THE CITIZEN ASSEMBLY: AN ALTERNATIVE TO THE INITIATIVE

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The Citizen Assembly is a superior alternative to direct mass democracy and the initiative. Building on the ideas of James Madison and Thomas Jefferson, it is possible to combine the traditional town hall and the Internet to fashion a new understanding of representative government that bridges the enormous gap that now exists between the political elite and the average voter. The assembly reform would increase opportunities for meaningful and intelligent participation by average citizens and improve public decisions. This article explains how a national network of citizen assemblies would work.

INTRODUCTION

The initiative process is an important part of modern democracy. In states such as California, Colorado, and Oregon it is hard to think about politics and government without speaking about ballot propositions—some of which can come crashing down on a state capitol like a tsunami.[1] It is obvious that the initiative is here to stay. The challenge is to improve it where we can and to look for other ways to reinvent democracy for the modern age. The citizen assembly, particularly the version I propose in *Saving Democracy: A Plan for Real Representation in America*, is a superior alternative to direct mass democracy

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1. While an undergraduate at UCLA, I spent a year in Kenya teaching high school and doing research. Imagine my surprise when one day I came to Nairobi and saw *Time* magazine with Howard Jarvis' bellicose face bristling. Proposition 13? A tax revolt? What was this all about?

and the initiative.[2] In my proposal, I build on the ideas of James Madison and Thomas Jefferson to show how it is possible to combine the traditional town hall and the Internet to fashion a new understanding of representative government that empowers citizens and bridges the enormous gap that now exists between the political elite and the average voter.[3] Here I explain how a network of citizen assemblies would work. My argument is developed at the national level, but the proposal works equally well at the state level and that is where it would first be institutionalized. The Assembly reform would both increase opportunities for meaningful and intelligent participation by average citizens and improve public decisions. In contrast to other proffered reforms of the American political system—such as term limits or proportional representation or parliamentary style changes—the Assembly reform maintains fidelity to Madison's basic design and, in fact, draws inspiration from both Madison and Jefferson.[4]

Joseph Schumpeter and Jean-Jacques Rousseau are the seminal writers on modern representative and participatory democracy, respectively, and most institutional thought about democracy flows from the basic principles of these two authors. Schumpeter says people have the right to accept or reject those who make the decisions, but the public should stay quiet between elections.[5] Participation, civic virtue, and vigorous democratic dialogue are of little consequence.[6] Madison, the original theorist of modern representative government, is also elitist, but Schumpeter pushes this stance to the limit. On the other democratic extreme, we find Rousseau, the eighteenth-century author of *The Social Contract* and patron saint of modern participatory democrats.[7] He famously favored tiny repub-

2. KEVIN O'LEARY, SAVING DEMOCRACY: A PLAN FOR REAL REPRESENTATION IN AMERICA (2006). In this article, I rely heavily on research I have previously published, particularly chapters 4 and 5 of the aforementioned book.

3. *Id.*

4. *Id.* at 55–85, 181–97.

5. *See* JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY (1st ed. 1942).

6. *See id.*

7. Two of the most important and influential books on participatory democracy are CAROL PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY (1970) and BENJAMIN BARBER, STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE (1984). Both authors are strongly influenced by Rousseau. Barber writes that "[r]epresentation is incompatible with freedom because it delegates and thus

lics filled with virtuous citizens and gave modern articulation to the ancient Greek understanding of democracy.[8] In contrast to Schumpeter, Rousseau insists that political power exercised by individual leaders must be directed by and under the authority of the freely expressed will of the people as sovereign.[9] A radical direct democrat, Rousseau says that representation is the death of democracy:

> The English people thinks it is free. It greatly deceives itself; it is free only during the election of the members of Parliament. As soon as they are elected, it is a slave, it is nothing . . . . The instant a people chooses representatives, it is no longer free; it no longer exists.[10]

If traditional representative government is unsatisfactory, because it allows for little participation and deliberation by average citizens, and traditional direct democracy is inadequate, because it is focused only on small communal settings, what can we do? Confronting this dilemma early in the twentieth century, the Progressive reformers thought they had the answer when they invented *direct mass* democracy. The Progressives devised the initiative and the mass primary by taking the basic principle of direct democracy—every citizen should have a vote on policy—and pushing the town meeting to a grand scale.

Yet, government by mass direct democracy—witness California's destructive obsession with initiatives—is problematic.[11] First, hot-button propositions are not instruments of sound public policy. They are campaign weapons. Designed by political consultants to appeal to specific groups in the electorate, many initiatives are flawed and incoherent. They often make bad law. Second, while the biggest positive of the initiative process is that states with ballot measures as part of the political culture are more responsive to the citizenry than states without, the biggest negative is the cumulative effect of ballot measures—some of them constitutional amendments

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alienates political will at the cost of genuine self-government and autonomy." *Id.* at 145.

8. JEAN-JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT (Roger D. Masters ed., Judith R. Masters trans., St. Martin's Press 1978) (1762).

9. *Id.* at 102–03.

10. *Id.*

11. *See* DAVID S. BRODER, DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY (2000).

nearly cast in stone—that severely hamstring state legislators and governors from doing their jobs. This incoherent straight jacket is what Peter Schrag rails against in *Paradise Lost: California's Experience, America's Future.*[12] In addition, in the larger states such as California, money is a real obstacle to citizen participation. Powerful interest groups and paid signature gatherers drive the process.[13]

The evidence is in: mass direct democracy is anemic. Voters are uninformed, manipulated by slanted television ads, and rarely determine the agenda on which they vote.[14] Public affairs do not have much salience with the mass public, except on highly emotional issues. Yet, it is exactly these issues that are often handled better by a legislative body.[15] Initiatives often become ugly but effective wedge issues. California's Proposition 187 (concerning illegal immigration) remains a prime example. Not wanting to get blamed for California's deep recession in the early 1990s, then Governor Pete Wilson was able to use the Anglo backlash against illegal immigration as a way of ensuring his reelection in 1994.[16] At times, the juggernaut of ballot initiatives in states across the nation during the past three decades seems to have had as its goal an "automatic pilot system" of government, writes Schrag, with scant involvement by the electorate "beyond occasional trips to the polls to vote on yet more initiatives."[17]

At the start of the twenty-first century, having confronted the problems of direct mass democracy, it is time to reexamine representative democracy. Is there another way to reach the

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12. PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (1998).

13. BRODER, *supra* note 11. Recent scholarship challenges the idea that elites have captured the initiative process. While business groups can qualify measures, they do not always pass. The ballot measures that pass generally work in a populist or majority direction. Gerber discusses capital punishment and parental abortion notification, while Matsusuka examines a century of tax and spend data. ELIZABETH GERBER, THE POPULIST PARADOX (1999); JOHN G. MATSUSUKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY (2004).

14. *See* THOMAS CRONIN, DIRECT DEMOCRACY (1989).

15. *Id.* at 158; John Ferejohn, *Reforming the Initiative Process, in* CONSTITUTIONAL REFORM IN CALIFORNIA: MAKING STATE GOVERNMENT MORE EFFECTIVE AND RESPONSIVE 319 (Bruce E. Cain & Roger G. Noll eds., 1995).

16. Peter Schrag, *California, Here We Come: Government by Plebiscite, Which Would Have Horrified the Founding Fathers, Threatens to Replace Representative Government*, ATLANTIC MONTHLY, Mar.1998, at 20–31.

17. *Id.* at 20–31.

middle ground between small-scale participatory democracy and traditional representative government?

A Continuum of Democratic Thought

Direct Democracy	Middle Ground	Representative
Rousseau/small scale		Madison/large scale

I. Initiative/Referendum

Progressives

Direct/mass democracy

II. Citizen Assembly / People's House

Representative/small scale

In an ongoing townhall—state

or national level—a representative

subset of citizens debate

the major issues.

Part One discusses the problem of scale and introduces the Assembly reform. This section concludes with a review of real world experience and the prospects for reform. Part Two introduces the second stage of the Assembly reform, the People's House, which would grant limited but potent power to the national Assembly and make it a formal part of the national government. It also highlights three specific benefits of the reform. Part Three discusses how the individual local assemblies would function and then explains how a steering committee would direct the national system. Part Four discusses delegate selection and argues that a lottery system similar to ancient Athens is superior to elections. The Conclusion summarizes

how American citizens would gain significant democratic rights by implementing the Assembly.

I. THE PROBLEM OF SCALE

As the U.S. population grows, it is as if politics takes place in an ever-expanding auditorium. Most of the audience is far from the stage, and only the loudest voices reach them. Realizing this, players perfect sound bites and handlers stagecraft entrances, backdrops, and messages. What matters are the sweeping gestures that reach far into the hall and the balcony. Those in the front rows—the fifteen to twenty percent of the population who keep up with current events and politics—would like to be more engaged in the performance, but they are largely excluded unless their checkbook grants them admittance backstage. And, as the distance between the players and the audience grows, democracy shifts from a community of shared values and genuine debate to a hollow procedure where marketing trumps truth. If one doubts that a huge gap exists between the political elite and the public, consider this: if congressional districts were as large in the 1790s as they are today, the early House of Representatives would have had only five members! The U.S. population in 1790 was approximately three million people; congressional districts grew to 650,000 after the 2000 U.S. Census.[18] A U.S. House of Representatives consisting of Nancy Pelosi, Dennis Hastert, and three friends is not what Madison had in mind.

The change in scale is astounding. Harvard University's Thomas Patterson writes:

> The gap between the practitioner and the citizen—despite the intimacy of television and the immediacy of polling—has arguably never been greater. The world occupied by the hundreds at the top and the world populated by the millions at the bottom still overlap at points, but they do so less satisfactorily than before.[19]

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18. THE WORLD ALMANAC AND BOOK OF FACTS 2004, U.S. POPULATION BY THE OFFICIAL CENSUS, 1790–2000 at 370–71 (2004).

19. THOMAS E. PATTERSON, THE VANISHING VOTER: PUBLIC INVOLVEMENT IN AN AGE OF UNCERTAINTY, at x (2002).

Early in the presidential season, the New Hampshire primary is a great political event precisely because the scale is human. Potential presidents talk with voters, and town meetings are the norm. Voters respond by being passionate about democracy. Taking their civic responsibilities seriously, more than eighty percent of adults vote.[20] In neighboring Vermont, 150 people serve in the lower house of the state Legislature. Because the Green Mountain State has a population of only 593,740, the ratio of representation is one to every 3,958 people. By contrast, in California, the most populous state with thirty-seven million residents, a similar style of state government would swell its current eighty-member state Assembly to 9,348 representatives!

Today many Americans appear to endorse, at least implicitly, democracy without citizens. Yet it is a mistake to expect experts, elected representatives, the press, and opinion polls to do the work of democracy for us. We can rely on experts, but many important public policy issues have moral and ethical dimensions that specialists are ill-equipped to address. We can rely on elected representatives, but in the current system, presidents, governors, and members of Congress listen closely to the powerful interests that fund their campaigns. We can rely on the media, but reporters move to the next story after exposing wrongdoing, and the tabloid trend toward the sensational deflects attention from issues that matter. We can rely on polls, but rare are polls that measure the opinions of Americans who have studied and discussed an issue before being asked to summarize what they think.

We cannot expect busy adults to be public policy wonks. Still, when important issues are being decided, it is impossible not to include the public in the equation. Consider two of the most critical debates in recent years—national health care and a second war with Iraq. These two enormously complex issues could not be left to only experts and interest groups. The public had to weigh in. We have public opinion polls, of course, but they are flawed in two respects.[21] First, they are superficial.

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20. "In presidential primaries over the last quarter century, turnout has peaked at a whopping 88 percent . . . . The worst turnout in contested presidential primaries in the last 24 years was 70 percent." Faye Fiore, *Where Voting is a Primary Concern*, L.A. TIMES, Feb. 1, 2000, at A16.

21. See O'LEARY, *supra* note 2, at 22–26, for a discussion of why traditional public opinion polls are problematic.

Most respondents lack the time and inclination to make a thoughtful, informed response, what pollster Daniel Yankelovich calls a considered judgment.[22] Think of the incredibly uninformed citizens who regularly share their wisdom with *Tonight Show* host Jay Leno. No one wants these people making public policy. Second, opinion polls, although scientifically valid when properly conducted, offer an illusion of participation that does not exist. Because such a small sample is needed for national polls (fewer than 1,000 respondents), having the *Los Angeles Times* or *NBC News* randomly select your house for a phone call is about as likely as winning the lottery. In the unlikely event that they do call, Neil Postman captured our dilemma well: "We have here a great loop of impotence: The news elicits from you a variety of opinions about which you can do nothing except to offer them (to a pollster) as more news, about which you can do nothing."[23]

As we begin the twenty-first century, the United States is rich, powerful, and politically troubled. Many recognize the symptoms of our democratic malaise, but because our political system is wracked by both hyper-democracy and apathy, a solution eludes us. In some respects, the political system is more open and responsive than at any time in our history. Elected officials, barraged by e-mail, faxes, phone calls, and lobbyists, must feel as though the political system is operating on amphetamines. Yet electoral participation is episodic, often dipping to near-record lows, and political knowledge is thin.[24] The initiative process allows for citizens to have a direct voice in writing laws, but the voters are often woefully informed on what they are voting on, the proposition may be poorly drafted, and the consultants and moneyed interests that dominate the

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22. DANIEL YANKELOVICH, COMING TO PUBLIC JUDGMENT: MAKING DEMOCRACY WORK IN A COMPLEX WORLD (1991).

23. NEIL POSTMAN, AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS 69 (1986).

24. Don Peck, *The Shrinking Electorate*, ATLANTIC MONTHLY, Nov. 2002, at 48. The author describes the decrease in electorate participation thusly:

> During the past forty years the American electorate has become wealthier and vastly better educated. Moreover, electoral reforms have made voting easier (for eligible voters) than at any point since the late 1800s. According to models of voting behavior created by electoral scholars, these changes (all else being equal) should have raised voter turnout by five percentage points or more, to close to 70 percent. Instead, it has fallen, to around 50 percent.

Id.

regular political process have captured the initiative process itself. What can we do? Beneath a veneer of surface detachment and cool cynicism, Americans remain idealists, especially about democracy. As idealists, we believe that democracy should allow for active participation on the part of interested citizens. As realists, we know that the sheer scale, rapid pace, and complexity of modern life make this impossible.

Or do they?

A. A Radical Plan for Deliberative Democracy

The United States is now one hundred times more populous than at the time of its founding, yet there has not been a proportional increase in the membership of the House of Representatives or in state legislatures. One result has been a growing sense of distance between people and their lawmakers. Another has been a breakdown in political engagement, leaving political discussion in fewer and fewer mouths. This may be good for the pundit class and the wealthy elite who control the political process, but it is not healthy for democracy in America. Today it is exceedingly difficult for one member of Congress to represent 650,000 constituents. Current congressional districts are not going to shrink; instead, as the U.S. population continues to grow, House districts will inch toward 700,000 and then 800,000 and finally one million. This is not the "intimate" representation that Madison envisioned for the House of Representatives.[25] To deal with the challenge of great size and population, we need to redesign our state legislatures and the national government to provide for a smaller ratio of electors to representatives.

We can see this in embryonic form in the experiments in deliberative democracy conducted by James Fishkin, the National Issues Forums and the Citizens' Assembly in British Columbia.[26] In British Columbia, 160 randomly-selected people

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25. "[I]t is particularly essential that the branch of it under consideration should have an immediate dependence on, and an *intimate sympathy* with, the people." THE FEDERALIST NO
. 52, at 327 (James Madison) (Clinton Rossiter ed., 1961) (emphasis added).

26. *See, e.g.*, James Fishkin & Cynthia Farrar, *Deliberative Polling: From Experiment to Community Resource*, *in* THE DELIBERATIVE DEMOCRACY HANDBOOK 68–79 (John Gastil & Peter Levine eds., 2005). *See also* DAVID MATHEWS, POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE (1998); Keith Melville, Taylor L. Willingham, & John R. Dedrick, *National Issues Forums: A Net-*

were asked to reconsider the electoral system.[27] In all these cases, average people came together to discuss, in a deliberative fashion, issues that affect the commonwealth as a whole. Most participants took the exercise seriously and observers were impressed with how these individuals listened and considered evidence, approached arguments with an open mind, and learned a great deal about the policy choices before them.[28]

Today it is possible to combine the traditional town hall and the Internet to fashion a new way of thinking about and institutionalizing representative government that empowers citizens while rejecting the mass plebiscite of the initiative system. Representative government, as currently practiced, gives no institutional role to assembled citizens. That this does not strike us as odd says a great deal about the success representative government has had in taking on the cloak of democracy while leaving behind a substantial part of its core meaning. Bernard Manin writes, "Conceived in explicit opposition to democracy, today [representative government] is seen as one of its forms . . . . Representative government has undeniably a democratic dimension. No less deniable, however, is its oligarchic dimension."[29] Champions of participatory democracy recognize this and, since the 1960s, have mounted a challenge to the minimalist democracy offered by Schumpeter and the early pluralists.[30] Although their critique of Schumpeter has been on the mark, their solution—direct democracy at the local level and in the workplace—dodges the problem of scale and our need for a more energetic and engaged democracy at the state and national levels.[31] In addition, the solution proposed by the

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work of Communities Promoting Public Deliberation, in THE DELIBERATIVE DEMOCRACY HANDBOOK, *supra*; Robert C. Luskin, James S. Fishkin, & Roger Jowell, *Considered Opinions: Deliberative Polling in Britain*, 32 BRIT J. POL. SCI. 455; National Issues Forums: Forums, http://www.nifi.org/forums/index.aspx (last visited July 30, 2007).

27. *See* DESIGNING DELIBERATIVE DEMOCRACY: THE BRITISH COLUMBIA CITIZENS' ASSEMBLY (Mark Warran & Hilary Pearse eds., forthcoming 2008); Citizens' Assembly on Electoral Reform: Citizens' Assembly in Action, http://www.citizensassembly.bc.ca/public/inaction (last visited July 30, 2007).

28. BRUCE ACKERMAN & JAMES S. FISHKIN, DELIBERATION DAY 52–59 (2004).

29. BERNARD MANIN, THE PRINCIPALS OF REPRESENTATIVE GOVERNMENT 8, 237 (1997).

30. *Id.*

31. PETER BACHRACH, THE THEORY OF DEMOCRATIC ELITISM: A CRITIQUE (1967); PETER BACHRACH & ARYEH BOTWINICK, POWER AND EMPOWERMENT: A RADICAL THEORY OF PARTICIPATORY DEMOCRACY (1992); BARBER, *supra* note 7;

Progressive reformers—direct mass democracy—has reached its logical limit. The inadequacy of the initiative is evident for all to see. The initiative system is easily captured by interest groups and political elites.[32]

It is time for a new strategy. Among political theorists, there has been a burst of writing not only about republican ideas, but also around the concept of deliberative democracy.[33] Both schools are moving in an institutional direction, but shifting from theory to practice is difficult. It is an especially long leap if the writer is Jürgen Habermas imagining a pure speech situation or Hannah Arendt describing an idealized Athens.[34] The goal here is to connect the theoretical with practical reality. The authors of *The Federalist Papers* were able to do this, and so can we. Our goal is to correct the elitism of Madison by institutionalizing greater popular voice and participation. Obviously, political and economic elites are necessary in a modern nation-state. To think otherwise is fantasy. Still, we need to narrow the gap between politically aware citizens and the political class specializing in politics and government. Instead of rejecting representation and trying to craft direct democracy, we must embrace representative government and give it a healthy dose of Machiavelli's sensibilities and Jefferson's faith in the people to reduce its oligarchic tendencies.[35]

The Internet facilitates a creative union between representative government and participatory democracy. Imagine a magic wand passing over the American political system: the triad structure of government remains; we have become neither a parliamentary democracy nor a multiparty republic. Instead,

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JANE MANSBRIDGE, BEYOND ADVERSARY DEMOCRACY (1983); PATEMAN, *supra* note 7.

32. John Ferejohn, *The Citizens' Assembly Model*, *in* DESIGNING DELIBERATIVE DEMOCRACY: THE BRITISH COLUMBIA CITIZENS' ASSEMBLY, *supra* note 27.

33. See O'LEARY, *supra* note 2, at 160–80, for a discussion of deliberative democracy.

34. *See* HANNAH ARENDT, THE HUMAN CONDITION (1958); JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 267–328 (William Rehg trans., 1996). "This could be guaranteed only by the ideal conditions of general communication extending to the entire public and free from domination." Jürgen Habermas, *The Scientization of Politics and Public Opinion*, *in* TOWARD A RATIONAL SOCIETY: STUDENT PROTEST, SCIENCE AND POLITICS 75 (Jeremy J. Sapiro trans., 1970).

35. John McCormick recommends Machiavelli's *Discourses* as a model for controlling elites. *See* John P. McCormick, *Machiavellian Democracy: Controlling Elites with Ferocious Populism*, 95 AM. POL. SCI. REV. 297, 297 (2001).

beneath each member of Congress we add a local citizen assembly. Linked together electronically, these local assemblies would form a virtual national town hall to assist Congress and the President in finding solutions to the thorniest public problems. These citizen assemblies would not have formal political power, yet their votes would count in the political calculations of Congress and the President. On the most critical issues, these panels of 100 people per district would help us arrive at a public judgment both intelligent and powerful. What the Assembly would create is a third legislative branch made up of a cross-section of regular citizens. Polling the 43,500 members of the Assembly would constitute a second, more considered, measure of public opinion on the major issues of the day.

Although the votes of the 435 citizen assemblies would not be binding, their voice would be powerful because the political elite, the media, and the broader public would be interested in what an intelligent cross-section of the public thought after study and debate. Delegate selection would be by lot. All adult citizens would automatically be part of the lottery pool, but people who wanted to opt out could. Allowing people to opt out, instead of opting in, would help ensure a large pool of potential delegates. Those selected would serve a single two-year term. At the end of the two-year term, each assembly would nominate one delegate for the national steering committee, which would consist of 100 people drawn by lot from the 435 nominated. This steering committee would set the agenda of the national Assembly and perform administrative and coordinating functions.[36]

Similar to the initiative process, the Assembly would ask the public to participate in policy making, but with a dramatic difference. Instead of millions of voters marking a ballot about which they know little, the Assembly delegate would be one of 43,500 citizens nationally who were given the time and resources to study an issue and make an informed judgment. Over the course of two years, the delegates might be called to examine a foreign policy dilemma, a budget proposal, and legislation to reform the mental health care system. Likewise, the delegates would be mini-politicians, but with a key difference:

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36. I am indebted to Paul Glastris, *Washington Monthly* editor-in-chief and former speechwriter for President Clinton, for helping me develop my thoughts about the Assembly.

they would not be taking money and would speak with less calculation. By encouraging the formation of the broad-based civic majorities central to Madison's founding vision, the assemblies would help check the power of single-interest groups. Those chosen to represent the community would be expected to take their responsibility seriously. Citizens would understand that when they serve in the local assembly, their duty and demeanor should be similar to that of a jury in the judicial system. As civic volunteers, it would be their moment of glory when they would stand for their neighbors and their country.[37]

The local assemblies would meet face-to-face two to three times a month. By virtue of their participation in the Assembly, delegates would get a crash course as to the complexity and tradeoffs involved in making decisions about public policy. Some of the delegates would be part of the politically aware public. Others would begin their two-year term as a delegate with more limited political knowledge. Because they had chosen to be part of the delegate lottery, however, they indicated their interest in participating and their willingness to learn about the issues at hand and to contribute, in albeit a small but important way, to the national dialogue.[38] As a concession both to their amateur status and to the economy of time, Assembly delegates would leave the committee work of legislation to the professional politicians and policy wonks of Capitol Hill. The Assembly's job would be to discuss issues in a way that both assists the legislative process and enlightens the general public and then, after listening to the debate and doing their best to educate themselves on the issues at hand, to make an informed choice.

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37. See DOUGLASS ADAIR, FAME AND THE FOUNDING FATHERS (Trevor Colbourn ed., 1974) and ERNEST BECKER, THE DENIAL OF DEATH (1973), on the importance of being a hero in one's own life.

38. Derek Bok points out why the encouragement of intelligent participation is important:

> [A]s the public presses for more referenda and congressional leaders turn increasingly to opinion polls to help them decide how to vote on a pending bill, misinformation and ignorance promise to have more harmful effects on the policymaking process than they have had in the past . . . . [T]here is every reason to believe that popular opinion tends to improve not only with better information but also with greater attention and effort on the part of the people and more opportunities for deliberation to test ideas and hear new facts and arguments.

DEREK BOK, THE TROUBLE WITH GOVERNMENT 381–84 (2001).

The Assembly poll could be done one of two ways. Each delegate could vote within his or her assembly, with the decision being made by majority rule (fifty percent plus one), and then each local assembly would cast a single vote nationally. The votes of the 435 local assemblies in congressional districts across the nation would be tallied, and the magic number of 218 (fifty percent plus one) would signify the victor in the Assembly as a whole—just as it does in the House of Representatives. This approach has appeal because it would mirror voting in the House of Representatives. However, it would be better to tally the votes of the Assembly as a whole. Under this second method, all 43,500 delegates in the national Assembly would be polled on specific questions in much the same way that opinion surveys are conducted today. Victory would go to the majority of individual votes cast, regardless of the congressional district in which they were cast. The second approach is better, because if each district assembly has a single vote, then the Assembly would fall prey to the same problem as the Electoral College: a mismatch between aggregate preferences and the outcome. Suppose alternative A narrowly wins fifty-one percent of the assemblies while alternative B overwhelmingly wins the remaining forty-nine percent. In such a case, the preference of a majority of the Assembly's members would lose. This is not the case when we count all the votes at once.

Imagine Sam Giovoti, an accountant with a good grasp of politics and finance, serving on the local assembly in St. Louis. After the President has presented his budget to Congress, Giovoti is one of four speakers chosen to address the national Assembly. Chosen by lot from those local assembly members bold enough to want to address the national audience, two speakers have been selected who support the President's plan and two to argue against it. When it comes his turn, Giovoti makes an intelligent, focused speech criticizing the President's plan. As his address is discussed in local assemblies across the nation, other delegates begin to rally around Giovoti's view of budget sums and priorities. What if Giovoti's bold challenge, in fact, showed that the President's budget had no clothes and that public opinion, first in the deliberative sphere of the Assembly and then in the broader public, came to agree with his version of the facts? Using his chance to address both the delegates and the wider public, Giovoti would have helped shape the budget debate. In addition, by speaking truth to power, Giovoti would have

changed how he, his neighborhood, his city, and the nation at large understand citizen participation.

Giving ordinary citizens the chance to argue, debate, and deliberate in the individual local assemblies and, occasionally speak to a national audience, could issue in a fundamental re-orientation of people's views of democracy in America. On many important issues, where interest groups dominate debate and the public is kept largely in the dark, an ongoing national town-hall meeting would generate healthy discussion and inject common sense into political debate. In sum, the Assembly reform offers a radical yet practical plan to give voters a true voice in national affairs and potentially a vote in Congress.

B. Real-World Predecessors

My Assembly plan builds on both Fishkin's experiments with deliberative polling and the National Issues Forums conducted by the Kettering Foundation, and also extends real-world efforts in Congress, the California Legislature, and British Columbia. Fishkin champions the idea of deliberative opinion polls in which statistically representative samples of the population make recommendations on specific policy issues.[39] Instead of just asking people questions via telephone, Fishkin brings them to a central location to allow them to study an issue, listen to experts, and discuss the pros and cons before letting them make a decision.[40] "A deliberative opinion poll models what the public *would* think, if it had a more adequate chance to think about the questions at issue."[41] To wit:

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39. *See* JAMES S. FISHKIN, DEMOCRACY AND DELIBERATION (1991).

40. One version of Fishkin's idea would improve the presidential nominating process. For exmple, a national sample of the voting-age population would be flown to one site—say Chicago or Austin, Texas—to meet with presidential candidates of both major parties. *Id.* These individuals would meet in small groups with the candidates and after several days, they would be polled on their views of both the candidates and the issues. *Id.* The program could be broadcast on national television to allow the broader public to watch and make judgments. *Id.* A second version of Fishkin's idea is what Ackerman and Fishkin call Deliberation Day. They suggest the United States institute a national holiday two weeks prior to the national election, a day set aside for political discussion. *See* BRUCE ACKERMAN & JAMES S. FISHKIN, DELIBERATION DAY (2004). For a discussion of *Deliberation Day*, see O'LEARY, *supra* note 2, at 128–30.

41. FISHKIN, *supra* note 39, at 1(emphasis in original).

> A deliberative opinion poll gives to a microcosm of the entire nation the opportunities for thoughtful interaction and opinion formation that are normally restricted to small-group democracy. It brings the face-to-face democracy of the Athenian Assembly or the New England town meeting to the large-scale nation-state. Most important, it offers a face-to-face democracy not of elected members of a legislature, but of ordinary citizens who can participate on the same basis of political equality as that offered by the assembly or town meeting. It provides a statistical model of what the electorate *would* think if, hypothetically, all voters had the same opportunities that are offered to the sample in the deliberative opinion poll . . . . Its results have prescriptive force because they are the voice of the people under special conditions where the people have had a chance to think about the issues and hence should have a voice worth listening to.[42]

The goal is for randomly-selected lay groups, with no special interest in the outcome, to come together and "invest the time and energy necessary to make informed decisions."[43]

The Kettering Foundation runs a series of National Issues Forums premised on just these principles. Such an approach widens the circle of participation beyond interest group lobbyists, policy experts, and elected officials to include the public's point of view.[44] Having a subset of the broad public participate recognizes the principle of economy—not everyone wants to or needs to participate in the making of public policy—as well as the need for those who do participate to gain enough knowledge to be better informed than the average voter. If post-World War II political science has proven nothing else, it has shown conclusively that political knowledge among the mass elector-

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42. *Id.* at 4 (emphasis in original).

43. Ian Shapiro, *Elements of Democratic Justice*, *in* POLITICAL THEORY 24 (Ian Shapiro & Russell Hardin eds., 1996).

44. *See* Kettering Foundation, Programs: Citizens and Public Choice, http://www.kettering.org/programs/public_choice.aspx (last visited Oct. 17, 2007). Ned Crosby is an early innovator in experimenting with forms of random sample forums. In Minnesota, he developed the Center for New Democratic Processes to promote the use of the Citizen Jury deliberation process. In an analogy to a jury, as opposed to a regular public opinion poll, a citizen jury hears evidence and argument and then deliberates about the best course of action. Similar to the NIF program, Crosby has conducted numerous citizen jury projects on local, state, and federal issues. *See* Ned Crosby, *Citizens Juries: One Solution for Difficult Environmental Questions*, *in* FAIRNESS AND COMPETENCE IN CITIZEN PARTICIPATION: EVALUATING MODELS FOR ENVIRONMENTAL DISCOURSE 157–74 (Ortwin Renn et al. eds., 1995).

ate is thin.[45] We want the people who make up a policy jury to be able to make a sound judgment based on the merits of the arguments presented. As Ian Shapiro writes, "The possibilities offered by deliberative polls are worth exploring because they provide a potential way out of Sirianni's paradox: they combine citizen control with the possibility of sophisticated decision-making in a complex world, and they do it in a way that takes account of the economy of time."[46]

The Assembly also has a close connection with the recently enacted health care reform plan introduced by Senator Ron Wyden (D-Oregon) and Senator Orrin Hatch (R-Utah) aimed at launching a national dialogue on comprehensive health care reform.[47] The Health Care That Works for All Americans Act, which became law as an amendment to the 2003 Medicare reform bill, provides for a series of open, public meetings across the nation in which Americans would discuss what they want from a health care system, how much they are willing to pay, and what is realistically achievable.[48] Wyden says, "We need to zero in on health care that is essential, effective and affordable. We need to lay out for people the alternatives and proceed from there."[49] The national conversation would focus on the trade-offs citizens feel prepared to make to get the services people need at a price the nation can afford.

The Hatch-Wyden idea is to frame the debate from the grassroots up. Doing so has the potential of breaking the pattern where a politician writes a bill in Washington, D.C., the interest groups attack what they do not like, the scare tactics

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45. "The political ignorance of the American voter is one of the best-documented features of contemporary politics . . . ." Larry M. Bartels, *Uninformed Votes: Informational Effects in Presidential Elections*, 40 AM. J. POL. SCI. 194, 194 (1996).

46. Shapiro, *supra* note 43, at 603.

47. After studying efforts at health care reform dating back to President Harry Truman, Senator Wyden became convinced that early public involvement is crucial for success. He argues that if the public gains a basic knowledge of what is being proposed, it will be more difficult for powerful special interests to derail the effort. The Hatch-Wyden bill starts with the public by sponsoring a national health care dialogue with hearings and meetings in hundreds of communities, conducted under the auspices of a twenty-six member Citizen Care Working Group. *See* Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173, § 1014, 117 Stat. 2066.

48. *See* Medicare Prescription Drug, Improvement, and Modernization Act § 1014.

49. *See* Joel B. Finkelstein, *Bill Aims for Public to Drive Health Reform*, AM. MED. NEWS, Dec. 9, 2002, at 1.

frighten the public, and nothing happens. In the case of President Clinton's failed health care reform effort, despite a great deal of public attention, the plan died a procedural death with never a single vote on substance.[50] As originally drafted, Hatch-Wyden reads: "A bill to establish a Citizens Health Care Working Group to facilitate public debate about how to improve the health care system for Americans and to provide for a vote by Congress on the recommendations that are derived from this debate."[51] Wyden says when he tested his idea "in labor halls and chambers of commerce lunches, the idea of being able to force a vote had tremendous appeal."[52] The Citizens Working Group would synthesize what it had learned from the national dialogue, and make recommendations to Congress, and, if Congress did not act in six months, any member could bring a bill to the floor reflecting the Working Group's recommendations and be guaranteed a vote on it.[53] Unfortunately, the vote requirement was watered down in the final version of Hatch-Wyden to hearings in each congressional committee of jurisdiction within ninety days of the Working Group's report to Congress.[54] Still, Hatch-Wyden is an important step toward improving public discussion and institutionalizing deliberative democracy.[55] The Assembly reform expands on the Hatch-Wyden approach and proposes creating an enduring civic discussion infrastructure crisscrossing the nation's congressional districts.

In California, two Assembly members, one Republican and one Democrat, teamed up to introduce legislation for a constitutional amendment—to be approved by the voters—to reform the state's election system.[56] Introduced at the beginning of 2006, modeled after similar legislation in British Columbia, ACA 28 would enact the Citizens Assembly on Electoral Re-

50. Matthew Miller, *Ron Wyden's Healthy Idea* (Oct. 23, 2002), http://wyden.senate.gov/media/special_feature/matthew_miller_column.html (last visited Oct. 2, 2007).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. The bill's name in final passage is the Hatch-Wyden Amendment.

56. Cal. Assemb. Constitutional Amendment 28, 2006 Leg. (Cal. 2006). California Assembly members Joe Canciamilla (D-Pittsburg) and Keith Richman (R-Northridge) introduced ACA 28, the Citizens' Assembly on Electoral Reform Act of 2006, in January 2006. The bill did not become law, and with both Canciamilla and Richman termed out of the Legislature, it was not reintroduced. *Id.*

form Act of 2006. It would establish a Citizens Assembly to evaluate potential reforms of the laws governing the electoral and campaign process for the Legislature and statewide elected executive officers. One man and one woman from each of the eighty Assembly districts would be randomly selected to serve in the Citizens' Assembly and would meet two to three times a month.

In British Columbia, frustration with the electoral system led to the proposal for a congress of citizens to examine the various plans and then to recommend a plan to submit to voters for final approval. Gordon Gibson, one of the leaders of the British Columbia effort, says the success of citizen panels in British Columbia and Ontario has encouraged Canada's federal government to look at a version of deliberative democracy to assess federal institutions.[57] About the British Columbia Citizens' Assembly Model, John Ferejohn believes it can be extended beyond its focus on electoral reform. He writes:

> The Citizens' Assembly (CA) provides a way to redeem, to some extent, the ancient promise of democracy as a popular form of government—in Lincoln's words, as government "by" the people. The CA provides a way for ordinary people to play a regular role in public life outside the channels of elite or Schumpeterian democracy. [The British Columbia experience] demonstrated that this role can be played responsibly and with intelligence. By demonstrating that this power to propose could be rationally and deliberately exercised by a genuinely democratic institution, the CA offers a new pathway of democratic reform. This path need not, in principle, be restricted to the narrow range of issues discussed above but might be plenary. It offers a way for democracy to consider and revise its fundamental laws: framework laws that a people need to see as "their own." The CA offers, in this way, a way of vindicating a notion of public authorship without, at the same time, falling prey either to plebiscite or mystery.[58]

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57. Gordon Gibson, Comment, *Democracy in America: One Day, They May Get It Right*, GLOBE & MAIL (Toronto, Can.), Feb. 28, 2007, at A21.

58. John Ferejohn, *The Citizens' Assembly Model*, *in* DESIGNING DELIBERATIVE DEMOCRACY: THE BRITISH COLUMBIA CITIZENS' ASSEMBLY, *supra* note 27.

C. A Near-Term Possibility in the States

Across the political spectrum, many Americans are unhappy with consultant-driven campaigns, attack advertising, endemic corruption and gerrymandered legislative districts. The real-life examples mentioned above indicate a ground swell of interest in reforming American democracy in a direction that is both participatory and deliberative. A decentralized system of deliberative democracy is within our reach, especially at the state level. This is particularly true in states such as Colorado, California, and Oregon where voters could use the initiative process to put an Assembly system in place. The goal of the Assembly is nothing less than to create new civic habits and expectations.[59]

I do not see the initiative system fading away. It is a powerful but blunt instrument for registering or manipulating (as critics would have it) public opinion. The Assembly, by contrast, is a more nuanced, more intelligent political instrument that would supplement the basic Madisonian structure on an on-going basis. Regardless of the ebbs and flows of political emotion, the Assembly delegates would debate the major issues, demand action on matters being ignored, and provide us a mechanism by which the public could "pay attention" to what public officials are doing in our name. In *Saving Democracy*, I explain and make the case for a full national system covering all 435 congressional districts. Obviously, this is a long-term goal. In the short run, reformers in the states could implement a prototype of the Assembly reform. Progressive political leaders and political activists could join in a campaign to establish a modest number of town halls across a particular state, connected by the Internet, to allow a random sample of citizens to grapple with and debate the major issues. Specifically, twenty panels of fifty persons—or 1,000 people (and thus comparable to traditional polls)—would be practical and builds on the single-panel format of the British Columbia Citizens' Assembly. The proposal for a statewide assembly of 1,000 citizens could well generate a positive response in the press and activist pub-

59. Many institutions could be enlisted in the effort, from nonprofit foundations focused on civic health, to secretaries of state, to organizations such as the League of Women Voters and the Coro Foundation.

lic; as a "motherhood and apple pie" type of reform it would be difficult to criticize without looking like Scrooge at Christmas.

Either the prototype or the full Assembly system could be institutionalized by a vote of the legislature or a ballot proposition. Because the Assembly is advisory, at either the state or national level, there are no constitutional issues. Of course, entrenched interests happy with the current corrupt system would oppose such a reform. However, because the Assembly consciously builds on Madison and Jefferson and is an argument for improving representative—not direct—democracy, straightforward opposition would be difficult.[60] Few senators would relish being asked why they are against the idea of American citizens having the chance to participate in a deliberative and thoughtful discussion about the great issues of the day. Michael Lind argues in favor of proportional representation (PR) and says it would be relatively easy to institute such a system, because changing to a PR system of voting does not require a constitutional change, only a vote of the legislature.[61] So too with the Assembly. However, the Assembly would have an easier time getting legislative approval, because a system of electronic town halls does not jeopardize the power of the two major parties.

The purpose of the Assembly reform is not simply to increase participation; the more fundamental reason is to improve public decisions. This is a key selling point. The Assembly reform would improve decision making by creating a two-tier system of public opinion. We would have mass opinion surveys *and* the Assembly poll. The media, the political class, and the mass public would closely observe the second, and elites would sometimes side with the Assembly when a serious discrepancy arose between mass opinion and deliberative democracy. Similar to a judicial jury, these individuals would look at the evidence, hear the major arguments, and weigh the different options before deciding. These political discussions would be lively and passionate, but they would be conducted at a higher level than what now passes for political debate on talk radio. Think of the British Parliament writ large.

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60. *See* O'LEARY, *supra* note 2, at 55–85.

61. Michael Lind, *A Radical Plan to Change American Politics*, ATLANTIC MONTHLY, Aug. 1992, at 73.

These debates would issue a second, more sophisticated, more informed measure of public opinion than traditional opinion polls.

II. THE PEOPLE'S HOUSE ADDS POWER

Creating a network of one-hundred person citizen assemblies whose job will be to study and discuss the major issues would provide us with a more deliberative and thoughtful sample of public opinion than now exists. In the first stage of the reform, delegates would study and debate pressing issues—immigration reform, for example—and then offer their opinions. In this first stage, the Assembly would have no formal power and act strictly in an advisory capacity.* Yet elected officials, the press, and the public would watch the opinions of these "super citizens" carefully, and the opinions of the Assembly would help shape the opinions of the public at large.

In the second stage, the People's House, the state or national Assembly, would gain formal power to vote yea or nay on major legislation that has passed the House of Representatives and the Senate. This veto power would allow members of the People's House to send bills back to the House of Representatives and the Senate for reconsideration, and a separate "gate opening" power would allow the People's House to force a floor vote on certain bills heretofore stuck in committee and destined to die. Other positive powers would include the authority to initiate bills in either the House or the Senate, the power to offer amendments to bills under consideration on the floor of the House or the Senate, the ability to pass formal instructions to individual representatives, and the right to draft at-large resolutions addressed to the House of Representatives or the Senate as a whole.

The key to the People's House reform is giving these delegates specific, limited power. Although the People's House would have greater power than the Assembly, there is no need to duplicate the full powers of the House of Representatives and Senate. To avoid undue complexity, the People's House would not be involved in committee deliberations about bills. Like the Assembly, the People's House would help focus the

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* I will use Assembly when speaking of the national or state system and assembly when talking about the local delegation in a particular legislative district.

public's attention on the most critical issues of the day and, in addition, would act either as a popular brake or accelerator on national legislation. The People's House would accomplish these goals by employing a combination of three powers.

First, delegates to the People's House would have the power to deliberate and vote yea or nay on the most important bills that have passed the House of Representatives or the Senate. This veto power would allow members of the People's House to send bills back to the House and the Senate for reconsideration.[62] Either of these houses could override the People's House veto with a three-fifths (sixty percent) vote.

Second, in addition to having the power to approve or reject laws, the People's House would have positive powers to help set the legislative agenda. These would include the authority to initiate a limited number of bills in either the House or the Senate, the power to offer amendments to bills under consideration on the floor of the House or the Senate, the ability to pass formal instructions to individual representatives, and the right to draft at-large resolutions addressed to the House of Representatives or Senate as a whole. To avoid undue complexity, the People's House would not be involved in committee deliberations about bills.

Third, the People's House could have a "gate opening" power to assist in breaking legislative gridlock. A major problem with the American system of government is that so many people have the right to say "no" at so many points along the legislative path. The gate-opening power would help us say "yes." Acting in concert, the local assemblies would be able to force floor votes on vital measures bottled up in committee. This "gate-opening" authority would increase the responsiveness of Congress and act as an important counterbalance to the power wielded by interest groups. Sometimes popular legislation supported by a strong majority of the public never comes to a floor vote. Why? Because committee chairs exercise a power not granted by the Constitution but developed by Congress during the twentieth century.

Adding formal power to the equation, the People's House would be the Assembly with a vote. In the People's House, the

62. O'LEARY, *supra* note 2, at 139–59 (discussing why, paradoxically, the People's House, would not add to legislative gridlock. One reason is "anticipated reactions" by legislative players and another is the "gate-opening" power).

number of American citizens having an actual vote on federal legislation would expand from a tiny 535 (100 senators and 435 House members) to a larger cross-section of nearly 45,000. In our new multicameral legislature, the face-to-face interaction taking place in the People's House, the House of Representatives, and the Senate would combine with the Internet to create a unique form of face-to-face and digital democracy.[63] In the new legislative branch, the Senate would continue to consist of 100 members, two from each state, regardless of population; the House of Representatives would remain at 435 members meeting physically in Washington, D.C.; and the People's House, made up of the 43,500 delegates, would meet physically in each of the 435 congressional districts and virtually on the Internet.

While each member of the House of Representatives would continue to represent the entire congressional district of 650,000, delegates to the People's House would each represent 6,500 people. One hundred persons per congressional district would be a large enough number to require significant participation from the community, yet still allow face-to-face debate and discussion among delegates. It would be large enough to split into smaller groups focused on specific tasks. For example, in 2007, local assemblies might have formed working groups on the war in Iraq, the subprime mortgage financial crisis, the legality of detaining terror suspects, and America's economic strategy vis-à-vis China and India, to name four hot topics. As with the local assembly, delegates to the local people's house would meet two or three times a month. Each local delegation would be connected electronically to the People's House as a whole—as well as to the House of Representatives and Senate.

Delegates to the People's House would be our representatives—just like the current members of the House and Senate—but these people would also be our neighbors. Who would participate in a lottery for the chance of becoming a delegate to the local assembly and thus to represent the local community in the national People's House? People with knowledge and ideas who never thought they would have their voices heard in national government would. A cross-section of America would

63. *Id.* (discussing questions of gridlock, bicameralism, and legislative dynamics).

participate: small business owners and elementary school teachers, scientists and architects, white-collar managers and factory workers, janitors and sales clerks, police chiefs and financial planners, attorneys and high-tech engineers, secretaries and auto repair servicemen. As a national network of electronic town halls formally connected to Congress, the People's House would act as a way station between average citizens and the political elite.

Pollster Yankelovich says an institution occupying the middle ground between elite insider knowledge and mass ignorance is precisely what the American political system needs but currently lacks.[64] Living in a nation awash with college-educated talent and blue-collar common sense, both the Assembly and the People's House would tap that resource. Together they would enlist the energy and talent of those interested enough in public affairs to participate in the selection lottery and ask these individuals to represent us in a twenty-first century town hall. In addition to the knowledge and political judgment gained by those who serve as delegates, there would be a ripple effect through the general population.[65]

The Federalists constructed the American system to safeguard the interests of the wealthy and powerful at the expense of participation by average citizens. A skyrocketing population accentuates this bias. The People's House would rebalance the system by injecting our national government with a dose of popular energy and common sense. At the time of the founding, Madison and his colleagues had an excuse for their elite sociology. They believed in a wiser and more virtuous ruling class and were deeply afraid of laborers, particularly those who might become a powerful "faction" against the interests of property and commerce.[66] Such were the lessons they drew from Shays' Rebellion, when debt-ridden farmers rebelled against Boston bankers, and from the Pennsylvania Constitution of 1776, with its unicameral legislature and the extraordi-

64. *See generally* YANKELOVICH, *supra* note 22.

65. *See* ELIHU KATZ & PAUL F. LAZARSFELD, PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS (Paul F. Lazarsfeld & Nernard Berelson eds., The Free Press 1964) (1955). People who are knowledgeable about a subject—be it politics or fashion or music—often influence others. Katz and Lazarsfeld call this "two-step flow" communication. *See id.* (concept discussed throughout).

66. *See* GORDON WOOD, THE CREATION OF THE AMERICAN REPUBLIC 1776–1787 (1969).

nary Article 15. Article 15 required every bill passed by the Pennsylvania Legislature to be circulated for consideration by the people at large before becoming law in the next legislative session.[67] Afraid of the democratic forces unleashed by the American Revolution, the Federalists worked hard to create a distant national government far from the people who gave their consent.[68] They created a system of government where Supreme Court justices are appointed for life, the President is elected by the electoral college, the Senate until the Seventeenth Amendment was chosen by indirect election, and the House of Representatives was the people's only direct connection to the state or national government.

The world we live in is far different from 1787. Today we think of virtue and corruption as being equally distributed across the population. Today Anti-Federalists' fears about a distant and remote government ring true, and today it is within our power to add a popular assembly to the constitutional mix. Doing so would correct the flaw in Federalist thinking and help us recapture democracy's promise. In the Assembly or the People's House, average citizens would have a chance to be players in the national debate. Of course, unlike the initiative process, only a limited number of people could serve in the Assembly or the People's House. Still, all adult citizens would have an equal chance of being chosen to be a delegate and, in the case of the People's House, an equal chance to participate in governing their state or the nation.

In addition, and just as importantly, the degree of separation from the federal government that each of us feels would be radically reduced. The chances of the average citizen meeting or knowing his or her congressman or congresswoman are slim when districts are 650,000 persons large. In a 6,500-person ward it would be much more likely that you, a person in your family, or a friend would actually know the local delegate. This simple dynamic would stimulate interest and conversation about the important issues of the day. Extending representation downward in the political system and asking a cross-section of citizens to take a formal deliberative role in setting national policy would both confront the dilemma of scale and help control corruption. Extending representation downward

67. *Id.* at 232.
68. On Anti-Federalist objections, see *id.* at 516.

would engage voters in a way that goes far beyond the illusory participation of polling. Madison's idea of extending representation horizontally across space in *Federalist No. 10* was a stroke of genius. It enabled the United States to build democracy on a continental scale. Today it is time to consider extending representation deeper into the population in the way that the Assembly reform provides.[69]

III. THE ASSEMBLY CONFRONTS AMERICAN POLITY PROBLEMS

The Assembly confronts the problems bedeviling the American polity. The national town hall deals seriously with the enormous size of representative districts by restoring earlier ratios of representation when average citizens knew their elected legislators. Those chosen as delegates of the Assembly or the People's House would continue to live and work in the community—instead of moving to far-off Washington, D.C., or the state capital. The virtual town hall is a healthy antidote to our current style of politics by consultants and interest groups because citizen-delegates would be able to counterbalance the influence of big-money lobbyists and single-interest fanatics. Anchored in their respective communities, delegates to the Assembly and the People's House would have a broader vision of the public good than interest-group lobbyists, would be less vulnerable to the influence of large campaign contributions than regular politicians, and, thus, would have a freer hand with which to seek the public good. By encouraging participation and giving people an outlet where they can influence the major issues of the day, the virtual national Assembly cultivates the civic virtues extolled by the republican tradition. The deliberative Assembly, in short, creates opportunities for intelligent participation and provides a space for citizens to practice their political skills. Although the local assemblies would not bring about the "participatory society" that some dreamed of in the 1960s, they would provide a way for a small representative portion of the public to participate in a powerful and constructive fashion.

The House and Senate would remain the primary shapers of legislation because the power of the local assemblies would be carefully limited. Still, on major issues as important as in-

69. *See* O'LEARY, *supra* note 2, at 86–110.

tervention in the Middle East, fixing Social Security, or improving health-care coverage, the virtual town hall would ensure that a representative segment of the public not only understood the merits of the various proposals but also had a voice (the Assembly) and possibly a vote (the People's House).[70]

Powerful medicine, the Assembly and the People's House would strengthen American politics in three specific, critical ways. No other reform on the horizon offers so many benefits while staying true to Madison's vision.

First, this reform would give the public back its voice by creating opportunities for intelligent participation. As Harvard Law professor Mary Ann Glendon writes, "Self-government not only requires certain civic skills (deliberation, compromise, consensus-building, civility, reason-giving), but *theaters* in which those arts can be meaningfully exercised."[71] The Assembly and the People's House would drastically improve opportunities for participation and involvement in a way that is deliberative and thoughtful, not impulsive and emotional.

Second, by encouraging the formation of broad-based civic majorities (Madison's goal), this reform would help curb the excessive influence of special interests that has gained strength in this era of consultant-dominated politics. The Assembly reform would act as a counterweight against single-interest groups that block sane solutions to pressing problems.

Third, the gate-opening aspect of the People's House would give us the option of forcing a floor vote on popular bills locked in committee. Thus, a reform that improves participation also boosts legislative speed.

Locally, the Assembly would add a third arena of public engagement. Today the school board and city council are platforms where citizens take turns conducting the public's business. Both Tocqueville and John Stuart Mill extolled the critical role that local participation plays in the health of

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70. *See generally* JAMES MILLER, DEMOCRACY IN THE STREETS: FROM PORT HURON TO THE SIEGE OF CHICAGO (1987); JAMES A. MORONE, THE DEMOCRATIC WISH: POPULAR PARTICIPATION AND THE LIMITS OF AMERICAN GOVERNMENT (1990). By providing a legitimate institutional channel for the intense activism of exceptional decades and nurturing grassroots participation in periods of normal politics, the Assembly and the People's House would help cure American politics of its periodic excessive oscillations between "democracy in the streets" and apathetic withdrawal.

71. Mary Ann Glendon, *Democracy's Discontent: America in Search of a Public Philosophy*, NEW REPUBLIC, Apr. 1, 1996, at 39 (emphasis added).

democracy.[72] The local assembly would be similar to the school board and city council in terms of its close connection to citizens and its moderate time demands on delegates. The difference lies in its focus on national affairs. In an increasingly cosmopolitan and global world, power long ago moved beyond city limits. The Assembly continues the American tradition of local political engagement, while greatly expanding our understanding of what local participation means.

Serving in a state or national Assembly would be similar to serving on a jury; we expect people on a jury to do their best to make dispassionate decisions based on the law and the evidence presented. In the same way, in the Assembly, delegates would be asked to think beyond partisanship and self-interest to consider what is right for the community and the nation. During the 1960s, the idea of participatory democracy energized a generation. Today, combining the traditional town hall and the Internet to fashion a new understanding of representative government would allow greater participation—and influence—by average citizens. It would help break the special interests' lock on Congress and help control the imperial presidency.[73] A one-hundred person citizen assembly in every legislative district would be a healthy antidote to the politics of plutocracy, elites, and narrow special interests. This new institution would assist us in becoming the nation that Madison and Abraham Lincoln envisioned—one where politics strives on a regular basis to reach the civic republican goal of "civic-minded" majorities, deciding issues on the basis of arguments presented, not campaign checks collected.

One of the great advantages of the federal system is that the states can be used as political laboratories. It is common for policy experimentation to take place in the states before being tried at the national level. The same should be true of the Assembly and the People's House. If states as varied as Arizona, California, Connecticut, Florida, Iowa, Kentucky, Wis-

72. *See* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 68–70 (J.P. Meyer ed., George Lawrence trans., Doubleday 1969); JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT (1958).

73. *See generally* ROBERT C. BYRD, LOSING AMERICA: CONFRONTING A RECKLESS AND ARROGANT PRESIDENCY (2004); JOHN W. DEAN, WORSE THAN WATERGATE (2005); ARTHUR M. SCHLESINGER JR., THE IMPERIAL PRESIDENCY (Houghton Mifflin Co. 2004) (1973); Arthur M. Schlesinger Jr., *Bush's Thousand Days*, WASH. POST, Apr. 24, 2006, at A17 (discussing the imperial presidency and its revival).

consin, and Vermont, for example, instituted first the Assembly and then the People's House, and the experiment flourished, implementation of a national Assembly at the federal level could be accomplished by a vote of Congress. However, moving to the stronger reform, the People's House, would require a constitutional amendment. We all know that constitutional amendments are very difficult to achieve. Most attempts fail.[74] Why try?

Many Americans assume the Constitution is sacred and untouchable. But Robert Dahl suggests that a more realistic attitude is to see the founders as our political Wright brothers. Madison, Hamilton, and the other framers did a spectacular job in creating the basic institutional structure of American politics. Yet the edifice is not perfect. Dahl writes: "[c]onsidered in the context of its present difficulties, we are entitled to wonder whether the constitutional system that has evolved from their design is, two centuries later, adequate for governing a modern country."[75] Dahl points out that although formal constitutional change is difficult to achieve, it is striking that a majority of the amendments to the Constitution since the Bill of Rights in 1791 have further democratized it.[76] Eleven of sixteen amendments in the past 200 years have expanded democracy in one way or another. These amendments have democratized the Constitution by reducing or eliminating exclusions from the full rights of citizenship (slavery, suffrage), limits on popular sovereignty (direct election of senators), and limits on majority rule (income tax by Congress).[77]

The People's House would be a modest but important change in our constitutional structure. It would radically improve American democracy. It may seem presumptuous and dangerous to tamper with a system of government that has served us so well. Yet, both the framers and the Progressives understood that institutional change was sometimes necessary. We can remain more closely connected to them by recognizing

74. *See generally* JANE J. MANSBRIDGE, WHY WE LOST THE ERA (1986) (describing a cautionary tale about the unsuccessful attempt to make the Equal Rights Amendment part of the Constitution).

75. Robert A. Dahl, *The Pseudodemocratization of the American Presidency*, *in* THE TANNER LECTURES ON HUMAN VALUES 52 (1988).

76. *Id.* at 58–59.

77. *Id.*

the need for reform today than by blindly adhering to the framers' exact design.

IV. HOW THE LOCAL ASSEMBLY WOULD WORK

Being a delegate to the People's House would be similar to serving on a busy city council. Delegates could keep their full-time jobs; the assembly position could pay a modest per diem similar to that of other local government bodies. The assembly would formally meet several times a month, and the meetings would rotate between two or three locations in the congressional district.[78] Each local assembly would pick a moderator and a secretary to run the meetings, and the main items for discussion would be selected by a national steering committee made up of assembly delegates selected by their colleagues.[79]

The Kettering Foundation's program of National Issues Forums (NIF) provides one model for how the discussion process could be structured.[80] In the NIF process, before coming together as a group, each participant is given a briefing booklet on a particular subject—national energy policy, the practice of jailing terrorism suspects, the estate tax.[81] These briefing materials present three or four perspectives on the issue, not always on a left-right party line basis, to give the participants basic information on the subject and get participants thinking about the policy choices involved and the tradeoffs and values that need to be discussed in order to make an informed decision.[82] In addition, depending on the issue, it would be possible for the two major parties to prepare video presentations for the assemblies and for the national steering committee to put together a panel of experts to debate the issue and provide a live video conference for the national audience. It is easy to

78. The meetings would be open to the public and interested citizens could attend and listen but would not participate unless the moderator asked for questions or comments from the audience.

79. This is similar to the function that the Council of 500 played in Athenian democracy.

80. *See* DAVID MATHEWS & NOELLE MCAFEE, MAKING CHOICES TOGETHER: THE POWER OF PUBLIC DELIBERATION (2003), 6–13, 25–33. *See also* DAVID MATHEWS, POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE (1994); Kettering Foundation, Programs: Citizens and Public Choice, http://www.kettering.org/programs/public_choice.aspx (last visited Oct. 17, 2007).

81. *See* MATHEWS & MCAFFEE, *supra* note 80.

82. *See id.*

imagine CSPAN, PBS, or CNN hosting such a debate and televising it for both the assembly delegates and the general public. The steering committee could prepare lists of articles, books, documentaries, and websites for interested delegates to consult. The idea is not for Assembly members to become policy wonks. Rather it is for delegates to get a primer so that they debate from a base of knowledge and not just sound-bites.

Each local assembly would elect a president of the assembly who would be similar to the foreperson of a jury. The president would be responsible for running the meeting and maintaining order. The person selected would act as a moderator during debate and refrain from interjecting her or his views. Another option would be to invite an outsider—a nonprofit leader, a lawyer, a judge, or a professor—to play the moderator role. The moderator would be responsible for keeping the discussion focused, giving various delegates the chance to speak and determining when enough debate has taken place for a vote to be taken. How would one-hundred people interact and talk with one another? Again the NIF process is instructive and works like this: the moderator would introduce the topic and ask if one or two people want to speak at the beginning of the session.[83] Then the group would break into four smaller groups, and here individuals would talk about their views on the topic, argue and debate their differences, and see if they could reach a consensus on some points. Joining the main group, each small group would present the results of their discussion, and then the group as a whole would discuss and see if there was consensus on some of the issues raised.[84]

Another option is the Athenian model where the topic is known in advance and, when the moderator for that session asks who would like to speak, several of the best orators present the arguments pro or con. Other members of the assembly would be able to participate in the dialogue, but at least two delegates would make prepared speeches focused on winning the audience.[85] If the Athenians could make this work in an assembly of 6,000, it is certainly possible in an assembly of one-hundred.[86] New Englanders have practiced town-meeting de-

83. *See id.*
84. *See id.*
85. *See* JOSIAH OBER, MASS AND ELITE IN DEMOCRATIC ATHENS: RHETORIC, IDEOLOGY, AND THE POWER OF THE PEOPLE (1989).
86. *See id.*

mocracy with good results since before the Revolution. Frank Bryan, the author of *Real Democracy: The New England Town Meeting and How it Works*, writes, "Town meetings are not public hearings . . . . They are legislatures—places for speaking and making law. In effect every citizen of a town is a legislator."[87]

A key question facing the People's House would be how to deal with policy complexity and the sheer number of bills churned out by modern legislative bodies. One answer would be to establish a steering committee to coordinate the work of the 435 local delegations across the nation and link them to Washington, D.C. The steering committee would have a function similar to the Council of 500 in ancient Athens that prepared the agenda for the Athenian Assembly and carried out its decisions.[88] Theoretically, the People's House could vote on every bill that passed the House of Representatives or the Senate. But busy adults with careers and families would not want to waste hours debating trivia. The steering committee, selected from the local delegations, would reduce the workload to a manageable level by focusing attention on the most important bills and issues that affect the nation as a whole.

This fifty-member panel, made up of a cross-section of representatives from each region of the United States, would be the administrative brains of the national Assembly and would be used for both the Assembly and the People's House. Its structure and function would be similar to the Democratic and Republican steering and policy committees in the House of Representatives. Where the legislation is trivial, industry specific, or uncontroversial, the steering committee of the People's House would forward those bills to the House of Representatives or the Senate without interference. After a bill has passed the House of Representatives or the Senate, the steering committee would decide to (1) let the bill go directly ahead to the upper or lower house, or (2) send the bill to the full People's House for review, debate, and a vote. When considering a bill passed by the Senate or the House of Representatives, the

87. *See generally* FRANK M. BRYAN, REAL DEMOCRACY: THE NEW ENGLAND TOWN MEETING AND HOW IT WORKS (2004); Frank M. Bryan, *Direct Democracy and Civic Competence: The Case of the Town Meeting, in* CITIZEN COMPETENCE AND DEMOCRATIC INSTITUTIONS 198 (Stephen L. Elkin & Karol Edward Soltan eds., 1999).

88. MANIN, *supra* note 28, at 17.

People's House would work under a time limit to avoid legislative delay.

In addition to selecting which congressional bills to debate, the steering committee would monitor the legislative calendar and coordinate meeting schedules, direct research efforts, and generally set the direction and pace of the agenda for the People's House as a whole. Members of the steering committee would be well versed on the legislative process and public policy. People who demonstrate leadership in the local assemblies would be natural candidates for the steering committee position. The job would require significantly more energy, attention, and performance than that of a regular delegate to the People's House.[89]

Because the steering committee could conceivably abuse its authority, it is important to give the body power without giving it too much. Care would be taken in the selection of its members. After a year of service, delegates in each local assembly would nominate by secret ballot one individual to take part in a national lottery that would then select the steering committee. Twenty-five people would be selected one year and twenty-five the next year; together they would make up the fifty-person steering committee. Once on the steering committee, members would serve a two-year term, with those in their second year having executive power and those in their first year helping with administration, research, and running the Assembly system. Such a seniority system would ensure that those running the national Assembly system and charged with the important responsibility of setting the agenda would come to the job with experience. Individuals could serve only one two-year term as a steering committee member. A selection process such as this

89. While the regular delegate position would be unpaid, except for a small meeting stipend, an argument can be made that fifty people selected to serve on the national steering committee should receive a salary comparable to that of paid senior legislative staff. Serving on the Assembly steering committee would be a demanding job that would require at least a part-time and often a full-time commitment by individuals. The performance of the steering committee would be crucial to the working of the People's House, and it would be important that these individuals be able to focus on their public duties without worrying about how to pay their bills. Also, because the steering committee would constitute the leadership of the People's House, it is important to assure the integrity and honesty of these delegates when they are the focus of lobbying efforts by various interest groups.

would limit the danger of an abuse of power by the people charged with directing the national system.

Apart from the steering committee, how would the 100 people from the congressional district interact with the other 43,500 delegates to the national Assembly? How, exactly, can 43,500 people talk with each other about anything in a coherent way? These are critical questions, and my answer also addresses another concern—how to ensure that discussion gets beyond the parochial biases and concerns of each local jurisdiction.

Just as a single assembly of one-hundred people can be broken into smaller groups for discussion, so the national system made up of 435 assemblies would be broken into smaller units to make communication and discussion possible. The national assemblies would be broken into six groups (Pacific Coast, Rocky Mountains, Midwest, Deep South, Mid-Atlantic, Northeast) and randomly matched with one of the other five groups from other parts of the nation. Similar to the two-party system, this technique would help people understand the great diversity that is America. It is much easier to imagine techniques for constructive dialogue between 600 individuals than 43,500. One way to structure the national dialogue would be for at least one of the monthly meetings to be a session in which the six matched local assemblies join together for discussion of an issue. In a group of 600, oratorical skills would become important, and video conferencing would put speakers on display for all to see. It would be difficult to have a single national roundtable of nearly 45,000 people unless, as in the case of Sam Giovoti addressing the Assembly as a whole, we follow the Athenian model, where talented speakers were chosen or self-selected to present one side of the argument. This type of approach would certainly be possible on the great issues of the day.

Structuring the national discussion so that each assembly is forced to confront the diversity and moral pluralism that is modern America would prevent local assemblies from becoming echo chambers of homogeneity.[90] Every delegate in the national Assembly would come from a particular congressional

90. *See* Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175–95 (2002). *See generally* MICHAEL R. JAMES, DELIBERATIVE DEMOCRACY AND THE PLURAL POLITY (2004).

district and thus would see a world colored by personal experience and geography. But national issues and discussions with far-flung assemblies from five other regions would contribute to a gradual education of cosmopolitan sensibilities. Assembly delegates would begin to think far past the local concerns that occupy officeholders on the city council, water board, and board of education. This aspect of the national Assembly would make it quite unlike local government service.

On a day-to-day basis, e-mail chains, chat rooms, and telephone conversations would tie people together across the Assembly network. People would be friends with delegates from the neighboring congressional districts and with delegates from across the country. In addition to conversations online and on the telephone with delegates from different regions, delegates would begin to have internal dialogues with themselves—what Robert Goodin calls "democratic deliberation within"—about the great issues of the day and what can be done about them. Building on models of everyday conversational dynamics, Goodin suggests that people can imagine themselves in the position of other people they have met or talked to or heard about and can ask, "What would they say about this proposal?"[91] The experience of serving on the national Assembly could not help but force people to expand their horizons and see problems from multiple perspectives.

On this point, and on the positive educational impact of the Assembly in general, consider these observations by John Stuart Mill. In *Considerations on Representative Government*, Mill wrote:

> It is not sufficiently considered how little there is in most men's ordinary lives to give any largeness either to their conceptions or to their sentiments . . . in most cases the individual has no access to any person of cultivation much superior to his own. Giving him something to do for the public, supplies, in a measure, all these deficiencies. If circumstances allow the amount of public duty assigned to him to be considerable, it makes him an educated man. Notwithstanding the defects of the social system and moral ideals of antiquity, the practice of the *dicastery* [judges] and the *ecclesia* [Assembly] raised the intellectual standard of an average Athenian citizen far beyond anything of which

91. *See generally* ROBERT E. GOODIN, REFLECTIVE DEMOCRACY (2003).

> there is yet an example in any other mass of men, ancient or modern . . . he is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the general good: and he usually finds associated with him in the same work minds more familiarized than his own with these ideas and operations, whose study it will be to supply reasons to this understanding, and stimulation to this feeling for the general good . . . Where this school of public spirit does not exist, scarcely any sense is entertained that private persons . . . owe any duties to society except to obey the laws and submit to the government.[92]

V. SELECTION OF DELEGATES

Assembly delegates could be selected by election, by random sample, or by lot. Election by ward (neighborhoods and cities within the congressional district), instead of at-large across the entire congressional district, would keep campaign costs low, nurture a sense of community, and keep representatives close to the voters. Small districts would encourage campaigns based on precinct walking, lawn signs, and coffee chats and enable low-budget candidates to compete effectively. Shoe leather and persistence often beats slick mailers and money in small wards. Campaigns would be conducted at the same time as regular congressional elections; piggybacking would allow voters to focus on the House of Representatives and the People's House at the same time while holding down costs for the Registrar of Voters. Thus, in addition to voting for their representative to the House of Representatives, every citizen would vote for one candidate to represent their small 6,500-person ward in the local assembly or the local people's house.

While elections are the standard way of selecting officials in American politics, there are distinct drawbacks to this approach. First, there are already so many local elections that voters may pay little attention to yet another contest. Although we can hope that constituents will take the time to learn about the candidates running for local assembly, in races beneath the U.S. Senate and governor most voters know little

92. JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 78–79 (Bobbs-Merrill Co. 1958) (1865).

about the candidates, other than which canidate is the incumbent and their party affiliation.[93] In most congressional districts, races for Assembly delegate would piggyback on the congressional race and turn into conventional elections featuring parties, advertisements, campaign financing, ideological interest groups, and the rest. Although the small size of the districts would allow for a personal touch, small size is not an ironclad protection given the politics of city wards in U.S. history. On balance, the Assembly would work best apart from the general political machine. If our current system were not so corrupt, then ward elections might make sense. However, as it stands, money and party machines would too easily dominate. The modern technique of a random sample or the ancient device of a lottery are both better options.

A second way to select delegates would be by stratified random sample.[94] A selection task force would choose from a stratified random sample of 500 men and 500 women in each congressional district. Each eligible person whose name is drawn would be given the opportunity to indicate his or her interest in becoming an Assembly delegate. Local selection meetings would be held in each congressional district to inform interested individuals about the scope, duties, and responsibilities of the citizen Assembly. From this pool, fifty men and fifty women would be randomly selected to serve in the local assembly for that congressional district.[95]

A final alternative would be selection by lot. In each congressional district, every competent adult would have his or her name placed in a lottery pool. The resulting delegate pool would provide a wide cross-section of the community—rich and

93. *See generally* GARY C. JACOBSON, THE POLITICS OF CONGRESSIONAL ELECTIONS (2003) (focusing on congressional voters); STEVEN J. ROSENSTONE & JOHN MARK HANSEN, MOBILIZATION, PARTICIPATION AND DEMOCRACY IN AMERICA (2003).

94. A stratified random sample recognizes that there are sub-populations on which to draw. For example, in a congressional district, these could include the percentage of men and women and the percentage of minority and mixed-race populations. When we sample a population with several strata, we generally require that the proportion of each stratum in the sample should be the same as in the population.

95. This paragraph draws on the language about a stratified random sample used by California Assemblymen Joseph Canciamilla (D) and Keith Richman (R) in their proposal for a Citizens' Assembly (ACA 28). Press Release, Joseph Canciamilla, Canciamilla and Richman Announce Legislation to Establish a California Citizen Assembly (Jan. 26, 2006) (on file with author).

poor, young and old, representation by ethnicity and race. The mentally ill, non-citizens, and ex-felons would be excluded.[96] Delegate selection by lot, with individuals automatically included in the lottery unless they request to be excluded, would result in a large delegate pool roughly matching the demographic mix of the district.

Most social scientists would argue for selection by stratified random sample, because a great deal hinges on whether the delegates are statistically representative of their community. Otherwise, why would any such system be regarded as legitimate? Viewed as an imperative, having a statistically representative sample could raise the need for compulsory service. However, before we automatically endorse the modern random sample as the obvious tool by which to select delegates, we should recall how often we accept legitimate situations as is that are not perfect statistical representations. Three examples suffice.

Was the Athenian Assembly a perfect statistical sample of the 50,000 to 60,000 citizens who made up the demos? No. The roughly 6,000 male citizens who gathered at the Pnyx, a hillside near the Acropolis, were, on balance, older and more urban than the population of citizens taken as a whole. Farmers, for example, had a more difficult time attending than did those who lived in Athens itself.[97] Moreover, the composition of 6,000 in attendance changed with each session so that the quorum that decided one issue was not the audience that decided the next.[98] And what about the famed U.S. Constitutional Convention of 1787? Were the fifty-five well-to-do white males who attended the secret sessions that drafted the Constitution a perfect representative sample of the population at large? Hardly. Yet few today view the Constitution as illegitimate. Quite the contrary, it is the holy grail of American politics. What about contemporary politics? We rely on random sample techniques when doing national polls, but the dirty

96. ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 129 (1989) ("The demos must include all adult members of the association except transients and persons proved to be mentally defective."). *See generally* PETER S. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY (1985) (regarding illegal immigrants); MICHAEL WALZER, SPHERES OF JUSTICE 31–63 (1983) (regarding guest workers).

97. *See* JAMES WYCLIFFE HEADLAM, ELECTION BY LOT AT ATHENS 2 (2d ed., rev. by D.C. MacGregor 1933) (1891).

98. M.I. FINLEY, DEMOCRACY ANCIENT & MODERN 49–54 (1985).

little secret in the polling community is that many people have unlisted phone numbers, and many decline to participate when contacted [99].

Both the stratified random sample and lottery are acceptable methods of delegate selection. Both would ensure that a wide cross-section of the population is represented in the Assembly. Although the case for a random sample is well-known, the beauty of a lottery is less understood. Drawing on the experience of ancient Athens, I develop the following argument. Although the delegate lottery pool would not be an exact statistical representation of the congressional district, it would be a rough approximation. As important as this rough approximation is, it is equally important that the 100 people chosen at random as delegates indeed want to serve. The goal is for those selected to take the responsibility seriously. In Athens, the jurors and the Council of 500 selected by lot knew that their neighbors, and the general community would be observing their conduct.[100] The same would be true of our modern assemblies.

About Athens, Manin writes, "Those who did not feel up to filling a post successfully could easily avoid being selected . . . ." The arrangement had the "effect of giving every citizen who *deemed himself* fit for office an opportunity of acceding to the magistracies."[101] Say we placed 500,000 adults from a congressional district into a lottery pool and thirty percent opted out. We would still have a large pool. We may wish it were otherwise, but it is clear that we live in a political culture in which many people choose not to participate. Although the Assembly and the People's House would not change this situation in any dramatic fashion, they would offer individual citizens the chance to participate in a powerful, significant, and consequential manner. As this fact is better understood, lottery participation would increase. Today, voter participation in local elections often hovers around twenty percent. If, say, seventy percent of the public decided to participate in the lottery, it would be a much more equitable method of choosing representatives.

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99. Michael W. Traugott, *Can We Trust the Polls? It All Depends*, THE BROOKINGS REVIEW, Summer 2003, at 8–11.

100. "Anyone taking up that opportunity exposed himself to the virtually constant judgment of others." MANIN, *supra* note 29, at 13.

101. *Id.* (emphasis in original).

The lottery is a good selection method for several practical reasons. First, selection by lot would help counter fears of local assemblies being overrun by passionate, well-organized factions (Christian evangelicals, environmentalists, ethnic groups, the Chamber of Commerce, for example) or local assembly candidates being given secret donations by key interest groups. Second, people lead busy lives and running for office—even a minor office—is a major undertaking. Many people who would be outstanding assembly delegates would be unwilling to submit themselves and their families to a campaign, knowing that the expense, time, and, sometimes, public embarrassment are often spent in a losing effort. For most adults, running for office is not a rational choice. Selection by lot makes these people eligible for office-holding.

Third, delegates chosen by lot would be able to focus on doing the job required without having to think and act like a candidate. Although there is an electoral connection between elected representatives and their constituencies, there also would be a connection between an assembly delegate, selected by lot, and the particular ward of the congressional district where that delegate lives. We could divide the congressional district into 100 equal, 6,500-person wards—echoing Jefferson—and drawing the lines to follow neighborhood and city boundaries as much as possible, and then hold a lottery drawing of the adult citizens in that ward. Here, we would have the most basic democratic connection—you are one of us, stand for us, and in helping to make the laws of the community, do your best to speak for what we believe and think—echoing of Anti-Federalists. In the Assembly system, a person selected as a representative would not have to change his or her personality to become a candidate. Instead, assembly delegates can remain the persons they always were.

A fourth practical advantage is familiarity. Americans have a high regard for selection by lot, because it is how juries are chosen in the United States. The American jury system is one of the most respected and highly regarded governmental institutions. It is admired at home and abroad because of the sense of fairness, seriousness of purpose, and probity that jurors bring to their task. Compared to elections, the lot is closely connected in people's minds with the ideal of virtuous public service. However much we grouse when we are called for jury duty, we respect the institution and believe that people

serving on juries strive to be upright and fair in deciding cases. As a civic institution, the jury has undergone a transformation from traditional republicanism to modern republicanism. Until recently, jurors were chosen by a "key man" system in which a local selectman had the discretion to pick jurors of "exemplary moderation and wisdom."[102]

In practice, however, the search for jurors with these qualities led to a systematic under-representation of minorities, the poor, the young, and women. In a 1975 case, *Taylor v. Louisiana*, the U.S. Supreme Court struck down Louisiana's exclusion of women jurors and ruled that a jury should represent "a fair cross section of the community."[103] To implement this ruling, much of the United States has adopted a lottery system for jury selection.[104] Here again, we see the shift from a classic republicanism, with its elite bias, to an egalitarian republican vision, where everyone has an equal chance to be selected and serve.

Given that the jury works well in the justice system, it makes sense to extend the idea to the political world. We do this to a certain extent with grand juries and citizen commissions. For example, Dahl recommends the establishment of a system of policy juries to study complex issues.[105] He says a thousand persons could study a single complex issue for a year—national, state, or local.[106] The group would meet regularly, investigate the issue, hold hearings, and issue a report.[107] Standing for the public, this mini-populus "would reflect public opinion at a higher level of competence."[108] Dahl says a central task of these policy juries would be to "assess risks, uncertainties, and trade-offs."[109] Both the policy jury and the Assembly fit what Dahl calls the "Strong Principle of Equality." The Strong Principle holds that a "substantial por-

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102. Akhil R. Amar, *Choosing Representatives by Lottery Voting*, 93 YALE L. J. 1283 (1984) (quoting Taylor v. Louisiana, 419 U.S. 522, 526 (1975)) (striking down Louisiana's exclusion of women jurors under the Sixth and Fourteenth Amendments).

103. 419 U.S. 522, 526 (1975). *See also* Amar, *supra* note 102, at 1287.

104. *See id.*

105. ROBERT A. DAHL, CONTROLLING NUCLEAR WEAPONS 88 (1985).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* Dahl conceives of these policy juries as having only advisory powers and no binding effect on the relevant executive or legislative body.

tion of adults are adequately qualified to govern themselves," and this is based, in part, on the assumption that "no person is, in general, more likely than yourself to be a better judge of your own good or interest or to act to bring it about."[110]

The philosophical reasons supporting selection by lot go deeper than the practical and familiar. When we understand these, we begin to see why lot is a powerful and valuable democratic tool. I begin with a brief description of how the lot was used in ancient Athens and then consider the value of lot in terms of representation and equality while meeting the objection concerning talent. Athens of the fifth and fourth centuries B.C. was a direct democracy, and every male citizen was automatically eligible to attend the Assembly (*ekklsia*), which met at least forty times during the year. An outdoor gathering that consisted of the first 6,000 men to arrive at the Pnyx, the Assembly had a composition that varied at each meeting.[111] The leading economic, intellectual, and cultural center of Greece, the Athens of Pericles' time struggled with issues of wealth and class conflict. It was not a tiny polity where everyone met face-to-face and harmony reigned.[112] In Athenian democracy, although the assembled citizens were the fulcrum of power, never did the approximately 40,000 to 60,000 Athenian citizens come together in a single body.[113]

At the Assembly, every citizen had the right to speak and address his peers. To Greeks, the universal right to speak (*isēgoria*) was synonymous with democracy. When individuals arrived at the Pnyx, they knew that each meeting of the Assembly was complete in itself. It was its own dramatic play with star players and a beginning, a middle, and an end. "[T]he normal procedure was for a proposal to be introduced, debated, and either passed (with or without amendments) or rejected in a single continuous setting."[114] Every speech, every argument was aimed at persuasion. Decisions were made by a simple majority vote—a raising of hands—of those who attended.

In addition to the Assembly, Athenian democracy relied on other governmental institutions where selection was accomplished by lot, except in a few cases such as the election of gen-

110. *Id.* at 97–99.
111. FINLEY, *supra* note 98, at 52.
112. OBER, *supra* note 85 (correcting this common misperception).
113. MANIN, *supra* note 29, at 24.
114. FINLEY, *supra* note 77, at 54.

erals. The administrative functions of government, the magistracies, the Council of 500, and the courts were all positions filled by lot. In his classic *Election by Lot at Athens*, James Headlam writes:

> It is scarcely too much to say that the whole administration of the state was in the hands of men appointed by lot: the serious work of the law courts, of the execution of the laws, of police, of public finance, in short of every department (with the exception of actual commands in the army) was done by officials so chosen.[115]

The Athenians were well aware that lot appoints people indiscriminately, yet they used the system successfully for 200 years. Why? First, lot exemplified the principle of equality and gave every citizen a reasonable chance of exercising a public function. The Athenians were deeply committed to the principle of rotation and believed that if people had experience in the roles of both ruler and ruled, this would lead to a just and successful polity. In *The Politics*, Aristotle writes, "One principle of liberty is for all to rule and be ruled in turn."[116] The experience of being an average citizen who also occasionally took on a position of authority meant "they were able to visualize how their orders would affect the governed, because they knew, having experienced it themselves, what it felt like to be governed and to have to obey."[117]

Second, the Athenians understood that elections have an aristocratic bias in which people with money, a family name, or exceptional talent stand out from the rest. By contrast, they identified lot with democracy. "For example," wrote Aristotle, "the appointment of magistrates by lot is thought to be democratic, and the election of them oligarchical; democratic again when there is no property qualification, oligarchical when there is."[118] Today, running for Congress requires a de facto property qualification. If a candidate lacks access to wealthy contributors—which is most easily had if one is in a lucrative profession or rich—being able to run a serious and competitive

115. HEADLAM, *supra* note 97, at 2. This essay remains one of the best studies about the use of lot in ancient Athens.

116. ARISTOTLE, THE POLITICS 42–43 (Stephen Everson ed., 1988).

117. MANIN, *supra* note 29, at 29–30.

118. ARISTOTLE, *supra* note 116, at 8–11.

race is rare.[119] Aristotle continues, "We should rather say that democracy is the form of government in which the free are rulers, and oligarchy in which the rich; it is only an accident that the free are the many and the rich are the few."[120]

Using lot to select those in administration meant there was less likelihood that the Council of 500 would challenge the authority of the Assembly. In fact, the Socratic criticism of Athenian democracy for lacking a captain at the helm misses the point.[121] The Athenians used elections to select their generals and sometimes their finance ministers. However, they were purposefully cautious about turning authority over to elites and experts. The point of selection by lot was to prevent those with talent and expertise from taking power away from the Assembly. In modern electoral systems in the period following the vote, the people lack direct control over the fate of the nation. By contrast, in a pure democracy, the people rule themselves as a king does a monarchy. They make all the decisions and, to keep authority in their hands, they must not create powerful officials. As Aristotle knew, the demos, like the tyrant, "must prevent any individuals or institutions from acquiring too great power . . . ."[122] Choosing the Athenian administration by lot accomplished this aim and ensured the primacy of the Assembly.

Thus, in ancient Athens, lot protected the sovereign authority of the Assembly. In modern America, lot would add a pure democratic element to an otherwise elitist representative government. Selection by lot to a national Assembly would provide "the People" a modicum of pure democratic power to counter the inevitable corruption of a large republic. Elections are inegalitarian because they do not provide every individual seeking office an equal chance of success. They are aristocratic

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119. The nation's leading expert on congressional elections writes, "[T]he minimum price tag for a competitive House campaign under average conditions today is probably closer to $700,000; every one of the thirty-seven challengers who defeated incumbents from 1996 through 2002 spent more than that amount." GARY C. JACOBSON, THE POLITICS OF CONGRESSIONAL ELECTIONS 44 (6th ed. 2004).

120. ARISTOTLE, *supra* note 116, at 1–4.

121. MOGENS HERMAN HANSEN, THE ATHENIAN DEMOCRACY IN THE AGE OF DEMOSTHENES: STRUCTURE, PRINCIPLES, AND IDEOLOGY 236 (J.A. Crook trans., 1999).

122. HEADLAM, *supra* note 97, at 32 (drawing on ARISTOTLE, *supra* note 103, at 10–20).

because they favor prominent individuals. True, the people en masse have the ultimate authority to choose whom they wish as their leaders. But representative democracy has an undeniable oligarchic dimension that is amplified in large republics. The question becomes one of balance.[123] The American system has plenty of elites and experts. What we need is a check on the oligarchy of money, power, and meritocracy. Using lot as a selection method for the local assemblies would help counter the advantages that wealth and privilege grant in the modern political economy.

Using lot to select members of the Assembly would add an Anti-Federalist understanding of representation to our constitutional mix.[124] The Anti-Federalists, Manin says, "formulated with great clarity, a plausible, consistent and powerful conception of representation."[125] Their understanding was fundamentally at odds with that of the Federalists, and the difference between the two helps explain the gulf that separated the Founders. *The Federalist* authors sought representatives who stood out because they were part of a region's elite and therefore different from and superior to their constituents.[126] By contrast, the Anti-Federalists insisted that, if representative government were to be genuinely popular as opposed to elitist, "representatives should be as close to their constituents as possible: living with them and sharing their circumstances."[127] The People's House understands representation in just this

123. MANIN, *supra* note 29, at 236–38.

124. HANNA FENICHEL PITKIN, THE CONCEPT OF REPRESENTATION (1967). Living in a world where the predominant form of government is liberal democracy, we all know what representative democracy is. But representation is a tricky philosophical subject. To begin, the word's etymological origin gives us the meaning, re-presentation, a making present again. As Pitkin writes, "representation, taken generally, means the making present *in some sense* of something which is nevertheless *not* present literally or in fact." *Id.* at 8–9 (emphasis in original). Rousseau, for one, famously argued that political representation is just not possible. The classic question facing all elected officials is whether a representative should do what her constituents want, and be bound by instructions from them, or should be free to act as seems best to her in pursuit of their welfare. In the first view, representatives attempt to mirror or reflect the opinions of their constituents. For the second view, Edmund Burke famously argued that representation is trusteeship, an elite caring for others or guardianship. He argued that a representative should be devoted to the constituents' interests, but not their opinions. *Id.* at 114, 145, 176.

125. MANIN, *supra* note 29, at 129.

126. *Id.* at 116.

127. *Id.* at 129.

way.[128] For Madison and Hamilton, power was to be exercised by men having the most wisdom and most virtue and, of course, this meant those of talent in the upper class with wealth and property. The Anti-Federalists diverged from the Federalists not on the need for elections, but in *defending a popular and non-elite form of representation.*

The Constitution of 1789 institutionalized the Federalist understanding of representation. The People's House would add the Anti-Federalist understanding to the Constitutional framework. Yet how much of an effect would lot and a "resemblance" conception of representation have when we are talking about 43,500 delegates out of a population of nearly 300 million? Obviously, we cannot hope to have Athenian style democracy in the modern world. That time has passed and is not our goal. Instead we aim to reinvent representative democracy and reduce the gap between citizens and their representatives. The size of our democracy is far too great for the direct democracy the Athenians enjoyed, but as a second best option, we can give every American citizen an equal right to participate in government.

CONCLUSION

Today, we have an equal right to consent to the power of our rulers. We have an equal right to participate in politics but not in government itself. The Assembly reform, and in particular the People's House, would change this. In the People's House, only a few individuals would be selected for service, but everyone would have an equal probability of being chosen. The People's House would grant the most important democratic right—a right that Americans do not now enjoy—an equal right to participate in government and, if chosen as an Assembly delegate, an equal right to speak (*isēgoria*) in the People's House. In sum, the Assembly reform would give every citizen an equal right to share in public power. Political power such as this is no small thing and goes considerably beyond what initiative—even under the best circumstances—can offer.

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128. PITKIN, *supra* note 124, at 73 (explaining that the Anti-Federalists, on this reading, clearly rejected the Burkean elitist position while not fully adopting the mirror position).