

**A DEMOCRATIC THEORY OF BALLOT MEASURES**

by

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## **Abstract**

Ballot measures, such as referendums and initiatives, are seen primarily as mechanisms of ‘direct democracy’, as supplements to ‘representative democracy’, or as failures of ‘deliberative democracy’. However, the recent systemic turn in democratic theory suggests that we should understand ballot measures within the contexts of democratic systems. I argue that the key function of ballot measures in democratic systems is to institutionalize opportunities for citizens to legislate. More specifically, we can extend Waldron’s principles of legislation to serve as the basis for a democratic theory of ballot measures. However, since we cannot simply transpose principles of legislation that were developed for legislatures to ballot measures, we need a theory of ballot measures as institutions of mass legislation. I suggest that synthesizing principles of legislation and election makes it possible to develop a coherent approach to evaluating ballot measures that moves past conflicting judgments that have their origins in distinct and often incommensurable models of democracy. From this vantage point, we can clearly theorize how ballot measures might be reconceived and redesigned to contribute to the political functions of inclusion, agenda-setting, will-formation, and decision-making that should be integral to any democratic system.

## **Lay Summary**

Ballot measures, such as referendums, have recently been used to decide on major political issues. On the one hand, these devices appear to be deeply democratic since they allow every eligible citizen the opportunity to vote on a specific issue. On the other hand, ballot measures can be manipulated by elected officials or wealthy interest groups. Somewhat surprisingly, we lack a well-developed theory of when ballot measures can be counted as democratic. Since ballot measures allow citizens to act as legislators, this dissertation suggests that designers of ballot measures should learn from the example of legislatures. Legislatures are designed to embody a number of principles that make lawmaking democratic. These principles can guide attempts to reform and redesign ballot measures to minimize manipulation and improve the capacity of citizens to make informed choices that are then democratically implemented.

## **Preface**

Some of the ideas in Chapters 1-3 were developed as part of a collaborative project with Alice el-Wakil. The material included in this dissertation is primarily the work of the author, Spencer McKay, although sections 2.1 and 2.2 include some material that was equally co-authored and which has been published in a modified form. See el-Wakil A and McKay S (2019)

Disentangling Referendums and Direct Democracy: A Defence of the Systemic Approach to Popular Vote Processes. *Representation* 0(0): 1–18. DOI: 10.1080/00344893.2019.1652203.

Some material from Chapter 6, particularly sections 6.4 and 6.5, has been published in a modified form. See McKay S (2018) Designing Popular Vote Processes for Democratic Systems: Counter-Proposals, Recurring Referendums, and Iterated Popular Votes. *Swiss Political Science Review* 24(3): 328–334. DOI: 10.1111/spsr.12316.

A modified version of Chapter 7 has been published. McKay S (2019) Building a Better Referendum: Linking Mini-Publics and Mass Publics in Popular Votes. *Journal of Public Deliberation* 15(1). Available at: <https://www.publicdeliberation.net/jpd/vol15/iss1/art8>.

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## **Dedication**

For Lauren,

## Chapter 1: Introduction

On 23 June 2016 citizens of the United Kingdom voted in a referendum on whether to “Leave” or “Remain” part of the European Union. The close result was announced the next morning, with 54.3% of voters voting to leave. In quick succession, the British pound quickly fell to a 31 year low, Prime Minister David Cameron resigned and Scotland’s pro-EU Prime Minister threatened to hold another referendum on independence. Turmoil also arose with the UK’s political parties as Leave campaigner Boris Johnson announced that he would not run for the leadership of the Conservative party, Labour leader Jeremy Corbyn faced a mass resignation of his shadow cabinet, and the leader of the United Kingdom Independence Party, Nigel Farage, announced that he too was resigning. Voters also responded with outrage to Farage’s post-referendum recantation of a popular campaign promise that leaving the EU would significantly increase funding to the UK’s National Health Service, with the hashtag #regrexit trending on Twitter. Prime Minister Theresa May called an election in 2017, in what many saw as an attempt to consolidate support for a ‘hard Brexit’ and failed to win a majority government, promoting further uncertainty about the future of the relationship between the United Kingdom and the European Union. Three years on, the United Kingdom’s Parliament has been unable to pass legislation regarding the details of Brexit.

*Ballot measures* – devices such as referendums and initiatives that allow citizens to vote on specific policies or issues – have become a major part of the political landscape. Brexit was followed by similarly controversial ballot measures in Colombia, Hungary, Turkey, Australia, Iraq, Spain, and Iraq. Despite the prominent place of ballot measures in contemporary political life, little has changed since Nurmi wrote that the “theoretical foundations of the referendum institution are weak” (1997: 33). Although ballot measures appear to be here to stay, political theorists have paid relatively little sustained attention to the topic. Many political theorists take ballot measures to be “mechanisms of direct democracy” (Altman, 2011) and, as a result, their judgments about these institutions are heavily influenced by the abstract debate about whether ‘direct’ or ‘representative’ democracy is the appropriate ideal. While there is now widespread agreement that this division is overstated or unproductive, little work has been done to provide an alternative theory of the relationship between ballot measures and democracy. As Weale (2007: 105) notes, the use of ballot measures “in terms of democratic principles still needs to be

established”.

The most important potential contribution of ballot measures to democratic systems, I shall argue, is that they can involve citizens in processes of *mass legislation*. First, I contend that the dominant paradigm for thinking about ballot measures – as tools of direct democracy – focuses too much on conflicts between comprehensive theories of democracy. While reducing the quality of democracy to the question of directness is attractive in its simplicity, it fails to grapple with important questions of institutional design. Second, I argue that ballot measures are best equipped to contribute to democratic systems when they provide institutional supports to enable citizens to act as legislators. Third, I develop the argument by mapping out how the underlying principles of other legislative institutions can guide the design of ballot measure processes in order to improve their capacity to contribute to the core normative functions of democratic systems. As such, a democratic theory of ballot measures makes it possible to assess what problems different types of ballot measures are well-suited to address and clarifies possible strategies for reforming these institutions to better serve democracy.

## **1.1 Ballot Measures in Democratic Theory**

Democratic theorists have frequently approached ballot measures from the perspective of different models of democracy. Most notably, ballot measures are frequently caught up in debates about the relative merits of direct and representative models of democracy. The rise of deliberative models of democracy has also generated influential assessments of ballot measures. I contend that approaching ballot measures from the perspective of these models has obscured many of the issues at stake in the use of ballot measures. As a result, I adopt a democratic systems approach that explicitly seeks to move beyond “models-thinking” (Warren, 2017a: 41).

The prevailing wisdom underlying the models approach is to work out the relevant democratic ideals and then work out the kinds of political institutions that are entailed by the model’s normative commitments. Direct democracy is frequently understood as a system of government in which citizens themselves make decisions. As Hug (2009: 252) puts it “the term direct democracy in its original sense [...] [is] the opposite of representative democracy. Consequently, in a direct democracy representative institutions do not exist.” Ballot measures are seen as a way of allowing citizens to exercise this kind of direct control in a large polity. Representative democracy, by contrast, is understood to give citizens indirect control over decision-making by

authorizing elected and non-electoral representatives to engage constituencies to make decisions. From this perspective, ballot measures are often dismissed altogether, in large part because they are seen as “undermining the authority of Parliament” or other representative bodies that are central to representative democracy (Offe, 2017: 18).

There have been many suggestions that this dichotomy is as “outdated,” (Budge, 2006), “a caricature,” (Tierney, 2012: 14) or a “stereotype” (Altman, 2011: 2). Faced with a reality in which ballot measures and institutions of representative democracy co-exist, scholars have coined terms such as “referendum democracy”, “semi-direct democracy”, or “supplemental democracy” to describe what is happening. For instance, Ian Budge (1996: 84) suggested the need to examine the “actual functioning of referendums and initiatives” rather than trying to resolve disputes between direct and representative democracy. However, he continues to conceive of ballot measures as ‘direct-democratic’ mechanisms and maintains that direct and representative democracy are “two ends of a continuum”, suggesting unavoidable trade-offs between the two. Mendelsohn and Parkin’s (2001b: 1) call to chart ‘a path whereby research on the referendum is no longer structured around a debate between the comparative advantages and disadvantages of two opposing systems of democracy: representative and direct’ names the problem explicitly but does not fully develop an alternative theory of ballot measures.

The rise of deliberative models of democracy that shifted focus to talking, rather than voting, may have sidelined attempts at theorizing referendums due to deep ambivalence about the democratic value of aggregative processes like ballot measures. The challenges of reasoned debate among citizens prior to voting on ballot measures provided a clear reason to question their normative desirability (Haskell, 2000: 11; Parkinson, 2001: 132; Uhr, 2000). On the other hand, approaching the evaluation of ballot measures from a model of deliberative, rather than direct or representative democracy, did allow for more constructive criticism. Rather than abandon ballot measures altogether, some theorists argued in favour of introducing new institutions to encourage deliberation prior to voting in referendums and initiatives. Benjamin Barber, for instance, suggests that ballot measures should have two stages to allow for deliberation before confirming the vote and include “a mandatory tie-in with neighborhood assemblies and interactive-television town meetings for the purpose of civic education” (Barber, 1984: 284–285). A similar impulse has guided the growing practice of pairing deliberative mini-publics with

ballot measures, renewing debates about the possibility of high-quality deliberation in campaigns (Gastil et al., 2014; Gastil and Richards, 2013; Warren and Pearse, 2008a).

Rather than focusing on an unproductive antagonism between ‘representative’ and ‘direct’ models of democracy, a democratic systems approach makes it possible to outline what functions need to be carried out at a systemic level to realize democracy. The distinctive strength of the democratic systems approach is that it explicitly rejects the notion that democracy should be so closely associated with any one particular political practice or institution. For instance, theories of deliberative democracy tend to reduce democracy to deliberation,<sup>1</sup> whereas a systems approach reinstates democracy as the highest-level normative ideal. The question should no longer be whether we should have representation or direct participation, but how, where, when, and why we should institutionalize these particular practices.

Warren (2017a) contends that democracies are political systems that achieve four key normative functions: empowered inclusion of citizens, collective agenda-setting, collective will-formation, and collective decision-making. This particular conception of democracy has clear antecedents, such as Robert Dahl’s (1998: 38) five democratic criteria:

1. Effective participation
2. Equality in voting
3. Gaining enlightened understanding
4. Exercising final control over the agenda
5. Inclusion of adults

While much of the analysis in this dissertation is unlikely to change substantively by using another theory of democracy, I adopt the language of democratic systems specifically because it is oriented toward addressing the lacunae created by the proliferation of models of democracy. The four key functions also correspond well, although imperfectly, to the four stages of ballot measures. Different accounts of these stages use different terminology, but they indicate essentially the same progression: an issue is defined, then discussed, voters then decide by

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<sup>1</sup> While recent work in deliberative systems theory has expanded the concept in ways that might make it more amenable to theorizing ballot measures, there are concerns that this approach is vulnerable to functionalist critiques (Gunn, 2017) or stretches the concept to the point of being useless (Goodin, 2018). In Chapter 3, I outline these problems and how the democratic systems approach avoids them.



voting, and governments then implement the chosen policy (Gastil and Richards, 2013; Parkinson, 2009).

## **1.2 Ballot Measures in Democratic Systems**

How can ballot measures contribute to the key democratic functions of empowered inclusion, collective agenda-setting, collective will-formation, and collective decision-making? Certain kinds of political practices may be necessary to realizing democratic functions, but none of them alone are sufficient. What we need is a mid-level theory that can clarify how to “combine these practices, usually into institutions, in ways that maximize their strengths and minimize their weaknesses” in relation to the core normative functions of democracy (see also Thompson, 2004b: 13; Warren, 2017a: 39). In other words, how can ballot measures organize voting, representing, deliberating, and other processes in order to contribute to normatively desirable functions at the system level? Answering this question requires developing principles to specify how institutions can instantiate democracy’s normative functions. Different sets of principles will be required for the diverse institutions that make up a democratic system, although I contend that the overarching potential contribution of ballot measures to democratic systems is their ability to involve citizens in processes of *mass legislation*.

While models of democracy have usefully emphasized the importance of particular practices – such as voting, representing, and deliberating – for democracy, this kind of models-thinking is now more of a liability than an asset. These lenses have obscured even relatively mundane similarities between the distinctive institutions of direct and representative democracy. If elections differ from ballot measures largely by virtue of the subject matter – voting on candidates and their proposed policy packages versus voting on specific issues or policies (Besley and Coate, 2008; Budge, 2006; Nurmi, 1998), then why are elections rarely understood to be ‘direct’? While they establish relationships of representation, the voting itself remains open to unmediated citizen participation.

Models also encourage overgeneralization, taking particular cases or institutional designs of ballot measures as signs of the success or failure of direct democracy. The democratic systems approach allows us to consider institutional variation in relation to democratic goals, particularly in regard to how ballot measures are integrated with other political institutions. No single institution or practice can achieve democracy’s functions on its own, and so democracy will

always require divisions of labour among the many institutions and practices that comprise democratic systems. This problem is not entirely unrecognized in political theory. Parkinson (2009) argues that the particular strength of ballot measures is that they give collective decisions particularly strong binding power. Others suggest that these devices are supplements to representative institutions that offer a safety valve for dissatisfied citizens (Resnick, 1997: 6) or a check on government. However, many of these assessments fail to adequately attend to the institutional variation among ballot measures, despite a growing concern with institutions in political theory (Fung, 2007, 2012; Shapiro and Macedo, 2000; Smith, 2009; Vermeule, 2007; Waldron, 2013, 2016).

**Table 1: Types of Ballot Measure<sup>2</sup>**

	Constitutionally Required	Citizen-initiated	Government-initiated
Proactive	--	<ul style="list-style-type: none"> <li>• Popular initiative<sup>3</sup></li> <li>• Indirect initiative</li> </ul>	<ul style="list-style-type: none"> <li>• Ad-Hoc Referendum</li> </ul>
Reactive	<ul style="list-style-type: none"> <li>• Mandatory Referendum</li> </ul>	<ul style="list-style-type: none"> <li>• Reactive referendum</li> </ul>	<ul style="list-style-type: none"> <li>• Counter-proposals</li> </ul>

I use the term “ballot measures” both to avoid any association with ‘direct democracy’ and to avoid collapsing important distinctions between various types of referendums and citizens’ initiatives.<sup>4</sup> Existing typologies of ballot measures frequently use the initiation process as a way of making preliminary distinctions between constitutionally-required, government-initiated, and citizen-initiated devices for popular voting (Altman, 2011: 11; Butler and Ranney,

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<sup>2</sup> This approach to classifying ballot measures does not include the recall, which is occasionally understood to be a similar ‘direct-democratic’ device (Altman, 2011: 16), on the grounds that recalls are about candidates rather than policies. The term ballot measures also excludes agenda initiatives, like the European Citizens’ Initiative, which essentially institutionalize petitions without empowering them to put a question on the ballot (Altman, 2011: 17; Setälä and Schiller, 2012: 8–9).

<sup>3</sup> Referred to elsewhere as a ‘full-scale’ initiative (Setälä and Schiller, 2012: 1).

<sup>4</sup> I defend this choice in more detail in Chapter 2.

1978: 23; Setälä, 2006). Ballot measures can also be reactive or active, depending on whether they respond to an existing proposal or propose a new one (Altman, 2011; Parkinson, 2009). I provide a simplified classification of ballot measures in Table 1 (adapted from Parkinson, 2009; Setälä, 2006),<sup>5</sup> although it is worth noting that any given type of ballot measure remains subject to considerable variation in design across different cases.

Some votes are constitutionally required, mandatory referendums, while others are *ad hoc*, discretionary, government-initiated referendums. Popular initiatives allow petitioners to collect signatures to put a question to a ballot measure, while indirect initiatives allow petitioners to collect signatures to put a proposal before the legislature, where it is put to an open vote only if the legislature does not respond within a certain timeframe. The reactive referendum includes procedures, such as the facultative referendum in Switzerland or the abrogative referendum in Italy, that allow petitioners to collect signatures in order to force a vote on whether or not to repeal a law that has been proposed or passed by an elected legislature. Counter-proposals allow legislatures to respond to citizen-initiated ballot measure by proposing an alternative that is voted on simultaneously as the initiative measure, with various decision-rules used in practice to determine implementation (Altman, 2011: 14).

Another criterion for classifying ballot measures is decisiveness, whether a ballot measure is legally binding or advisory (Suksi, 1993). I omit this criterion from the table as I argue in Chapter 8 that decisiveness cannot be reduced to whether a ballot measure is legally binding or not and so it is difficult to ascertain *a priori*. Multi-stage referendums and variations in voting rules are also excluded from Table 1 as, conceptually, these institutional choices may be implemented in any type of ballot measures. In practice, such changes are most common in *ad hoc* referendums as governments often control both the initiation and design of referendum and can thus manipulate procedures more easily than in mandatory referendums, which would require constitutional amendment, or citizen-initiated ballot measures, in which sponsors have control over the content of the initiative but not the process.

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<sup>5</sup> A different classification of ballot measures based on veto power can be found in (Hug and Tsebelis, 2002); however, the end result is largely similar. What they refer to as a “required referendum”, I call a “mandatory referendum”. Their “popular veto”, is what I refer to as a reactive referendum. What they call a “veto player referendum” is further distinguished in my typology into *ad-hoc* referendums and counter-proposals. I also distinguish between popular and indirect initiatives whereas they introduce the broader category of popular initiatives.

Paying attention to the details of institutional design also helps make it clear that democratic theory has fallen behind democratic practice when it comes to the use of ballot measures. Despite general enthusiasm for the study of democratic innovations, relatively little has been said about, say, New Zealand's use of two-stage referendums. Alternatively, little attention has been given to theorizing practices that are relatively uncommon, such as counterproposals, or that have fallen out of use, such as indirect initiatives. It is also necessary to place each of these designs in its particular context. What other ballot measures are available? How do these institutions interact with the legislative, executive, or judicial branches? While there is now a healthy empirical literature on many of these questions, models of direct, representative, and deliberative democracy have not been particularly useful as a basis for normative assessments, in part because the latter two have focused more on the weaknesses rather than the strengths of ballot measures.

By way of brief illustration, it is worth comparing two jurisdictions that are commonly associated with the use of ballot measures – California and Switzerland. Like several other American states, California has institutionalized the view that ballot measures help democracy because they circumvent representative government. The result is a state which no longer has the indirect initiative and there is no reactive referendum. Instead, the popular initiative captures the imagination of citizens and scholars. Yet, this institutional arrangement is based on the assumption that democratic politics can exist without some form of representation.<sup>6</sup> By way of contrast, Switzerland has no provision for ad-hoc referendums or popular initiatives but does allow reactive referendums and indirect initiatives. Here the system trades off giving citizens extremely broad agenda-setting power in favour of a more interactive agenda-setting process that empowers citizens to participate with elected legislators in a process of shared decision-making.<sup>7</sup>

While an oversimplification, this brief account highlights some of the institutional considerations that are routinely missing from existing judgments regarding ballot measures. However, detailed consideration of institutional design remains somewhat distant from the

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<sup>6</sup> The underlying logic can be traced back to the Populist movement, discussed further in Chapter 4.

<sup>7</sup> What matters is also not simply the combination of institutions, but the temporal dimension of their use. As Vermeule puts it: "As intermittent institutions appear more frequently, whether on a periodic schedule established ex ante or, instead, on an episodic basis, they tend to become more stable and successful. Frequent and repeated appearances seem to clarify and stabilize the ground rules of the institutions, dampen strategic behavior and rent-seeking, and lower the stakes for all parties." (Vermeule, 2011: 439–440).

abstract normative functions of the democratic systems approach. How are we to assess the use of ballot measures in Switzerland and California? I contend that a democratic theory of ballot measures needs to be a mid-level theory that provides guidance on how institutions can instantiate the principles of democracy. While many normative evaluations of ballot measures focus on their aggregative nature or the practice of voting, we can more clearly understand the strengths and deficiencies of ballot measures if we see them as institutions that aim to achieve the normative functions of democracy by organizing various practices into institutions. Institutions embody shared commitments to particular principles – such as the notion that elections ought to be free and fair – that are broader than specific institutional designs yet narrower than the core democratic functions of empowered inclusion, collective agenda and will formation, and collective decision-making. The principles that serve to connect institutions such as elections or legislatures to the normative functions of democracy are relatively well-understood, yet we lack an account of the principles of mass legislation that would help specify the role of ballot measures as institutions in democratic systems.

### **1.3 A Legislative Theory of Ballot Measures**

Democracy is fundamentally about collective self-government, which is very often and legitimately mediated through representatives of various kinds. One dimension of the notion of self-government is frequently referred to in the notion of citizens legislating for themselves. For instance Cristina Lafont argues that the mutual justification of coercion is key to the ability of citizens to “see themselves as colegislators or political equals in precisely the way the democratic ideal of self-government requires” (Lafont, 2017: 85). Theories of direct democracy overstate the normative value of ‘direct’ participation and devalue, if not openly criticize, the many forms of mediation that occur, particularly by non-electoral representatives. I think that the distinction between direct and representative democracy is much too stark, although the emphasis on ‘directness’ does grasp at a problem for democracy as a system of self-governance, namely: how often are citizens permitted to play a meaningful role in determining the laws to which they will be bound? That is, when are citizens permitted to act as legislators?

Following Benjamin Barber, we might contend that well-designed ballot measures should not aim to “make it *easy* for the public to self-legislate but to make it *possible* and feasible for them to do so” (Barber, 1984: 288). Often citizens simply take on the role of spectators (Green,

2009), although they may also attempt to influence decisions by changing public opinion through interest groups, protests, civil disobedience or other types of political action. However, it would be wrong to conceive of citizens in any of these situations as legislating. Jeremy Waldron argues that “legislation” is a particular subtype of lawmaking that is distinct from lawmaking by executive agencies or the judiciary (Waldron, 2016: 125). Legislation in contemporary democracies happens primarily in legislatures, although legislatures are not inherently democratic. The democratic legitimacy of legislatures arises from their capacity to realize “principles of legislation” such as explicit lawmaking, a duty of care, representation, respect for disagreement, responsiveness to deliberation, legislative formality, and voting rules consistent with political equality (Waldron, 2016: 6). This idealized account of legislation can help us understand the normative impulses built into ballot measure institutions and effectively guide their reforms.<sup>8</sup>

Waldron (2016: 142) himself suggests that his theory of legislation makes it “impossible to see direct democracy as an ideal.” This dismissal appears to be rooted in a failure to distinguish the role of *legislator* from the role of *representative*. The recent focus on representation in democratic theory makes it possible to forget that contemporary representative institutions are also legislative institutions. A theory of mass legislation needs to pull apart those two threads because ballot measures give citizens legislative power even though many of them will not have obligations as representatives. When citizens act as legislators, they do not need not meet the standards of representative democracy, but they also do not need to meet the standards of direct democracy in which representation is viewed with suspicion, at best. Instead, citizens can engage with various electoral and non-electoral representatives while still maintaining the capacity to participate in public processes of lawmaking. Again, we see here that the representative and direct models of democracy have obscured the possibility of a distinct conception of mass legislation that avoids the unrealistic claims of a wide range of democratic theorists.

The notion that ballot measures grant citizens legislative power is not new, as exemplified by titles like *Citizens as Legislators* (Bowler et al., 1998) or *Direct Legislation*

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<sup>8</sup> Dennis Thompson’s (2004b) analysis of elections adopts a similar strategy, eschewing models of democracy in favour of an examination of the principles that connect electoral institutions to democratic ideals.

(Magleby, 1984).<sup>9</sup> For political scientists, this view has largely been seen as a mere description of what citizens do when they participate in ballot measures. Political theorists have been more aspirational in their conception of citizens as legislators (Bohman, 2010: 21; Habermas, 1998: 119–123; Kaufman, 1997; Rawls, 2001: 56). The notion of self-legislation – of citizens making laws for themselves – has wide appeal but is contested in its application. Following Rousseau, direct democrats have argued that representation makes self-legislation impossible. Others have suggested that self-legislation is preserved in a weaker form when legislators act as agents for principals, namely their constituents. However, empirical evidence suggests that elected officials often fail to live up to the ideals of responsiveness implied by a self-legislation model. I argue that ballot measures offer multicameral moments by dividing legislative power, if only temporarily, in ways that allow all citizens to actually legislate for themselves. Such an account should be understood to go both ways, making it possible to clarify the ways in which ballot measures can be used to hold elected legislators accountable but also the ways in which elected legislators might repeal or amend decisions taken through ballot measures.

This account also suggests that objections to ballot measures on the basis of concerns about citizen competence are misplaced. Criticisms that suggest elected legislators are better prepared for the task of legislating than citizens tend to make one of more of the following mistakes (e.g. Morel, 2017: 159). They may view legislation as a technocratic activity that searches for the correct answer, rather than seeing it as a practice of political judgment (Barber, 1984: 289). They may be overly optimistic about the competencies of elected representatives despite evidence that these individuals often lack relevant experience and are vulnerable to various cognitive shortcomings (Loat and MacMillan, 2014; Sheffer et al., 2017; Warren and Gastil, 2015). Lastly, they may be overly dismissive of the role that institutions play in facilitating legislative activity by providing legislators with various kinds of resources and coordinating their activity through structured procedures of interaction (Budge, 1996: 132; Kriesi, 2005: 238). I contend that we need an account of ballot measures as specific institutions whose role in the democratic system is to facilitate legislation by ordinary citizens. Before

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<sup>9</sup> This idea is distinct from the notion of the ‘citizen-legislator’ often used in debates about term limits, which is set in contrast to professionalized career politicians. (George Will. 1992. *Restoration: Congress, Term Limits, and Deliberative Democracy*). This is because this debate focuses largely on the question of representation (Tabarrok, 1994: 335), whereas citizen legislators in my model need not be representatives (see Tabarrok 1984).

moving on to the outline of the dissertation, it is necessary to provide a brief account of the key institutional designs for ballot measures that will be addressed throughout.

#### **1.4 Why Do We Need a Democratic Theory of Ballot Measures?**

The theories of direct democracy that are often associated with ballot measures have surprisingly little to say about these institutions and their variations. This seems to be the case because direct democracy is articulated primarily at an abstract level in an attempt to defend its particular vision of democracy against its primary competitor: representative democracy. We need a theory of ballot measures that acknowledges that there is no fundamental incompatibility between these devices and practices of representation and that institutional variations matter, both empirically and normatively. A new, institutionally-grounded democratic theory of ballot measures is necessary because these devices have become an increasingly common way of making major political decisions. It is not simply that provisions that institutionalize ballot measures are increasingly common (Hug and Tsebelis, 2002; Scarrow, 2001), but that the actual use of ballot measures has increased. At the national level, the use of ballot measures, particularly ad-hoc ones, has grown dramatically since the 1970s in democratic countries (Altman, 2011: 70–73; Butler and Ranney, 1978: 3). While citizen-initiated ballot measures saw a more moderate increase at the national level, their use at the subnational level has exploded in some jurisdictions (LeDuc, 2003b: 22).

It is not only the number of ballot measures that motivates a need for a democratic theory of ballot measures. Such a theory is also necessary as ballot measures are often used for high-profile, significant political decisions (Björklund, 2009: 118–119). Recent referendums on Brexit, Catalan independence, refugees in Hungary, and other such important issues have illustrated some of the issues that are commonly put to the people to decide, such as independence, membership in supranational organizations, moral questions, and constitutional change. While it is important not to theorize from extreme cases, recent ballot measures have largely been notable because they have motivated mainstream concern about ballot measures as a *process*. Newspapers and magazines regularly publish editorials with titles such as “Government by referendums is not democracy” (Cappe and Stein, 2016), “Why Referendums Aren’t as Democratic as They Seem” (Taub and Fisher, 2016), “The trouble with referendums” (Lowe and Suter, 2016), and “Referendums break democracies so best to avoid them” (Harford, 2018).



Recent negotiations around forming a coalition government in the Netherlands led to the abolition of the citizen-initiated advisory referendum process. These views are probably running against the tide: even where ballot measures are not institutionalized, in an era of high popular distrust of mainstream institutions, it is unlikely that politicians will forego opportunities to demonstrate their populist credentials.

We need, then, a democratic theory that shows how, when, and where ballot initiatives might be used well, in support of democratic systems. As Stephen Tierney puts it: “we must ask whether this is an inherent pathology in the referendum itself or a specific defect of referendum design” (Tierney, 2012: 37). We need a theory of ballot measures that is divorced from the ideal of ‘direct democracy’ and that provides a coherent way of synthesizing relevant existing research, including empirical political science. This research often demonstrates a deep cynicism about the democratic prospects of ballot measures but fails to show its work in reaching normative judgments, instead leaving these claims largely implicit. That is, many evaluations of ballot measures have appropriately started from the perspective of analyzing their failures, although in doing so they rarely articulate what it is that ballot measures have failed to do (Wiens, 2012).

For instance, the strategic use of ballot measures by politicians and interest groups remains a worrying concern for many. Although ballot measures may have been “dreamed up by the disempowered, [...] once established they become available for the powerful and well-resourced as well” (Shapiro, 2016). It is especially difficult for citizens to challenge attempts at manipulation when they are unable to articulate a normatively appealing counternarrative. Taking inspiration from Jeremy Waldron, I suggest that a democratic theory of ballot measures is necessary to provide a reasonable ideal that makes it possible for us to assess how ballot measures fall short of that ideal (Waldron, 1999b: 33). Stephen Tierney rightly concludes that “it is time to reassess the negative stereotypes that have in many ways come to characterize the debate surrounding referendums” (Tierney, 2012: 301). This dissertation attempts to fill these gaps by providing the missing democratic theory of ballot measures, informed by recent work in both political theory and empirical political science.

## 1.5 Outline of the Dissertation

The first part of the dissertation assesses the value and use of existing theories of direct and representative democracy. I contend that this “models of democracy” (Held, 2006; Macpherson, 1977) approach has generated confusion rather than clarity about the democratic deficits and benefits of ballot measures. The concept of ‘direct democracy’ has misled both democratic theorists and political scientists, encouraging them to draw counterproductive ties between ballot measures as particular types of institutions and a normative ideal that encourages abandoning practices of representation. In other words, the long-standing assumption that ‘direct’ and ‘representative’ democracy are mutually exclusive ‘models’ of democracy has led many democratic theorists to prefer ‘representative’ arrangements, at the expense of studying ‘direct’ ones. Instead, I suggest adopting an institutionally grounded systems approach to democratic theory. I contend that ballot measure designs ought to be judged by their capacities to facilitate citizen legislation. The second part of the dissertation provides some initial considerations on how designing institutions to encourage citizens to legislate can allow ballot measures to contribute to the key functions of democratic systems. While I indicate that specific kinds of design principles play key roles in fulfilling certain functions, many contribute to several functions. So theoretical distinctions among them are suggestive rather than conclusive.

A number of scholars have implicitly recognized the problem of the dominant frame applied to ballot measures, although the grounds for rejecting the binary distinction between ‘representative’ and ‘direct’ democracy has rarely been explored in detail. In Chapter 2, I develop a rationale for rejecting the concept of ‘direct democracy’. First, direct democracy is not direct in the way that is commonly posited as the basis for the legitimacy of decisions made through ballot measures. That is, ballot measures are not an unmediated and non-representative pure aggregation of the ‘will of the people.’ Second, ballot measures are not inherently democratic either. Much like elections, these devices can be subject to various forms of manipulation that can render them tools of authoritarians, despite the fact that they are often seen as the purest instantiation of democracy.

Chapter 3 outlines an alternative to the predominant approach to evaluating ballot measures from the perspective of ‘direct democracy’. The systems approach to democratic theory provides a coherent theoretical rationale for rejecting the ‘models’ approach to democracy in favour of paying more attention to the consequences of institutional design. The guiding

question is: what are the functional strengths and weaknesses of ballot measures in contributing to democratic systems? Building upon existing theoretical work on democratic systems, I evaluate the capacity of referendums to fulfill four functions that are key to democracy: empowered inclusion, collective agenda-setting, collective will-formation, and collective decision-making. Failures of referendums to carry out each of these functions are well known and documented in the existing literature, although we lack a convincing account of how ballot measures might actually contribute to these functions.

Chapter 4 introduces and defends the notion of ballot measures as institutions of mass legislation. The notion of mass legislation is distinct from earlier understandings of ballot measures as it draws not on the abstract ideals of a model of direct democracy, but instead on the normative principles that are embedded in existing institutions. By drawing on our understandings of how both elections and legislatures organize various practices, such as voting, in accordance with principles that are both supportive of and distinct from the core democratic functions we can develop a standard for evaluating and redesigning ballot measures.

Chapter 5 addresses the function of empowered inclusion, which requires that “people who are (normatively) entitled to be included must have powers through which they can, as it were, demand and enforce their inclusions” (Warren, 2017a: 44). At first glance, this function appears to be straightforwardly realized by the equal distribution of voting power. However, ballot measures are not reducible to the moment of voting and various kinds of representatives play roles throughout the process. The tendency to see ballot measures as mechanisms of ‘direct democracy’ has served as an obstacle to a full understanding of the ways in which practices of representation affect the democratic potential of ballot measures. Representation is a principle of legislation that ensures that diverse interests, rather than merely the interests of the politically or economically powerful, are included in processes of legislation. In legislatures, this possibility is often realized by the election of representatives who are both selected and sanctioned by their constituents. In ballot measures, more attention must be given to questions of non-electoral representation. I shall argue that ballot measures can improve empowered inclusion throughout the democratic system, although this function may rely on effective opportunities for diverse forms of representation.

Chapter 6 argues that legislative formality and respect for disagreement are the key principles of legislation that account for the capacity of ballot measures to contribute to the

function of collective agenda-setting. First, the principle of legislative formality affirms the importance of “highly stylized rules of procedure” in allowing diverse groups of people to talk to each other in a meaningful way that avoids misunderstanding (Waldron, 2016: 162–163). These rules take on a different form in ballot measures than legislatures, focusing instead on issues such as the requirements necessary for a petition to initiate a popular vote. It remains notable that in relation to agenda-setting these rules are often much more clearly defined in relation to citizen-initiated ballot measures, rather than government-initiated ones. The principle of respect for disagreement is realized when there are structural features that prevent false consensus by enabling “rival views to confront one another in debate, so that all of those involved in lawmaking hear all that is to be said against, as well as all that is to be said in favor of, the legislative proposals in front of them” (Waldron, 2016: 159). Both of these principles suggest the need for institutions that set clear rules about setting the agenda in order to avoid the strategic manipulation of procedures. These could include requiring advice from electoral management bodies on question wording or the creation of institutions that better allow citizens to register dissent. Commonly used institutional designs for ballot measures fail to do so by reducing issues to binary ‘yes’ or ‘no’ questions. I suggest that the increased use of multi-stage ballot measures and counterproposals could reaffirm the importance of respect for disagreement by allowing the agenda to better reflect the full set of legislative proposals being seriously considered.

Chapter 7 explores the frequent criticism that ballot measures are capable of allowing citizens to express a pre-existing collective will but rarely enable citizens to form collective wills prior to taking a decision. Most notably, I suggest that ballot measures can facilitate collective will-formation when they are designed to be responsive to deliberation and encourage citizens to acknowledge the duty of care that accompanies legislating. It is often suggested that citizens lack the interest or capacities to deliberate about issues in referendums in a way that illustrates taking care, perhaps most clearly illustrated in ballot measures that target minorities or reduce taxes without reducing spending. Some critics have suggested that the scale of ballot measures makes deliberation impossible and so we might simply do away with ballot measures. Recent research on the pairing of deliberative mini-publics with ballot measures suggests that small groups of people can deliberate and improve the quality of collective will-formation, even if the larger population primarily engages in voting behaviour. Yet, successful deliberation is of little value if it does not have any effect on the resulting legislation. Thus, ballot measures as processes of

legislation also require responsiveness to deliberation, such that citizens are aware of the results of robust deliberation in small groups. Existing evidence suggests that many citizens still do not engage with the recommendations of these mini-publics, although I argue that restructuring the voting process itself might encourage such behaviour.

Chapter 8 suggests that ballot measures contribute to the function of collective decision-making when they meet the principles of voting rules consistent with political equality and a commitment to explicit lawmaking. The first principle is a voting rule consistent with political equality, namely that each citizen should have his or her vote counted equally in determining the outcome. While majority decision in the final stage of voting is the most common decision rule used in both legislatures and referendums, it does not necessarily need to be so. Voting is just one moment in a much longer process and so various voting rules can be justified, so long as they are clear and minimize space for interpretation. In other words, the process of taking a decision should be consistent with the principle of explicit lawmaking. This principles require that ballot measures provide a process clearly dedicated to explicitly changing the law in which citizens clearly understand how their votes will be translated into collective action (Waldron, 2016: 154).

Chapter 9 concludes with a restatement and defence of the claim that citizen-legislation is the activity to which ballot measures ought to be oriented to contribute to democratic systems. I make the case for a number of institutional reforms that would bring the practice of ballot measures closer to this ideal and note the obstacles to bringing about such reforms.

## Chapter 2: Is Direct Democracy Direct or Democratic?

Ballot measures – such as referendums and initiatives – allow citizens to vote directly on specific issues in contrast to institutions of representative government, which give citizens influence by allowing them to elect representatives who then make decisions (Besley and Coate, 2008; Budge, 2006; Clark, 1998: 463–467; Nurmi, 1998). I adopt the term ‘ballot measures’ because it avoids the common association of these devices with the idea of ‘direct democracy.’ I contend that referring to ballot measures as tools of “direct democracy” presumes that these devices are both direct and democratic. In this chapter, I suggest that referring to ballot measures as “mechanisms of direct democracy” (Altman, 2011) implies that these institutions meet certain criteria. The problem is not merely that this terminology is descriptively misleading but that it forecloses certain avenues of research. For instance, breaking the link between ballot measures as institutions and a model of ‘direct democracy’ makes it possible to foreground the question of how to democratize ballot measures and investigate the ways in which practices of representation might play a role in doing so.

Of course, any discussion of ‘direct democracy’ is faced with the problem of what is meant by the term given the proliferation of idiosyncratic understandings of ‘direct democracy’ within political theory. For instance, Bernard Manin (1997) suggests that it refers to a model of democracy in which the governing authorities are randomly selected. Alternatively, James Fishkin (1997) suggests that ‘direct democracy’ refers to a system of government in which elected representatives act as delegates and closely follow the will of their constituents. However, most political theorists use the term ‘direct democracy’ to refer to a model of democracy that emphasizes decision-making by citizens without the mediation of representatives (see e.g., Miller, 1978: 3; Cohen, 1986; Dahl, 1989; Dupuis-Déri, 2016; Kioupkiolis, 2017; Lacey, 2017: 36–37; Papadopoulos, 2012: 126; Rosanvallon, 2011: 123; Sartori, 1987; Urbinati, 2006). In this understanding, the ideal of ‘direct democracy’ contains three essential features: 1) Open-ended, large scale, and face-to-face assemblies in which all eligible citizens can participate; 2) majoritarian voting to make decisions; and 3) the absence of political representation that permits “direct” self-governance by citizens (Kobach, 1993). The first two features refer primarily to the institutional requirements frequently associated with ‘direct democracy.’ Examples of this conception of direct democracy are relatively rare in practice, but

can be found today in New England town hall meetings or in the Swiss *Landsgemeinden* (Altman, 2011: 7 n11; Gerber and Mueller, 2017: 2; Smith, 2009: 30).

Concerns about the feasibility of these kinds of assemblies in contemporary mass democracies have led to a reworking of the concept in which it refers both to various kinds of citizen assemblies, such as processes of participatory budgeting and deliberative mini-publics, as well as what I refer to as ballot measures (Gastil and Richards, 2013: 255). For instance, Jane Mansbridge distinguishes between a “face-to-face form of direct democracy,” which includes assemblies, and “its *non* face-to-face” variant, namely ballot measures (Mansbridge, 1983: xi). These considerably different institutions are ‘direct democratic’ only to the extent that they implement the third feature, the absence of representation. Despite changing understandings of how the model of ‘direct democracy’ can be institutionalized, the absence of representation has remained central to the concept. Some theorists argue that there is “no solid democratic case against the superiority of direct democracy over all indirect forms of decision-making” (Saward, 1998: 84), highlighting that models of direct democracy find practices of representation normatively troubling.

But directness alone is no guarantee of democracy. The use of plebiscites within authoritarian regimes and the commonly cited shortcomings of ballot measures within democracies suggest the need for a richer theory of ballot measures. Theories of direct democracy rarely engage with questions of institutional design as they are too often stuck in a more abstract debate with theories of representative democracy. By privileging directness as the key normative criterion, theories of direct democracy promote an overly narrow understanding of democracy and denigrate the value of representation not only as a model of democracy but as a democratic practice. This chapter builds on existing, but often incomplete or implicit, critiques of the divide between direct and representative democracy. For instance, citing Budge’s work (1996), Saward (2001a: 576) insists that “any serious vision of direct democracy today must see it as operating alongside or more clearly as part of a larger democratic system which includes (for example) elected parliaments and political parties.” I suggest that ballot measures are neither direct nor democratic and follow this line of reasoning to its logical conclusion, that the long-held dichotomy is “misleading at best” (Saward, 2010: 162). I contend that disentangling ballot measures from their association with ‘direct democracy’ is the first step to developing a new democratic theory that relates democratic ideals to institutional design.

## **2.1 Representation and its Absence**

The absence of representation appears to underwrite claims that ‘direct democracy’ is, “by definition, the most democratic form of democracy” (Saward, 1993: 18). But what is representation and why might its absence be good for democracy? The nature of representation remains a deeply contested concept in contemporary political theory and so this account remains necessarily brief. Fossen (2019: 1) distinguishes between two broad meanings of the term representation: ‘representation as’ in which “x represents y as z” and ‘representative agency’ in which “x represents y”. The idea of ‘representation as’ is key to understanding the role of representation around ballot measures but most political theorists to date have focused on theorizing the dyadic relationships of ‘representative agency’. Perhaps the most influential such theory is Pitkin’s well-known account of authorized, accountable representatives who are responsive to the interests of those who they represent. Although Pitkin’s theory is considerable more nuanced, many readers of her work came to understand representation as a practice aimed at similarities between represented and representatives, such as congruence of policy preferences (Disch, 2012; Sabl, 2015). From this perspective, Pitkin summarizes the problem with representation as such: “governors have become a self-perpetuating elite that rules – or rather, administers – passive or privatized masses of people. The representatives act not as agents of the people but simply instead of them” (Pitkin, 2004: 339).

Normative arguments for direct democracy, with its absence of representation, implicitly rely on the assumptions embedded in such an understanding of representation. Yet, theories of representation have proliferated in recent years, clearly separating the descriptive question of representation as a fact from the question of representation’s normative legitimacy. Rehfeld defines representation as the result of “an audience’s judgment that some individual, rather than some other, stands in for a group in order to perform a specific function” (2006: 2). On this view, the audience that determines whether representation exists is not necessarily made up of those who are represented. Instead, representatives are chosen by a selection agent to fulfill a certain function in accordance with certain rules of recognition. While democratic theorists have been largely preoccupied with the rules of recognition by which the electorate chooses representatives, Rehfeld’s theory makes it possible to think about non-electoral or non-democratic practices of representation. Yet, much like Pitkin’s early work, Rehfeld’s account focuses on the semantic



meaning of the term representation whereas constructivists, occasionally building on Pitkin's latent insights, adopt a more pragmatic approach that sees representation as a process (Disch, 2012: 606–607; Fossen, 2019: 3).

Constructivist theories of representation advance the notion that representation is not merely the result of election, but is a practice of claim-making (Kuyper, 2016; Mansbridge, 2003; Montanaro, 2012; Rehfeld, 2011; Saward, 2006; Urbinati and Warren, 2008). While Rehfeld points out that audiences are the ones that have the capacity to turn “claimants” into representatives (Rehfeld, 2006: 5), his tendency to suggest that there is an objectively realizable audience misses the way in which the representative process itself plays a role in the way that audiences “contract, expand, change character, are created, are disbanded, or disbanded themselves” (Saward, 2010: 27). Saward summarizes the idea of representative claim-making as a process in which “would-be political representatives, in this process of portrayal or representation of constituencies, make claims about themselves and their constituents and the links between the two; they argue or imply that they are the best representatives of the constituency so understood” (Saward, 2006: 302).

Pitkin's focus on semantics led her to see representation as being about making something present again, concluding “the represented must be somehow logically prior; the representative must be responsive to him rather than the other way around” (Disch, 2012: 606; Pitkin, 1967: 140). Disch (2012: 605–608) suggests that this unidirectional view obscures the fact that representation is bi-directional and anticipatory so that representatives do not simply respond to pre-existing preferences, but play a role in informing those preferences and calling constituencies into being. Other recent theories of representation have arrived at similar conclusions (Näsström, 2006). Frank Ankersmit's aesthetic theory of representation suggests that representation cannot be grafted onto a more direct political system because representation is what constitutes political reality. Claude Lefort's theory of savage democracy similarly suggests that the very notion of ‘the people’, often taken as integral to democracy, does not exist until it has already emerged as a sort of “quasi-representation”.

Saward's account of representative claim-making might be seen as similarly assuming that such constituencies to be represented already exist as when he explains that “A *maker* of representations puts forward a *subject* which stands for an *object* that is related to a *referent* and is offered to an *audience*” (Saward, 2010: 36 emphasis in original). Yet, Saward's theory, like

other constructivist accounts, implicitly relies on the idea of a triadic form of ‘representation as’ in which “x represents y as z.” Representatives do not only make claims about representative agency – namely, claims that they represent some other entity – but they also make claims that characterize the entity to be represented. This approach does not assume that the characterized entity exists prior to such a representative claim, but rather that we can conceive of a “counterfactual multitude of all those who would count as members” of such a group (Fossen, 2019: 10). By distinguishing between ‘representation as’ and ‘representative agency’ we can see that we do not need to assume that the represented is a pre-existing entity with clear preferences. Instead, constructivist theories highlight that democratic representation requires a reflexive, bi-directional view of responsiveness in which representatives should direct “one’s actions qua representative toward the interests of the represented according to one’s best judgment, while acknowledging that one’s judgment is fallible, and comporting oneself toward the represented in a manner that allows for the contestation of those interests” (Fossen, 2019: 12). In other words, the interests of the represented are given normative priority, such that representatives owe justifications to those they claim to represent, although these interests may be uncovered as part of the representative process itself.

The foregoing sketch should be sufficient to serve as the basis for a critique of the idea of direct democracy as a system of government which takes the absence of representation as its normative core. In brief, direct democracy frequently claims to reveal the will of the people, although constructivist theories of representation raise the question of whether such a people could even conceive of itself as existing without practices of representation. Direct democrats are correct in pointing out that representation might not be democratic, although I, following many of others, point out that some form of representation is likely necessary for democratic politics (Fossen, 2019: 1; Plotke, 1997; Urbinati, 2006). I return to the question of the normative legitimacy of democratic representation, particularly among non-electoral representatives, in Chapter 5, although the rest of this chapter illustrates that direct democracy is neither direct nor democratic.

## **2.2 Directness as a Normative Criterion**

The tension between representation and direct participation is almost as old as democracy itself, although its evolution into two fully-fledged, antagonistic models appears relatively recent

(Hug, 2009: 5; Schorderet, 2007).<sup>10</sup> What was previously understood as ‘pure democracy’ or simply ‘democracy’ (Budge, 2006: 1; Fishkin, 1991: 16) only becomes redefined as ‘direct democracy’ in the first quarter of the 20<sup>th</sup> century (Schorderet, 2007: 10).<sup>11</sup> It is tempting to conclude that politics prior to this time was ‘direct’ and so this distinction was not necessary.<sup>12</sup> However, some systems that were long thought to be ‘direct’ feature various practices of representation (Daly, 2015; Ober, 1990; Remer, 2010). The problem is that until the early modern period, there was no conceptual vocabulary to facilitate the analysis of representation of a political phenomenon. This vocabulary seems to appear in conjunction with the growth of representation as a practice in countries like England (Pitkin 2004, 337). Quoting Nadia Urbinati, Näsström writes that “representative government has from the day of its inception ‘been defined from the standpoint of a view of democracy as direct or immediate democracy’” (Näsström, 2006: 324). That is, representative democracy appears to be theorized once the relationship between representation and democracy becomes more institutionalized, not because representation was absent before.

As such, the debate about ‘direct democracy’ is actually a debate about the comparative merits of ‘direct’ and ‘representative’ democracy as two irreconcilable alternatives, with the opposition between the two crystallizing around the question of representation (see e.g., Butler and Ranney, 1994b: 12–13; Gutmann and Thompson, 2004: 30–31; Held, 2006: 4; Näsström, 2006; Setälä, 1999: 43–47). The absence of representation does not merely indicate a political system without institutions of representative government, such as legislatures, but suggests that political participation is entirely unmediated by representation (Barber, 1984: 132; Budge, 2006: 3–4). A common claim among direct democrats is that a system in which issues are decided ‘directly’ by the citizens is “more democratic than representative democracy” (Saward, 1998: 83–84; see also Butler and Ranney, 1994b: 15; Näsström, 2006: 335; Svensson, 2007: 1). This claim often relies on the “intuitive” (Lagerspetz, 2016: 128; Tierney, 2012: 19) argument that the

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<sup>10</sup> Margaret Canovan suggests that the tension is actually between the liberal and democratic parts of ‘liberal democracy’, although here too she frames the democratic aspect as being “concerned with the sovereign will of the people, understood as unqualified majority rule and typically expressed through referendums” (Canovan, 2004: 244).

<sup>11</sup> In English, French and German, according to Schorderet.

<sup>12</sup> Even in the face of these developments, theorists like Condorcet recognized that increasing opportunities for citizens to participate in political life did not require less representation, but instead a more complex array of institutional devices (Rosanvallon, 2011: 128–129).

value of democratic political systems derives from the extended possibilities for citizens to govern themselves without transferring their decision-making rights to others. From this perspective, the absence of representation is the condition that makes it possible “to restore the absolute sovereignty of the people” (Bourne 1912, 3-5, as cited in Achen and Bartels, 2016: 51) and to realize the essence of democracy (Bogdanor, 1981: 93).

The valorization of directness over representation in Western political philosophy seems to find its roots in one of two sources: ancient Athens or the work of Jean-Jacques Rousseau. It is common to read claims that Athens was the “greatest historical example of direct democracy” (Saward, 1998: 83) or a “model for unmediated direct democracy” (Budge, 1996: 44). David Held contends that, in Athens, the “principle of government was the principle of a form life: *direct participation*” (Held, 2006: 14). Other scholars similarly note that “Ancient Athens is an archetypical example of direct participatory democracy” (Tridimas, 2011: 59) and that citizens “ruled via direct participation” (Ober, 2010: 32). Of course, this view presents an idealized version of Ancient Athens, rather than a historical one in which there seem to be practices very much akin to representation, at least on the constructivist view, even if such a term would be anachronistic (Budge, 1996: 43; Remer, 2010). For instance, Manin (1997) notes that considerable powers did not reside in popular assemblies, but in other offices chosen by lot. The tension between representation and direct participation is almost as old as democracy itself, although its evolution into two fully-fledged, antagonistic models appears relatively recent (Hug, 2009: 5; Schorderet, 2007). Even in the face of these developments, theorists like Condorcet recognized that increasing opportunities for citizens to participate in political life did not require less representation, but instead a more complex array of institutional devices (Rosanvallon, 2011: 128–129).

While there is considerable scholarly debate about the correct interpretation of Rousseau’s political philosophy, his work has often been read as defending direct participation against practices of political representation. Interpreters have argued that Rousseau “defend[s] the idea of ‘assembly politics’ where the people can readily meet together” (Held, 2006: 44) and that his proposed institutional arrangements reflect the idea that “the popular will has to be unmediated to be pure” (Budge, 2008: 599). These interpretations can be supported by Rousseau’s own writings, such as his claims that electing representatives enslaves citizens as

“any law that the populace has not ratified in person is null; it is not a law at all” (Rousseau, 1988: 198).<sup>13</sup>

Despite the fact that Rousseau was a critic of Athenian democracy, these two traditions both serve as touchstones for those who defend ‘direct democracy’. In their influential volume on ballot measures, Butler and Ranney argue that “direct popular decisions made by referendums have a legitimacy that indirect decisions by elected representatives cannot match” (1994b: 15). Saward similarly claims that “responsive rule [...] leads us to favouring direct over indirect forms of decision-making” (Saward, 1998: 83). This view of ballot measures is echoed in popular discourse, which suggests that ballot measures are “real” or “pure” democracy, in contrast to the corrupted ideals of modern systems of government in which citizens elect representatives to make most political decisions (Bowler et al., 2017: 72). Similar claims can be found among populists, who “have an aversion to all intermediary bodies, since according to them these only dilute the relationship between the people and the leadership” (Jacobs, 2010: 5). Populist parties thus often adopt plebiscitarian approaches to representation that propose to “radically curtail the distortion and mediation of citizen preferences by compromised political organizations, offering to substitute direct connections between the people and the policies or social results they seek,” often through the implementation of ballot measures (Barney and Laycock, 1999: 318).

The growing focus on ballot measures as a tool of ‘direct democracy’ appears to have been driven by the acknowledgment that mass assemblies are rarely feasible in contemporary mass societies (Dahl, 1998: 93–95). Max Weber contended that “so-called direct democracy is technically possible only in a small state” (Weber, 1994: 127) and John Stuart Mill argued that “since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative” (Mill, 1958: 55). Given these feasibility objections, direct democracy in contemporary democracies is typically understood to refer to the use of ballot measures (Saward, 2010: 161). This view still accepts ‘directness’ to mean unmediated decision-making power and is well-summarized in the statement that “representative institutions are, at

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<sup>13</sup> Other interpreters have suggested that Rousseau is not so hostile to practices of representation and that his account of democracy relies less on directness than commonly believed (Lund, 2003: 494–499).

best, unfortunate substitutes for direct democracy, necessitated by the inconvenience and expense of frequent plebiscites” (Achen and Bartels, 2016: 88). On such a view, the ideal of a non-representative, ‘direct democracy’ is considered as a guide to the imperfect implementation of non face-to-face assemblies through communications technologies (Barber, 1984; Budge, 1996), or ‘semi-direct democracy’, which is a mix of representative government and ballot measure decision-making mechanisms (Gastil and Richards, 2013; Saward, 2010: 161).<sup>14</sup> These revised accounts of direct democracy judge the quality of democracy on the directness of citizen participation and acknowledge that some mediation is necessary and acceptable, although the less, the better (Urbinati, 2000). That is, ‘direct democracy’ remains a regulative ideal and the introduction of “devices of direct democracy” improves systems of ‘representative democracy’.

These thin accounts of direct democracy demonstrate the conceptual problems that accompany those thick accounts of direct democracy that focus on the absence of representation. Seen through the lens of a debate about ‘direct’ and representative’ democracy, any such combination of institutions introduces tensions due to the antagonism between their underlying democratic logics. Those who valorize ‘direct democracy’ often conflate ‘directness’ with ‘democracy,’ while critics tend to focus on defending ‘indirect’ practices of representation (Plotke, 1997; Urbinati, 2006). As a result, ballot measures are often rejected or ignored by democratic theorists due to their association with the model of ‘direct democracy’ or because they do not go far enough, generally being surrounded by representative institutions. On the other hand, critics see ballot measures as misguidedly pursuing an ideal that reduces democracy to directness and suggest that there is little benefit in trying to combine ‘direct’ and ‘representative democracy’ (Plotke, 1997: 27). Acknowledging the limited value of distinguishing between models of representative and direct democracy should then lead us to reassess the assumed linkage between these models and particular institutions. For instance, a model of representative democracy encourages laying blame for the problems of ballot measures on the model of direct democracy. However, the shortcomings of ballot measures are probably better understood as the result of actors behaving strategically in specific political contexts, rather than the result of a particular conception of democracy.

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<sup>14</sup> Interestingly, Landa and Pevnick (2019) have essentially reversed this logic, arguing that direct democracy is an imperfect substitute for representative democracy.

## 2.3 Representation and Ballot Measures

The debate about the relationship between directness and democracy has been led astray by a longstanding assumption that practices of representation were ‘ingrafted’ upon a form of “pure democracy” in which citizens “assemble and administer the government in person (Hindess, 2000; Madison, 2009). At the heart of the distinction between “pure democracy” and “representative democracy” is the ideal of a non-representative politics consistent with a conception of “direct democracy.” Yet, various recent approaches to rethinking the concept of political representation all suggest that representation is not only practically unavoidable but has always been a key conceptual part of any concept of democracy. The result is that both the concepts of ‘direct’ and ‘representative’ democracy are misleading because they suggest the possibility of a non-representative conception of democracy.

The constructivist turn in democratic theory demonstrates that representation is not only practically unavoidable, in the sense that representatives play a role even in ballot measure processes, but that democracy and representation are conceptually bound to each other. Näsström (2006: 330) suggests that Ankersmit and Lefort’s reconsiderations of representation suggest that “‘representative democracy’ is, in fact, a tautology” because representation is not something added to democracy, but a key dimension of the concept. As such, it is untenable to preserve the concept of ‘direct democracy’ since it claims to be democracy without representation. Saward himself notes that representation as claim-making “operates in regimes of so-called ‘direct democracy’ no less than in regimes of ‘representative democracy’” (Saward, 2006: 316). The far-reaching implications of these theoretical developments are currently being realized. For instance, Landmore (2017: 57–58) argues that the inability to avoid representation in democratic politics provides one of several reasons to “move entirely past and beyond ‘representative democracy’” as a model of democracy.<sup>15</sup> I suggest that the same is true for the concept of ‘direct democracy’, which loses its relevance as a concept once its distinguishing characteristic – the absence of representation – is shown to be fundamentally flawed.

The presence of representation around and within ballot measure processes has not gone unnoticed. Representation is often noted simply from the perspective of those who adopt ‘direct

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<sup>15</sup> This criticism of representative democracy is distinct from Wolin’s notion of ‘postrepresentative politics’ (Wolin, 2009: 599–600) and Simon Tormey’s (2015) contention that we have reached the end of representative politics. For a response to Tormey that embodies the approach to representation adopted here, see Disch (2017).

democracy' as a regulative ideal as an unfortunate reality (see also e.g., Kriesi, 2005: 7; Lutz, 2006: 46; Mendelsohn and Parkin, 2001a). Several studies have more casually noted the ways in which ballot measures create spaces for representation, although little has been done to develop the implications of these observations. For instance, Smith and Tolbert (2007: 421) note that "critics of policies resulting from ballot initiatives often conclude that numerous opportunities for misrepresentation exist in the process." Kobach observes that the growth of initiatives in Switzerland was driven by "committees representing organizations that were new to the political stage" (Kobach, 1993: 101). In his landmark study on voter cues, Lupia finds that in the campaign leading up to voting on numerous insurance reform propositions, "all of the large groups claim to be consumer- or citizen-oriented" (1994: 65). Representative claims are also clearly found in ballot measures that affect constituencies who are not eligible to vote, such as immigrants (Kriesi et al., 2008: 13) or in analyses that construe problems of minority harm under direct democracy as problems of representation (Smith, 2007). Additionally, Donovan et al.'s (1998) classification of campaign types depends on a binary classification of representation in initiative campaigns, based on whether or not organizers represent broad or narrow constituencies.

From these examples, it's possible to begin to outline the variety of actors who make representative claims in response to ballot measures. Ballot measures create opportunities for representation by various actors. First, there are elected representatives whose relationship to ballot measures is relatively well-understood. Second, various types of interest groups may intervene in ballot measures and they may be economic groups (e.g. trade unions), social movement groups (e.g. environmental activists), or expert groups (e.g. scientific associations). These interest groups can take a variety of legal forms and they may make representative claims that run counter to their actual interests and avoid disclosures that might make their constituencies question their motives (Garrett and Smith, 2005). I include campaigners who emerge solely to respond to a particular ballot measure as interest groups as well. Third, in some circumstances "lay citizens represent other citizens" in the form of citizen representatives (Warren, 2008: 50). In the context of ballot measures, this may occur if citizens are participants in deliberative forums who are charged with representing the broader population or if citizens speak up at public hearings. In either of these cases, the public nature of discourse suggests that even if these citizen representatives do not make explicit claims to represent, this notion is often



implicit in selection processes that aim for descriptive representation and explicitly in the expectation that they will speak on behalf of their communities, however construed. Fourth, in jurisdictions that allow citizen-initiated ballot measures, petitioners play a vital representative role by claiming to represent a constituency and advocating for a ballot measure on the part of that constituency (Staszewski, 2003: 420–435). Fifth, theorists have recently been attentive to the problem of representation that occurs due to the fact that ballot measures never have full turnout, leaving those who vote to represent others (Serota and Lieb, 2013; Urbinati, 2000). While this phenomenon is rarely framed as representation in relation to elections, it seems that theorists have found it more interesting or problematic in ballot measures because these are generally believed to be direct. That is, the notion of representation by other voters may appear less significant in elections, which produce forms of democratic decision-making that are less controversially recognized as indirect.

**Table 2: Representatives and Ballot Measures**

<i>Stage of Vote</i> →	Initiation	Discussion	Decision	Implementation
<i>Type of Vote</i> ↓				
Mandatory	• Elected Representatives	• Elected Representatives	• Non-voters represented by voters	• Elected Representatives
Government-Initiated	• Interest Groups • Citizen Representatives	• Interest Groups • Citizen Representatives		• Interest Groups
Citizen-Initiated (Facultative Referendums and Popular Initiatives)	• Petitioners • Interest Groups • Elected Representatives			

Different typologies of popular votes frequently use the ballot measure initiation process as a way of making preliminary distinctions between constitutionally-required, government-initiated, and citizen-initiated devices for popular voting (Altman, 2011: 11; Setälä, 2006). The four stages of the ballot measure process – initiation, discussion, decision, and implementation – each introduce new opportunities and incentives for political actors to make representative claims. We can map out the various representative roles that frequently emerge in the context of

ballot measures, as shown in Table 2. Only one of these types of representation is electoral, which echoes the claim that non-electoral representation “is a pervasive and persistent phenomenon” (Kuyper, 2016: 310) that has only recently begun to be theorized.<sup>16</sup> I return to this topic in Chapter 5, where I analyze the conditions under which these non-electoral representatives produce democratic effects.

The absence of representation seems to be key to distinguishing ‘direct’ from ‘representative’ democracy, suggesting that the presence of representation would undermine the claim to ‘directness’. Yet, ‘direct democracy’ has long been understood to be mediated (Budge, 1996; Sartori, 1987), although few have seriously reflected on the ways in which mediation usually includes practices of representation. This poses a difficulty for ‘direct democracy’ because the presence of representation threatens to undermine the antagonism between representative and direct democracy. Without this antagonism, both ‘direct democracy’ and ‘representative democracy’ lose their normative value as distinct models of democracy.

## 2.4 Plebiscites and Democracy

The concept of ‘direct democracy’ implies that so-called “mechanisms of direct democracy” are, in some sense, democratic.<sup>17</sup> A notable illustration of this perspective can be found in Bogdanor’s (1981: 93) assertion that “arguments against the referendum are also arguments against democracy.” This widely cited claim seems to suggest that democracy is reducible to referendums; however, such a claim cannot be upheld in light of the recognition that models of direct democracy fail to capture significant parts of the concept of democracy. More practically, the well-documented use of the plebiscite by non-democratic regimes or for non-democratic ends around the world should also give us pause (Johnston et al., 1996; Smith, 1976: 19; Topaloff, 2017: 128–129). It is widely acknowledged that the democratic credentials of elections can vary quite widely to the point where elections may be distinguished as democratic or authoritarian. In other words, institutions for mass participation need not be democratic and it

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<sup>16</sup> Jane Mansbridge traces the recognition of representation without direct electoral links, what she calls “surrogate representation” back to Edmond Burke, although her conceptualization remains largely electoral in nature (2003: 522–525, 2011: 627).

<sup>17</sup> Despite his recognition that “direct democracy is Janus-faced: Some mechanisms of direct democracy look forward in an attempt to democratize politics whereas others look backward, enhancing the power of politicians who deliberately use them” Altman (2011: 1) still refers to ‘mechanisms of direct *democracy*’ (emphasis mine).

is preferable to avoid terminology that misleads on this front. In this section, I draw on existing work on evaluating elections to suggest that it is worthwhile to distinguish between ballot measures and plebiscites.

Several political theorists have raised concerns about the usage of plebiscites. Max Weber focused specifically on plebiscites, rather than the more amorphous concept of “direct democracy” (Thomas, 1984: 230), and warned of their limitations: binary choice, a lack of compromise, and an inability to express clear preferences. Michael Oakeshott argued that the

plebiscite is not a method by which ‘mass man’ imposes his choices upon his rulers; it is a method for generating a government with unlimited authority to make choices on his behalf. In the plebiscite ‘mass man’ achieved release from the burden of individuality he was told emphatically what to choose (Oakeshott, 1991: 379)

Although he drew different normative conclusions, Carl Schmitt viewed the device similarly, noting that ballot measures embody the homogeneity of a People (Green, 2009: 169). For these purposes, Schmitt argues that the “institutions of direct democracy [are always] in a position superior to the so-called indirect democracy of the parliamentary state” (Schmitt, 1988: 60).

However, these evaluations rarely provide enough detail about what kind of institutional design they have in mind. Indeed, the word plebiscite has taken on many meanings. In some jurisdictions, it refers simply to government-initiated referendums that are either advisory or that offer only yes or no answers (Fimiani, 2011). Others define plebiscites as popular votes that are focused primarily on the approval of political leaders (Morel, 2001: 59–60), although these are more like inverse forms of recall than ballot measures by virtue of being focused more on individuals, rather than policies. Some authors refuse to adopt the term plebiscite (Butler and Ranney, 1978: 4) while others offer broad definitions, such as Offe (2017) who refers to all referendums, citizens’ initiatives, and agenda initiatives as plebiscitary devices, if not plebiscites. The typology of ballot measures proposed in Chapter 1 does not specify the plebiscite as a specific type of institutional design so I suggest that a preferable option is to adopt the common conception that sees plebiscite as an evaluative term. As Barney and Laycock point out, the use of ballot measures is plebiscitarian when they feature “a bias against public, highly pluralistic and group-organized deliberation, and a tendency to manipulative use of the preferred decision-making instruments” (1999: 320). In other words, plebiscites are ballot measures that are designed to undermine widely agreed upon democratic norms.

Plebiscites pose problems that are similar to those that arise from the use of “authoritarian elections” (Gandhi and Lust-Okar, 2009). However, even ballot measures that are not explicitly hostile to democracy can fall short of meeting various democratic standards. Much more has been said about these issues as they relate to elections, likely because elections are often seen as a key component of democratization whereas referendums are seen as ‘supplemental’ to the institutions of representative democracy (Magleby, 1984: 46; Setälä, 2006: 701–702). For instance, Schedler (2002) notes that elections are a necessary, but not sufficient condition for democracy and contends that electoral authoritarian and electoral democratic regimes exist between the two poles of full, liberal democracy and closed authoritarianism. Electoral authoritarian regimes can be further divided into competitive authoritarianism and uncompetitive or hegemonic authoritarianism (Diamond, 2002; Levitsky and Way, 2010; Schedler, 2002). Ballot measures might be similarly categorized on a continuum ranging from absolute plebiscites to fully-democratic ballot measures, with competitive plebiscites, hegemonic plebiscites, and minimally-democratic ballot measures filling the gap in the middle. The use of the term absolute plebiscite most accurately corresponds to the notion of a sham election, in which there is “no meaningful contestation for power” (Levitsky and Way, 2002: 54), as in Egypt’s nine referendums between 1956 and 1976 that “never yielded less than 99.8 percent yes” votes (Butler and Ranney, 1978: 9).<sup>18</sup>

This rough accounting should be sufficient to demonstrate that it is probably unwise to view ballot measures as inherently democratic devices. Unfortunately, the continued association of ballot measures with models of ‘direct democracy’ obscures this well-known reality. While I have much more to say about the relationship between ballot measures and democracy in the following chapters, it is worth briefly reviewing how students of elections might approach the assessment of ballot measures. On this view, the major division between ballot measures and plebiscites would rest on whether or not ballot measures are free, fair, inclusive, and meaningful (Diamond, 2002: 28; Levitsky and Way, 2002: 53; Schedler, 2002: 38). Ballot measures are free

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<sup>18</sup> Butler and Ranney (Butler and Ranney, 1978: 9) note that it “is interesting that absolutist regimes should think it worthwhile to turn to the ballot box and, by intimidation of voters or fraudulent counting, produce the implausible unanimity that has characterized so large a proportion of referendums.” What is perhaps underappreciated and unexplored is the question of why some regimes choose to use plebiscites for this purpose while others use sham elections.

when citizens are permitted to make an uncoerced choice and fair when rules are applied in a regular, unbiased way and competitors have reasonably similar access to resources (Elklit and Svensson, 1997: 35). Inclusion is met when citizens are empowered and protected through various rights to participate and are not disenfranchised by formal or informal constraints on suffrage (Levitsky and Way, 2002: 53; Schedler, 2002: 39). The question of meaningfulness in ballot measures is somewhat distinct from the corresponding electoral concept, in part because elections are meaningful if they play a significant role in the constitution of power. Since ballot measures vary in their decisiveness – that is, they can be advisory – meaningfulness in these cases appears to more closely reflect whether supporters and opponents of a proposition being voted on genuinely care about the outcome of a ballot measure (Schedler, 2002: 38). Yet, both sides are only likely to care about the outcome if they understand it to be binding. At their heart, advisory ballot measures provide citizens with communicative influence on decision-making. Disregarding this communication may not meet the standards of democracy, particularly where governments pre-commit themselves to the outcome and then backtrack later. In other words, the decision of a government to not implement the result of an advisory ballot measure does not necessarily negate the democratic credentials of the process in the same way that refusing to accept the results of an election does because advisory ballot measures are not decision-making procedures. However, overturning the results of *de facto* or *de jure* binding ballot measures does detract from meaningfulness in a way that undermines democracy.

The line between competitive and hegemonic plebiscites depends, in large part, on the *degree* to which ballot measures fail to be free, fair, inclusive, and meaningful. Competitive plebiscites are those cases where violations of these criteria are so common and significant that they “create an un-even playing field between the government and opposition” but where competition is real, leaving governments to resort to subtle means of manipulation (Levitsky and Way, 2002: 53). Hegemonic plebiscites are those where the outcome remains predetermined, but where there is some meaningful competition. Since my interest lies primarily in the question of how ballot measures might be democratized, I largely leave aside further consideration of these issues in favour of looking at how ballot measures might still fail as part of a broadly democratic system.

## 2.5 Democratic Deficits and Ballot Measures

Even where the use of ballot measures is broadly democratic, these devices remain susceptible to a number of shortcomings. Existing practices of election observation provide a useful starting place for thinking about these issues, although ballot measures can pose unique challenges. For one, ballot measures are often used in order to make constitutive decisions, such as adopting a constitution or declaring independence. The varying degrees of decisiveness also complicate assessments of the democratic quality of ballot measures. Additionally, since ballot measures are not regular occurrences in many democratic systems, they do not have the degree of institutionalization that often accompanies elections. In particular, rules about government-initiated ballot measures are often made for each particular case, whereas electoral systems and election regulations are more entrenched, making it more difficult for governments to design election rules for their own advantage.

The association of ballot measures with a conception of “direct democracy” has, at times, obscured the problem of elite manipulation. Mendelsohn and Parkin contend that conceptualizing ballot measures as tools of ‘direct democracy’ cannot “sufficiently account for how the referendum may be deployed strategically by elected representatives in order to accomplish a wide range of objectives, many of which have little to do with a genuine desire to turn decision-making powers over to the public” (Mendelsohn and Parkin, 2001a: 3). Yet, even this focus on manipulation by elected officials is too narrow, as it fails to acknowledge the full range of elite actors who can manipulate ballot measures and the associated campaigns.

Elites in democracies, even where they have abdicated their responsibility for decision-making by calling a referendum, often have a preferred outcome that they pursue by manipulating the agenda, voting procedures, or the related campaign (Setälä, 1999: 161). Elites manipulate the agenda by deciding which issues will be voted on as ballot measures. Since many governments have sole discretion over the issues to be voted on in ballot measures, they maintain considerable control over the agenda. Even when citizen-initiated ballot measures are allowed, these devices tend to be accessible only to privileged minorities, who have the funding and organizational capacity to collect the signatures necessary to trigger a popular vote (Magleby, 1994: 35). Elites also manipulate procedures, if necessary. For instance, New Zealand’s government in 1992 found itself politically bound to hold a referendum on electoral reform (Morel, 2007), an outcome the government did not want. As a majority government in a

unicameral system with no existing referendum regulations, the government was free to develop a new two-stage referendum procedure designed to split the reform vote in order to protect the status quo. Elites can also manipulate the campaign, perhaps by spreading misinformation, as was done in the UK referendum on leaving the EU.

For these reasons, Setälä (1999: 105) concludes that government-initiated, ad hoc referendums have the “weakest normative grounds” of all types of ballot measures. However, relatively little attention has been given to questions of how democracies should regulate referendums in order to address these concerns. One example is the Council of Europe’s *Code of Good Practice on Referendums*, which sought to address aspects of referendum regulation not covered in the Council’s *Code of Good Practice in Electoral Matters*. Reidy and Suiter (2015) combined the insights from this document with guidance produced by other international entities, such as the ACE Electoral Knowledge Network to produce an index of electoral regulation. However, this index has not yet been widely used by researchers and many governments appear capable of ignoring or manipulating regulations when they desire to do so (Reidy and Suiter, 2015: 168). One solution to this problem would be to acknowledge that ballot measures can be regulated at multiple levels – constitutional, through overarching legislation, or legislation specific to each ballot measure (Tierney, 2013: 515).

The largely under-explored possibility of building on existing work on elections to evaluate the democratic quality of ballot measures highlights the fact that many of the apparent democratic deficits of ballot measures are either challenges to democratic institutions more broadly or the result of particular institutional pathologies. The debate over models of democracy has led ballot measures to be criticized for several problems that are commonly associated with ‘direct democracy,’ but which are actually general democratic problems that also affect ‘representative democracy’ and its related institutions, such as elections (Renwick, 2017). Such problems include, but are not limited to, concerns about citizen competence, social choice problems, the tyranny of the majority, or the problem of a plebiscitarian ‘will of the people’. Misleading comparisons between idealized representative institutions and real-existing referendum processes have been criticized before (see e.g., Budge, 1996: 2–3, 2007: 203; Held, 2006: 136, 154; Saward, 2001a: 377 n8), although little work has been done to illustrate how the notion of ‘direct democracy’ contributes to this confusion by encouraging overgeneralization.

## 2.6 Why ‘Ballot Measures’?

Even when critics of ‘direct democracy’ make reference to real-existing instances of specific ballot measures, they sometimes generalize the problems of a single case – and the specific type of ballot measure – to all the various existing procedures (Daly, 2015: 31) For instance, Claus Offe relies on the fact that “virtually all populist radical right parties call for [their] introduction or increased use” (see also e.g., Albertazzi, 2008: 109; Mudde, 2004: 152) to argue that “referenda on policy issues [and] citizens initiatives to hold such referenda” are purely tools of right wing populists (Offe, 2017: 17). The recent Brexit vote has also been used as evidence that referendums are detrimental to democracy (McCarthy, 2017: 34–35; see e.g., Offe, 2017: 17; Shapiro, 2017: 82). These examples point to case selection problems in theorizing about ballot measures. Normative theorizing about ballot measures is often motivated by extreme cases, rather than typical ones (Seawright and Gerring, 2008). Specific referendums or citizens’ initiatives, particularly those with easily condemned processes or results, serve poorly as the basis of a generalization about the challenges facing ballot measures more generally.

Unfortunately, many empirical studies also frame their findings in terms of their implications for ‘direct democracy’ in ways that undermine careful attention to the variations between each device, invite overgeneralization of results, and reproduce the conceptual confusion that accompanies the term ‘direct democracy’ (see e.g., Bauer and Fatke, 2014; Fatke and Freitag, 2013: 254; Peters, 2016a; Mendelsohn and Parkin, 2001a: 9; Prato and Strulovici, 2017: 440, 454). Stuck in the ‘direct’ versus ‘representative’ framework, political theorists have failed to inform the evaluation of these empirical results (Dyck, 2016) due to the absence of a democratic theory of ballot measures. The concept of ‘direct democracy’ and the persistent framing of ballot measures as “mechanisms of direct democracy (MDD)” (Altman, 2011: 2) seems to exacerbate these problems, as it encourages papering over the multiple differences in institutional designs for ballot measures<sup>19</sup> (e.g., Offe, 2017: 17). This problem is notable because the concept of ‘direct democracy’ appears to have little other analytic value that might offset the ways in which it obscures institutional variation and encourages overgeneralization.

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<sup>19</sup> Sometimes in full knowledge of the fact that they are ignoring these differences: Miller (2016: 437) for instance notes that he will not name the Swiss popular vote on the minarets’ ban an ‘initiative’ (the appropriate name for this type of ballot measure), but a ‘referendum’ “as the term commonly used to describe popular votes of this kind.”



As I have argued, ‘direct democracy’ provides a misleading framework for understanding ballot measures since it is neither direct nor democratic. Faced with the inescapability of representation, ‘direct democracy’ is reduced to a pair of procedures, namely ballot measures and popular assemblies. Yet, there is nothing intrinsically ‘directly democratic’ about these procedures if they include representation so they should be studied as specific practices that are not in principle opposed to other forms of citizens’ participation, such as representation. A similar justification is offered by Mendelsohn and Parkin who prefer the general term ‘referendum’, (2001a: 5). In their view, it is necessary to avoid speaking of direct democracy to make it clear that referendums are not opposed, but “intricately intertwined with the institutions and agents of representative democracy,” and to draw attention to the role played by the elites in such procedures. Uleri (2012: 73) even goes so far as to refer to some types of ballot measures as “institutions of citizens’ participation” rather than as devices of direct democracy on the grounds that these are “instruments of liberal, representative democracy.”

The suggestion that we should abandon the concept of direct democracy may seem controversial, but it appears to be the next logical step in a long process. Some theorists have previously attempted to redefine the distinguishing characteristics of ‘representative’ and ‘direct’ democracy to account for the presence of representation in ‘direct democratic’ processes (Dupuis-Déri, 2016; Fishkin, 1997: 42; Kioupkiolis, 2017: 38; Manin, 1997: 166; Urbinati, 2000: 765). A minority of democratic theorists have already taken steps in this direction and implicitly extricated ballot measures from the shadow of ‘direct democracy’ by referring to them simply as ‘referendums’<sup>20</sup> or redefining ‘direct democracy,’ either explicitly (Gastil and Richards, 2013: 254) or implicitly (Chambers, 2001: 239) to mean ballot measures. Others refer to democratic systems that use both ballot measures and representative government as semi-direct democracies (Budge, 1996; Gastil and Richards, 2013; Saward, 2010: 161) or ‘referendum democracies’ (Mendelsohn and Parkin, 2001a). These and similar attempts to redefine the meaning of ‘direct democracy’ have had little impact on democratic theory, in part because even accounts of ‘referendum democracy’ or semi-direct democracy see ballot measures as a supplement to institutions of representative democracy (Lagerspetz, 2016: 128).

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<sup>20</sup> Ballot measure is preferable for the latter can easily lead to misunderstandings as to the specific type of referendum being described.

I suggest that using the term ‘ballot measure’<sup>21</sup> to refer to the set of political institutions – such as referendums and initiatives – makes a clear conceptual break between particular institutional devices and specific normative models of democracy. Ballot measures are processes that allow citizens to vote on specific policies or issues in contrast to elections, in which citizens vote on candidates (Altman, 2015: 3; Besley and Coate, 2008; Boehmke, 2005; Budge, 2006; Lacey, 2017: 24; Nurmi, 1998; Uleri, 1996).<sup>22</sup> This distinction is often used to separate elections from ‘popular votes,’ although this risks some confusion with the term ‘popular vote’ as a way of assessing the proportionality of the translation of votes to seats in studies of elections (see e.g. Katz, 1997: 9). Using ‘ballot measures’ instead of ‘popular votes’ avoids this terminological difficulty, while maintaining a distinction that can also be found in Swiss French, which distinguishes *votation* from *élection* and German, which distinguishes *abstimmung* from *wahlen*.

‘Ballot measure’ better serves as an umbrella term that describes a set of related devices without asserting ‘direct democracy’ as the shared feature. Conceiving of ballot measures, rather than ‘mechanisms of direct democracy’ does away with confusions resulting from a belief that these practices lack representation and acknowledges the fact that ballot measures can fail to meet basic democratic norms (Altman, 2011: 88–109; Qvortrup, 2017; Topaloff, 2017; Walker, 2003). Rather than being tied to particular ‘models’ of democracy, ballot measures are simply one sort of institutional arrangement among the different procedures for citizens’ participation, such as elections, town hall meetings, mini-publics, and others. I take ‘ballot measures’ to refer to the entire process, rather than simply the actual process of voting, as this makes explicit the importance of the vote’s initiation – whether through the collection of signatures or

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<sup>21</sup> Admittedly, the term ‘ballot measure’ is similar to the more limited, contemporary definition of ‘direct democracy’ (Gastil and Richards, 2013: 254) and the term ‘mechanism of direct democracy’, defined as “a publicly recognized institution wherein citizens decide or emit their opinion on issues – other than through legislative and executive elections – directly at the ballot box through universal and secret suffrage” (Altman, 2011: 7). At a basic level, the distinction between the two concepts is that ‘ballot measure’ excludes recall elections and while Altman includes initiatives, it’s not clear that it includes those that fail to collect enough signatures to go on the ballot. These choices are justifiable and I point them out primarily by way of clarification. The main problem with the notion of ‘mechanisms of direct democracy’ is that it ignores the fact that these devices are not inherently direct or democratic and unnecessarily loads these devices with the conceptual baggage that accompanies ‘direct democracy’, such as the widespread tendency to evaluate them against a ‘representative’ model of democracy. As such, the continued reference to referendums, initiatives, and other similar devices as mechanisms, tools, or devices of ‘direct democracy’ seems inappropriate.

<sup>22</sup> The term “elections” is occasionally used to refer to ballot measures (Fishkin and Mansbridge, 2017: 7; Gerber, 1999: 5; Matsusaka, 2017: 2), especially in the American context, and the term “popular vote” is sometimes used to describe both elections and what I call ballot measures (see e.g., Lacey, 2017: 24). However, these terms remain marginal. Thanks to Alice el-Wakil for this point.

governmental decision – as well as the resulting campaign. As such, the term ‘ballot measures’ also makes it possible to analyze initiatives as institutions that can, but do not necessarily lead to an actual vote, either due to failure to qualify the initiative through the collection of signatures or due to withdrawal of a petition by its sponsors.

There is another, related rationale for using the term ‘ballot measures’, namely that it avoids possible confusion about different types of devices that allow citizens to vote on specific policies. For instance, in their landmark study of referendums, Butler and Ranney define a referendum as a process in which “a mass electorate votes on some public issue” (Butler and Ranney, 1994b: 1).<sup>23</sup> In this case, ‘referendum’ is used as an umbrella term to refer to all such votes, including citizens’ initiatives but excluding the recall, which is “a negative variant of personal election” rather than a vote on a public issue (Butler and Ranney, 1978: 5; Papadopoulos, 1995: 422). Yet, the use of ‘referendum’ as a general term to refer to different types of ballot measures risks collapsing important institutional distinctions, such as the differences between a government-initiated referendum and a citizen-initiated popular initiative.

In the next chapter, I argue that, rather than seeing ballot measure from the vantage point of a particular model of democracy that is based on specific practices or institutions, like ‘direct democracy’, we should examine ballot measures from a democratic systems view. I take democracy to be a system of government that fulfills four key normative functions: it includes and empowers citizens; it allows citizens to set the public agenda; it allows citizens to generate public opinion out of individual preferences; and it organizes citizens to make decisions as a collective (Warren, 2017a). Despite its strengths, the democratic systems approach outlines normative democratic functions at a high-level, whereas ballot measures are specific institutions. A democratic theory of ballot measures needs to be a mid-level theory that provides guidance on how institutions can instantiate the principles of democracy. From this perspective we can ask how different types of ballot measures can contribute to or detract from these functions. This approach is attentive to both the institutional variation across different types of ballot measures – such as ad-hoc referendums, popular initiatives, mandatory referendums – and the need to avoid approaches that reduce democracy to specific practices, such as deliberation or representation.

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<sup>23</sup> It is also customary in studies of referendums to note that ‘referendums’ is the appropriate plural form since the Latin term ‘referenda’ refers to a plurality of issues, whereas referendums are about single issues (Butler and Ranney, 1994a: 1; Lacy and Niou, 2000: 5; Qvortrup, 2014: 2)

This is not to say that there is nothing of use in accounts of 'direct democracy'. Instead, I suggest that the democratic systems approach allows us to excavate the valuable notion of ballot measures as institutions that allow citizens to participate in processes of legislation at the large scale.

### Chapter 3: Ballot Measures and Democratic Systems

The debate over direct and representative models of democracy is long and seems intractable. On one side are claims that “direct democracy is more democratic than representative democracy” (Saward, 1998: 83–84) and that “arguments against the referendum are also arguments against democracy” (Bogdanor, 1981: 93). On the other hand, critics of direct democracy contend that representatives are more capable of making informed decisions and so representation is not merely a “defective substitute for direct democracy” (Mansbridge, 2003: 515; Plotke, 1997; Urbinati, 2006). Political theorists have certainly revisited the subject of ballot measures over time to reflect new developments in political theory and they often tend to agree that ballot measures are largely undesirable despite their various other disagreements, largely based on the division between ‘direct’ and ‘representative’ democracy.

Max Weber long ago warned against such a division, noting that “the advocates of a bureaucracy free of all controls delight in playing one type of democracy off against another” (1994: 126). There is growing consensus that this approach has perhaps done more harm than good for democratic theory and practice (Hug, 2009; Mendelsohn and Parkin, 2001a). However, political theorists who have given sustained attention to ballot measures have come to different, more nuanced conclusions, including those who were previously staunch defenders of direct democracy (Budge, 2006; Saward, 2010: 160–163). Many of these evaluations have avoided the language of ‘direct democracy’ in favour of considering the role that ballot measures play within broader democratic systems, although they often lack a clear analytic framework to guide these evaluations.

It is time for a normative reappraisal of ballot measures and the recent systemic turn in democratic theory provides a useful framework for conducting such an analysis. To be clear, this is not a systems approach to ‘direct democracy’ but rather a systems approach to democracy in general that seems to be best suited to moving past the ‘direct’ and ‘representative’ divide. I outline the recent systems approach in deliberative democracy to demonstrate why a systems approach to ‘direct democracy’ would be similarly flawed. I argue that Warren’s (2017a) democratic systems approach is particularly well-suited to studying ballot measures because of its explicit commitment to move beyond ‘models’ of democracy. I reconstruct an implicit systems approach in much theorizing about referendums and suggest that there is more to be gained by making this tendency explicit and distinguishing it from theories of ‘direct

democracy'. Lastly, I outline how a systems approach reveals that despite our robust understandings of democracy's functions and the institutional variation of ballot measures, we lack a clear understanding of how to ensure that these institutions actually contribute to the relevant functions.

### **3.1 The Systemic Turn in Deliberative Democracy**

The revival of systems-thinking in democratic theory emerged from evolving theories of deliberative democracy. A recent overview of this history (Elstub et al., 2016) suggests that deliberative democracy's first generation focused on developing an ideal based around the exchange of reasons, the second generation fleshed out that ideal by drawing attention to difference and inequalities of power, and the third generation began to study the feasibility of deliberative democracy with an increased focus on empirical research.<sup>24</sup> Deliberative democracy has since taken a "systemic turn" (Dryzek, 2016; Kuyper, 2016; Owen and Smith, 2015), which demarcates the fourth generation of deliberative democracy from earlier iterations in its focus on the macro-level impacts of deliberation.

While most early work on deliberative democracy focused on the ideals of deliberation or individual forums (Fishkin, 1997; Fung and Wright, 2003; Gutmann and Thompson, 1998), others focused more on how deliberation functioned within the context of a broader democratic system (Dryzek, 2000; Habermas, 1998). However, it seems that this aspect of theories of deliberative democracy was underappreciated by many until deliberative democrats started to seriously question the limits of specific forums as sites for deliberation. Empirical evidence was interpreted by some to show that democratic deliberation was limited to serving as a particular practice, rather than a theory of democracy (Neblo, 2015: 8). For instance, deliberation at the highest levels of decision-making, such as in legislatures, was rarely of a high quality. On the other hand, small-scale, citizen deliberation in mini-publics came closer to meeting deliberative ideals (Gastil et al., 2014; Warren, 2008), although it often lacked linkages that allowed deliberation in small-scale forms to be transmitted throughout "mass publics" (Chambers, 2009; Curato and Böker, 2016; Goodin and Dryzek, 2006; Parkinson, 2006b).

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<sup>24</sup> While I proceed with the understanding that the systemic turn is the fourth generation of deliberative democracy, there is disagreement about how to classify the history of deliberative democracy, with others suggesting that the systemic turn marks the beginning of a third generation (Kuyper, 2016; Owen and Smith, 2015).

The systemic turn was motivated in part by the apparent challenges of ‘scaling up’ deliberation (Niemeyer, 2013), although there appear to have been other considerations at play as well. Another force propelling the systemic turn in deliberative democracy was the need for deliberative theorists to account for various types of non-deliberative activity that occurs within democracies. While some theorists made distinctions between aggregation and deliberation, or voting and talking, others began to reconsider how these binaries might be softened or reconciled. Goodin’s (2008) advice to “talk first then vote” is one such example that fits nicely with the clarification that deliberative processes need not culminate in consensus (Chambers, 2003: 309; Gronlund et al., 2009: 189; Parkinson, 2015: 72–75; Thompson, 2008a: 508). Additionally, Fung (2005) argued that coercive, oppositional tactics may be permissible if they are used to demand authentic deliberation in unjust circumstances, such as those marked by inequality or hostility. Other theorists sought to redeem self-interest from the perspective of deliberative democracy and which made it possible to better theorize the role of bargaining and negotiation in democracies (Mansbridge et al., 2010; Warren and Mansbridge, 2013).

Jane Mansbridge’s (1999) introduction of the concept of a ‘deliberative system’ made explicit what would become a central consideration for later theories of deliberative democracy. Perhaps the most influential statement of the systems approach to deliberative democracy is the introduction to Parkinson and Mansbridge’s *Deliberative Systems: Deliberative Democracy at the Large Scale* (2012). Key to the notion of the deliberative system is a division of democratic labour in which “the entire burden of decision-making and legitimacy does not fall on one forum or institution but is distributed among different components in different cases” (Dryzek, 2016: 8–10; Goodin, 2005, 2008; Kuyper, 2015: 57; Mansbridge et al., 2012: 5). According to Mansbridge et al., deliberation has epistemic, ethical, and democratic functions that produce considered judgments that generate legitimacy for political decisions (Mansbridge et al., 2012: 11–13). The epistemic function is to ensure that decisions are informed by facts and logic, the ethical function is to ensure mutual respect of citizens, and the democratic function is to ensure inclusion and equal opportunities for participation.

### **3.2 Democratic, Not Deliberative, Systems**

The systemic turn in deliberative theory also has its critics. A sympathetic overview of the possible challenges facing such an approach suggests that

It remains an open question how we can ensure the correct balance between representative institutions, citizen participation, and civil society. Determining how to secure functional differentiation within a system, the strength of institutional connections, the division of labor, and much else requires fine-grained appreciation of institutional design (Kuyper, 2015: 61–62).

Indeed, such limitations are frequently voiced by scholars who adopt a systems approach (Bächtiger et al., 2010: 59; Boswell, 2016: 735; Mansbridge et al., 2012: 22–25). In a recent article, Paul Gunn (2017: 103) contends that such attempts by deliberative theorists to redeem features of real politics have backfired and that “systemic theory renders a great deal of previous deliberative theory irrelevant” by focusing on substantive ends, rather than a procedural account of deliberation, regardless of the meaning of the outcomes. He goes on to conclude that these calls for future research showcase a deep confusion about whether deliberation should remain an end in itself or if it is now simply one of many ways for citizens to pursue their ends.

The most notable critique of the systemic turn in deliberative theory comes from Owen and Smith (2015), who raise two major objections to the systemic turn: that non-deliberative acts can cause harm and that a systems approach might not include any deliberation. The first concern arises from the division of labour and Owen and Smith contend that the system approach downplays the “*deliberative wrongs* that such acts involve and the harm they frequently cause” (Owen and Smith, 2015: 223). Even if non-deliberative acts encourage net reflection and increase deliberation elsewhere in the system, the systems approach risks losing sight of the very real damages that these acts can cause, often on those who are already vulnerable. Gunn similarly contends that the systemic turn is an “underargued functionalism [that] invites the bad habit of suggesting that any aspect of real-world mass democracy, no matter how irrational or uninformed it might seem, could, or even must, make a positive contribution to the pursuit of citizens’ interests” (Gunn, 2017: 113).

Owen and Smith’s (2015: 227) second concern is that the concept of deliberation has been stretched too far, and that a system might be considered to be deliberative “without any actual democratic deliberation between citizens taking place.” John Dryzek (2016: 2) has recently suggested that deliberative democracy should be thought of less as sequential generations and more as being comprised of three key parts – the forum, the system, and the polity – each of which is a key part “of a productive dialogue about how democracy can and should be pursued.” Dryzek suggests that forums are embedded in systems, and systems are



embedded in polities so that the polity has the capacity to judge deliberative quality through intersubjectively accepted integrative norms. By responding to Owen and Smith, who worry about the total absence of deliberation, Dryzek initiates a new line of questioning: why consider only whether there is intersubjective acceptance of *deliberative* norms, rather than *democratic* ones?

The question of democratic norms reflects one of Owen and Smith's own proposed solutions to the shortcomings of the deliberative systems approach, namely that there are perhaps *democratic* rationales for allowing non-deliberative acts and the appropriate way of handling these concerns is to conceive of deliberation as one type of practice within a broader democratic system. That is, the evaluative concept at the system level should be democracy, rather than deliberation, even though deliberation may remain normatively desirable. Owen and Smith (2015: 232) conclude that this approach has "the advantage of being clear as to the nature of deliberation (it avoids the twin dangers of 'concept-stretching' and 'criteria weakening' to which much of the deliberative systems literature is prone), but also the limitations that the idealisation of deliberation and deliberative criteria can involve."

Deliberation is not inherently democratic, so I suggest that ballot measures are better evaluated against democratic standards rather than deliberative ones. Assessing ballot measures solely by deliberative standards is likely to produce the pessimistic evaluations that are familiar to deliberative democrats. Adopting such a standard does not require letting go of deliberation as a practice that is central to democracy, but it provides a way of understanding how non-deliberative practices can still have salutary effects, not on deliberation, necessarily, but on democracy. As a result, critics and defenders of ballot measures often talk past each other. Those who favour ballot measures often point to their capacity to solve problems of empowered inclusion by giving every citizen an equal right to vote on a particular policy, while critics often point to unsolved problems of collective will-formation that arise due to the lack of structured deliberation preceding such a vote. Such a view makes it clear that a normative theory of ballot measures cannot be founded on an antagonism between representation and direct participation. A democratic theory of ballot measures should not assume that certain practices – such as representation or deliberation – cannot be incorporated into institutions that allow all citizens the opportunity to vote on policies.

How can ballot measures contribute to the key democratic functions of empowered inclusion, collective agenda-setting, collective will-formation, and collective decision-making? I suggest that answering this question requires developing an account of the particular value of ballot measures. This question does appear to be complicated by the variety of institutional forms – government-initiated referendums, bottom-up referendums, mandatory referendums, popular initiatives, and indirect initiatives – that ballot measures take on. For instance, many critics contend that ballot measures threaten minorities. Sartori (1987: 115) for instance claims they are zero-sum and conflict-maximizing, leading to the possibility that unchecked majoritarianism allows minorities to be oppressed in a way that is unlikely in representative governments (see also Mendelsohn and Parkin, 2001a: 17; Smith, 2009: 118). While empirical evidence does suggest that minority oppression is more common in jurisdictions that allow for popular initiatives (Dyck, 2016; Lewis, 2013),<sup>25</sup> the opposition between models of democracy has enabled defenders of ballot measures to answer this objection by emphasizing that that elected representatives also violate the rights of minorities (Matsusaka, 2005: 168). A more productive approach would be to acknowledge that different political systems channel attempts at minority oppression through different institutional avenues. For instance, some kinds of ballot measures, such as the facultative referendum, might actually protect minorities from oppressive decisions taken by legislatures (Cheneval and el-Wakil, 2018).

A systems approach to ‘direct democracy’ would likely face similar criticisms to those brought against the systems approach to deliberative democracy. It would threaten to elevate ‘directness’ to the level of a systemic goal, despite the fact that there may be a good democratic case for representation. Additionally, there is a growing interest in assessing representation from the perspective of democratic systems theory (Kuyper, 2016; Maia, 2012; Setälä, 2017), but relatively little attention so far has been given to the question of ballot measures in the democratic system. Warren (2017a) presents the clearest outline of a democratic systems approach based on the ideal of collective self-rule on the basis of political equality. Warren suggests that different democratic practices – such as deliberating, voting, resisting – are particularly well-suited to address different types of democratic problems.

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<sup>25</sup> In the case of Switzerland, Vatter and Danaci (2010; see also Moeckli, 2011) show that not all minorities are equally impacted. Those whose rights are the most endangered are minorities perceived as out-groups.

This approach sheds some light on the confusion among deliberative democrats identified by Gunn, namely that deliberative democracy, as a model of democracy, seems overloaded. That is, scholars who have noted “the potential for democratic processes such as voting, negotiation, and bargaining to be both deliberative and anti-deliberative” (Gunn, 2017: 110) have shifted from making democracy more deliberative to making deliberation less deliberative. In Chapter 2, I noted similar problems with the notion of directness as a normative criterion. The democratic systems approach suggests that the appropriate analytic strategy for normative theorists is not to stretch the concepts of deliberation or directness to capture practices that are neither deliberative nor direct, but to clarify that these are characteristics of specific practices, each of which has a role to play in a well-functioning democracy.

While the democratic systems approach does recognize the need for a division of labour that includes multiple institutions that combine various political practices, it evaluates them in their combined capacity to solve democratic problems. Functions are thus conceptualized in normative terms, as a way of evaluating whether the problems facing democracies are appropriately matched to the institutions and practices that are supposed to resolve them. Warren suggests that there are four distinct functions that link individuals to collective self-government and are necessary for a system to be democratic. The first of these functions is empowered inclusion, which includes individual standing within processes of political decision-making, paired with the necessary empowerments to have influence, such as the right to vote or speak. The second function is collective agenda setting, which gives citizens influence over the issues to be considered. The third function is collective will formation, which allows individuals to engage with others to “identify and understand their preferences, and relate their preferences to others and collective agency” through processes such as bargaining and deliberation. The fourth function is collective decision making, which allows polities to impose binding decisions upon themselves.

The democratic systems approach does not assume that all political systems, or at least those that claim to be democracies, function in an entirely coherent or normatively desirable way. Yet, it also does not assume that systems are merely complexes of parts that cannot be evaluated in respect of their systemic effects. Consider an imperfect analogy. Muscular systems often involve compensations that allow stronger muscles to substitute for weaker ones. This seems consistent with a classical view of functionalism. However, the long-term effects of such

compensations may include further atrophy of weaker muscles in ways that increasingly reduce the overall capacity of the system or which may threaten the function of other bodily systems, such as the skeletal system. Indeed, we commonly accept that muscular systems work, albeit frequently suboptimally, and regularly take steps to bring their functioning back toward an ideal.

The democratic systems approach uses language of functionalism, but avoids the trap of “placing value on whatever exists, deducing functional necessity from survival within encompassing systems” (Warren, 2017a: 42) by emphasizing the functions as normatively desirable systemic effects. Various practices – such as voting, deliberating, and representing – can contribute or detract from each democratic function in distinct ways. Voting, for instance, is good at meeting the democratic requirement of empowered inclusion, as the distribution of equal voting power is relatively straightforward, but voting is ineffectual at collective will formation since votes are noisy signals. That is, what votes convey – whether support for a candidate, strategic voting, a protest vote, or something else – cannot be discerned from actual ballot counts. Dahl famously developed the concept of polyarchy to describe a system that fell short of the democratic ideal. The democratic systems approach similarly acknowledges the complex interplay of citizens, institutions, and other activities as a system while also recognizing that only systems that produce certain normatively desirable effects count as democracies.

### **3.3 Ballot Measures in Democratic Systems**

Warren (2017a: 41) contends that the systems approach to democratic theory is not new, but a “rediscovery” and I suggest that this is true of the study of ballot measures as well. For example, in the late 19th and early 20th century, the rise of the ballot initiative in the United States led to a heated debate between Populists and the Progressives. The Populists saw initiatives in particular as a way of doing an end-run around legislatures to realize the “will of the people” without any impediments (Miller, 2000; Qvortrup, 1999a: 546), a view consistent with many theories of direct democracy. On the other hand, the Progressives did not want to “destroy representative government” they sought to keep the initiative and referendum “for emergency use.” They saw the initiative as a way of contesting decisions made by elected representatives. These kinds of checks on legislators have a long history in political theory, although the clearest statement of ballot measures playing this role can be found in the work of A.V. Dicey. Dicey rejected initiatives and government-initiated ad hoc referendums in favour of

mandatory referendums on constitutional changes that would institutionalize popular consent by giving “the people an effective veto against the continual encroachments of Parliament” (Qvortrup, 1999b: 546).

Another early attempt at situating ballot measures within democratic systems might be Max Weber’s contention that the division between representative and direct democracy was misguided as the “elimination of parliaments has never actually been a serious demand of any democrat” (Weber, 1994: 224–227). Smith’s influential article on referendums adopts a similar approach, noting that a referendum that

is held in a relatively non-controversial atmosphere and that subsequently the decision is implemented without any further repercussions does mean that the referendum has acted in a supportive capacity towards the system. Whilst the contribution of any one referendum in this respect may be negligible, the repetition of a whole series acts as a powerful reinforcement of the prevailing order (Smith, 1976: 8).

Smith’s approach to the study of referendums explicitly recognized the need to study how referendums interact with other institutions in democratic systems, such as the party system, as well as the need to study these effects over time.

Mendelsohn and Parkin’s (2001a: 1–2) account of “referendum democracy” refers to it as “a system in which the use, possible use, and threatened use of the referendum are fully integrated into the decision-making apparatus of representative, liberal democracy”. An influential volume on referendums concludes with Butler and Ranney noting that they are “most concerned” with this question: “What has been the impact of referendums on [representative] institutions?” (Butler and Ranney, 1978: 225). An answer to this question can be found in the work of Magleby (1994: 46), who concludes that “Direct legislation is at best a supplement to representative democracy [...] But carried to an extreme it has negative consequences for the political system.” The very notion of “supplementing” representative democracy is somewhat misleading as it reproduces a model of representative democracy that prioritizes representation over other forms of political participation.

A notable systems account that combines representative and direct institutions can be found in Ian Budge’s account of party-based direct democracy.<sup>26</sup> Budge contends that parties are

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<sup>26</sup> A similar account comes from Leib and Elmendorf (2012), who resist the tendency to put what they call ‘popular democracy’ in opposition to ‘party democracy’.

“crucial in forming and organizing public opinion and transmitting it into government action” (1996: 105). Regarding ballot measures, parties clarify the choices available to voters, build coalitions, mobilize voters, and encourage coherence in policy decisions (Budge, 1996: 117–118). Of course, ballot measures also shape the behaviour of parties. Parties may avoid taking positions on many ballot issues to avoid internal divisions, but ballot measures may also serve as a way for citizens to rebuke party policy or call attention to certain issues and for parties to build support by sponsoring initiatives or calling a referendum (Budge, 1996: 117–122). Budge’s perspective reflects the approach I put forward in this chapter, particularly when he approvingly cites Dahl’s argument for a political division of labour (1996: 175–176) and when he reorients debates about citizen competence to inquire whether “the overall system operates well” (1996: 108).

Perhaps the most significant shortcoming of Budge’s approach is his unwillingness to jettison the language of ‘direct democracy,’ despite his claim that the alleged need for parties “destroys” many existing distinctions between ‘direct’ and ‘representative’ democracy. Distinguishing between mediated and unmediated forms of ‘direct democracy’ obscures Budge’s most potent insights and leaves the ideal of unmediated direct democracy in place. It is unsurprising then, that he laments that “both supporters and opponents of direct democracy discuss it in terms of its totally unmediated forms. It is no wonder, because of this assumption, that it ends up being rejected by all but a few idealists” (Budge, 1996: 175). Budge does not seem to realize that the solution to the blanket dismissal of ballot measures due to its association with ‘direct democracy’ is not to append the term ‘unmediated’ to the phrase but to do away with it altogether because unmediated ‘direct democracy’ is both impossible and undesirable. The analysis put forward implicitly adopts a democratic systems approach but the inability to overcome the dominant framing of the issue and the prevalence of the models approach to democratic theory obfuscates the significance of Budge’s account.

This problem is clear when Saward (2001b: 576) praises Budge for eliminating the divide between ‘representative’ and ‘direct’ models of democracy while still claiming that any “serious vision of direct democracy today must see it as operating alongside, or more clearly as part of, a larger democratic system which includes (for example) elected parliaments and political parties.” In other words, Saward reproduces the concept of ‘direct democracy’ while embracing a systems approach to evaluating ballot measures that goes beyond the dominant frame of ‘representative’

versus ‘direct’ democracy. Elsewhere, Saward applies Robert Dahl’s criteria for a democratic process to argue that “a system needs both deliberative and direct mechanisms” to be democratic (2001a: 370).

Another proposal that examines combinations of representation, deliberation, and direct participation is Cohen and Sabel’s notion of “directly-deliberative polyarchy” (1997), which is “a system with both substantial local problem-solving, and continuous discussion among local units about current best practice and better ways of ascertaining it.” By focusing on Dahl’s notion of ‘polyarchy’ they similarly acknowledge the need to evaluate *systems* as including various complementary institutions. However, they make a stark contrast between deliberation and aggregation that, much like the false dichotomy between ‘direct’ and ‘representative’ democracy, leads them to reject ballot measures in favour of face-to-face, deliberative forms of participation (see Saward, 2001a: 9).

Although Cohen and Sabel fail to assess the ways in which ballot measures, representative institutions, and deliberative institutions might interact in a complex system, there is also a long history of theorizing the relationships between ballot measures and other institutions. Daly contends that it is inappropriate to see referendums and parliaments as rivals, instead suggesting that referendums are “one of a suite of constitutional devices which [...] can ensure the stability of a primarily representative constitutional system” (Daly, 2015: 51). A.V. Dicey saw the referendum as a “people’s veto” and Condorcet proposed introducing ballot measures as a way to contribute to creating a general will through the interaction between representatives and citizens. A democratic systems approach also clarifies the underlying logic between the decision to couple ballot measures with deliberative mini-publics (Gastil and Richards, 2013). Examples include the Oregon Citizens' Initiative Review (CIR) and the British Columbia Citizens' Assembly, processes that both brought together small groups of citizens to deliberate and issue public recommendations about upcoming popular votes. Deliberation need not occur within these types of designed forums, but these examples suggest that some of the other democratic deficits of referendums – such as majoritarianism, voter competence, and social choice concerns – might be mitigated by encouraging deliberation elsewhere in the system, while allowing popular votes to provide “a clear decision rule which produces decisive outcomes” (Mendelsohn and Parkin, 2001a: 21; Parkinson, 2009). Of course, while ballot measures appear to serve the function of collective-decision making, in many instances the results are not binding,

with struggles over their interpretation reaffirming the importance of examining the interactions between ballot measures and other institutions.

Empirical research has also been increasingly attentive to the interactions between ballot measures and other democratic institutions. An overview of the empirical literature about referendums and representative government concludes that “we know very little about how referendums interact with the institutions of a representative democracy” (Hug, 2009: 259). In recent years, empirical political scientists have increasingly examined the effects of using these procedures on the entire political system, turning their attention to the impact of ballot measures on electoral representative institutions (Lloren, 2017; see e.g., Peters, 2016a, 2016b; Prato and Strulovici, 2017), party systems (Fatke, 2014; Leib and Elmendorf, 2012; Peters, 2016a), electoral turnout (Freitag and Stadelmann-Steffen, 2010; Tolbert et al., 2003), and non-electoral representation (Boehmke, 2005; see e.g., Gerber, 1999; Kriesi and Trechsel, 2008; Sciarini et al., 2015).

The increased use of ballot measures in recent years does appear to be driven by elected officials who are distrusted by citizens and turn to ballot measures to generate legitimacy for significant or controversial decisions (Dalton et al., 2001; Parkinson, 2009; Scarrow, 2001: 652–653; Schuck and Vreese, 2011). When governments use ballot measures, some voters interpret this as a signal that politicians cannot be trusted to make these decisions (Dyck, 2009; Freitag and Ackermann, 2016) and there is evidence that the availability of ballot measures diminishes trust in government and political parties (Voigt and Blume, 2015). Dalton et al. go so far as to suggest that the contemporary use of ballot measures has the potential to “strain the fabric of democracy” (Dalton et al., 2001: 150; cf. Donovan and Karp, 2006). The potential negative consequences of an increase in the use of ballot measures might be exacerbated due to the common normative overburdening of these devices because of their association with a concept of ‘direct democracy.’ This perspective inverts direct voting and democracy, suggesting that the latter is only realized by ignoring various practices, such as representing, when democracy requires a variety of different practices.

### **3.4 Toward a Democratic Theory of Ballot Measures**

The systems approach has another distinctive strength when it comes to normative evaluations of ballot measures, namely that the systems approach explicitly rejects the notion of



‘models’ of democracy.<sup>27</sup> The models approach to democratic theory has a tendency to reduce democracy to one specific practice (Warren, 2017a: 41). For instance, theories of deliberative democracy tend to reduce democracy to deliberation, while minimalist theories of democracy tend to reduce democracy to voting in elections to choose representatives. The systems approach inverts the tendency of these theories by reinstating democracy – rather than practices of deliberation, participation, representation – as the highest-level normative ideal. Instead of privileging a particular kind of practice or valorizing a particular institution, the systems approach encourages asking whether democracy’s ends are being realized. The systems approach suggests that there are many roads to the same destination, in contrast to models which suggest that there is only one road or that one road is preferable to all others.

Direct democracy is yet another model that reduces democracy to a system in which all decisions are taken in a process of voting open to all citizens. This view is found especially in “intuitive” (Lagerspetz, 2016: 128; Tierney, 2012: 19) accounts of the normative desirability of models of direct democracy, which contend that “arguments against the referendum are also arguments against democracy” (Bogdanor, 1981: 93). Applying the systems approach requires understanding the implications of abandoning a model of ‘direct democracy’ in favour of theorizing about ballot measures in a way that is attentive to their particular design features and their interactions with other institutions. For instance, Chambers notes that “advocates of direct democracy often fail to see the way in which referendums, if not very carefully designed, undermine meaningful participation” (Chambers, 2001: 240). The classification and examination of different institutional designs on its own provides relatively little fodder for a normative theory. What is missing is an account of how these diverse institutions are linked to the highly abstract, system-level democratic functions. What we need is a mid-level theory that can clarify how to “combine these practices, usually into institutions, in ways that maximize their strengths and minimize their weaknesses” (Warren, 2017a: 39) in relation to the core normative functions of democracy. The cognitive content of institutions reflects these descriptive differences, such as the fact that elections structure generic political practices – such as voting, representing,

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<sup>27</sup> Models in this sense are distinct from the formal models often used in social choice or game theory as well as other uses of models in political theory, such as the Rawlsian original position or Foucault’s panopticon (Clarke and Primo, 2007; Johnson, 2014).

deliberating – in specific ways that distinguish them from ballot measures, legislatures, board meetings, or other institutions where the same practices are organized in different ways.

However, institutions also carry normative ideas, which can be thought of as *principles* that serve as the basis for judgments about whether certain institutions are appropriate in relation to certain values (Schmidt, 2008: 306–307). To illustrate, we can turn to the example of elections. As detailed in chapter two, elections are not necessarily democratic, although they are widely considered to contribute to democratic systems when they embody certain principles. Perhaps the most widely acknowledged principles are that elections ought to be free and fair (Elklit and Svensson, 1997). These principles are distinct from the normative functions and serve to link democratic functions to particular institutions. That is, freedom and fairness are not reducible to any single democratic function, nor could either of them substitute for a democratic function. For instance, the principle of freedom empowers citizens in a way that allows them to contribute to decision-making in a meaningful way, although freedom alone fails to fulfill the functions of empowered inclusion or collective decision-making.

Principles constrain institutional choices, at least to the extent that actors wish to realize the principles and their consequent effects. In some cases principles might imply certain institutional arrangements, although in many other instances principles can be institutionalized in multiple ways. For instance, the notion of fair elections implies that there is a campaign period in which candidates and parties can engage with citizens, although the principle of fairness does not dictate any specific length for the campaign period prior to voting. We might similarly think of constitutional principles as those that set out the normatively desirable interactions between different institutions. From this vantage point, it becomes clearer that democratic theory lacks an adequate theory of ballot measures. Assessments of ballot measures that are grounded in the debate between representative and direct models of democracy have tended to focus on whether ballot measures are desirable rather than investigating what principles would need to be realized for ballot measures to be democratic (Chollet, 2018).<sup>28</sup>

In following with the democratic systems approach, I suggest assessing what problems are solved, exacerbated, or introduced by ballot measures and which other institutions can

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<sup>28</sup> A recent example of a similar project can be found in recent work on designing mini-publics and integrating them into broader democratic systems (Johnson and Gastil, 2015; Lafont, 2017).

coordinate other practices in ways that address the shortcomings associated with ballot measures. From the systems approach, a viable conception of democracy must include institutions that facilitate a wide variety of political participation, through voting, representation, deliberation and other similar practices. Because these practices are often combined and institutionalized in particular ways, the systems approach is compatible with recent calls for political theorists to be attentive to specific institutions. Jeremy Waldron (2013, 2016) argues that political theorists need to ask how institutions can realize desired norms and values and Archon Fung (2007, 2012) suggests that democracy requires institutional innovation. Following Dennis Thompson (Thompson, 2004b), Owen and Smith (2015: 231) similarly note that one of the strengths of democratic systems theory is that it is an institutional political theory that “stays close to actual democratic institutions and practices, building an acknowledgment of the feasibility constraints of this focus into the construction of its democratic ideal.” Such a perspective requires not only careful attention to the different types of ballot measures outlined in Chapter 1 and their different effects, but also the ways in which ballot measures interact with other institutions.

## Chapter 4: Ballot Measures as Institutions of Mass Legislation

Ballot measures are often unfavourably compared to other democratic institutions. The legacy of the debate between direct and representative models of democracy seems to have led many to conclude that it is the representative nature of the other institutions that is to credit for their alleged superiority (Budge, 1996: 14–15; Mansbridge, 2003: 515; Urbinati, 2000). However, a more careful assessment of the use of initiatives suggests these institutions lack the “slow, careful, iterative, and compromise-oriented nature of *legislative* action” (Miller, 2000: 1051, emphasis added). Conflating the role of a legislator with the role of representative makes it harder to see that the normative goals of legislation are facilitated in part by the representative character of legislators but also by the structure and processes of legislatures as institutions. On my view, ballot measures are not inherently threatening to democracy, but pose a challenge because they are expected to play a role in law-making processes with few of the rules that serve to grant legislative processes legitimacy. As a result, I suggest that the appropriate way to conceive of ballot measures in the democratic system is as *institutions of mass legislation*.

The notion that ballot measures grant citizens legislative power is not new, as exemplified by titles like *Citizens as Legislators* (Bowler et al., 1998) or *Direct Legislation* (Magleby, 1984).<sup>29</sup> However, this view has largely been seen as a mere description of what citizens do when they participate in ballot measures, rather than as the basis for a normative ideal that can inform the institutional design of ballot measures. The notion of mass legislation is distinct from earlier understandings of ballot measures as it draws not on the abstract ideals of a model of direct democracy, but instead on the normative principles that are embedded in existing institutions. The following theory is thus not ideal theory in the sense of assuming that ballot measures are used under ideal conditions, such as a Rawlsian well-ordered society, but takes ideals as things to which we ought to aspire (Wiens, 2012: 54–55). By drawing on our understandings of how both elections and legislatures organize various practices, such as voting, in accordance with principles that are both supportive of and distinct from the core democratic functions we can develop a standard for evaluating and redesigning ballot measures.

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<sup>29</sup> This is distinct from the notion of the ‘citizen-legislator’ often used in debates about term limits, which is set in contrast to professionalized career politicians (Will, 1993). This is because this debate focuses largely on the question of representation (Tabarrok, 1994: 335), whereas citizen legislators in my model need not be representatives.

To develop this account, I turn to Jeremy Waldron's normative reconstruction of the principles of legislation.<sup>30</sup> Waldon (2016: 125) argues that legislation is a particular subtype of lawmaking that is distinct from lawmaking by executive agencies or the judiciary. On this view, the democratic legitimacy of legislatures arises from their "transparent dedication to lawmaking," the fact that they are large enough to include legislators with diverse opinions, and the fact that legislators are also representatives who need to filter and shape public opinion to generate laws that are sufficiently general in character (Waldron, 2016: 6). Lawmaking often takes place within relatively small groups and so it is worth turning to normative theories of elections in order to establish the principles that should guide attempts at scaling up legislative practice. This approach to ballot measures provides a coherent way of analyzing the many diverse problems that, in practice, have tended to keep ballot measures from making a positive contribution to democratic functions. This approach stands in contrast to piecemeal evaluations that look at ballot measures in isolation and evaluate them against how well they facilitate a particular practice, such as voting or deliberation.

#### **4.1 Ballot Measures as Legislation**

Why should we think of ballot measures as legislative institutions? Democracy is fundamentally about collective self-government, which is very often and legitimately mediated through representatives of various kinds. In these situations, citizens often simply take on the role of spectators (Green, 2009). Occasionally, they attempt to influence decisions by changing public opinion through interest groups, protests, civil disobedience or other types of political action. However, it would be wrong to conceive of citizens in any of these situations as legislating since these actions aren't explicit processes of lawmaking. On the other hand, there are numerous examples of constitutions and court rulings, particularly in the United States, that indicate that citizens are legislators in the eyes of the law and that legislative assemblies have legislative power only to the extent to which it is delegated by the people (Noyes, 2015). However, my primary goal is not to demonstrate that ballot measures *are* legislation, legally or otherwise, but to emphasize that the idea of legislation provides a powerful normative ideal

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<sup>30</sup> Similar analyses of the linkages between principles and institutional design can be found in Thompson's (Thompson, 2004b) account of electoral justice and Gastil and Wright's (2018) argument in favour of a randomly-selected legislative chamber.

against which we might evaluate ballot measures. For example, Mattson’s proposals for reforming the initiative process are based on the view that when citizens “get a chance to vote on legislation; they act as legislatures” (2002: 329). The application of legislative standards to ballot measures should not be understood as a “radical attenuation and ‘dumbing down’” of what legislation is (Waldron, 2016: 141). Instead, this view provides a coherent foundation from which we can assess the democratic credentials of ballot measures given that their continued use appears likely.

James Bohman has suggested that many accounts of democracy take self-legislation – “the act of a people giving itself laws” (Bohman, 2010: 21) – as a core ideal. Viewing ballot measures as legislative processes seems to reserve part of the powerful impulse underlying the model of direct democracy, without insisting that self-legislation is necessarily unmediated by representation. The notion of legislation also arises in the work of John Rawls, who contends that citizens should “think of themselves *as if* they were legislators and ask themselves what statutes [...] would be reasonable to enact” (Rawls, 2001: 56). Yet, where Rawls sees the notion of legislation as a way of individuals guiding their individual choices about substantive political issues, I contend that the idea of legislation is more useful for thinking about the process and institutions for democratic law-making. Such a view echoes Habermas’s claim that self-legislation is not reducible to the “*moral* self-legislation of *individual* persons” but that democratic institutions that embody certain principles give the legislative process its legitimacy (Habermas, 1998: 121). However, the notion that ballot measures are legislative institutions appears threatened by the existence of non-binding ballot measures, problems of implementation, the limited role of citizens, and the superiority of legislatures. I take each of these objections in turn, although they all, in different ways, suggest that ballot measures are not legislative institutions because they fail to live up to these ideals. In doing so, they actually reaffirm my main line of argument, namely that legislation is the appropriate standard against which to evaluate ballot measures.

Graham Smith contends that the term ‘direct legislation’ only applies to legally binding ballot measures since only these grant citizens equal control over decision-making (Smith, 2009: 112). Binding ballot measures are said to be those that give legal standing to the result of a popular vote, whereas advisory ballot measures allow legislators considerable legal discretion in deciding whether to comply with the results. Advisory ballot measures appear to introduce

problems, particularly when they conflict with the decisions taken by elected legislators, leading some to suggest that all ballot measures ought to be legally binding (Nurmi, 1998: 348–349). However, elected representatives often pre-commit themselves to implementing the results due to fear of future punishment by voters (Donovan, 2007: 232; Setälä, 2006: 707) or avoid implementing even legally binding ballot measures (Gerber et al., 2001). I return to the question of decisiveness in Chapter 8.

The problems of the decisiveness of ballot measures are akin to questions about the relationship between law and legislation. As Waldron (1999b: 10) notes, legal realists adopt the view that “A bill does not become law simply by being enacted [...] It becomes law only when it starts to play a role in the life of the community, and we cannot tell what role that will be - and so we cannot tell what law it is that has been created - until the thing begins to be administered and interpreted by the courts.” It is not possible to resolve this controversy here, although it is worth noting that ballot measures cannot obviously be disqualified as legislative institutions on these grounds any more than legislative assemblies. I return to the problems of implementation posed by ballot measures in Chapter 8.

Another objection might be that citizens lack the capacities to act as legislators in many contexts. On this view, certain kinds of ballot measures, such as popular initiatives, may allow citizens to legislate, whereas institutions like the facultative referendum that allow citizens to vote on bills passed by the legislature do not count. However, such an objection is based on a prohibitively narrow view of legislation. Most legislators vote on bills that they did not draft and multicameral legislatures offer the possibility of voting on legislation that was drafted elsewhere. Yet it would be misleading to suggest that these activities are not part of the legislative process. These criticisms do point to the fact that the capacity of citizens to legislate in a more expansive sense is limited by the absence of institutions that would make it possible for them to do so.

Against the thrust of my argument, Waldron specifically contends that “Legislation is a function for which representation, rather than direct participatory choice, is the better democratic alternative” (Waldron, 2016: 135) I think Waldron is correct in suggesting that representation is a principle of legislation, although I think he is wrong to suggest that legislative power ought to be allocated to those with claims to represent others. In doing so, he appears to associate ballot measures with a model of direct democracy in which citizens legislate without mediation by representatives. As I’ve argued, such a model of democracy seems to be a poor starting place for

a normative analysis of ballot measures in democratic systems. His objection to ballot measures seems to result from a failure to sufficiently distinguish between *representatives* and *legislators*, presumably because most legislative power in contemporary democracies is most clearly exercised by representatives.<sup>31</sup> Democratic theorists who find virtues in the institutions of ‘representative government’ too often associate these normatively desirable features with representation, rather than legislation.<sup>32</sup> For instance, Dominique Leydet (2017: 176) suggests that legislatures are “more likely to afford [...] deliberate and careful examination of the issues” than ballot measures. Yet, it’s not clear whether this difference in deliberative quality is the result of the fact that voters are not representatives or because voters do not operate within a legislature.

If we are interested in thinking about ballot measures as legislative institutions, then we need to distinguish between the roles of representatives and the roles of legislators since citizens may act as legislators without acting as representatives.<sup>33</sup> This view is distinct from models of direct democracy because the absence of representation here is not conceived of as a democratic good. Nor does it imply that ballot measures free representatives from their duties or preclude the formation of new representative relationships. In Chapter 5, I contend that we actually underestimate the importance of representation to ballot measures and so these practices remain important to an account of mass legislation. The key point is that while democratic theorists generally accept that not all representatives are legislators, it is worth making clear that not all legislators are also representatives. I turn now to reviewing how the institutional design of legislatures structures legislative activity with an eye to understanding how these design features might be transferred from representative institutions to ballot measures.

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<sup>31</sup> Waldron is not alone in eliding the differences between representation and legislation. See, for instance, (Disch, 2012; Sabl, 2004: 225).

<sup>32</sup> This is not to say that this distinction is never made (Urbinati, 2004: 59–60) or that there are no desirable features of representation – these features are clearly seen in the literature on non-electoral representation – but that it is rare to see the distinction between these two roles adequately acknowledged.

<sup>33</sup> While Serota and Leib (2013) contend that citizens do serve as representatives when voting in ballot measures, I argue in Chapter 5 that this view is unconvincing, at least from the perspective of theories of representation that focus on claim-making.



## 4.2 Legislatures and Ballot Measures

According to Waldron, legislation is ideally a process in which “the representatives of the community come together to settle solemnly and explicitly on common schemes and measures that can stand in the name of them all, and they do so in a way that openly acknowledges and respects (rather than conceals) the inevitable differences of opinion and principle among them” (Waldron, 1999b: 2). On first glance, it appears that this definition excludes ballot measures due to its focus on representation. However, Waldron also contends that the principles of legislation apply to both citizens and elected legislators (Waldron, 2016: 155) and elsewhere refers to ballot measures as instances of “legislation by the people” that would not be endorsed by the theorists who he draws upon to build his account of legislation (Waldron, 1999b: 163). This apparent paradox is cleared up by Waldron’s explicit acknowledgement that he is interested in theorizing about legislation primarily as it occurs in the context of *legislatures* (Waldron, 1999a: 21).

Waldron’s stated goal is to “develop a rosy picture of legislatures” (Waldron, 1999b: 2). Yet, despite this narrow focus and his apparent skepticism of ballot measures (Waldron, 2016: 143), I suggest that if we view ballot measures as legislative institutions then Waldron’s work on legislatures may still be instructive. Before moving on to develop an idealized account of ballot measures though, it may be worth making clear how I plan to integrate Waldron’s theory with a democratic systems approach. To do so, I sketch out how his normative principles underwrite the institutionalization of specific political practices in legislatures.

Legislatures are complex institutions that structure political disagreements among competing partisans, rather than impartial actors. This capacity for legislation originates in the fact that legislators collectively accept “certain rules about rule-articulation, rule-making, and rule-change” (Waldron, 1999a: 37). In other words, legislatures organize a variety of political practices in particular ways that allow legislators to make statutory law.<sup>34</sup> Waldron illustrates this view when he writes that

An assembly debating whether to confer authority on the measure before it (whether the measure was drafted by a subset of its members or by an expert parliamentary counsel) is doing something different from sponsoring an open-ended conversation. It must pay attention to deadlines, whether these are features of its constitution or of the exigencies of the challenges which it faces. It must respect its responsibility, of the whole assembly to

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<sup>34</sup> Of course, legislatures accomplish a variety of goals beyond law-making (Waldron, 1999a: 28), although my primary interest in legislatures is primarily what they can tell us about legislation, that is, public lawmaking.

action and consequences, and of members to its constituents. It must deliberate at every stage and in every aspect of its proceedings, in a way that allows some articulation between stages and aspects – so that a procedure involving drafting, consultation, committee hearings, bicameralism, conference committees, first, second and third readings, and so on, can add up to a structured but unified legislative process (Waldron, 1999a: 71).

Yet, the democratic legitimacy of the legislative process does not merely result from the acceptance of these rules and procedures by legislators. Rather, it is that legislators have good reasons for accepting these rules. Namely, this idealized account suggests that legislators accept the rules that govern and organize practices within legislative institutions because they embody particular principles that aspire to preserving pluralism and political equality. Even in non-ideal contexts, rules built on such principles can effectively constrain legislators because violations can be politically costly where they violate widely held beliefs about how institutions ought to be structured in democratic societies (Norton, 2001).

### **4.3 Institutionalizing Principles of Mass Legislation**

Does thinking about ballot measures as institutions of mass legislation get us farther in thinking about the role of these institutions in democratic systems than understanding these as devices of direct democracy? I argue that it does. There are many different institutions that are all recognized as legislatures or elections, despite the fact that they organize political practices in distinct ways. For instance, legislatures may be unicameral or multicameral and elections may use a variety of different electoral systems. The key point is that these institutions embody shared commitments to particular principles that are broader than specific institutional designs yet narrower than the core democratic functions of empowered inclusion, collective agenda and will formation, and collective decision-making. We have well-developed accounts of these principles in relation to other democratic institutions.

Jeremy Waldron suggests that principles of legislation include explicit lawmaking, a duty of care, representation, respect for disagreement, responsiveness to deliberation, legislative formality, and voting rules consistent with political equality (Waldron, 2016: 145–166). Explicit lawmaking requires the existence of publicly observable institutions specifically designed for legislation. A duty of care requires that lawmakers avoid the harms of reckless or negligent lawmaking by considering the possible effects of their legislation and developing reasons for legislating the way that they do. Lawmaking should be representative in the sense that it takes

the diverse interests of society into account, even if all of these interests cannot ultimately be reflected in the resulting legislation. The principles of respect for disagreement respond to what Rawls called the “burdens of judgment,” namely that different conceptions of the world may produce irreconcilable differences, which should be acknowledged even if a decision ultimately needs to be taken that privileges one conception of the world over others. The principle of responsive deliberation requires not only that different perspectives be voiced, but that these perspectives are listened to by individuals or groups who are willing to be persuaded. The principle of legislative formality suggests that rules of order play a key role in facilitating discussion and decision-making by groups of people who might otherwise fail to understand each other. The principle of voting rules consistent with political equality emphasizes that decisions made against the backdrop of persistent disagreement should be taken through a procedure that reflects the moral and political equality of persons.

The institutional design of ballot measures can be guided by an attempt to reconstruct many of the key features – albeit in a more distributed form – of legislatures so that citizens can act more like citizen-legislators when they participate in ballot measures. Dismissals of citizen capacity to legislate are often based on unfavourable comparisons to (often idealized) elected legislators. A common objection to mass legislation is that citizens will be less informed or competent to make a decision than elected representatives (e.g. Morel, 2017: 159). Yet, such a perspective neglects the ways in which elected legislators are enabled and constrained by institutions that are intended to mitigate some of the challenges to their capacities to legislate. The question of competence is thus considerably more complicated than it appears at first glance. For one, the activity of legislation is less about expertise than it is about political judgment (Barber, 1984: 289). Furthermore, while there are legitimate concerns about citizen competence, we should not be naïvely optimistic about the capacities of elected representatives either, who may lack relevant legislative experience (Loat and MacMillan, 2014), remain vulnerable to the same cognitive shortcomings as citizens (Broockman and Skovron, 2018; Sheffer et al., 2017), who may have “less time to study many bills on which they vote” (Linde, 1989: 168; see also Jones, 2013; Volokh, 2011), and who may not be responsive to public opinion (Achen and Bartels, 2016). In fact, elections appear to be good at selecting partisan motivated reasoners, rather than those who are trustworthy or accuracy-driven (Warren and Gastil, 2015). Without denying the possible benefits of partisanship and strategic interaction in democratic life, it is

worth acknowledging the importance of institutions in forming and harnessing legislative capacities. It is widely recognized that the shared acceptance of legislative institutions and rules by political rivals underwrites the democratic legitimacy of the resulting laws. Less frequently acknowledged is the fact that these institutional supports also play a key role in transforming elected representatives, many of whom have little or no legislative experience, into legislators.

It is thus inappropriate to blame citizens for their inability to meet the normative standards that we hold of legislators since they have neither the institutional supports nor the opportunities for legislative activities. As Ian Budge contends, “What voter confusion and error there is derives from institutional practices” (Budge, 1996: 132). Kriesi similarly contends that the solution to the alleged lack of citizen competence “does not call for the suppression of direct-democratic procedures, but for the creation of the structural preconditions allowing the large majority of the citizens to acquire the competence required for making more or less enlightened choices” (Kriesi, 2005: 238). Evidence from deliberative mini-publics also suggests that citizens are competent and trustworthy political decision-makers when institutional supports and opportunities exist (Fournier et al., 2011; Warren and Gastil, 2015). Similarly, arguments in favour of randomly selected legislatures emphasize that the citizens selected “would receive extensive training and professional support staff” (Gastil and Wright, 2018: 304).

Yet, Waldron’s principles of legislation are tailored to contexts in which legislation occurs in assemblies of relatively limited size. The institutional features that are present in legislatures cannot simply be transposed to the mass public. Implementing these principles at the large scale might require taking cues not only from legislatures, but from other large-scale opportunities for voting, namely elections.<sup>35</sup> While legislative activity in practice is often

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<sup>35</sup> In some cases, the relevant principles of electoral justice – equal respect, free choice, and popular sovereignty (Thompson, 2004b) – are frequently taken to entail certain features of institutional design, such as a secret ballot, that are relatively well documented. Another common instance among democrats is that elections are regularly held, although again the specifics of this principle can be institutionalized in distinct ways, whether through fixed election dates or confidence conventions that specify the conditions under which elections are triggered. In other instances, principles may be institutionalized in a variety of different ways, depending on the context and history of the broader democratic system. For instance, both proportional and majoritarian elections have been recognized as instruments of democracy. Yet, little consideration has been given to the ways in which ballot measures might be used to address issues of distribution in accordance with the principle of proportionality and how this might be democratically desirable (Brighthouse and Fleurbaey, 2010). Other features, such as the temporal aspects of elections (Thompson, 2004a), have only recently begun to be theorized. While we expect elected legislators to be present for votes and to vote simultaneously, is it necessary that citizens do so when they legislate? Are advance polls or mail-in ballots democratically legitimate on this view?

strategic, the absence of party discipline and processes of negotiation pose a challenge for voters, particularly in the context of campaigns that feature competing sources of information and advocacy. Existing normative theories of campaigns have focused on the relationships between voters and candidates (Beerbohm, 2016; Lipsitz, 2004), leaving open the question of how we should understand competition for votes where the goal is not selecting legislators, but legislating.

My contention is not that citizens ought to be seen to have exactly the same responsibilities as legislators are commonly assigned in democratic theory because the latter are normally elected. Election serves as the basis for a constituent-representative relationship, whereas ballot measures sever the role of legislator from the role of representative, save for those who act as elected or non-electoral representatives. I suggest that a less demanding conception of the role citizens play in ballot measures as citizen-legislators is appropriate, because most citizens do not represent others and because their power to legislate is considerably more dispersed.<sup>36</sup> Legislating may be a skill that is developed through practice (Cameron, 2018),<sup>37</sup> opportunities for citizens to act as legislators are rare and arise primarily through ballot measures. Ballot measures are “intermittent institutions” because they have a discontinuous existence (Vermeule, 2011). Intermittent institutions can be periodic or episodic as the “former come into being on a schedule set down in advance, while the latter come into being at unpredictable intervals” (Vermeule, 2011: 421). Periodic ballot measure institutions would include the regularly scheduled initiative process in places like California, Oregon, Switzerland, whereas the ad-hoc referendum would be an example of an episodic ballot measures. As a result,

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<sup>36</sup> It seems plausible that we think that as the level of empowerment increases and as the legislative process is centralized among a smaller number of participants, the surrounding institutions should have greater capacity to realize the principles of legislation. For instance, a duty of care is realized in part by the availability of sufficient information such that legislators have a reasonable understanding of the impact of their decisions. The information available to citizens during a ballot measure campaign is likely to be less comprehensive than the information provided to the members of a citizens’ assembly who are charged with determining a ballot question and this information will be less comprehensive than that available to members of the legislature. It is worth noting that the different institutions do not merely provide different levels of information, but they provide a greater degree of self-directedness. That is, members of parliament are able to request specific types of information whereas ordinary citizens lack such resources.

<sup>37</sup> Although there is relatively little evidence that citizens do, in fact, learn from their participation in ballot measures it seems plausible that the possibility of citizen learning depends, at least partially, on the design of ballot measures and the existence of complementary institutions.

most citizens are unlikely to have a structured relationship with ballot measures, as legislators do with the legislatures in which they hold seats.

To put this another way, we should not expect citizen-legislators to be similar to members of legislative assemblies. Indeed, many concerns about ballot measures have to do with questions of citizen competence, alleging that elected representatives are properly charged with the responsibility of legislating because these people have the necessary capacities. Yet, this perspective often underestimates the importance of legislative institutions in underwriting those capacities. That is, legislative processes are democratically legitimate in large part because of the persistence of institutions that explicitly and formally structure the process of legislation by creating opportunities for deliberation and establishing clear decision rules. Institutional supports play a key role in making elected representatives, many of whom have little or no legislative experience, into legislators. Guillermo O'Donnell similarly suggests that the basic rights of democratic citizenship are the result of an “institutionalized wager” that legally assigns these rights to all individuals meeting certain criteria (O'Donnell, 2010: 25–28). This set of institutions is necessary but not sufficient for individual citizens to meet the normative standards of democratic citizenship, nor the more demanding ideal of the citizen-legislator.

We can thus distinguish between ‘voters’ and ‘citizen-legislators’ as ideal types. The former are those who participate in ballot measures where institutions are not designed to realize principles such as a duty of care, respect for disagreement, and responsiveness to deliberation. Plebiscites are the clearest example of institutions that are not designed to allow citizens to legislate, although ballot measures that aim to manipulate voters or that are carelessly organized may also fail to support citizen legislators. It is more difficult to provide examples of ballot measures that do meet this admittedly high standard. In fact, the systemic approach should draw our attention to the possibility that many other institutions in the democratic system will need to increasingly play a role in making ballot measures into normatively valuable legislative processes, such as the well-documented pairing of deliberative mini-publics with ballot measures (Gastil and Richards, 2013).

While many normative evaluations of ballot measures focus on their aggregative aspects and practices of voting, we can more clearly understand the possibilities and deficiencies of ballot measures if we evaluate them as processes of legislation. That is, legislation requires not only voting, but also agenda-setting, debate, and negotiation in the context of an agreed-upon set

of rules where legislators have access to trustworthy sources of information. An objection to this proposal might be to emphasize the fact that ballot measures are not always about concrete proposals for law. I argue that ballot measures are always about lawmaking, although they vary in their exact role in this process. Proposals vary in detail, from fully drafted legislation to questions of principle, but the underlying assumption is that citizens are being asked to vote to determine or influence the lawmaking process. This may occur when citizens draft legislation (as in popular initiatives), vote on existing legislation (in bottom-up referendums), decide on legislation introduced specifically to be voted on in a ballot measure (in government-initiated referendums), or as a way of influencing the legislative process in ways that might lead to the creation of laws through other avenues (as in indirect initiatives or advisory referendums). Vague proposals that are floated and withdrawn or defeated in the relatively formal and institutionalized ballot measure process still count as part of the legislative process, just as bills that are defeated on first reading within a legislature.

This approach makes clear that we need to understand ballot measures not merely as institutions, but as institutions that are shaped and used by various actors. A democratic theory of ballot measures needs to make room for the agency of citizens while acknowledging the ways in which institutions constrain and enable these possibilities. The democratic legitimacy of ballot measures is shaped in large part by how well they facilitate the process of legislation. If citizens are to act as legislators, then they need trustworthy information proxies, space to deliberate, clear rules about their powers of amendment, explicit commitments to how the results of a vote will be translated into law, and other similar institutional arrangements.

#### **4.4 The Will of the People and Populism's Anti-Legislative Character**

Populists<sup>38</sup> have recently played key roles in controversial referendums, such as Brexit or Hungary's refugee referendum, leading scholars like Laurence Morel to contend that democrats need to "retake the referendum from the hands of populists" (Morel, 2017: 166). Populists

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<sup>38</sup> The account of populism used here is well-supported in the literature, but it is perhaps better referred to as a 'thin' populism that "challenges and corrodes traditional modes of representative government, generates emotional appeals to bind people together in collective action, and is often marked by exclusionary bias or racism" (Dzur and Hendriks, 2018: 335). In contrast, 'thick' populism is based on a vision of democracy that has "constructive, self-organizing, self-reliant, [and] institution-shaping elements" (Dzur and Hendriks, 2018: 338) and sits quite comfortably with the view of ballot measures that I am advancing.

frequently demand the introduction or increased use of ballot measures, in part because populism is an ideology that assumes that there is an antagonistic relationship between “the people” and the “elite” (Elchardus and Spruyt, 2016; Spruyt et al., 2016). Ballot measures appear to offer a way for the will of the people to be realized without the interference of allegedly corrupt elites. However, the call for more referendums does not actually appear to be based on demands from populist party supporters (Bowler et al., 2017; Webb, 2013; cf. Jacobs et al., 2018) nor do populist parties appear particularly committed or effective at implementing ballot measures when they have opportunities to do so (Jacobs, 2010). These findings suggest that the relationship between referendums and the will of the people may be used primarily as a strategic framing device.<sup>39</sup> I suggest that the notion of mass legislation provides an alternative way of conceptualizing ballot measures that ties them more closely to democratic ideals rather than populist ones.

Populism’s focus on a divide between the established elite and a homogenous idea of ‘the people’ reflects “a moralised form of antipluralism” that claims, at least implicitly, that part of the people can stand for the people as a whole (Müller, 2016: 20–22). Many existing evaluations of ballot measures have focused on how the majoritarian nature of popular votes can permit minority oppression, although it may be more productive to focus on the populist character of ballot measures. That is, their majoritarian character appears to be exacerbated by common features of ballot measures, such as binary choices, funding for only two official campaigns (Lipsitz, 2004: 164–166), and rules that limit amendments or repeal of laws passed through ballot measures. Under these institutional constraints, space for pluralism is minimized. Where ballot measures take on such anti-pluralist character, the political nature of both the initiation and implementation of ballot measures is obscured as citizens are ultimately divided into only two categories: winners and losers. This dynamic can hamper deliberation because it ultimately

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<sup>39</sup> Indeed, most political theorists have been skeptical of this populist assessment of ballot measures. For instance, although Max Weber suggested that there is a People that could recognize leaders, he doubted that the People had a will that could be captured through a popular vote. These concerns have persisted, with later theorists, like Schumpeter (1994: 251, 263–264), rejecting ballot measures partially due to doubts that they could convey the will of the people. The rise of social choice theory cast further doubt on the ability of ballot measures to capture the will of the people, with some concluding that it is “fatal for all conceptions of direct democracy” (Ankersmit, 1996: 408; Haskell, 2000). In his influential volume on the normative implications of social choice theory, Riker (1988) contended that populism, in which citizens choose policies, was indefensible in comparison to liberalism, in which citizens choose legislators. These distinctions map closely onto the divide between ‘direct democracy’ and ‘representative’ democracy.



suggests that all that matters is numbers and the winning side can claim to be the voice of the people when only the results of the vote are considered (Chambers, 2001: 242).

The populist conception of ballot measures therefore has a striking similarity to unitary models of legislation, which suggest that the “legislature is not only said to *act*, but to possess a *will* and to have *intentions*” (Waldron, 1999a: 42). Such an understanding of legislatures treats them as a black box, downplaying the importance of will-formation as a *process* in favour of emphasizing the result. Similarly, populists largely see ballot measures as a way of uncovering a pre-existing ‘will of the people’ rather than as an opportunity for pluralist political activity.<sup>40</sup> These institutionally impoverished perspectives are overly sanguine about the capacity for decisions taken by collectives, rather than individuals, to reflect any kind of will or intention. Collective decision-making requires institutions and rules, although the unitary model of legislatures and the populist conception of ballot measures both overlook the ways in which ballot measures constrain and enable citizen agency. Daly (2015: 44) contends that thinking of the people as an “ad hoc legislature” makes it possible to distinguish between the voting people and the broader *demos* in a way that clarifies that ballot measures are not unmediated conduits to revealing the will of the people.

Populism is likely to be hostile to this understanding of ballot measures given that they frequently see ballot measure as a way of circumventing the legislative process and are generally skeptical of mediating institutions. However, the problem of mediating the will of the people has a long history in political theory and finds perhaps its most notable formulation in the work of Rousseau, who contended that individual wills cannot be represented. As a result, all laws are to be voted on by all citizens so that “law unites universality of will with universality of the field of legislation” (Rousseau, 1988). However, all citizens are expected to deliberate individually and vote on laws not on the basis of their individual interests but by searching for the general will. Theorists like Nadia Urbinati and Waldron suggest that citizens will be unable to abstract from their own particular vantage point in order to arrive at sufficiently general laws. In contrast, they suggest that processes of representation force legislators to abstract from their own positions (and the particular positions of constituents) because the link between representative and

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<sup>40</sup> Direct democrats are more interested in the process than populists, although because they are primarily concerned with maximizing ‘directness’ they may treat other procedural considerations as being similarly unimportant.

constituent is characterized by linkages usually based on geography or ideology rather than linkages based on the particular interests or values of constituents.

This account is distinct from Rousseauian and populist accounts because the democratic legitimacy for decisions largely rests on the capacity of institutions and procedures to include a diverse array of affected interests in ways that go beyond simply voting. This conception sees democratic legislatures as polyphonic rather than univocal (Waldron, 1999a: 4) and specifies that it is normatively desirable for legislators to also be representatives. However, it is not obvious that all legislators need to be representatives in order to generate the relevant benefits. A democratic systems approach suggests that we might productively look to a democratic division of labour in which representatives interact with non-representative legislators in ways that might mobilize diversity to ensure that the ballot measure process produces sufficiently general laws. In contrast to models of direct democracy, the normative ideal of ballot measures as institutions of mass legislation explicitly makes room for thinking about the role of representation in ballot measures. I explore these considerations in more detail in the next chapter.

## **4.5 Theorizing Mass Legislation in Democratic Systems**

Thinking about ballot measures as institutions of mass legislation, we can begin addressing questions about how ballot measures ought to be situated in democratic systems, such as how legislative power ought to be divided between ballot measures and legislatures. However, answering these kinds of questions requires fleshing out in more detail the relationship between principles of mass legislation, specific political practices, and democratic functions. The rest of this chapter briefly outlines the second half of the dissertation by providing some initial considerations on how the principles of legislation can help us understand the functional differences between ballot measure designs. While I indicate that certain principles play a key role in fulfilling certain functions, many of these principles contribute to several functions and their division here is suggestive, rather than conclusive.

### **4.5.1 Empowered Inclusion**

Empowered inclusion requires that “people who are (normatively) entitled to be included must have powers through which they can, as it were, demand and enforce their inclusions” (Warren, 2017a: 44). The function of empowered inclusion may appear straightforwardly

realized by the equal distribution of voting power; however, ballot measures are not reducible to the moment of voting and so it is necessary to address both the potentials and pitfalls of representation. I contend that representation is a principle of legislation that ensures that diverse interests, rather than merely the interests of the politically or economically powerful, are included in processes of legislation. In legislatures, this possibility is often realized by the election of representatives who are both selected and sanctioned by their constituents. In ballot measures, more attention must be given to questions of non-electoral representation. I shall argue that ballot measures can improve empowered inclusion throughout the democratic system, although this function may rely on effective opportunities for diverse forms of representation.

#### **4.5.2 Collective Agenda Setting**

The function of collective agenda setting is underwritten by several principles of legislation. First, the principle of legislative formality affirms the importance of “highly stylized rules of procedure” in allowing diverse groups of people to talk to each other in a meaningful way that avoids misunderstanding (Waldron, 2016: 162–163). These rules take on a different form in ballot measures than legislatures, focusing instead on how citizens and elected legislatures might work together to legislation. The relevant rules will be those such as requirements for a petition to initiate a popular vote. It remains notable that in relation to agenda-setting these rules are often much more clearly defined in relation to citizen-initiated ballot measures, rather than government-initiated ones. The principle of respect for disagreement is realized when there are structural features that prevent false consensus by enabling “rival views to confront one another in debate, so that all of those involved in lawmaking hear all that is to be said against, as well as all that is to be said in favor of, the legislative proposals in front of them” (Waldron, 2016: 159).

Both of these principles suggest the need for institutions that set clear rules about setting the agenda in order to avoid the strategic manipulation of procedures. This could include requiring advice from electoral management bodies on question wording or the creation of institutions that better allow citizens to register dissent. Commonly used institutional designs for ballot measures fail to do so by reducing issues to binary ‘yes’ or ‘no’ questions. I suggest that the increased use of reactive referendums that are initiated by citizens in response to legislation introduced elsewhere, indirect initiatives that are initiated by citizens but allow elected

legislators to respond prior to a popular vote, and counterproposals that allow elected legislators to respond to a citizen-initiated ballot measure by putting forward an alternative proposal on the same topic. These institutional designs could reaffirm the importance of respect for disagreement by allowing the agenda to better reflect the full set of legislative proposals being seriously considered.

#### **4.5.3 Collective Will-Formation**

The function of collective will-formation relies on several principles of legislation. Perhaps most obvious is the idea that legislation should be responsive to deliberation, which requires that legislators are open-minded and willing to be persuaded. It is often suggested that citizens lack the interest or capacities to deliberate about issues in referendums in a way that illustrates taking care, perhaps most clearly illustrated in ballot measures that target minorities or reduce taxes without reducing spending. Some critics have suggested that the scale of ballot measures makes deliberation impossible and so we might simply do away with ballot measures.

Democratic systems theory suggests that the limited successes of ballot measures in stimulating robust public will-formation is not necessarily a reason for eliminating referendums as a democratic institution. The systems approach acknowledges that there is a division of labour and so the key question to ask is: what problems of democracy can ballot measures solve? And what other institutions can solve the problems that may arise from the use of ballot measures? Recent research on the pairing of deliberative mini-publics with ballot measures answers these questions. Notable examples include the pairing of mini-publics, like the British Columbia Citizens' Assembly or the Oregon Citizens' Initiative Review, with referendum processes (Warren and Gastil, 2015). Both of these mini-publics provided a site for deliberation, with final recommendations made available to the wider public. These uses of mini-publics embody the logic of democratic systems thinking, with functions distributed so that small groups of people can deliberate and improve the quality of collective will-formation, even if the larger population primarily engages in voting behaviour. Citizens appear to trust these institutions and find them useful. However, there are problems in scaling up the will-formation that happens within these mini-publics. Many citizens still do not encounter recommendations, citizens may not be able to provide input into the mini-public process, and governments or petitioners often retain

considerable control over the agenda. I argue that adopting a multi-stage voting process might allow a more iterative conversation between mini-publics and the broader public.

#### **4.5.4 Collective Decision-Making**

Ballot measures contribute to the function of collective decision-making when collectives can make decisions and effectively translate them into action. I suggest that this function is fulfilled by legislative principles relating to voting rules and explicit lawmaking. Firstly, ballot measures should use voting rules consistent with political equality, although I suggest that existing accounts have construed these rules too narrowly. I suggest that voting rules other than simple majority rule may have an underappreciated role in facilitating collective decision-making through ballot measures. Secondly, the principle of explicit lawmaking suggests that many ballot measure processes are insufficiently clear about how votes will translate into state-sanctioned action. I suggest that the focus on whether ballot measures are binding or advisory has obscured the broader – and more important question – of how ambiguous ballot measures are. I suggest that ballot measures that minimize space for interpretation prior to the vote are better suited to realizing the democratic function of collective decision-making.

#### **4.5.5 Conclusion**

The problem of ballot measures in democratic systems can be summarized as such: Democratic lawmaking ought to proceed primarily within representative legislatures but ballot measures provide contexts for lawmaking by “the many, the multitude, the rabble” (Waldron, 1999b: 31). For populists and other critics of representative institutions, it is precisely this capacity to remove lawmaking from legislatures that makes ballot measures attractive. While the populist understanding of the will of the people is problematic, the desire to provide an alternative to legislatures is understandable given their real-world shortcomings. Our capacity to understand the shortcomings of legislatures is based on our well-developed normative expectations about how these institutions are related to democracy’s normative functions. We lack such clear expectations about ballot measures, although I suggest that we can develop them on the basis of principles of mass legislation as outlined here. The rest of this dissertation develops these relationships in more detail.

## Chapter 5: Empowered Inclusion and Ballot Measures

Empowered inclusion requires that “people who are (normatively) entitled to be included must have powers through which they can, as it were, demand and enforce their inclusions” (Warren, 2017a: 44). The ability of ballot measures to contribute to the function of empowered inclusion appears straightforward at first glance. When paired with universal suffrage, ballot measures include all citizens who are eligible to vote and empower them by giving them an equal right to participate in determining the outcome of a popular vote on a specific issue (Dalton et al., 2004). For these reasons, many advocates of ballot measures contend that the primary virtue of these devices is that they return power to the people by allowing them to vote directly on particular policies. However, this notion is complicated by at least two problems. The first problem is that formal equality does not necessarily translate into meaningful inclusion (Young, 2001). Ballot measure questions may be written at a reading level that is difficult to understand for many citizens, the often binary format of ballot measures may exclude viable and widely-held preferences, the use of turnout quotas might encourage status-quo supporters to abstain from voting rather than casting a ballot, and the parties who are affected by a ballot measure may not be the same as those who are granted equal voting rights. The second problem is that ballot measures are not necessarily binding and, in these cases, citizens may be included without being empowered. Ballot measures vary in their level of decisiveness, a topic explored in more detail in Chapter 8, although the result is that governments often maintain a considerable amount of discretion after the votes are counted. Governments may ignore the results completely, perhaps by implementing post-hoc approval or turnout thresholds, or may strategically use the ambiguity of measure wording to shape its implementation in ways that were unintended by proponents or unforeseen by voters (Gerber et al., 2001).

Practices of representation may play an underappreciated role in connecting ballot measures to the function of empowered inclusion. While the association of ballot measures with models of direct democracy has largely obscured this possibility by idealizing ballot measures as institutions that should be free of representation, understanding ballot measures as institutions of mass legislation highlights the importance of representation. As a principle of legislation, representation ensures that those at the table reflect a diversity of views such that the resulting outcomes are sufficiently general that no particular part of society is illegitimately advantaged or disadvantaged. Representation remains important because, depending on the institutional design

of the ballot measure, the stages of initiation, agenda-setting, and implementation may not clearly include and empower citizens.

While ballot measures allow all citizens to participate as legislators, this does not also impose representative roles onto citizens. Rather, various actors will play more or less prominent roles at different stages of the ballot measure process. Specifically, I draw attention to how non-electoral representatives, those whose claims to represent are not authorized or challenged through the use of election, can open up new avenues of citizen empowerment and inclusion, particularly for marginalized and excluded groups who are not effectively represented by elected officials. Building on the recent constructivist turn in theories of political representation, I contend that referendums offer unique opportunities for non-electoral representatives to make claims and press demands for inclusion. I outline a variety of general representative roles – such as interest groups, petitioners, and citizen representatives – and how these roles emerge and change throughout the referendum process, from initiation of a ballot measure to implementation of any chosen policy. While non-electoral representatives may also behave in non-democratic ways and use ballot measures to reduce inclusion, particularly of minorities, citizens can hold representatives discursively accountable. Furthermore, the moment of voting offers citizens the opportunity to retroactively and indirectly authorize and reject representative claims. As such, I contend that voting retains an important and underappreciated role in theories of non-electoral representation.

Practices of representation do not only improve empowered inclusion throughout the ballot measure process but can also have positive effects on the broader democratic system. To illustrate the inclusive possibilities of ballot measures, I examine the interaction between non-electoral representation and referendums with reference primarily to women's suffrage movements in the United States and Switzerland. Ballot measures should not be understood simply as tools for minority oppression, but they are more likely to avoid this outcome when circumstances allow for democratic non-electoral representation around referendum procedures. First, non-electoral representatives may be more successful in facilitating inclusion if they frame rights in universal terms (Eisenberg, 2004). Second, legislatures appear relatively less likely to target minority rights and so jurisdictions that allow citizen-initiated referendums should implement higher signature thresholds for indirect initiatives that pass through the legislature in comparison to popular initiatives that bypass legislators altogether. Third, many inequalities and

exclusions are likely to be systemic so regulations that ensure a level playing field for referendum campaigns may generate more inclusive non-electoral representation.

### **5.1 Non-electoral Representation and Empowered Inclusion**

As the shortcomings of electoral representation have become more apparent, democratic theorists have increasingly turned their attention to non-electoral representation. The interest in non-electoral representation stems, in part, from the fact that complex societies introduce issues that do not map neatly onto the electoral, territorially-based modes of representation (Castiglione and Warren, 2006; Saward, 2009). In response, we have seen growing interest in understandings of representation that acknowledge that various other relationships of representation emerge to fill these gaps and cultivate emerging constituencies (Disch, 2011; Montanaro, 2012). This literature has largely understood representation as a practice of claim-making in which representatives make claims to represent others which may then be accepted or rejected by the would-be constituents (Saward, 2006: 302). Non-electoral representatives may be self-appointed, such as petitioners or activists, who actively make their own claims to represent others. Non-electoral representatives might also be “citizen representatives,” such as the members of a deliberative mini-public, who may collectively be understood to represent others because of their role in an institution that is designed to be statistically representative of the broader population. Regardless of the nature of their representative claims, non-electoral representatives are unlikely to enjoy democratic legitimacy if these claims are not accepted in some way by their intended audiences.

While would-be representatives make claims to represent others, the relationship between them and their constituencies is best understood as bi-directional (Disch, 2011; Montanaro, 2012) and theorists disagree about what criteria must be met for non-electoral representatives to be democratically legitimate. While representatives can be legitimate but not democratic by being accepted by the relevant audience – such as those who represent authoritarian regimes in front of the UN – democratically legitimate representation implies that the relevant audience is those who are to be represented (Rehfeld, 2006). However, whereas much has been written about selection and sanction via electoral mechanisms as the method for choosing democratically legitimate representatives, Saward (2009) argues that those who make representative claims are democratic when they are connected to, confirmed by, and considered untainted by those they



claim to represent. On this account, authenticity is the distinctive strength of non-electoral representative claims as it ensures the inclusion of interests or discourses that might be pushed out by the demands of compromise and negotiation that are common in electoral politics. Montanaro (2012) suggests that non-electoral representation is democratic when representatives give presence to their constituencies and are also both authorized by and accountable to them. Kuyper (2016) contends that deliberative capacity – evaluated in terms of inclusion, authenticity, and consequentiality – is key to making representation by unelected actors democratic. He notes that the obligations that fall upon unelected representatives vary based on whether they are empowered to subject others to their decisions (Kuyper, 2016). Those who are not empowered – who operate in the ‘public’ space – can be democratically legitimate even if they exclude some participants, promote partisanship, and pursue the interests of their constituencies without regard for others.<sup>41</sup> Empowered non-electoral representatives have a democratic obligation to consider the interests of all subjected persons, must be authentic by making publicly acceptable claims, and must use power in a manner consistent with the first two requirements to be democratically legitimate (Kuyper, 2016: 8).

All of these accounts take a more or less systemic view that recognizes that non-electoral representatives can empower and include citizens in ways that could not be carried out by elected representatives (Saward, 2009: 21). The ideas of presence (Montanaro, 2012) and authenticity (Kuyper, 2016; Saward, 2009) reflect the importance of inclusion. Broad inclusion is necessary in order to improve other democratic functions, such as collective will formation and decision making, since diverse actors introduce novel discourses in a way that makes it possible for these ideas to be contested and produce a greater “prospect of democratic legitimation” (Saward, 2014: 756). The notion of empowerment is captured by the emphasis on consequentiality (Kuyper,

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<sup>41</sup> Rehfeld anticipates this point when he notes that the function of a representative plays an important role in shaping “what it means to represent “well” or be a “good representative.” Here he suggests that the quality of representation in “say, a legislature will likely refer to democratic norms of autonomy, equality, and respect: a representative ought to consider the views of all his constituents not because he is a representative, but because he “stands for” in order to democratically make law. By contrast, we will presumably judge whether a political advocate was a good or bad representative by reference to a normative account of advocacy in the context of a pluralist society: a representative of an interest group ought to push as hard as she can to get the laws favorable to her group not because she is a representative, but because she “stands for” in order to advocate within a pluralist society” (Rehfeld, 2006: 18). Rehfeld does not explicitly draw out the possibility that while we might judge both of these kinds of representatives by democratic ideals, the difference in function may ultimately rest on a difference in power.

2016) or authorization (Montanaro, 2012). Kuyper (2016) argues that democratic deliberation is consequential when it is linked to the decisions ultimately made and suggests that there is a democratic obligation for empowered non-electoral representatives to be responsive to those they represent. However, he provides relatively little indication about how the represented are or could be empowered to demand that those moral obligations are respected. Montanaro (2012) centres the empowerment of principals against agents as a key feature of their democratic credentials by focusing on authorization and accountability. On the other hand, Saward (2009) suggests that there is a fundamental tension between authenticity and authorization. Elections can produce incentives for elected representatives to trade-off authenticity for votes, perhaps by strategically prioritizing parochial or short-term interests even when there are doubts about whether this is the right thing to do (Saward, 2009: 19).

While Saward notes that the tension between authenticity and authorization pushes aspiring representatives into making either non-electoral or electoral representative claims, he also acknowledges that “the value to democracy of electoral and non-electoral representation is positive-sum” (Saward, 2009: 22). I suggest that this insight can be taken further to suggest that accountability is not merely a relevant feature of empowering citizens vis à vis their *elected* representatives. The possibility that authorization and accountability might also apply to non-electoral representatives has been explored in primarily discursive terms. Consider, for instance, Gutmann and Thompson’s (1998: 138) suggestion that “deliberative accountability requires representatives to give reasons to citizens and to respond to the reasons that citizens give.” Yet, Gutmann and Thompson still indicate that deliberative accountability is limited in its utility unless paired with some sort of distributed empowerment. In other words, discursive demands have teeth because they are backed by the power of voting or other mechanisms of influence.

## **5.2 Voting and Non-Electoral Representation**

The diverse array of actors who make representative claims suggests that any evaluation of the capacity of ballot measures to empower and include citizens must grapple with some consideration of whether the various representatives contribute to or detract from that end. It is reasonable to conclude that “unlike regularly scheduled elections, referendums do not offer built-in options for holding campaigners accountable or deciding on a change of course” (Topaloff, 2017: 135). However, the presence of various distinct and competing representative claims

reflects the complex reality of modern representation in which we increasingly choose types of representation rather than specific representatives (Saward, 2009: 9). Ballot measures provide a unique context for considering the role of non-electoral representatives as they resemble elections in that representative claims are, in the end, decided by an act of mass suffrage.<sup>42</sup> That is, there is some sense in which representative claims in this context serve as a sort of middle ground in which representation is pluralized but in which voting still plays a vital role in ensuring that the inclusion remains empowered. Existing accounts of non-electoral representation have downplayed the potential value of voting in attempts to distance themselves from electoral accounts of what makes representation democratic. Yet, I argue that the decisive moment of voting can serve as a way of indirectly authorizing or holding accountable non-electoral representatives in ballot measures.

One objection to a conception of ballot measures as authorizing representatives is that elections are about selecting candidates, so voting is clearly about representative claims in that context, whereas it is ostensibly about issues in ballot measures. However, candidates in elections also present bundles of policies and so it is difficult to fully separate the question of voting on policies from voting on representatives. The key difference between elections and ballot measures, then, is the relative importance of issues and representatives, but also whether authorized representatives win political positions. In other words, ballot measures provide opportunities for citizens to accept or reject representative claims by voting for or against the substantive issue position taken up by representatives. Voting on substantive issue positions offers a way of retrospectively authorizing (Urbinati and Warren, 2008) or sanctioning those who make representative claims. The phenomenon of second-order voting, in which voters cast a ballot based on their evaluation of, for instance, the current government instead of their evaluation of the ballot measure itself suggests that this is not merely a theoretical point (Franklin et al., 1995; Glencross and Trechsel, 2011; Svensson, 2002). In these cases, some citizens use popular votes *primarily* as a way of rejecting representative claims.

The benefits of voting to empowered inclusion are probably to be found between second order voting and plebiscitary situations where representatives play virtually no role. Such an

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<sup>42</sup> The picture is complicated when election campaigns and ballot measure campaigns overlap in ways that may make it difficult to separate the role of candidates for election from their role, if any, as representatives around a ballot measure.

account does not reduce representative claims to positions on substantive issues being voted on but recognizes that the refusal to support the conclusion that allegedly follows from a representative claim is at least a signal that the claim may not be recognized as valid. When citizens use cues from those who claim to represent their interests (Lupia, 1994) or adopt the arguments and justifications presented by representatives (Colombo, 2016), we might interpret this as an instance of citizens accepting some representative claims, rejecting others, and voting accordingly. Representative claim-makers might also encourage citizens to learn more about the ballot measure (Warren and Gastil, 2015), leaving those who do not authorize the claim to refuse information and vote on their own.

Of course, voting to authorize or sanction in this respect must be understood as indirect by virtue of the fact that the vote itself is *not* about representatives and so it may not be clear to those making representative claims that these claims have been rejected. Additionally, cognitive and informational limits suggest that voting serves primarily to “constrain the most egregious abuses of power” (Warren, 2014: 45). That being said, if accountability is fundamentally about principal-agent relationships, then the fact that citizens ideally make the final decision that allows them to reassert their entitlement to be “treated as *principals*,” even if representatives played key roles throughout the process (Waldron, 2016: 188). The ability to make collective decisions through popular votes can serve to improve the capacity for non-electoral representatives to facilitate empowered inclusion, suggesting a need to be attentive to the interdependence between democratic functions. That is, for voters to retrospectively authorize or sanction those who make representative claims, voters need to have a clear idea about what meaning will be attributed to the result of the final popular vote, thus reinforcing the need to consider the quality of collective agenda setting and will formation. This highlights the continued relevance of considering how particular representative claims or discourses are amplified at the systemic level, such as the disparities in influence accorded by financial advantages or the difficulties in transmitting the findings of citizen representatives to mass publics.

### **5.3 Representatives in Ballot Measures**

Thinking about representation in terms of making claims to represent others has opened the door to a richer understanding of representation and the increasingly widespread recognition that people are represented by others in non-electoral contexts (Disch, 2011; Mansbridge, 2003,

2011; Saward, 2009; Warren, 2008). However, a notable precursor to this view can be found in Kriesi's "realistic theory of direct democracy" which suggests that we need to pay more attention to the relationships that develop between citizens and *political elites*, defined as "all actors who contribute to the political debate as speakers in the public sphere" (2005: 9). Rather than thinking about ballot measures as being institutions that free citizens from representation, ballot measures are institutions that can change incentives for elected representatives while also creating opportunities that may be exploited by non-electoral representatives. Representatives can thus strategically shape-shift to make different claims to represent certain constituencies based on the changing context (Saward, 2014). For instance, elected representatives during the initiation and agenda-setting phases may be more attentive to the needs of their core supporters but they may reframe their motivations and position for a broader audience during the public campaign. While these shifts often have implications for the power relationships between constituents and those who claim to represent them, I will argue that empowerment of constituents against representatives in the context of popular votes largely comes from the institution of the ballot measure itself. In other words, the wide distribution of voting power provides an indirect check on those who make representative claims about popular votes.

In this section, I outline several common types of representatives, although this exercise is illustrative and not exhaustive. Additionally, the boundaries between types of representatives is not strict and the dynamics of empowerment between principals and agents may be fluid. As a result, actors may become empowered, surrender their existing empowerments, or alter their representative claims at different stages of the ballot measure process. Those who initiate ballot measures or pressure others to initiate ballot measures often claim to be doing so in order to represent some constituency. The discussion stage opens up opportunities for political actors to make representative claims during the campaign, particularly in cases where there are clear coalitions around the 'yes' or 'no' sides of a ballot issue. While traditional theorizing about ballot measures sees such voting as direct and unmediated, some theorists have suggested that even the moment of decision-making invokes representative considerations. Lastly, representation in the implementation phase is centered around attempts to interpret the result of the ballot measure.<sup>43</sup>

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<sup>43</sup> I thank Alice el-Wakil for this point.

### 5.3.1 Elected Representatives

Elected representatives who play roles in popular votes are often empowered in various ways: as the initiators of the process, as campaigners who can use the resources available to them as elected officials, or in their ability to influence implementation. These capacities stem from the fact that elected representatives have been authorized through elections to legislate. However, ballot measures can be understood to deauthorize elected representatives from legislating on a certain point. When the ballot measure is initiated by citizens, it might be understood as an alternative method of holding elected representatives accountable, particularly where election is not feasible or imminent. When the ballot measure is initiated by elected representatives themselves, then representatives are voluntarily giving up their authorization to act on a particular issue. In either case, whether such deauthorization is normatively desirable depends on whether the relevant constituencies might accept a *non-representative* claim. That is, whether the initiator of the ballot measure can justifiably claim that elected representatives are not fit to represent their constituencies on the issue being put to a vote. One such example is popular votes that would introduce a conflict of interest for legislators, such as electoral system reform (Thompson, 2008b: 23–25). Another such example is in the case of mandatory referendums in which a popular vote is constitutionally required in order for the government to achieve its desired policy change.

By initiating popular votes, elected representatives shape-shift by giving up their decision-making power but may continue to participate in the campaign surrounding a popular vote and remain accountable to citizens at the next election, if not indirectly by popular vote. In cases of citizen-initiated popular votes, elected representatives play a largely similar role, the key difference being that in government-initiated popular votes elected officials should be held accountable for the decision to initiate a popular vote and their design choices. In the case of government-initiated referendums, elected representatives have substantial influence over the agenda and can significantly shape collective agenda and will formation by virtue of their control over the timing of the vote, the writing of the ballot question, and their ability to control the conditions of the campaign. Across institutional differences, legislators have capacities to affect the quality of collective will formation by funding public information campaigns, convening deliberative mini-publics, or using their status as public figures to campaign, although the

systemic impact of all of these interventions may be positive or negative, depending on the context.

At the moment of decision-making, elected officials have no real capacity to make representative claims. However, accountability for the result itself rests somewhat ambiguously with the broader public. As Pettit puts it, ballot measures face an accountability problem because the same entity – the People – is both the critic and the target of criticism (Pettit, 2006: 306). Where there is no compelling case for deauthorization and no clear mechanism to overturn the result of a popular vote, the choice of elected representatives to initiate a government-initiated referendum can circumscribe empowered inclusion in a particular issue area by devaluing the influence of those who voted in elections in favour of those who participated in a popular vote. I return to these problems in Chapter 8.

Elected representatives may remain unempowered or shift back to being empowered in the implementation phase. In some instances, the results of popular votes are not self-implementing, such as in California where elected representatives maintain wide latitude in cases where the initiative itself is insufficiently specific (Gerber et al., 2001). Kobach notes that the Swiss parliament is also capable of abandoning the “goals and central tenets of an initiative” (Kobach, 1993: 103). In other cases, such as those that take place in Westminster systems, norms of parliamentary supremacy render popular votes advisory rather than binding, leaving governments with the capacity to ignore results entirely, such as Prince Edward Island’s recent vote on electoral reform (Desserud and Collins, 2017) or New Zealand’s experience with citizen-initiated referendums (Keall, 2013). Where elected officials maintain these powers, popular votes appear to fail to empower inclusion by undermining the power of voting to compel policy change. Of course, citizens retain power to vote on representatives directly at a later point and, in this respect, they retain some tools to encourage governments to respect the results of popular votes.

### **5.3.2 Interest Groups**

Interest groups face familiar problems of self-selection, namely that well-resourced groups with strong vested interests tend to be the most influential, although the systemic approach suggests that self-selection does not mean that they are unable to contribute to democratic functions. Interest groups can be empowered – such as in cases of regulatory

capture<sup>44</sup> – although many of them lack such empowerments. Many interest groups are accountable to their constituencies because members maintain capacities to leave or withdraw resources, to join other interest groups, or to vote down the group’s leadership. However, other interest groups make claims to represent for groups that lack the capacities to authorize or hold them accountable, such as those who claim to represent future generations or animals. I largely leave aside these differences to sketch out the various different roles interest groups can play in ballot measure processes.

At the initiation stage, interest groups can serve as a focal point for launching an initiative or if they can pressure governments to hold a government-initiated referendum on a particular issue. In both cases, interest groups might play an important role in mobilizing constituencies to put an issue on the agenda. While interest groups lack the empowerment necessary to actually initiate a popular vote themselves, they may play an important role in mobilizing support for a popular vote or other change. Interest groups frequently campaign for or against a specific option on the ballot. These may be existing organizations or newly formed ones that arise in order to give voice to and mobilize a constituency that emerges around the campaign issue. Taking on partisan, strategic positions can provide discourses and cues that can be taken up and used to argue throughout the broader public sphere. As long as no one interest group is able to drown out the perspectives of others, they facilitate inclusion. Whether these inclusions are empowered, however, depends largely on the organization of the interest group itself.

Interest groups may play a role during the implementation stage when governments refuse or fail to implement the winning option. In these contexts, the representative claims of these actors are strengthened by a sort of indirect authorization in the form of the results of the popular vote. While the ability of members or constituents to hold interest groups and campaigners accountable vary, these entities arguably serve as a way of facilitating empowered inclusion between the popular vote and the following election by pressuring legislators to act on a popular vote. In other words, interest groups here claim to represent the majority of voters who supported the winning option. Alternatively, campaigners on the losing side might highlight deficiencies of empowered inclusion or collective agenda setting that suggest reasons in favour of rejecting the outcome of a popular vote. For instance, interest groups that challenge the

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<sup>44</sup> Thanks to Jonathan Kuyper for this point.



framing of the question or the particular choices make representative claims to represent a possible majority in favour of other relevant options that were not voted on. For instance, proponents of proportional representation in the UK might object that electoral reform was not rejected in the 2011 referendum, merely the alternative vote. These interest groups can facilitate empowered inclusion if they argue in favour of another vote on the issue on the behalf of a constituency that feels it was left out of previous popular votes on an issue.

### **5.3.3 Petitioners**

Citizen-initiated popular votes institutionalize empowerments for any citizen to trigger a popular vote through the collection of signatures. It is necessary to distinguish between those who sign petitions and those who initiate them, both in theoretical and practical terms. Theoretically, the distinction between petitioners and signatories is found in the former's agenda-setting power and the latter's ability to sign on, although with little opportunity for deliberation or revision (Staszewski, 2003: 426). Petitioners claim to represent those who support, at a minimum, the ability of citizens to vote on a particular proposal, with signatures serving as a way of evaluating that claim. Practically, the success of petitions to meet high thresholds depends in many jurisdictions on the ability to employ professional signature collectors. Thus petitioners are frequently responsible for raising the necessary funds and organizing the campaign in order to make the petition successful, whereas most signatories simply sign on in support of having the question posed to the general public (Broder, 2001; Cronin, 1989: 62–66). In other words, petitioners make representative claims and signatories authorize those claims in order to mobilize a constituency around an issue. As the ballot measure process moves from the initiation stage to the discussion stage, petitioners also cease to be petitioners in much the same way as candidates who win elections are no longer understood as candidates, even if they are still held to promises made as candidates. In other words, petitioners shapeshift and may formulate different representative claims as they join interest groups or campaign independently.

Petitions distribute the power of agenda-setting. Those who petition for reactive referendums focus on policies that elected representatives have already put on the agenda and instead claim that they, rather than the elected officials, are the appropriate representatives of a constituency on a specific issue. The capacity for agenda-setting is stronger in popular initiatives where petitioners make claims about the need to vote on an issue that elected representatives

have failed to act on. Hollingsworth (1912: 73) argues that the initiative distributes agenda-setting power but that “every [petitioner], being self-appointed and extra-constitutional, occupies an irresponsible position very similar to that of the party machine boss who holds no public office.” In cases where the petition is accepted, petitioners become indirectly authorized and empowered to do one thing: subject other citizens to a popular vote and its consequences.<sup>45</sup> Petitioners are representatives whose momentary empowerment is contingent on the acceptance of their representative claims by their constituents.

Petitioners effectively respond to and mobilize constituencies at the same time (Disch, 2011), their limited accountability and the fact that petitions cannot be changed in response to demands from signatories suggest that potential constituents have little capacity to demand authenticity or broader inclusion (Miller, 2000: 1052). While signing petitions offers an empowerment that is similar to, but distinct from voting, its capacity to encourage authenticity or discursive accountability seems to depend largely on the threshold set for signature collection (e.g. Lewis, 2013). While signatures and the final popular vote offer opportunities to expand political inclusion, the very possibility of petitions that threaten the political standing of minorities may undermine their capacity to contribute to empowered inclusion at a systemic level. Mechanisms such as judicial review, the possibility of counterproposals offered by legislatures, and high qualification thresholds might all discourage petitions that would undermine empowered inclusion. Although petitioners appear to have a radical capacity to inject new constituencies and discourses into democratic systems, these features are only likely to be democratically valuable where mechanisms are in place to preserve the equal standing of citizens.

### **5.3.4 Voters Representing Non-Voters**

At the actual moment of decision-making, there appears at first glance to be virtually no opportunity for representation of any sort, given that this is the point at which so-called direct democracy and representative democracy are most clearly distinguished. However, some political theorists contend that voters do represent non-voters in some way (Mansbridge, 2011:

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<sup>45</sup> Sometimes petitioners have particular duties and benefits in the resulting campaign, although this varies across jurisdictions.

628; Serota and Lieb, 2013; Urbinati, 2000). Mansbridge notes that voters may represent others even if “that is not their intent” (Mansbridge, 2011). Serota and Lieb (2013) similarly suggest that voters are representatives because ballot measures allow voters to legislate and so they impose a duty of representation. Such a view suggests that it is empowerment that imposes a duty of representation on citizens rather; however, this fits uneasily with most theories of representation. While empowerment may shape the kinds of duties that representatives need to fulfill to be democratically legitimate (Kuyper, 2015; Rehfeld, 2006), these duties follow not from empowerment but from making claims to represent others.<sup>46</sup> Judges, for instance, are empowered but often unelected for legitimate reasons and they do not serve as representatives.

It’s not clear that voters generally make representative claims and, even if they did, it’s difficult to see how these claims could be democratically legitimated. The duty of representation is portrayed as requiring that a voter forgoes her own self-interest and votes with “a credible belief that her vote promotes the best interests of the public” (Serota and Lieb, 2013: 1617). Yet, this seems to disregard the role that representatives might play in shaping interests, rather than simply responding to them. But even on a simple responsiveness account of representation, it is difficult to see how representation could be democratic since the vote is individual and secret. In contrast to most parliamentary votes, votes in ballot measures cannot be whipped in any way so as to be coherent nor can constituents hold them accountable in anyway. While voters may choose to look beyond their own self-interest as they cast their ballot, this seems more like “deliberation within” (Goodin, 2008), rather than representation. As a result, I consider it largely accurate to say that voters are not representatives, much less democratically legitimate ones, at the moment of decision-making.

### **5.3.5 Citizen Representatives**

I focus here on the citizen representatives that emerge in deliberative forums or similar institutions of participatory governance. The frequent use of sortition or stratified random samples in an attempt to ensure descriptive representation has its critics (e.g. James, 2008),

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<sup>46</sup> In the case of voters, the empowerment of voting is so widely distributed that the collective is empowered but the individual’s ability to represent anyone else is strictly limited. It might be tempting to see the collective of voters representing the broader electorate, although much more theorizing would need to be done to establish how this relates to the kinds of individual duties that Serota and Lieb assign to voters.

although it can function to ensure the inclusion of perspectives that would not have been included in public debate otherwise. Citizen representatives might be conceived of in two distinct ways. First, citizens may be representatives by virtue of their membership in an institution that claims to be descriptively representative of the broader population. Second, citizens may be citizen representatives when they explicitly make “claims to represent perspectives, considered opinions, goods, interests, and values of those who are not present in the process” (Warren, 2008: 56),

At the initiation stage, citizen representatives have played a role in a number of high-profile popular votes. In the case of the citizens’ assemblies in British Columbia and Ontario, these citizens representatives were empowered to determine the actual ballot question (LeDuc, 2009; Warren and Pearse, 2008b). In the case of the Irish referendum on gay marriage, citizen representatives were only able to recommend that a popular vote be held on the issue (Elkink et al., 2016). At the discussion stage, citizen representatives have the capacity to play the most significant role. Citizen representatives can serve a unique deliberative function due to their “potential to represent discursively considered opinions and voices that are not necessarily represented either through electoral democracy or through the aggregate of self-authorized representatives in the public sphere” (Urbinati and Warren, 2008: 405). Citizen representatives may serve a particularly important function where there is no organized campaign on one side of an issue or where the campaign lacks sufficient funding to effectively introduce competing claims. They also offer a venue for arguments to be tested against each other deliberately (Owen and Smith, 2015), whereas it can be difficult for citizens in the broader public to adjudicate between competing uses of strategic language.

Some citizen representatives, like those in the Oregon’s Citizens’ Initiative Review (CIR), come into being after a ballot measure has already been initiated and so they act primarily to serve as deliberators during the campaign itself (Gastil et al., 2014). The CIR is a

near-randomly selected group of 24 registered Oregon voters for five days to study and deliberate about a statewide ballot measure. After hearing from both sides of the issue, selecting and talking with impartial witnesses, and deliberating intensively as a full panel as well as in small groups, the CIR panelists write a one-page statement for the official Oregon State Voters’ Pamphlet (Warren and Gastil, 2015: 570).

Other citizen representatives, like those from the British Columbia Citizens' Assembly (BCCA), deliberate prior to the initiation of the popular vote and then shape-shift into campaigners. However, unlike petitioners whose momentary empowerment lapses when petitions are accepted, I contend that citizen representatives who adopt new representative roles remain citizen representatives as their representative claims remain grounded in inclusive and authentic deliberation rather than strategic considerations. Those who start as citizen representatives but later take on roles as campaigners self-authorize themselves, but this authorization has roots in their experience as deliberative participants.

Despite the fact that these citizens representatives are not elected, the prospect of a popular vote on the substantive issue means that these representatives cannot claim to make any final decisions. This is important because it points to the possibility of citizens to reject the representative claims put forward by citizen representatives. So, while citizen representatives have some legitimacy on the grounds that they are often authorized by elected officials (Parkinson, 2006a: 153), the possibility of accountability in the form of a popular vote provides an indirect way of rejecting these claims of citizen representatives and ensuring that the inclusion of views that would be otherwise omitted is done so in a way that maintains broad popular empowerment.

#### **5.4 Non-Electoral Representation and Democratic Boundary Problems**

Why do ballot measures need representation? One relatively pragmatic answer is simply that representatives are necessary to set the agenda and mobilize constituencies (Budge, 1996; Disch, 2011). Yet, there is another, more clearly normative answer that is based on the question of who should be entitled to participate in democratic decision-making. While space does not permit a full discussion of whether these entitlements should be distributed to all of those who are affected by the decision or all of those who are subjected to relevant coercion, the point it is now widely acknowledged that normative entitlements don't necessarily align with the distribution of empowerments.<sup>47</sup> When this is the case, then the norm of empowered inclusion is unlikely to be realized. The potential democratic value of non-electoral representation in ballot

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<sup>47</sup> For more on the all-affected interests principle, see (Fung, 2013; Goodin, 2007; Miklosi, 2012; Näsström, 2011; Owen, 2012; Warren, 2017b; Young, 2001). For more on what has been called the autonomy or coercion principle, see (Abizadeh, 2008; López-Guerra, 2005; Song, 2012).

measures is perhaps most clearly illustrated in cases where those affected by an issue or subjected to relevant coercion are not empowered to vote on it. These examples might include referendums on whether resident non-citizens should be granted citizenship (Hainmueller and Hangartner, 2013) or referendums on children's rights (*BBC News*, 2009). Concerns about the tyranny of the minority often reflect similar concerns, particularly because structural minorities often already face several challenges to empowered inclusion that are likely to be exacerbated by the majoritarian nature of referendum processes. These types of ballot measures pose significant normative problems, although relatively little attention has been given to their relationship to non-electoral representation.

Ballot measures, as institutions, are by and large janus-faced. They can produce outcomes that can have either contribute to more empowered inclusion throughout the democratic system or reinforce disempowerment and exclusion. Additionally, ballot measures themselves vary in their inclusive capacity, which is largely determined by structural factors about the distribution of rights and relevant resources. What are the conditions under which ballot measures facilitate inclusion rather than exclusion? One key aspect is to consider whether ballot measures are about whether to extend rights or rescind them. While the two possible outcomes are similar in many ways – either a group has a right or it does not at the end of the process – there is a meaningful difference. While there may be disagreement about the appropriateness of a ballot measure as a decision-making method, voting on the extension of rights can be the result of non-electoral representatives successfully putting an issue on the agenda in a way that is democratically desirable. In contrast, voting to restrict or rescind rights generally suggests the success of representatives, either elected or non-electoral, who are unlikely to be democratically legitimate.

A comprehensive investigation of this problem is unfortunately beyond the scope of this chapter, although it is possible to sketch out how the availability of ballot measures can, in some instances, improve democratic inclusion throughout the democratic system. To illustrate, I turn to the use of referendums to vote on women's suffrage, which occurred multiple times at both the national and cantonal level in Switzerland, as well as in several American states. These cases demonstrate the complexity of non-electoral representation in the context of ballot measures. Women were not allowed to vote on the question of their own empowered inclusion or stand for office, leaving them little choice but to pursue non-electoral forms of representation. In the context of ballot measures, claims to non-electoral representation present an interesting problem,

namely that they need to be both acceptable to the represented constituency but also to those who are empowered to vote in the referendum. In the context of suffrage referendums, representative claims can be authorized by men through voting, whereas women are left to practices such as deliberating, resisting, or joining.

Switzerland is notable for the fact that women were not enfranchised at the national level until 1971, when a referendum on the extension of suffrage was approved by male voters. The most prominent women's suffrage advocacy organization, the Schweizerischer Verband für Frauenstimmrecht (SVF), was created in 1909 and largely focused its efforts on public education, such as holding public forums. The SVF was unwilling to launch a citizens' initiative to demand a vote, because women were not allowed to sign initiative petitions, highlighting the tension between authenticity and authorization. In an attempt to preserve authenticity by allowing women to voice their support for suffrage, the SVF launched a regular petition that was summarily ignored by the government, despite the fact that it had enough signatures from men that it would have triggered a popular vote if it had been an initiative petition (Banaszak, 1996: 168). Furthermore, Banaszak's analysis suggests that cantons where suffrage activists did make use of the initiative gained suffrage four years earlier, on average, than those that did not (Banaszak, 1996: 182).

Contrast this to several American states where suffrage activists turned to the initiative when state legislatures refused to consider the issue (Banaszak, 1996: 181). These instances are instructive because they also highlight the use of initiatives not as antagonistic to representation or representative democracy, but as a way in which non-electoral representation can use ballot measures to broaden empowered inclusion within institutions of representative government. In fact, it appears that the mere existence of the citizens' initiative in a state was able to motivate the extension of suffrage, perhaps by legislators who were attempting to pre-empt a popular vote on the issue (Banaszak, 1996: 184). The looming prospect of a vote also provides a focal point around which non-electoral representatives can mobilize to provide public education campaigns and attempt to gain acceptance of their claims (Banaszak, 1996: 159). In the United States, these strategies were successful because suffrage activists were able to develop and share innovative tactics, whereas the Swiss movement was considerably more conservative. The authenticity of this movement was finally called into question by women's liberation activists in the 1960s who protested the SVF, chanting slogans such as "75 years working for suffrage is no reason to

celebrate” (Banaszak, 1996: 18). Although the long process of public education pursued by the SVF may have laid the groundwork for the success of the 1971 referendum, a younger generation of activists played a key role in providing a different set of representative claims that were more confrontational and less willing to compromise in demanding suffrage. Notably, the earlier generation of suffrage activists attempted to talk to the younger protestors, although there was little success in bridging the gap between these two groups (Banaszak, 1996: 842).

Contestation over the claim to represent those who wanted women’s suffrage illustrates how a systemic approach can clarify the short and long-term contributions of non-electoral representatives to empowered inclusion. Lacking the formal empowerments of voting, both movements still sought to mobilize around referendum campaigns. However, the older advocates behaved as if they already had relevant empowerments that would subject them to a number of duties to behave more deliberatively and make space for all possible participants (Fung, 2005). By contrast, the younger advocates sought to represent the interests of what they saw as their constituents in a way that allowed for protest, rather than dialogue, and the promotion of self-interest over generalizable interests (Kuyper, 2016: 8). Examples from the Swiss cantons suggest that these confrontational representative claims were actually more effective in bringing about the enfranchisement of women than the non-confrontational strategy (Banaszak, 1996: 178–180).

In other words, non-electoral representation can improve empowered inclusion in ballot measures, particularly for those who are affected by a vote by lack formal empowerments. Mobilization by non-electoral representatives around spaces of disempowerment – such as collecting initiative signatures or organizing public education campaigns – can generate both inclusion and empowerment by translating diverse discourses into consequences. These consequences may include forcing the hands of legislators who make up empowered spaces or persuading voters to cast ballots in favour of women’s suffrage. In cases like the 1971 Swiss referendum, the result is a long-term, institutionalized increase in empowered inclusion by extending the right to vote to women. Similarly, in the period from 1945-1968, twelve amendments to the constitutions of U.S. states were introduced to extend suffrage and eleven of these succeeded (Gazey, 1971: 132).

Of course, empowered inclusion is not always so cleanly realized. The problem is considerably thornier when citizens are being asked to restrict rights. Additionally, the rights being voted on were seen as an extension of a right already enjoyed by men, rather than



understood as a special right that would give women unique privileges. Representative claims that fail to frame the expansion or preservation of rights in universal terms appear to be less viable ways of mobilizing broad constituencies in support of an issue, which is necessary in majoritarian ballot measure campaigns (Eisenberg, 2004). Furthermore, although Swiss women lacked political rights, they enjoyed many other rights that served as valuable empowerments that underwrote their capacity to organize, assemble, and speak publicly. However, in cases where those who would be subjected to policies being voted on in ballot measures lack such protections, non-electoral representation remains a valuable avenue of contestation, especially when those who are included and empowered in various ways take up the cause of those who are more vulnerable.

## **5.5 Conclusion**

Despite the apparent importance of the absence of representation for theories of direct democracy, in practice, totally unmediated ballot measures seem to face more frequent normative challenges than mediated ones (Budge, 2006: 73). This is because representation remains a key way of fulfilling democratic functions around ballot measures. Representatives ensure empowered inclusion of individuals, groups, and discourses by amplifying, organizing, and mobilizing support, even if the represented constituencies cannot vote. Representatives can set the agenda by initiating referendums and can ensure deliberative accountability by questioning existing representative claims and offering new ones. Representatives can also make decisions, as when concerns about ballot measures drive legislators to take action rather than going through with a popular vote.

## Chapter 6: Collective Agenda-Setting and Ballot Measures

Agenda-setting refers to the process by which a set of feasible issues is narrowed down to a set of issues that are actually considered and to a set of alternatives from which a final decision is made (Riker, 1993: 2). Agenda setting power refers to the ability of actors to add items to the agenda, block items from the agenda, or control the sequence in which issues are considered (Rasch, 2014). In many democratic systems, the power to introduce legislation remains predominantly concentrated in the hands of elected representatives, leaving citizens to try to shape the agenda indirectly through public opinion campaigns and the threat of retrospective sanctioning in elections (Kriesi, 2005: 7). In Dahl's classic formulation, democratic agenda-setting requires that citizens "have the exclusive opportunity to decide how and, if they choose, what matters are to be placed on the agenda" (Dahl, 1998: 38). Can ballot measures distribute agenda-setting power in ways that allow them to contribute to the functions of democratic systems?

I argue that legislative formality and respect for disagreement are the key principles of legislation for making sense of how ballot measures can contribute to the function of collective agenda-setting. First, the principle of legislative formality affirms the importance of "highly stylized rules of procedure" in allowing diverse groups of people to talk to each other in a meaningful way that avoids misunderstanding (Waldron, 2016: 162–163). These rules take on a different form in ballot measures than legislatures, focusing instead on issues such as the requirements necessary for a petition to initiate a popular vote. It remains notable that in relation to agenda-setting these rules are often much more clearly defined in relation to citizen-initiated ballot measures, rather than government-initiated ones. Second, the principle of respect for disagreement is realized when there are structural features that prevent false consensus by enabling "rival views to confront one another in debate, so that all of those involved in lawmaking hear all that is to be said against, as well as all that is to be said in favor of, the legislative proposals in front of them" (Waldron, 2016: 159).

Both of these principles suggest the need for institutions that set clear rules about how agenda setting power is to be distributed. These could include requiring advice from electoral management bodies on question wording or the creation of institutions that better allow citizens to contest the agendas set by elected representatives. Commonly used institutional designs for ballot measures fail to do so by reducing issues to binary 'yes' or 'no' questions. I suggest that

the increased use of multi-stage ballot measures and counterproposals could reaffirm the importance of respect for disagreement by allowing the agenda to better reflect the full set of legislative proposals being seriously considered.

Democratic agenda-setting also requires that the agenda is perpetually open to revision and issues cannot be foreclosed entirely (Chambers, 2001; Gutmann and Thompson, 2004: 7). Yet, referendums appear to suffer from problems of irreversibility. Popular votes can serve as “super-precedents” that prevent legislators from revisiting issues that were previously decided (Donovan, 2007). I outline three kinds of irreversibility – political, legal, and inherent – and contend that the best way to avoid the problems associated with irreversible decisions is to provide mechanisms that make it possible to challenge this framing.

## **6.1 Agenda Control and Ballot Measure Institutions**

Existing institutions for ballot measures distribute agenda-setting power in different ways that can be theoretically arrayed from greatest collective agenda formation to least. Government-initiated referendums appear to have the weakest claim to collective agenda formation, followed by reactive referendums that allow citizens to demand a popular vote on a piece of legislation introduced by elected representatives. Indirect initiatives allow citizens to introduce an idea to the agenda, but give elected representatives a chance to modify it and a popular vote only occurs if elected officials take no action. At the far opposite end from government-initiated referendums are popular initiatives that allow citizens to be proactive in putting an issue on the agenda to be voted on by all citizens. Popular initiatives theoretically have the capacity to diminish the agenda-setting power of legislatures and political parties (Kobach, 1993: 157). In this section, I draw on existing research to illustrate the complexity of setting the agenda within ballot measure processes.

### **6.1.1 Government-Initiated Referendums**

Ad-hoc referendums are the most commonly used type of ballot measure and there is a widely-held belief that these are normally motivated by an “informed expectation that the outcome will be favourable” (Smith, 1976: 9). Lijphart similarly claims that “when governments control the referendum, they will tend to use it only when they expect to win” (Lijphart, 1984: 204). Mendelsohn and Parkin also note that “In theory, referendums are designed to permit

citizens to make decisions about public policy, but in practice referendums are used strategically by governments or groups” (Mendelsohn and Parkin, 2001a: 2).

Morel (2001) develops four motivations that lead governments to initiate ballot measures – resolving tensions, political obligation, plebiscitary affirmation, and legislative change – which shed light on the agenda-setting strategies available to the initiator. Governments may initiate ballot measures to resolve tensions within the governing party or coalition. In some cases, minorities within the government demand a referendum because they have little support from other elites or the broader public, as in the 1997 New Zealand referendum on retirement savings or the 2011 referendum on the alternative vote in the UK. More powerful actors within the governing party or coalition may allow the referendum but will try to negotiate terms that are advantageous to their preferred outcomes, such as the UK’s Conservative Party being free to campaign against their coalition partner in the 2011 AV vote (Curtice, 2013: 217). In some instances, powerful actors miscalculate and fail to set the agenda in a sufficiently advantageous way to produce the desired result. A clear example is the Brexit vote, which Prime Minister Cameron promised prior to the 2015 election in order to placate the Euroskeptic wing of his own Conservative party.

A second motivation is political obligation, which leads to a ballot measure when “governments could not have afforded not to consult the people on the matters put to the referendum” (Morel, 2001: 60–61). When governments face significant political pressure to hold a popular vote on an issue, there is a sense in which they are only formally the initiator of the resulting “politically obligatory referendum”. These political pressures have various sources. When the general public is skeptical of a proposal and elections are drawing near, parties will champion a referendum in an attempt to earn more votes by being responsive to public demand (Dür and Mateo, 2011). Morel (2001: 60–62) notes that precedent can also play an important role in these ballot measures, namely that issues that were previously subjected to a popular vote often make it difficult to enact future policy changes on the same issue without a ballot measure. This is the case for topics such as ascension to the European Union and electoral reform.

Third, Morel suggests that governments initiate ballot measures to bring about legislative change when it is unavailable through other means. For instance, a government may put an issue to a popular vote when it is unable to implement a policy because it lacks a parliamentary majority (Closa, 2007). Tridimas (2007) provides a formal model that suggests that this strategy

is valuable to governments when the policy being voted on is closer to the preferences of the median voter than to the preferences of the median legislator.

Lastly, Morel suggests that referendums may be used in a plebiscitary manner to mobilize support for the government. To do so governments initiate an ad-hoc referendum that they fully expect to win in anticipation that it will increase support, particularly for an upcoming election. Yet, Morel's list of motivations is not exhaustive as it omits at least one other way that governments may strategically use the referendum. The inverse of the plebiscitary motivation is when governments initiate ad-hoc referendums in order to abdicate responsibility for a decision or "pass the buck." Instead of putting popular policies on the ballot to increase electoral support, governments take this course of action to avoid making a controversial decision that could reduce their electoral support (Kobach, 1993: 67–68). It appears that this strategy remains relatively rare in practice (Damore et al., 2012: 7; Gazey, 1971: 131), although there are also notable examples such as Metro Vancouver's 2015 referendum on funding for public transportation.

### **6.1.2 Mandatory Referendums**

There is a notable subset of politically obligatory ballot measures that has its roots, paradoxically, in legally compulsory referendums. The existence of regulations regarding compulsory referendums, issues on which a popular vote is legally required, is not merely legal. In many instances, there is a political debate about whether or not a referendum is necessary since some jurisdictions, such as New Zealand, allow parliamentary supermajorities to pass legislation that would otherwise require ratification through a compulsory referendum (Lundberg and Miller, 2014: 4). However, the referendum requirement raises the political cost of such parliamentary action, encouraging governments to actually initiate a popular vote instead (Prosser, 2016). A related possibility is that the existence of a legal requirement to initiate a referendum can limit the agenda by imposing a seemingly insurmountable threshold that prevents an issue from being put back on the agenda at all.

### **6.1.3 Citizen-Initiated Ballot Measures**

While democratic theorists disagree about the appropriateness of granting minorities substantive decision-making power, there are various benefits in using submajority rules to allow

minorities to make *procedural* changes to the status quo (Vermeule, 2007: 90). One key feature of both initiatives and reactive referendums is that they distribute agenda-setting power to allow minorities to “force a kind of public accountability and a kind of transparency upon majorities” (Vermeule, 2007: 85, 91). These rules are common in legislatures and are understood to improve the epistemic quality of outcomes, as well as their democratic legitimacy, by broadening inclusion. It is both legally and politically difficult for majorities to reverse the achievements of minorities who succeed in putting issues on the agenda through the collection of signatures (Vermeule, 2007: 87). Of course, majorities still have the opportunity to prevail in the final popular vote, although the underlying logic is that minorities should be able to demand publicly justifiable reasons for why a decision is being made or a topic is not being addressed.

In theory, this is a compelling explanation of how citizen-initiated ballot measures can contribute to the process of collective agenda-setting by reaffirming the principles of a duty of care and providing formal legislative tools to set the rules for such distributed agenda-setting. However, in practice the use of citizen-initiated ballot measures is not so straightforwardly democratic. The power granted to minorities is likely to be shaped by the broader political context and is often leveraged by relatively powerful minorities that are well-represented elsewhere in the democratic system, rather than by those who are meaningfully excluded.

Agenda-setting power is widely distributed but relatively restricted in reactive referendums, in which citizens initiate a ballot measure on a piece of legislation that has been proposed or passed, depending on the jurisdiction. In some sense, the locus of agenda setting in reactive referendums largely resides with the legislature while the actual power of initiative resides with citizens at large. Institutions like the Swiss facultative referendum, which allows voters to demand a referendum on legislation passed by elected representatives, can be understood as giving citizens the right of refusal over legislation, but citizens are unable to set the agenda themselves (Cheneval and el-Wakil, 2018). This stands in contrast to initiatives, which allow citizens to choose the topic to be put on the ballot and initiate a popular vote.

Similar to government-initiated ballot measures, the motivations of the initiator have important consequences for the resulting agenda. One motivation is that citizens want to contest elected representatives that are seen as disconnected and unresponsive (Jäske, 2017). In response, ballot measures are often the result of grassroots campaigns at the local level (Adams, 2012) or interest groups, either of whom press an issue onto the agenda when it is not taken up

by legislators (Damore et al., 2012). In these cases, the agenda is generally broadened to bring more issues from the feasible set into the set of actually considered issues. In jurisdictions where other citizens or legislators are permitted to place counterproposals on the ballot, the set of alternatives that is voted on may be broadened as well as other actors respond to a wider set of considered issues.

## 6.2 Regulation of Agenda Control

In this section, I focus primarily on manipulation of agendas which, given the various paradoxes of collective choice, means that “the agenda partially determines the outcome” (Riker, 1993: 2). Manipulation of various kinds is relatively common in ballot measures (Setälä, 1999: 161), in part because ballot measures in many jurisdictions remain relatively uncommon occurrences and regulations governing their use often remain weak or non-existent. As a result, restrictions on manipulation of the agenda are often primarily political, rather than regulatory.

The best existing study of the regulation of referendums focuses on the indicators derived from the Venice Commission’s *Code of Good Practice on Referendums*, although it unfortunately focuses on the campaign, rather than the initiation process (Reidy and Suiter, 2015). The *Code* suggests that governments should observe a number of limits on their agenda-setting power. For instance, “The question put to the vote must be clear; it must not be misleading; it must not suggest an answer; electors must be informed of the effects of the referendum; voters must be able to answer the questions asked solely by yes, no or a blank vote” (Venice Commission, 2007). The *Code* also suggests that governments should not impose quorums on turnout or attempt to manipulate question wording in other ways.

The *Code of Good Practice on Referendums* is largely limited to European countries, but even there it appears to be inconsistently observed. For instance, Hungary’s recent referendum on refugees was defeated because it had a quorum requirement. Similarly, it’s not clear that voters in the United Kingdom were truly “informed of the effects of the referendum” considering the widespread sentiment of ‘regrexit’ and debate about a ‘hard’ versus ‘soft’ Brexit. Other cases more closely reflect the principles of the *Code*, such as municipal ballot measures in Flanders where “the question has to be phrased in a way that only requires a ‘yes’ or ‘no’ answer, in order to avoid any ambiguity” (Beckers and Billiet, 2010: 6–7). The United Kingdom’s *Political Parties, Referendums and Elections Act 2000 (PPERA)* requires the Electoral Commission

“consider the wording of [a] referendum question and to publish a statement of our views as to its intelligibility” (The Electoral Commission, 2018), although the wording is ultimately left to Parliament. Such regulation also does not address the capacity of governments to leave viable choices off the ballot while still claiming to have put the issue to a vote. For instance, although the Conservatives acquiesced to the Liberal Democrats’ demands for a referendum on electoral reform, the Conservatives refused to put the Liberal Democrats’ preferred system of proportional representation on the ballot, choosing the alternative vote instead (Curtice, 2013: 217; Lundberg and Miller, 2014: 15–16).

Overall, it’s not obvious that all of the regulatory measures spelled out by the *Code* or other legislation are appropriate or sufficiently comprehensive. The *Code* does little to explore how governments will be constrained or incentivized to adhere to its recommendations. In general, governments have considerable control over the agenda when they initiate ballot measures. As Lundberg and Miller put it, governments try to minimize uncertainty about the result by using “supermajority requirements, the inclusion of complicated questions and multiple options, staging multiple referendums, or making strategic use of unpopular options” (2014: 6–7).<sup>48</sup> However, the ability of governments to manipulate procedures can be constrained by partisan opposition (Damore et al., 2012), particularly in multicameral systems or when a government only holds a minority of seats. These constraints suggest that manipulation is likely unavailable in cases where the motivation for initiating a ballot measure is primarily legislative because similar obstacles obstruct both the substantive legislation as well as that enabling the ballot measure.

### **6.3 How Manipulation Undermines Legislative Principles**

Agenda manipulation pits the principle of legislative formality against the principle of respect for disagreement. The principle of legislative formality indicates that communication between diverse groups is not like a conversation, but more like proceedings which need to be organized by clear rules of engagement (Waldron, 1999a: 70). In terms of ballot measures, formal rules clarify who is allowed to trigger a popular vote and under what conditions, who

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<sup>48</sup> To be clear, the examples listed here include both procedural manipulation (*e.g.* supermajority requirements, multiple referendums) and agenda manipulation (*e.g.* complicated questions, multiple options, strategic use of unpopular opinions).



writes the questions, the voting rules to be used, and whether a quorum exists. Of course, adherence to these formal rules is entirely compatible with heresthetical strategies that are more interested in promoting a particular outcome than hearing what is to be said on all sides of an issue. In fact, governments may often have the capacity to change the rules of ballot measures, suggesting that formal rules have limits. Citizen-initiated ballot measures often have formal rules that cannot be easily changed by those who they govern, given that elected representatives have a generalized incentive to uphold these rules. However, the formal rules that govern citizen-initiated ballot measures citizens also enable citizens to set the agenda in ways that might allow them to register their disagreement with ballot measure processes and, perhaps in some circumstances, prevent or sanction the manipulation of formal rules by political elites.

Formal rules requiring binary choices for ballot questions obscure various kinds of disagreements, such as “no for the time being – although not necessarily opposed in principle” (Barber, 1984: 286). When faced with take it or leave it questions, citizens are allowed to disagree, but only in a thin sense. It is a relatively common view that ballot measures ask citizens to weigh in on legislation for which they “can neither draft the terms nor suggest amendments” (Taillon, 2017: 169). These problems are especially common in government-initiated ad-hoc referendums where the pursuit of strategic motivations is often relatively unimpeded by formal rules, including the process by which options make it onto the ballot. Yet, the Venice Commission’s *Code* reinforces the fact “that complex issues tend to be broken down into ‘this option or nothing’, yes/no questions” that are set by powerful actors (Parkinson, 2006a: 171). The underlying criticism is, essentially, that respect for disagreement is undermined, particularly where citizens lack capacity to influence the ballot options.

Of course, it is probably undesirable to give up on legislative formality as well, given that a common criticism of referendums is that the lack of such rules permits a small but powerful group to set the agenda in a way that precludes meaningful conversation between the mass public and the initiator of the ballot measure. While voting yes or no on a specific proposal is a common feature of voting in legislatures, the context is distinct since legislation there is an iterative process of deliberating, negotiating, amending, and voting. The mass character of elections suggests that several modifications might be necessary, such as allowing runoff referendums, two-stage voting processes, or even leaving the status quo off the ballot and asking voters to choose between two alternatives to the status quo. These proposals all run against the

recommendations of the *Code* although they might better harness a democratic division of labour in order to make the ballot measure process more functionally similar to legislatures, even if there are important institutional differences.

Formal rules may at first appear to be incapable of addressing the considerable discretion that many governments hold over the decision to call a government-initiated referendum. That is, while the question may not be misleading, governments may choose to hold referendums on issues that are already loaded with misperceptions. Yet, rules that formalize the ability of citizens to register their disagreements might counterbalance the inherent potential for manipulation. Much existing regulation focuses on granting public resources to competing sides of a referendum and imposing regulations on contributions and spending. A better strategy might be found in guaranteeing publicly-provided information campaigns to voters, such as voters' guides. If the government is deemed an untrustworthy producer of material on its own referendum, then it may be useful to delegate this responsibility to an independent trusted body, like an electoral commission or a mini-public (Warren and Gastil, 2015). Evidence from New Zealand suggests that it may be possible that misinformation and more complex ballot designs with multiple choices may be at least partially offset by a robust public information campaign (LeDuc, 2015).

Citizens are, in some ways, more limited in their capacity to manipulate the agenda than governments. Perhaps the most notable limitation is that for citizens to effectively set the agenda, they need to be able to collect enough signatures to qualify the initiative. Of course, in some instances the threat of a signature campaign alone might put the issue on the agenda and lead to legislative action (Gerber and Hug, 2001; Kobach, 1993: 6). Some jurisdictions include other limitations, such as regularly scheduled deadlines for petition qualification and pre-planned voting days that limit the ability of citizens to take advantage of timing in the way that governments can. Citizen-initiated ballot measures may also be vulnerable to countermeasures from legislators who seek to introduce new alternative policies to either complicate the agenda and dilute support or who introduce a similar, but distinct alternative.

The capacity of citizens to shape the agenda also varies depending, in large part, on the types of citizen-initiated ballot measures that are permitted within a jurisdiction. Popular initiatives allow citizens wide latitude in setting the agenda as these devices can bypass legislators entirely. Popular initiatives technically allow virtually any issue to be put on the ballot and voted on by the broader population. By contrast, indirect initiatives allow citizens to force

legislators to consider an issue, with the threat of a popular vote serving as a credible threat to do so. Indirect initiatives are distinct from popular initiatives because the former allows the agenda to be changed through interactions with the legislature while popular initiatives provide petitioners with, theoretically, unlimited capacity to set the agenda.

However, the implications of the agenda-setting capacity of initiatives go beyond the issue being voted on, which is sometimes of secondary importance. In the Swiss case, groups who are successful in triggering initiatives or facultative referendums may find themselves included in future consultations as governments try to avoid disruptive popular votes on forthcoming legislation (Kobach, 1993: 136–137). Citizen-initiated ballot measures are occasionally sponsored by political parties or their supporters not to change policy, but to force an election candidate to take a stand on an initiative or to prime an issue to increase registration or turnout (DuVivier, 2007: 1049–1050; Kousser and McCubbins, 2005). In these cases, the agenda may be designed precisely to be divisive, rather than to bring about policy change. Furthermore, political parties and other “veiled political actors” may attempt to hide their involvement in order to obscure the true sources of funding and maintain the appearance that the campaign reflects grassroots interests, rather than the interests of powerful or wealthy actors (Garrett and Smith, 2005). Here, we return to the problems of misrepresentation addressed in the previous chapter and the potential that actors will strategically manipulate the agenda when possible.

#### **6.4 Contesting Agenda Control**

While manipulation is unavoidable in any decision-making procedure, some formal rules are better suited to preserving respect for disagreement than others. I contend that ballot measures should be designed with formal rules that govern the interactions between ballot measures and legislative institutions. This would facilitate, at its best, a deliberative process of co-creation, while also providing tools to allow contestation of attempts at manipulation. Daly’s (2015) republican defence of ballot measures picks up on arguments advanced by others that ballot measures provide “security against misrule” by allowing citizens to contest decisions made by governments in other venues, particularly legislatures (Elster, 2013; Qvortrup, 1999b). In other words, the hope is that ballot measures might not simply be tools of manipulation, but might be used to contest manipulation, primarily within legislatures. Indirect initiatives,

counterproposals, and reactive referendums all have formal rules that acknowledge that agenda-control should not be monopolized by a single institution.

There are many variations on the precise details of the indirect initiative process (see Stern, 2011) although fundamentally it allows citizens to qualify a proposal via petition, which is then given to the legislature. If the government does not come to an agreement with the petitioners over an amended measure or pass the measure within a predetermined period of time, then the measure is put to a popular vote. Indirect initiatives, in some instances, allow counterproposals or amendments from legislators that can be accepted by the proposer without reauthorization from the signatories. In Switzerland, indirect initiatives allow the petitioners to withdraw their initiative prior to a vote if they reach a compromise with the legislature. While this type of negotiated agreement is unavailable in many jurisdictions, it demonstrates a distribution of agenda-setting power without necessarily turning over decision-making power to the mass public.

While both indirect and popular initiatives distribute agenda-setting power, popular initiatives do so in a way that can be antagonistic to representative institutions whereas indirect initiatives allow for citizens and elected representatives to bargain or compromise. However, in instances where governments are clearly non-responsive to widely held citizen demands, popular initiatives may be more appropriate as they allow citizens to move past governments that would use features of the indirect initiative to strategically dismiss the concerns of citizens, say by developing counterproposals or not responding to a proposal in an attempt to wait out the demand. All of these considerations suggest the need for substantially higher thresholds for the use of popular initiatives over indirect initiatives (Miller, 2000). That is, the popular initiative is a significantly more powerful tool and thus the cost of access should be limited to citizens or groups who are able to mobilize more than a small group of interested citizens. The indirect initiative, by contrast, faces possible checks on its power not only by the broad voting public, but also by elected representatives.

The ability of legislatures to offer counterproposals may similarly encourage negotiation and widen the set of alternative proposals in ways that make it more difficult for initiators to make “a take-it or-leave-it offer to voters” that forces “the public to pass measures much closer to [the initiator’s] own ideal policy than to the preferences of the median voter” (Fishkin et al., 2015: 1031). Ellis suggests that this is exactly what occurred with popular initiatives on

legislator term limits and tax reduction. Citizens preferred implementing term limits and cutting taxes to the status quo, although the term limits and tax cuts they approved may have been more extreme than if citizens had been able to amend the question or vote between several different options (Ellis, 2003: 40–41).

Another conceivable form of democratic innovation that could encourage compromise might be found in *citizens' counterproposals* (Altman, 2014). In contrast to legislative counterproposals – which allow legislatures to respond to popular initiatives by placing another measure on the ballot so that voters can choose between the status quo, the initial proposal, or the counterproposal (Altman, 2011: 14) – citizens' counterproposals might originate in deliberative mini-publics or citizen petitions similar to the initiative process. This could expand the scope of counterproposals so that citizens can contest the agenda-setting power of legislatures that initiate referendums. The possibility of this power might lead governments to avoid framing the issue in the most advantageous 'take-it or leave it' manner.

Attempts to manipulate the agenda might also be limited by independent bodies. McCormick suggests that the creation of a tribunal that is allowed to call a referendum once a year (McCormick, 2011: 184). Another way of minimizing manipulation would be to require that questions are drafted by independent electoral bodies to prevent initiators from drafting complex questions that might mislead voters (Reilly, 2010: 55) and would allow for some, admittedly, elite deliberation to influence the agenda-setting process. A practice that synthesizes some of the strengths of both of these approaches can be found in the British Columbia Citizens' Assembly, which was a mini-public designed to deliberate about alternatives to the province's single-member plurality electoral system and then decide whether to recommend the adoption of an alternative system. The mini-public was empowered to trigger a 2005 referendum on the issue if it recommended such a change.

## **6.5 The Lobster Trap: Are Ballot Measures Irreversible?**

It is worth addressing the problem of irreversibility from the perspective of collective agenda formation since it suggests that the results of previous ballot measures can limit the agenda and capacities for collective agenda formation. Because some theories of democracy see the results of a popular vote as the declared will of the people, any attempt to revisit a decision, no matter how ill-conceived, can be perceived as undemocratic (cf. Morel, 2017: 152). The end

result is that the resulting campaigns often resemble ‘lobster traps.’ Simone Chambers explains the idea by noting that Quebec Premier Jacques Parizeau suggested that voting for sovereignty felt like a “lobster trap: once Quebeckers had voted yes they would be like lobsters with the trap door closing behind them, unable to escape their fate” (Chambers, 2001: 247). Such a state of affairs seems undesirable since “the possibility of reversing a decision somewhere down the line when more information is available or the debate takes a new turn is a very important component to stable democratic decisions” (Chambers, 2001: 247).

Chambers suggests that the problem with irreversibility is that it ends the process of deliberation. However, there are other notable reasons to worry about irreversibility that move beyond deliberative models. Adam Przeworski’s (1999) analysis of elections as institutions that maintain the stability of democracy by providing a non-violent way of resolving conflicts suggests that the losing candidates observe the results of elections because they know that, in a democratic system, there will be a future opportunity to revisit the question of who forms government and the peaceful resolution of this question through the ballot box is preferable to a violent struggle for power. However, this possibility seems to require that the agenda remains open to issues that have previously been decided by referendum.

An alternative explanation of why we ought to worry about irreversibility can be found in the tension between democratic procedures and future generations. The ideal of self-government seems to be at odds with the possibility of a past people ruling over a present one. This problem was identified long ago by Thomas Jefferson in a letter to James Madison in which he asked “Whether one generation of men has a right to bind another” (Jefferson, 1789). In short, Jefferson’s answer was no, suggesting that even the ability to repeal a law was inferior to having laws expire after a designated period. Contemporary political theorists have renewed interest in similar questions. Dennis Thompson argues that democratic procedures tend to produce laws that are biased “in favor of present over future generations” and that some legislation has effects that cannot be reversed (Thompson, 2010: 17). While this problem affects virtually all decisions to some extent, these problems are exacerbated in the case of ballot measures due to widespread agreement among citizens and elected representatives that decisions taken by ballot measure are irreversible, or at least more difficult to undo than other decisions. This seems to stem from continued populist or direct democratic understandings of ballot measures that see decisions

taken by ballot measure to be more legitimate or democratic and thus deserving of increased stability.

Problems of irreversibility also appear to be tied to departures from the status quo. A decision to remain with the status quo can appear to be more easily revisited than a decision to depart from the status quo.<sup>49</sup> For instance, decisions made by referendum in Switzerland “cannot be overruled except by another referendum. However, the government is free to attempt to pass a law or constitutional amendment again after it has been rejected in a referendum” (Kobach, 1993: 41). This is illustrated by the phenomenon of “double referendums” (Atikcan, 2015), where voters are asked to vote on the same issue twice after initially failing to change the status quo. Similarly, many petitioners whose initiatives fail can initiate the same or similar petitions in future referendums. That is, these issues can be subjected to a second referendum because the status quo persisted initially, unlike votes to move away from the status quo (Lacey, 2018). As such, the problem of irreversibility does not really apply to reactive referendums as these are fundamentally conservative and seek to preserve the status quo (Kobach, 1993: 89).<sup>50</sup> Voting to reject a piece of government legislation is rarely interpreted as preventing any future change to the status quo, as evidenced by the fact that facultative referendums in Switzerland are often followed by new legislation on the issue.

### 6.5.1 Institutional Design and Irreversibility

Rather than speak simply of irreversibility, it is worth outlining three subtypes – *inherent*, *political*, and *legal* – are often associated with other types of ballot measures, such as ad-hoc referendums and initiatives, although these distinctions are rarely made in a way that makes it possible to analyze the different implications for agenda setting. The level of each of these types of irreversibility can vary and particular cases may be characterized by multiple types of irreversibility, which can compound and make it difficult to reverse a decision.

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<sup>49</sup> Of course, the literature on ‘drift’ as a type of institutional change suggests that this is an oversimplification (Hacker et al., 2015).

<sup>50</sup> Mandatory referendums seem to fall somewhere between reactive referendums and all other types. This is because mandatory referendums are often ad-hoc in the sense that they occur because the government *chooses* to pursue constitutional or legislative changes that require a popular vote. If a mandatory referendum occurs instead because it is scheduled to occur at regular intervals, such as recurring votes to renew the constitutions of some US states (The New Republic, 2008) and New Zealand’s votes on alcohol (Dostie and Dupré, 2016), then the results are unlikely to be considered irreversible, particularly if there is another such referendum scheduled to occur in the future.

Inherent irreversibility arises when the nature of the decision makes it difficult to undo. For instance, a referendum on destroying a monument or building is irreversible because it is virtually impossible to undo this destruction. Many political decisions are not quite so irreversible, although ballot measures that pertain to constitutional change or other fundamental issues are irreversible in some way. Electoral reform may also present an instructive example. For instance, there is a well-known difficulty in changing electoral systems, namely that governments generally prefer to retain the same rules that enabled their victory. Electoral reform is a rare event, although it has historically been more common to see systems adopt proportional representation as they move away from single-member plurality systems. Voting to adopt proportional representation makes it more difficult to build a coalition that would want to put electoral reform back on the agenda. The change thus makes an already difficult occurrence even more difficult to accomplish. Similarly, petitioners attempt to make their preferred policies “procedurally more difficult to alter in the future” by using ballot measures to embed them in the constitution, rather than as simple statutory law (Damore et al., 2012).

There is also a tendency to use ballot measures to vote on issues that are inherently difficult to reverse. The underlying logic appears to be that the apparent permanence of the decision is such that ballot measures appear to be the only possibly legitimate way to make a decision. In other words, legislatures are known for the fact that legislation can be amended or repealed and so this seems to be an inapt procedure for making potentially irreversible decisions. For instance, there does seem to now be a precedent that electoral reform requires a referendum.

Political irreversibility arises in instances when a ballot measure is understood as final or irreversible because it was the “will of the people.” This phenomenon is largely the same as what Donovan refers to as super-precedent, in which a decision “is immune from reconsideration across moderate spans of time—such that voters do not challenge the wisdom of their own decision over time *and* the citizen-initiated law also achieves a level of authority, such that it binds and constrains the behavior of legislators over time and prevents them from reconsidering, or reversing, citizen-initiated legislation” (Donovan, 2007: 193–194).

Political irreversibility is stronger when there is agreement among key actors that the decision is final prior to the moment of voting. This framing may be used because there is an advantage in doing so, such as raising the stakes to increase turnout. Political irreversibility is similar to when governments commit themselves to observe advisory ballot measures, but



distinct because governments may follow through on the result of a ballot measure while accepting that revisiting that decision in the legislature or through another ballot measure is a legitimate possibility. A more modest form of political irreversibility arises when it is strategically unwise to advance an alternative to the status quo that has already been rejected by voters in a previous ballot measure. That is, even if the issue as a whole has not been removed from the agenda, it's possible that the alternative set has still been reduced in size.

One recent example of political irreversibility is when, in the final days of the Brexit campaign, Prime Minister David Cameron stated that a result in favour of the European Union would have significant consequences for future generations, who “can’t undo the decision we take. If we vote out, that’s it. It is irreversible. We will leave Europe – for good.” While rethinking the decision was certainly possible given the circumstances – including considerable demand for a second referendum – this possibility was partially foreclosed by a Prime Minister and party that committed to the idea that any decision would be the final word on the matter. The problem of irreversibility is compounded by the ad-hoc nature of the referendum such that a second referendum on the topic may be seen to have less force given the fact that the first referendum was overturned (Lacey, 2018).

Legal irreversibility occurs when there are formal restrictions that limit the reconsideration of issues decided through ballot measures. For instance, no American state allows the governor to veto bills approved by the voters through the initiative process (Noyes, 2015: 281). Perhaps the most famous example is California, where the legislature is not permitted to amend or repeal voter-approved statutes. States like Alaska and Washington also impose limits on amending and repealing decisions made through ballot measures, although not to this same extent (Miller, 2000: 1067; Waters, 2017). These regulations reflect the influence of the ‘direct’ versus ‘representative’ democracy paradigm, as they limit legislatures without narrowing the agenda for other ballot measures.

These distinctions are certainly stylized and may overlap, although they should make it easier to clarify the nature of the problem and appropriate responses. These instances of irreversibility have implications for the processes of collective agenda setting and collective decision-making. Most immediately, it is worth highlighting that a decision that is considered to be irreversible is an issue that would be futile to try and put back onto the agenda. That is, while there are some issues that are appropriately irreversible from the perspective of democratic

theory, such as the abolition of slavery (Rawls, 2005: 151–152), many other issues cannot be truly understood as irreversible. The question in a democratic system remains: who decides what issues are irreversible and cannot be returned to the agenda? Overall, citizens should have considerable control over the agenda. As a result, I suggest that the three kinds of irreversibility outlined above underwrite distinct rationales for further democratizing the agenda-setting role when it comes to ballot measures.

Legal irreversibility is generally accompanied by clear guidelines about how and when the result of a popular vote could be overturned and raises fewer concerns about the manipulation of agenda-setting since the outcome is revisable under certain conditions. Inherent irreversibility raises the stakes by indicating that some possible outcomes – whether on the ballot or not – will not be accessible to voters in the future. Political irreversibility hinges on the idea that the outcome of a process will be accepted as irreversible, although this procedural legitimacy may be undermined if citizens later come to doubt the integrity of the process, such as the selection of the ballot options.

Unlike legal irreversibility, there is rarely a clear way forward in cases when politically irreversible decisions are challenged and so it is probably best to avoid claims of irreversibility or, at the least, build widespread agreement about what the ballot options will be. In cases of both political and inherent irreversibility, if the nature of the decision is such that citizens are being asked to decide, it's unclear why citizens should not have a role in setting the agenda. This may already be the case, say if the vote itself is politically obligatory, but is less likely when the vote is motivated by strategic considerations amongst more powerful actors who frequently attempt to manipulate the agenda. However, the kinds of formal rules or institutions that are currently in place tend to push disagreement out, rather than channelling it to produce outcomes that are unlikely to be reversed because they enjoy widespread support. Ballot measure designs that allow citizens to set the agenda in an initial round of voting, such as in New Zealand's two-stage referendums, or that explicitly contest the question of irreversibility, such as British Columbia's 2018 electoral reform referendum that promised a future referendum in the case of a departure from the status quo, provide institutional mechanisms that open up the agenda-setting process and ensure that the agenda remains open to revision.

## 6.6 Conclusion

Highly charged public debate or mass abstentions about the options on the ballot are likely signs that some political actors suspect agenda manipulation has taken place. Such manipulation is facilitated, in part, by the absence of effective institutions to counteract such strategic action. This is not to say that reasonable disagreement about the appropriateness of the ballot options is impossible or that there needs to be consensus regarding the options. However, the possibility that allegations of manipulation will be used as a way of discounting the outcome raises serious concerns about the democratic potential of ballot measures. This point might be illustrated through an analogy with elections. Pluralism suggests that voters will disagree about which candidate in an election ought to win, although this does not significantly detract from the legitimacy of the winning candidate. Now, in instances where there is widespread disapproval of the legitimacy of a candidate *as a candidate*, rather than simply as disagreement over the desirability of the candidate winning, this may be a sign that the institutions used to select candidates – such as primary elections – have failed and are in need of reform. Of course, governments bear some responsibility for these decisions but once a ballot measure has been initiated, it can be difficult to change course so the solution, like so many others, is to design institutions in an attempt to check these kinds of decisions. I suggest that indirect initiatives, reactive referendums, and counterproposals are particularly adept at realizing the principles of both legislative formality and respect for disagreement.

However, manipulation is not the only threat to collective agenda-formation. The results of previous ballot measures can also be seen to limit the set of feasible issues to be decided by either legislatures or ballot measures. This suggests that representatives should contest attempts to frame issues as being irreversible when they are not and to preemptively establish clear rules about the conditions under which decisions taken by ballot measure might be revisited.

## Chapter 7: Collective Will-Formation and Ballot Measures

The function of collective will-formation requires that citizens “know how their preferences relate to collective judgments, and to understand the reasons that justify collective judgments” (Warren, 2017a: 44). The democratic function of collective will-formation is distinct from the populist notion of the will of the people in several important respects. First, the populist account is an essentialist one that assumes that the will of the people exists prior to the existence of any relevant political institutions (Abts and Rummens, 2007: 408–409). This stands in contrast to a conception of will-formation as a process by which collectives generate wills that did not exist previously. Second, the democratic systems approach is more compatible with a process-based account of will-formation where legitimacy is granted not on the basis of an outcome, such as consensus, but on the existence of a procedure that allows individual citizens to reflect on how their values, preferences, and judgments relate to the values, preferences, and judgments of other citizens in the context of an issue of public concern (Chambers, 2004: 156). Third, it recognizes that the process of collective will-formation is often pluralistic since democratic politics is marked by the existence of competing collective wills on many issues (Warren, 2017a).

As a democratic function collective-will formation is achieved when political actors are capable of communicating with one another and persuading others on the basis of acceptable reasons, free from coercion or manipulation. Legislative processes are structured in ways that are designed to promote a duty of care and responsiveness to deliberation. A duty of care requires that citizen-legislators have a sound understanding of whether a particular proposal will be desirable or not based on an evaluation of a new law’s effects on other citizens and existing laws (Waldron, 2016: 155–156). In theory, reading bills multiple times and sending bills to committee for further consideration constrains legislators from acting too hastily (Waldron, 2003: 390). Ballot measures largely lack these kinds of institutional incentives. There is one campaign period that culminates in a vote, usually with no possibility of amendment, rather than an iterated process of consideration, debate, and voting.

The principle of responsive deliberation requires that opinions “must be held as opinions, and therefore open to elaboration, argument, correction, and modification” (Waldron, 2016: 160). The principle of responsive deliberation goes both ways, requiring representative legislators to bring the views of their constituents to the legislature and citizens to be open to the

arguments presented by their representatives. Deliberation in legislatures seems to be supported by particular institutional features, such as multicameralism and the existence of non-public arenas for discussion and negotiation (Bächtiger et al., 2005). Some committees are non-public or have the capacity to hold *in camera* meetings that appear to make them key sites of deliberation within legislatures (Bächtiger, 2014; Rinne, 2016). What is important is not merely that committees are more deliberative than other parts of legislatures, but that the results of these deliberations are often taken up by the legislature more broadly, such as in the adoption of a committee's recommendations.

While voting is an important democratic practice, there is still a need to preface it with deliberation, as in Goodin's (2008) recommendation to "talk first, then vote," as this can structure disagreement, improve the quality of information available to voters, and ensure that decisions are made legitimate by the presence of good reasons. Ballot measures are frequently derided as non-deliberative events that allow elite actors to manipulate ill-informed citizens (Parkinson, 2001: 132; Setälä, 1999: 79; Smith, 2009). Critics suggest that popular votes trade-off "the deliberation inherent in the legislative process in favor of a majoritarian process of the aggregation of individual opinions" (Mendelsohn and Parkin, 2001a: 17). James Fishkin (2011: 91) contends that during referendum campaigns "people have little reason to think about the power we would have them exercise" and Claus Offe (2017: 22) argues that ballot measures are plebiscitarian devices that "de-emphasize requirements of consistency, compromise-building, and the reflection on consequences." Benjamin Barber (1984) similarly notes that deliberation is a practice for ensuring reasonable, not unanimous decisions, although referendums as commonly used fail to produce reasonable decisions.

Others are more measured in their evaluations. Simone Chambers concludes that while popular votes are not deliberative exercises, "they can be more or less deliberative" (Chambers, 2009: 331). Some observers have also noted that popular votes provide a rare opportunity for citizens to deliberate about political matters between elections (Daly, 2015: 48). Ballot measures, especially reactive referendums, offer a tool for citizens to demand discursive accountability at virtually any time as "public opposition forces the government to justify and defend its policies" (Kobach, 1993: 153).

The quality of deliberation prior to voting on ballot measures may be influenced by other features of the institutional context, such as the media system or voting rules (LeDuc, 2015: 147;

Parkinson, 2006a: 171). Some democratic theorists have suggested in passing that multi-stage referendums might reduce the shortcomings of direct democracy (Chambers, 2001; Mendelsohn, 2000; Smith, 2009: 131–132). An alternative approach has seen mini-publics used in conjunction with ballot measures in Canada, Iceland, Ireland, the United Kingdom, and several U.S. states in an attempt to institutionalize public debate prior to popular votes. Mini-publics are small groups convened to deliberate, often made up of lay-citizens and selected by sortition or random stratified sampling from the broader population in order avoid self-selection models of participation that incentivize those with vested interests in a way that undermines deliberation (Bagg, 2015; Beauvais and Bächtiger, 2016; Warren, 2017a: 50). In this chapter, I outline how the combination of multi-stage referendum processes and deliberative mini-publics might improve the capacity of ballot measures to serve as focal points for collective will-formation by setting up institutional constraints and incentives that are more similar to those found in legislatures. This iterated procedure would alternate between moments of structured deliberation and voting on alternatives prior to voting on the status quo in ways that reflect the debates and amendments that precede the final votes on bills in legislatures.

## **7.1 Multi-Stage Popular Votes in Theory and Practice**

While it is commonplace for legislatures to clearly structure voting on legislation across multiple readings, ballot measures are frequently one-shot events. However, there are both theoretical and empirical accounts of a variety of multi-stage ballot measure procedures. The most detailed account of multi-stage ballot measures is Barber's suggestion that a referendum process in which voters can choose between more than two options and vote in a two-stage process would improve the quality of public discourse (1984: 284–285). The multi-choice format was designed to provide a set of options beyond the simple “yes or no” format of many popular votes. The second vote is intended to prevent rash action and elite manipulation by giving citizens an opportunity to “reevaluate the results of the first vote” (Barber, 1984: 286). This two-stage referendum is supposed to mitigate the shortcomings of majority rule by deliberating prior to taking the vote, a process that occurs twice due to the iterated voting procedure (Barber, 1984: 296; Goodin, 2008: 6; Landemore, 2012: 166).

Barber's model has apparently never been put into practice but different types of multi-stage referendums have been implemented. Perhaps the most obvious is the use of a runoff

voting rule to choose between three or more choices, although both mandate referendums and two-stage referendums have been used as well.<sup>51</sup> Mandate referendums allow voters to authorize governments to negotiate an agreement with the understanding that it will be subject to another popular vote to ratify it (Tierney, 2012: 266–269).<sup>52</sup> A mandate referendum was used in Quebec's 1980 referendum on sovereignty, proposed for both the 2012 referendum on Scottish independence and the 2016 referendum on UK membership in the EU (Cummings, 2015; Guardian, 2016) and is required to take place if Greenland ever pursues independence (Mortensen, 2016: 16). While the 1980 Quebec referendum was marked by considerable manipulation, it is worth questioning whether there is a potential benefit to adopting the underlying design.

Two-stage referendums have been used multiple times in New Zealand. The first two-stage referendum was held in 1992 and 1993 to determine whether New Zealand would retain its single member plurality (SMP) voting system. In 1992, an advisory referendum asked voters two questions on a single ballot. First, whether they wanted to retain the current electoral system or choose a new one and, second, which of four alternative voting systems should replace SMP, which was decided by plurality vote. Nearly 85% of voters supported changing the electoral system and 70% of voters preferred mixed member proportional representation (MMP) over the other alternatives (Jackson and McRobie, 1998: 252). The following year, MMP defeated the status quo with 53.9% of the vote in a binding second referendum (Jackson and McRobie, 1998: 255). New Zealand initiated another two-stage referendum on electoral reform in 2011, with essentially the same design, with the second stage to be held in 2014 between the status quo of MMP and the winning alternative. However, in the first stage 56.2% of voters chose to keep MMP and so the binding second stage was cancelled (Electoral Commission, 2013).

A third two-stage referendum was held in 2015 and 2016 to determine whether or not New Zealand should adopt a new flag. The first stage presented five proposed designs for a new flag and voters were asked to rank the alternatives in the order of their preference with Kyle Lockwood's *Silver Fern (Black, White and Blue)* design winning in an instant runoff (Electoral

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<sup>51</sup> The use of instant runoff voting rules does not present an opportunity for deliberation between ballots and so I leave this possibility aside.

<sup>52</sup> Mandate referendums are distinct from 'double referendums' in which the issue of treaty ratification is voted on a second time in a referendum because ratification failed the first time. See (Atikcan, 2015).

Commission, 2015). The second stage asked voters whether they wanted to retain the current flag or replace it with the Lockwood design. In March 2016, the final result was 56.6% of votes in favour of retaining the current flag (Electoral Commission, 2016).

There are several differences in the institutional design of the two-stage referendums on electoral reform and the two-stage referendum on the flag. In contrast to the electoral reform referendums, the second stage of the two-stage referendum could not have been cancelled by the vote in the first stage since the status quo did not appear on the initial ballot. This ensures that a second stage of voting takes place and creates an opportunity for further deliberation between ballots. Additionally, voters had the opportunity to vote on the status quo twice in the electoral reform referendum processes, which was the result of government manipulation in an attempt to preserve SMP. In contrast, the flag referendum process was designed to allow only one vote on the status quo. Two-stage referendums also vary in the voting rules used to determine the winning alternative to the status quo. The two electoral reform referendums used a plurality rule to choose from the set of alternative electoral systems while the flag referendum used an instant runoff voting rule to select an alternative flag design.

These considerations suggest multiple possible configurations for the design of two-stage referendums, although there are more similarities than differences between the electoral reform processes and the flag process. For instance, both processes make a final decision on the status quo by using majority rule. The main difference appears to be that the opportunity to vote on the status quo twice in the electoral reform referendums makes it possible for a two-stage referendum to conclude after the first stage, as it did in 2011. Voting on the status quo first has the potential to eliminate the distinctive benefits of the two-stage referendum, namely that it allows citizens to deliberate between stages and set the agenda for the final ballot. As a result, I focus on two-stage popular votes that, like the flag referendum process, ask voters to first choose between two or more alternatives to the status quo in the first stage and to choose between the status quo and one alternative in the second stage.

The major difference between Barber's proposal and multi-stage popular votes in practice is that Barber's design asks voters to voter multiple times on the same set of options. While some of Barber's (1984: 286) proposed choices, such as "no for the time being – although not necessarily opposed in principle, suggest postponement" attempt to capture richer information about voter preferences, this added level of detail provides little guidance as to which alternative



formulation voters might prefer instead. This problem would be aggravated in cases where the result of the first popular vote disagrees with the result of the second popular vote. Runoff referendums avoid this problem by asking the same question but gradually eliminating possible options. Both mandate referendums and two-stage popular votes are designed to prevent this kind of inconsistency by asking different questions in each stage of voting. Mandate referendums organize an initial vote on whether to negotiate and a second vote to ratify the negotiated agreement while two-stage popular votes dedicate one stage of voting to selecting one of several alternatives and one stage of voting to deciding whether to maintain the status quo. In contrast, two-stage popular votes allow voters to deliberate about a feasible set of concrete alternatives, choose one, deliberate about whether they prefer the winning alternative to the status quo, and then vote on the status quo.

Even though these multi-stage popular votes are all ultimately decided by majority rule in the final vote, the structure of run-off and two-stage referendums accommodates a wider variety of options in a way that mitigates a common criticism of referendums, namely “that complex issues tend to be broken down into 'this option or nothing', yes/no questions” that are set by powerful actors (Parkinson, 2006a: 171). Furthermore, multi-stage referendums appear to offer citizens more opportunities for deliberation and agenda-setting. For instance, even though New Zealand’s first two-stage referendum was marked by government manipulation, observers have noted that a relatively high level of deliberation still took place (LeDuc, 2015: 147). The next section argues that multi-stage popular votes and mini-publics have complementary strengths that could be productively combined.

## **7.2 Mini-publics and Popular Votes**

Mini-publics are often made up of lay-citizens and selected by sortition or random stratified sampling from the broader population in order to achieve descriptive representation and avoid self-selection models of participation that incentivize those with vested interests in a way that undermines deliberation (Bagg, 2015; Beauvais and Bächtiger, 2016; Warren, 2017a: 50). The participants in mini-publics can thus be understood as “citizen representatives” who represent those who are not present in these deliberative forums (Warren, 2008). Mini-public participants act as “facilitative trustees that underwrite their political judgments with trustworthy issue framing and information” (Warren and Gastil, 2015: 567). In other words, they can serve as

information proxies who provide trustworthy and credible cues to voters to help them overcome cognitive biases and elite manipulation. The value of these cues is that they are not provided by the ‘usual suspects’ but instead originate with a group of ‘ordinary citizens’ that is insulated from partisan politics in a way that encourages impartiality and deliberation (Boswell et al., 2013: 173; Landwehr, 2014; Warren and Gastil, 2015: 567–568).

Proponents suggest that mini-publics offer unique opportunities for ordinary citizens to deliberate about policies and suggest that the cues they provide to other citizens have a “recommending force” due to their deliberative origins (Chambers, 2003; Fishkin, 1997: 162; Warren and Gastil, 2015; Warren and Pearse, 2008b). However, critics have pointed out that mini-publics are not fully inclusive (Lafont, 2015; Pateman, 2012), remain vulnerable to strategic manipulation (Fuji Johnson, 2011, 2015; Hendriks, 2006, 2011), and often encounter problems communicating their arguments to the broader public (Curato and Böker, 2016; Felicetti et al., 2015; Olsen and Trenz, 2014).<sup>53</sup>

Well-designed mini-publics exemplify a duty of care, providing an arena for citizens to study an issue, carefully consider its probable effects and deliberate about whether those effects would be desirable or not. In many ways, mini-publics play a similar role that committees play in legislatures, providing a subset of citizens to develop expertise on an issue that they can then use to issue recommendations to the broader public. So far, mini-publics have only been paired with popular initiatives and ad-hoc referendums. Mini-publics are most commonly used during the initiation and campaign periods, although at least one mini-public has occurred during the implementation period. The rest of this section provides an overview of several notable types of mini-publics that have been paired with popular votes.

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<sup>53</sup> The severity of these problems varies across cases, detailed below. The Oregon CIR seems to have had the greatest amount of success in connecting the findings of the mini-public to the mass public. This might be because the CIR process is regularly scheduled, rather than simply convened when politically expedient, in a way that allows citizens to learn about the process over time (Knobloch et al., 2016; Warren and Gastil, 2015). Furthermore, the Oregon CIR, like the BCCA, does not rely solely on the media to transmit its findings as these are distributed in the voters’ guide that is sent to every household in the state. This is in contrast to the Icelandic case, where citizens would have to seek out drafts were posted online, or the Ontario case where media coverage and support from Elections Ontario was sparse (LeDuc et al., 2008).

### 7.2.1 Citizens' Assemblies

The British Columbia Citizens Assembly (BCCA) was a mini-public designed to deliberate about alternatives to British Columbia's single-member plurality electoral system prior to a 2005 referendum on the issue. The BCCA was made up of 160 randomly selected citizens from across the province who were descriptively representative of the population of the province in terms of age, region, and gender.<sup>54</sup> The BCCA proceeded in three phases: a learning phase in which they heard from interested parties and read written materials, a public consultation phase in which members attended community meetings to engage with other citizens, and a deliberation phase where the members considered possible alternatives among themselves (Warren and Pearse, 2008b: 11).

The BCCA was empowered to choose which alternative system went on the ballot against the status quo and selected the single transferable vote (STV). The BCCA also decided to make a formal recommendation in favour of adopting STV. Some members of the assembly campaigned for the Yes side and this intervention was persuasive among those who knew about the BCCA, which was about 60% of the population by the end of the campaign (Cutler et al., 2008: 174, 186). Despite receiving 57% support in the referendum, STV failed to meet the 60% supermajority threshold that had been put in place.

A similar assembly was convened in 2006 in the province of Ontario to look at electoral reform. The design closely resembled the BCCA, as it was randomly selected, included the same three phases, and was empowered to select an alternative system to be voted on in a 2007 referendum. Leduc (2009: 40) suggests that in Ontario, compared to BC, the Citizen's Assembly “was an unknown quantity for most voters, and its negative portrayal in the media made it more of a liability than an asset in generating public support for electoral reform.” Roughly 80% of Ontarians were unfamiliar with the Assembly and as a result their recommendation for a mixed-member proportional system only received 37% of the vote (LeDuc, 2009: 38–39; LeDuc et al., 2008: 35). A key difference between the two cases may be that Elections Ontario did little to publicize the recommendation of the Citizens' Assembly, whereas the BCCA's mini-report was sent to every household in the province.

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<sup>54</sup> James (2008) points out that visible minorities and indigenous peoples were not proportionally represented in this process.

An interesting variation on the citizen assembly model can be found in the recent Citizens' Assembly on Brexit, organized by the Constitution Unit at University College London. A mini-public was organized after the referendum and during the implementation stage in order to gain insight into "what kind of Brexit the UK government should seek, focusing on options for trade and migration" (Renwick, 2017: 6). Participants concluded that the UK should pursue "a comprehensive trade deal [...] and special arrangements for UK–EU migration" (Renwick, 2017: 8). While it is too early to establish the impact of this Citizens' Assembly, its independence from existing political institutions may have been beneficial for the quality of deliberation but might also limit its influence on actual decision-making.

### **7.2.2 Constitutional Councils and Conventions**

In 2011, Iceland created a Constitutional Council made up of 25 elected delegates to draft a new constitution that would be voted on in two referendums in 2012 and 2013 (Landemore, 2015). The Constitutional Council was preceded by a National Forum that was chosen through a process of quota sampling to ensure descriptive representation in terms of age, gender, and geographic origin (Landemore, 2015: 177). However, the process of consultation through the National Forum was ultimately more aggregative than deliberative (Landemore, 2015: 183–185). The Constitutional Council attempted to engage with the broader public by posting draft constitutional documents online, although relatively few citizens responded with comments (Landemore, 2015). Landemore (2015: 189) concludes that a different process, such as a deliberative poll, may have been necessary to facilitate macro-level deliberation. The draft was approved in the 2012 referendum, although the second referendum was cancelled by elected officials and the drafted constitution was not implemented (Landemore, 2015: 170).

In 2011, Ireland's coalition government was unable to reach an agreement on gay marriage and referred the issue to a proposed Constitutional Convention (Elkink et al., 2016). The Convention deliberated the issue and, in 2013, recommended a constitutional amendment to allow gay marriage to be put to a referendum (Murphy, 2016: 318–319). In 2015, 62% of voters supported the Convention's recommendation in support of allowing gay marriage (Murphy, 2016: 326). Unlike the Canadian cases, the proposal survived the referendum process and, unlike the Icelandic cases, the referendum result was implemented. However, 54% of citizens still knew relatively little about the Convention, with only 12% demonstrating a high level of knowledge

(Elkink et al., 2016: 2016). This suggests, once again, that even in contentious campaigns, many voters remain unaware of deliberative mini-publics.

### **7.2.3 Citizens' Initiative Reviews**

The Oregon Citizen's Initiative Review (CIR) process selects citizens to serve on panels and deliberate about citizen-initiated ballot measures (Knobloch et al., 2016). The CIR provides evaluations of each option on the ballot, which are then distributed to voters in the official voter's guide as a way of providing information from the perspective of lay-Oregonians. Those who read the findings of the citizen panel find them useful, with some voters changing their opinion quite substantially (Gastil et al., 2014: 66–68). The process was introduced in 2010 and, while initial research suggested that most likely voters were unfamiliar with the CIR and its recommendations, recent studies suggest that slightly more than half of voters now aware of its existence (Gastil et al., 2014: 66–68; Gastil, Rosenzweig, et al., 2016). Pilot projects in Colorado, Massachusetts, and Phoenix in 2016 have led to similar findings (Gastil, Knobloch, et al., 2016), suggesting that repetition and institutionalization play key roles in making the mass public aware of mini-publics.

### **7.3 Linking Mini-Publics and Mass Publics**

A democratic systems approach provides a basis for reconciling some of the pessimism and optimism about mini-publics and popular votes by acknowledging that a division of labour is necessary to meet a wide variety of democratic functions (Mansbridge et al., 2012; Warren, 2017a). Advocates contend that mini-publics could be used much more broadly to draft or review popular vote proposals, giving them a direct effect on public policy (Niemeyer, 2013: 195; Papadopoulos, 2012: 148). However, mini-publics can only serve this function if the broader public is aware of their existence and findings (Chambers, 2009; Lafont, 2015). It is worth reckoning with the fact that mini-publics appear to often have a limited reach. This is not to say that the pairing of mini-publics with referendums has not been beneficial (Setälä, 2017), but that it may be time to think more carefully about questions of institutional design (Fung, 2012; Waldron, 2016).

The working assumption that mini-publics could simply be grafted onto standard popular vote procedures seems to be undermined by the numerous identified obstacles to connecting

mini-publics and the mass, voting public (Curato and Böker, 2016; Felicetti et al., 2015; Lafont, 2015). Curato and Böker (2016: 181) even suggest that deliberative processes that culminate in popular votes can undermine the internal deliberative quality of a mini-public by limiting the ability of “participants to weigh nuanced positions.” These findings suggest a need to rethink the common strategy of grafting mini-publics onto popular votes without redesigning the underlying institution in order to better transmit arguments to the broader public sphere (Chambers, 2009: 332; Fishkin et al., 2015; Gastil and Richards, 2013; Goodin and Dryzek, 2006; Hendriks, 2016; Lang and Warren, 2012). The challenges associated with meaningful deliberation between all citizens appear virtually insurmountable, around ballot measures and otherwise. Some division of labour appears necessary, although having only some citizens deliberating seems unsatisfactory. Cristina Lafont (2017) highlights that mini-publics seem most capable of contributing to democracy when they highlight differences of opinion between mini-publics and the broad public, congruent opinion between mini-publics and mass publics that conflicts with existing policy, or where the mass public has no considered opinion on an issue.

Recently, scholars have begun to consider how institutions could be designed to work together (Curato and Böker, 2016; Hendriks, 2016), suggesting that the introduction of new institutions may require altering existing institutions to bring about democratically desirable system-level results (Böker and Elstub, 2015). As a result, it is important not to think of institutions as isolated entities and instead design them in tandem to encourage deliberative norms across the broader democratic system (Curato and Böker, 2016: 186–187; Parkinson, 2006a). Previous combinations of mini-publics and popular votes have attempted to realize the deliberative maxim to “talk first, then vote” (Goodin, 2008: 6; Parkinson, 2006a: 172; Setälä, 2011). Unfortunately, the results have been mixed. However, few critical assessments of mini-publics have been attentive to the institutional design of the voting process itself. Some theorists have suggested in passing that multi-stage popular votes might provide conditions more favourable to deliberation (Barber, 1984: 284–285; Chambers, 2001; Mendelsohn, 2000; Smith, 2009: 131–132). Building on this insight, I suggest that multi-stage voting procedures might provide one way of improving the transmission of arguments between mini-publics and the broader public. I suggest that coupling mini-publics with multi-stage popular votes – a design I refer to as an iterated popular vote – can allow each part to mitigate the weaknesses of the other. The multi-stage popular vote improves on traditional designs by increasing the number of

opportunities for deliberation and allowing citizens a greater role in setting the agenda, while mini-publics facilitate high quality deliberation that provide cues to the broader public.

The iterated popular vote is an attempt at institutional design inspired by the notion of “designed coupling,” which seeks to “find the optimal strength of linkages between different parts of a deliberative system” (Hendriks, 2016: 55). Relevant institutional variations are discussed below, but the basic insight is that there would be an initiation stage, followed by deliberation and agenda setting by a mini-public. An initial campaign would culminate in a first vote that allows the mass public of citizens to set the agenda for the second vote. This would be followed by further deliberation and agenda setting by a mini-public, concluding with another campaign and then a final vote. Thus, the iterated popular vote would structure an iterated dialogue between the deliberative mini-public and the mass, voting public by institutionalizing opportunities for the results of deep deliberation to motivate discussion among the broader public, whose votes set the agenda for future deliberation by the mini-public.

The iterated popular vote would be designed from the outset to alternate between deliberative moments at both micro and macro levels in which different actors play distinct roles (Goodin, 2005). A similar process recently took place in the Canadian municipalities of Duncan and North Cowichan. In November 2014, voters in both municipalities were asked: “Are you in favour of spending time and resources to study the costs and benefits of the amalgamation of the municipalities of North Cowichan and the City of Duncan?” Although the study could have been conducted in several ways, a Citizens’ Assembly on Municipal Amalgamation was convened and mandated to make a recommendation on amalgamation that noted any necessary conditions for the process to succeed. The Assembly reached a consensus in favour of amalgamation and this recommendation was supported by 59% of voters in North Cowichan. However, amalgamation did not move forward as 68% of voters in Duncan voted against the proposal. The major distinction between this process and an iterated popular vote is that each step of the process was gradually added, rather than being explicitly designed from the outset as a multi-stage referendum process that included a mini-public between votes.<sup>55</sup>

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<sup>55</sup> The structure of the BCCA also has some parallels to the iterated referendum proposal in that the BCCA engaged in a deliberative learning process, then consulted with the broader public, then deliberated about a recommended electoral system. The citizens at large were then given the opportunity to make the final decision. The key difference in this example is that there was a non-binding consultation process where the iterated referendum would include a first stage of voting that is potentially more inclusive than small consultation meetings.

I have already outlined key institutional variations for the design of two-stage popular votes as used in New Zealand and argued that while several possibilities are theoretically possible, it is worth focusing on the flag referendum design as it guarantees a multi-stage process. Mandate referendums and runoffs have considerably less potential for variation in institutional design. The major outstanding consideration for all types of multi-stage referendum is whether the processes is citizen-initiated or government-initiated. It appears that no existing process for citizen-initiated votes currently enables citizens to initiate a multi-stage referendum or to even ask for more than one alternative to the status quo to appear on the ballot. While I discuss the implications of citizen-initiated multi-stage popular votes below, it is not clear if this possibility will become a reality. Mandate referendums appear especially unlikely to be citizen-initiated as they rely on a government's willingness to negotiate an agreement that would be voted on again in a ratification process.

To address the key design choices for mini-publics, I adopt Johnson and Gastil's (2015) dimensions of variation. Mini-publics can be *embedded* or *autonomous*, with the former including traditionally powerful actors so that deliberation translates to implementation and the latter focusing on the preservation of non-elite deliberation. Mini-publics have *final* authority when their decisions are implemented directly and *provisional* authority when these decisions are "subject to a further ratification or approval" (Johnson and Gastil, 2015: 13). Mini-publics are also situated over time in space so that they can be *local* or *trans-local*, and *recurring* or a *single event*.

In the context of pairing two-stage popular votes with mini-publics, mini-publics will be provisional, since the final decision is ultimately taken by popular vote. Existing pairings – such as the BCCA, the Ontario Citizens' Assembly, and the Oregon CIR – have all been autonomous because they have been designed to provide an alternative to elite discourse and exclude actors that are powerful enough to make their views known through existing channels. However, in cases where designers wish to emphasize implementation and decision-making over inclusion, then embedded mini-publics remain a viable possibility. Whether mini-publics are local or trans-local will depend on whether the popular vote is local or trans-local. For instance, a mini-public that addresses a municipal referendum would be local, while provincial or national referendums will normally produce mini-publics at similar scales. It remains possible that multiple local mini-publics would be convened for trans-local referendums, but such a process is likely to be cost-



prohibitive in many circumstances. Lastly, whether mini-publics are recurring or single-events is also dependent on whether the ballot measure is recurring or not. That is, the Oregon CIR is recurring because the initiative process regularly takes place in November of even-numbered years, whereas the BCCA was a single-event because of the ad-hoc referendum process.

One key design decision that does need to be made for iterated popular votes is to determine when mini-publics will play a role. Mini-publics can precede popular votes, such as in Ireland's use of constitutional conventions, or they can be used during the campaign periods prior to each vote, or they can follow the results of a popular vote, as in the Citizens' Assembly on Brexit. Another key decision is whether mini-publics are charged with making a strong recommendation or assessing the pros and cons of each option. To date, most pairings of mini-publics and popular votes have asked mini-publics to provide recommendations. The Irish Constitutional Convention and the British Columbia and Ontario citizens' assemblies all issued recommendations. The Oregon CIR process is a hybrid in that it presents key findings as well as statements both for and against the measure, along with a count of how many participants took each position.

Closely related to this matter is whether one mini-public will be used for all of these stages or if a new mini-public will be convened at some stage of the process. Reconvening the previous mini-public may reduce costs and be composed of citizen-experts who had already learned the subject matter in their initial deliberations (Blais et al., 2008; Cutler et al., 2008). However, mini-publics may be biased or perceived as biased if they are believed to have a vested interest in their earlier findings or decisions (Bagg, 2015; Morrell, 2013). This concern may be mitigated if mini-publics are seen as deliberative and their members are regarded as legitimate citizen representatives. Mini-publics might then be understood not to have an illegitimate bias, but rather a commitment to a conclusion formed based on acceptable reasons.

#### **7.4 Evaluating the Iterated Popular Vote**

Mini-publics tend to produce high quality deliberation, although they may lack influence if they are not integrated with a decision-making process. The iterated popular vote exploits the fact that "a referendum is a series of stages – or deliberation opportunities" (Tierney, 2012: 187–188; see also Gastil and Richards, 2013: 266–269) in order to ensure that deliberation is responsive. The addition of mini-publics ensures the existence of a site for robust deliberation

that provides a trusted judgment that voters can use to inform their vote. After the initiation stage, there is an opportunity for intervention by mini-publics during the campaign. Referendums designed as runoffs or two-stage referendums may have first stages that appear daunting when there are more than two alternatives to the status quo, particularly if these alternatives are unfamiliar to voters. Here, mini-publics could provide information about the available options to assist voters in their own process of deliberation. Alternatively, mini-publics could make a recommendation, whether in the form of an endorsement of one of one or more of the options, criticism of one or more of the options, or a suggested ranking for voters to use if the iterated referendum uses an instant runoff voting rule, as in the first stage of the New Zealand flag referendums.

In runoff iterated referendums, the mini-public could be reconvened after each round of voting to take stock of the result and repeat the deliberative process to provide more information or another recommendation. Such repetition might not be necessary if the mini-public only provides information or recommends an option that successfully advances to the second ballot. The two-stage iterated referendum would differ in that the second stage of voting introduces a new option – the status quo – that was omitted from the first stage of voting. After the results of the initial stage of voting are made public, a mini-public would be convened or reconvened for a second round of deliberation to study and evaluate the status quo and its proposed replacement.<sup>56</sup> The mini-public would then publicize its evaluations of the status quo and the proposed alternatives, as well as the supporting arguments. While the two-stage iterated referendum procedure makes the process slightly more complicated, it has the potential to eliminate the status quo bias commonly associated with referendums by encouraging citizens to seriously consider the alternatives during the first stage of voting (Chambers, 2001: 251; Tierney, 2012: 12–13). The two-stage design proposed for the iterated popular vote concludes with a simple, binary choice between one alternative and the status quo.

The iterated mandate referendum seems to offer the lowest capacity for deliberation since the agreement to be ratified in the final vote is likely to be shaped largely by the relative negotiating power of the involved parties. However, situations in which a mandate referendum is

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<sup>56</sup> While mini-publics might be charged with making a recommendation, voters retain the power to choose differently so the alternative that is available to voters in the final stage may or may not be the alternative that was recommended by the mini-public earlier.

likely to be used are those where deliberation is likely to be relatively poor already, such as popular votes on peace agreements or secession. Several empirical studies suggest that deliberative mini-publics remain viable even in deeply divided societies (Caluwaerts and Deschouwer, 2014; Steiner et al., 2017) so iterated mandate referendums could feed deliberative insights into negotiating processes. However, mandate referendums suffer from an additional problem, which is that citizens are asked to “give their assent to a regime or to a complex package of policies. In such cases the “no” alternative need not have any specified meaning” (Lagerspetz, 2016: 116).

Overall, the alternation between popular votes and small-group deliberation establishes a dynamic process in which the mass public receives new information, such as recommendations, from the mini-public and the mini-public receives information, such as voting results, from the mass public at alternating intervals. These multiple pieces of information reflect a commitment to two-way responsive deliberation that may keep the popular vote in public consciousness over time in a way that stimulates rethinking by citizens and mini-public participants as they are faced with new information and new decisions (Goodin, 2008: 3). Keeping the mini-public tightly integrated with the ballot measure may increase voters’ familiarity with the mini-public, improving the possibility that elite-dominated discourse will be interrupted by the findings of citizen representatives (Gastil et al., 2014).

Some democratic theorists have argued that using mini-publics to provide recommendations reduces them to cue-givers that are incapable of facilitating emancipatory discussion (Böker, 2017: 28–29) or transmitting the complex content of deliberation to a broader audience (Parkinson, 2006b). Similarly, Lafont (2015: 50) questions why the judgments of mini-publics should “have any more recommending force than those of other experts that may be substantively superior on their merits?” Yet, Fishkin and Luskin (2006: 187) contend that the provision of cues is a specific goal of at least one mini-public design, the deliberative poll, and that the benefit of these cues is greatest where there is a clear choice to be made, as in a popular vote. Thompson (2008b: 46–49) similarly argues that providing a cue is the “normatively desirable” role of deliberative mini-publics and that these cues may simply need to be better connected to the broader public. Furthermore, citizens do not appear to accept these cues uncritically, as Gastil et al. (2016: 187) report that most voters consider the Oregon CIR to be a source of information that aids their decision-making process rather than a guide as to how they

should vote. This seems normatively desirable since competing cues and information serve as one way of counteracting any potentially undue influence from mini-publics (Gilens and Murakawa, 2002; Lupia, 1994; Lupia and McCubbins, 1998).

Mini-publics might generate a process of learning and internal consideration that may be even more important than public discussion for people to update their preferences in light of new information (Goodin, 2008: 3), a finding that is consistent with evidence that campaigns matter most for popular votes on unfamiliar issues (LeDuc, 2015: 158–160). Cues themselves do not need to convey the full content of deliberation and even those who caution against overly optimistic evaluations of mini-publics, like Fuji Johnson (2015: 123), suggest that such deliberative cues can “stimulate broader public thought, discussion, and action.” The cues that originate from mini-publics are deliberative, in contrast to most other sources of cues, such as partisan elites, which are bound up with strategic considerations (Gastil, 2014). Citizens may take these deliberative cues seriously when they perceive mini-publics to have both relevant knowledge and

In some ways, iterated popular votes reflect Moore and O'Doherty's (2014: 317) suggestion to use votes as a way of signalling and recording positions as part of an “iterative deliberative decision procedure.”<sup>57</sup> The possibility of such a process is likely to vary across the underlying referendum designs and broader political contexts. For instance, the context of distrust and power imbalances that is likely to appear in a mandate referendum may suggest relatively little room for change in favour of the agreement. However, deliberative mini-publics, if well-designed, demonstrate a commitment to building trust and reducing power that might encourage more voters to authorize the negotiations in the first place, keep an open mind, and reserve the ability to vote against it if the mini-public does not sufficiently influence the negotiated agreement. The structure of iterated two-stage and runoff popular votes can also realize a duty of care by motivating deliberation among those whose desired alternative did not win in the first stage who now have the option to abstain from the second round of voting or choose between the winning alternative and the status quo, knowing that their preferred

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<sup>57</sup> A similar iterative procedure is the basis for the legitimacy of “decision-controlling” referendums as described in (Setälä, 2006).

alternative has been put to a vote and lost. Mini-publics might play a key role in helping citizens assess the remaining options and making decisions as the context changes.

## **7.5 Conclusion**

Democratic theorists have been right to consider how multi-stage popular votes might better realize democratic aims. However, this research agenda has largely been overshadowed in recent years by experiments in supplementing popular votes with deliberative mini-publics. Empirical evidence suggests that simply adding mini-publics to binary, one-time popular votes is not always capable of meeting the high expectations of deliberative democrats.

The systemic turn in democratic theory provides an opportunity to bring these two lines of inquiry together. Empirical evidence from both the use of multi-stage popular votes and the pairing of mini-publics and popular votes demonstrates both democratic benefits and shortcomings. I suggest that combining these innovative procedures into an iterated popular vote could minimize the functional shortcomings of both mini-publics and multi-stage popular votes. While there is no certainty that these benefits would be realized, there are compelling theoretical and empirical reasons to think that the iterated popular vote could have benefits for the quality of collective will-formation.

## **Chapter 8: Collective Decision-Making and Ballot Measures**

The function of collective decision-making is realized when “collectives have the capacity to make and impose binding decisions upon themselves” (Warren, 2017a: 44). One view of ballot measures is that they are uniquely positioned to facilitate a “mass, public act of consent” at the end of a longer process (Parkinson, 2009: 15). Such evaluations focus on the capacity of ballot measures to lead to a decision, it’s less clear how well they translate those decisions into action. I address both how ballot measures can facilitate decision-making and how ballot measures might interact with other parts of the democratic system in order to ensure that these decisions are turned into action. This chapter focuses on two principles of legislation most relevant to ensuring that the democratic function of collective decision-making is realized.

The first principle is the existence of voting rules consistent with political equality, namely that each citizen should have his or her vote counted equally in determining the outcome. While majority decision in the final stage of voting is the most common decision rule used in both legislatures and referendums, it does not necessarily need to be so. Ballot measures have occasionally used different voting rules and legislatures use a number of minority and supermajority voting rules that might be modified for use in the context of ballot measures. My aim is to illustrate that different voting rules may be compatible with the ideals of fairness and equality that are necessary for ballot measures to realize the ideal of citizen legislation.

The second principle is explicit lawmaking, namely that ballot measures provide a process clearly dedicated to transparently changing the law (Waldron, 2016: 154). In other words, ballot measures should make it clear to citizens how their vote on a specific text will translate into action. Too many existing evaluations focus solely on the question of whether the ballot measure is legally binding or not, although this oversimplifies the matter. Like all forms of legislation, the decisions taken by ballot measure are subject to some degree of interpretation, if not by legislators than by bureaucracies and courts. However, questions of interpretation can provide opportunities for other actors to subvert the decisions taken, particularly through informal means (Rocher and Lecours, 2017). The binding quality of decisions in a democratic system rests on a kind of “imperfect legitimacy” in which the democratic quality of the linkage between decision and action is viewed as a continuum, rather than a dichotomy (Mansbridge, 2012: 5). I argue that the problems of decisiveness and irreversibility are complicated by the nature of the issue, the institutional design

of the ballot measure, and the often poorly defined relationship between ballot measures and other democratic institutions.

## **8.1 Equality and Fairness in Voting Rules**

Collective decision-making needs clear rules that set out the procedures by which decisions are taken. Waldron suggests that democratic processes of legislation require a rule that is both fair and that demonstrates respect for other citizens compatible with democratic equality. Following May's Theorem, he goes on to contend that majority rule is desirable because it meets the following conditions: "it is neutral between outcomes, it gives equal weight to each participant's input, and it gives each participant's input as much weight as possible in the direction that their input indicates as is compatible with equality" (Waldron, 2016: 164). In general, the use of majority rule in ballot measures provides "a clear decision rule which produces decisive outcomes" on specific policies (Mendelsohn and Parkin, 2001a: 21). However, the clear and decisive procedures are of little value if they don't meet the normative criteria that appear to be necessary for legislation in democratic systems. Drawing on May's theorem and the work of Hobbes and Locke, Waldron suggests that fairness and respect for others as equals are two key reasons for adopting majority rule.

In practice, ballot measures almost always use majority rule, with deviations often being limited to supermajority voting rules. Even many ballot measures that offer more than two choices to voters still culminate in a process of pairwise voting with the result determined by majority rule (Morel, 2017: 163; Taillon, 2017: 177). Referendums on the dissolution of the Netherlands Antilles offered three or four options to voters, depending on the jurisdiction, with the result decided by a runoff. In all five referendums<sup>58</sup> one of the options received majority support in the first round so no further referendum was held. New Zealand's two-stage referendums in both 1992-93 and 2011 allowed one alternative to the status quo to advance to the second round with a plurality of votes, although this advancement remained dependent on majority support for the general principle of changing electoral systems on a separate question. Furthermore, the alternative to the status quo requires majority support against the status quo in the second ballot to win.

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<sup>58</sup> Bonaire (2004), Curacao (2005), Saba (2004), Sint Eustatius (2005), and Sint Maarten (2000)

While majority rule has its strengths, both Waldron's defence and May's theorem are notably limited to addressing decisions where there are only two options. This limitation may be the reason why "referendum democracy presupposes two things. First, issues that are voted on can be treated separately. Second, the number of meaningful policy alternatives in every referendum is two" (Lagerspetz, 2016: 114). However, under such conditions, positional voting rules – like plurality rule, approval voting, or the Borda count – return the same results, making it difficult to judge the desirability of majority rule (Risse, 2004: 54). As a result, Risse (2004: 57) contends that majority rule is not a necessary condition for preserving political equality and there only appears to be a strong argument to require majority rule when certain unlikely conditions are met.<sup>59</sup>

The outcomes of voting rules might also motivate skepticism about the use of majority rule. Outcomes can undermine the normative legitimacy of majority rule into question if, for example, the losing minority is composed of the same persons every time (Mansbridge, 1983: 265–267). Familiar problems from social choice theory, such as Condorcet's paradox and Arrow's Impossibility Theorem indicate some of the problems, such as cycling majorities, that might occur when ballot measures present voters with more than two options. However, even binary choice referendums may pose notable problems. This is because ballot measures not only assume the existence of two choices, but they also assume that these issues are disconnected from other considerations.<sup>60</sup> Treating each ballot measure as its own discrete issue ignores the potential conflicts that may arise between, say, proposals to increase spending and cut taxes. Without the logrolling, compromise, and negotiation familiar in other legislative institutions, it can be difficult to determine how to resolve these issues (Achen and Bartels, 2016: 81–83).

Despite Waldron's (2016: 164) focus on majority rule, he admits that majority rule is not necessary, but that "some such rule satisfying conditions" like fairness and respect for the equality of citizens, "must be used." While ballot measures rarely include rules that reflect an interest in 'fair division' by generating proportionate outcomes or the intensity of preferences, some thought has been given to the various problems that arise. One way of addressing the problem of non-

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<sup>59</sup> Risse (2004: 57) notes that majority rule is only necessary when "it is reasonable (a) to use merely ordinal information about rankings, (b) to restrict voting to pairs of options, and (c) to use aggregation methods at the exclusion of other procedures (for example, fair-division methods)." He suggests that conditions (b) and (c) are rarely met in practice.

<sup>60</sup> For an overview, see (Nurmi, 1998).



separable preferences is to have voters indicate their preference between sets of related issues (Brams et al., 1998). That is, voters who can vote ‘Yes’ (Y) or ‘No’ (N) on two referendum questions could vote YY, NN, YN, or NY, assuming no abstentions.<sup>61</sup> These votes could be tallied with a positional voting rule, such as plurality, Borda count, or approval voting; however, a practical problem quickly arises due to the rapid proliferation of possible options. Avoiding the separability problem requires that “voters with interdependent preferences need information about the outcomes of certain questions in order to voice their opinions on others” (Hodge and Schwallier, 2006; see also Setälä, 1999: 18–20). As a result, Lacy and Niou suggest that voting on questions in sequence so that voters learn the outcomes of previous questions provides another way of resolving this problem.

While relatively rare, some alternatives to majority rule have been put into practice. Perhaps most notable is the use of supermajority voting rules that give minorities a veto on changes to the status quo, but do not grant minorities the power to change the status quo (Vermeule, 2007: 88). As far as ballot measures are concerned, these thresholds have been used on issues where there was concern about ongoing reversals of either (quasi-) constitutional rules or issues that are inherently irreversible and where revising a decision would be quite costly. Supermajority requirements may be imposed by raising the percentage of votes required to carry a decision above 50% plus one, adding a geographic approval requirement, or implementing both strategies. For instance, constitutional initiatives in Florida require 60% or more of votes in order to pass (Morel, 2017: 153). Constitutional amendments in Australia require the support of both a majority of voters overall and in a majority of states. While other features may recommend geographic thresholds, it is worth noting that they do not preserve the equal voting power of citizens, due to variation in the size of districts. Both of these supermajority requirements were combined in British Columbia’s 2005 and 2009 referendums on electoral reform. These supermajority requirements are non-neutral as they normally privilege the status quo (Schwartzberg, 2014).

A variety of more complex voting rules have also been used. Puerto Rico’s 2012 referendum on its status in the United States asked voters to choose between three possible status

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<sup>61</sup> This also suggests that an often-cited problem of referendums – conflicting or incoherent results – is not actually a problem that is inherent to referendums (or ‘direct’ participation), nor one that is inherently avoided in representative institutions. Rather, it is a problem that has institutional solutions in legislatures – the possibility of logrolling and compromise – that are rarely offered to referendum voters who face considerably greater coordination problems.

arrangements, using a plurality voting rule. Approval voting has been used in New Zealand's referendums on alcohol prohibition, which allows citizens to vote in favour of either one or two of three possible liquor licensing regimes. A different approach is the 'structured value referendum' (SVR), which gives citizens the choice between three or more options and includes information about the trade-offs between options on the ballot. The SVR has been used at least twice in Canadian municipalities and has used both plurality and approval voting rules (McDaniels, 1996; McDaniels and Thomas, 1999). Furthermore, there is some evidence of growing demand for alternative voting rules. For instance, Prince Edward Island's consultation process in 2015 featured considerable debate about different voting rules. The government of British Columbia engaged in a consultation process prior to holding a referendum in 2018, with numerous questions dedicated to gathering input on the actual referendum process. Of course, many of these calls are self-interested, although in some cases self-interest can motivate changes to rules in ways that are democratically desirable (McKay and Warren, 2018).

In many cases majority rule will be the preferable option, although my aim has been to illustrate that other voting rules may be compatible with the ideals of fairness and equality that are necessary for ballot measures to realize the ideal of citizen legislation. Moreover, consistent with the systemic approach I have adopted, Charles Beitz (1989: 58–67) contends that procedural fairness and equality in voting rules cannot be treated in isolation as it is only one aspect of political equality. Restricting voting to pairs of options is often shaped by the processes of agenda-setting and manipulation described in Chapter 6. Offering binary choices reduces complexity (Lupia and Johnston, 2001; Risse, 2004: 60), which may be worthwhile given the challenges associated with informing voters to adjudicate between more than two options.

On the other hand, Dewey advanced similar concerns about majority rule that might be extended to voting rules in general with slight modifications. As he puts it, the “means by which a majority comes to be a majority is the important thing [...] The essential need, in other words, is the improvement of the methods and conditions of debate, discussion, and persuasion” (Dewey, 1981: 365). Aggregating equal votes under many of the voting rules used in ballot measures may blind us to other questions of fairness, such as proportionality or the intensity of preferences. Such concepts underwrite much of the activity that is familiar to legislators, such as brokering compromises by bargaining and logrolling. A similar sentiment is found in Clark's (1998) populist critique of referendums, which contends that although ballot measures can identify the majority's

preference on a single binary issue, cannot account for the intensity of preferences. Apart from various different procedures for handling competing counterproposals,<sup>62</sup> relatively little attention has been given to designing ballot measures to address these kinds of trade-offs.

Furthermore, it is worth considering the different contexts in which voting occurs. Legislatures often hold votes with the knowledge of future opportunities to vote or amend. This may reduce some of the problems commonly associated with referendums, although it also creates new opportunities for strategic action. The moment of voting is only one small part of a much longer process that must be attentive to what happens before the vote – such as agenda-setting and will-formation – but also what happens after it, namely interpretation of the outcome and the possibility of amending, ignoring, implementing, or overturning the result.

## **8.2 The Interpretation of Results and Explicit Lawmaking**

The principle of explicit lawmaking suggests that democratically legitimate legislation requires that a proposal to change a law “be explicitly discussed for what it is, rather than [...] presented under the guise of a matter of interpretation” (Waldron, 2016: 155). That is, the need to resolve crucial political questions – if only temporarily – should be done openly through the production of legislation as an explicit text in ways that minimize searches for legislative intent or the will of the legislature (Goodin and Saward, 2005; Waldron, 1999a). This is because the latter option shifts responsibility for making final decisions to courts or regulatory bodies, rather than democratically elected legislatures. Yet, ballot measures are frequently subject to interpretation for various reasons, often because citizens face questions that are unclear or vague, leaving the exact meaning of their vote underspecified.

How a decision is interpreted is thus shaped heavily by the democratic functions outlined earlier in this dissertation: empowered inclusion, collective agenda-setting, and collective will-formation (Morel, 2017: 162). Competing representative claims early on in the process are important, particularly when the agenda-setting process often seeks to present a binary choice to

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<sup>62</sup> Another problem arises when counterproposals are used. In these scenarios, two choices on virtually the same issue can both receive a majority of support. Various rules have been devised to address this problem. For instance, in Switzerland, voters are asked “should both projects be accepted, which one would you prefer to become law?”. If both an initiative and its counterproposal receive approval, then this question determines the winner. In the United States, many states allow voters to support multiple competing initiatives and if multiple initiatives receive a majority, then the one with the largest majority wins (Lagerspetz, 2016: 120–122)

voters. Where constituencies lack representatives or are unable to mobilize, then this choice is likely to be omitted from the set of feasible alternatives. Processes of collective will-formation allow for nascent interpretations of the vote to be articulated and discursively challenged, although these interpretations remain shaped by the balance of power. The solution to these interpretive dilemmas will remain largely political as opposition parties or other actors can demand clarity during campaigns. However, these attempts may be stymied by governments who invoke the notion that an issue will ultimately be decided by ‘the People’ despite the associated interpretive difficulties.

Because votes are information poor, relevant actors can also make claims about what the results actually mean after the votes are tallied. This process of interpretation is less likely to be pursued where the results support the government’s preferred outcome, although it may be used to justify government pursuit of outcomes contrary to the results of the vote. Interpretation of the results may lead to results being entirely ignored, altered in meaningful ways, or pushed to a future decision. Governments can take advantage of ambiguities in the wording of a ballot measure in order to modify or ignore the outcome. These interpretations are strengthened when governments can point to specific discourses prior to the vote that give credence to their interpretations. For instance, Puerto Rico’s 2012 status referendum asked voters two questions: first, whether Puerto Rico should maintain its current territorial status and, second, which of three possible alternatives to the status quo would be preferable. Although 54% of votes were in favour of change and 61% of votes preferred Statehood over the other two options in the second question, coordinated abstention undermined the binding power of the result. The Popular Democratic Party convinced 27% of voters who answered the first question to leave the second question blank to protest the omission of ‘Enhanced Commonwealth’ as an alternative to the status quo.

Most existing accounts of this problem of interpretation focus on the benefits of making ballot measures legally binding. It is commonly recognized that legal decisiveness alone is insufficient to limit interpretation in a manner consistent with the process of legislation. The principle of explicit lawmaking suggests that ballot measures realize the norms of legislative processes when room for interpretation is minimized. Both political and legal factors can contribute to binding governments in this way. In short, ballot measures realize the principle of explicit lawmaking when they are legally binding, are taken on pieces of legislation or other

clearly formulated policies, and where other legislative institutions have made prior commitments about how they will respond to the results of a vote.

### 8.3 Legal Decisiveness and Interpretation

Many existing accounts focus on whether ballot measures are legally binding or merely advisory. Precisely what it means for a ballot measure to be legally binding has rarely been clearly outlined and the picture is muddled somewhat by widespread acknowledgements that ballot measures can be *de facto* binding (Setälä, 2006) or *de facto* advisory (Gerber et al., 2001). By requiring “explicit rather than oblique lawmaking” (Waldron, 2016: 154), the principle of explicit lawmaking seems to require that the relationship between decision and implementation be publicly known prior to the moment of voting. That is, it is not enough simply to know whether a ballot measure is legally binding or advisory, but whether that legal status will be upheld. Although this raises the question about whether there are circumstances in which truly advisory ballot measures, in which few efforts are made to commit to implementing the results of a ballot measure, can play a valuable role in the legislative process. In other words, if citizens know that the results will be discarded or ignored, then it seems unlikely that citizens will buy into the process. The end result appears to be a return to the notion that citizens ought to be assured prior to voting that the decision taken will be implemented, although that knowledge cannot be gleaned entirely from the legal status of the ballot measures.

The problem posed by properly advisory ballot measures is that their advisory status leaves their relationship to lawmaking ambiguous. The underlying idea is that advisory ballot measures serve as a democratically legitimate method of communicating citizen preferences to governments which are distinct from public opinion polls since they give citizens the right to participate. When ballot measures are politically binding, but formally advisory, they can be understood as giving the government something akin to a policy mandate (Butler and Ranney, 1978: 17). However, policy mandates primarily give governments insulation from legislative opposition (Goodin and Saward, 2005). On the other hand, the primary concern here is whether the mandate directs governments to carry out a specific policy. Governments frequently do adhere to expressed preferences because they understand that ignoring such information may lead to future punishment or due to efforts by relevant actors to frame the decision as binding, even if there is no legal requirement to implement the outcome (Donovan, 2007: 232; Jäske, 2017: 52; Setälä, 2006: 707).

Even in Westminster systems with notions of parliamentary supremacy, governments can find various ways of binding themselves to the results of formally advisory referendums.<sup>63</sup> A common commitment device is for legislators simply “precommit themselves to respect the result” (Setälä, 2006: 713). These actors also have influence over the degree of decisiveness through framing, as in David Cameron’s admonition that a ‘Leave’ vote in Brexit would be “irreversible”.<sup>64</sup>

Truly advisory ballot measures might still be justified primarily as a way of putting issues on the agenda that have otherwise been neglected. These often include fringe ideas in initiatives and relatively obscure issues in government-initiated referendums about which citizens lack strong preferences. The learning that occurs within campaigns may be necessary for a broader segment of the population to develop their preferences. The value of advisory measures then is not that they are direct or binding, but that they incentivize public debate or can be used to sound the alarm over particular policies (Morel, 2017: 156; Resnick, 1997). Leduc (LeDuc, 2003a) distinguishes between three types of ballot measure campaigns: opinion formation, opinion reversal, and uphill struggle. Uphill struggle campaigns occur when referendums are called on issues where public opinion is largely stable and closely associated with strong cues from political parties or other sources. Advisory ballot measures are probably inappropriate to initiate on issues that have been debated over a long period in the partisan arena and are probably best resolved through other mechanisms. The other two types of referendums have considerable space for the public to learn and so they may induce learning, not only among citizens who are being introduced to an issue, but also among elected representatives who perhaps are uncertain about public opinion. In these instances, the campaign may actually mobilize support for, or generate, a viable third option that was not placed on the ballot (Taillon, 2017: 177). These cases highlight the possible value of advisory votes that do not impose any firm restrictions on governments, but also emphasize the value of representation and debate during the campaign period. In other words, the claims made during the campaign – particularly if measures are in place to ensure an inclusive public sphere – provide valuable context for the interpretation of the result.

Of course, this defence of advisory votes faces two major obstacles. First is that the ability of a campaign to promote the development of enlightened preferences is heavily shaped

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<sup>63</sup> For more on referendums in Westminster systems, see (Kobach, 1993: 58).

<sup>64</sup> An alternative, more formal option can be found in New Zealand’s use of statutory triggers, discussed in the section 7.2.2.

by the ability of ballot measures to realize democratic agenda-setting and will-formation as discussed in Chapters 6 to 8. Too often ballot measures become mobilization contests, in which small minorities can engage in rent-seeking or other self-interested behaviour because the majority does not realize the collective action problem at hand, nor do they have the capacity to resolve it. Second, the advisory nature of the ballot measure may lead citizens not to take the issue seriously (Setälä, 2006: 714). Thus, legislators need to be explicit about how the result of the referendum will play into the ultimate decision and they also need to design a process that facilitates inclusion, collective agenda-setting, and collective will-formation. This problem is well-developed in the literature on participatory governance, in which citizens do not always have decision-making power. When governments are unclear about how the recommendations of mini-publics and other consultation processes will be incorporated into decision-making, participatory window-dressing remains a possible outcome.

All else being equal, it is true that legally binding ballot measures leave less space for interpretation than advisory ones, if only because they allow critics to mobilize political activity around legal violations. Advisory ballot measures offer legislators the ability to ignore results that clash with their preferences with no such legal cost. They also allow citizens and non-electoral representatives the ability to apply pressure, knowing that legislators have the capacity to overturn the decision taken in a ballot measure. However, whether a ballot measure is advisory or binding in practice is more complicated than reviewing the relevant legal or constitutional framework. Rather than think of political decisiveness as a substitute for legal decisiveness, we can think of them as two potentially complementary ways of compelling a government to follow through. However, when popular votes are not held on pieces of drafted legislation, they leave considerable room for interpretation such that citizens could reasonably disagree about whether or not the decision taken was actually implemented.

#### **8.4 Well-Defined Proposals**

Critics of ballot measures frequently call into question the competence of voters, suggesting that they often do not know what they are voting for or are voting on the basis of considerations that appear irrelevant to the ballot question. While elected representatives cannot read the full text of every bill that they vote on, it is generally regarded as normatively desirable that drafts of legislation are made available so that legislators could read it and so that the wider

public has the capacity to engage with draft legislation, raising concerns when warranted. In practice, this responsibility is often fulfilled by constituents, reporters, and staffers whose attention to drafts often holds elected legislators accountable by drawing attention to the details of the proposed legislation. I contend that the principle of explicit lawmaking similarly requires that citizens have the opportunity to vote on a well-defined and clear proposal.

While much attention has been given to the wording of the questions that go on the ballot (Seyd, 1998: 197–198), more attention needs to be given to the underlying substance of the question. As Rocher and Lecours argue, “one could easily agree, on the surface, that a good question should be (1) simple, (2) short, (3) intelligible, and (4) neutral. However, a question that meets these four criteria may not guarantee a lack of ambiguity” (2017: 228). A vote on the independence of a province might appear straightforward, although the exact meaning of independence might remain unclear unless other steps are taken to clarify its meaning (Rocher and Lecours, 2017). This problem clearly plagued attempts to implement the result of the Brexit vote as building a coalition in Parliament around any negotiated agreement with the EU posed a considerable challenge. Vague proposals leave campaigns to be dominated by the exchange of “claim and counter claim by the opposing campaign groups” with no clear standard against which citizens or other actors could judge these claims (Seyd, 1998: 192–193). This problem can persist beyond the campaign and into the implementation phase as actors who are dissatisfied with the results contend that the proposal being implemented is not what was intended by the ballot question. Of course, the use of vague proposals is often used in order to maintain a wider range of interpretations after the votes are counted.

The uncertainty that accompanies vague proposals is particularly notable in light of several well-documented issues that affect referendums. There is a well-documented status quo bias in direct democracy, particularly where issues are unfamiliar or complex (LeDuc, 2003b: 158–160, 2015: 144; Levy, 2013: 563; Mendelsohn and Parkin, 2001a: 11; cf. Clarke et al., 2004). Preservation of the status quo in ballot measures has been interpreted as a sign of stability and thus reasoned consideration to avoid rash action, particularly where referendums are understood as a constitutional safeguard (Galligan, 2001; Qvortrup, 2000). However, too much stability in preferences and decision-making can be a signal that power or arbitrary considerations are producing a ‘false sense of ‘meta-consensus’ if not substantive agreement’ (Neblo, 2015: 87). This may be connected to a well-documented psychological bias toward the



status quo. For instance, systems justification theory suggests that there are non-conscious motivations – potentially loss aversion or a need for ontological security – that generate a process “by which existing social arrangements are legitimized, even at the expense of personal and group interest” (Jost and Banaji, 1994: 2). For instance, Loewen et al. (2012) find that arguments for the status quo in an electoral reform referendum are systematically advantaged over arguments for change. Political actors take advantage of this fact and often design ballot measures to discourage enlightened understanding and manipulate campaigns or procedures to their advantage. Pro-status quo campaigns that deploy the “Don't Know? Vote No!” message to prime uncertainty about changes from the status quo (Bowler and Donovan, 2000: 3) and question wording can exacerbate this problem, particularly among low-information voters (Barber et al., 2017; Reilly, 2010). Cronin (1989) similarly suggests that “less well educated, younger, and some minority voters often remain unmotivated to study the issues” that arise in ballot measures due to the high cost of obtaining information. Moravcsik (2008: 14) notes that “nearly a third of Irish 'NO' voters told pollsters that they opposed the treaty because they were ignorant of its content.”

One apparently straightforward way of addressing this issue would be to require all referendums to be votes on pieces of draft legislation. Use of the initiative in some jurisdictions, such as many American states, requires that initiators provide draft legislation for citizens to vote on, whereas others allow more vague questions of principle to be put on the ballot. Even when the vote is not directly on legislation, efforts might be made to minimize the space for interpretation available to actors after the vote. A clear example is the 2018 Irish referendum on amending the constitution to allow abortion. Despite the fact that the referendum was on the repeal of a constitutional amendment, the government introduced a draft bill to give voters a clear idea of the resulting policy impacts of the referendum (O'Toole, 2018)

Requiring draft legislation, whenever possible, has clear benefits although it is likely an imperfect solution that poses different problems for different kinds of ballot measures. When elected representatives draft legislation they may leave considerable room for interpretation if they know that they will have the power to shape that interpretation after the votes are counted, although this still constrains them more than vague questions of principle. Petitioners who draft citizens initiatives are unlikely to have such influence over later interpretation and might seek to minimize ambiguity. However, the draft legislation in ballot initiatives may be poorly written due to a lack

of experience or resources, there is little opportunity for consultation or compromise, the text may be intentionally misleading, and individual initiatives are not coordinated so multiple pieces of legislation that contradict each other may be passed (Collins and Oesterle, 1994: 76).

Minimizing space for interpretation would be facilitated by dividing responsibility for the process among a greater number of actors, rather than allowing the same people to frame the proposal and interpret it after the votes are counted. For instance, independent bodies may play a vital role in ensuring clarity around the proposals being voted on in order to minimize future interpretation. For citizen-initiated ballot measures, this might require assisting petitioners with drafting or reviewing the proposed legislation so that it meets the standards of professionally drafted legislation (Morel, 2017: 165). Additionally, legislatures can more powerfully bind themselves by passing legislation that includes a statutory trigger to implement the results of a popular vote. That is, the legislation to be voted on in a referendum is passed by parliament, but only comes into force if the Chief Electoral Officer declares that the proposal is carried (Harris et al., 2017: 662–663). Of course, governments remain capable of repealing or amending this legislature later, but it prevents them from ignoring the results outright. A similar requirement has been suggested by the UK’s Independent Commission on Referendums (2018: 86), which recommends that “wherever possible, referendums should be held post-legislatively:<sup>65</sup> the relevant parliament or assembly should legislate in detail for the change, subject to approval by voters in a referendum. Should the result favour the change, the provisions would then be implemented.”

In most jurisdictions, government-initiated referendums are the least regulated form of ballot measure. This is in contrast to initiatives, mandatory referendums, and reactive referendums where the status of a ballot measure as binding or advisory is more clearly outlined prior to the initiation of the process. As a result, the shortcomings of legally advisory ballot measures are, perhaps unsurprisingly, most closely associated with government-initiated, ad-hoc referendums. Ballot measures seem to have the greatest democratic legitimacy when governments take action to minimize space for interpretation by committing themselves to take a particular course of action within a legislature that is explicitly dedicated to making laws.

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<sup>65</sup> Renwick et al. refer to referendums on legislation as “post-legislative referendums”, although I do not use this terminology to avoid giving the impression that the process of legislation ceases when bills have left the legislature. The capacity of citizens to veto legislation (or parts of legislation) appears to reflect the legislative capacities of repeal or amendment, depending on the circumstances.

## 8.5 Irreversibility and Accountability

Although there is no principal-agent relationship at the moment of voting, the populace ought to be able to hold itself retrospectively accountable which requires that ballot measures are not treated as irreversible. Ballot measures, like all democratic decisions, need to be “binding for some period of time” but this should not be understood to mean that the decisions are irreversible or final (Gutmann and Thompson, 2004: 7). This insight is well-developed in theories of elections, which are democratic in part because of the promise of future elections (Przeworski, 1999), but has largely remained a footnote in theorizing about ballot measures. Thinking about problems of implementation in terms of minimizing space for interpretation rather than whether a decision is binding or not has a distinct advantage in that it avoids the problem of mistaking legal decisiveness for irreversibility. In terms of collective decision-making, irreversibility threatens to undermine one of the principles of *mass* legislation, namely that of popular sovereignty. However, ballot measures may still suffer from legal, political, and inherent forms of irreversibility, which suggests that retrospective accountability relies on *pre-emptive* challenges to irreversibility. That is, attempts to establish the reversibility of ballot measures become increasingly difficult as the process unfolds.

The need for these commitments early on in ballot measure processes aligns with broadly held views on ballot measure processes. While citizens generally disapprove of legislators who amend legislation passed via ballot measure after it is passed, surveys find that large majorities support the idea of cooperation and compromise on citizens’ initiatives prior to the moment they are voted on (Donovan, 2007: 233). More generally, the principle of explicit lawmaking indicates the need to think carefully about developing transparent, public rules about when the results of ballot measures can be ignored or overturned. Quorum rules present a useful example. If the results of a ballot measure are going to be considered invalid due to low turnout – as in Puerto Rico in 2012, Hungary in 2016, and PEI in 2016 – then explicit lawmaking suggests that thresholds be publicly known in advance, rather than used as a post-hoc justification for ignoring the results. However, publicly known quorums for ballot measures pose their own set of problems. They provide an advantage to the status quo since its supporters can win primarily through abstinence, as occurred in Hungary. This can actually promote other reinterpretation of the results, as when Orban’s government argued that the result – 98% against resettlement of

refugees by the EU – as a sign of a “reinforced mandate for the government” even though the 50% quorum was not met as only 44% of voters turned out (*BBC News*, 2016). Minimizing room for interpretation in the early stages of the ballot measure process can make the motivation for the ballot measure process more transparent, such as the plebiscitary motivation to claim support for the government’s mandate (Morel, 2001).

The election of candidates is frequently understood to be revisable while popular votes are often seen as final. Trechsel (2010) describes this as a problem of holding the collective agent of the voting public accountable for the decisions made directly in ballot measures. The winning side of any referendum is an undefined, largely unknown mass of voters that seems to be difficult to hold accountable. Because it is impossible to sanction the public, broadly construed, any such concept of accountability is bound to be thinner than frequently cited interpretations of democratic accountability, with Trechsel's account focusing on a sort of indirect sanctioning mechanism: the ability to demand a second vote. He suggests that when citizens have access to the popular initiative, then they are able to enact a kind of reflexive accountability due to the possibility of having a second vote. I propose expanding on Trechsel's account in three ways. First, it is worth addressing problems of irreversibility that might limit the legitimacy for a second vote, even if taken through a popular initiative. Second, it is worth exploring whether citizen-initiated ballot measures are sufficient to ensure accountability or whether there might be a need for other mechanisms that trigger votes without the need for petitioners to engage in the expensive and time-consuming process of signature collection. Third, it is worth clarifying that the notion of accountability should be expanded to explicitly account for the provision of justifications by relevant actors.

Relatively little attention has been given to the question of determining at what point, if ever, the issues decided through ballot measures can be revisited. While other legislative processes often look forward by including sunset clauses or requirements for periodic review, this rarely seems to be the case for ballot measures. This is not to deny that some issues voted on in ballot measures are nearly impossible to reverse, such as independence referendums, but rather to note that some mechanism may be necessary to legitimize revisiting issues previously decided by popular vote. One strategy for doing so would be to avoid the semblance of irreversibility in the

first place.<sup>66</sup> For instance, one of the reasons that New Zealand had a second referendum on electoral reform in 2011 was because of a widespread misperception that such a review referendum had been promised during the 1992-93 referendum campaign on electoral reform (Arseneau and Roberts, 2012: 326). I contend that the multi-stage or multi-option ballot measure designs discussed in Chapter 7 might lead to decisions that remain binding but that seem less irreversible. This is because they explicitly signal that decision-making is an iterated process and acknowledge the existence of plausible alternatives. In other words, they highlight the fact that things could have been otherwise and that it is worth institutionalizing the opportunity to revisit earlier decisions.

In jurisdictions where citizens can trigger initiatives, they retain the ability to contest the notions of political and legal irreversibility. Political irreversibility requires a relatively broad consensus to uphold the result of a vote, although a petition that collects the required number of signatures makes it possible to revisit an issue. Legal irreversibility primarily limits the activities of legislators, although citizens are still generally permitted to initiate ballot measures on the issue. This is not to deny the other problems commonly associated with initiatives, but to acknowledge that the ability to pro-actively set the agenda for popular votes could be a particularly powerful tool for realizing democratic norms of control over the agenda and the ability to revisit decisions.

More broadly, but especially in jurisdictions that do not allow for initiatives, it is probably beneficial to establish formal rules about when decisions taken through ballot measures can or must be revisited. While some jurisdictions clearly spell out the period during which repeal or amendment to laws passed through ballot measures are disallowed, few jurisdictions provide clear examples of when such decisions must be revisited. It is in cases where the results are very close or a majority winner does not reach a required supermajority (Emerson, 2011: 151; Kobach, 1993: 59,65-66), that such mechanisms might be most useful given the clear potential for ongoing contestation of any resulting decision. Such conditions might trigger a second vote or perhaps review or study by a legislative committee or deliberative mini-public. Such occurrences are rare, although recently a deliberative mini-public was held after the Brexit referendum. However, perhaps due to its post-hoc nature, the Brexit mini-public was restricted to

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<sup>66</sup> As discussed above, this is more difficult to do with formally advisory ballot measures, where downplaying irreversibility can allow governments an escape hatch if they do not receive their desired result.

addressing the question of how the UK should leave the EU, rather than revisiting the question of whether to leave or not.

Additionally, certain instances of inherent irreversibility might be addressed by designing a process that promises the opportunity to revisit the issue in a future popular vote. The recent British Columbia referendum on electoral reform was designed so that if the electoral system changed, the enabling legislation would provide for a review referendum to be held after two elections under the new system. This process has the advantage of ensuring that the issue will be revisited, even if it would be unlikely otherwise due to strategic considerations by parties. Yet, this design is likely to be implemented only when changes to the status quo are adopted. A preferable design might schedule a future referendum regardless of the outcome, such as in recurring referendums on whether to initiate constitutional change in some US states (The New Republic, 2008). However, recurring referendums have the potential to carry on indefinitely, even long past the point of salience as in New Zealand's referendums on liquor licensing, which continued for decades because ceasing them was viewed as politically costly to a small but powerful constituency (Dostie and Dupré, 2016).

This capacity to demand a second vote alone seems insufficient to meet the justification criteria of accountability, namely that the people are not required to explain themselves, but merely asked to vote again. However, it signals to elected and non-electoral representatives that previous questions may need to be asked again. Second votes called by governments who did not receive the outcome they desired have had the effect of persuading political actors to better justify their positions to citizens (Atikcan, 2015). Rather than simply examine how to hold citizens accountable for decisions made through ballot measures or to force legislators to abide by the results, it is also worth considering how citizens could demand better justifications from their governments. More specifically, it is necessary to more clearly specify how ballot measures ought to be integrated with other legislative institutions in democratic systems in order to improve the accountability of both elected and non-electoral representatives both in legislatures and ballot measures. In the conclusion, I summarize the argument so far and suggest that thinking of ballot measures as institutions of mass legislation leads to the possibility of incorporating them as part of a multicameral legislative system.

## Chapter 9: Conclusion

Butler and Ranney concluded their landmark study of referendums by stating that they “find it impossible to take our place with either the true believers in or the irreconcilable opponents of referendums. It seems to us that to argue that *no* questions should be settled by referendum is almost as untenable as to argue that *every* question should be settled thus” (Butler and Ranney, 1978). However, we still appear to lack a compelling answer to the normative question: when should ballot measures be used? I would like to suggest that there is no single answer to this question. I have attempted to outline, at a relatively high level, the pitfalls and potentials of ballot measures to contribute to the key functions of democratic systems. I have suggested ballot measures are likely to contribute to these functions when they and their supporting institutions are designed to realized principles of legislation. The appropriateness of ballot measures should be judged in context, with particular attention given to the capacity of the democratic system to address the particular issue. However, the foregoing analysis suggests that certain existing ballot measure institutions – the indirect initiative and the reactive referendum – generally embody key principles of legislation better than alternative ballot measure designs.

The conclusion proceeds as follows. First, I reiterate the value of using the democratic systems approach to study ballot measures. Second, I contend that mass legislation requires ballot measure institutions that are designed to uphold certain principles. Third, I outline how thinking of ballot measures as institutions within a multicameral legislative system helps clarify how to think about possible conflicts between decisions taken in different venues. Fourth, I outline potential obstacles to practical implementation of more legislative ballot measures and summarize the case for optimism about innovative reforms. Lastly, I restate the key points of a democratic theory of ballot measures.

### 9.1 Mass Legislation in Democratic Systems

Considerable effort has been given, both in this dissertation and beyond, to the question of how referendums could be designed to alleviate some of the problems with which they are commonly associated. This tendency has been encouraged by the fact that referendums are frequently seen as optional democratic devices, as opposed to elections, which have been interpreted as perhaps the defining feature of democratic systems. Some of these innovations show promise and deserve greater attention and widespread adoption. However, a truly systemic

approach – particularly one that seeks to move beyond the misleading dichotomy between direct and representative democracy – must consider the possibility that the burden of making ballot measures work for democracy cannot solely fall upon ballot measures themselves. That is, if ballot measures are to play a useful role in democratic systems, it is necessary to establish what that role is and, crucially, to make room in existing institutions for ballot measures to play that role. Many theorists have failed to fully appreciate the scope of this problem because ballot measures are all too commonly understood to be supplementary devices to representative democracy. The notion of ballot measures as *supplements* implies that representative democracy is the true core of democratic systems and that ballot measures are optional add-ons.

I hesitate to go so far as some others and insist that ballot measures are necessary for democracy. In fact, a radical interpretation of the systems approach throws into question the possibility that any particular institution is necessary. Such a perspective perhaps finds sympathizers in those contemporary democratic theorists who have promoted a return to sortition or “lottocracy” as an alternative to elections (Gastil and Wright, 2018; Guerrero, 2014), the oft-cited *sine qua non* of modern democracy. The view that I advance in this chapter does not require accepting the non-necessity of elections. I do not mean to reaffirm the alleged centrality of representative democracy. Rather, my point is that even if elections are a necessary condition of democracy, systems that allow for ballot measures or the random selection of representatives, as in mini-publics, should not conceive of this institutional diversity as an antagonistic struggle between competing conceptions of democracy. It is this notion that seems largely responsible for the notion that representative government plays a central role that ballot measures can only supplement, at best, or undermine, at worst. This is not to deny that ballot measures, elections, and sortition all have differing logics, but too often advocates insist upon the relative superiority of one logic over others in general terms. This is a mistake. The utility of each of these logics appears to be determined, in large part, by the problems that they are meant to solve and the institutional design choices made in response to these specific problems.

The piecemeal evaluation of individual designs of ballot measures – or particular characteristics of these designs – obscures the ways in which different sets of institutions might have different consequences at the system level. Focusing, say, on ballot measures that are reactive rather than proactive acknowledges that the former gives citizens or governments a right to refute legislation introduced elsewhere, whereas the latter gives citizens or governments the



right to author legislation that is then voted on. However, the cost of doing so is to forgo a discussion of the appropriate balance between the right of authorship and the right to refute and how institutional design might achieve that balance. For instance, the co-existence of popular initiatives and the facultative referendum in a system will probably lead to less use of the facultative referendum, unless signature thresholds are higher for popular initiatives. The underlying assumption being that if both options have the same costs, then citizens will choose the option that provides them with wider latitude to impose the legislation they desire rather than rejecting legislation that do not approve of.

## **9.2 The Legislative Process and Ballot Measures**

What might an idealized ballot measure process look like? Again, it is difficult and probably inappropriate to prescribe a process in too much detail, although the foregoing analysis suggest a number of key features. For ballot measures to move closer to the legislative ideal, they ought to make space for representation of diverse perspectives, provide citizens with the opportunity to set the agenda, and offer structured opportunities for scrutiny and amendment, and minimize space for interpretation. These goals can be achieved through various institutional arrangements and so my goal here is to illustrate their similarities to other legislative institutions.

The idea that ballot measures should make space for representation echoes the fact that legislative institutions often attempt to ensure diversity. This diversity is often geographical, although legislatures where members are selected through proportional electoral systems are also likely to be more ideologically diverse. However, representative legislators might fail to address certain claims that do not align with the prominent cleavages that organize political conflict within legislatures. Where ballot measures are primarily initiated by legislatures, this problem is likely to persist<sup>67</sup> and may be exacerbated by campaign structures that pit a single ‘yes’ campaign against a single ‘no’ campaign. Where citizens are capable of organizing ballot measures, they make representative claims and can mobilize new constituencies to address failures of responsiveness elsewhere in the democratic system.

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<sup>67</sup> A notable exception might be found in ballot measures orchestrated to resolve divisions within a political party as these demonstrate the failings of existing lines of party organization.

Various sub-majority rules often exist to allow minorities within legislatures control of the agenda under certain circumstances (Vermeule, 2007). The capacity for citizens to initiate ballot measures, either on new legislation or legislation introduced elsewhere, reflects a similar process. Where ballot measures are government-initiated, I have suggested that citizens ought to be allowed to launch counterproposals in a way that parallels the ability of legislators to offer amendments to draft legislation. The process could be designed in such a way that governments would be willing to accept the amended version of the proposal in lieu of their own or have citizens vote on both measures. Another possible alternative would be to introduce “‘co-initiative’ procedures, in which holding a referendum vote requires the consent of a certain mixture of elected officials and voters” (Taillon, 2017: 181). This process would divide agenda-setting power, although it might risk sacrificing the distinctiveness of ballot measures and encouraging their use to better align with existing political cleavages.

While legislatures offer a variety of venues for debate and discussion of bills over time, each with their own strengths and weaknesses, ballot measures often feature one large, undifferentiated debate. That is, legislatures allow each party caucus to deliberate internally, but they also provide for multiple readings as well as committee hearings. I have suggested that multi-stage voting processes might break down questions into their constituent parts, rather than have citizens vote on the equivalent of omnibus bills. Additionally, iterative voting processes extend the period for public debate and raise the possibility that new information might be made available, such as the results of an earlier vote, or constituencies mobilized. Deliberative mini-publics might serve as useful analogues to committee meetings, allowing citizens to examine witnesses, study an issue in detail, and issue a final report or recommendations.

Ballot measures should strive to minimize uncertainty about what the decision means in terms of action by the executive branch. In legislatures, particularly those where the legislative and executive branches are fused or controlled by the same party, it is often well-established what will happen once the legislature passes a bill. Ballot measures, especially those which are citizen-initiated and lack a clear relationship to the state apparatus, may face challenges of implementation. While all legislation is open to some degree of future interpretation, good legislation minimizes such opportunities.

Conceiving of ballot measures as institutions of mass legislation also makes it possible to provide a stronger, coherent critique of ballot measures as having legislative supremacy.

Constitutions frequently limit legislatures by limiting the subjects on which they can legislate through a separation or division of powers. Additionally, many decisions taken by legislatures are subject to review by a second chamber or an independent judiciary. While ballot measures are often used to address constitutional amendment or other kinds of ‘exceptional’ political questions, it’s not clear that they are fit for this purpose simply on the grounds that they are ballot measures. I cannot develop such an account here, but the idea of ballot measures as institutions of mass legislation suggests that we ought to look to how legislatures deal with these exceptional decisions for insight into how ballot measures might more appropriately do so.

### **9.3 Ballot Measures as Multicameral Moments**

Nurmi’s (1998: 348–349) ‘referendum paradox’ points out that the results of a parliamentary vote can conflict with the results of a referendum. This poses a notable problem that echoes the distinction between ‘direct’ and ‘representative’ democracy. Which outcome has more democratic legitimacy? Decisions taken through a popular vote or decisions taken by democratically elected legislators? These problems are not merely theoretical. New Zealand’s elected governments have ignored the results of every citizen-initiated referendum. Sweden has ignored the results of several government-initiated referendums (Setälä, 2006: 4). Similarly, the Canadian province of Prince Edward Island recently refused to follow through on the results of a government-initiated referendum, citing low turnout as a reason to maintain the status quo. Nurmi suggests that the solution is simply to make all referendums legally binding, although the preceding analysis suggests that this does not get to the heart of the problem. Instead, we need to think more seriously about how legislative power ought to be divided between legislatures and ballot measures.

In short, I wish to argue that ballot measures serve as what we might call ‘multicameral moments’ in which all citizens are asked to participate as part of a virtual  $n^{\text{th}}$  chamber. Multicameralism<sup>68</sup> refers to the division of legislative power across multiple chambers, “although not necessarily equally” (Uhr, 2008: 474). One alternative often pointed to in this respect is the possible use of sortition to establish a randomly-selected legislative chamber that

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<sup>68</sup> Since most of the relevant literature focuses on bicameralism, I draw on this literature and assume that many of the salient features would be present in multicameral legislatures as well (see Uhr, 2008: 481).

would support the capacities of citizens to legislate. In his proposal for a ‘popular branch’ of government, Ethan Leib suggests that rather than “having a ballot measure put before the entire populace for adjudication, imagine instead a stratified random sample of eligible voters convened for the purpose of settling a policy question” (Leib, 2006: 8). While many democratic theorists are cautious about the prospect of empowering randomly-selected assemblies (e.g. Lafont, 2015), Leib notes that any such legislative assembly would be subject to various checks and balances from the executive, legislative, and judicial branches of government.

My intention is not to deny the possible democratic value of randomly selected chambers, but merely to point out that such an arrangement is fundamentally different from ballot measures as it shifts citizen participation from the mass level to the micro level. I am more interested in whether a conception of an ad-hoc, virtual legislative chamber subject to checks and balances can help us understand how *ballot measures* can be steered toward democratic ends without doing away with their mass character. It echoes el-Wakil and Cheneval’s suggestion that ballot measures “are especially valuable in one chamber parliamentary system” where they can serve as a check on elite domination (Cheneval and el-Wakil, 2018: 297). While multicameralism imposes supermajority rule and is thus inherently conservative (Przeworski, 2010: 6) there is an important difference between multicameral legislatures and ballot measures as multicameral moments. Multicameral moments are not standing institutions but are, ideally, triggered in response to specific proposals where increased scrutiny and may be appropriate and consistent with a higher threshold. As such, supermajority rule may be less normatively questionable than when it is encountered as an occasional, rather than inherent, part of the legislative process.<sup>69</sup>

I argue that multicameralism reinforces several key principles of legislation. It upholds respect for disagreement by insisting that conflict between legislative institutions is not inherently mischievous (Waldron, 2016: 75). Multicameralism does, however, establish rules and

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<sup>69</sup> Many legislatures are already bicameral and thus ballot measures add to the supermajority requirements, rather than imposing them altogether.

Moreover, I have generally argued that iteration and repetition can improve the functioning of ballot measures. In part, this point is a criticism of ad-hoc ballot measures or citizen-initiated ballot measures that are underused, perhaps due to overly high thresholds. The point here is different, namely that legislation passed in legislatures need not always be held to a supermajority standard. However, certain kinds of ballot measures, such as the facultative referendum, allow citizens to demand a vote on an issue. How often these ballot measures are held is a matter of legislature-citizen interaction, although institutional allowances for these kinds of referendums is relatively rare.

precedents that help specify how these conflicts ought to be resolved, thus contributing to the principle of legislative formality. A multicameral legislature reflects a duty of care because a second chamber slows down the process and ensures that the first will not become “despotic and overweening” (Mill, quoted in Waldron, 2016: 80). This reduced speed also improves responsiveness to deliberation by allowing proposals to be the subject of both contentious debate as well as sober second thought, which might provide distinct benefits when different chambers are empowered to negotiate with each other (Fung, 2003; Waldron, 2016: 73). The principle of representation is strengthened by an acknowledgement that we can’t conceive of one legislature perfectly representing the ‘unitary’ people (Waldron, 2016: 78) and ballot measures offer a venue for citizens to contest their misrepresentation within the legislature.

Strong multicameralism is often conceptualized as having two dimensions, which Lijphart referred to as ‘symmetry’ and ‘congruence’ (Russell, 2013). Symmetry refers to the formal power of each chamber and congruence refers to the degree to which the multiple chambers have distinctive compositions. That is, multicameralism is stronger where chambers have symmetrical capacities to veto proposals from other chambers and are incongruent in their composition. Russell also contends that the sociological legitimacy of the second chamber is an often overlooked third dimension of strong multicameralism (Russell, 2013). These perceptions of legitimacy may be independent from the composition and formal powers of chambers and be the product of “a combination of input, procedural, and output factors” (Russell, 2013: 385). I take each of these dimensions in turn to evaluate whether multicameralism is a useful way of conceptualizing the relationship between ballot measures and legislatures.

Symmetrical legislative institutions can help ensure that debate is genuine, rather than merely a prelude to the acceptance of policies handed down by the executive branch (Waldron, 2016). Whereas much of the previous chapter addressed the possibility of the executive branch failing to implement legislation, ballot measures may also offer a way of reducing domination of the legislative branch by the executive. Anita Breuer has suggested that the use of the reactive referendum in Colombia “forced an extremely popular head of executive to abandon his ideal outcome and negotiate his proposal with Congress [which] indicates that this tool is adequate to foster horizontal accountability and avert constitutional crisis in case of legislative–executive conflict” (Breuer, 2007: 568). This example helps highlight that the use of ballot measures as a “people’s veto” is not necessarily as a definitive rejection of the proposal but as a demand, at a

minimum, for further consultation and amendment (el-Wakil, 2017). Counterproposals and indirect initiatives offer similar benefits, raising the possibility of bargaining and compromise between legislatures and citizen petitioners. Going the other way, thinking of ballot measures in multicameral terms makes it possible to clarify how legislatures might legitimately block or repeal legislation passed through ballot measures. Benjamin Barber, for instance, suggests that Presidents or legislatures might be allowed to “veto a measure following a second vote and then [require] a third reading for an override of the veto and final passage” (Barber, 1984: 288).

Some of the principles of legislation, such as the duty of care and respect for disagreement, are more strongly realized when the additional legislative bodies are incongruent and “constituted on a quite different basis” (Waldron, 2016: 80). While the focus on legislatures means that this discussion has often focused on different kinds of representation, ballot measures are incongruent because citizens act as legislators without holding representative obligations. It is at this point that we can recover direct democracy’s emphasis on ‘directness’ without conflating it with democracy. That is, directness is one of several justifiable bases for legislative power, although it is certainly not the only one nor should we assume that political systems that do not offer direct legislative power are undemocratic.

Lastly, Russell contends that perceived legitimacy is the third dimension of strong multicameralism since “a lack of legitimacy may render a second chamber unable in practice to make full use of its powers” (Russell, 2013: 374). In terms of input legitimacy, there does seem to be relatively widespread support for ballot measures (Anderson and Goodyear-Grant, 2010; Bowler et al., 2007; Donovan and Karp, 2006), perhaps due to an intuitive belief in their democratic credentials. On the other hand, the procedural legitimacy of ballot measures is often called into question. Government-initiated ballot measures seem most likely to be viewed with skepticism, perhaps because they do not provide a clear enough division between party politics and citizen decision-making. Other possible ballot measure processes may garner more support, although little work has been done to assess how public opinion varies across different kinds of ballot measures. The output legitimacy of ballot measures is also frequently called into question, with critics pointing to cases like California’s Proposition 13 or Brexit as examples of ill-thought out decisions made by ballot measure. In any case, the key point is that the capacity of ballot measures to serve useful roles in the democratic system relies largely on the willingness of citizens to see them as legitimate. My contention is that democratizing ballot measures by

designing them to reflect legislative ideals may help generate all three kinds of legitimacy in ways that allow ballot measures to interact productively with elected legislative chambers.

## 9.4 Challenges to Reform

The contemporary use of ballot measures largely fails to live up to the notion of ballot measure as institutions of mass legislation, although I maintain that it remains a largely realistic ideal. Many of the described innovations that could help ballot measure designs better realize democratic functions are derived not from theory, but from practice.<sup>70</sup> In this respect, this dissertation has been an exercise in bringing democratic theory up to speed on the various experiments in popular votes that have been taking place around the world. The theory of mass legislation is, in many ways, a reconstruction of the underlying principles at work in these new devices. If we accept legislation as the normative standard by which we judge ballot measures, then we also gain normative leverage that can be used to counteract manipulation. That is, manipulation of legislative procedures often receives widespread condemnation, whereas the manipulation of ballot measures is almost expected. Part of the problem is the fact that ballot measures are intermittent institutions compared to the relative continuity of legislatures, although manipulation may be seen as worse if ballot measures are understood to be analogous to legislatures despite their intermittent nature.

All of that being said, it is worth highlighting the potential challenges to the widespread adoption of institutions that encapsulate the ideal of mass legislation. Reform is likely difficult for the reasons that make institutional change difficult in general. Mahoney and Thelen (2009) have convincingly argued that institutional change can take on several forms – layering, displacement, drift, and conversion – depending on the ability of status quo defenders to veto proposed changes and the amount of ambiguity that surrounds existing institutions. I am unable to develop a full account here, but this insight suggests that different types of ballot measures will likely be accomplished in different ways and with different outcomes. The fact that some types of ballot measures are intermittent institutions – most notably, government-initiated *ad hoc* referendums – also introduces challenges to reform. Namely that the fact that they are often used

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<sup>70</sup> This fact should hopefully allay potential concerns that I have engaged in what Wiens (2012) calls ‘architectural’ theorizing of applied ethics without considering the associated ‘engineering’ problems of applied social science.

in extreme circumstances tends to rule out “the sort of continual adjustments” that take place in standing institutions (Vermeule, 2011: 437).

Ballot measures in some systems may be deeply entrenched and have considerable buy-in from relevant actors who seek to maintain their perceived advantages (Miller, 2000: 1082). Ballot measures have frequently been developed and deployed by elites pursuing their own self-interest while ostensibly empowering citizens. For instance, while I have said little about the role of money in ballot measures<sup>71</sup>, it is a subject of considerable interest as well-heeled policy entrepreneurs who hire signature gatherers are essentially capable of buying their way onto the ballot (Ellis, 2003). These individuals and groups are unlikely to be enthusiastic about the prospect of actually coming to share power with citizens as co-legislators. On the other hand, processes like the popular initiative have given citizens considerable power with little oversight. Initiative entrepreneurs are unlikely to want to cede this power in favour of reforms that transform initiatives from tools of constitutional amendment to processes of regular legislation. As Ferejohn puts it: “Reforming the initiative process can be politically dangerous because such attempts often appear to be undemocratic and high-handed. The initiative seems so obviously democratic and self-justifying, that those who would limit it appear to be self seeking, corrupt, arrogant, or simply out of touch with the people” (Ferejohn, 1995: 313).

At the same time, there are reasons for optimism since attempts at manipulation can sometimes backfire and result in democratizing institutions (McKay and Warren, 2018). In fact, several changes in referendum practice illustrate this feature. For instance, New Zealand’s development of both serial referendums on liquor licensing and two-stage referendums on electoral reform were the result of attempts at strategic manipulation. However, in many respects these rules backfired, with governments failing to achieve the desired results and the use of these referendum designs setting precedents that later bound the same governments to the use of similar processes, even when it was no longer advantageous. In other instances, we see policy diffusion of practices that were set up in other circumstances, such as the use of mini-publics in conjunction with ballot measures in the wake of the British Columbia Citizens’ Assembly.

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<sup>71</sup> While spending appears capable of influencing ballot measure outcomes under certain conditions, the size of these effects and their enabling conditions remains contested (Broder, 2001; Gerber, 1999; Stratmann, 2006). Much of this work focuses on ballot initiatives in U.S. states, raising questions about the effects of spending in other kinds of campaigns. Further consideration of this issue from the perspective of democratic theory is also needed to develop the normative implications.



Throughout this dissertation, I have focused on the role that institutional design can play in helping ballot measures to avoid failing democracy. Consistent with the holistic view demanded by a democratic systems approach, it is worth highlighting the fact that institutional design is only one of many factors that contributes to democratic flourishing. It is worth emphasizing that the performance of ballot measures and other democratic institutions may also be improved by a host of other socio-economic and cultural changes. I do not detail any of these possible changes here, but note that I have focused on the institutional design of ballot measures because such reforms could be one piece of a broader solution to addressing the challenges facing contemporary democracies.

## **9.5 Mass Legislation: A Restatement**

In *Direct Democracy*, Thomas Cronin wrote that “The idealistic notion that populist democracy devices can make every citizen a citizen-legislator and move us closer to political and egalitarian democracy is plainly an unrealized aspiration” (1989: 6). I broadly agree with this assessment, although I maintain that the ideal of mass legislation and its corollary – treating citizens as legislators – remains our best account of the role that ballot measures ought to play in democratic systems. Taking this account seriously means acknowledging that granting citizens the power to make laws may not be the most significant problem with ballot measures. Rather, the problem with ballot measures may be that they have not been designed to generate the procedural legitimacy that we would want from democratic institutions.

If we want ballot measures to include and empower citizens, to let them set the agenda, and make decisions that reflect the collective will then we need an account not only of how ballot measures have failed to contribute to these functions, but also how they have done so or might do so in the future. Until now, we have lacked a coherent account of the role of ballot measures in democratic systems that is also attuned to the importance of institutional diversity. The theory of mass legislation fills the gap left by theories of direct democracy by articulating a set of principles that is flexible enough to apply to a variety of institutional designs, helping to evaluate both existing practices and think through more reforms that would democratize ballot measures.

## Bibliography

- Abizadeh A (2008) Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders. *Political Theory* 36(1): 37–65. DOI: 10.1177/0090591707310090.
- Abts K and Rummens S (2007) Populism versus Democracy. *Political Studies* 55(2): 405–424. DOI: 10.1111/j.1467-9248.2007.00657.x.
- Achen CH and Bartels LM (2016) *Democracy for Realists : Why Elections Do Not Produce Responsive Government*. Princeton: Princeton University Press.
- Adams BE (2012) Citizens, Interest Groups, and Local Ballot Initiatives. *Politics & Policy* 40(1): 43–68. DOI: 10.1111/j.1747-1346.2011.00336.x.
- Albertazzi D (2008) Switzerland: Yet Another Populist Paradise. In: *Twenty-First Century Populism: The Spectre of Western European Democracy*. New York: Palgrave Macmillan, pp. 100–118.
- Altman D (2011) *Direct Democracy Worldwide*. New York: Cambridge University Press.
- Altman D (2014) *Strengthening Democratic Quality: Reactive Deliberation in the Context of Direct Democracy*. 400, Working Paper, June. Notre Dame, IN: Kellogg Institute for International Studies. Available at: <https://kellogg.nd.edu/documents/1718> (accessed 1 April 2018).
- Altman D (2015) *Measuring the Potential of Direct Democracy Around the World (1900-2014)*. ID 2701164, SSRN Scholarly Paper, 1 December. Rochester, NY: Social Science Research Network. Available at: <https://papers.ssrn.com/abstract=2701164> (accessed 3 November 2016).
- Anderson C and Goodyear-Grant E (2010) Why are highly informed citizens sceptical of referenda? *Electoral Studies* 29(2): 227–238. DOI: 10.1016/j.electstud.2009.12.004.
- Ankersmit FR (1996) *Aesthetic Politics: Political Philosophy Beyond Fact and Value*. Stanford University Press.
- Arseneau T and Roberts NS (2012) Kicking the Tyres’ on MMP: The Results of the Referendum Reviewed. In: Johansson J and Levine S (eds) *Kicking the Tyres: The New Zealand General Election and Electoral Referendum of 2011*. Wellington: Victoria University Press, pp. 325–344.
- Atikcan EÖ (2015) The Puzzle of Double Referendums in the European Union: The puzzle of double referendums in the European Union. *JCMS: Journal of Common Market Studies* 53(5): 937–956. DOI: 10.1111/jcms.12239.
- Bächtiger A (2014) Debate and Deliberation in Legislatures. In: Martin S, Saalfeld T, and Strøm KW (eds) *The Oxford Handbook of Legislative Studies*. Oxford University Press. DOI: 10.1093/oxfordhb/9780199653010.013.0008.

- Bächtiger A, Spörndli M, Steenbergen MR, et al. (2005) The Deliberative Dimensions of Legislatures. *Acta Politica* 40(2): 225–238. DOI: 10.1057/palgrave.ap.5500103.
- Bächtiger A, Niemeyer S, Neblo M, et al. (2010) Disentangling Diversity in Deliberative Democracy: Competing Theories, Their Blind Spots and Complementarities\*. *Journal of Political Philosophy* 18(1): 32–63. DOI: 10.1111/j.1467-9760.2009.00342.x.
- Bagg S (2015) Can deliberation neutralise power? *European Journal of Political Theory*. DOI: 10.1177/1474885115610542.
- Banaszak LA (1996) *Why Movements Succeed or Fail: Opportunity, Culture, and the Struggle for Woman Suffrage*. Princeton studies in American politics. Princeton, N.J: Princeton University Press.
- Barber BR (1984) *Strong Democracy: Participatory Politics for a New Age*. University of California Press.
- Barber M, Gordon D, Hill R, et al. (2017) Status Quo Bias in Ballot Wording. *Journal of Experimental Political Science* 4(02): 151–160. DOI: 10.1017/XPS.2017.9.
- Barney DD and Laycock D (1999) Right-Populists and Plebiscitary Politics in Canada. *Party Politics* 5(3): 317–339. DOI: 10.1177/1354068899005003004.
- Bauer PC and Fatke M (2014) Direct Democracy and Political Trust: Enhancing Trust, Initiating Distrust – or Both? *Swiss Political Science Review* 20(1): 49–69.
- BBC News (2009) New Zealand votes on smacking ban. 31 July. Available at: <http://news.bbc.co.uk/2/hi/asia-pacific/8177661.stm> (accessed 14 November 2018).
- BBC News (2016) Hungary PM claims referendum victory. 3 October. Available at: <http://www.bbc.com/news/world-europe-37528325> (accessed 21 September 2017).
- Beauvais E and Bächtiger A (2016) Taking the Goals of Deliberation Seriously: A Differentiated View on Equality and Equity in Deliberative Designs and Processes. *Journal of Public Deliberation* 12(2). Available at: <http://www.publicdeliberation.net/jpd/vol12/iss2/art2>.
- Beckers M and Billiet J (2010) ‘Uphold’ or ‘Revoke’? A Study of Question Wording in Twelve Municipal Plebiscites in Flanders. *World Political Science* 6(1). DOI: 10.2202/1935-6226.1078.
- Beerbohm E (2016) The Ethics of Electioneering. *Journal of Political Philosophy* 24(4): 381–405. DOI: 10.1111/jopp.12082.
- Beitz CR (1989) *Political Equality: An Essay in Democratic Theory*. Princeton, N.J: Princeton University Press.
- Besley T and Coate S (2008) Issue Unbundling via Citizens’ Initiatives. *Quarterly Journal of Political Science* 3(4): 379–397. DOI: 10.1561/100.00008059.

- Björklund T (2009) The Surge of Referendums and the New Politics Approach. In: Setälä M and Schiller T (eds) *Referendums and Representative Democracy: Responsiveness, Accountability and Deliberation*. Routledge/ECPR studies in European political science 62. London ; New York: Routledge, pp. 117–136.
- Blais A, Carty RK and Fournier P (2008) Do Citizens' Assemblies Make Reasoned Choices? In: Warren ME and Pearse H (eds) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge University Press, pp. 127–144.
- Boehmke FJ (2005) *The Indirect Effect of Direct Legislation: How Institutions Shape Interest Group Systems*. Columbus: Ohio State University Press.
- Bogdanor V (1981) *The People and the Party System: The Referendum and Electoral Reform in British Politics*. CUP Archive.
- Bohman J (2010) *Democracy across Borders: From Dêmos to Dêmoi*. MIT Press.
- Böker M (2017) Justification, critique and deliberative legitimacy: The limits of mini-publics. *Contemporary Political Theory* 16(1): 19–40. DOI: 10.1057/cpt.2016.11.
- Böker M and Elstub S (2015) The Possibility of Critical Mini-publics: Realpolitik and Normative Cycles in Democratic Theory. *Representation* 51(1): 125–144. DOI: 10.1080/00344893.2015.1026205.
- Boswell J (2016) Deliberating Downstream: Countering Democratic Distortions in the Policy Process. *Perspectives on Politics* 14(03): 724–737. DOI: 10.1017/S1537592716001146.
- Boswell J, Niemeyer S and Hendriks CM (2013) Julia Gillard's Citizens' Assembly Proposal for Australia: A Deliberative Democratic Analysis. *Australian Journal of Political Science* 48(2): 164–178. DOI: 10.1080/10361146.2013.786675.
- Bowler S and Donovan T (2000) *Demanding Choices: Opinion, Voting, and Direct Democracy*. University of Michigan Press.
- Bowler S, Donovan T and Tolbert CJ (eds) (1998) *Citizens as Legislators: Direct Democracy in the United States*. Ohio State University Press.
- Bowler S, Donovan T and Karp JA (2007) Enraged or Engaged? Preferences for Direct Citizen Participation in Affluent Democracies. *Political Research Quarterly* 60(3): 351–362. DOI: 10.1177/1065912907304108.
- Bowler S, Denemark D, Donovan T, et al. (2017) Right-wing populist party supporters: Dissatisfied but not direct democrats. *European Journal of Political Research* 56(1): 70–91. DOI: 10.1111/1475-6765.12166.
- Brams S, Zwicker WS and Kilgour DM (1998) The paradox of multiple elections. *Social Choice and Welfare* 15(2): 211–236.

- Breuer A (2007) Institutions of Direct Democracy and Accountability in Latin America's Presidential Democracies. *Democratization* 14(4): 554–579. DOI: 10.1080/13510340701398287.
- Brighouse H and Fleurbaey M (2010) Democracy and Proportionality. *Journal of Political Philosophy* 18(2): 137–155. DOI: 10.1111/j.1467-9760.2008.00316.x.
- Broder DS (2001) *Democracy Derailed: Initiative Campaigns and the Power of Money*. New York: Harcourt.
- Broockman DE and Skovron C (2018) Bias in Perceptions of Public Opinion among Political Elites. *The American Political Science Review; Washington* 112(3): 542–563. DOI: <http://dx.doi.org.ezproxy.library.ubc.ca/10.1017/S0003055418000011>.
- Budge I (1996) *The New Challenge of Direct Democracy*. Cambridge Mass: Polity Press.
- Budge I (2006) Direct and Representative Democracy: Are They Necessarily Opposed? *Representation* 42(1): 1–12. DOI: 10.1080/00344890600583685.
- Budge I (2007) Direct Democracy: Setting Appropriate Terms of Debate. In: Saward M (ed.) *Democracy: Critical Concepts in Political Science*. London, New York: Routledge, pp. 194–211.
- Budge I (2008) Direct Democracy. *The Oxford Handbook of Political Institutions*: 595–610. DOI: 10.1093/oxfordhb/9780199548460.003.0030.
- Butler D and Ranney A (1978) *Referendums: A Comparative Study of Practice and Theory*. American Enterprise Institute for Public Policy Research.
- Butler D and Ranney A (1994a) *Referendums Around the World: The Growing Use of Direct Democracy*. American Enterprise Institute.
- Butler D and Ranney A (1994b) Theory. In: *Referendums Around the World: The Growing Use of Direct Democracy*. Basingtoke: Macmillan, pp. 11–23.
- Caluwaerts D and Deschouwer K (2014) Building bridges across political divides: experiments on deliberative democracy in deeply divided Belgium. *European Political Science Review* 6(03): 427–450. DOI: 10.1017/S1755773913000179.
- Cameron MA (2018) *Political Institutions and Practical Wisdom: Between Rules and Practice*. New York, NY, United States of America : Oxford University Press.
- Canovan M (2004) Populism for political theorists? *Journal of Political Ideologies* 9(3): 241–252. DOI: 10.1080/1356931042000263500.
- Cappe M and Stein JG (2016) Government by referendums is not democracy. Available at: <http://www.theglobeandmail.com/opinion/government-by-referendums-is-not-democracy/article30798029/> (accessed 7 October 2016).

- Castiglione D and Warren ME (2006) Rethinking democratic representation: eight theoretical issues. *Centre for the Study of Democratic Institutions, University of British Columbia*. Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.565.9652&rep=rep1&type=pdf> (accessed 14 January 2017).
- Chambers S (2001) Constitutional Referendums and Democratic Deliberation. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy: Citizens, Elites and Deliberation in Referendum Campaigns*. New York: Palgrave Macmillan, pp. 231–255.
- Chambers S (2003) Deliberative Democratic Theory. *Annual Review of Political Science* 6(1): 307–326. DOI: 10.1146/annurev.polisci.6.121901.085538.
- Chambers S (2004) Democracy, Popular Sovereignty, and Constitutional Legitimacy. *Constellations* 11(2): 153–173. DOI: 10.1111/j.1351-0487.2004.0370.x.
- Chambers S (2009) Rhetoric and the Public Sphere: Has Deliberative Democracy Abandoned Mass Democracy? *Political Theory* 37(3): 323–350.
- Cheneval F and el-Wakil A (2018) The Institutional Design of Referendums: Bottom-Up and Binding. *Swiss Political Science Review* 24(3): 294–304. DOI: 10.1111/spsr.12319.
- Chollet A (2018) Referendums Are True Democratic Devices. *Swiss Political Science Review* 24(3): 342–347. DOI: 10.1111/spsr.12322.
- Clark S (1998) A Populist Critique of Direct Democracy. *Harvard Law Review* 112(2): 434–482.
- Clarke HD, Kornberg A and Stewart MC (2004) Referendum Voting as Political Choice: The Case of Quebec. *British Journal of Political Science* 34(2): 345–355. DOI: 10.1017/S0007123404000092.
- Clarke KA and Primo DM (2007) Modernizing Political Science: A Model-Based Approach. *Perspectives on Politics* 5(4): 741–753. DOI: 10.1017/S1537592707072192.
- Closa C (2007) Why convene referendums? Explaining choices in EU constitutional politics. *Journal of European Public Policy* 14(8): 1311–1332. DOI: 10.1080/13501760701656478.
- Cohen J (1986) An Epistemic Conception of Democracy. *Ethics* 97(1): 26–38.
- Cohen J and Sabel C (1997) Directly-Deliberative Polyarchy. *European Law Journal* 3(4): 313–342. DOI: 10.1111/1468-0386.00034.
- Collins RB and Oesterle D (1994) Structuring the Ballot Initiative: Procedures That Do and Don't Work. *University of Colorado Law Review* 66: 47–127.
- Colombo C (2016) Justifications and Citizen Competence in Direct Democracy: A Multilevel Analysis. *British Journal of Political Science*: 1–20. DOI: 10.1017/S0007123416000090.

- Cronin TE (1989) *Direct Democracy: The Politics of Initiative, Referendum, and Recall*. Harvard University Press.
- Cummings D (2015) On the referendum #11: new ICM poll on a second referendum idea, Boris etc. In: *Dominic Cummings's Blog*. Available at: <https://dominiccummings.wordpress.com/2015/07/20/on-the-referendum-11-new-icm-poll-on-a-second-referendum-idea-boris-etc/> (accessed 9 May 2016).
- Curato N and Böker M (2016) Linking mini-publics to the deliberative system: a research agenda. *Policy Sciences* 49(2): 173–190. DOI: 10.1007/s11077-015-9238-5.
- Curtice J (2013) Politicians, voters and democracy: The 2011 UK referendum on the Alternative Vote. *Electoral Studies* 32(2): 215–223. DOI: 10.1016/j.electstud.2012.10.010.
- Cutler F, Johnston R, Carty RK, et al. (2008) Deliberation, information, and trust: the British Columbia Citizens' Assembly as agenda setter. In: Warren ME and Pearse H (eds) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge University Press, pp. 166–192.
- Dahl RA (1989) *Democracy and Its Critics*. New Haven and London: Yale University Press.
- Dahl RA (1998) *On Democracy*. New Haven: Yale University Press.
- Dalton RJ, Burklin WP and Drummond A (2001) Public Opinion and Direct Democracy. *Journal of Democracy* 12(4): 141–153. DOI: 10.1353/jod.2001.0066.
- Dalton RJ, Scarrow SE and Cain BE (2004) Advanced Democracies and the New Politics. *Journal of Democracy* 15(1): 124–138. DOI: 10.1353/jod.2004.0004.
- Daly E (2015) A republican defence of the constitutional referendum. *Legal Studies* 35(01): 30–54. DOI: 10.1111/lest.12038.
- Damore DF, Bowler S and Nicholson SP (2012) Agenda Setting by Direct Democracy: Comparing the Initiative and the Referendum. *State Politics & Policy Quarterly* 12(4): 367–393. DOI: 10.1177/1532440012453592.
- Desserud D and Collins JF (2017) The ongoing saga of electoral reform in PEI. *Policy Options*, 11 April. Available at: <http://policyoptions.irpp.org/magazines/april-2017/the-ongoing-saga-of-electoral-reform-in-pei/> (accessed 14 November 2018).
- Dewey J (1981) *The Later Works, 1925-1953: 1925-1927*. SIU Press.
- Diamond LJ (2002) Thinking About Hybrid Regimes. *Journal of Democracy* 13(2): 21–35. DOI: 10.1353/jod.2002.0025.
- Disch L (2011) Toward a Mobilization Conception of Democratic Representation. *American Political Science Review* 105(01): 100–114. DOI: 10.1017/S0003055410000602.

- Disch L (2012) Democratic Representation and the Constituency Paradox. *Perspectives on Politics* 10(3): 599–616. DOI: 10.1017/S1537592712001636.
- Disch L (2017) Not Quite the End of Representative Politics. *European Political Science* 16(3): 441–444.
- Donovan T (2007) Direct Democracy as Super-Precedent: Political Constraints of Citizen-Initiated Laws. *Willamette Law Review* 43: 191.
- Donovan T and Karp JA (2006) Popular Support for Direct Democracy. *Party Politics* 12(5): 671–688. DOI: 10.1177/1354068806066793.
- Donovan T, Bowler S, McCuan D, et al. (1998) Contending Players and Strategies: Opposition Advantages in Initiative Elections. In: Bowler S, Donovan T, and Tolbert CJ (eds) *Citizens as Legislators: Direct Democracy in the United States*. Ohio State University Press.
- Dostie B and Dupré R (2016) Serial Referendums on Alcohol Prohibition: A New Zealand Invention. *Social Science History* 40(3): 491–521.
- Dryzek JS (2000) *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press.
- Dryzek JS (2016) The Forum, the System, and the Polity: Three Varieties of Democratic Theory. *Political Theory*. DOI: 10.1177/0090591716659114.
- Dupuis-Déri F (2016) *La Peur Du Peuple: Agoraphobie et Agoraphilie Politiques*. Montréal: Lux.
- Dür A and Mateo G (2011) To Call or Not to Call? Political Parties and Referendums on the EU's Constitutional Treaty. *Comparative Political Studies* 44(4): 468–492. DOI: 10.1177/0010414010393476.
- DuVivier KK (2007) *Out of the Bottle: The Genie of Direct Democracy*. ID 2602920, SSRN Scholarly Paper, 5 May. Rochester, NY: Social Science Research Network. Available at: <https://papers.ssrn.com/abstract=2602920> (accessed 3 November 2017).
- Dyck JJ (2009) Initiated Distrust: Direct Democracy and Trust in Government. *American Politics Research* 37(4): 539–568. DOI: 10.1177/1532673X08330635.
- Dyck JJ (2016) New Directions for Empirical Studies of Direct Democracy. *Chapman Law Review* 19: 109.
- Dzur AW and Hendriks CM (2018) Thick populism: democracy-enhancing popular participation. *Policy Studies* 39(3): 334–351. DOI: 10.1080/01442872.2018.1478408.
- Eisenberg A (2004) When (if Ever) Are Referendums on Minority Rights Fair? In: Laycock D (ed.) *Representation and Democratic Theory*. Vancouver, BC: UBC Press, pp. 3–22.



- el-Wakil A (2017) The Deliberative Potential of Facultative Referendums: Procedure and Substance in Direct Democracy. *Democratic Theory* 4(1): 59–78. DOI: 10.3167/dt.2017.040104.
- Elchardus M and Spruyt B (2016) Populism, Persistent Republicanism and Declinism: An Empirical Analysis of Populism as a Thin Ideology. *Government and Opposition* 51(01): 111–133. DOI: 10.1017/gov.2014.27.
- Electoral Commission (2013) About the 2011 Referendum on the Voting System. Available at: <http://www.elections.org.nz/events/past-events-0/2011-referendum-voting-system/about-2011-referendum-voting-system> (accessed 7 July 2016).
- Electoral Commission (2015) First Referendum on the New Zealand Flag. Available at: [http://www.electionresults.govt.nz/2015\\_flag\\_referendum1/](http://www.electionresults.govt.nz/2015_flag_referendum1/) (accessed 7 July 2016).
- Electoral Commission (2016) Second Referendum on the New Zealand Flag - Final Result. Available at: [http://www.electionresults.govt.nz/2016\\_flag\\_referendum2/](http://www.electionresults.govt.nz/2016_flag_referendum2/) (accessed 7 July 2016).
- Elkink JA, Farrell DM, Reidy T, et al. (2016) Understanding the 2015 marriage referendum in Ireland: context, campaign, and conservative Ireland. *Irish Political Studies*: 1–21. DOI: 10.1080/07907184.2016.1197209.
- Elklit J and Svensson P (1997) What Makes Elections Free and Fair? *Journal of Democracy* 8(3): 32–46. DOI: 10.1353/jod.1997.0041.
- Ellis RJ (2003) Signature Gathering in the Initiative Process: How Democratic Is It? *Montana Law Review* 64(1): 35–97.
- Elster J (2013) *Securities Against Misrule: Juries, Assemblies, Elections*. Cambridge University Press.
- Elstub S, Ercan S and Mendonça RF (2016) Editorial introduction: The fourth generation of deliberative democracy. *Critical Policy Studies* 10(2): 139–151. DOI: 10.1080/19460171.2016.1175956.
- Emerson P (2011) *Defining Democracy: Voting Procedures in Decision-Making, Elections and Governance*. Springer Science & Business Media.
- Fatke M (2014) Allure or alternative? Direct democracy and party identification. *Party Politics* 20(2): 248–260. DOI: 10.1177/1354068813520271.
- Fatke M and Freitag M (2013) Direct Democracy: Protest Catalyst or Protest Alternative? *Political Behavior* 35(2): 237–260.
- Felicetti A, Niemeyer S and Curato N (2015) Improving deliberative participation: connecting mini-publics to deliberative systems. *European Political Science Review*: 1–22. DOI: 10.1017/S1755773915000119.

- Ferejohn J (1995) Reforming the Initiative Process. In: Cain BE and Noll RG (eds) *Constitutional Reform in California: Making State Government More Effective and Responsive*. Berkeley: Institute of Governmental Studies Press.
- Fimiani E (2011) Elections, Plebiscitary Elections, and Plebiscites in Fascist Italy and Nazi-Germany: Comparative Perspectives. In: Jessen R and Richter H (eds) *Voting for Hitler and Stalin: Elections Under 20th Century Dictatorships*. Frankfurt: Campus Verlag, pp. 231–254.
- Fishkin JS (1991) *Democracy and Deliberation: New Directions for Democratic Reform*. New Haven: Yale University Press.
- Fishkin JS (1997) *The Voice of the People: Public Opinion and Democracy*. New Haven: Yale University Press.
- Fishkin JS (2011) *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford University Press.
- Fishkin JS and Luskin RC (2006) Broadcasts of Deliberative Polls: Aspirations and Effects. *British Journal of Political Science* 36(1): 184–188.
- Fishkin JS and Mansbridge J (2017) Introduction. *Daedalus* 146(3): 6–13. DOI: 10.1162/DAED\_a\_00443.
- Fishkin JS, Kousser T, Luskin RC, et al. (2015) Deliberative Agenda Setting: Piloting Reform of Direct Democracy in California. *Perspectives on Politics* 13(04): 1030–1042. DOI: 10.1017/S1537592715002297.
- Fossen T (2019) Constructivism and the Logic of Political Representation. *American Political Science Review*: 1–14. DOI: 10.1017/S0003055419000273.
- Fournier P, van der Kolk H, Carty RK, et al. (2011) *When Citizens Decide*. Oxford University Press. DOI: 10.1093/acprof:oso/9780199567843.001.0001.
- Franklin MN, van der Eijk C and Marsh M (1995) Referendum outcomes and trust in government: Public support for Europe in the wake of Maastricht. *West European Politics* 18(3): 101–117. DOI: 10.1080/01402389508425093.
- Freitag M and Ackermann K (2016) Direct Democracy and Institutional Trust: Relationships and Differences Across Personality Traits. *Political Psychology* 37(5): 707–723. DOI: 10.1111/pops.12293.
- Freitag M and Stadelmann-Steffen I (2010) Stumbling block or stepping stone? The influence of direct democracy on individual participation in parliamentary elections. *Electoral Studies* 29(3): 472–483. DOI: 10.1016/j.electstud.2010.04.009.

- Fuji Johnson G (2011) The Limits of Deliberative Democracy and Empowerment: Elite Motivation in Three Canadian Cases. *Canadian Journal of Political Science* 44(01): 137–159. DOI: 10.1017/S0008423910001058.
- Fuji Johnson G (2015) *Democratic Illusion*. Toronto: University of Toronto Press.
- Fung A (2003) Survey Article: Recipes for Public Spheres: Eight Institutional Design Choices and Their Consequences. *Journal of Political Philosophy* 11(3): 338–367. DOI: 10.1111/1467-9760.00181.
- Fung A (2005) Deliberation before the Revolution Toward an Ethics of Deliberative Democracy in an Unjust World. *Political Theory* 33(3): 397–419. DOI: 10.1177/0090591704271990.
- Fung A (2007) Democratic Theory and Political Science: A Pragmatic Method of Constructive Engagement. *American Political Science Review* 101(03): 443–458. DOI: 10.1017/S000305540707030X.
- Fung A (2012) Continuous Institutional Innovation and the Pragmatic Conception of Democracy. *Polity* 44(4): 609–624. DOI: 10.1057/pol.2012.17.
- Fung A (2013) The Principle of Affected Interests: An Interpretation and Defense. In: Nagel JH and Smith RM (eds) *Representation: Elections and Beyond*. Philadelphia: University of Pennsylvania Press, pp. 236–268.
- Fung A and Wright EO (2003) Countervailing Power in Empowered Participatory Governance. In: Fung A and Wright EO (eds) *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*. Verso, pp. 259–290.
- Galligan B (2001) Amending Constitutions through the Referendum Device. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy*. Basingstoke: Palgrave Macmillan, pp. 109–124. Available at: <http://www.palgraveconnect.com/doi/10.1057/9781403900968> (accessed 9 May 2016).
- Gandhi J and Lust-Okar E (2009) Elections Under Authoritarianism. *Annual Review of Political Science* 12(1): 403–422. DOI: 10.1146/annurev.polisci.11.060106.095434.
- Garrett E and Smith DA (2005) Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy. *Election Law Journal* 4(4): 295–328. DOI: 10.1089/elj.2005.4.295.
- Gastil J (2014) Beyond Endorsements and Partisan Cues: Giving Voters Viable Alternatives to Unreliable Cognitive Shortcuts. *The Good Society* 23(2): 145–159.
- Gastil J and Richards R (2013) Making Direct Democracy Deliberative through Random Assemblies. *Politics & Society* 41(2): 253–281. DOI: 10.1177/0032329213483109.
- Gastil J and Wright EO (2018) Legislature by Lot: Envisioning Sortition within a Bicameral System. *Politics & Society* 46(3): 303–330. DOI: 10.1177/0032329218789886.

- Gastil J, Richards RC and Knobloch KR (2014) Vicarious Deliberation: How the Oregon Citizens' Initiative Review Influenced Deliberation in Mass Elections. *International Journal of Communication* 8(1): 62–89.
- Gastil J, Knobloch KR, Hannah AL, et al. (2016) *Assessment of the 2016 Massachusetts Citizens' Initiative Review Pilot on Question 4*. State College, PA: Pennsylvania State University.
- Gastil J, Rosenzweig E, Knobloch KR, et al. (2016) Does the public want mini-publics? Voter responses to the Citizens' Initiative Review. *Communication and the Public* 1(2): 174–192. DOI: 10.1177/2057047316648329.
- Gazey PJ (1971) DIRECT DEMOCRACY—A STUDY OF THE AMERICAN REFERENDUM. *Parliamentary Affairs* 24(2): 123–139. DOI: 10.1093/oxfordjournals.pa.a051553.
- Gerber ER (1999) *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation*. Princeton: Princeton University Press.
- Gerber ER and Hug S (2001) Legislative Response to Direct Legislation. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy*. Basingstoke: Palgrave Macmillan, pp. 88–108.
- Gerber ER, Lupia A, McCubbins MD, et al. (2001) *Stealing the Initiative: How State Government Responds to Direct Democracy*. Upper Saddle River, NJ: Pearson.
- Gerber M and Mueller S (2017) When the people speak - and decide: deliberation and direct democracy in the citizen assembly of Glarus, Switzerland. *Policy & Politics*: 1–20. DOI: 10.1332/030557317X14976099453327.
- Gilens M and Murakawa N (2002) Elite Cues and Political Decision Making. In: Carpini MXD, Huddy L, and Shapiro RY (eds) *Political Decision-Making, Deliberation and Participation*. Amsterdam: JAI Press, pp. 15–49.
- Glencross A and Trechsel A (2011) First or Second Order Referendums? Understanding the Votes on the EU Constitutional Treaty in Four EU Member States. *West European Politics* 34(4): 755–772. DOI: 10.1080/01402382.2011.572390.
- Goodin RE (2005) Sequencing Deliberative Moments. *Acta Politica* 40(2): 182–196. DOI: 10.1057/palgrave.ap.5500098.
- Goodin RE (2007) Enfranchising All Affected Interests, and Its Alternatives. *Philosophy & Public Affairs* 35(1): 40–68. DOI: 10.1111/j.1088-4963.2007.00098.x.
- Goodin RE (2008) *Innovating Democracy: Democratic Theory and Practice After the Deliberative Turn*. OUP Oxford.
- Goodin RE (2018) If Deliberation Is Everything, Maybe It's Nothing. *The Oxford Handbook of Deliberative Democracy*. DOI: 10.1093/oxfordhb/9780198747369.013.23.

- Goodin RE and Dryzek JS (2006) Deliberative Impacts: The Macro-Political Uptake of Mini-Publics. *Politics & Society* 34(2): 219–244. DOI: 10.1177/0032329206288152.
- Goodin RE and Saward M (2005) Dog Whistles and Democratic Mandates. *The Political Quarterly* 76(4): 471–476. DOI: 10.1111/j.1467-923X.2005.00708.x.
- Green JE (2009) *The Eyes of the People: Democracy in an Age of Spectatorship*. Oxford University Press.
- Gronlund K, Strandberg K and Himmelroos S (2009) The challenge of deliberative democracy online – A comparison of face-to-face and virtual experiments in citizen deliberation. *Information Polity* (3): 187–201. DOI: 10.3233/IP-2009-0182.
- Guardian (2016) Boris Johnson rejects idea of second EU referendum and says ‘out is out’. Available at: <http://www.theguardian.com/politics/2016/feb/27/boris-johnson-rejects-idea-of-second-eu-referendum-and-says-out-is-out> (accessed 9 May 2016).
- Guerrero AA (2014) Against Elections: The Lottocratic Alternative: Against Elections: The Lottocratic Alternative. *Philosophy & Public Affairs* 42(2): 135–178. DOI: 10.1111/papa.12029.
- Gunn P (2017) Deliberative Democracy and the Systemic Turn: Reply to Kuyper. *Critical Review* 29(1): 88–119. DOI: 10.1080/08913811.2017.1296065.
- Gutmann A and Thompson D (1998) *Democracy and Disagreement*. 1 edition. Cambridge, Mass.: Belknap Press.
- Gutmann A and Thompson D (2004) *Why Deliberative Democracy?* Princeton: Princeton University Press.
- Habermas J (1998) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Reprint edition. Cambridge, Mass.: The MIT Press.
- Hacker J, Pierson P and Thelen K (2015) Drift and Conversion: Hidden Faces of Institutional Change. In: Thelen K and Mahoney J (eds) *Comparative Historical Analysis in the Social Sciences*. New York: Cambridge University Press, pp. 180–208.
- Hainmueller J and Hangartner D (2013) Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination. *American Political Science Review* 107(01): 159–187. DOI: 10.1017/S0003055412000494.
- Harford T (2018) Referendums break democracies so best to avoid them. Available at: <https://www.ft.com/content/995babac-1c98-11e8-aaca-4574d7dabfb6> (accessed 4 June 2018).
- Harris M, Wilson D, Bagnall D, et al. (eds) (2017) *Parliamentary Practice in New Zealand*. 4th Edition. Auckland: Oratia. Available at:

- <https://www.parliament.nz/media/4113/parliamentary-practice-in-nz-final-text.pdf> (accessed 10 March 2018).
- Haskell J (2000) *Direct Democracy or Representative Government?: Dispelling the Populist Myth*. Boulder, CO: Westview Press.
- Held D (2006) *Models of Democracy*. 3rd ed. Stanford: Stanford University Press.
- Hendriks CM (2006) When the Forum Meets Interest Politics: Strategic Uses of Public Deliberation. *Politics & Society* 34(4): 571–602. DOI: 10.1177/0032329206293641.
- Hendriks CM (2011) *The Politics of Public Deliberation*. Palgrave Macmillan UK.
- Hendriks CM (2016) Coupling citizens and elites in deliberative systems: The role of institutional design. *European Journal of Political Research* 55(1): 43–60. DOI: 10.1111/1475-6765.12123.
- Hindess B (2000) Representation ingrafted upon democracy? *Democratization* 7(2): 1–18. DOI: 10.1080/13510340008403657.
- Hodge JK and Schwallier P (2006) How Does Separability Affect The Desirability Of Referendum Election Outcomes? *Theory and Decision* 61(3): 251–276. DOI: 10.1007/s11238-006-9001-7.
- Hollingsworth CM (1912) The So-Called Progressive Movement: Its Real Nature, Causes and Significance. *The Annals of the American Academy of Political and Social Science* 43: 32–48.
- Hug S (2009) Some thoughts about referendums, representative democracy, and separation of powers. *Constitutional Political Economy* 20(3–4): 251–266. DOI: 10.1007/s10602-008-9065-1.
- Hug S and Tsebelis G (2002) Veto Players and Referendums Around the World. *Journal of Theoretical Politics* 14(4): 465–515. DOI: 10.1177/095169280201400404.
- Independent Commission on Referendums (2018) *Report of the Independent Commission on Referendums*. July. London: Constitution Unit, School of Public Policy, University College London. Available at: [https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/182\\_-\\_Independent\\_Commission\\_on\\_Referendums](https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/182_-_Independent_Commission_on_Referendums).
- Jackson K and McRobie A (1998) *New Zealand Adopts Proportional Representation*. Hazard Press Limited.
- Jacobs K (2010) So do they empower the people? Populism, electoral reform and direct democracy in Austria, Belgium, and the Netherlands. In: *ECPR Joint Sessions*, Munster, 2010. Available at: <https://ecpr.eu/Filestore/PaperProposal/7e3bf0fa-64a7-4922-923f-19e10c77ab5e.pdf>.

- Jacobs K, Akkerman A and Zaslove A (2018) The voice of populist people? Referendum preferences, practices and populist attitudes. *Acta Politica* 53(4): 517–541. DOI: 10.1057/s41269-018-0105-1.
- James MR (2008) Descriptive representation in the British Columbia Citizens' Assembly. In: Warren ME and Pearse H (eds) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. New York: Cambridge University Press, pp. 50–69.
- Jäske M (2017) 'Soft' forms of direct democracy: Explaining the occurrence of referendum motions and advisory referendums in Finnish local government. *Swiss Political Science Review* 23(1): 50–76. DOI: 10.1111/spsr.12238.
- Jefferson T (1789) To James Madison, Paris. Available at: <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl81.php> (accessed 23 March 2018).
- Johnson C and Gastil J (2015) Variations of Institutional Design for Empowered Deliberation. *Journal of Public Deliberation* 11(1). Available at: <http://www.publicdeliberation.net/jpd/vol11/iss1/art2>.
- Johnson J (2014) Models Among the Political Theorists. *American Journal of Political Science* 58(3): 547–560. DOI: 10.1111/ajps.12114.
- Johnston R, Blais A, Gidengil E, et al. (1996) *The Challenge of Direct Democracy: The 1992 Canadian Referendum*. McGill-Queen's Press - MQUP.
- Jones BC (2013) Don't Be Silly: Lawmakers "Rarely" Read Legislation and Oftentimes Don't Understand It . . . But That's Okay. *Penn St. L. Rev. Penn Statim* (118): 7–21.
- Jost JT and Banaji MR (1994) The role of stereotyping in system-justification and the production of false consciousness. *British Journal of Social Psychology* 33(1): 1–27. DOI: 10.1111/j.2044-8309.1994.tb01008.x.
- Katz RS (1997) *Democracy and Elections*. New York: Oxford University Press.
- Kaufman A (1997) Reason, Self-Legislation and Legitimacy: Conceptions of Freedom in the Political Thought of Rousseau and Kant. *The Review of Politics* 59(1): 25–52.
- Keall C (2013) NZ govts have proud history of ignoring referenda results. *The National Business Review*, 3 September. Available at: <https://web.archive.org/web/20170518084903/https://www.nbr.co.nz/opinion/nz-govts-have-proud-history-ignoring-referenda-results> (accessed 14 November 2018).
- Kioupkiolis A (2017) Common Democracy: Political Representation beyond Representative Democracy. *Democratic Theory* 4(1): 35–58. DOI: 10.3167/dt.2017.040103.
- Knobloch KR, Gastil J and Reitman T (2016) Connecting Micro-Deliberation to Electoral Decision Making: Institutionalizing the Oregon Citizens' Initiative Review. In: Coleman

- S, Przybylska A, and Sintomer Y (eds) *Deliberation and Democracy: Innovative Processes and Institutions*. New York: Peter Lang, pp. 1–22.
- Kobach KW (1993) *The Referendum: Direct Democracy in Switzerland*. Aldershot, Hants, England ; Brookfield, Vt., USA: Dartmouth.
- Kousser T and McCubbins M (2005) Social Choice, Crypto-Initiatives, and Policymaking by Direct Democracy. *Southern California Law Review*: 949–984.
- Kriesi H (2005) *Direct Democratic Choice: The Swiss Experience*. Lanham: Lexington.
- Kriesi H and Trechsel AH (2008) *The Politics of Switzerland : Continuity and Change in a Consensus Democracy*. Cambridge UK: Cambridge University Press.
- Kriesi H, Bernhard L and Hanggli R (2008) *Coalition formation in direct-democratic campaigns: a case study of the vote on the Swiss asylum law*. Challenges to Democracy in the 21st Century 12, Working Paper. University of Zurich.
- Kuyper JW (2015) Democratic Deliberation in the Modern World: The Systemic Turn. *Critical Review* 27(1): 49–63. DOI: 10.1080/08913811.2014.993891.
- Kuyper JW (2016) Systemic Representation: Democracy, Deliberation, and Nonelectoral Representatives. *American Political Science Review* 110(02): 308–324. DOI: 10.1017/S0003055416000095.
- Lacey J (2017) *Centripetal Democracy: Democratic Legitimacy and Political Identity in Belgium, Switzerland, and the European Union*. Oxford, New York: Oxford University Press.
- Lacey J (2018) What was wrong with the Brexit referendum and what would be wrong with a second | British Politics and Policy at LSE. Available at: <http://blogs.lse.ac.uk/politicsandpolicy/what-was-wrong-with-the-brexit-referendum-and-what-would-be-wrong-with-a-second/> (accessed 23 March 2018).
- Lacy D and Niou EMS (2000) A Problem with Referendums. *Journal of Theoretical Politics* 12(1): 5–31. DOI: 10.1177/0951692800012001001.
- Lafont C (2015) Deliberation, Participation, and Democratic Legitimacy: Should Deliberative Mini-publics Shape Public Policy? *Journal of Political Philosophy* 23(1): 40–63. DOI: 10.1111/jopp.12031.
- Lafont C (2017) Can Democracy be Deliberative & Participatory? The Democratic Case for Political Uses of Mini-Publics. *Daedalus* 146(3): 85–105. DOI: 10.1162/DAED\_a\_00449.
- Lagerspetz E (2016) *Social Choice and Democratic Values*. Studies in Choice and Welfare. Cham: Springer International Publishing. Available at: <http://link.springer.com/10.1007/978-3-319-23261-4> (accessed 9 May 2016).



- Landa D and Pevnick R (2019) Representative Democracy as Defensible Epistocracy. *American Political Science Review*: 1–13. DOI: 10.1017/S0003055419000509.
- Landemore H (2012) *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*. Princeton ; Oxford: Princeton University Press.
- Landemore H (2015) Inclusive Constitution-Making: The Icelandic Experiment. *Journal of Political Philosophy* 23(2): 166–191. DOI: 10.1111/jopp.12032.
- Landemore H (2017) Deliberative Democracy as Open, Not (Just) Representative Democracy. *Daedalus* 146(3). DOI: 10.1162/DAED\_a\_00443.
- Landwehr C (2014) Facilitating Deliberation: The Role of Impartial Intermediaries in Deliberative Mini-Publics. In: Bächtiger A, Gronlund K, and Setälä M (eds) *Deliberative Mini-Publics: Involving Citizens in the Democratic Process*. Colchester: ECPR Press, pp. 77–93.
- Lang A and Warren ME (2012) Supplementary Democracy? Democratic Deficits and Citizens' Assemblies. In: Lenard PT and Simeon R (eds) *Imperfect Democracies: The Democratic Deficit in Canada and the United States*. Vancouver: UBC Press, pp. 291–314.
- LeDuc L (2003a) Referendums and Elections: Do Campaigns Matter? In: Farrell DM and Schmitt-Beck R (eds) *Do Political Campaigns Matter?: Campaign Effects in Elections and Referendums*. Routledge, pp. 137–153.
- LeDuc L (2003b) *The Politics of Direct Democracy: Referendums in Global Perspective*. Broadview Press.
- LeDuc L (2009) The Failure of Electoral Reform Proposals in Canada. *Political Science* 61(2): 21–40. DOI: 10.1177/00323187090610020301.
- LeDuc L (2015) Referendums and deliberative democracy. *Electoral Studies* 38: 139–148. DOI: 10.1016/j.electstud.2015.02.007.
- LeDuc L, Bastedo H and Baquero C (2008) The Quiet Referendum: Why Electoral Reform Failed in Ontario. In: *Annual Meeting of the Canadian Political Science Association*, University of British Columbia, 2008.
- Leib E (2006) Can Direct Democracy Be Made Deliberative? *Buff. L. Rev.*: 903.
- Leib EJ and Elmendorf CS (2012) Why Party Democrats Need Popular Democracy and Popular Democrats Need Parties. *California Law Review* 100(1): 69. DOI: <https://doi.org/10.15779/Z38Q70X>.
- Levitsky S and Way L (2002) The Rise of Competitive Authoritarianism. *Journal of Democracy* 13(2): 51–65. DOI: 10.1353/jod.2002.0026.

- Levitsky S and Way LA (2010) *Competitive Authoritarianism: Hybrid Regimes after the Cold War*. Cambridge University Press.
- Levy R (2013) “Deliberative Voting”: Realising Constitutional Referendum Democracy. *Public Law Review* 24: 555–574.
- Lewis DC (2013) *Direct Democracy and Minority Rights: A Critical Assessment of the Tyranny of the Majority in the American States*. Routledge.
- Leydet D (2017) Should We Have a Referendum. In: Potter A, Weinstock DM, and Loewen PJ (eds) *Should We Change How We Vote? Evaluating Canada’s Electoral System*. Montreal ; Kingston: Published for the McGill Institute for the Study of Canada by McGill-Queen’s University Press, pp. 166–176.
- Lijphart A (1984) *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven: Yale University Press.
- Linde HA (1989) When Is Initiative Lawmaking Not Republican Government. *Hastings Constitutional Law Quarterly* 17: 159.
- Lipsitz K (2004) Democratic Theory and Political Campaigns. *Journal of Political Philosophy* 12(2): 163–189. DOI: 10.1111/j.1467-9760.2004.00196.x.
- Lloren A (2017) Does direct democracy increase communicative responsiveness? A field experiment with Swiss politicians. *Research & Politics* 4(1): 2053168017700738. DOI: 10.1177/2053168017700738.
- Loat A and MacMillan M (2014) *Tragedy in the Commons: Former Members of Parliament Speak Out About Canada’s Failing Democracy*. First Edition edition. Toronto: Random House Canada.
- Loewen PJ, Rubenson D and Spirling A (2012) Testing the power of arguments in referendums: A Bradley–Terry approach. *Electoral Studies* 31(1): 212–221. DOI: 10.1016/j.electstud.2011.07.003.
- López-Guerra C (2005) Should Expatriates Vote?\*. *Journal of Political Philosophy* 13(2): 216–234. DOI: 10.1111/j.1467-9760.2005.00221.x.
- Lowe K and Suter K (2016) The trouble with referendums. Available at: <http://www.politico.eu/article/brexit-direct-democracy-trouble-with-referendums-eu-leave/> (accessed 21 September 2017).
- Lund N (2003) Rousseau and Direct Democracy (with a Note on the Supreme Court’s Term Limits Decision). *Journal of Contemporary Legal Issues* 13(2): 459–510.
- Lundberg TC and Miller R (2014) Letting the Voters Decide: Government Referendums and the Management of Risk. In: *Political Studies Association*, Manchester, 16 April 2014. Available at: <http://dc-10751-711240033.eu-west->

1.elb.amazonaws.com/sites/default/files/conference/papers/2014/PSAconfLettingTheVotersDecide.pdf.

- Lupia A (1994) Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections. *The American Political Science Review* 88(1): 63. DOI: 10.2307/2944882.
- Lupia A and Johnston R (2001) Are Voters to Blame? Voter Competence and Elite Maneuvers in Referendums. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy*. Basingstoke: Palgrave Macmillan, pp. 191–210.
- Lupia A and McCubbins MD (1998) *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* Cambridge University Press.
- Lutz G (2006) The Interaction Between Direct and Representative Democracy in Switzerland. *Representation* 42(1): 45–57. DOI: 10.1080/00344890600583776.
- Macpherson CB (1977) *The Life and Times of Liberal Democracy*. New York: Oxford University Press.
- Madison J (2009) Federalist No. 10. In: Shapiro I (ed.) *The Federalist Papers*. New Haven: Yale University Press.
- Magleby DB (1984) *Direct Legislation: Voting on Ballot Propositions in the United States*. Johns Hopkins University Press.
- Magleby DB (1994) Let the Voters Decide - An Assessment of the Initiative and Referendum Process. *University of Colorado Law Review* 66: 13.
- Mahoney J and Thelen K (2009) A Theory of Gradual Institutional Change. In: Mahoney J and Thelen K (eds) *Explaining Institutional Change: Ambiguity, Agency, and Power*. Cambridge: Cambridge University Press, pp. 1–37.
- Maia RCM (2012) Non-Electoral Political Representation: Expanding Discursive Domains. *Representation* 48(4): 429–443. DOI: 10.1080/00344893.2012.712547.
- Manin B (1997) *The Principles of Representative Government*. Cambridge University Press.
- Mansbridge J (1983) *Beyond Adversary Democracy*. Chicago: University Of Chicago Press.
- Mansbridge J (1999) Everyday Talk in the Deliberative System. In: Macedo S (ed.) *Deliberative Politics: Essays on Democracy and Disagreement*. Oxford University Press, pp. 1–211.
- Mansbridge J (2003) Rethinking Representation. *American Political Science Review* 97(4): 515–528.
- Mansbridge J (2011) Clarifying the Concept of Representation. *The American Political Science Review* 105(3): 621–630.

- Mansbridge J (2012) On the Importance of Getting Things Done. *PS: Political Science & Politics* 45(01): 1–8. DOI: 10.1017/S104909651100165X.
- Mansbridge J, Bohman J, Chambers S, et al. (2010) The Place of Self-Interest and the Role of Power in Deliberative Democracy\*. *Journal of Political Philosophy* 18(1): 64–100. DOI: 10.1111/j.1467-9760.2009.00344.x.
- Mansbridge J, Bohman J, Chambers S, et al. (2012) A Systemic Approach to Deliberative Democracy. In: Parkinson J and Mansbridge J (eds) *Deliberative Systems: Deliberative Democracy at the Large Scale*. Cambridge University Press, pp. 1–26.
- Matusaka JG (2005) Direct Democracy Works. *The Journal of Economic Perspectives* 19(2): 185–206. DOI: 10.1257/0895330054048713.
- Matusaka JG (2017) When Do Legislators Follow Constituent Opinion? Evidence from Matched Roll Call and Referendum Votes. *Working Paper Series, Stigler Center* (9): 1–38.
- Mattson K (2002) Do Americans Really Want Deliberative Democracy? *Rhetoric and Public Affairs* 5(2): 327–329.
- McCarthy H (2017) Less politics, more democracy: Brexit and the civic culture. *IPPR Progressive Review* 24(1): 32–35. DOI: 10.1111/newe.12034.
- McCormick JP (2011) *Machiavellian Democracy*. Cambridge University Press.
- McDaniels TL (1996) The structured value referendum: Eliciting preferences for environmental policy alternatives. *Journal of Policy Analysis and Management* 15(2): 227–251. DOI: 10.1002/(SICI)1520-6688(199621)15:2<227::AID-PAM4>3.0.CO;2-L.
- McDaniels TL and Thomas K (1999) Eliciting preferences for land use alternatives: A structured value referendum with approval voting. *Journal of Policy Analysis and Management* 18(2): 264–280. DOI: 10.1002/(SICI)1520-6688(199921)18:2<264::AID-PAM4>3.0.CO;2-F.
- McKay S and Warren ME (2018) Democratizing participatory governance through countervailing power. In: Heinelt H (ed.) *Handbook on Participatory Governance*. 77-93. Northampton, MA: Edward Elgar Publishing. DOI: 10.4337/9781785364358.
- Mendelsohn M (2000) Public Brokerage: Constitutional Reform and the Accommodation of Mass Publics. *Canadian Journal of Political Science / Revue canadienne de science politique* 33(2): 245–272.
- Mendelsohn M and Parkin A (2001a) Introduction: Referendum Democracy. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy*. Basingstoke: Palgrave Macmillan, pp. 1–22.
- Mendelsohn M and Parkin A (2001b) *Referendum Democracy: Citizens, Elites and Deliberation in Referendum Campaigns*. New York: Palgrave Macmillan.

- Miklosi Z (2012) Against the Principle of All-Affected Interests. *Social Theory and Practice* 38(3): 483–503.
- Mill JS (1958) *Considerations on Representative Government*. New York: Liberal Arts Press. Available at: <http://dx.doi.org/10.1017/CBO9780511783128> (accessed 22 May 2018).
- Miller D (1978) Democracy and Social Justice. *British Journal of Political Science* 8(1): 1–19. DOI: 10.1017/S0007123400001198.
- Miller D (2014) Majorities and Minarets: Religious Freedom and Public Space. *British Journal of Political Science* 46: 437–456. DOI: 10.1017/S0007123414000131.
- Miller D (2016) Majorities and Minarets: Religious Freedom and Public Space. *British Journal of Political Science* 46(2): 437–456. DOI: 10.1017/S0007123414000131.
- Miller KP (2000) Constraining Populism: The Real Challenge of Initiative Reform. *Santa Clara Law Review* 41: 1037.
- Moeckli D (2011) Of Minarets and Foreign Criminals: Swiss Direct Democracy and Human Rights. *Human Rights Law Review* 11(4): 774–794. DOI: 10.1093/hrlr/ngr026.
- Montanaro L (2012) The Democratic Legitimacy of Self-Appointed Representatives. *The Journal of Politics* 74(04): 1094–1107. DOI: 10.1017/S0022381612000515.
- Moore A and O’Doherty K (2014) Deliberative Voting: Clarifying Consent in a Consensus Process: Deliberative Voting. *Journal of Political Philosophy* 22(3): 302–319. DOI: 10.1111/jopp.12028.
- Moravcsik A (2008) Don’t know? Vote no! | Prospect Magazine. *Prospect*, 26 July. Available at: <https://www.prospectmagazine.co.uk/magazine/dontknowvoteno> (accessed 10 April 2017).
- Morel L (2001) The Rise of Government-Initiated Referendums in Consolidated Democracies. In: Mendelsohn M and Parkin A (eds) *Referendum Democracy*. Basingstoke: Palgrave Macmillan, pp. 47–66.
- Morel L (2007) The Rise of ‘Politically Obligatory’ Referendums: The 2005 French Referendum in Comparative Perspective’. *West European Politics* 30(5): 1041–1067. DOI: 10.1080/01402380701617449.
- Morel L (2017) The democratic criticism of referendums. In: Morel L and Qvortrup M (eds) *Routledge Handbook to Referendums and Direct Democracy*. London: Taylor and Francis, pp. 149–168. Available at: <http://lib.myilibrary.com?id=1056229> (accessed 20 June 2018).
- Morrell ME (2013) Participant Bias and Success in Deliberative Mini-Publics. In: Grönlund K, Bachtinger A, and Setälä M (eds) *Deliberative Mini-Publics: Practices, Promises, Pitfalls*. Colchester: European Consortium for Political Research Press, pp. 157–176.

- Mortensen BOG (2016) The Self-Government and the overall framework concerning Greenland. In: Ulfbeck V, Møllmann A, and Mortensen BOG (eds) *Responsibilities and Liabilities for Commercial Activity in the Arctic: The Example of Greenland*. Routledge, pp. 12–28.
- Mudde C (2004) The Populist Zeitgeist. *Government and Opposition* 39(4): 542–563. DOI: 10.1111/j.1477-7053.2004.00135.x.
- Müller J-W (2016) *What Is Populism?* Philadelphia: University of Pennsylvania Press.
- Murphy Y (2016) The marriage equality referendum 2015. *Irish Political Studies* 31(2): 315–330. DOI: 10.1080/07907184.2016.1158162.
- Näsström S (2006) Representative Democracy as Tautology: Ankersmit and Lefort on Representation. *European Journal of Political Theory* 5(3): 321–342. DOI: 10.1177/1474885106064664.
- Näsström S (2011) The Challenge of the All-Affected Principle. *Political Studies* 59(1): 116–134. DOI: 10.1111/j.1467-9248.2010.00845.x.
- Neblo MA (2015) *Deliberative Democracy between Theory and Practice*. New York: Cambridge University Press.
- Niemeyer S (2013) Scaling Up Deliberation to Mass Publics. In: Grönlund K, Bachtiger A, and Setälä M (eds) *Deliberative Mini-Publics: Practices, Promises, Pitfalls*. Colchester: European Consortium for Political Research Press, pp. 177–202.
- Norton P (2001) Playing by the Rules: The Constraining Hand of Parliamentary Procedure. *The Journal of Legislative Studies* 7(3): 13–33. DOI: 10.1080/714003882.
- Noyes H (2015) Direct Democracy as a Legislative Act. *Chapman L. Rev.* 19: 199.
- Nurmi H (1997) Referendum Design: An Exercise in Applied Social Choice Theory. *Scandinavian Political Studies* 20(1): 33–52. DOI: 10.1111/j.1467-9477.1997.tb00183.x.
- Nurmi H (1998) Voting paradoxes and referenda. *Social Choice and Welfare* 15(3): 333–350. DOI: 10.1007/s003550050109.
- Oakeshott M (1991) *Rationalism in Politics and Other Essays*. Liberty Fund Inc.
- Ober J (1990) *Mass and Elite in Democratic Athens: Rethoric, Ideology and the Power of the People*. 2. printing, with corrections. Princeton, NJ: Princeton Univ. Press.
- Ober J (2010) *Democracy and Knowledge: Innovation and Learning in Classical Athens*. 2. printing, and 1. paperback printing. Princeton, N.J.: Princeton Univ. Press.
- O'Donnell GA (2010) *Democracy, Agency, and the State: Theory with Comparative Intent*. Oxford studies in democratization. Oxford ; New York: Oxford University Press.

- Offe C (2017) Referendum vs. Institutionalized Deliberation: What Democratic Theorists Can Learn from the 2016 Brexit Decision. *Daedalus* 146(3): 14–25. DOI: 10.1162/DAED\_a\_00443.
- Olsen EDH and Trenz H-J (2014) From Citizens' Deliberation to Popular Will Formation? Generating Democratic Legitimacy in Transnational Deliberative Polling: Deliberation to Popular Will Formation? *Political Studies* 62: 117–133. DOI: 10.1111/1467-9248.12021.
- O'Toole F (2018) If only Brexit had been run like Ireland's referendum | Fintan O'Toole. *The Guardian*, 29 May. Available at: <https://www.theguardian.com/commentisfree/2018/may/29/brexit-ireland-referendum-experiment-trusting-people> (accessed 9 November 2018).
- Owen D (2012) Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem. *Ethics & Global Politics* 5(3): 129–152. DOI: 10.3402/egp.v5i3.18617.
- Owen D and Smith G (2015) Survey Article: Deliberation, Democracy, and the Systemic Turn: Survey Article: Deliberation & the Systemic Turn. *Journal of Political Philosophy* 23(2): 213–234. DOI: 10.1111/jopp.12054.
- Papadopoulos Y (1995) Analysis of Functions and Dysfunctions of Direct Democracy: Top-Down and Bottom-Up Perspectives. *Politics & Society* 23(4): 421–448. DOI: 10.1177/0032329295023004002.
- Papadopoulos Y (2012) On the embeddedness of deliberative systems: why elitist innovations matter more. In: Parkinson J and Mansbridge J (eds) *Deliberative Systems: Deliberative Democracy at the Large Scale*. Cambridge University Press, pp. 125–150.
- Parkinson J (2001) Deliberative Democracy and Referendums. In: Dowding K, Hughes J, and Margetts H (eds) *Challenges to Democracy: Ideas, Involvement and Institutions*. London: Palgrave, pp. 131–152.
- Parkinson J (2006a) *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy*. Oxford ; Toronto: Oxford University Press.
- Parkinson J (2006b) Rickety Bridges: Using the Media in Deliberative Democracy. *British Journal of Political Science* 36(1): 175–183.
- Parkinson J (2009) Beyond 'Technique': The Role of Referendums in the Deliberative System. University of Edinburgh. Available at: <http://www.johnrparkinson.net/Parkinson%20referendums%20and%20delib%20system.pdf> (accessed 3 August 2015).
- Parkinson J (2015) Pettit on Deliberative Democracy and Vice Versa. *Philosophy and Public Issues* 5(2): 59–77.

- Parkinson J and Mansbridge J (2012) *Deliberative Systems: Deliberative Democracy at the Large Scale*. Cambridge University Press.
- Pateman C (2012) Participatory Democracy Revisited. *Perspectives on Politics* 10(01): 7–19. DOI: 10.1017/S1537592711004877.
- Peters Y (2016a) (Re-)Join the Party! The Effects of Direct Democracy on Party Membership in Europe. *European Journal of Political Research* 55(1): 138–159. DOI: 10.1111/1475-6765.12120.
- Peters Y (2016b) Zero-Sum Democracy? The Effects of Direct Democracy on Representative Participation. *Political Studies* 64(3): 593–613. DOI: 10.1177/0032321715607510.
- Pettit P (2006) Democracy, National and International. *The Monist* 89(2): 301–324. DOI: 10.5840/monist200689226.
- Pitkin HF (1967) *The Concept of Representation*. University of California Press.
- Pitkin HF (2004) Representation and Democracy: Uneasy Alliance. *Scandinavian Political Studies* 27(3): 335–342.
- Plotke D (1997) Representation is Democracy. *Constellations* 4(1): 19–34. DOI: 10.1111/1467-8675.00033.
- Prato C and Strulovici B (2017) The hidden cost of direct democracy: How ballot initiatives affect politicians' selection and incentives. *Journal of Theoretical Politics* 29(3): 440–466. DOI: 10.1177/0951629816650762.
- Prosser C (2016) Calling European Union Treaty Referendums: Electoral and Institutional Politics. *Political Studies* 64(1): 182–199. DOI: 10.1111/1467-9248.12176.
- Przeworski A (1999) Minimalist conception of democracy: a defense. In: Shapiro I and Hacker-Cordsn C (eds) *Democracy's Values*. Cambridge, U.K. ; New York: Cambridge University Press.
- Przeworski A (2010) *Democracy and the Limits of Self-Government*. 1 edition. New York: Cambridge University Press.
- Qvortrup M (1999a) A.V. Dicey: the referendum as the people's veto. *History of Political Thought* 20(3): 531–546.
- Qvortrup M (1999b) A.V. Dicey: the referendum as the people's veto. *History of Political Thought* 20(3): 531–546.
- Qvortrup M (2000) Research Note: Are Referendums Controlled and Pro-hegemonic? *Political Studies* 48(4): 821–826.



- Qvortrup M (2014) *Referendums Around the World: The Continued Growth of Direct Democracy*. Springer.
- Qvortrup M (2017) Demystifying Direct Democracy. *Journal of Democracy* 28(3): 141–152. DOI: 10.1353/jod.2017.0052.
- Rasch BE (2014) Institutional Foundations of Legislative Agenda-Setting. In: Martin S, Saalfeld T, and Strøm KW (eds) *The Oxford Handbook of Legislative Studies*. Oxford University Press, pp. 455–480. Available at: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199653010.001.0001/oxfordhb-9780199653010> (accessed 9 May 2016).
- Rawls J (2001) *The Law of Peoples: With 'The Idea of Public Reason Revisited'*. Harvard University Press.
- Rawls J (2005) *Political Liberalism: Expanded Edition*. second edition edition. New York: Columbia University Press.
- Rehfeld A (2006) Towards a General Theory of Political Representation. *The Journal of Politics* 68(1): 1–21. DOI: 10.1111/j.1468-2508.2006.00365.x.
- Rehfeld A (2011) The Concepts of Representation. *American Political Science Review* 105(03): 631–641. DOI: 10.1017/S0003055411000190.
- Reidy T and Suiter J (2015) Do rules matter? Categorizing the regulation of referendum campaigns. *Electoral Studies* 38: 159–169. DOI: 10.1016/j.electstud.2015.02.011.
- Reilly S (2010) *Design, Meaning and Choice in Direct Democracy: The Influences of Petitioners and Voters*. Ashgate Publishing, Ltd.
- Remer G (2010) The Classical Orator as Political Representative: Cicero and the Modern Concept of Representation. *The Journal of Politics* 72(4): 1063–1082. DOI: 10.1017/S0022381610000538.
- Renwick A (2017) Can We Improve Discourse in Referendum Campaigns? In: *Workshop on political inequality and democratic innovations*, Villa Vigoni, 13 March 2017, pp. 1–12.
- Resnick P (1997) *Twenty-First Century Democracy*. McGill-Queen's University Press. Available at: <http://www.jstor.org/stable/j.ctt812ct> (accessed 20 June 2018).
- Riker WH (1988) *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice*. Reissue edition. Prospect Heights, Ill: Waveland Pr Inc.
- Riker WH (ed.) (1993) *Agenda Formation*. Ann Arbor: University of Michigan Press.

- Rinne JM (2016) How Not to Talk Past Each Other: The Convergence of Political Representation and Deliberation. *Representation* 52(1): 29–41. DOI: 10.1080/00344893.2016.1241295.
- Risse M (2004) Arguing for Majority Rule\*. *Journal of Political Philosophy* 12(1): 41–64. DOI: 10.1111/j.1467-9760.2004.00190.x.
- Rocher F and Lecours A (2017) The correct expression of popular will : Does the wording of a referendum question matter? In: Morel L and Qvortrup M (eds) *The Routledge Handbook to Referendums and Direct Democracy*. London: Taylor and Francis, pp. 227–246. DOI: 10.4324/9780203713181-13.
- Rosanvallon P (2011) *Democratic Legitimacy: Impartiality, Reflexivity, Proximity*. Princeton: Princeton University Press.
- Rousseau J-J (1988) *On the Social Contract*. Indianapolis: Hackett Pub Co Inc.
- Russell M (2013) Rethinking Bicameral Strength: A Three-Dimensional Approach. *The Journal of Legislative Studies* 19(3): 370–391. DOI: 10.1080/13572334.2013.773639.
- Sabl A (2004) Legislative Virtues and Democratic Relationships. *Public Integrity* 6(3): 221–233. DOI: 10.1080/10999922.2004.11051257.
- Sabl A (2015) The Two Cultures of Democratic Theory: Responsiveness, Democratic Quality, and the Empirical-Normative Divide. *Perspectives on Politics* 13(2): 345–365. DOI: 10.1017/S1537592715000079.
- Sartori G (1987) *The Theory of Democracy Revisited*. Chatham, New Jersey: Chatham House Publishers.
- Saward M (1993) Direct Democracy Revisited. *Politics* 13(2): 18–24. DOI: 10.1111/j.1467-9256.1993.tb00224.x.
- Saward M (1998) *The Terms of Democracy*. Malden: Polity Press ; Blackwell.
- Saward M (2001a) Making Democratic Connections: Political Equality, Deliberation and Direct Democracy. *Acta Politica* 36(4): 361–379.
- Saward M (2001b) Reconstructing Democracy: Current Thinking and New Directions. *Government and Opposition* 36(04): 559–581. DOI: 10.1111/1477-7053.00081.
- Saward M (2006) The Representative Claim. *Contemporary Political Theory* 5(3): 297–318. DOI: 10.1057/palgrave.cpt.9300234.
- Saward M (2009) Authorisation and Authenticity: Representation and the Unelected\*. *Journal of Political Philosophy* 17(1): 1–22. DOI: 10.1111/j.1467-9760.2008.00309.x.
- Saward M (2010) *The Representative Claim*. Oxford ; New York: Oxford University Press.

- Saward M (2014) Shape-Shifting Representation. *American Political Science Review* 108(04): 723–736. DOI: 10.1017/S0003055414000471.
- Scarrow SE (2001) Direct Democracy and Institutional Change: A Comparative Investigation. *Comparative Political Studies* 34(6): 651–665. DOI: 10.1177/0010414001034006003.
- Schedler A (2002) The Menu of Manipulation. *Journal of Democracy* 13(2): 36–50. DOI: 10.1353/jod.2002.0031.
- Schmidt VA (2008) Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. *Annual Review of Political Science* 11(1): 303–326. DOI: 10.1146/annurev.polisci.11.060606.135342.
- Schmitt C (1988) *The Crisis of Parliamentary Democracy*. MIT Press.
- Schorderet P-A (2007) Les origines de la démocratie directe: retour sur un parcours de recherche entre histoire, sociologie et science politique. Available at: [http://www.unige.ch/ses/socio/carnets-de-bord/revue/pdf/14\\_141.pdf](http://www.unige.ch/ses/socio/carnets-de-bord/revue/pdf/14_141.pdf) (accessed 30 November 2016).
- Schuck ART and Vreese CHD (2011) Public Support for Referendums: The Role of the Media. *West European Politics* 34(2): 181–207. DOI: 10.1080/01402382.2011.546566.
- Schumpeter J (1994) *Capitalism, Socialism and Democracy*. 1 edition. London: Routledge.
- Schwartzberg M (2014) *Counting the Many: The Origins and Limits of Supermajority Rule*. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139013970> (accessed 31 July 2019).
- Sciarini P, Fischer M and Traber D (2015) *Political Decision-Making in Switzerland: The Consensus Model under Pressure*. London, New York: Palgrave Macmillan.
- Seawright J and Gerring J (2008) Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options. *Political Research Quarterly* 61(2): 294–308. DOI: 10.1177/1065912907313077.
- Serota M and Lieb EJ (2013) The Political Morality of Voting in Direct Democracy. *Minnesota Law Review* 97(5): 1596–1620.
- Setälä M (1999) *Referendums and Democratic Government: Normative Theory and the Analysis of Institutions*. Basingtoke; New York: Macmillan; St. Martin's Press.
- Setälä M (2006) On the problems of responsibility and accountability in referendums. *European Journal of Political Research* 45(4): 699–721. DOI: 10.1111/j.1475-6765.2006.00630.x.
- Setälä M (2011) The Role of Deliberative Mini-Publics in Representative Democracy: Lessons from The Experience of Referendums. *Representation* 47(2): 201–213. DOI: 10.1080/00344893.2011.581080.

- Setälä M (2017) Connecting Deliberative Mini-Publics to Representative Decision Making. *European Journal of Political Research*. DOI: 10.1111/1475-6765.12207.
- Setälä M and Schiller T (eds) (2012) *Citizens' Initiatives in Europe*. London: Palgrave Macmillan UK. Available at: <http://link.springer.com/10.1057/9780230369900> (accessed 6 July 2016).
- Seyd B (1998) Regulating the referendum. *Representation* 35(4): 191–199. DOI: 10.1080/00344899808523040.
- Shapiro I (2016) *Politics against Domination*. Cambridge London: The Belknap Press of Harvard University Press.
- Shapiro I (2017) Collusion in Restraint of Democracy: Against Political Deliberation. *Daedalus* 146(3): 77–84. DOI: 10.1162/DAED\_a\_00443.
- Shapiro I and Macedo S (eds) (2000) *Designing Democratic Institutions*. Nomos 42. New York: New York University Press.
- Sheffer L, Loewen PJ, Soroka S, et al. (2017) Nonrepresentative Representatives: An Experimental Study of the Decision Making of Elected Politicians. *American Political Science Review*: 1–20. DOI: 10.1017/S0003055417000569.
- Smith DA (2007) Representation and the Spatial Bias of Direct Democracy. *University of Colorado Law Review* 78(4): 1395.
- Smith DA and Tolbert C (2007) The Instrumental and Educative Effects of Ballot Measures: Research on Direct Democracy in the American States. *State Politics & Policy Quarterly* 7(4): 416–445. DOI: 10.1177/153244000700700404.
- Smith G (1976) The Functional Properties of the Referendum\*. *European Journal of Political Research* 4(1): 1–23. DOI: 10.1111/j.1475-6765.1976.tb00787.x.
- Smith G (2009) *Democratic Innovations: Designing Institutions for Citizen Participation*. Cambridge UK: Cambridge University Press.
- Song S (2012) The boundary problem in democratic theory: why the demos should be bounded by the state. *International Theory* 4(1): 39–68. DOI: 10.1017/S1752971911000248.
- Spruyt B, Keppens G and Van Droogenbroeck F (2016) Who Supports Populism and What Attracts People to It? *Political Research Quarterly* 69(2): 335–346. DOI: 10.1177/1065912916639138.
- Staszewski G (2003) Rejecting the Myth of Popular Sovereignty and Applying an Agency Model to Direct Democracy. *SSRN Electronic Journal*. DOI: 10.2139/ssrn.405520.
- Steiner J, Jaramillo MC, Maia RCM, et al. (2017) *Deliberation Across Deeply Divided Societies*. Cambridge University Press.

- Stern R (2011) California Should Return to the Indirect Initiative. *Loyola of Los Angeles Law Review* 44(2): 671.
- Stratmann T (2006) Is Spending More Potent for or against a Proposition? Evidence from Ballot Measures. *American Journal of Political Science* 50(3): 788–801.
- Suksi M (1993) *Bringing in the People: A Comparison of Constitutional Forms and Practices of the Referendum*. Martinus Nijhoff Publishers.
- Svensson P (2002) Five Danish referendums on the European Community and European Union: A critical assessment of the Franklin thesis. *European Journal of Political Research* 41(6): 733–750. DOI: 10.1111/1475-6765.00028.
- Svensson P (2007) Direct and Representative Democracy - Supplementing, not Excluding Each Other. In: *ECPR Joint Sessions*, Helsinki, 2007. Available at: <https://ecpr.eu/Filestore/PaperProposal/3cfd4868-3887-4fd0-94bf-267becd23995.pdf> (accessed 26 February 2019).
- Tabarrok A (1994) A Survey, Critique, and New Defense of Term Limits. *Cato Journal* 14: 333–350.
- Taillon P (2017) The Democratic Potential of Referendums: Intrinsic and Extrinsic Limitations. In: Morel L and Qvortrup M (eds) *The Routledge Handbook to Referendums and Direct Democracy*. London: Taylor and Francis, pp. 169–191. DOI: 10.4324/9780203713181-13.
- Taub A and Fisher M (2016) Why Referendums Aren't as Democratic as They Seem. *The New York Times*, 4 October. Available at: <http://www.nytimes.com/2016/10/05/world/americas/colombia-brexite-referendum-farc-cameron-santos.html> (accessed 7 October 2016).
- The Electoral Commission (2018) EU referendum question assessment. Available at: <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/eu-referendum-question-assessment> (accessed 14 November 2018).
- The New Republic (2008) What Jefferson Said. *The New Republic*, 30 November. Available at: <https://newrepublic.com/article/63773/what-jefferson-said> (accessed 23 March 2018).
- Thomas JJR (1984) Weber and Direct Democracy. *The British Journal of Sociology* 35(2): 216. DOI: 10.2307/590233.
- Thompson DF (2004a) Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States. *The American Political Science Review* 98(1): 51–64.
- Thompson DF (2004b) *Just Elections: Creating a Fair Electoral Process in the United States*. University of Chicago Press.

- Thompson DF (2008a) Deliberative Democratic Theory and Empirical Political Science. *Annual Review of Political Science* 11(1): 497–520. DOI: 10.1146/annurev.polisci.11.081306.070555.
- Thompson DF (2008b) Who should govern who governs? The role of citizens in reforming the electoral system. In: Warren ME and Pearse H (eds) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge University Press, pp. 50–69.
- Thompson DF (2010) Representing future generations: political presentism and democratic trusteeship. *Critical Review of International Social and Political Philosophy* 13(1): 17–37. DOI: 10.1080/13698230903326232.
- Tierney S (2012) *Constitutional Referendums: The Theory and Practice of Republican Deliberation*. Oxford University Press.
- Tierney S (2013) Using Electoral Law to Construct a Deliberative Referendum: Moving Beyond the Democratic Paradox. *Election Law Journal: Rules, Politics, and Policy* 12(4): 508–523. DOI: 10.1089/elj.2013.0203.
- Tolbert CJ, McNeal RS and Smith DA (2003) Enhancing Civic Engagement: The Effect of Direct Democracy on Political Participation and Knowledge. *State Politics & Policy Quarterly* 3(1): 23–41. DOI: 10.1177/153244000300300102.
- Topaloff L (2017) The Rise of Referendums: Elite Strategy or Populist Weapon? *Journal of Democracy* 28(3): 127–140.
- Tormey S (2015) *The End of Representative Politics*. Malden, MA: Polity.
- Trechsel AH (2010) Reflexive Accountability and Direct Democracy. *West European Politics* 33(5): 1050–1064. DOI: 10.1080/01402382.2010.486128.
- Tridimas G (2007) Ratification through referendum or parliamentary vote: When to call a non-required referendum? *European Journal of Political Economy* 23(3): 674–692. DOI: 10.1016/j.ejpoleco.2006.09.019.
- Tridimas G (2011) A political economy perspective of direct democracy in ancient Athens. *Constitutional Political Economy* 22(1): 58–82. DOI: 10.1007/s10602-010-9093-5.
- Uhr J (2000) Testing Deliberative Democracy: The 1999 Australian Republic Referendum. *Government and Opposition* 35(2): 189–210. DOI: 10.1111/1477-7053.00023.
- Uhr J (2008) Bicameralism. *The Oxford Handbook of Political Institutions*. DOI: 10.1093/oxfordhb/9780199548460.003.0024.
- Uleri PV (1996) Introduction. In: *The Referendum Experience in Europe*. London: Palgrave Macmillan, pp. 1–19. DOI: 10.1007/978-1-349-24796-7\_1.

- Uleri PV (2012) Institutions of Citizens' Political Participation in Italy: Crooked Forms, Hindered Institutionalization. In: Setälä M and Schiller T (eds) *Citizens' Initiatives in Europe: Procedures and Consequences of Agenda-Setting by Citizens*. Challenges to Democracy in the 21st Century series. London: Palgrave Macmillan UK, pp. 71–88. DOI: 10.1057/9780230369900\_5.
- Urbinati N (2000) Representation as Advocacy: A Study of Democratic Deliberation. *Political Theory* 28(6): 758–786. DOI: 10.1177/0090591700028006003.
- Urbinati N (2004) Condorcet's Democratic Theory of Representative Government. *European Journal of Political Theory* 3(1): 53–75. DOI: 10.1177/1474885104038990.
- Urbinati N (2006) *Representative Democracy: Principles and Genealogy*. Chicago: University of Chicago Press.
- Urbinati N and Warren ME (2008) The Concept of Representation in Contemporary Democratic Theory. *Annual Review of Political Science* 11(1): 387–412. DOI: 10.1146/annurev.polisci.11.053006.190533.
- Vatter A and Danaci D (2010) Mehrheitstyannei durch Volksentscheide? *Politische Vierteljahresschrift* 51(2): 205–222. DOI: 10.1007/s11615-010-0019-7.
- Venice Commission (2007) Code of Good Practice on Referendums. Council of Europe Press.
- Vermeule A (2007) *Mechanisms of Democracy: Institutional Design Writ Small*. Oxford ; New York: Oxford University Press.
- Vermeule A (2011) Intermittent institutions. *Politics, Philosophy & Economics* 10(4): 420–444. DOI: 10.1177/1470594X10392341.
- Voigt S and Blume L (2015) Does direct democracy make for better citizens? A cautionary warning based on cross-country evidence. *Constitutional Political Economy* 26(4): 391–420. DOI: 10.1007/s10602-015-9194-2.
- Volokh HM (2011) A Read-the-Bill Rule for Congress. *Missouri Law Review* 76(1): 135–184.
- Waldron J (1999a) *Law and Disagreement*. Oxford : New York: Clarendon Press ; Oxford University Press.
- Waldron J (1999b) *The Dignity of Legislation*. Cambridge University Press.
- Waldron J (2003) Legislating With Integrity. *Fordham Law Review* 72(2): 373–394.
- Waldron J (2013) Political Political Theory: An Inaugural Lecture. *Journal of Political Philosophy* 21(1): 1–23. DOI: 10.1111/jopp.12007.
- Waldron J (2016) *Political Political Theory: Essays on Institutions*. Cambridge, Massachusetts: Harvard University Press.

- Walker MC (2003) *The Strategic Use of Referendums: Power, Legitimacy, and Democracy*. New York, NY: Palgrave Macmillan.
- Warren ME (2008) Citizen Representatives. In: Warren ME and Pearse H (eds) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge University Press, pp. 50–69.
- Warren ME (2014) Accountability and Democracy. *The Oxford Handbook of Public Accountability*. DOI: 10.1093/oxfordhb/9780199641253.013.0018.
- Warren ME (2017a) A Problem-Based Approach to Democratic Theory. *American Political Science Review* 111(01): 39–53. DOI: 10.1017/S0003055416000605.
- Warren ME (2017b) The All Affected Interests Principle in Democratic Theory and Practice. Working Paper. Institute for Advanced Studies, Vienna. Available at: <http://irihs.ihs.ac.at/4306/15/Warren%20-%20All%20Affected%20Interests%20Principle.pdf>.
- Warren ME and Gastil J (2015) Can Deliberative Minipublics Address the Cognitive Challenges of Democratic Citizenship? *The Journal of Politics* 77(2): 562–574. DOI: 10.1086/680078.
- Warren ME and Mansbridge J (2013) Deliberative Negotiation. In: Mansbridge J and Martin CJ (eds). Washington, D.C: APSA, pp. 86–120.
- Warren ME and Pearse H (eds) (2008a) *Designing Deliberative Democracy: The British Columbia Citizens' Assembly*. Cambridge: Cambridge University Press. Available at: <http://www.cambridge.org/catalogue/catalogue.asp?isbn=9780521885072> (accessed 16 March 2017).
- Warren ME and Pearse H (eds) (2008b) Introduction: Democratic renewal and deliberative democracy. In: *Designing Deliberative Democracy*. Cambridge University Press, pp. 1–20.
- Waters MD (2017) The Strength of Popular Will: Legal impact, implementation, and duration. In: Morel L and Qvortrup M (eds) *Routledge Handbook to Referendums and Direct Democracy*. London: Taylor and Francis, pp. 260–270. Available at: <http://lib.myilibrary.com?id=1056229> (accessed 20 June 2018).
- Weale A (2007) *Democracy*. 2nd ed. Issues in political theory. Houndmills: Palgrave Macmillan.
- Webb P (2013) Who is willing to participate? Dissatisfied democrats, stealth democrats and populists in the United Kingdom: Who is willing to participate? *European Journal of Political Research* 52(6): 747–772. DOI: 10.1111/1475-6765.12021.
- Weber M (1994) *Weber: Political Writings*. Cambridge University Press.



- Wiens D (2012) Prescribing Institutions Without Ideal Theory. *Journal of Political Philosophy* 20(1): 45–70. DOI: 10.1111/j.1467-9760.2010.00387.x.
- Will GF (1993) *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*. Reprint edition. New York, NY: Free Press.
- Wolin SS (2009) *Politics and Vision: Continuity and Innovation in Western Political Thought*. Princeton University Press.
- Young IM (2001) *Inclusion and Democracy*. Oxford; New York: Oxford University Press.