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# Interest groups and direct democracy

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## Keywords

Direct democracy; Initiative; Referendum; Citizen Groups; Business Groups; Advocacy Strategies; Advocacy Resources.

## Definition

A variety of direct democratic instruments allow “policy-making at the ballot box” (Gerber, 1999, p. 3), with the citizens having the last word on policy adoption and change. Criteria for the classification of direct democracy devices include who initiates a popular vote, who has control over the content of the proposal, whether it addresses statutory or constitutional law, or whether the result is binding or not.

Interest groups use two main direct democracy instruments to influence policy-making: the initiative to put a new policy issue on the political agenda, and the referendum to veto a policy adopted by the legislature. This chapter scrutinizes the effects of these tools on the policy process, on policy outputs and on interest group populations. It shows that citizen groups benefit more than business groups from the initiative and referendum.

## Introduction

Interest groups may use two direct democracy instruments to influence policy-making. First, the *initiative* allows groups of citizens to propose a constitutional amendment or a legislative measure. The initiative promoters need to fill a petition bearing a required number of valid citizen signatures. In Switzerland for example, 100'000 citizens, i.e. about 3% of the electorate, should sign the petition to qualify it for a popular vote on a total or partial revision of the federal constitution.

Second, the *referendum* allows voters to ratify or reject a constitutional provision or a law that has been initiated and accepted by the government and the legislature. In California, for example, the referendum allows submitting an enacted statute to the voters for approval if the required signatures, which should equal 5% of the votes for all candidates at the last gubernatorial election, can be collected within 90 days of the law enactment.

The initiative or referendum process is clearly different from legislative law-making, regulatory rule-making or judiciary litigation. It requires persuading a majority of voters to support (or oppose) the proposed policy rather than lobbying elected representatives,

delivering policy expertise to administrative agencies or filing lawsuits and cosigning amicus briefs. It thus offers an additional decision-making venue to access the policy process and to influence policy outputs directly (Boehmke, 2005a; Varone et al., 2018). Concretely, interest groups can act as initiative or referendum proponents by gathering the signatures necessary to qualify it for submission to the voters. They can also contribute to promote (or defeat) a specific measure by making financial contributions to a campaign in favor (or against) it and by voicing their opinions in the media.

It is important, from a democratic point of view, to analyze how interest groups concretely use the initiative and referendum process to influence policy-making. Two camps of politicians, and academic scholars as well, virulently oppose each other on the expected effects of direct democracy on policy processes and, furthermore, democracy itself, as shown by the epic debate about the U.S. Federal Constitution.

On the one hand, James Madison and the Federalist founders of the U.S. Constitution strongly rejected direct democracy for the following reasons, neatly summarized by Miller (2009, p. 31): “direct lawmaking provides an inferior form of deliberation; voters are incompetent to enact complex initiative legislation; *special interests can manipulate the initiative process*; and direct lawmaking undermines representative institutions; the initiative process threatens individual and minority rights”. Consequently, the people should only exercise political power indirectly, through the election of parliamentary representatives and government officials.

On the other hand, mainstream Progressives, among which Woodrow Wilson and Theodore Roosevelt, supported direct democracy as a necessary addendum to representative democracy. They argued that representative institutions had become biased since “we have a *great inextricable jungle of organizations* intervening between the people and the process of their government” (quoted in Wilson, 1912, p. 27). The initiative and referendum are thus understood as a means to counteract special interests, which have captured elected representatives, who eventually are no more responsive to the popular will. Direct democracy should restore representative democracy.

This chapter does not engage in a normative debate about the superiority of liberal or representative democracy over participatory or direct democracy. It provides empirical evidence about the use of direct democratic tools by interest groups (1), and about the direct and indirect effects that initiatives and referenda have on policy decisions (2), on the policy process (3) and on interest group populations (4) in “hybrid democracies” (Bowler et al., 1998). In particular, it scrutinizes whether business interests benefit more than citizen organizations from direct democracy devices.

Such an empirically grounded approach to the study of direct democracy and interest groups is relevant and topical. Indeed, we observe a growing use of direct democratic instruments across the globe. In Europe, for instance, national referenda were held on the EU integration process in the 1990s-2000s. In addition, the Lisbon Treaty has introduced the European Citizens’ Initiative as a new institutional tool to empower European citizens. Finally, the 2016 UK referendum on Brexit has had major

implications for British Politics. In other words, direct democracy is spreading (Altman, 2011), beyond the emblematic examples of Switzerland (Kriesi, 2005) or the U.S. states of Oregon and California (Boehmke, 2005a; Bowler et al., 1998)

## Which groups use direct democracy?

Direct democracy has always been more accessible to organized groups rather than to spontaneous aggregations of citizens expressing their discontent with government policy. However, rather than considering this as the knockout argument against direct democracy, researchers have insisted on distinguishing both between different types of groups engaging in direct democratic battles and between the different stages of the direct democratic process.

With regards to the “*qualifying stage*” (i.e. gathering the sufficient number of citizens’ signatures to require a popular vote), Donovan et al. (1998) showed that citizen groups launched 73 percent of all general election initiatives in California between 1986 and 1996. In Switzerland too, citizen groups sponsored 78 percent of all popular initiatives between 1990 and 2009, whereas business groups accounted for only 7 percent, with the remainder (15 percent) going to trade unions (Eichenberger, 2017, p. 142). Of course, these figures must be linked to the actual size of the citizen group population. Comparing initiative use across various U.S. states, Boehmke (2005b) showed that the size of the citizen group population positively affects the frequency of initiatives, whereas it is negatively affected by the size of the population of economic groups.

There are several explanations for citizen groups’ stronger reliance on initiatives. First, and to some extent, it represents the mirror image of their lack of access to the legislative and particularly the administrative venue. Secondly, reliance on the popular initiative is more than a fallback option for “outsider groups”. Gerber (1999) argued that the mobilization of an electoral majority requires not only financial but also “personnel” resources. Citizen groups can rely on members to defend and relay the group’s position. Business groups, on the other hand, predominantly rely on monetary expenditures to win a vote. Citizens might construe such expenditures as wealthy interests acting against the will of the majority, which makes it difficult for business groups to win the ballot. Thirdly, citizen groups might also pursue an agenda-setting or membership objective through their campaign spending: their aim is to secure their organizational survival rather than to influence policy content directly. Citizen groups rely more heavily on outside lobbying than business groups as it allows them to achieve both policy influence and publicity for their cause (Binderkrantz et al., 2015). A similar argument can be made for citizen groups’ reliance on direct democratic tools and their campaign spending. Finally, direct democratic debates largely take place within the media. In fact, in a direct democratic context, the media arena becomes quasi decisive and is thus transformed into a policy-making venue, in which binding policy decision can be made. Citizen groups’ defense of broadly shared claims grants them better access to the media arena, as compared to the administrative and legislative venues, and when controlling for advocacy resources (Binderkrantz et al., 2015). As compared

to business groups, they thus face a stronger incentive to rely on direct democratic tools.

Nevertheless, citizen groups' stronger reliance on direct democratic tools must be nuanced according to the type of tool. Gerber (1999, p. 62) pointed out that "especially when voters are risk averse, groups that expend large amounts of monetary resources may be able to convince enough voters that the known status quo policy, although perhaps not optimal, is preferable to the risky, unknown alternative policy". In Switzerland, for instance, business groups launched roughly 25% of all referenda between 1990 and 2009, which represents a sizeable share, particularly in a period of welfare state retrenchment (Eichenberger, 2017, p. 145). Gerber (1999, p. 96) showed that business groups spend three times more on supporting referenda than citizen groups in California.

## Effects on policy decisions

Interest groups have made an increased use of direct democratic instruments over the past decades, both in the U.S. states and in Switzerland. Beyond the qualifying stage, however, a ballot proposal's fate is decided during the *campaign stage*.

Gerber focusing on the U.S. context, in fact highlighted that "one of the noteworthy facts of the modern initiative process is that most ballot initiatives fail" (see Bowler et al., 1998). In Switzerland, the passage rate of popular initiatives is even lower than in the US, hovering around 10% (Linder & Müller, 2017). As pointed out above, popular initiatives are rarely launched by business groups, which makes a comparison of passage rates across group types difficult. Nevertheless, business groups did not succeed in passing any of the four popular initiatives launched between 1990 and 2009 in Switzerland. Citizen groups, on the other hand, succeeded in passing 18% of their initiatives (8/45) during the same time period (Eichenberger, 2017). Focusing on the U.S. states, Gerber (1999, p. 119) too points out that "economic groups find it very difficult to pass new initiatives, whereas citizen groups are much more successful at modifying policy through the direct legislation process".

It must be pointed out, however, that opposition spending by business groups lowers the vote-margin and probability of passage of initiatives, whereas opposition spending by citizen groups does not affect the success of initiatives (Gerber, 1999, pp. 114–115). In addition, business groups invest considerably more financial resources into countering popular initiatives than citizen groups invest into supporting them. This could provide an explanation for the low passage rate of popular initiatives launched by citizen groups.

Incidentally, Gerber also showed that citizen and business groups spend roughly similar amounts on supporting popular initiatives. That is, while business groups rely less on popular initiatives than citizen groups, they buttress their initiatives with considerably more financial resources. Critics of direct democracy thus suspect "special interests" (e.g. big business, peak economic associations) to buy ballot results.

However, empirical evidence suggests voters to be swayed under particular circumstances only: if citizens' predispositions towards the policy issue at stake are only weakly developed, and if the policy issue is complex and conflict is low (Kriesi, 2005). Accordingly, the global amount of money spent during campaigns remains limited.

Again, a distinction must be made between initiatives and referenda. It appears generally easier to abrogate parliamentary decisions through referenda rather than directly legislating through the popular initiative. In Switzerland, roughly 40 percent of the referenda actually abrogated parliamentary decisions (Linder & Müller, 2017), whereas figures for other countries are not readily available. Between 1990 and 2009, business groups succeeded 45 percent of their referenda (5/11), whereas citizen groups lag behind with a success rate of only 13 percent (3/23) (Eichenberger, 2017). Gerber (1999, p. 62) pointed out that "when attempting to preserve the status quo [thus when relying on referenda], groups simply need to create enough doubt and concern about the measure to dissuade a majority of the electorate from supporting the new policy". Here cash- and less personnel-intensive strategies play a more important role than during the initiative process, which might explain why business groups fare better than citizen groups in passing their referenda.

In light of the generally low passage rate of popular initiatives, we might tend to underestimate the effect of direct democratic institutions on policy decisions. One of the motives for relying on initiatives is not necessarily to circumvent the legislature and legislate directly, but rather to exert pressure on the legislature. Measuring such indirect influence is somewhat difficult, as groups' intent cannot be inferred from their actions. Legislators might in fact anticipate groups' reactions. Nevertheless, it suffices to point out that if groups can pass initiatives and referenda, then they can also make credible threats, and therefore achieve *indirect* influence. In the Swiss case, the importance of interest groups' indirect influence is also illustrated by the gradual introduction and codification of the so-called governmental counter-proposal. Interest groups can repeal their initiative if they are satisfied with the compromise (counter-proposal) suggested by the government and endorsed (and possibly amended) by the parliament. In fact, we estimate that the Swiss people did not vote on about 40 percent (16/40) of all popular initiatives that qualified for a popular vote between 2001 and 2010.

When discussing the effects of direct democratic devices on policy decisions, we must go beyond the mere passage rates and indirect influence, and focus on the substantive content of different public policies. Focusing on tax and public spending over one hundred years, and for several U.S. states and cities, Matsusaka (2004) compared the tax spending policies supported by the proponents of initiatives related to these issues with the public preferences. His study delivers consistent findings showing that the initiatives give the majority the tax and spending policies they like. Narrow "special interests" are not able to subvert the initiative process and distort policy-making at the expense of the public good. In other words, "the initiative appears to promote the interest of the many rather than the few" (Matsusaka, 2004, p. 3).

Additional comparative studies (e.g. on Swiss cantons) also show that direct democracy does not lead to a “Robin Hood” tendency of government to extend state intervention. Quite the contrary is true: “direct democratic processes limit and decentralize government spending, income and debt, provide public services more efficiently, increase transparency and contribute to lower level of tax frauds.” (Vatter et al., 2019, p. 179).

Further research has tackled the question whether minority groups can seek protection through direct democratic institutions, or whether the purely majoritarian direct democratic venue actually curtails minority rights. As concerns the U.S. states, it has been shown that racial and ethnic minorities regularly lose in racially targeted propositions (Gamble, 1997). In Switzerland, minorities appear to lose less frequently than in the U.S. (Frey & Goette, 1998). The crucial question, however, relates to whether there is a difference in the protection of minority rights between direct democratic and legislative institutions. Here the evidence is less conclusive. More recent research, focusing on the U.S., suggests that direct democracy states are more likely to pass anti-minority legislation (Haider-Markel et al., 2007).

While we must be careful not to conflate the interests of specific societal groups with the actual interest organizations organizing these groups, these examples suggest that narrowly shared interests find it more difficult to avail themselves of the initiative process to their own ends.

## Effects on the policy process

The existence of direct democratic institutions does not just give interest groups the possibility to exert direct and indirect influence on policy decisions, but it also informs both the strategies deployed during, and the access gained to, the policy process.

In terms of access to the decision-making process, and adopting a functionalist perspective, Neidhart (1970) argued that Switzerland’s elaborate pre-parliamentary concertation structures serve to avoid a popular veto on parliamentary decisions through the *ex post* referendum. So-called “referendum-capable” interest groups are integrated into extra-parliamentary committees, and when consulting interest groups on bill pre-proposals, the Swiss government generally casts a wide net. Direct democratic institutions further the openness of the political system.

Increased access to the administrative and legislative venues in turn informs interest groups’ strategies. Swiss citizen groups rely more heavily on inside lobbying (relative to outside lobbying) than their German counterparts (Weiler & Brändli, 2015). Boehmke (2005a), focusing on the U.S. states, argued that direct democracy increases interest groups’ reliance on outside lobbying. In a direct democratic context, groups can exert more pressure on decision-makers through outside lobbying. This does not necessarily contradict the findings of Weiler and Brändli (2015). Direct democratic institutions might in fact increase interest groups’ reliance on both inside and outside lobbying, but

the effect on inside lobbying might be stronger, especially as inside lobbying arguably remains more effective than outside lobbying, even in a direct democratic context.

It might also be the case, however, that direct democratic institutions do not inform interest groups' access to the policy process in the same manner across different political contexts. In Switzerland, popular initiatives cannot easily be overturned in another venue, whereas they are frequently invalidated through the courts in the U.S. (see below). In addition, the existence of the governmental and parliamentary counter-proposals to a qualified popular initiative creates an incentive to associate outsider groups to the drafting of this counter-proposal in Switzerland. This incentive is largely absent in the U.S. context. Elaborate pre-parliamentary consultation mechanisms and citizen groups' stronger reliance on inside lobbying might hence be specific to the Swiss case.

Interest groups' reliance on direct democratic instruments, and their increased participation in "normal" politics, might lead them to moderate their demands. Social movement scholars have related the relatively moderate action repertoire of Swiss new social movements to the openness of the political system. Perhaps this argument can be extended to citizen groups, but we lack empirical proof.

Finally, to grasp fully how interest groups benefit from the existence of direct democratic instruments, we also need to look beyond the adopted initiative, especially since interest groups try to avoid or to reverse direct democratic decisions in other institutional venues (Varone et al., 2018).

For instance, interest groups that are defeated at the ballot box may activate the *courts* to challenge the constitutionality of voters-accepted initiatives. This strategy is quite frequent in U.S. states, with courts invalidating California's initiatives at highest rate: "By the 1990s, it seemed that post-election litigation had become an institutionalized feature of the state's initiative system. Opponents challenged 69 percent of all California initiatives adopted from the 1970s through the 1990s, and courts invalidated, in part or in whole, 38 percent of all initiatives adopted in the state during these years" (Miller, 2009, p. 109). Although the litigation rate is lower in other U.S. initiative states or countries, initiative opponents who are defeated at the ballot box consider the judicial review of adopted initiatives as a strategic advocacy activity. Consequently, judges might exert a strong counter-majoritarian check on citizens' will.

As concerns the Swiss case and the *legislative venue*, interest groups can use their connections to members of parliament to curtail an initiative before it even comes to a popular vote. As mentioned, popular initiatives can be "tamed" through counter-proposals that are more moderate and interest groups often play an important role in co-drafting these. In addition, parliament gives out a voting recommendation that can also be the object of interest group lobbying.

The interactions between direct democracy and *the executive venue* are also crucial. Since direct democracy breaks the policy monopoly of elected representatives, it should come as little surprise that the implementation (by the government) of an accepted

initiative might be problematic. Most of the time, popular initiatives supported by interest groups run counter to the elites' will. Government officials and street-level bureaucrats could thus be tempted to only partially implement the content of the initiative, i.e. to "steal" the initiative proponents (Gerber et al., 2001). Empirical analysis on the pressure that interest groups put on government and public agencies to adequately implement their initiative is relevant, but yet largely lacking.

## Effects on interest group populations

In addition to the instrumental merit of direct democracy, i.e. the ability to control unrepresentative and non-responsive elites, Progressives also claimed that direct democracy has an educative effect on citizens, political parties and interest groups (Smith & Tolbert, 2004, pp. 1–30). They assume that the initiative process could counteract the undue influence of business groups (e.g. the infamous Southern Pacific Railroad in California or the mining companies in Colorado) and modify the size and diversity of interest group populations.

Empirical studies show that the mere existence of direct democracy instruments creates incentives for interest groups to form and mobilize. Pooling data of interest group populations from 1975 to 1990, Boehmke finds that U.S. states permitting the initiative process display 28 percent more interest groups than states without direct democracy. Even more importantly, initiative states have 45 percent more citizen groups than non-initiative states, compared to 23 percent more economic groups. This clearly makes the interest group populations of initiative states more representative (Boehmke, 2005a, p. 148).

In a similar vein, and focusing on groups registered in 1997, Smith and Tolbert investigate whether direct democracy in use, i.e. the number of initiatives on statewide ballots from 1990 to 1996, has a positive impact on the formation and mobilization of not-for-profit interest groups. Their findings corroborate that the usage of the initiative promotes the representation of citizen interests. States with 40 or more initiatives on the ballot between 1990 and 1996 have about 47 percent more not-for-profit groups than non-initiative states (Smith & Tolbert, 2004, pp. 96–102).

In sum, the expectations of the Progressive Era reformers appear fulfilled as the initiative process fosters the mobilization of latent citizen groups. Direct democracy seems to mitigate the problem of collective action that typically affects potential citizen groups advocating a broad cause with a large audience. This contributes to a higher pluralism in the interest group population, which is a necessary, but not sufficient condition, to balance the (structural) power of corporate interests and peak economic associations. Business groups have adapted and nowadays rely more heavily on direct democratic tools as policy-making devices.

## Conclusion

Why should we care, as policy scholars, about the impacts of direct democracy on interest group politics?

(1) “Hybrid democracy” combining institutions of representative democracy and direct democracy is a reality in many countries, federated entities (e.g. half of the U.S. States) and even supranational organizations (e.g. European Union).

(2) Direct democracy offers interest groups a new decision-making venue to access the policy-making process and influence policy outputs.

(3) Under the initiative process, interest groups, acting as policy entrepreneurs, may bypass the government and the legislature to set the political agenda. Under the referendum process, they can put into question a policy decided by elected representatives, thusly becoming veto players.

(4) Both the initiative and referendum processes eventually grant agenda setting and veto power to the voting public. However, interest groups may be so influential during the collection of signatures and the voting campaign that they are able to exert undue influence on the outcome. This might lead to a “populist paradox”: whereas, in principle, direct democracy offers new opportunities to bypass political parties, interest groups may indeed control the initiative and referendum processes to serve their own (narrow) interests.

(5) Empirical findings show that direct democratic institutions alleviate collective action problems, particularly for citizen groups, and thus lead to more representative interest group populations. Furthermore, citizen groups rely more heavily on direct democratic instruments, particularly the initiative, than business groups; but direct influence through popular initiatives is rare, also because business groups succeed in thwarting them through the investment of considerable financial resources during the voting campaign.

(6) Direct democracy restructures the policy process. Interest groups in general and citizen groups in particular, are more closely associated to the establishment of public policies in the administrative and legislative venues. However, closer association might lead to cooptation and the dilute citizens’ demands as expressed through interest groups.

(7) Several open questions remain. First, interest groups are often presented as the main proponents of direct democratic measures, acting against political parties. However, empirical research on how interest groups confront or conjoin political parties in direct democratic battles is scant. Secondly, more research on how popular initiatives are translated into laws and rules might further qualify the benefits accruing to citizen groups through the initiative process. Finally, further research should tackle interdependencies across policy-making venues. Business groups’ hesitant use of popular initiatives might reflect their strong access to insider venues (e.g. rule-making agencies). Perhaps they are capable but not willing to use the initiative.

## Cross-References

'Interest Group Access'; 'Influence'; 'Group populations'; 'Interest groups and agenda-setting'; 'Political parties and interest groups'

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## Further Reading [if applicable]

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