

## **Response to "The Internet and the Future of Democratic Governance"**

By Senator Mike Gravel, November 18, 2000

Responding to [an article](#) by Sen. Patrick J. Leahy and Rep. Robert Goodlatte.

The authors of this Briefing correctly identify the areas affected by the Internet's impact on governance, but their assessment of the extent of that impact is far too modest. I share the level of optimism found in many of the other Briefings: that the Internet portends fundamental changes on the order of those resulting from the Gutenberg Press that ushered in the Ages of Discovery and Enlightenment, thence to individual sovereignty setting the stage for constitutional democracy. The Internet, in my view, will usher in the Age of Democracy, the essence of which will be republican governance -- the majoritarian expression of the popular sovereignty of people,<sup>1</sup> an age where citizens "shall make and shall obey their own laws, shall be at once their own subjects and their own masters"<sup>2</sup>

### **Enhancing The Status Quo**

This Briefing is decidedly government-centered. "The Internet's potential to enhance democratic governance" by promoting "popular involvement" is immediately cautioned that the enhancement should occur only "without diluting the advantages of the republican form of government."<sup>3</sup> This is "code" for: do not dilute the power of representatives. It is difficult to see how improving "popular involvement" within a polity of laws can negatively dilute democratic governance.

*Access to Government Documents:* The Briefing's assessment of what the Internet offers for the delivery of government information is well made. Much greater benefits however lie in moving the processing of the interface between citizens and government onto the Internet. My recent online driver's license renewal with the Virginia DMV was unexpectedly convenient and efficient. With little attention or effort, filing of income taxes online is on the rise. Clearly intra-governmental operations are increasingly going online. It makes sense that the entire government-citizen interface and interaction should begin to be vectored toward Internet facilitation, digital divide aside, which will shortly be marginalized.

*Online Voting and Voter Turnout:* The authors conclude on the strength of little data that the convenience of Internet voting will increase voter turnout. Knowledgeable political scientists,<sup>4</sup> citing other empirical data, do not believe convenience alone will increase voting. If the latter are correct, then voter disenchantment goes much deeper than matters of convenience. The turnout question is misleading however. It is not the number of people who vote that is important, but how well informed they are. To focus on body counts at the polls tends to allow avoidance of the necessary, more important examination of today's deeper problems of governance.

Americans have always been suspicious of government controlled by politicians because they know the representative structure is flawed. There is ample evidence that for politicians their own self-interest and the economic interests of their financial backers always come first. Half the eligible citizens of our democracy choose not to participate as voters. I believe a primary reason for their disenchantment involves the structural limitation on the people's role in their own governance.

Far and away the Briefing's most important instruction is the recommendation to fund "experiments with Internet voting." This should be aggressively pursued, since it is a vital first step toward capturing what the Internet has to offer the people in their quest for total franchise.

### **Direct Democracy**

This Briefing briefly touches on the essence of human governance in noting the option available with the Internet for government-by-plebiscite -- direct democracy. On this question, which is

fraught with historic and constitutional misunderstandings, the Briefing is woefully unengaged.

Instead, the Briefing voices the disputable opinion that "since the days of our Founding, the idea of plebiscitary democracy has been viewed with considerable suspicion." There is no question that elites of earlier generations viewed the public's ability to govern with suspicion. They still do. However, this is grossly inaccurate in that our nation was founded on the ability of ordinary citizens to govern themselves as evidenced by the Mayflower Compact, the New England Town Meeting, and the continuation of orderly local governments after the Declaration of Independence removed the elitist supervision of the Crown. The overwhelming majority of Americans throughout our history never suspected their ability to govern. Witness the overarching constitutional efforts since 1789 that have resulted in the successful expansion of the voting franchise and the empowerment of people.

The watershed expansion of the franchise took place over a hundred years ago with the enactment of initiative, referendum and recall laws by reformers in reaction to the abject corruption of representatives in government. These laws made lawmakers of a substantial number of Americans. The Internet now suggests the same possibility for all Americans, addressing the real reason for voter alienation.

Governance within the American polity is structurally flawed. The Constitution limits the power of government but gives unlimited control of that power to a very small minority of individuals. Actually, the Framers had no alternative but to define for us a representative legislative structure. On June 6, 1787, at the Constitutional Convention, James Wilson, second only to James Madison in fashioning the Constitution, described the context of our republican structure:

The Legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively.<sup>5</sup>

Wilson acknowledged the obvious impossibility of assembling great numbers of people from distant geographic areas to operate as a polity. Thus were technological limitations in 1787 of crucial importance in determining the structure of Congress as defined in the Constitution. Obviously the Internet, if not today but certainly within a few years, will remove those limitations, permitting the "virtual assembly" of people electronically, locally and nationally.

Removing technological barriers still leaves a constitutional question about the power of the people to legislate in some minds. Two arguments put this final objection to rest: historic instruction and contemporary practice. First, Wilson's instructions are surprising to many who self-servingly misread the Framers intent:

All power is originally in the people and should be exercised by them in person, if that could be done with convenience, or even with little difficulty.<sup>6</sup>

Second, today nineteen states permit their citizens to legislate by initiative, California, Missouri and Oregon for example. Additionally, twenty-three states use referenda. A considerable number of local jurisdictions also permit people to make laws. American citizens have a hand in making laws in forty-two states. Even though these laws are different in each state, the constitutional lawmaking powers of the people have been repeatedly sustained by the Supreme Court.

Nevertheless, pundits, government officials, scholars and assorted elites view initiative lawmaking with suspicion because the initiative process, as they see it, is not sufficiently deliberative. Deliberation is vital to lawmaking. The charge is accurate. The original reformers writing these laws, with little legislative experience, naively failed to realize the need for detailed, deliberative, legislative procedures. Moreover, since their enactment, initiative laws have been controlled and administered by representative government officials increasingly to the disadvantage of citizen

lawmakers. Those officials, critics of initiative laws, have had the power to make initiative laws deliberative, but not only have they failed to do so, they made their use more difficult, revealing their true attitude toward "service to the people."

Not surprisingly, even though the initiative laws lacked proper deliberation, the people's legislative record for the last hundred years in states with initiative laws is as good or better than the record of elected legislators; a record detractors always fail to mention. Some of the nation's foremost reforms were enacted by the people: women's right to vote, old age assistance, the removal of civil service from party politics, campaign finance reform and term limits, to name a few.

Yet, opponents still continue to advance the groundless charges that the majority of people, if given power, will oppress minorities and that they will bankrupt their political jurisdictions by showering their treasuries on themselves. Nowhere, in the last one hundred years, have these charges been realized where people can legislate. Ironically, however, the oppression of minorities and the bankrupting of political jurisdictions has been characteristic of a number of representative governments.

### **The Direct Democracy Initiative**

In order to realize the full potential of the Internet, the legislative powers of government must be redistributed to permit the people to make laws in a parallel partnership with their elected legislators, nationally and in every local and state government jurisdiction of the United States. Deliberative legislative procedures must to be enacted either as a constitutional amendment or as a federal law in order to create a "Legislature of the People."

The necessary legislative procedures, similar to those of the Congress, are embodied in the Direct Democracy Initiative (DDI), a proposed federal law sponsored by Philadelphia Two.<sup>7</sup> The law also creates an agency to administer the legislative procedures -- the Electoral Trust.

It is unlikely that the Congress or state legislatures will enact such legislation, in effect diluting their power. Nevertheless, both proponents and opponents of citizen lawmaking see the polity moving toward direct democracy. The utility of the Internet is the driving force. Unless a thoughtful legislative transition is made to include citizens in a lawmaking role creating a partnership with their elected representatives, the people will take control forcibly in a process that will of necessity be disruptive, expensive and a threat to democracy itself. A forcible process will impose laws at best similar to those that presently exist in states -- laws that lack proper deliberative procedures.

Rather than oppose advances to higher democracy, political elites should encourage a smooth transition for the people's involvement by endorsing the Direct Democracy Initiative or something similar for submission to the people in a manner suggested by James Madison at the Constitutional Convention on three separate occasions:

The new Constitution should be ratified in the most exceptional form, and by the supreme authority of the people themselves.<sup>8</sup>

These changes would make essential inroads on State Constitutions...and in the case of these a ratification must of necessity be obtained from the people.<sup>9</sup>

The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over.<sup>10</sup>

Madison's call for ratification by the people in a self-enacting process was the device the Framers used to circumvent the certain opposition of Colonial State Legislatures to the Constitution. The

DDI employs a similar device to circumvent the certain opposition of the Congress. Both the deliberative legislative procedures similar to those of any legislature and the modern-day self-enactment process proposed in the DDI can be examined in detail online at:

<http://philadelphiatwo.org>.

## Conclusion

The complexities of human governance have never been more challenging. The revolution in communications technology is globalizing national economies and regional cultures by democratizing individuals with the power of information and the ability to act upon it individually. Present representative government structures, more than two hundred years old, are mired in earlier technologies and are ill equipped to stay abreast of the monumental and rapid changes taking place in society.

Direct democracy suggests a more mature participatory role for citizens than reliance only on intermediaries in representative governments where representatives' personal agendas and special interests always come first. More importantly, citizens are denied, when forced to transfer their sovereign power to others, the civic maturity that is gained from sharing the responsibilities of government.

For the first time in history, technology can permit great numbers of citizens from distant places to assemble and participate directly in their self-governance as lawmakers. If this opportunity is not taken, this same technology could unleash scenarios for national and global anarchy by people frustrated in their desire to exercise their sovereign role within the polity. If we are not sufficiently mature to understand the governing dysfunctions that presently occur and to anticipate those that will occur by not fully sharing with the people the lawmaking powers of the polity, then we condemn society to an uncertain and dangerous future.

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<sup>1</sup> Many constitutional scholars erroneously interpret Article IV Section 4 of the Constitution, the Republican Form of Government guarantee clause, to mean a guarantee for representative government. They interpret the word republican to mean representative. Our legislative structure is incidental only to the technology of the day as noted by James Wilson. The representative structure does not attach itself for all time to the generic definitions of democracy or republic, two different words with Latin and Greek roots with the same meanings -- public and people. People rule in republics or democracies, employing whatever structure or constitutional device recognizes majoritarian rule. James Madison made this clear in the 3rd paragraph of Federalist 49: "As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of government, but whenever any one of the departments may commit encroachments on the chartered authorities of the others." Emphasis added.

<sup>2</sup> Alexander Meiklejohn, *Political Freedom: The Constitutional Powers of the People*, Harper, New York, 1960, p 18. Meiklejohn was a renowned constitutional scholar of the last century.

<sup>3</sup> The following sources enlarge the theory and meaning of the republican guarantee clause of the Constitution:

Akhil Reed Amar, *The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule and the Denominator Problem*, *University of Colorado Law Review*, Vol. 65:4, 1994, p. 749. Max Farrand, ed, *The Record of the Federal Constitution of 1787*, Yale University Press, New Haven, 1966, 92-93 (remarks by James Madison).

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<sup>4</sup> Frances Fox Piven and Richard A. Cloward, *Why Americans Still Don't Vote: And Why Politicians Want It That Way*, Beacon Press, Boston, 2000, pp. 267-268.

<sup>5</sup> Max Farrand, ed., *The Records of the Federal Constitution of 1787*, Yale University Press, New Haven, 1966, Vol. I, pp. 132-133.

<sup>6</sup> James Wilson, *The Works of James Wilson*, ed. Robert Green McCloskey, The Belnap Press of Harvard University Press, Cambridge, 1967, Vol. I, p. 405.

<sup>7</sup> Philadelphia Two and Direct Democracy are nonprofit corporations dedicated to the establishment of direct democracy and are available for public inspection at <http://philadelphiatwo.org>.

<sup>8</sup> Jonathan Elliot's *Debates*, edited by James McClellan and M.E. Bradford, *Debates in the Federal Convention of 1787 as reported by James Madison*, Vol. III, James River Press, Richmond, 1989, p. 70.

<sup>9</sup> *Ibid.* p. 335.

<sup>10</sup> *Ibid.* p. 534.