



The Fourth Branch of Government

How Direct Democracy is Altering the Structure of State Governments

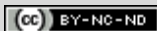
Thomas Helgerman

Staff Writer

Abstract

This paper aims to explore how direct democracy (i.e. the initiative and referendum) affect the balance of power in state governments. Traditionally, like the federal government, state governments consist of three branches: executive, legislative, and judicial. Due to a complex system of checks and balances, one branch cannot become too powerful, adhering to an anti-monarchy sentiment of the founders of the United States. In this set-up, the legislative branch is responsible for creating policy, the executive branch is responsible for implementing it, and the judicial branch is responsible for interpreting it. My thesis is that direct democracy, by allowing the populous to *directly* implement policy without bearing the responsibility for their actions as politicians do, undermines the legislative branch and therefore representative democracy itself, leading to irresponsible legislation that is not subject to the scrutiny of the United States political process.

Keywords: *referendum, initiative, California, direct democracy*



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In 1911, during his Inaugural speech, newly elected governor of California Hiram Johnson declared, “I most strongly urge, that the first step in our design to preserve and perpetuate popular government shall be the adoption of the Initiative, Referendum, and Recall.”¹ Imagine what his surprise would be to see *The Economist* declare in a special report on the state 100 years later that “California is an experiment in extreme democracy gone wrong.”² Over the span of a century, California has gone from being a forerunner in the direct democracy movement to becoming a stellar example of the positive effects of the initiative process, to being referred to as a “‘dysfunctional’, ‘ungovernable’ and even ‘failed’ state.”³ The situation in California is only one prominent example of a problem that has seeped into state government. This essay aims to examine the processes of direct democracy (i.e. initiative and referendum), which have become much stronger political forces in the latter half of the 21st century and have altered the balance of power in western state governments, using California as a case study of these problems.

First, it would be beneficial to examine how direct democracy first came to be used in state governments. After all, the processes that affect state politics today were not present until the end of the 19th century. That being said, some sort of popular vote to decide state legislative functions has been present since shortly after the nation’s inception. In 1778, Massachusetts held a statewide legislative referendum that allowed the state’s constituents to accept or reject its proposed constitution.⁴ Many states have used this process to establish state constitutions, and in the

modern United States every state except Delaware requires a legislative referendum for a constitutional amendment to be passed.⁵ However, shifts in power did not happen until much later because of the differences between legislative referendum and other forms of direct democracy.

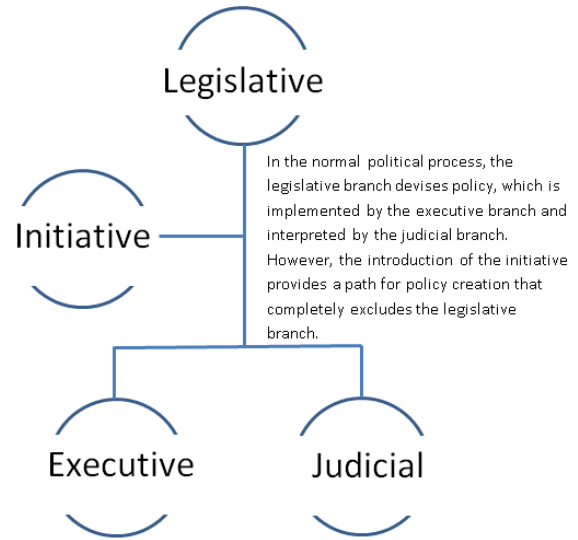
There are two different processes used to hold a piece of legislation up to a popular vote among a state’s constituents: the initiative and the referendum. A referendum is held to allow the people to accept or reject laws that have passed through the legislature. This is the less powerful form of direct democracy, as far as citizens are concerned. This essay will focus on the initiative. The initiative is more powerful because it allows a state’s constituents to both draft and vote on legislation. There are also two different types of initiative processes that a state can adopt: the indirect initiative and the direct initiative. In both, a piece of legislation is written by someone or some organization, then a certain number of signatures are gathered from other citizens in that state to have the proposed legislation considered. In an indirect initiative, the prospective bill must be approved by the legislature or sufficiently overridden by the additional collection of signatures if the legislature does not approve it. However, in a direct initiative, the legislature plays no role, and the bill is put up to a vote once the proper number of signatures is acquired and the document is submitted.⁶

While legislative referendums were held before the 19th century, the first state that adopted an initiative process was South Dakota, in 1898. Even then, it took another six years until the first statewide initiative was voted on, in Oregon. As it turns out, the turn of the century was a breeding ground for direct democracy in the United States. During the 10-year span between 1898 and 1918, 24 states adopted either an initiative or popular referendum process. This reform was driven by the populist movement in the country at that time. As US citizens became increasingly angry at the grip big business had on the government and at the lack of rights they themselves had, the populist movement lobbied for many different types of reform, including women’s suffrage, the direct election of

senators, and, of course, the implementation of the initiative and referendum processes on the state level. However, most of the reforms made concerning direct democracy were in the West, which some claim resulted from the spirit of expansion that blossomed there.⁷

Before we examine the effect these changes had on state governments, we must look at the structures of these institutions and how direct democracy alters their balance of power. In general, state governments are modeled after the federal government. Each state government consists of three branches: the executive, legislative, and judicial. Each is responsible for implementing, creating, and interpreting laws, respectively. Like the national government, the state executive branch has an elected governor, but most other positions in the state executive branch are elected, as opposed to the presidentially appointed cabinet. The state legislative branch has two houses, like Congress and the House of Representatives, and the composition of the state judicial branch mirrors that of the federal judiciary as well.⁸ Now, the federal government has a limited form of direct democracy in Article V of the Constitution; however, since the legislative branch has to vote to put this into effect, it has never been a useful tool of direct democracy.⁹ The state government’s initiative is much more powerful.

When the founding fathers created the nation’s government, they created a set of checks and balances between the three branches of government to limit the power of each individual branch. Accordingly, since state governments are structured in a similar fashion, they work in roughly the same way. That being said, the existent power structure of state governments has been radically changed, due to a *fourth* branch of government: direct democracy. The proper comparison for this additional branch would be the legislative branch, because it implements policy. The difference lies primarily in the sense of responsibility each branch has for its action. When the legislative branch of a state passes a bill, its elected representatives are held responsible for the success or failure of the policy and more importantly in our analysis, how to finance it.



When a law is passed via initiative, the document does not have to provide a way to pay for it, or even specify how it’s going to be paid. Karen Bass, a former assembly leader in California once said, “We have control of only 10 percent of our budget. Whatever the precise percentage is, voters long ago seized most power of appropriation from their legislature.”¹⁰ On top of this, the national legislature, and thus state legislatures as well, was designed to be a slow-moving political body; accordingly, it is very hard to pass a law without a clear majority approval, which protects the rights of minorities. When an initiative is put up to a vote, on the other hand, it only requires a majority to pass. Thus direct democracy becomes not only a tool for irresponsible change, but also for suppressing the rights and interests of minority citizens.

Now, let us take a step back and analyze that new structure of the system. If we construct a model of a state government with an active population that regularly submits initiatives, we arrive at a somewhat similar system, but with two branches doing the job of the legislative branch, formulating policy. Instead of one elected legislative body writing and voting on policy, the people perform the function of creating and implementing policy, while the legislative branch is left struggling to find a way to pay for it.



Source: www.legislature.ca.gov

To illustrate this power shift, consider the state of California, which is well known for its use of the referendum. California adopted both the initiative and referendum processes in 1911, during the wave of reform caused by the populist movement. However, the movement for direct democracy in this state was focused on a single enemy, the Southern Pacific Railroad. Known as “‘The Octopus’ because its tentacles corrupted every part of the state,” this railroad company’s extensive control of state politics drove California progressives to change the structure of their state government.¹¹ It was eventually this attitude that made California into the state it is today. Unlike how it is used in California, direct democracy is designed to provide an outlet for the people to work *with* their government to find policy solutions, not against it. Ironically, the confrontational attitude in the state led to disaster in later years.

Between 1912 and 2000, California held 275 initiatives up to a vote, with a 35 percent passage rate.¹² Potential legislation subjects ranged from prohibition to banking reform, but nothing notable passed until 1978. During this year, an initiative supported by local leader Howard Jarvis, Proposition 13, was passed. The people wanted to lower property taxes, and so they did. However, in addition to doing this, they added an additional clause stating that for the legislature to raise taxes in the state, it needed a two-thirds supermajority. Despite this decrease in current and future revenue, the bill had no appropriations on how to pay for these tax decreases. Consequently, the local governments in California, including schools, counties, and cities,

found themselves in debt from a loss of a major source of revenue. Fortunately, the state government had a surplus that year, so they gave money to these local bodies to help them deal with the shock. As one might expect, this “one-off transfer turned into a permanent financing mechanism.”¹³ Essentially, the local governmental bodies became dependent on state government funding. Obviously, the effects of the initiative process can reach farther than the state, endangering the stability of cities, counties, and schools, while effectively centralizing the state’s finances.¹⁴

Proposition 13 was only the start of California’s troubles. As the modern era dawned, new inventions changed the initiative process in ways that progressives in 1911 could not have imagined. The main malformation was the way signatures were acquired. In the ideal initiative process, a citizen or group of citizens would come up with an idea for a change. They would then gather enough signatures from other citizens who support the bill as well, so that the bill could be put on the ballot for voting. Unfortunately, the process of getting signatures turned into an industry. Professional signature gatherers were employed by those who had the money, mostly big businesses, to obtain signatures in support of a bill that an organization wanted to pass into law. In effect, a new more direct form of lobbying was invented. Interestingly enough, the Southern Pacific Railroad sponsored a successful initiative in 1990, using the very mechanism that was created to stop its influence. As Karen Bass puts it, “any billionaire can change the state constitution.”¹⁵ This feature of the modern initiative system is still working in full force; the online retailer Amazon is sponsoring a referendum to overturn the state’s Internet sales tax law that it hopes will be on the ballot by June 2012.¹⁶

Now, let us look at some ways to fix this system. As we have seen, there are three clear faults: a lack of responsibility; the suppression of the voice of the minority; and the enhanced form of lobbying the system creates. First, to promote responsibility, the best solution would be to implement a law through the legislature that would require those proposing an

initiative to provide an explanation about how the state would finance implementation of the bill. Even if the proposed financing plan is ineffective in helping to pay for an initiative, it will at least force the proponents of the bill to consider costs. Second, to give minorities more of a voice, the legislative branch must be brought back into the process, because it was designed to uphold minority rights. One way to do this would be to encourage the use of the indirect initiative. That way, the legislature would have the ability to work with citizens on proposing initiatives. At the same time, the people would still be able to bypass the legislature, but it would require a two-thirds majority if the constituents vote. Addressing the third fault, lobbying, is the most challenging. The idea is to not limit who can submit an initiative, as that would infringe on citizens' rights, but to discourage the use of the initiative as a lobbying tool. Perhaps a statewide campaign that informs citizens of the power of their signature or legislation limiting the ways in which signatures can be obtained could be effective. However, as we have seen on the national stage, lobbying is a powerful force. The best strategy may be containment, as opposed to trying to eliminate it entirely.

As state senator Loni Hancock put it, "The initiative and referendum process have been hijacked."¹⁷ In the face of soaring deficits and a gloomy national recession, all we can do is wait to see what state governments will do to counter this problem.

Author

THOMAS HELGERMAN is a freshman studying math and economics, with interests in international affairs and psychology. He is a member of the Pitt Band and the parliamentary debate team.

Notes

- ¹ Initiative and Referendum Institute, "The History of Initiative and Referendum in the United States," Internet (accessed October 7, 2011).
- ² "The People's Will," *The Economist*, April 20, 2011, Internet (accessed October 7, 2011).
- ³ Ibid.
- ⁴ Initiative and Referendum Institute, "The History of Initiative and Referendum."
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- ⁶ Ibid.
- ⁷ Initiative and Referendum Institute, "The History of Initiative and Referendum."
- ⁸ Ibid.
- ⁹ Initiative and Referendum Institute, "The History of Initiative and Referendum."
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- ¹² Initiative and Referendum Institute, "Statewide Initiative Usage," Internet (accessed October 7, 2011).
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- ¹⁴ Ibid.
- ¹⁵ Ibid.
- ¹⁶ "Amazon Spends Millions to Fight Internet Sales Tax," *New York Times*, August 27, 2011, Internet (accessed October 7, 2011).
- ¹⁷ Ibid.