basis, the student will only be required to read one
case in its totality in order to keep the week’s workload manageable.

Reading assignment.

1. Week 7 Instructors Notes (Depth: Judicial Scrutiny)
   Supreme Court, 1912 (available per Google search).
   per Google search). (Optional at instructor discretion for subsequent class variety)

Discussion questions.

Instructor note: students answer any two.

DQ1: Based on Water’s (2003) summaries of the major legal precedents regarding direct
democracy, what themes emerge from the body of case law as significant and justiceable?
How do these themes relate to the various academic debates?

DQ2: Pacific Telegraph: Analyze the case holding and extrapolate the consequences with
respect to who determines political questions. Specifically, who decides the answer to
such questions (i.e., the federal government, state government, politicians, or the people)?
Given that there is no federal level direct democracy, what is the academic consequence,
if any, of popular sovereignty? Did the people, as was suggested, give up their right to
revolution under the Constitution?
DQ3: Choose any direct democracy case of relevance in Water’s summary. Read the case itself (most can be found with a simple Google search). Describe the general fact pattern of the case, legal issues of relevance, court holding, and court rationale. Finally, assess the significance of the case for direct democracy generally. In your view, was the case decided correctly?

**Week 8: Popular Issues Week**

*Statement of purpose.*

The purpose of this week’s readings is to familiarize the student with some of the typical direct democracy issues. The reading this week, while substantial, is light and goes relatively quickly in order to give extra time to complete the quantitative analysis.

*Reading assignment.*

1. Week 8 Instructor’s Notes (Depth: Policy Impact)

*Discussion questions.*

DQ1: Choose three of the most important policy issues to you and examine the policy implications based on your assessment of the protection of minority rights, voter competency, the influence of money, etc.

DQ2: Based on your analysis of the types of issues that use the direct democracy process and the readings so far, do the subject matters involved in direct democracy efforts suggest that any particular subject should be prohibited as a matter of policy or law? On what theoretical basis should such subjects be prohibited?
Week 9: Case Studies: California

Statement of purpose.

The purpose of this week’s readings is to provide a historical and legal grounding in direct democracy constitutional and statutory law in California. While the readings are relatively short, a great deal of analysis and synthesis is required to read the legal materials and address the discussion questions. Use any additional time to work on the critique of Broder’s *Democracy Derailed*. Ultimately, the goal of this week’s work is to prepare the student to compare and contrast direct democracy in California with direct democracy in other states. Specifically, the student will assess how particular legal forms of expression codify certain theoretical issues and concerns. The student should pay particular attention to the discussion questions, as the results will be compared with the results for the state of Oregon in week 10.

Reading assignment.

Waters (2008). *State by State History and Overview: California* (pp. 91-143).

Discussion questions.

DQ1: Based on the readings and the subject matter of California initiatives (see in particular *Statewide Initiatives* pp. 93-110), how has the subject matter of direct democracy efforts in California evolved, if at all, from its early iterations to present day? What types of propositions tend to fail? What types of propositions tend to pass? What are the major policy implications for these propositions?

DQ2: Based on a close reading of the California constitutional and statutory law regarding direct democracy, what major direct democracy themes or issues are expressed by the content of the law? What major direct democracy themes or
issues are not expressed by the content of the law? For example, voter competency, minority rights, educated citizenry, etc.

**Week 10: Case Studies: Oregon**

*Statement of purpose.*

The purpose of this week’s readings is to provide a historical and legal grounding in direct democracy constitutional and statutory law in Oregon. While the readings are relatively short, a great deal of analysis and synthesis is required to read the legal materials and address the discussion questions. Use any additional time to work on the critique of Broder’s *Democracy Derailed*. Finally, with the previous week’s work as a foundation, the student can compare and contrast direct democracy in California with direct democracy in Oregon. The differences between California and Oregonian law demonstrate the local nature of direct democracy implementation. This week will be one of the courses most intense as it requires a great degree of synthesis.

*Reading assignment.*


*Discussion questions.*

DQ1: Based on the readings and the subject matter of Oregon initiatives (see in particular *Statewide Initiatives* pp. 360-371), how has the subject matter of direct democracy efforts in Oregon evolved, if at all, from its early iterations to present day? What types of propositions tend to fail? What types of propositions tend to pass? What are the major policy implications for these propositions? How do these subject matters differ from those in California, if at all?
DQ2: Based on a close reading of the Oregon constitutional and statutory law regarding direct democracy, what major direct democracy themes or issues are expressed by the content of the law? What major direct democracy themes or issues are not expressed by the content of the law? For example, voter competency, minority rights, educated citizenry, etc. Finally, how do these expressions differ from those in California, if at all?

Week 11: Implementation?

Statement of purpose.

The purpose of this week’s readings is to bring the ideal version of perfectly implemented direct democracy up to date with a more realistic compromise model of implementation—one based on a compromise between the desires of the electorate and the desires of various government actors responsible for implementation—as described by Gerber through various case studies. The student’s responses to the discussion questions of his or her peers will increase the value of the weeks readings considerably. Recall that the analysis of Broder’s Democracy Derailed is due this week so plan accordingly.

Reading assignment.


3. Choose any two Chapters from Chapters 5-15 on specific propositions (i.e., English only, Cal/OSHA, Tobacco Tax, Transportation, Legislative Spending, Term Limits Provisions, Three Strikes, Open Primaries, Bilingual Education, Gann Limit, or Public School Finance) to analyze and comment in the discussion questions.

Discussion questions.

Instructor note: same discussion question for each of two cases chosen by the student.

DQ1/DQ2: Choose any of the cases from chapters 5-15. Describe the direct democracy measure as passed and briefly describe the general chain of events in its implementation (or lack thereof). Identify the critical actors or interest groups involved and critically assess the chain of events in terms of the dynamics of Gerber’s compromise-based implementation model between government actors and the electorate. Gerber states,

For people who think groups should be able to pass laws by initiative without the intervention of other government actors, our results should represent a cause for concern. For people who think that participation by state government actors results in better or more representative policies, our findings should be a cause for optimism. (2001, p. 110)

Based on your analysis, is the chain of events as described a cause of concern or optimism in your view? What is the rationale for your view?
Week 12: Afterthoughts

Statement of purpose.

The purpose of this week’s readings is to consolidate the course lessons into a practical assessment of direct democracy using Cronin’s sensible democracy model as a starting point. The discussion questions help the students synthesize the course materials while at the same time encouraging an informed expression of the student’s opinions regarding direct democracy.

Reading assignment.

Cronin (1999), Chapter 9, *Sound and Sensible Democracy* (pp. 223-251)

Discussion questions.

Instructor note: students choose two of three questions that include DQ5 with the two additional questions chosen by instructor each term in order to achieve class diversity.

DQ1: Critically evaluate Cronin’s sensible democracy Model (see particularly pp. 249-251) as a compromise between the populist-plebiscitary democracy and representative democracy models. Based on the course readings and what you have learned in this class, do you concur with Cronin’s assertions? If not, which assertions would you challenge and why?

DQ2: Critically assess the appropriateness and hypothetical effectiveness of Cronin’s initiative and referendum safeguards (pp. 232-240)

DQ3: Critically assess the appropriateness and hypothetical effectiveness of Cronin’s recall safeguards (pp. 243-246)
DQ4: Based on your personal opinion informed by the course materials, what are the pros and cons of an expanded (i.e., federal) use of direct democracy in America? Would such an expanded use of direct democracy be a positive or negative tool for social change?

DQ5: Please provide feedback regarding course content that you feel relevant and appropriate.

Concluding Thoughts

Direct democracy is a great deal more complex than one would suspect in large part due to the great variety of its permutations from jurisdiction to jurisdiction. Proponents adore her and at the same time, opponents curse her. Even so, this course has presented direct democracy in a comprehensive and diverse manner in an attempt to provide a more balanced approach to its principles than traditional proponents or opponents have. The course has demonstrated that a more positive and balanced view of direct democracy is possible. It concludes by asserting that a great deal of research remains to be completed.
References


