

THE EDUCATIVE EFFECTS OF DIRECT DEMOCRACY: A RESEARCH PRIMER FOR LEGAL SCHOLARS

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This article surveys recent studies by political scientists that examine the “educative effects” of ballot measures on political participation and civic engagement, as well as their impact on candidate elections. The article provides legal scholars with empirical evidence that can be used to bolster normative and theoretical claims about the process and politics of direct democracy. The authors conclude by presenting original empirical research on the effects of ballot measures on individual attitudes toward state government and political trust. The article hypothesizes that citizens who are given more opportunities to participate in politics will have more trust in state government. The authors find that citizens—when given the opportunity to participate directly in policy decisions via the initiative process—are generally more likely to hold more favorable opinions of state government, though they find that citizens do not necessarily have greater political trust.

INTRODUCTION

Ignored for much of the mid-twentieth-century by legal scholars—as well as political scientists and historians—

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research on the politics and practice of direct democracy in the American states is once again in vogue.¹ An impressive amount of legal scholarship in recent years has examined direct democracy in the American sub-national context.² Since Derrick Bell's seminal article in 1978 in which he argued that ballot measures addressing the civil rights of minorities should be analyzed by the courts with heightened scrutiny,³ legal scholars have examined many aspects of what we refer to elsewhere as the "instrumental outcomes" of direct democracy.⁴ Questioning direct democracy's constitutional legitimacy and procedural soundness, legal scholars have tended to inform their inquiries with normative and theoretical concerns over the instrumental effects of ballot measures, specifically public policies adopted by initiative.⁵

Several studies by legal scholars on direct democracy in the American states come readily to mind even to those of us not in the legal profession. Political scientists have drawn on Julian Eule's work on ballot measures and judicial review,⁶ Hans Linde's insights into why direct democracy outcomes

1. Numerous studies by prominent legal scholars, historians, and political scientists appeared in the early 1900s as direct democracy was first being adopted in the American states. For a synthetic review of this Populist and Progressive Era literature, see DANIEL A. SMITH & CAROLINE J. TOLBERT, *EDUCATED BY INITIATIVE: THE EFFECTS OF DIRECT DEMOCRACY ON CITIZENS AND POLITICAL ORGANIZATIONS IN THE AMERICAN STATES* 3-30 (2004).

2. A LexisNexis search reveals that 82 articles with "Direct Democracy" or "Direct Legislation" in their titles have been published in American and Canadian law reviews since 1990.

3. Derrick A. Bell, Jr., *The Referendum: Democracy's Barrier to Racial Equality*, 54 WASH. L. REV. 1 (1978). For more information, see Richard Briffault's review of David Magleby's pioneering book on direct legislation in the American states in Richard Briffault, *Distrust of Democracy*, 63 TEX. L. REV. 1347, 1364 (1984); DAVID B. MAGLEBY, *DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES* (1984). For an overview of some of Magleby's major findings, see David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum Process*, 66 U. COLO. L. REV. 13 (1995).

4. SMITH & TOLBERT, *supra* note 1, at xiv-xv.

5. The initiative is one of the three mechanisms of direct democracy (along with the popular referendum and the recall). Of the three mechanisms, the initiative is by far the most widely used in the American states. The initiative allows citizens to participate directly in the making of public policy by casting their votes on ballot measures. In order to place either a statutory or a constitutional amendment measure on the ballot for fellow citizens to adopt or reject, a specified number of valid signatures must be collected by petition.

6. Julian N. Eule, *Crocodiles in the Bathtub: State Courts, Voter Initiatives and the Threat of Electoral Reprisal*, 65 U. COLO. L. REV. 733, 735 (1994); Julian N. Eule, *Judicial Review of Direct Democracy*, 99 YALE L.J. 1503 (1990).

might undermine minority rights and conflict with the constitutionally guaranteed right to a republican form of government,⁷ and Richard Collins and Dale Oesterle's critical analysis of the drafting of initiatives.⁸ Political scientists studying the campaign financing of ballot initiatives⁹ are especially indebted to the formative work by Daniel Lowenstein on the effects of money on ballot initiative campaigns,¹⁰ as well as his work on the peculiarities of direct democracy's single-subject rule.¹¹ Sherman Clark's counterintuitive criticism of the plebiscitary process,¹² Jane Schacter's original examination of how the popular intent of ballot measures should be interpreted,¹³ and Elizabeth Garrett's writings on the role special interests play in the initiative process have influenced the way scholars outside the legal academy think about direct democracy.¹⁴ Ardent critics of direct democracy,¹⁵ those concerned with the possible lack of accountability in the process¹⁶ and how initia-

7. Hans A. Linde, *When Initiative Lawmaking Is Not "Republican Government": The Campaign Against Homosexuality*, 72 OR. L. REV. 19, 31-34 (1993); Hans A. Linde, *When Is Initiative Lawmaking Not "Republican Government"*, 17 HASTINGS CONST. L.Q. 159 (1989).

8. Richard B. Collins & Dale Oesterle, *Structuring the Ballot Initiative: Procedures That Do and Don't Work*, 66 U. COLO. L. REV. 47 (1995).

9. For a review of the literature, see Daniel A. Smith, *Campaign Financing of Ballot Initiatives in the American States*, in DANGEROUS DEMOCRACY?: THE BATTLE OVER BALLOT INITIATIVES IN AMERICA 71 (Larry Sabato et al. eds., 2001).

10. Daniel Lowenstein, *A Patternless Mosaic: Campaign Finance and the First Amendment After Austin*, 21 CAP. U. L. REV. 381 (1992); Daniel H. Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment*, 29 UCLA L. REV. 505 (1982). See also Richard Briffault, *Ballot Propositions and Campaign Finance Reform*, in ANNUAL SURVEY OF AMERICAN LAW 413-440 (1996); Adam Winkler, *Beyond Bellotti*, 32 LOY. L.A. L. REV. 133 (1998).

11. Daniel H. Lowenstein, *Initiatives and the New Single Subject Rule*, 1 ELECTION L.J. 35, 35-48 (2002); Daniel H. Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. REV. 936 (1983).

12. Sherman J. Clark, *A Populist Critique of Direct Democracy*, 112 HARV. L. REV. 434 (1998).

13. Jane S. Schacter, *The Pursuit of "Popular Intent": Interpretative Dilemmas in Direct Democracy*, 105 YALE L.J. 107 (1995).

14. Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295 (2005); Elizabeth Garrett, *Who Directs Direct Democracy?*, 4 U. CHI. L. SCH. ROUNDTABLE 17 (1997).

15. Marci A. Hamilton, *Perspective on Direct Democracy: The People: The Least Accountable Branch*, 4 U. CHI. L. SCH. ROUNDTABLE 1 (1997).

16. Clayton P. Gillette, *Plebiscites, Participation, and Collective Action in Local Government Law*, 86 MICH. L. REV. 930, 937 (1988).

tives may lead to divisive policy outcomes,¹⁷ as well as supporters of deliberative democracy who would like to see the initiative process improved if not expanded¹⁸ have written from a perspective informed by the instrumental function and policy outcomes of direct democracy.

In our review of the scholarly literature on direct democracy that follows, our goal is twofold. First, we hope to expose legal scholars to another facet of direct democracy—what we refer to elsewhere as the process’ “educative effects.”¹⁹ Educative effects are second-order phenomena resulting from the process of direct democracy itself, that is, from allowing citizens to serve as Election-day policymakers. Though a handful of legal scholars have analyzed direct democracy from an educative perspective,²⁰ most have not.²¹ In Part I, we review the empirical research conducted by political scientists examining how the process of direct democracy can affect citizen attitudes, political behavior and interest group formation. We also review some new studies that probe the spillover effects of ballot

17. Michael M. O’Hear, *Statutory Interpretation and Direct Democracy: Lessons from the Drug Treatment Initiatives*, 40 HARV. J. ON LEGIS. 281 (2003); Daniel M. Warner, *Direct Democracy: The Right of the People to Make Fools of Themselves*, 19 SEATTLE U. L. REV. 47 (1995).

18. ETHAN J. LEIB, *DELIBERATIVE DEMOCRACY IN AMERICA: A PROPOSAL FOR A POPULAR BRANCH OF GOVERNMENT* (2004).

19. SMITH & TOLBERT, *supra* note 1, at xiv–xv. Portions of this literature review are drawn from Caroline J. Tolbert & Daniel A. Smith, *Representation and Direct Democracy in the United States*, 42 REPRESENTATION: J. REPRESENTATIVE DEMOCRACY 25 (2006), which also assesses the scholarly literature on the instrumental effects of direct democracy.

20. See Elizabeth Garrett, *Crypto-Initiatives In Hybrid Democracy*, 78 S. CAL. L. REV. 985 (2005); Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. 1096, 1130 (2005); Elizabeth Garrett, *The Promise and Perils of Hybrid Democracy*, 59 OKLA. L. REV. 227 (2006); Elizabeth Garrett, *Who Chooses the Rules?*, 4 ELECTION L.J. 139 (2005); Bernard Grofman, *Contribution and Spending Limits for Initiatives or Other Ballot Propositions: What Evidence Is Needed to Justify a Particular Regulatory Regime?*, 78 S. CAL. L. REV. 927 (2005); Richard L. Hasen, *Rethinking the Unconstitutionality of Contribution and Expenditure Limits in Ballot Measure Campaigns*, 78 S. CAL. L. REV. 885 (2005); Michael S. Kang, *Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and “Disclosure Plus”*, 50 UCLA L. REV. 1141, 1149–59 (2003); Daniel R. Ortiz, *The Empirics of Campaign Finance*, 78 S. CAL. L. REV. 939 (2005); George Steven Swan, *The Law and Economics of State-Sanctioned Medical Marijuana: Gonzales v. Raich*, 7 FL. COASTAL L. REV. 473 (2007).

21. Many political scientists, too, have yet to take off their instrumental blinders. See, for example, the dearth of studies examining the educative effects of direct democracy cited in a recent review of the literature. Arthur Lupia & John Matsusaka, *Direct Democracy: New Approaches to Old Questions*, 7 ANN. REV. POL. SCI. 463 (2004).

propositions on candidate elections and party control of state legislatures.

Our second goal is to provide legal scholars with new empirical evidence they can use when making normative and theoretical arguments concerning the politics and process of voting on ballot measures. Lee Epstein and Gary King make a persuasive case that much of the empirical evidence marshaled by legal scholars in support of their normative or theoretical claims tends to violate the "rules of inference" and is "deeply flawed."²² Though there are exceptions,²³ the preponderance of studies of direct democracy by legal scholars that offer an empirical basis for their theoretical and normative claims do so with primarily anecdotal evidence. With roadmap in hand to better navigate recent empirical research on ballot initiatives in state politics, we hope legal scholars will embark on new avenues of inquiry that draw on empirical studies of the educative effects of direct democracy.

Following our review of the literature, in Part II we present some original empirical research on the availability and use of direct democracy in the American states and corresponding individual attitudes toward state government and levels of political trust. Political trust, or an individual's attitude toward state government, is another potential educative effect of direct democracy. But political scientists have yet to explore this phenomenon. Political trust is the ultimate measure of citizen satisfaction with democracy, and trust in all levels of government is at an all time low.²⁴ Are citizens residing in states with direct democracy more distrusting or trusting of government? Our empirical analysis shows that citizens have more favorable opinions of their state governments when they are given the opportunity to participate directly in policy decisions, although high use of the process may decrease confidence in state government. We offer legal scholars a taste of our empirical research, not because we think they should conduct similar quantitative analyses, but to encourage them to con-

22. See Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 6 (2002), for a robust critique of the use of empirical data in legal scholarship.

23. For an exemplary use of political science literature by a legal scholar in making empirical claims about the instrumental outcomes of ballot measures, see Matthew L. Spitzer, *Perspective on Direct Democracy: Evaluating Direct Democracy: A Response*, 4 U. CHI. L. SCH. ROUNDTABLE 37 (1997).

24. See TODD DONOVAN & SHAUN BOWLER, *REFORMING THE REPUBLIC: DEMOCRATIC INSTITUTIONS FOR THE NEW AMERICA* (2004).

sider and draw upon similar empirical research when developing normative and theoretical arguments. Finally, in Part III, we briefly conclude by reemphasizing why legal scholars working on direct democracy might want to consider the process' educative effects.

I. EMPIRICAL RESEARCH ON THE EDUCATIVE EFFECTS OF DIRECT DEMOCRACY

Political scientists have used ballot measures to investigate topics as diverse as political knowledge, political interest and efficacy, mobilization and turnout, voter competence and behavior, the behavior of interest groups and political parties, campaign finance activities, campaign and media effects, agenda setting, median voter preferences and policy responsiveness, minority rights, representation, and policy implementation. In our review of the literature, we focus exclusively on the educative effects of direct democracy, assessing research that has examined how the plebiscitary process can impact the broader political and electoral processes in the American states.²⁵ In our survey of the literature, we focus largely on quantitative studies that employ a variety of multivariate statistical methods²⁶ to isolate the independent effect of predictor variables on an outcome variable, but we also highlight some studies that use qualitative methods.

A. *Turnout and Civic Engagement*

Progressive era reformers envisioned the process of direct democracy inspiring and educating the masses. Early advocates of the initiative argued that citizens serving as Election Day lawmakers could enhance civic engagement and participation, broadly understood.²⁷ In our recent book, *Educated by*

25. For a review of the literature on how ballot measures affect candidate campaigns, see Daniel A. Smith, *Initiatives and Referendums: The Effects of Direct Democracy on Candidate Elections*, in *THE ELECTORAL CHALLENGE: THEORY MEETS PRACTICE* (Steven C. Craig ed., 2006).

26. Multivariate models examine simultaneously the relationship between a dependent variable and several independent (or causal) variables. For a general textbook on multivariate regression, see MCKEE J. MCCLENDON, *MULTIPLE REGRESSION AND CAUSAL ANALYSIS* (2002). For an advanced statistics textbook covering most topics, see WILLIAM H. GREENE, *ECONOMETRIC ANALYSIS* (1997).

27. See KEVIN MATTSON, *CREATING A DEMOCRATIC PUBLIC: THE STRUGGLE*

Initiative,²⁸ we measure this Progressive Era wisdom against the contemporary reality of citizen lawmaking in the American states. We find that the use of the initiative increased political participation (*i.e.*, turnout), political knowledge, political interest and efficacy, as well as nonprofit and citizen interest group participation in the states. We also examine the strategic use of direct democracy by interest groups and political parties, finding that political organizations use the process not solely to bring about instrumental ends, but also to alter the electoral landscape by mobilizing base supporters, driving wedges into opposing coalitions, and draining the coffers of political opponents. Fred Boehmke's work shows that initiative states have larger and more robust interest group systems than non-initiative states, and initiative states have more citizen interest groups.²⁹

One of the most important and robust educative effects of direct democracy is increased political participation. Recent research has found that the presence of ballot measures increases turnout in low profile, midterm elections, as well as in higher profile presidential elections.³⁰ Using the number of initiatives on state ballots to measure campaign effects over a twenty-five year period (1980–2004), we have found that, on average, each initiative may boost a state's turnout by almost one percent in presidential elections and almost two percent in midterm elections, all other factors held constant.³¹ A state with four initiatives on the ballot is expected to have four percent higher turnout in a presidential election than a similar state with no initiatives on the ballot. This may be enough to

FOR URBAN PARTICIPATORY DEMOCRACY DURING THE PROGRESSIVE ERA (1998). But see RICHARD HOFSTADTER, *THE AGE OF REFORM* (1955).

28. SMITH & TOLBERT, *supra* note 1. See Michael Kang, *Counting on Initiatives? An Empirical Assessment*, 4 ELECTION L.J. 217 (2005), for a thoughtful critique of our book.

29. See FREDERICK J. BOEHMKE, *THE INDIRECT EFFECT OF DIRECT LEGISLATION: HOW INSTITUTIONS SHAPE INTEREST GROUP SYSTEMS* (2005); Daniel A. Smith & Caroline Tolbert, *The Initiative to Party: Partisanship and Ballot Initiatives in California*, 7 PARTY POL. 738 (2001).

30. See R. Lacey, *The Electoral Allure of Direct Democracy: The Effect of Initiative Salience on Voting, 1990–1996*, 5 ST. POL. & POL'Y Q. 168 (2005); Mark Smith, *The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout*, 45 AM. J. POL. SCI. 700 (2001); Caroline J. Tolbert et al., *The Effects of Ballot Initiatives on Voter Turnout in the American States*, 29 AM. POL. RES. 625 (2001).

31. See Daniel Smith & Caroline Tolbert, *The Educative Effects of Ballot Initiatives on Voter Turnout*, 33 AM. POL. RES. 283 (2005).

swing the outcome of a close election. Using an experimental design, a recent study finds citizens allowed to vote on referenda in Switzerland have increased levels of participation.³² Individual-level survey data provide evidence that voters exposed to initiative contests (or residing in states with salient propositions on the ballot) are more likely to vote, controlling for other known predictors of turnout, including age and education.³³ Turnout effects of ballot propositions are well established both in the United States and cross-nationally.

Salient ballot propositions are also associated with increases in voters' political knowledge.³⁴ Studies that draw on data from American states are bolstered by findings from Switzerland which show that citizens are better informed when they reside in cantons with more opportunities for direct political participation.³⁵ Research on a 1992 national referendum in Canada also shows that exposure to the referenda in the provinces led to increased citizen interest in politics as well as knowledge.³⁶ New research is necessary to confirm these findings using survey data with larger state samples, state samples that are randomly drawn from individual states (unlike the NES), and more robust statistical modeling, including the use of hierarchical linear modeling (HLM) to deal with problems related to multi-level data.³⁷

32. David Lassen, *The Effect of Information on Voter Turnout: Evidence from a Natural Experiment*, 49 AM. J. POL. SCI. 103 (2005).

33. See SMITH & TOLBERT, *supra* note 1; R. Lacey, *supra* note 30; Caroline Tolbert et al., *Enhancing Civic Engagement: The Effect of Direct Democracy on Political Participation and Knowledge*, 3 ST. POL. & POL'Y Q. 23 (2003).

34. See Mark A. Smith, *Ballot Initiatives and the Democratic Citizen*, 64 J. POL. 892 (2002); Tolbert et al., *supra* note 33.

35. See Matthias Benz & Alois Stutzer, *Are Voters Better Informed When They Have a Larger Say in Politics?*, 119 PUB. CHOICE 31 (2004).

36. Matthew Mendelsohn & Fred Cutler, *The Effect of Referenda on Democratic Citizens: Information, Politicization, Efficacy and Tolerance*, 30 BRIT. J. POL. SCI. 669 (2000).

37. The term 'multi-level' refers to a hierarchical or nested data structure. For example, in a two-level study, individuals are nested (or reside) within states. The lowest level (level 1) is formed by individuals, while the highest level of aggregation (level 2) is the American states. Multi-level models, or Hierarchical Linear Modeling (HLM), are needed because the assumption of independence of all observations is violated when data are grouped by states; that is, observations from one state are generally more similar than the observations from another state. See STEPHEN W. RAUDENBUSH & ANTHONY S. BRYK, *HIERARCHICAL LINEAR MODELS: APPLICATIONS AND DATA ANALYSIS METHODS* (2002). While the boost in turnout when initiatives and referenda appear on statewide ballots is robust and based on individual and aggregate data, some preliminary studies have ques-

B. *Direct Democracy and Candidate Elections*

There is substantial evidence that vote choice on ballot propositions is highly informed by a voter's partisan identification.³⁸ This finding should not come as a surprise, as political parties and interest groups have become increasingly strategic actors—albeit sometimes clandestinely—in ballot campaigns, and they often regard the initiative process as a means to mobilize their base and create wedge issues in elections.³⁹ In the 1990s, for instance, the Republican Party in California backed a number of high profile initiative campaigns dealing with racially-charged issues like affirmative action, immigration, and bilingual education because it thought the partisan divisions on the propositions would divide the electorate and bolster their candidates at the polls.⁴⁰ Though the endorsement of these measures may have held some immediate benefits for the Republican Party, one long-term consequence of favoring race-based propositions may have been a shift in the partisan identification toward the Democratic Party among racial and ethnic minorities as well as some female white voters who thought the measures were too extreme and punitive.⁴¹

tioned the extent of the educative effects of initiatives on political attitudes, such as political efficacy or attitudes about government responsiveness. See Joshua Dyke & Mark Baldassare, *The Limits of Support for Direct Democracy: Process-Oriented Preferences and the 2005 California Special Election* (Paper presented at the 2006 annual meeting of the American Political Science Association) (on file with author).

38. See Regina Branton, *Examining Individual-Level Voting Behavior on State Ballot Propositions*, 56 POL. RES. Q. 367 (2003); Smith & Tolbert, *supra* note 29. But see DAVID MAGLEBY, *DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES* (1984) (finding some evidence to the contrary in a study of California ballot propositions in the 1960s and 1970s).

39. See Ian Budge, *Political Parties in Direct Democracy*, in REFERENDUM DEMOCRACY: CITIZENS, ELITES AND DELIBERATION IN REFERENDUM CAMPAIGNS 67 (Matthew Mendelsohn & Andrew Parkin eds., 2002); IAN BUDGE, *THE NEW CHALLENGE OF DIRECT DEMOCRACY* (1996); SMITH & TOLBERT, *supra* note 1; Thad Kousser & Mathew McCubbins, *Social Choice, Crypto-Initiatives, and Policymaking by Direct Democracy*, 78 S. CAL. L. REV. 949 (2005); Michael Lewkowicz, *The Effectiveness of Elite Cues as Heuristics in Proposition Elections*, 34 AM. POL. RES. 51 (2006); Smith & Tolbert, *supra* note 29; Daniel Smith et al., *Same-Sex Marriage Ballot Measures and the 2004 Presidential Election*, 38 ST. & LOC. GOV'T REV. 78 (2005).

40. Shaun Bowler et al., *Earthquakes and Aftershocks: Race, Direct Democracy, and Partisan Change*, 50 AM. J. POL. SCI. 146 (2006).

41. *Id.*

Because voting on initiatives tends to fall along partisan lines, scholars have begun to investigate the linkage between voting on ballot propositions and voting for candidates.⁴² A case in point is the reelection in 2004 of President George W. Bush. It is possible that a single ballot measure (banning same-sex marriage) in a single swing state (Ohio) tipped the election to Bush.⁴³ Although the presidential candidates dedicated little time to overt discussion of the topic, same-sex marriage emerged as a galvanizing issue early in the 2004 election cycle, as Bush had previously proposed a national amendment to the U.S. Constitution banning gay marriage. In all, measures banning gay marriage were placed on ballots in thirteen states in 2004, with voters in eleven states presented with the question in November in conjunction with the general election. While the scholarly debate is not settled regarding the mobilizing effects of gay marriage, it is possible that the ballot measures motivated some voters to the polls and encouraged some to vote for Bush. Indeed, as the *New York Times* reported following the election, the statewide measures banning same-sex marriage “appear to have acted like magnets for thousands of socially conservative voters in rural and suburban communities who might not otherwise have voted, even in this heated campaign.”⁴⁴

Research on the potential spillover effects of ballot propositions on candidate races is just beginning to emerge. Stephen Nicholson argues that since issues and candidates for elected office—up and down the ballot—share space on the same ticket, it is only logical to ask whether issues placed on ballots

42. See Smith, *supra* note 25.

43. See Alan Abramowitz, *Terrorism, Gay Marriage, and Incumbency: Explaining the Republican Victory in the 2004 Presidential Election*, 2 THE FORUM art. 3 (2004), <http://www.bepress.com/forum/vol2/iss4/art3>; Barry Burden, *An Alternative Account of the 2004 Presidential Election*, 2 THE FORUM art. 2 (2004), <http://www.bepress.com/forum/vol2/iss4/art2>; Paul Freedman, *The Gay Marriage Myth*, SLATE, Nov. 5, 2004, <http://slate.msn.com/id/2109275/>; Sunshine Hillygus & Todd Shields, *Moral Issues and Voter Decision Making in the 2004 Presidential Election*, 38 PS: POL. SCI. & POL. 201 (2005); Smith et al., *supra* note 39; David Campbell & J. Quinn Monson, *The Case of Bush's Re-election: Did Gay Marriage Do It?* (Paper presented at the 2005 annual meeting of the American Political Science Association); Todd Donovan et al., *Do State-Level Ballot Measures Affect Presidential Elections? Gay Marriage and the 2004 Election* (Paper presented at the 2005 annual meeting of the American Political Science Association) (on file with author).

44. James Dao, *The 2004 Elections: The Electorate—Gay Marriage; Same-Sex Marriage Key to Some G.O.P. Races*, N. Y. TIMES, Nov. 4, 2004, at P4.

prime voters' evaluations of candidates running for elected office.⁴⁵ Nicholson suggests ballot issues, such as a series of Nuclear Freeze measures on statewide ballots in 1982, may have had second-order effects on candidate races (*e.g.* governor, U.S. senator), priming vote choice in candidate races, regardless of whether the issue was related to the candidate or whether the candidate had taken a position on the ballot issue.⁴⁶ While candidates do their best to set the agenda, they often fail in defining the big issues. Especially in low-information elections, candidates regularly must contend with issues not of their making, which can educate the electorate because candidates are forced to take positions on issues which they do not control. Controversial ballot propositions are an increasingly important way for interest groups and political parties to set the electoral agenda, introducing common elements into the judgments voters make about candidates. By helping to define the electoral agenda, ballot propositions can cast the election in favorable terms for one political party or another. For Nicholson, partisan stereotypes do the "heavy lifting" of linking issues on the ballot to candidate evaluations.⁴⁷ Voters link candidates to particular sides of ballot issues because the Democratic and Republican parties have reputations tied to certain positions and issues. Due to candidates' party identification and these broader partisanship stereotypes, ballot propositions may shape voting decisions along party lines. New research has applied Nicholson's theory to voting in presidential elections, with some promising findings.⁴⁸

C. Conclusion

In his history of the adoption and earliest usage of direct democracy in America, *A Government by the People*, Thomas Goebel concludes on a pessimistic note, writing that "the historical analysis of direct democracy since its inception a century ago makes abundantly clear that the initiative and referendum have never served, and probably never will serve, as the means to strengthen democracy in America, to truly build a

45. See STEPHEN P. NICHOLSON, *VOTING THE AGENDA: CANDIDATES, ELECTIONS, AND BALLOT PROPOSITIONS* (2005).

46. *Id.* at 68–71, 111, 124.

47. *Id.* at 15.

48. Donovan et al., *supra* note 43.

government by the people.”⁴⁹ A closer reading of the recent empirical evidence amassed by political scientists on the educative effects of direct democracy suggests that Goebel’s conclusion, as well as that of some legal scholars, may be off the mark. Frederick C. Howe, a Progressive reformer and Commissioner of Immigration at the Port of New York, told an audience at the annual meeting of the Academy of Political Science soon after the elections of 1912 that direct democracy has an “educative influence,” as the mechanisms of the process “lead to constant discussion, to a deeper interest in government, and to a psychological conviction that a government is in effect the people themselves. And this is the greatest gain of all.”⁵⁰ It is perhaps this silver lining of direct democracy—the educative, transformative effects of the process—that will prove to be more lasting than any policy resulting from its instrumental use. A new set of theoretical and normative questions emerge for legal scholars interested in the broader political process when the educative and spillover effects of ballot measures are revealed.

Future research on the educative and spillover effects of ballot measures, including studies conducted by legal scholars, should strive to better integrate the initiative with other institutions and political actors in American state politics. Legal scholars seem to be particularly well-equipped to focus on some of these unanswered questions concerning the educative and spillover effects of direct democracy. For example, we know relatively little about the effects of the initiative on state party systems over time. Does the initiative process weaken or strengthen state party systems,⁵¹ or conversely, is it circumscribed by state laws regulating the parties? Does the use of the initiative alter the proceedings of state legislatures? Are state legislatures in initiative states more prone to shirking their duty to pass legislation, deferring their responsibility to citizens? Does the initiative affect how well state legislatures represent racial and ethnic minorities? What are the effects of

49. THOMAS GOEBEL, *A GOVERNMENT BY THE PEOPLE: DIRECT DEMOCRACY IN AMERICA, 1890–1940* 199 (2002).

50. Frederic C. Howe, *The Constitution and Public Opinion*, PROC. ACAD. POL. SCI. CITY N.Y., Oct. 1914, at 7, 18.

51. See Shaun Bowler & Todd Donovan, *Direct Democracy and Political Parties in America*, 12 PARTY POL. 649 (2006).

the initiative on policy implementation,⁵² and are there spillover effects of ballot propositions on judicial behavior, such as judicial activism or restraint? In many of these areas of inquiry, we think legal scholars are especially well-equipped to take the lead.

In addition, scholars only recently have begun to look systematically at the use and consequences of direct democracy at the local level.⁵³ What is the relationship between local and state use of direct democracy, especially for institutional change of representative systems? For example, some scholars have found that tax and expenditure limitations, frequently adopted by initiative, have had the unintended consequence of creating more local governments and unincorporated areas.⁵⁴ These are just a few of the many questions concerning the second-order effects of initiatives and referenda that remain to be answered by the next generation of legal scholars interested in direct democracy.

In short, research on the educative and spillover effects of ballot propositions is one of the most important new avenues of study, as the process of direct democracy itself can affect a range of representational and electoral issues. Additional empirical and theoretical research is still needed on the educative and spillover effects of direct democracy. Using two-stage models⁵⁵ and rolling cross-sectional survey data to control for

52. See Anne Campbell, *In the Eye of the Beholder: The Single Subject Rule for Ballot Initiatives*, in *THE BATTLE OVER CITIZEN LAWMAKING* 131 (M. Dane Waters ed., 2001); Elisabeth Gerber et al., *When Does Government Limit the Impact of Voter Initiatives? The Politics of Implementation and Enforcement*, 66 J. POL. 43 (2004).

53. See JOHN MATSUSAKA, *FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY* (2004); Elisabeth Gerber & Justin Phillips, *Evaluating the Effects of Direct Democracy on Public Policy: California's Urban Growth Boundaries*, 33 AM. POL. REV. 310 (2005).

54. Shaun Bowler & Todd Donovan, *Evolution in State Governance Structures: Unintended Consequences of State Tax and Expenditure Limitations*, 57 POL. RES. Q. 189 (2004).

55. Two-stage causal models are used to isolate cause and effect by controlling for the effects of unobserved factors and to remedy selection bias—or endogeneity problems. For example, a scholar may be interested in the effect of ballot initiatives (A) on voter turnout (C), but political interest (B) is an intervening factor. To model an $A \rightarrow B \rightarrow C$ causal chain, we remove from B everything we could not explain with A. We then estimate B's independent effect on C. This creates a stricter test of the theory, and reduces the chance that the statistical relationship is caused by an unknown—or unmodeled—third factor. These models allow the researcher to understand the true contribution of an effect, over and above other factors, on the outcome variable.

the possibility of reverse causality,⁵⁶ political scientists need to measure more precisely the educative and spillover effects of ballot measures if we are to uncover the learning and priming effects the process has on candidate races in general and off-year elections. For their part, legal scholars need to probe more deeply into the theoretical and normative implications that underlie the causal connection of issue and candidate elections.

II. DIRECT DEMOCRACY AND POLITICAL TRUST

As our review of the literature shows, scholars have found broad support for the educative effects of direct democracy and that ballot propositions can have spillover effects that impact candidate races. Informed by empirical data from the American states, these findings are bolstered by cross-national research. Ballot initiative and referendum campaigns provide various types of information to voters through media coverage, paid advertisements, and political parties. Issue elections may foster increased political interest, discussion, and deliberation among the electorate, even among those with low formal education.⁵⁷ Still, one of the most important and controversial claims about direct democracy involves political trust.

A growing body of literature suggests that political efficacy and confidence in government responsiveness is higher among individuals who are frequently given opportunities to vote on policy questions in referenda elections.⁵⁸ Other research, though, suggests that extensive use of direct democracy has

56. A normal survey takes a snap shot of public opinion at one point in time. In contrast, rolling cross-sectional surveys are conducted every day of a campaign, for example, over a one-month period. Different individuals are interviewed each day, accounting for a cross-section of respondents, but opinion change over time can be measured over time, which is the "rolling" component. By modeling events occurring over time with multiple surveys, the researcher has more leverage to determine cause and effect with what accounts to multiple pre and post-tests.

57. Caroline Tolbert & Daniel Bowen, *Direct Democracy and Political Interest: Information, Engagement and Participation*, in THE IMPACT OF DIRECT DEMOCRACY (Shaun Bowler ed., 2007) (forthcoming 2008).

58. See Shaun Bowler & Todd Donovan, *Democracy, Institutions and Attitudes about Citizen Influence on Government*, 32 BRIT. J. POL. SCI. 371 (2002); Rodney Hero & Caroline Tolbert, *Minority Voices and Citizen Attitudes about Government Responsiveness in the American States: Do Social and Institutional Context Matter?* 34 BRIT. J. POL. SCI. 109 (2004); Mendelsohn & Cutler, *supra* note 36. For the first article on this topic, see Bruno Frey & Alois Stutzer, *Happiness, Economy and Institutions*, 110 ECON. J. 918 (2000).

eroded trust in government⁵⁹ and that exposure to ballot propositions does not increase political efficacy.⁶⁰ These conflicting findings raise important questions as to whether exposure to ballot issue elections supplements or undermines trust in representative government. Further clouding our empirical understanding of the effects of direct democracy on political trust are methodological limitations due to an over reliance on American National Election Study (ANES) data in previous research, a failure to adequately model multi-level data, and limited question wording that does not measure mass opinion about sub-national government, but only assesses the government in general.

A. *Data and Methods*

Many studies on trust in government have relied on descriptive statistics, case studies, or other methods of analysis that lack multivariate controls to untangle overlapping influences. These can be useful for understanding trends, but not cause and effect. Multivariate statistical methods are used in this article to explore the causes of trends, including the relative significance of overlapping influences such as age, income and education. Using more advanced statistical modeling than previous research to account for multi-level data (both individual survey data and aggregate state data), we draw on survey data from two unique Pew surveys conducted in 1997 and 2003.⁶¹ Both Pew surveys include questions about political attitudes and trust in state government in the United States. These opinion data are drawn from national random sampled

59. See MARK BALDASSARE, CALIFORNIA IN THE NEW MILLENNIUM: THE CHANGING SOCIAL AND POLITICAL LANDSCAPE (2000); DAVID BRODER, DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY (2000); PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (1998).

60. Dyke & Baldassare, *supra* note 38.

61. Pew Research Center for the People and the Press & Pew Internet and American Life Project. The data used came from two national surveys. One was conducted by Princeton Survey Research Associates for the Pew Center for the People and the Press from late September through early October, 1997 with an N of 1,700. Raw survey data is available online at <http://people-press.org/dataarchive/>. The other survey was also conducted by Princeton Survey Research Associates on behalf of the Pew Internet and the American Life Project with an N of over 2000 and was in the field from June 25, through July 17, 2003. Raw survey data is available online at <http://www.pewinternet.org/data.asp>.

telephone surveys conducted by Pew of individuals from the 48-contiguous United States.

In contrast to the Pew data, there are several problems with using American National Election Studies (ANES) data to estimate state level attitudes and behavior. First, although not well understood by most scholars, the ANES only samples randomly within geographic regions, not within states.⁶² Thus, ANES data is not ideal for studying state contextual effects, such as exposure to ballot questions, to gauge individual political attitudes and behavior. Second, because all respondents in ANES surveys may reside in one geographic area of a state,⁶³ selection bias may occur. Third, the ANES does not include respondents from some small states, many of which have the initiative process.⁶⁴ In contrast to the ANES, Pew surveys sample randomly within states and include respondents from 48 of the 50 states.⁶⁵ This makes inferences about state level effects on individual behavior less biased, as the surveys include small western states that have the initiative process.

While many national surveys include questions about trust in the federal government, few include questions on trust in state governments.⁶⁶ The Pew surveys that we draw upon in-

62. American National Election Study is conducted by the Inter-University Consortium for Political and Social Research at the University of Michigan.

The American National Election Study (ANES), begun in 1948, is the oldest continuous series of survey data investigating electoral behavior and attitudes in the United States. The focus of the survey includes voter perceptions of the major political parties, the candidates, national and international issues, and of the importance of the election. Also explored are voter expectations about the outcome of the election, degree of voter interest in politics, political affiliation and voting history, as well as participation in the electoral process. ANES interviews are conducted before and after presidential elections and after national congressional elections. Post-election interviews include questions on actual voting behavior and voter reflections about the election outcome. Inter-University Consortium for Political and Social Research Home Page, <http://www.icpsr.umich.edu/cocoon/ICPSR/SERIES/00003.xml> (last visited Aug. 14, 2007).

63. *Id.*

64. *Id.*

65. Pew Research Center for the People and the Press: Methodology, <http://people-press.org/reports/methodology.php3> (last visited Aug. 14, 2007). The authors analyzed the Pew surveys using multivariate statistical methods, but did not conduct the telephone surveys, which were conducted for Pew by the Princeton Research Associates.

66. For an extensive list of survey questions asked in nationwide and state polls over time by subject area, see PollingReport.com, <http://pollingreport.com> (last visited Aug. 14, 2007). Trust in government questions asked on national surveys can be found online at PollingReport.com: Major Institutions,

clude identically worded questions on opinions about state government over a five-year period,⁶⁷ following standard wording for questions on levels of trust regarding the federal government.⁶⁸ By merging the individual level survey data with state level variables measuring residence in a state with the initiative and usage of the process over the previous decade, we are able to model whether the initiative process (and exposure to ballot propositions) fosters or inhibits favorable opinion about state government and levels of political trust. Finally, by clustering respondents by state, we are able to more accurately model these multi-level data. Such statistical methods, accounting for the use of both individual and aggregate state data, have not been used in previous research on this topic.⁶⁹

As outcome variables in our statistical analysis we used two questions included on the Pew surveys to measure public opinion about state governments.⁷⁰ The first outcome (or dependent) variable measured *favorable opinions of state government*.⁷¹ Respondents were asked: "I'd like your opinion of some organizations and institutions. Do you have a very favorable, mostly favorable, mostly unfavorable, or very unfavorable opinion of your state government?"⁷² This question was asked in both 1997 and 2003.⁷³ A second dependent variable asks about *trust in state government*: "How much trust and confidence do you have in your state government when it comes to handling state problems?"⁷⁴ A great deal, a fair amount, not very much, or none at all?"⁷⁵ This question was included only on the 1997 survey. Because the dependent variables are bi-

<http://www.pollingreport.com/institut.htm> (last visited Aug. 14, 2007).

67. Pew Research Center for the People and the Press, <http://people-press.org/> (last visited Aug. 14, 2007); Pew Internet and American Life Project, <http://www.pewinternet.org/> (last visited Aug. 14, 2007).

68. PollingReport.com, *supra* note 67.

69. See *supra* text accompanying note 37 for a discussion of multi-level modeling. Future research will replicate these models using Hierarchical Linear Modeling (HLM) software.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. The authors created a dichotomous variable with those answering "a great deal" and "a fair amount" coded as 1 and "not very much" and "none at all" were coded as 0.

nary, our statistical models are estimated using logistic regression.⁷⁶

A number of predictor (or explanatory) variables are used to predict individual trust and confidence in government. The primary explanatory variables measure whether the respondent resides in a state with the initiative process, coded 1 if yes and 0 if no. A second explanatory variable measures use of the process; specifically the average number of initiatives on the respondent's state ballot each year from 1970–1992.⁷⁷ We are interested in whether prior exposure to direct democracy increases or reduces trust and confidence in state government.

The models also control for a battery of state contextual factors that may increase or reduce trust in state government. Some legislatures are highly professional while others are not, in terms of their legislative staff, time in session, and salaries for state lawmakers. Using a standard measure of state legislative professionalism, we expect respondents residing in states with more professional legislatures and with increased governing capacity to have less favorable opinions of government.⁷⁸ Imposition of legislative term limits, a major institutional change of state legislatures in the twentieth century,⁷⁹ is measured with a binary variable; states with term limits are coded 1, and all other states are coded 0. State racial diversity is measured by the percentage of the respondent's state population that is African American, Latino, or Asian American based on the 2000 U.S. Census.⁸⁰ We expect individuals living in

76. Binomial logistic regression is a form of regression which is used when the dependent is a dichotomy and the independents are of any type. Logistic regression applies maximum likelihood estimation after transforming the dependent into a logit variable (the natural log of the odds of the dependent occurring or not). Logistic regression estimates the probability of a certain event occurring by calculating changes in the log odds of the dependent variable, not changes in the dependent itself as ordinary least squares (OLS) regression does. See SCOTT LONG, REGRESSION MODELS FOR CATEGORICAL AND LIMITED DEPENDENT VARIABLES (1997).

77. The average number of initiatives appearing on state ballots is derived from Chapters 1 and 2 in CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES (Shaun Bowler et al. eds., 1998).

78. See Peverill Squire, *Legislative Professionalization and Membership Diversity in State Legislatures*, 27 LEGIS. STUD. Q. 69 (1992).

79. THAD KOUSSER, TERM LIMITS AND THE DISMANTLING OF STATE LEGISLATIVE PROFESSIONALISM (2004).

80. RODNEY E. HERO, FACES OF INEQUALITY: SOCIAL DIVERSITY IN AMERICAN POLITICS (1998); RODNEY E. HERO, RACIAL DIVERSITY AND SOCIAL CAPITAL: EQUALITY AND COMMUNITY IN AMERICA (2007).

more ethnically diverse states to have less confidence in state government.⁸¹ To control for state socioeconomic conditions, we use U.S. Census data on state median income and the size of the state (population logged).

At the individual level, a number of factors have been shown to increase trust in government.⁸² An important factor is trust in the federal government.⁸³ We hypothesize that those trusting the federal government should be more likely to trust their state and local governments. Inclusion of this variable provides a rigorous test of whether direct democracy matters, as trust in the federal government is a powerful predictor of trust in state government. Trust in the federal government is measured with the following question: "How much trust and confidence do you have in our federal government when it comes to handling domestic problems? A great deal, a fair amount, not very much, or none at all?"⁸⁴ Similar question wording is used to measure favorable opinions of the federal government.⁸⁵

Our multivariate statistical models control for other factors that may increase or reduce trust, including several individual-level demographic factors. Binary variables are included to measure the race of the respondent (African American, Latino, or Asian American) with white non-Hispanics as the reference category, gender (males 1, females 0), marital status (married 1, non-married 0), and whether respondents had a child under eighteen in their household (coded 1) or not (coded 0). Educational attainment is coded as a seven-point ordinal variable. Income is measured on an eight-point scale ranging from one (less than \$10,000) to eight (more than \$100,000). Age is measured in years and age squared is included to capture any nonlinear effects⁸⁶ of age on reducing

81. See BALDASSARE, *supra* note 60.

82. See PIPPA NORRIS, *CRITICAL CITIZENS: GLOBAL SUPPORT FOR DEMOCRATIC GOVERNANCE* (1999); WHY PEOPLE DON'T TRUST GOVERNMENT (Joseph S. Nye et al. eds., 1997); Margaret Levi & Laura Stoker, *Political Trust and Trustworthiness*, 3 ANN. REV. POL. SCI. 475 (2000); Arthur Miller, *Political Issues and Trust in Government*, 68 AM. POL. SCI. REV. 951 (1974).

83. Miller, *supra* note 82.

84. Pew Research Center for the People and the Press, *supra* note 68; Pew Internet and American Life Project, *supra* note 68.

85. *Id.*

86. The effects of age on political trust is generally understood to be nonlinear, in that trust is not expected to continually rise as citizens become older.

trust in government, and government employees, who have been shown to have greater trust in government at all levels,⁸⁷ are controlled with a binary variable. Because electoral losers—voters who are of a different political party than those in power—have been shown to have lower political trust,⁸⁸ we include two binary measures of party identification, one for Republicans and one for Democrats; independents are left as the reference category.

B. Empirical Results

We report in Table 1 the findings of our empirical tests of whether individuals residing in initiative states have more favorable opinions of state government or more trust in state government. Over a five-year period, from 1997–2003, we found evidence in Model 1 and Model 2 that individuals residing in initiative states have increasingly favorable opinions about state government. Holding all other factors constant, individuals living in initiative states were more likely to report favorable opinions of state government. Though this is the first evidence directly linking the availability of direct democracy in a state and favorable mass opinion toward state government, the finding builds upon earlier empirical research on the use of direct democracy and enhanced political efficacy.⁸⁹ At the same time, we find that respondents residing in states with frequent use of the initiative process had less favorable opinions about state government. Extensive use of the process appears to erode confidence in state government. Thus, the initiative process may be a double-edged sword. These results are consistent in both 1997 and 2003, providing additional confidence in the findings.

87. Miller, *supra* note 83.

88. DONOVAN & BOWLER, *supra* note 24.

89. See SMITH & TOLBERT, *supra* note 1; Bowler & Donovan, *supra* note 59; Hero & Tolbert, *supra* note 58.

Table 1: *The Educative Effect of Direct Democracy on Public Attitudes Toward State Government and Political Trust.*⁹⁰

	1997			2003			1997		
	Favorable Opinions About State Govern- ment			Favorable Opinion About State Govern- ment			Trust in State Govern- ment		
	Coef.	(s.e.)	> z	Coef.	(s.e.)	> z	Coef.	(s.e.)	p> z
<i>Respondent's State Context</i>									
Initiative process	.40	(.17)	.018	.34	(.21)	.099	-.12	(.42)	.780
Use of initiative	-.12	(.07)	.072	-.46	(.11)	.000	-.14	(.10)	.159
Legislative Pro- fession.	-1.24	(.48)	.010	-1.02	(.60)	.089	.21	(.95)	.826
Term limits	-.23	(.19)	.220	-.04	(.23)	.875	-.07	(.35)	.839
Population (logged)	.02	(.31)	.951	-.12	(.45)	.784	-.03	(.38)	.938
Racial diversity	.09 ⁻²	(.01)	.887	.01	(.01)	.331	.03 ⁻¹	(.01)	.762
Median income	.03 ⁻³	(.01 ⁻³)	.068	.04 ⁻³	(.02 ⁻³)	.056	-.01 ⁻⁴	(.02 ⁻³)	.949
<i>Individual Characteristics</i>									
Trust in federal government	—	—	—	—	—	—	1.39	(.20)	.000
Favorable opin- ion of federal government	.91	(.10)	.000	1.41	(.14)	.000	—	—	—
Educational at- tainment	-.001	(.04)	.978	.08	(.05)	.107	-.05	(.06)	.365
Income	-.01	(.04)	.807	.03	(.04)	.542	.07	(.06)	.290
Age	-.06	(.02)	.001	-.05	(.03)	.072	-.04	(.04)	.322
Age Squared	.07 ⁻²	(.01 ⁻²)	.000	.06 ⁻²	(.03 ⁻²)	.074	.03 ⁻²	(.04 ⁻²)	.475
Male	-.01	(.12)	.936	-.05	(.13)	.704	-.24	(.17)	.163
Latino	.04	(.19)	.847	.19	(.28)	.498	-.23	(.30)	.446
African Ameri-	-.69	(.17)	.000	.11	(.30)	.712	-.15	(.23)	.533

90. Unstandardized logistic regression coefficients with robust standard errors in parentheses. Probabilities based on two-tailed test, with coefficients significant at a 95% confidence interval or greater highlighted in bold. To account for multi-level data, coefficients estimated using cluster by state in STATA 9.0. The data used come from two national surveys; one was conducted by Princeton Survey Research Associates for the Pew Center for the People and the Press from late September through early October, 1997 with an N of 1,700. The other survey was also conducted by Princeton Survey Research Associates on behalf of the Pew Internet and the American Life Project with an N of over 2000 and was in the field from June 25 through July 17, 2003.

can									
Asian American	-.03	(.34)	.920	-.66	(.30)	.029	-.52	(.59)	.377
Marital status	.17	(.14)	.236	.09	(.17)	.616	-.34	(.19)	.072
Child	.07	(.13)	.579	.16	(.17)	.363	.14	(.18)	.431
Government worker	-.01	(.11)	.925	-.29	(.24)	.243	.03	(.20)	.882
Republican	.26	(.17)	.126	-.22	(.17)	.192	.07	(.23)	.755
Democrat	-.15	(.10)	.145	.02	(.17)	.918	.69	(.20)	.001
Constant	.72	(2.13)	.734	-.27	(2.63)	.919	2.00	(2.75)	.468
N	1439			1021			774		
Wald Chi ²	304.8		.000	633.3		.000	246.3		.000

The third model in Table 1 indicates that individuals residing in initiative states or in states with frequent use of the process have no statistically different trust in state government than individuals residing in non-initiative states. Exposure to direct democracy may affect opinions about state government, but not the deeper phenomena of political trust. Stated more directly, direct democracy appears to neither increase nor reduce an individual's trust in state government.

Control variables for all three models are in their expected directions. Individuals with more confidence in the federal government have more confidence in state government (Models 1 and 2). Similarly, those with more trust in the government in Washington, D.C. have more trust in state government (Model 3). Residence in states with more professional legislatures results in more negative opinions of state government—which is contrary to our expectations—but professionalism has no effect on trust in state government. As expected, residence in more affluent states—presumably with improved government services measured by median income—increases individual confidence in state government, but not political trust. Consistent with the literature, older individuals have decreased confidence in state government,⁹¹ as do racial and ethnic minorities, especially African-Americans and Asian-Americans, across both years.⁹²

91. Miller, *supra* note 83.

92. SMITH & TOLBERT, *supra* note 1

C. Discussion

The empirical analysis we offer sheds some light on the educative effects of direct democracy on political trust. A consistent pattern emerges showing that exposure to direct democracy increases favorable opinions about representative government, but very high use of the process decreases confidence in state government. These findings challenge the work by political scientists John Hibbing and Elizabeth Theiss-Morse, who argue that "counter to the prevailing view that people want greater involvement in politics, most citizens do not care about most policies and therefore are content to turn over decision-making authority to someone else."⁹³ Our analysis of national survey data reveals that citizens have improved opinions of representative government when given the opportunity to participate directly in policy decisions, but they do not necessarily want to govern via ballot initiatives with great frequency. Rather, they may prefer a combination of direct and representative democracy, what has been called alternatively as "referendum democracy"⁹⁴ and "hybrid democracy."⁹⁵ Finally, we find no evidence that direct democracy has a measurable impact on the deeper, emotional phenomena of political trust in government.

CONCLUSION

Only recently have political scientists begun to examine second-order effects of ballot initiatives, such as the effects of direct democracy on political trust. It comes as no surprise, then, that many legal scholars have yet to take an educative turn in their normative and theoretical analyses of direct democracy. In addition to studying the instrumental effects of direct democracy on substantive policy outcomes, we encourage

93. JOHN R. HIBBING & ELIZABETH THEISS-MORSE, *STEALTH DEMOCRACY: AMERICANS' BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK* (2002); *see also*, John R. Hibbing & Elizabeth Theiss-Morse, *Process Preferences and American Politics: What the People Want Government To Be*, 95 AM. POL. SCI. REV. 145 (2001); John R. Hibbing & Elizabeth Theiss-Morse, *Too Much of a Good Thing: More Representative is Not Necessarily Better*, 31 PS: POL. SCI. & POL. 28 (1998).

94. *See* REFERENDUM DEMOCRACY: CITIZENS, ELITES, AND DELIBERATION IN REFERENDUM CAMPAIGNS (Matthew Mendelsohn & Andrew Parkin eds., 2001).

95. *See* Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. 1096 (2005).

legal scholars to take an educative turn and consider the procedural byproducts of direct democracy. Specifically, they should consider how ballot measures affect the political attitudes and behavior of citizens as well as the strategies of political organizations, such as interest groups, political parties and even political candidates. By failing to recognize the educative and spillover effects of ballot measures, legal scholars risk missing much of the dynamic research being conducted on direct democracy.

It is our hope that our review of the literature, and our brief empirical analysis of the effects of initiative use on attitudes toward state government and political trust, provides legal scholars with some new insights. Our intent here certainly is not to turn legal scholars into political scientists; we can hardly imagine a worse misallocation of resources and talent. Rather, using their considerable analytic skills, theoretical insights, and normative concerns, we hope legal scholars will draw on empirical studies to flesh out their own inquiries regarding the effects of direct democracy on legal and procedural questions and representational concerns. By incorporating into their own work current empirical research on the spillover effects of direct democracy, we are confident that legal scholars will continue to build upon, problematize, and challenge the research being done by political scientists.