INITIATIVES, REFERENDA, AND THE PROBLEM OF DEMOCRATIC INCLUSION: A REPLY TO JOHN GASTIL AND KEVIN O'LEARY

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John Gastil and Kevin O'Leary propose addressing democratic deficits in the Initiative and Referendum (I&R) process by improving the fairness of the processes of crafting and debating initiatives and referenda leading up to a popular vote. In this essay, I argue that a concern with the democratic deficits of I&R should drive us to also attend to the ways that the outcome of a popular vote may lead to perceptions of unfairness and to undemocratic forms of exclusion. I consider two cases in which members of a minority felt unfairly excluded from the political community by the outcome of an I&R vote: the referendum in Canada on the Charlottetown Accord, and the votes on two same-sex union-related ballot measures in the 2006 Colorado general election. In conclusion, I make suggestions about how we might mitigate minority perceptions of unfairness and exclusion by rethinking and extending democratic processes beyond the day of voting.

Proponents of initiatives and referenda in American politics usually consider these procedures to be forms of direct democracy: that is, legislation for the people by the people themselves, rather than indirectly by means of elected or appointed representatives.[1] In the initiative process, laws are proposed

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1. The conflation of initiatives and referenda with direct democracy is so common that scholars frequently do not even attempt to make the case to prove that initiatives are democratic in nature. *See* Initiative & Referendum Institute at the University of Southern California, I & R Studies, http://www.iandrinstitute.org/Studies.htm (last visited July 17, 2007) [hereinafter Initiative & Referendum Institute] (providing a collection of studies, reports, and

by citizens; in the referendum process, proposals are made by legislatures. In both cases, proposals are submitted to the electorate for direct approval.[2]

However, the initiative and referendum (I & R) process—from the writing of legislation, to the dissemination of information about proposed legislation to voters, to the implementation of successful ballot measures—has been criticized for having a number of democratic deficits. In particular, initiatives are often crafted by citizens with little legislative experience. As a result, initiatives often contain confusing, and in some instances perhaps deliberately misleading, language.[3] Furthermore, inexperienced authors frequently craft initiatives that are unconstitutional, that do not anticipate unintended consequences, or that paradoxically produce results at odds with the people's will they are meant to embody.[4] Even worse, while initiatives and referenda are taken to be forms of direct democracy, moneyed interests frequently play a significant role in acquiring the signatures necessary to put an initiative on the ballot, in crafting the language of the legislation, and in

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briefing papers that uncritically equates initiatives and referenda with direct democracy).

2. *See* John G. Matsusaka, *Initiative and Referendum*, *in* 2 ENCYCLOPEDIA OF PUBLIC CHOICE 300, 300 (Charles K. Rowley & Friedrich Schneider eds., 2004) (providing definitions of these and other technical terms relating to initiatives and referenda).

3. *See* JOHN GASTIL, BY POPULAR DEMAND: REVITALIZING REPRESENTATIVE DEMOCRACY THROUGH DELIBERATIVE ELECTIONS 71 (2000). The issues of confusing and misleading information are exacerbated by the use of advertising to generate or undermine support for ballot initiatives and referenda. *See, e.g.*, Becky Kruse, *The Truth in Masquerade: Regulating False Ballot Proposition Ads Through State Anti-False Speech Statutes*, 89 CAL. L. REV. 129 (2001).

4. In Colorado, for example, Amendment 2, COLO. CONST. art. II, § 30b, was approved by the voters in 1992 but was declared unconstitutional by the U.S. Supreme Court in *Romer v. Evans*, 517 U.S. 620 (1996). Amendment 41, intended to promote ethics in government, was passed by Colorado voters in 2006. The text and voters' information for this initiative are available at LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY, ANALYSIS OF THE 2006 BALLOT PROPOSALS 9–11, 30–33 (2006), http://www.state.co.us/gov_dir/leg_dir/lcsstaff/bluebook/BlueBook2006.pdf. However, quickly after the election, it became apparent that the amendment had unintended consequences (for example, preventing family members of government officials from accepting college scholarships or university professors from accepting the Nobel Prize). *See Suthers: Amendment 41 Prohibits Nobel Prize Money*, DENVER BUS. J., Dec. 28, 2006, http://www.bizjournals.com/denver/stories/2006/12/25/daily25.html.

campaigning for or against particular measures.[5] As a consequence, votes on initiatives and referenda are the aggregation of individual opinions that often seem to be influenced by well-financed campaigns appealing to base fears and self-interest, rather than reflecting the will of a rationally deliberative public.

In an effort to recuperate I & R from these serious critiques, John Gastil and Kevin O'Leary have sought to creatively reinvent the process.[6] In particular, they advocate adding procedures that encourage public deliberation prior to elections—both in the process of crafting the language of ballot initiatives and in the process of publicly assessing the relative merits of supporting and opposing each measure. These friendly amendments to I & R aim to extend possibilities for citizen involvement, direct democracy, and public discussion leading up to elections.

However, a concern for democratic inclusion demands broader attention, not only to the fairness of procedures relating to the crafting and debating of initiatives and referenda *prior to* an election, but also—in certain cases—to perceptions of fairness and their consequences for democratic participation *after* an election. I have in mind here initiatives and referenda that are perceived by a minority of the citizenry as reflecting a judgment on whether they fully belong to the democratic community.[7] When the outcome of an election is interpreted by some as a statement by the majority that a particular minority is undeserving of full inclusion in the community, advocates of direct and deliberative democracy ought to be seriously concerned. Such outcomes suggest that I & R can be used unfairly as an outlet for intolerant views supported by a majority of voters but oppressive to particular minorities.

Furthermore, the perception by minorities that the majority is at best indifferent and at worst hostile to their needs po-

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5. *See generally* DAVID S. BRODER, DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY (2000). On the other hand, John G. Matsusaka argues that special interests do not subvert the will of the majority. *See generally* JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY (2004).

6. *See* John Gastil et al., *When Good Voters Make Bad Policies: Assessing and Improving the Deliberative Quality of Initiative Elections*, 78 U. COLO. L. REV. 1435 (2007); Kevin O'Leary, *The Citizen Assembly: An Alternative to the Initiative*, 78 U. COLO. L. REV. 1489 (2007).

7. I discuss several examples of this below. *See infra.*

tentially undermines minority democratic participation. Where it is politically and geographically feasible, this rejection of minority belonging can trigger a secessionist movement.[8] Where populations are more intermixed, minorities may simply be discouraged from political participation and withdraw from the democratic political process. Or they may be encouraged by the outcomes of I & R to migrate and segregate themselves within political locales that are at least locally receptive to their differences.

While secession and migration may in the short term produce results that protect the rights and identities of these minorities, in the long term they sustain a deeply problematic view that democratic political communities require homogeneity. As Canadian political philosopher Charles Taylor has pointed out in response to the Québecois secessionist movement, secession does not resolve once and for all the question of minority rights; secession merely displaces the question.[9] An independent Québec would still have to reckon with its own minorities—queers, immigrants, and Anglophones among them—and their own claims to belonging to the community.[10] Democratic institutions like I & R must be designed to be compatible with diverse political communities.

Of course, legislatures and executives may also take actions that convey the message that certain minorities do not fully belong to the political community.[11] However, the perception that one is excluded may be exacerbated by the popular vote, which is the central feature of I & R. An I & R vote is a vote by one's peers: by the people one sees at the grocery store; by the people whose children go to the same school as one's own; by one's co-workers, neighbors, and even friends. When a minority group loses a legislative battle, it may be easier, although of course not always possible, for members to reassure themselves that they will have another chance to make

8. *See infra* notes 16–34 and accompanying text for discussion of the Québecois secessionist movement.

9. *See* Charles Taylor, *Shared and Divergent Values*, *in* OPTIONS FOR A NEW CANADA (Ronald L. Watts & Douglas M. Brown eds., 1991), *reprinted in* CHARLES TAYLOR, RECONCILING THE SOLITUDES: ESSAYS ON CANADIAN FEDERALISM AND NATIONALISM 155, 181–84 (1994).

10. *Id.*

11. For example, President Franklin D. Roosevelt's Executive Order 9066 authorized the internment of Japanese Americans during World War II. Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 25, 1942).

changes in the future. When a minority group loses a popular battle, though, this loss may be accompanied by a sense of personal betrayal: surely some of the people who voted against me had to be people I know, people I thought understood me, people I thought were tolerant. But now I know what they *really* think of me and people like me.

I & R decisions are also likely to be perceived as having a kind of finality that legislative votes do not have. Oftentimes, I & R measures are constitutional amendments.[12] The burden for overturning constitutional amendments is often greater than that for overturning mere legislation. In many cases, another popular vote is required to re-amend a constitution[13]—but this seems a futile option, since the people have just made their voices heard. Furthermore, I & R votes are often perceived from within the logic of "aggregative democracy"; that is, they measure aggregations of fixed, individual preferences.[14] From within this logic, it is difficult for democratic actors to see how preferences might change; intolerant citizens, it seems, will likely stay intolerant. How could another ballot initiative and another election change the outcome? It would only give people another opportunity to express their narrowness and bigotry.[15]

Consequently, if we are at all concerned with promoting direct and deliberative democracy, we need to examine the fairness of I & R. We must do so not only in terms of the pro-

12. *See* Initiative & Referendum Institute, *supra* note 1 (providing up-to-date details on where in the United States constitutional amendments are possible by initiative and by referendum).

13. For example, in the state of Colorado, an initiative or referendum establishing a new statutory law can be overturned by a mere majority of both houses of the legislature (with the governor's consent), whereas an initiative or referendum amending the state constitution can only be overturned with a majority vote of the people at the next general election. COLO. CONST. art. V, § 1; art. XIX, § 2 (describing I & R procedures and constitutional amendments in Colorado).

14. IRIS MARION YOUNG, INCLUSION AND DEMOCRACY 19–21 (2000).

15. For example, gay rights activists often endorse this view when they point to the changing demographics of support for gay rights. Their goal is not necessarily to change people's minds about homosexuality but rather to wait it out until the older, intolerant generations die off and are replaced by a younger, more tolerant population. This was among the more optimistic responses given by gay rights activists following the 2006 elections in Colorado: the changing percentage of Coloradoans willing to support Referendum I, as compared to the perceptions of those who supported the infamous Amendment 2, is the result of a change in demographics, more than the persuasion of the public through deliberation. *See, e.g.*, Myung Oak Kim & Burt Hubbard, *Ref I Had the Stuff for Success*, ROCKY MTN. NEWS, Nov. 11, 2006, at A10.

cedures leading up to the election but also, in the case of measures perceived as systematically excluding minority groups, in terms of procedures *following* elections that might mitigate the exclusionary effects of some decisions and promote democratic inclusion.

In what follows, I will briefly discuss two examples of I & R that produced minority perceptions of unfairness and exclusion. These examples present important challenges to the view that we can fully address questions of fairness by attending to the procedures leading up to the election. In both cases, deliberative bodies produced the measures up for vote. The fairness of the measures produced through these public, deliberative procedures likely would not be questioned by people like John Gastil and Kevin O'Leary. Nonetheless, questions about the fairness and democratic effects of the *outcomes* of these votes remain.

EXAMPLE 1: THE CHARLOTTETOWN ACCORD

In the early 1990s, the federal, provincial, and territorial governments of Canada met with representatives from key minority groups in Charlottetown, Prince Edward Island, to negotiate a series of proposed constitutional amendments.[16] The result of these negotiations was the Charlottetown Accord, which proposed significant institutional changes to the Canadian Charter and was designed to, among other purposes, rebalance power between the provinces, allow for some forms of aboriginal self-government, and—most importantly for this discussion—to recognize Québec as a "distinct society" within a multicultural Canada.[17] After lengthy deliberations, negotiators approved the Charlottetown Accord on August 28, 1992.[18] Voters subsequently rejected the Accord in a popular referendum on October 26 of that year.[19]

The Charlottetown negotiations in many ways model exactly the kinds of deliberative processes that I & R reformers

16. *See* PETER H. RUSSELL, CONSTITUTIONAL ODYSSEY: CAN CANADIANS BECOME A SOVEREIGN PEOPLE? (3d ed. 2004), (providing an overview of the history of these negotiations and the outcome of the subsequent referenda, especially in Chapters 10 and 11).

17. *Id.* at 171–73 (giving a summary of the proposed constitutional amendments).

18. *Id.* at 220.

19. *Id.* at 227.

advocate. First, the negotiations that determined the wording of the proposed amendments were multilateral: they involved representatives from various political parties, jurisdictions, and (in the case of aboriginals) minority groups.[20] Furthermore, after they came to agreement, the participants returned to their constituencies and campaigned in support of the Accord in the lead-up to the national referendum.[21] Nonetheless, as I discuss below, the fairness of the procedures prior to the vote could not erase the perception by many afterwards that the outcome of the referendum was itself unfair.

In particular, many Québecois reacted to the rejection of the Accord by supporting independence for Québec from Canada.[22] Recall that one of the provisions of the Charlottetown Accord was the recognition of Québec as a "distinct society." This was the second time that Québec leaders had sought to obtain constitutional recognition of Québec's linguistic, cultural, and historical distinctness from the rest of Canada, the first being in the failed Meech Lake Accord of 1987.[23] The second failure in the 1992 referendum fueled Québecois frustration and separatism.[24]

Given that the Charlottetown Accord included major institutional reforms, we might wonder why it was the rejection of something as vague and symbolic as the recognition of Québec's "distinctness" that would encourage separatist sentiment. Charles Taylor, a philosopher most well known for his history of philosophy in *Sources of the Self* and for his defense of the importance of political recognition of minority groups,[25] has given a convincing explanation for why many Québecois took such a superficial constitutional change so seriously. He argues that what was at stake for Québecois in being recognized as distinct was a choice between two different conceptions of

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20. *Id.* at 154–89. However, while Russell notes that this round of constitutional negotiations was significantly more inclusive than those that had preceded it, he also notes the many ways in which important groups were excluded from various stages of these negotiations. *Id.* at 190–227.

21. *Id.* at 220–27.

22. *See id.* at 228–47.

23. *See id.* at 127–53 (explaining the history of the Meech Lake round of constitutional negotiations in Canada).

24. *See id.* at 228–247.

25. CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY (1989); Charles Taylor, *The Politics of Recognition*, *in* MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 25 (Amy Gutmann ed., 1994).

liberal democracy: one in which all citizens are treated equally by being treated the same, the other in which citizens are treated equally by recognizing their different conceptions of identity.[26] To treat the Québecois as simply one among the many cultures within Canada would be to ignore the unique history of Francophones—including a history of forcible assimilation and political exclusion by Anglophones.[27] It would also be to treat Québecois language and culture as on par with the language and culture of the many immigrants to Canada, a move which many in Québec feel would threaten them with assimilation to a bland Anglo-American norm. What many Québecois sought in these constitutional reforms, then, was recognition by the rest of Canada of the value of Québec's unique identity and the importance of the availability of a distinct and distinctly Francophone society for future Francophone generations.[28]

Many Québecois reacted to the rejection of the "distinct society" language in the Meech Lake and then the Charlottetown Accords with a kind of political fatalism.[29] If the rest of Canada would not acknowledge Québec's distinctness, the Parti Québecois reasoned, then Québec ought to pursue secession and protect its identity by asserting its sovereignty.[30] In 1995, another referendum was put to the popular vote in Québec: this time a referendum on secession.[31] As Daniel Smith and Caro-

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26. This argument is developed with respect to Canada in Taylor, *Shared and Divergent Values*, *supra* note 9. *See also* Charles Taylor, *Impediments to a Canadian Future*, *in* TAYLOR, RECONCILING THE SOLITUDES, *supra* note 9, at 187.

27. For an introduction to the history of Canada, see MARGARET CONRAD, CANADA: A NATIONAL HISTORY (2003).

28. TAYLOR, RECONCILING THE SOLITUDES, *supra* note 9, at 176.

29. It is important to note here that the "distinct society" clause was hardly the only contentious issue in the Charlottetown Accord. Of particular concern for Québecois was the redistribution of seats in the Parliament and the Supreme Court that would have weakened Québec's ability to protect its interests at the federal level. James Tully, *Diversity's Gambit Declined*, *in* CONSTITUTIONAL PREDICAMENT: CANADA AFTER THE REFERENDUM OF 1992 149, 154–57 (Curtis Cook ed., 1994). Consequently, it is unsurprising that the referendum was defeated in Québec 57% to 43%. *See* Clyde H. Farnsworth, *Canadians Reject Charter Changes*, N.Y. TIMES, Oct. 27, 1992, at A1. These institutional changes, we might say, undermined the value that might have been gained by the recognition of Québec's distinctiveness by suggesting that the "distinct society" clause was, indeed, merely symbolic.

30. *See* Rheal Seguin, *Referendum 1992: Quebec Will Change, One Way or Another*, GLOBE AND MAIL (Canada), Oct. 27, 1992.

31. *See* RUSSELL, *supra* note 16, at 232–33 (providing text of the referendum question).

line Tolbert might suggest, this referendum is evidence that the I & R process increases political participation[32]—some 94% of registered voters turned out to vote[33]—but to what end? If people are participating with the end of separating from the larger political community, should we really celebrate this as evidence of democratic political participation? The referendum, in the end, was narrowly defeated, by a vote of 49.42% for secession, 50.58% against.[34]

What are we to make of the particular effects of a popular vote in a case such as this? A popular vote reveals to us that we share democracy with people who are themselves unfair. Despite repeated negotiations, despite extensive public hearings, despite all the trappings of participatory and deliberative democracy, our fellow citizens do not understand what we need in order to feel that we belong as full members of the community. And, to make matters worse, we not only share democracy with these people, but they constitute the majority—and so the referendum process gives them the power to act unfairly. Why should we want to be a part of this democracy if it legitimates unfair and exclusionary outcomes?

EXAMPLE 2: SAME-SEX PARTNERSHIPS AND THE 2006 COLORADO BALLOT

Québec is perhaps an extraordinary case, insofar as it involves an excluded minority that constitutes a majority within a particular territory and has access to self-governing institutions. In this situation, a minority group that feels betrayed by a popular vote can realistically imagine secession as an option. Yet we should also be concerned with the perception that the outcome of I & R is unfair in cases where a minority is territorially dispersed and lacks a history of self-government. Indeed, precisely because such minorities lack formal institutions of representation, we should be very concerned when they perceive outcomes as unfair.

The case I would like to use to illustrate this is one that is a bit closer to home, geographically and temporally. It involves

32. *See* Daniel A. Smith, Caroline J. Tolbert, & Daniel C. Bowen, *The Educative Effects of Direct Democracy: A Research Primer for Legal Scholars*, 78 U. COLO. L. REV. 1371 (2007).

33. RUSSELL, *supra* note 16, at 235.

34. *Id.*

two ballot measures from the 2006 election in Colorado. The first is Referendum I, a measure drafted by the Colorado House of Representatives as HB 06-1344 that would have extended the rights and obligations of marriage to same-sex couples entering "domestic partnerships."[35] Like the Charlottetown Accord, this bill was drafted by experienced legislators and put to the voters after public deliberations—in theory it should not be prone to objections about the fairness of the process that led to its creation. The second ballot measure was Amendment 43, a measure proposed by popular initiative to amend the Colorado Constitution, restricting the legal definition of marriage to relationships between one man and one woman.[36] Referendum I failed by a vote of 47% to 53%; Amendment 43 passed by a slightly wider margin, with 56% support.[37]

The day after the election, many students of mine were shocked by the outcome. Several of them had campaigned on behalf of Referendum I in the Boulder and Denver areas (traditionally more liberal parts of the state) and were convinced before the vote that the referendum would pass by a significant margin.[38] Everyone they knew, they told me, supported the referendum. Of course, these were naïve undergraduates whose campaigning had restricted them to neighborhoods where the referendum enjoyed wide support. What is of interest to me here is not their naïveté, however, but the way they reacted to the vote. Students felt pessimism about the future of gay rights in Colorado, shock that (statistically speaking) some of their friends and classmates they presumed supported the measure must have voted against it nonetheless, anger that they had been betrayed by the vote, fear of how the majority of Coloradoans might treat homosexuals, and finally a desire to move to a more hospitable state.

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35. H.R. 06-1344, 65th Gen. Assem., 2d Reg. Sess. (Colo. 2006).

36. LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY, *supra* note 4, at 13 (providing the text of the proposed amendment).

37. INITIATIVE AND REFERENDUM INSTITUTE, BALLOTWATCH, ELECTION RESULTS 2006 4 (2006), http://www.iandrinstitute.org/BW%202006-5%20(Election%20results).pdf.

38. The referendum passed in Denver County by 67% and in Boulder County by 69%. *See* OFFICIAL PUBLICATION OF THE ABSTRACT OF VOTES CAST FOR THE 2005 COORDINATED, 2006 PRIMARY, 2006 GENERAL [ELECTION], STATE OF COLORADO, http://www.elections.colorado.gov/www/default/2005-2006_complete_abstract.pdf.

Similar views were reflected in letters to the editor published in local newspapers in the aftermath of the election. One letter writer noted, "While many may find the defeat of Referendum I a victory for family values and moral strongholds, many who would have benefited from its approval were left weeping the day after the election."[39] Another Colorado native living out of state wrote, "After Colorado voters chose to make a judgement in the name of fear and bigotry, I do not plan to return."[40]

These are not the only reactions that supporters of Referendum I had to their loss, of course. The same letter writer who noted widespread post-election sadness also vowed, "I will not rest easy at night until I know my rights as a citizen will be accounted for."[41] As the Québec case shows, and as Smith and Tolbert demonstrate, losing in the I & R process does not always lead to political defeatism; it can sometimes *increase* motivation for citizens to participate in the next round.[42] Political defeatism—and the accompanying urge to migrate to jurisdictions where people are surrounded by others who agree with them—is neither a necessary outcome nor one that members of minority groups will uniformly experience. Nonetheless, I believe it is an important response to some votes that calls out for attention. If we are concerned about the inclusiveness of the I & R process, we should reflect seriously on how some may feel excluded not by the process but by its outcomes.

DEMOCRATIC INCLUSION POST-ELECTION

The kinds of cases I have described in this article challenge the presumption that ensuring inclusive pre-election deliberations is sufficient to render the I & R process fair. If we are concerned about promoting direct democracy, participatory democracy, and deliberative democracy via this process, then we need to work to mitigate some of the anti-participatory and exclusionary effects of the *outcomes* of some initiatives and referenda. We need to mitigate in particular the perception (right or wrong) of minority populations that the outcomes of I & R

39. Megan Skeehan, Letter to the Editor, *Not a 2nd-Class Citizen*, ROCKY MOUNTAIN NEWS, Nov. 14, 2006, at A42.

40. James Johnson, Letter to the Editor, DENVER POST, Nov. 10, 2006, at B06.

41. Skeehan, *supra* note 39.

42. *See* Smith, Tolbert, & Bowen, *supra* note 32, at 1393–94.

votes relegate them to second-class status, misrecognize their identities, and suggest that they do not belong as full members of the political community. In conclusion, I want to suggest that we might begin to do this by thinking creatively about ways to institutionalize losing voices in the I & R process after the election. I will briefly mention three possible ways that we might do so.

1. *Provide formal recognition of minority and dissenting viewpoints.*

U.S. Supreme Court opinions are the model I have in mind here: they include majority and minority opinions, concurring and dissenting views. While majority decisions carry more weight, minority positions are formally recognized through their inclusion in the opinion and can be cited in future opinions. Similarly, we might find ways of publicly acknowledging dissent post-election. This would signal to dissenting voices that, while they were outvoted, their voices as members of the community nonetheless matter. The following two proposals are possible ways of formalizing this recognition; we might think of still others.

2. *Treat I & R votes as provisional.*

James Tully, writing about the Charlottetown Accord, has argued that the defeatist climate after the 1992 referendum might have been mitigated had the referendum been treated simply as one stage in an ongoing process of constitutional amendment, rather than as an all-or-nothing vote.[43] Similarly, Ben Barber has argued for a two-stage I & R process that would require a second vote six months after the first to confirm or revoke the results of the first vote.[44] Both of these proposals encourage public reflection and commitment to an ongoing political process. Of course, there is no guarantee that the outcome of a vote would change over time. While we can hope that citizens may be persuaded to reflect critically on the impact of a given measure on minority populations, they may not.

43. Tully, *supra* note 29, at 161–65.

44. BENJAMIN R. BARBER, STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE 288–89 (1984).

The larger contribution of this approach then is simply to emphasize I & R as an ongoing process in which minority voices are included, even where the provisional outcomes appear to signal that they should not be.

3. Continue public discussions after the elections.

If we are to take the advice of some I & R reformers and create citizen councils to publicly deliberate the merits of initiatives and referenda prior to elections, why not ensure that these same spaces continue to exist for citizens with divergent views to discuss the outcomes of those same elections? In particular, we need spaces where diverse citizens can come together, discuss their differences, and learn about one another. In the best possible circumstances, such forums would enable minorities and majorities to come to understand one another's perspectives. I would not go so far as to suggest this would then lead to political agreement; majorities may be justified in passing measures that some perceive as exclusionary, and minorities may not always be able to persuade majorities to change their views, even where changing views would produce the fairest outcome. Nonetheless, I think we can and should work through public dialogue to mitigate the fear and betrayal that outvoted minorities can feel. Bringing divergent people together in public discussions may help shore up the perception that we share democracy not with people who would rather we not be who we are, but rather with people who themselves acknowledge (if only begrudgingly) that they share democracy with people who differ from and disagree with them.