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**The Home Page of The Democracy Defined Campaign for  
RESTORATION and UNIVERSAL ADOPTION of  
CONSTITUTIONAL COMMON LAW TRIAL BY JURY.**



Campaign philosophy supported by academics, doctors, attorneys & judges (U.S. & U.K.).  
(Standard English Spelling)

THE DEMOCRACY DEFINED CAMPAIGN PHILOSOPHY ESSAY EIS#22.

**ON REFERENDA AND MAJORITY RULE.**

Although one would like to proceed from the assumption that everyone knows the etymology, history and signification of the word democracy, it would be as well to put this information first. Then, the main thrust of this essay can be appreciated. So, to begin with, here is explanation and definition with which many people will be familiar anyway, of...

**THE WORD.**

To preclude arbitrary (i.e. tyrannical; illegal) government and establish liberty and equal justice for all, the Hellenes created the society in which the common people have the power in Trial by Jury to judge the laws and overrule the laws and measures enacted by the national assembly. *The word* the Hellenes gave to describe this state of society in which the citizens have control *through the Trial by Jury* to judge, make and enforce the laws and overrule the government, the wealthy and powerful, the aristocrats and all the people who sought to rule them, was ‘*demokratia*’, which translates into English as ‘Democracy’.

Derived from the Hellenic Athenian Constitution of government by Trial by Jury, Democracy is founded on the Trial by Jury. Constitutional Democracy is based on the sovereignty of the individual citizen-juror in Common Law Trial by Jury as the final arbiter of law and protection of the people from tyranny.

Etymology (linguistic derivation). Hellenic Greek, *Demokratia*, Democracy. *demos*, the people; *kratos*, sovereignty\*, power; *kratein*, to rule.

\*Perseus Digital Library, Tufts University. See Democracy Defined Essay EIS#10, “We the People and the Matter of Words,” downloadable for free from the Democracy Defined Campaign Material webpage.

Chambers Dictionary, etymology, *demos*, the people; *kratein*, to rule;  
MSN Encarta. Democracy, *demos*, the people; *kratein*, to rule;  
etc.

**FROM THE ETYMOLOGY COMES THE DEFINITION:**

**Democracy, the form of government in which the Sovereign Supreme Power is vested in the Common People; the emancipation and ethos of society produced by the power of Juries of ordinary citizens in Trial by Jury, to vet, make, decide and enforce the law; the people rule.**

In order to understand the meaning of the word, it is essential to know first, that democracy embodies the people's control over government and law through the Trial by Jury. The people control the government, not the other way around. The people rule. This is democracy.

Secondly, Democracy is only extant where the Common Law Trial by Jury Justice System is implemented for all causes (lawsuits) civil, criminal and fiscal, to the exclusion of all other systems of justice.

Thirdly, Trial by Jury comprises a complete constitution of itself, providing legal control by the people of the modus operandi of government.

See the Juror's Judicial Duties and the constitutional common law *non-judicial* rôle of convenors ('justices', 'judges'), etc., explained in Essay EIS#10, "We the People and the Matter of Words."

It is the implementation of the common law Trial by Jury through which "the people rule," which forms and defines democracy, sine qua non. Within the society which is democratic, the assembly (congress, senate, parliament, etc.) remains of inferior authority to the decisions of juries in Trial by Jury.

**SOME ANTIDEMOCRATIC PITFALLS OF VOTING:**

**Referendum and Congress.**

To begin with, consideration must be given to the fact that with electronic voting, it becomes ever easier to falsify the result... and the same applies with elections to parliament, congress and senate or wherever computers replace the traditional methods. Consider this caveat: To date, there is nothing more efficient and fair yet devised than the publicly scrutinised polling station; the private booth; and old fashioned paper ballots available for verification and re-counts. Come the age of the computerised voting machine, never has there been a greater need for the citizen-juror's duties in Trial by Jury to vet every law, and control each act of enforcement.

Personally, I can think of no more simple, agreeable system and as cheap to the taxpayer, than the electronically arranged (non-binding) 'referendum'; a poll on the large-scale for the purpose of ascertaining public opinion in regard to new laws. Most people agree that referenda are useful instruments for such purposes. However, while technological advances such as computers make it feasible for remote millions to vote to accept or reject some proposal of legislation, the *disadvantages* of making the results of routine referenda *legally binding* on society far outweigh any benefits.

Most laws contain qualifications and clauses, all of which require to be considered and a separate vote needed for each one. This tedious activity is

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what most people prefer to leave to bureaucrats and politicians. Issues have to be divided into numerous points, all requiring consideration before voting on multiple-choice questions and answers. Over the course of time, the majority of people would lose interest and avoid involving themselves in the process. *Eventually, the referendum would come to reflect only the self-interests of a motivated minority.*

So, people prefer to pass the job of deciding laws to representatives. Yet, what is to be done when the frailties which beset human beings, especially those who seek or find themselves in positions of power, come into play? If parts or all of government, that is, the executive, legislature and judiciary, succumb to the temptations of venality, carnality, authoritarianism or incompetence, injustice and tyranny become the lot of the population unless there is the proven barrier of Trial by Jury interposed: for this is the only (peaceful) mechanism known to mankind by which the population can protect themselves.

### **DEMOCRACY IS INDEPENDENT OF ALL VOTING ACTIVITIES, POPULAR, ELECTORAL OR LEGISLATORIAL.**

Perhaps the best application of referenda is in the arena of local politics, when the location of a school, hospital or the route of a new road is to be decided. Open discussion with the public in attendance followed by a vote of all involved, is frequently undertaken. This is the most useful application of the referendum, which follows along the lines of the Athenian City State, wherein every citizen had the right to join the debate and vote on laws and measures in the nation's assembly.

Certainly, latterday technology can bring the referendum technique to virtually all the population. However, this was NOT the activity by which *democratia*, democracy, was achieved, secured and defined in Athens or anywhere else. Far from it. The Athenians knew all about the virtues of people's voluntary involvement, en masse. Such activity is conducive to harmony and unity, but realistically-speaking, *it is only healthy within that society wherein the common people have the power in Trial by Jury to comprise the Supreme Legislature and annul potential injustices.* That is to say, it is only in Trial by Jury that the constitutional basis of authority resides in a democracy, Hellenic, and everywhere else in place and time.

Democracy does not operate on 'popularity' or power of the majority, by referenda or in congress. Quite the opposite, democracy prevails on behalf of minorities and even of individuals, in establishing equal justice for ALL the people, demos, the people; not for only some. Only in societies where the Trial by Jury holds sway is democracy extant.

Explained by its etymology, history and signification, democracy can be paraphrased as "*rule by the people through the Trial by Jury Justice System.*" Yet, by contrast, when the referendum is *binding* on the society, then it is the referendum which "rules;" the results become statute law; and those who resist

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or fall foul of the measure are scourged under the full force of the criminal 'justice' system. People who understand the meaning of the word democracy, see how in every case these dismal facts apply. The binding referendum not only breaches the terms by which democracy is defined, it is in dire CONFLICT with all the adherents of the democratic system. Hence, government-by-referendum cannot be 'democracy' by direct means.

Democracy, that is, "*the people rule through Trial by Jury*," is a state of society created neither by the referendum for new laws, nor by voting for representatives, nor by the votes of the representatives. The referendum can take place in a democracy, but, of course, it cannot *create* democracy. Democracy is only brought into being by Trial by Jury.

When these words are examined more closely than at the superficial first glance, the distinct semasiological attributes which establish the signification of the words 'referendum' and 'democracy', render them mutually opposed; reciprocally incompatible. It is semantically maladroit to adjoin one to the other in the glib hope that somehow this epithet could express a 'democracy' which would be achieved 'directly' by referenda. In the context of voting by binding referenda, the word 'direct' destroys the entire meaning of the word democracy.

### **FURTHER ANTITHESES: MEANING AND FUNCTION.**

A 'referendum' is not a system for establishing justice; whereas democracy is the very embodiment of a system of the people's, for the people, which is fully preoccupied with ensuring liberty and equal justice for all.

The results of government-by-referendum within a state bereft of Trial by Jury can yield up the worst imaginable injustices of which our species is capable. For example, the extreme ballot-box popularity of the National Socialist (NAZI) Party through the 'Thirties had the effect of 'referenda' or plebiscite, from which the Party claimed a 'mandate' for their barbaric acts of tyranny.

In the lead-up to a referendum, and indeed within the assembly, people can be charmed, cajoled, or terrified into voting for a given measure. Majorities can overwhelmingly endorse a party's program, albeit one of lethal race laws, or the imposition of grotesque rule by the fanatics of a particular religion (to exemplify but a couple of the countless illegitimate antidemocratic laws under which humanity constantly suffers).

Today, constitutional democracy is mankind's model society which installs **legem terræ**. This is the common law of the land prescribed and defined by Magna Carta, of which the central tenet is the Trial by Jury Justice System, which is emplaced as the barrier or mechanism for protecting the population from all tyrannical inclinations of government maladministration.

Through the (authentic) Trial by Jury, democracy bestows justice equally on all the people; empowers ordinary people peacefully to choose and maintain

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their rights and liberties for themselves; and removes from majorities, judges and politicians any power to forestall the democratic society, whether in a republic or a constitutional monarchy.

In Trial by Jury, the validity, worth, justice and legality of a statute (a government-made law) may be challenged. A law's effects, dangers, a possible venal character, and even the potential *mens rea* (malicious motives) behind the referendum or the assemblies' lawmakers themselves, may be exposed.

When such circumstances are pertinent to defence, then, alerting jurors to their duty to annul bad laws and unjust prosecutions, counsel and defendant induce the jury to dispassionate deliberations on the evidence, facts, moral intentions, the purpose and fairness of the law and of its enforcement.

Further protection is afforded by Trial by Jury against *factions*, potential tyrants and demagogues by common law processes, such as the care with which all views amongst the population are reflected within juries (by random selection of jurors from amongst the entire adult population (save the sick, aged, convicts and the insane). It is a crime under common law for government and courts to impose property or other 'qualifications' for jury service.

See Essay EIS#18, On the Legally Correct Random Selection of Jurors.

The referendum on the other hand, when installed as the means of *rule*, of *governing*, in which majorities have power to please themselves at the expense of minorities, is a horror which strikes fear and fury within the breast of every sane adult and true democrat. Government-by-referendum is as atrocious as government-by-majorities in the legislature or parliament, whenever these functions are unrestrained because of an absence of Constitutional Trial by Jury.

### FOR EXAMPLE !

For example, the Spaniards have lost all memory of democracy and their former Gothic heritage of Common Law Trial by Jury. They were deceived by their wily politicians who praised the numerous social benefits listed in the so-called 'European Constitution', without alerting them to the fact that all the terms of the 'constitution' are not guaranteed: they do not control and bind the governing bodies in the slightest. Some constitution!

On the contrary, the terms are actually changeable at the whim of the *unelected* commissioners (commissars) of the Supreme Soviet (council) System. Moreover, all citizens are at the mercy of the inquisitorial methods of trial-by-judge, which in practice denies Habeas Corpus (freedom from arbitrary detention); freedom from arbitrary arrest (without probable cause); and Trial by Jury. The 'European Treaty-Constitution' \* is **NOT** a constitution: it is literally a charter of mass enslavement to the power of, *or behind*, the state.

\**Definition-in-brief*: a constitution is a code of laws and customs for the guidance and control of government.

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The Spanish decision overruled a significant proportion of the population, which, when added to the large number who did not vote, was the real majority. Thus was the execrable result of government-by-referendum. But for the wonderful Irish, we would be under the jackboot of the New World Order's leading plutocrat families, with all the implications which that entails for our rights to liberty, property, lives and the pursuit of happiness. Still, the show's not over yet...

### **MISNOMER.**

Democracy was itself brought into being by the Athenians as the constitutional means of superseding and curtailing a state of government-by-referendum, from the voting in the assembly in which all could take part. Hence, again, it is seen that applying to democracy the adjective '*direct*' in the context of referenda, is a linguistic mutilation. The attachment results, not in a meaningful nomenclature, but in a hideous self-contradictory misnomer. Instead of a useful term being coined, it represents *reductio ad absurdum*.

This 'direct' idea is an expression of linguistic confusion which has been cooked-up by a person or persons wholly unaware of (or intentionally to conceal) the definitive aspect of Trial by Jury as forming the foundation of *democratia*, democracy. Let us consider further how the referendum technique does not create 'democracy' of any type:

### **FEROCIOUS ANTIPATHY TO DEMOS "WE THE PEOPLE."**

Citizen-Juries educated and instructed to judge on the justice of law and its enforcement, can be relied upon to protect people from the state (i.e. the government), when the state breaches correct behaviour in attempting to enforce injustices. It is for this reason that those who stand to gain money and/or power from tyranny by the imposition of unjust 'laws', regard the genuine Trial by Jury as an obstacle to be undermined and destroyed. Untrustworthy at best, of outright criminal intent at worst, are those who, instead of restoring Common Law Trial by Jury to its true form, would discard it altogether.

As always, there are today those of the power-hungry oligarchical inclination who are ferociously antithetical to democracy: they wish to deny the people their inherent, inalienable right to the just power, through the peaceful mechanism of Trial by Jury, to decide and protect their liberties for themselves. To destroy democracy is the intention of the plutocrat. This he does through his minions in government and the law, and his servitors and employees in publishing and media.

*Demos-kratein*, *democratia*, *democracy*, the word, with its unique historic derivation, has the strict parameters of meaning: "government by the People with ultimate sovereign authority invested in the citizen-juror in common law Trial by Jury." Despite this unequivocal definition of democracy, and relying on the general insouciance of the people, not to say, widespread ignorance, the enemies of democracy attempt to miseducate the people en masse by

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introducing self-contradictory, extraneous and stridently incorrect uses of the word; viz. Wikipedia's and the latest dictionaries' contributors' gibberish.

In this way, they hope to increase their dominion over the mentality of the population, and destroy all concept and memory of mankind's model justice system; the only one which bestows equal justice and liberty upon all. It remains the ongoing principal secular adult duty of men and women everywhere, who love liberty and justice, to promulgate the definitive facts on democracy to this generation, literally to save civilisation and emancipate all.

When one sees the word democracy being misused, it is of interest to ascertain whether this abuse is from plain ignorance, or from deliberate mind-manipulation ('brain-washing'). Politicians themselves can be brainwashed, duped and misled. However, politicians and others ruthlessly set out to blind people as to what *genuine* democracy can and should be allowed to achieve towards the people's happiness, well-being and emancipation.

When the word democracy is properly understood, the *contradictions-in-terms* (meaningless distortions of language) become self-evident if adjectives such as 'direct' or 'representative' precede the word. These latter combinations confound, undermine and pervert the meaning of democracy, because they incorrectly allude to *government-by-majorities* by public referenda and voting in assemblies. These terms deliberately obscure the vital semantical point: democracy is founded on the Common Law Trial by Jury, the justice system in which the citizen-juror is sovereign, has all judicial authority, and jurors have the duty to annul bad laws, tyranny and acts of injustice.

What goes on in referenda and the national assemblies has nothing whatsoever to do with Trial by Jury, and this latter is the basis of democracy through which "the people rule" (demos; krates) and by which the people hold in their own keeping all the rights and liberties which they wish to enjoy.

Indeed, through the Trial by Jury, democracy is the very system which precludes ochlocracy, i.e. direct rule by mobs, whether of brutish minorities or majorities expressing their self-interest in referenda or assemblies.

Government-by-referendum is just that and no more than that. Government by referenda majorities and congressional/ parliamentary majorities are not 'democracy', because such voting activity can and does occur within societies which outlaw the people's protective barrier of Trial by Jury, and which therefore are NOT democracies.

### **Note To Whom It Relates:**

Thucydides \* observed truly that most people will uncritically believe the first account they hear about something without taking the trouble to find out whether it is true.

\* See *History of the Peloponnesian War*, by Thucydides.

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Reading some people's apocryphal accounts of the history of Hellenic Athenian Democracy explains, in some cases, the misappropriation by these people of THE WORD, which they then abuse by misapplying it to activities of government-by-referenda (mass voting) or government-by-representatives (i.e. voting in the assembly). From negligence or by malintention, they only acknowledge the *inferior* functions of voting and assembly; and omit the paramount definitive factor of democracy: Constitutional Trial by Jury.

### EXOUSIA.

It is far from correct to conceive of 'democracy' as *only* a society of a small number of citizens who assemble and administer the government in person, for neither in Hellenic Greece nor in any other democracy is *the assembly* the supreme judge and final arbiter of law: *that* is the exclusive domain of the Jury.

In democratic Athens, all citizens including the poorest, the *thetes*, were equals before the law with *exousia*, which included the right to a Trial by Jury; right to participate in deliberations and vote in the assembly; *and...*

*...right of JUDICIAL OFFICE by which as jurors they decided causes and could annul the disagreeable laws and measures. The Hellenes created Democracy peacefully to preclude the progress of voting factions and wealthy would-be despots, by means of the Trial by Jury.*

Any society which spurns despotism, oligarchy, tyranny, ochlocracy-through-referenda (mob rule), and all such lawless, uncivilised forms of government, may select, by sortition or election, representatives to take care of the uncontroversial 'nuts and bolts' of tedious daily administration of the country, because most people prefer to occupy themselves with other matters.

In democratic parliamentary processes everywhere, *assemblage* embodies the initial, preliminary procedure of government, wherein proposal, debate and voting, frame measures and enact laws. Trial by Jury is the decisive, superior stage: citizen-jurors are sovereign to judge the laws and causes in all their aspects, to decide whether, and if so, how, to give effect to their execution.

Some people choose ambiguous quotations from Plato's Socratic dialogues and confuse themselves and others about Socrates. (Remember, Socrates himself wrote down nothing. What we know about him comes from writings of his contemporaries, principally his devotee and student Plato.)

It is factually incorrect to say that Socrates "supported" democracy. Socrates was the implacable foe of democracy: he inspired a coup d'état (seizure of power) against the democratic state by those who came to be known as the Thirty Tyrants; wealthy oligarchs and aristocrats with their mercenaries and slaves.

The Tyrants removed *exousia* and the right to a Trial by Jury from all but five hundred. Only a carefully selected three thousand were permitted to bear arms, to support the Tyrants and enforce the Illegality of the Status Quo.

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Hundreds of the proponents of the democratic state were forced to drink the lethal cup of hemlock and thousands were exiled.

Democracy was however restored after a year, and amnesty was given to all parties by the compassionate democratic state. Socrates nevertheless callously despised the people. He was a worthless criminal traitor to demos, “we the people,” and continued thereafter for four years to be the murderous opponent of democracy, fomenting further revolution amongst his aristocratic followers and students. Hence, when he eventually came to be tried (on charges of corrupting youth, etc.), his sentence of capital punishment was deserved and inevitable.



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For info about Plato’s book on the prototypical fascist state, The Republic, adopted as the official doctrine of Adolf Hitler’s National Socialist (NAZI) Party, and on Socrates, see Democracy Defined Essay EIS#10 “We the People and the Matter of Words,” freely downloadable from the Democracy Defined Campaign Material webpage.

**Kenn d’Oudney is the author of the following books and essays:**

**THE CONSTITUTION TREATISE:** Why the d’Estaing Constitution Is the Antithesis of Democracy ISBN 9781902848747, see website for endorsements by U.S. & U.K. cognoscenti;

**TRIAL BY JURY:** Its History, True Purpose and Modern Relevance ISBN 9781902848723, with edited section authored by U.S. lawyer Lysander Spooner;

**THE REPORT,** Cannabis (marijuana): the Facts, Human Rights and the Law ISBN 9781902848204, co-authored by Joanna d’Oudney; Foreword by a Nobel laureate former official Adviser to U.S. government professor emeritus; endorsed by a Professor of Physiology Fellow of the Royal Society; and academics, doctors (of medicine, psychiatry, homeopathy, jurisprudence, etc.) and judges (U.S. & U.K.);

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