CHAPTER 1

AN INTRODUCTION TO THE DESIGN OF DEMOCRATIC INSTITUTIONS

Before the first vote is cast or the first ballot counted, the possibilities for democratic politics are already constrained and channeled. The election process is well underway before the formal stage of voting, for elections do not take place in a legal or institutional vacuum. Rather the election process emerges from previously fixed—and often carefully orchestrated—institutional arrangements that influence the range of possible outcomes that formal elections and subsequent policymaking can achieve. Thus a paradox rests at the core of democratic politics: this politics is in part a contest over the structure of state institutions, and yet those very institutions define the terms within which the contest of democratic politics proceeds.

The central focus of this book is this complex interaction between democratic politics and the formal institutions of the state. On one view of democracy, politics should be a domain autonomous of existing state institutions. Democratic politics provides the arena in which private preferences and collective deliberation should be free to develop without state interference or constraint; indeed, a democratic political system is largely defined by the relative liberty of citizens to criticize existing distributions of political power and institutional arrangements. This is probably the most conventional understanding of democracy: democratic deliberation creates public offices, officials, institutions, and policies, and these arrangements are justified to the extent they are responsive to democratic decisionmaking. In this view, democracy exists in some sense prior to and independent of the specific institutional forms in which it happens to be embodied at any particular time and place.

But this vision of democratic politics as autonomous from existing state institutions is, in our view, misconceived and perhaps even unintelligible. At the heart of a democratic political order lies a process of collective decisionmaking that must operate through pre-existing laws, rules, and institutions. The kind of democratic politics we have is always and inevitably itself a product of institutional forms and legal structures. There are many possible forms democracy can take, many different institutional embodiments of democratic politics. Should we have representative or direct democracy? If we employ electoral politics, should elections be from single-member geographical districts, through cumulative voting, or through one of the many forms of proportional representation? Who is eligible to participate in politics, and who decides
that question? These institutional structures all limit and define the decisions available through democratic politics itself. In turn, these institutional arrangements are either the inherited product of prior democratic choice or of inertia—or perhaps some combination of the two. That is one central point we hope to convey: there is no “We the People” independent of the way the law constructs democracy.

That perspective leads to the second central point this book will emphasize throughout. Because democratic politics is not autonomous of existing law and institutions, those who control existing arrangements have the capacity to shape, manipulate, and distort democratic processes. Historical experience provides convincing reasons to believe that those who currently hold power will deploy that power to try to preserve their control. Thus, democratic politics constantly confronts the prospect of law being used to freeze existing political arrangements into place. Yet there is no way to take the law “out” of democracy. The question, then, is what the law might contribute to mediating or resolving this tension. Can institutional arrangements be developed that both reflect the inevitable role of law in shaping democracy and at the same time prevent that role from being manipulated by existing officeholders for self-interested aims? That is the other side of the mutual relationship between law and democracy we stress: the need to find techniques and theories that prevent the capture of democratic politics by existing distributions of political power.

Any inquiry into institutional arrangements leads inevitably to issues concerning the relationship among courts, legislatures, executive officials, and voters in overseeing democratic processes. At some points, we will see legislatures play a leading role, as when we explore Congress’ enactment of the Voting Rights Act of 1965 and its subsequent amendments or the series of federal campaign finance laws. At other points, the courts will assume center stage, invoking the tools of constitutional law. When courts become central players, that judicial role will raise some of the most difficult questions about institutional role in all of constitutional theory. On the one hand, courts will become embroiled in partisan political struggles not over specific enactments, but over the very political framework through which the electorate exercises its political will. The events of Florida in the 2000 presidential election provide a dramatic example. But the judicial involvement in resolving the disputed 2000 presidential election only reflects in a most dramatic fashion the problem that is starkly posed whenever courts act to set aside the choices that emerge from pre-existing electoral arrangements. At that point, the pressure on the judiciary to articulate a coherent vision of properly functioning politics is most acute if the electoral will is to be deemed unlawful or unconstitutional. On the other hand, if the courts refuse to oversee the process, we risk leaving the power to shape the fundamental ground rules of politics in the self-interested hands of existing officeholders. In many instances, we shall see that the judiciary
emerges as the sole branch of government capable of destabilizing an apparently unshakable lock-up of the political process.

The central tension between institutional constraints and some form of majoritarian choice goes to the heart of any constitutional democracy. The first three words in the United States Constitution, “We the People,” purport to claim as a source of authority an already established background fact: an entity known as “the People” that has expressed its will in advance of the design of political institutions, including the institution of the Constitution itself. In this rhetorical structure, “the People” is a recognizable entity that can act as the creator of the Constitution. But many possible versions of “We the People” exist. Perhaps the most important task of any constitution is picking among these versions and giving effect, through specific institutions, to one version rather than another of “the People.” Can “We the People” pre-exist the Constitution, as opposed to being created by it? Indeed, are not “the People” the most important legal creation of any constitution? Consider the following view:

[Some theorists imagine that “democracy” involves] a collective will already in existence, lying in wait for democratic institutions to discover. Before institutions are formed, however, no such collective will exists. Political institutions and decision procedures must create the conditions out of which, for the first time, a political community can forge for itself a collective will. Those institutions and procedures specify whose views will be counted in determining the collective will and define the means by which the collective will can be recognized. No uniquely “rational” institutional architecture exists for constructing that will. Each bundle of institutions and practices represents a distinct social constitution of the collective will.

Richard H. Pildes and Elizabeth S. Anderson, Slinging Arrows at Democracy: Social Choice Theory, Value Pluralism, and Democratic Politics, 90 Colum. L. Rev. 2121, 2197–98 (1990). Is there some unique version of “We the People” that democracy itself or the Constitution should be understood to require? If not, what values and considerations should be looked to in determining which version of “We the People” to incorporate into the design of democratic political institutions?

A. THE ORIGINAL CONSTITUTION AND DEMOCRACY

One of the striking features about this area of law is just how unsettled the main doctrines remain, in many cases even after decades of litigation. The opinions and the doctrines that emerge are, of course, the product of how questions are presented under the case and controversy requirements of Article III of the Constitution. Behind the cases lie deeply contested issues of democratic theory and political legitimacy, each of which tugs at reviewing courts and each of which
challenges easy doctrinal resolution. Moreover, specific legal issues today arise within a framework of institutional structures that was established many decades, and sometimes centuries, ago.

As you will soon discover, while the original Constitution devotes a great deal of attention to issues of governmental structure, it is largely silent with respect to the structure of democratic politics. The text does speak about the terms of federal elected officials and even more generally about their necessary qualifications for election. But it omits explicit discussion of most other important issues regarding elections—from who gets to vote, to how ballots are to be cast, to the way the electoral system is to be structured for all public offices save the President and Senate, to issues of how elections are to be run and financed, and so forth.

The failure of the Constitution to offer much specific guidance reflects the pre-modern world of democratic practice and the long-since rejected assumptions of that world on which the Constitution rests. Most importantly for present purposes, the constitutional structure was specifically intended to preclude the rise of political parties, which were considered the quintessential form of “faction.” As the classic study of shifting concepts of political representation in the eighteenth century puts it,

[When James Madison] discussed the problem of interests in the tenth number of The Federalist, he was occupied immediately with the problem of so dividing the government as to resist the formation of political parties. No doubt influenced by his great Irish fellow-Whig, Burke, Madison anticipated the division of the country into conflicting and competing economic interests, and maintained that the chief cause of conflict would be between those with and those without property. The political organization of these interests he called factions, a disparaging name for parties—but he hoped that parties would merely come and go as their temporary objects dictated. By an irony which he cannot have either anticipated or enjoyed, Madison himself soon became one of the leading agents in the process by which interests were consolidated into parties. . . .”


Yet as we will see in Chapter 4, political parties long ago became the principal organizational form through which mass democracy can be mobilized and effectively pursued. No constitutional framework for enabling modern democratic self-government can neglect the role of political parties, yet the Constitution not only is silent about parties, it was designed to preclude their emergence.

Similarly, the original Constitution reflected a particularly elite conception of democratic politics. As Gordon S. Wood describes: “With the ‘purest and noblest characters’ of the society in power, Madison expected
the new national government to play the same suprapolitical neutral role that the British king had been supposed to play in the empire.” The Radicalism of the American Revolution 255 (1992). Bernard Manin argues that the debate between Federalists and Anti-Federalists was, as the Anti-Federalists argued, essentially a debate over how aristocratic political leadership should be, or how much it should instead mirror the electorate. Bernard Manin, The Principles of Representative Government 121 (1997) (“The Federalists, however, all agreed that representatives should not be like their constituents. Whether the difference was expressed in terms of wisdom, virtue, talents, or sheer wealth and property, they all expected and wished the elected to stand higher than those who elected them.”)

But this more aristocratic conception of democracy was already being displaced by the 1790s, and was utterly supplanted as early as the Jacksonian era—developments that led virtually all the Framers who lived that long to a pervasive but underappreciated pessimism because democracy had fallen “into the hands of the young and ignorant and needy part of the community.” Wood, supra, at 365. This transformation in the conception of democracy eventually culminated in certain structural changes, such as the Seventeenth Amendment’s shift to direct senatorial elections, the various franchise-expanding amendments, and the move toward primary elections for choosing presidential and other candidates. But these changes are layered onto a document and set of institutional structures that were built upon the pre-modern vision of democratic politics.

For example, while voting for public officeholders was the quintessential attribute of representative government, the act of voting quickly changed its social meaning and significance from what the Framers originally envisioned. Initially, the open ballot played the role of ratifying social and political hierarchies; as another important historian notes, “leaders still assumed political office as their right and instructed the people as their duty.” Robert H. Wiebe, Self-Rule: A Cultural History of American Democracy 29 (1995). Elections focused on personal qualities, not political issues; a striking example was that, in the elections to the Virginia ratifying Convention for the Constitution, many districts would elect their two leading men—even though they held opposing opinions on whether the Constitution should be embraced. Already by the early nineteenth century, though, the open ballot had come to symbolize a kind of political equality and independent choice of citizens, with genuine sovereign power, that had not been originally contemplated in the election-as-ratification conception. Id. at 29–30.

With respect to democratic politics, then, the U.S. Constitution is a curious amalgam of textual silences, astute insights into the risks and temptations of political power, archaic assumptions that subsequent developments quickly undermined, and a small number of narrowly targeted more recent amendments that reflect more modern conceptions
of politics. Particularly in this arena of democratic institutional design, the U.S. Constitution reveals its age. More modern constitutions invariably devote considerable space to the institutional framework for politics and tend to reflect the structures now associated with democracy, such as political parties.

In light of this history, American courts facing contemporary questions of democratic principles today often have to construct a conception of democracy with less textual and historical foundation than in some other areas of constitutional law. Yet the pressure on courts to do so is great, given the self-interest existing power holders have in manipulating the ground rules of democracy in furtherance of their own partisan, ideological, and personal interests. Throughout, we will see the problems facing the Supreme Court as it struggles to work out a democratic theory of the Constitution to deal with numerous specific issues. To what extent should the Constitution’s original assumptions preclude the Court from taking on this task itself? To what extent do those assumptions instead require that the Court play this role? How does the Court avoid being seen itself as a partisan actor in the political process? As courts and the rest of us consider these specific issues, the questions that emerge will raise challenges both about the principles and ideas that underlie those background institutional structures of democracy, as well as about how to integrate these structures with the kinds of legal challenges that arise in contemporary circumstances.

B. SOME FOUNDATIONAL UNDERSTANDINGS OF THE DEMOCRATIC ENTERPRISE

Beyond the constitutional framework, an examination of the law of democracy invariably raises questions about the deeper objectives of democracy. These, in turn, raise profound questions about the nature of politics and human behavior. The arguments stretch back to the very beginnings of political philosophy and democratic theory and they recur throughout the book. We highlight here only a few of the most influential approaches.

1. Democratic Deliberation and the Public Good. One of the aims of the law governing the democratic political process is to ensure the quality of public debate, in a belief that a broad public engagement is most suitable to achieving a greater public good. Thus, there is a longstanding belief in democratic theory that the role of representative government is to aspire to “general good, resulting from the general reason of the whole,” as famously expressed by Edmund Burke in his *Speech to the Electors of Bristol*. An early, powerful expression can be found in The Politics, in which Aristotle argued,

The principle that the multitude ought to be supreme rather than the few best is one that is maintained, and, though not free from difficulty, yet seems to contain an element of truth. For the
many, of whom each individual is but an ordinary person, when they meet together may very likely be better than the few good, if regarded not individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse. For each individual among the many has a share of virtue and prudence, and when they meet together, they become in a manner one man, who has many feet, and hands, and senses; that is a figure of their mind and disposition.

This is what Jeremy Waldron terms the “doctrine of the wisdom of the multitude.” As pithily expressed by The New Yorker writer James Surowiecki, it is “as if we’ve been programmed to be collectively smart.” More formally, the Condorcet jury theorem establishes that so long as individuals have a better than even chance of being right, a group majority is more likely to choose the better of two alternatives. As a technical matter, this is simply the application of the law of large numbers whereby multiple iterations are likely to drive out random deviations. Some contemporary defenses of democracy point more strongly to the virtues of deliberation in reaching legitimate outcomes, as with the work of the philosopher Joshua Cohen. Others offer an epistemic account of democracy as more likely to yield correct social outcomes, as for example in David Estlund’s Democratic Authority: A Philosophical Framework. Others draw from both, as with James Fishkin’s innovation of deliberative polling in which the process of citizen deliberation helps inform other members of the polity when it comes time to vote.

2. Economic Theories of Democracy. Some theorists see the deliberative view of democracy as overly romantic. Instead, they assert that democracy is best understood as a system in which organized political parties compete to control state power, and in which voters are largely confined to the role of casting retrospective judgment on the performance of the party that controls the government. Perhaps the most well-known articulation of this perspective comes from Joseph A. Schumpeter’s Capitalism, Socialism, and Democracy (3rd ed. 1950). Schumpeter defined “the democratic method [as] that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.” The limited role of citizens he characterized in this way:

[I]n making [ ] the primary function of the electorate to produce a government (directly or through an intermediate body) I intended to include in this phrase also the function of evicting it. The one means simply the acceptance of a leader or a group of leaders, the other means simply the withdrawal of this acceptance. This takes care of an element the reader may have missed. He may have thought that the electorate controls as well as installs. But since electorates normally do not control their political leaders in any way except by refusing to reelect
them or the parliamentary majorities that support them, it seems well to reduce our ideas about this control in the way indicated by our definition.

This is how Schumpeter described political competition between political parties:

A party is not, as classical doctrine (or Edmund Burke) would have us believe, a group of men who intend to promote public welfare “upon some principle on which they are all agreed.” This rationalization is so dangerous because it is so tempting. For all parties will of course, at any given time, provide themselves with a stock of principles or planks and these principles or planks may be as characteristic of the party that adopts them and as important for its success as the brands of goods a department store sells are characteristic of it and important for its success. But the department store cannot be defined in terms of its brands and a party cannot be defined in terms of its principles. A party is a group whose members propose to act in concert in the competitive struggle for political power. . . . Party and machine politicians are simply the response to the fact that the electoral mass is incapable of action other than a stampede, and they constitute an attempt to regulate political competition exactly similar to the corresponding practices of a trade association. They psycho-technics of party management and party advertising, slogans and marching tunes are not accessories. They are of the essence of politics. So is the political boss.

Contemporary public choice theorists often adopt a Schumpeterian approach. But this perspective finds echoes in the work of legal scholars who focus on the psychology of political engagement—for example, Daniel Ortiz in his article The Engaged and the Inert: Theorizing Political Personality Under the First Amendment, 81 Va. L. Rev. 1 (1995).

3. The Object of Judicial Review. In the most famous footnote in American constitutional law, the Supreme Court in United States v. Carolene Products, 304 U.S. 144, 152 n.4 (1938)—an otherwise inconsequential case about federal regulatory requirements—set out one basis for judicial review. The Court observed that it might have to consider “whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.” Included among such subjects of concern would be “restrictions upon the right to vote.” In the most famous passage of the Carolene Products footnote, the Court further added as a source of concern “whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities,
and which may call for a correspondingly more searching judicial inquiry.”

_Carolene Products_ thus invited two inquiries. The most obvious, and the subject of much of this book, turned on the protection of the perpetual minorities who would presumably be vulnerable to electoral majorities, particularly ones that proved stable and well-disciplined over time. This is the problem that writers from Alexis de Tocqueville to Lani Guinier have termed the “tyranny of the majority,” a persistent concern in democratic governance. Second, _Carolene Products_ places particular emphasis on process defects that may keep democracies from adjusting in response to systemic failures. As well presented by John Hart Ely in Democracy and Distrust (1980), his highly influential book on the Warren Court, courts should be particularly attentive to “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation”:

"[T]he representation-reinforcing orientation whose contours I have sketched and will develop further is not inconsistent with, but on the contrary is entirely supportive of, the American system of representative government. . . . The approach to constitutional adjudication recommended here is akin to what might be called an “antitrust” as opposed to a “regulatory” orientation to economic affairs—rather than dictate substantive results it intervenes only when the “market,” in our case the political market, is systematically malfunctioning. . . . Our government cannot be said to be “malfuctioning” simply because it sometimes generates outcomes with which we disagree, however strongly. . . . In a representative democracy value determination are to be made by our elected representatives, and if in fact most of us disapprove we can vote them out of office. Malfunction occurs when the _process_ is undeserving of trust, when (1) the ins are choking off the channels of political change to ensure they will stay in and the outs will stay out, or (2) though no one is actually denied a voice or a vote, representatives beholden to an effective majority are systematically disadvantaging some minority out of simple hostility or a prejudiced refusal to recognize commonality of interest, and thereby denying the minority the protection afforded to other groups by a representative system. Obviously our elected representatives are the last persons we should trust with identification of either of these situations.

_Id._ at 102–03.

As we examine a wide range of problems and issues in the law of democracy throughout the remainder of the book, these three approaches will always lie near the surface of our discussions—and will sometimes take center stage.
C. A BRIEF COMPARATIVE VIEW

Consider the following questions about different voting systems. In each case, the institutional arrangements that underlie voting systems appear, at the very least, to color the likely consequences. Imagine yourself in the position of drafting the electoral rules for a newly established democracy. How would knowledge of the likely consequences on electoral outcomes influence your decisions on designing a voting system?

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VOTING QUIZ

International Elections

1. Of the 53 democracies in the world with at least two million people and with a high human-rights rating of “Free” from the organization Freedom House, how many use a plurality, winner-take-all, single-member district election system such as in the United States? How many use forms of proportional representation?

2. In 2010, the United Kingdom general election resulted in a “hung parliament”, with no party winning a clear majority of the vote. What proportion of the vote did each of the top three parties obtain? What number of seats?

3. Germany and New Zealand use proportional representation to elect some of their legislators and a plurality, winner-take-all, single-member district system, as in the United States, to elect others. How much more likely is a woman to be elected under these proportional representation systems than in U.S-style districted elections?

4. How many times has a political party in the United Kingdom won a majority of the popular vote in elections since World War II?

5. In 2000, candidates for the Liberal Party in Canada won 52% of the popular vote in Ontario. What percentage of Ontario’s 103 seats did they win? In 2011, the Conservatives won 93% of Saskatchewan’s seats. What percentage of the vote did they win?

United States

6. Of 378 incumbent U.S. House Members running for re-election in 2012, what percentage won? What was the average margin of victory for Members of the House? How many won by a margin of 10% or less?

7. What percentage of Americans approve of the job that Congress is doing?

8. What percentage of the 6,129 state legislative seats elected in 2014 around the nation were contested?

9. Of 212 state legislative seats in New York, how many were won by margins of at least 10% in 2010? Of the 200 state legislative seats in Massachusetts, how many were contested by both major parties in 2010?
ANSWERS TO QUIZ

International

1. Only 10 of these 53 countries do not use proportional representation (PR) for at least some national elections. Those 10 countries are Mongolia, France and its former colony Mali, the United Kingdom and its former colonies Botswana, Canada, Ghana, India, Jamaica, and the United States.

2. In 2010, the Conservative Party won 36.1% of the vote and 47.2% of the available seats, the Labour Party won 29.0% of the vote and 39.7% of the available seats, and the Liberal Democrat Party won 23.0% of the vote and yet only 8.8% of the available seats. With only a 3.8% increase in its popularity from the last election, the Conservatives gained 97 seats, or 14.9% of the available seats (in other words, three times its increase in vote share), while the Liberal Democrats, with a gain of 1.0% in popular support, lost 5 seats.

3. In recent elections in Germany and New Zealand, women were around twice as likely to be elected to the seats filled by PR as to the seats elected from single-member districts. The ratio was 44% to 20% in Germany in 2009 and 40% to 23% in New Zealand in 2008. Women were half as likely to be elected in the United States, where the House of Representatives is 17% female. In the Inter-Parliamentary Union’s 2011 world parity rankings, the United States places 69th (equal with Turkmenistan), lagging behind the United Kingdom at 50th, where according to the Equality and Human Rights Commission, it will take 200 years, or 40 elections, for women to achieve parity at the current rate of progress. Women consistently win more seats in PR elections than winner-take-all elections; for example, a study by Richard Vengroff, Lucy Creevey, and Henry Krisch found that the mean percentage of seats held by women was highest with PR, at 15%, and lowest in plurality-or-majority systems, at 8%.

4. No political party in the United Kingdom has won a majority of the popular vote in elections since World War II. The Conservative party never won more than 44% of the vote—which is less than the percentage won by Democratic presidential candidate Michael Dukakis in 1988—in its 18 years of government from 1979 to 1996. The Labour government’s share of the vote between 1997 and 2009 never exceeded 43%, while following the 2010 election, the Conservative government holds 36% of the vote.

5. In 2000, candidates for the Liberal Party in Canada won 100 of 103 Ontario’s seats with only 52% of the popular vote. The province-by-province results in the 2000 elections in Canada were classic examples of distortions of majority rule and minority representation. In 2011, the Conservatives won 93% of Saskatchewan’s seats with only 56% of the vote.
6. Of the 378 incumbent U.S. House Members running for re-election in the 2012 general election, 351 won (a 92.9% win rate). Including the 13 members defeated in primaries, 89.8% of incumbents won re-election. Only 63 races were won by a margin of 10% or less, a margin that usually defines a “competitive” election. The average margin of victory for all House elections was 31.9 points. Consider that when Franklin Roosevelt won the 1936 presidential election by a landslide, his margin of victory was roughly 25 percentage points and that when Ronald Reagan won the 1984 presidential election by a landslide, his margin of victory was less than 20 percentage points.

7. In a fall 2015 Gallup approval poll, 11% of Americans approved of Congress’ work, just above the all-time low of 9% that Gallup had recorded in 2013.

8. A nationwide study by Professor John McGlennon found that in 2014, only 57.41% involved major party competition. This represents the “lowest level in the past seven federal election cycles.”

9. Ten races in each of New York State’s 62-member Senate and 150-member Assembly were decided by less than 10% in 2010. As the New York Times editorialized in respect to the 2006 election, in state races, due to gerrymandered district lines, New Yorkers have “no more voting options than North Koreans have.” As additional evidence of New York state’s non-competitive elections, in 2010, 26 of the 62 state senate seats, and 80 of the 150 state senate seats, were won by margins of 40% or more (70%–30%). Of the 200 state legislative seats in Massachusetts, only 110 (55%) were contested by both major parties in 2010.

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The examples in the quiz are drawn largely from issues posed by the use of district-based legislative elections, rather than the proportional representation systems more widely used in democracies around the world. As the quiz illustrates, the choice of the basis for legislative representation has deep effects on the range of likely electoral outcomes, yet the use one or another form of legislative selection process is rarely questioned and almost never posed to the voters. This baseline condition nonetheless exerts a powerful pull on how any democracy operates and what choices are likely to be presented to the electorate.

How legislative selection is organized is only one of many topics with a similar impact on democratic choice. For example, how should the law view political parties? Should they be viewed with suspicion, as institutions that threaten to corrupt the relationship between citizens and elected officials? Or should they be viewed as organizations essential to effective democracy that deserve protection against state regulation? The way parties are organized, select their candidates, and are financed all have similarly strong effects on the functioning of the political process.
and the prospects of successful challenges to the status quo. There are
also questions of what rights the polity as a whole may claim to act
directly through initiatives or referenda. And, of course, no discussion of
democracy focused on the United States would be complete without
recognition of the powerful role that race has had in defining the limits
of participation and in pressing the question of guaranteeing minority
rights against the majoritarian premises of all electoral systems. Each of
these topics, and many others, will be developed in the Chapters that
follow.