Direct Democracy and Legislative Dysfunction: California Politics Since 1978

La démocratie directe et les dysfonctionnements de la législature : la vie politique californienne depuis 1978

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Over the past several decades, critics from across the political spectrum have condemned California’s legislature as seriously dysfunctional – unable to pass budgets on time and unable to resolve chronic and increasing deficits. The culprit, according to one argument, is direct democracy – the initiative, referendum, and recall, especially the initiative. This essay examines that argument by looking at the use of these political procedures since the 1970s and the ways that direct democratic procedures have contributed to legislative dysfunction, then evaluates the likelihood that recent changes in election procedures (approved through direct democracy) will resolve the dysfunction, and concludes with proposals to restore the ability of the legislature to legislate.

In examining the nexus between direct democracy and governmental dysfunction over the past third of a century, this paper will also outline a long-term process whereby political conservatives, predominantly advocates of small government and the free market, along with such special interest groups as business associations and so-called taxpayer organizations, nearly all of them closely aligned with the Republican party, have restructured governance, often using the instruments of direct democracy. One element in this restructuring has been these groups’ consistent efforts to limit state revenues and, hence, state services – as conservatives have repeatedly said, “to starve the beast” of government. Small government conservatives have also used the initiative to limit government in other ways – to hobble the beast, as it were. Other interest groups, notably teachers’ unions and environmental groups, have responded by using the initiative to create or protect state-funded programs. The consequence of this “government by
"Government by Initiative" has been to place serious constraints on the ability of the legislature to govern and to shift power from elected legislators to organized interest groups and the governor. In addition, Republicans have repeatedly used or threatened to use the recall to discipline their own ranks and to intimidate or punish their opponents. Recent governors from both parties have come to govern through initiatives, sometimes with partisan motives and other times to bypass the gridlocked legislature. This restructuring of governance has not yet run its full course.¹

This political struggle reflects competing visions for California: one based on a belief in small government and free markets, with strict constraints on the ability of the legislature to tax and spend, and the other derived from the progressives of the early 20th century and liberals of the 1950s and 1960s who used the state to regulate powerful corporations, build public infrastructure, and create an educational system open to all at minimal cost. At base, these competing visions ask whether the common good is best accomplished by restricting state power and freeing individuals to maximize their own personal well being, or whether the common good requires an active state to restrict private power so that all individuals can reach their maximum potential. Both groups have used direct democracy to advance their vision, but California voters have been inconsistent in adopting one or the other of these visions. The Democrats, who embrace the notion of active government, have long had a majority both among voters and in the legislature. However, small-government conservatives have often been successful in promoting popular initiatives that have constrained legislative action.² Thus, as a consequence in significant part of direct democracy, the legislative majority often finds itself unable to legislate. To those who favor active government, this appears as dysfunction; to the advocates of minimal government, these results may well be exactly what they intended.

Figure 1 summarizes California’s experience with statewide initiatives and referenda. Between 1912 and 1939, there was considerable interest in using these tools, leading to 134 initiatives or referenda, averaging nearly five per year. Then the numbers dropped, reaching a low point in the 1960s, with only nine statewide propositions.
Figure 1: California Initiative and Referendum Propositions, by Decades, 1912-2012

Figure 1 suggests a turning point in the 1970s, after which there was a significant increase in the use of the instruments of direct democracy, especially the initiative. In November 1988, for an extreme example, voters faced a mind-numbing total of 29 propositions, of which 12 were voter initiatives. Two years later, they voted on 28 propositions, including 13 voter initiatives.

What happened in the 1970s to produce the upsurge in the use of direct democracy? Some of it reflected grassroots activism on social and cultural issues, but the most important initiative of that decade was certainly Proposition 13 of 1978. Run-away inflation spurred this initiative. The annual rate of inflation reached double digits in 1974-1975, fell to 5-7% in 1976-1977, then climbed to 9% in late 1978. Californians found themselves paying more for necessities and also paying higher taxes. Although individual income generally failed to keep pace with inflation, incomes increased enough to push many Californians into higher state income tax brackets. Inflation-driven increases in property values produced higher assessments and hence higher property taxes. By 1978, inflated taxes, together with a tight-fisted approach to state expenditures by Governor Jerry Brown, generated a state budget surplus of nearly $4 billion, a larger surplus than in all the other states combined. This combination of rising taxes and a huge state surplus spawned a very angry electorate.

During 1977, Howard Jarvis and Paul Gann created the United Organization of Taxpayers and launched a tax initiative, which became Proposition 13 on the 1978 primary ballot. It passed by a large majority. The new law set residential and business property taxes at one percent of assessed value, rolled back assessed values to 1975 levels, and limited annual increases in assessed value to two percent. Reassessments were possible only when property was bought or improved. New taxes required two-thirds approval in the legislature rather than the previously required simple majority. Within two years, the
state’s budget surplus had been spent, mostly by bailing out hard-pressed city and county
governments.\(^5\) Prop 13 also had more far-reaching and unforeseen consequences.

By limiting property taxes, the state became more dependent on the sales and income
tax, and those taxes, especially the income tax, have shown significant variation based on
the economic cycle. California’s income tax is fairly progressive. Over the past twenty
years, the top 1% of taxpayers has paid between 33% and 49% of all state income taxes.\(^6\)
The income of the top 1% consists disproportionately of investment income and capital
gains, which are especially susceptible to economic downturns. Increased reliance on the
income tax has therefore produced larger variations in state revenue, following the
economic cycle.

Another unforeseen consequence was that the responsibility for funding the public
schools shifted away from local school districts, which had relied on the property tax, to
the state government, which receives most of its revenue from sales and income taxes,
making school funding more susceptible to variations in the economic cycle. Prop 13
brought a significant reduction in spending on public education. By 1986, California had
fallen from 17th to 35th place in spending per pupil for the public primary and secondary
schools (called K-12), and finished last among all the states in the K-12 student/teacher
ratio (a common measure of quality).\(^7\)

Prop 13 generated a revolution in the use of the initiative by many groups. As funding for
education fell, the California Teachers Association (the largest teachers’ union) turned to
the initiative to stabilize funding for schools and community colleges. Voters approved
Proposition 98 in 1988, requiring that the public primary and secondary schools and
community colleges (called K-14) receive the same percentage of the state general fund as
in 1986-87. If state revenues go up, funding for K-14 must go up proportionately. If state
revenues fall, any cuts in K-14 funding must be no greater proportionately than cuts in
overall state spending.\(^8\)

Taken together, Propositions 13 and 98 present a new version of direct democracy: voters
could choose not to tax themselves and could also mandate how to spend public funds.
Voters have frequently chosen to mandate expenditures without mandating corresponding
taxes, e.g., voters in 1990 approved Proposition 117 which required the state to spend at least $30 million a year on wildlife protection.\(^9\) Taken together with federal mandates, this has meant that governors and legislators have found themselves unable to increase most taxes and unable to cut most state expenditures. This situation has been widely – and correctly – blamed for the annual gridlock over the state budget. But there were other elements as well, including several that also derived from direct democracy. (The most serious cases of legislative dysfunction have all had to do with the budget and taxes; for policy decisions requiring a simple majority, the legislature has sometimes accomplished significant initiatives, notably in environmental legislation.)

The sharp increase in the use of direct democracy in the late 20th century led many
political observers to refer to “government by initiative” – that is, well organized
interested groups that seek to bypass the legislature and secure favorable public policy by
hiring agents to solicit the necessary signatures to get a proposal on the ballot and then
spending lavishly on political advertising to gain a majority of the votes on election day.\(^10\)

Although many corporations have jumped onto the initiative bandwagon, their most
transparent efforts to benefit themselves have failed. In 1988, voters were presented with
five different initiatives on automobile insurance rates, three promoted by the insurance
industry and the other two opposed by the industry. Voters approved only one, supported by consumer groups and opposed by the insurance industry. In 2000, voters rejected a proposition, initiated by the owner of a large chain of tobacco stores, to reduce the tax on cigarettes. In 2010, a Texas oil refining company used the initiative to try to suspend California’s pioneering law to reduce global warming, only to lose against a strong campaign by environmental groups. The record of these and similar corporate attempts to mandate state policy through the ballot box suggests that it is easier to defeat an initiative than to pass it. Though corporations and business organizations have often failed in their efforts to benefit themselves through initiatives, they have typically been more successful in defeating initiatives that they opposed or in supporting measures to keep taxes low or otherwise limit government. For example, in spring 2012 election, a coalition of health organizations sponsored an initiative to increase the tax on cigarettes to fund cancer research; polls showed that it was passing until the tobacco industry spent $47 million on advertising to defeat it.

An example of using direct democracy to reduce legislative effectiveness came in 1990, when California voters approved Proposition 140, a constitutional amendment limiting the number of terms for state officials. Voters adopted term limits partly in response to the increasing entrenchment of incumbents. However, there were other currents in the vote for term limits – it was promoted largely by Republican conservatives and business groups who hoped to remove popular, long-serving liberals and thereby, perhaps, open more opportunities for their candidates. Some proponents of the measure also saw it as a way to end the long tenure as speaker of the assembly of Willie Brown, an African American Democrat from San Francisco who particularly infuriated conservatives. Recent studies have concluded that, with term limits, legislators are no sooner elected than they begin casting around for a new office to run for, limiting their interest in learning the intricacies of the position they have, weakening their effectiveness as legislators, and increasing the influence of lobbyists and the relative power of the governor.

Direct Democracy and Partisan Mobilization

In the 1990s, conservatives and Republicans made effective use of the initiative both to create public policies that the legislature refused to adopt and simultaneously to mobilize like-minded voters on election day. During much of the 1990s, California was governed by a dysfunctional match-up of a Republican governor and Democratic legislature. In 1990, Californians elected as governor, Peter Wilson, a former mayor of San Diego who had won election to two terms in the U.S. Senate. At stake was redistricting – Republican strategists persuaded Wilson to run for governor because they knew that they could not win control of the legislature, but by winning the governorship they hoped to keep the Democratic legislature from eliminating Republican seats through redistricting. Wilson won narrowly. He vetoed the legislature’s redistricting plans and asked the state supreme court to establish new districts, but the result produced few competitive districts. One-party districts combined with term limits meant that the real election was usually the primary, when the majority party in the district chose its candidate. Primary voters tend to be the party faithful, more partisan and more ideological than general election voters, and, it has been argued, the legislators they choose tend to be similarly partisan and ideological.
In 1991, Wilson was faced with a sagging economy and a $14.3 billion projected deficit in state funds. In response, he raised taxes and slashed spending. The following year, a budget deadlock between Wilson and the state legislature dragged on for 64 days. Wilson moved steadily to the right during his years as governor. He reduced welfare benefits, cut expenditures on workers’ compensation, and convinced the Industrial Welfare Commission to remove restrictions on overtime.

Wilson hoped to run for president in 1996. To do that, he had to win reelection by a large margin in 1994. That meant mobilizing the Republican political base. Wilson focused his reelection campaign on illegal immigration, which he claimed was endangering the state due of the cost of educating and providing social services to illegal immigrants.

When the Democratic majority in the legislature ignored Wilson's campaign against illegal immigrants, he promoted an initiative, Proposition 187, to deny to undocumented immigrants all state-funded services including education, social services, and non-emergency health care. The measure required teachers, service providers, and doctors to report suspected illegal aliens to authorities. Prop 187 passed by a large margin. Almost two-thirds of white voters supported it, along with roughly half of black and Asian American voters and nearly a quarter of Latino voters.

Prop 187 illustrates how initiatives can be used, in conjunction with an electoral campaign by a candidate, to mobilize particular groups of voters. In 1994, Wilson used Prop 187 to mobilize California voters who were anxious about the increasing presence of immigrants, especially Spanish-speaking immigrants. The success of Prop 187 in getting votes from African Americans, Asian Americans, and Latinos also exemplifies a “wedge issue.” Wilson used Prop 187 to drive a wedge into the Democrats’ voter base, with the intent of splitting off some Democratic voters. In the short-run, he secured reelection even though federal courts quickly invalidated most of the proposition. In the long run, Wilson’s strategy backfired, as it led many Latino immigrants to become voters – and to vote for the Democrats, who had opposed Prop 187.

**The Recall as Partisan Weapon**

In April 1994, opponents of gun control tried to recall liberal Democrat David Roberti, president pro tempore of the state senate and a strong supporter of gun control laws. It was the first effort to recall a member of the legislature since 1914. Widely touted as a test of the strength of anti-gun control forces, the recall failed.

Use of the recall as a partisan tactic escalated the next year. The 1994 elections seemed to give Republicans a one-vote majority in the state assembly. However, when it came time to elect a speaker, one Republican, Paul Horcher, voted for Willie Brown, the long-time Democratic Speaker of the Assembly, creating a 40-40 tie. Without an elected speaker, the rules called for the most senior member of the Assembly to preside – and that was Willie Brown. Soon after, the assembly disqualified one Republican member from voting because he had been elected to the state senate. With support from Horcher, Brown won election as speaker. Furious Republicans then mounted a successful recall election against Horcher. Republican party leaders also threatened to run recall elections against Democrats, but only one actually took place and it was defeated by a large margin. With Horcher out, Democratic assembly members voted for Doris Allen, a Republican who was dissatisfied with the Republican leadership and who, adding her own vote to that of the
Democrats, became the first woman to serve as speaker. Republicans then quickly mobilized for another special recall election and recalled Allen.27 Thus, by the end of that year, Republicans had successfully used recall elections twice to enforce party discipline and unsuccessfully once to punish a Democrat.

22 The most dramatic use of the recall was in the case of Governor Joseph “Gray” Davis in 2003. First elected in 1998, Davis was the first Democrat to win that office since 1978.28 As governor, Davis moved cautiously and was often at odds with the liberal Democrats who led the legislature. Since Prop 13, the constitution had required that the budget be approved by a two-thirds vote, and the Democrats always fell a few votes short. Capital gains taxes during the dot-com boom generated a flood of state revenues, and in 2000 the Republican minority in the legislature insisted on tax cuts in return for their votes to approve the budget. The legislature approved, and Davis signed, measures to reduce taxes by $1.4 billion.29

23 Early in 2001, Davis faced a statewide energy crisis created in major part by deregulation. Demand for electricity rose sharply, supply fell for several reasons including manipulation of the market, and prices skyrocketed. By 2001, utility companies, claiming to be unable to buy sufficient energy, instituted “rolling blackouts” that shut down power one grid section at a time. Liberal Democrats in the legislature urged Davis to take the companies over if necessary, but Davis instead committed $43 billion to long-term contracts with wholesalers, producing a quick drop in his popularity.30 In 2002, Davis narrowly won a second term at a time when Democrats easily won nearly all other statewide races. Davis’s campaign was so negative that many voters stayed at home, producing the lowest proportional turnout in the state's history – and, ironically, significantly reducing the number of signatures needed to trigger a special recall election.31

24 In 2003, California faced a monstrous budget deficit – between $26 and $35 billion – resulting from reduced tax revenues caused by recession, the tax cuts in 2000, the $43-billion electricity contracts, and inflation. With most seasoned legislators turned out due to term limits, only a few legislators had experience with such a situation. There seemed no way to resolve the budget problems short of a tax increase or massive spending cuts. Republicans refused to support any tax increase, and some Republicans threatened that any Republican who voted for a tax increase would be recalled. Democrats lacked the two-thirds majority necessary to increase taxes, but refused to slash spending for education and healthcare. A long deadlock was finally resolved through borrowing – thus putting off the problem.32

25 Public opinion polls registered a level of voter discontent that surpassed anything previously measured. Seven voters in ten disapproved of both Davis and the legislature.33 Voters seemed to be angry with the political system itself, and Davis, as governor, was the most visible target for that anger.

26 Shortly after Davis began his second term, Ted Costa launched a campaign to recall Davis. Costa had entered politics as an assistant to Paul Gann, who, with Howard Jarvis, had initiated Proposition 13.34 The effort sputtered along until late April when Darrell Issa, a conservative Republican member of Congress, pumped $1.6 million of his own funds into the recall. The recall then took off as paid organizers effectively tapped into voters' anger, especially through talk radio and the internet. In the end, there were twice as many signatures as needed to trigger a special recall election.35
Californians voted on two matters – whether Davis should be recalled and who should succeed him. Davis was barred from running. The election brought an outpouring of candidates – 135 in total – and a media circus that captured national and international headlines. In this circus, the star proved to be the weightlifter. To the surprise of Issa, who had planned to run, Arnold Schwarzenegger announced his candidacy. Other Republicans, including a tearful Issa, bowed out under pressure from party leaders. In his campaign, Schwarzenegger skillfully tapped into the widespread anger among voters. “We, the people,” Schwarzenegger said in one of his most effective campaign ads, “are doing our job, working hard, raising our families and paying taxes. But the politicians are not doing their job.” The vote to recall Davis received 55 percent in favor. In the vote for governor, Schwarzenegger received 49 percent.

Governing by Initiative: The Governorships of Arnold Schwarzenegger and Jerry Brown

Schwarzenegger faced one of the biggest challenges to confront any California governor. Many knowledgeable Californians considered that if the state had been a corporation or a city it would have had to declare bankruptcy. Schwarzenegger first persuaded the legislature to repeal an unpopular motor vehicle tax, further increasing the deficit. He then sought a popular vote on a huge bond issue – $15 billion – to borrow more funds to resolve the state’s desperate financial situation, and he tied the bond issue to a constitutional amendment for a state reserve fund. He campaigned aggressively for both measures, and both won by large margins. Balancing the state budget by borrowing, however, was clearly a temporary expedient.

In January 2005, Schwarzenegger announced a “year of reform,” and presented proposals to tackle transportation problems, change public employee pension programs, and scrap many state agencies. When those failed to attract legislative support, he focused instead on four initiative propositions: to make tenure more difficult for public school teachers, restrict political contributions by public employee unions, limit state spending, and take redistricting away from the legislature. This “reform agenda” was quickly endorsed by business leaders, the Republican Party, many chambers of commerce, and the California Bankers Association. Strong opposition came from unions of teachers, nurses, firefighters, and police, along with the Democratic party. In the end, voters seemed to identify more with teachers, nurses, and firefighters than with bankers and chambers of commerce. All four propositions were defeated.

Schwarzenegger responded not with anger but contrition. He acknowledged that he had been mistaken to target public employees, promised more cooperation with Democrats, but also promised to continue his efforts to put the state on a sound financial footing. In a personal victory, he won reelection in 2006 at the same time voters elected Democrats to all but one of the other statewide offices and returned Democratic majorities in the legislature. Voters also approved large bond issues for transportation and public educational infrastructure.

The struggle over the budget in 2008 was one of the longest in the state’s history. At one point Schwarzenegger agreed with the Democratic legislative leadership that both new taxes and spending cuts were required, but he failed to sway even one Republican in the legislature, and once again there were threats of recall against any Republican who might
vote to increase taxes. Eighty-five days late, the legislature finally approved a budget but
did so by passing crucial decisions to the voters, in the form of six propositions to be
voted on in May 2009. The first five proposed to create a financial reserve, use it to
restore educational funding, establish a cap on state expenditures, give the governor new
power to cut spending, and redirect funds from existing programs created by initiatives.
All were defeated by 2-1 margins. The only one that passed – and it passed by a 3-1
margin – requires that elected officials not receive pay increases when the state has a
deficit.43 In response to the defeat of those propositions, the governor’s finance office
announced budget cuts totalling nearly $15 billion.44 In 2009, the budget was again passed
mostly by smoke and mirrors and by unpaid leaves for state employees. In the end,
Schwarzenegger failed to resolve the state’s financial problems as he promised when he
was elected, and he ended up with popularity ratings as low as those of Gray Davis.

In the elections of 2010, California bucked the tide of Republican victories across the
country. Democrats swept all statewide elections and held all their legislative seats.
Former governor Jerry Brown won the governorship.45 As governor, Brown reached into
the past and tried to craft a bi-partisan approach to the state’s budget crisis. He tried to
persuade the legislature to permit voters to decide on raising taxes, but the Republicans
refused. Again there were threats to recall any Republican who broke ranks. Passing the
budget was easier because an initiative in 2010 changed the long-standing two-thirds rule
to a simple majority, though the two-thirds rule persisted for tax increases. The final
budget closed some state parks (others became dependent on private funding),
eliminated some social services, transferred significant costs to university students in the
form of large tuition increases, and transferred other costs to local governments. At the
same time, Brown proposed an initiative for the November 2012 ballot to raise taxes on
the wealthiest Californians, modestly increase the sales tax, and earmark the new funds
for education. Several other groups also proposed initiatives to raise taxes in 2012, and a
last-minute compromise led to the merger of Brown’s proposal with one promoted by a
teachers’ union. Early polling suggests that voters may approve a tax increase on the
wealthy – which, if passed, will make state revenue even more susceptible to economic
downturns.46 Thus, in the end, both Swarzenegger and Brown followed Wilson’s lead and
resorted to initiatives when their proposals were blocked in the legislature.

Using Direct Democracy to Change the Political
Ground Rules

The 2012 elections involve major changes in the political ground rules, changes claimed
by their advocates as ways to challenge the intense partisanship that has long
characterized the legislature. Redistricting in 1981, 1991, and 2001 created districts that
nearly all had a reliable majority for one party, so the real election was typically the
primary. One consequence seems to have been that legislators from both parties became
more partisan, because candidates needed to appeal only to their party’s base and not to
moderates or independents. (This is not unique to California. Similar redistricting takes
place in most states. Across the country, the past few decades have seen a growth in
hyperpartisanship, and frequently a reduction in civility. Non-competitive districts have
been only one contributing factor to this development.)
In the 2001 redistricting, the leading Democrats in the legislature – John Burton, president pro tempore of the Senate, and Robert Herzberg, speaker of the Assembly – had the prospect of creating somewhat more competitive districts that would be likely in most elections to give the Democrats the two-thirds majority that they needed to pass budgets and taxes without the Republicans. However, given the virtual certainty that Republicans would have challenged such a redistricting plan, either in the courts or through a referendum, the Democrats instead drafted a redistricting map that gave every incumbent a safe district, thereby giving Republicans slightly more seats than they might otherwise have won in return for Republican promises not to challenge the redistricting act with referenda or court cases. Never able to win a legislative majority, California Republicans nonetheless maintained a veto over the budget (until 2010) and over tax increases due to the two-thirds requirements. As a consequence of the 2001 redistricting, not only was every legislative seat safely Republican or safely Democratic, but Republicans were also guaranteed to have enough votes to block any budget or tax increase. The results, not surprisingly, were a decade of deadlock on the annual budget. Democrat legislators always had to win over at least a few Republicans to pass a budget.

In 2008 and 2010, California voters approved propositions intended to change some of those partisan dynamics. As already noted, one was an initiative constitutional amendment promoted by public-employee unions to permit a simple majority of the legislature to approve the budget, although two-thirds are still required for tax increases. The other changes directly affect the 2012 elections.

One of the new procedures, a constitutional amendment, significantly changes the direct primary. Previously, only registered party members could participate in the primary to select their party’s candidates. Now, for all offices except president and members of political parties’ county central committees, all candidates of all parties are on the same primary ballot, all voters regardless of party choose among all the candidates, and the two candidates with the highest vote face each other in the general election. Write-in candidates are not permitted in the general election. Those who supported this change argued that it will encourage candidates to appeal to independents and moderate voters of both major parties, rather than to the most partisan voters. They also argued that this procedure will produce a more moderate legislature, based on the assumption that legislators elected by centrist voters will have weaker party commitments and be more likely to cooperate with members of the other party.

The Top-Two Primaries Law was put on the ballot not as the result of a voter initiative but as the result of a deal within the state legislature. Abel Maldonado, a moderate Republican in the state senate who has been called a “pragmatic centrist” and an “adept horse-trader,” agreed to provide the necessary vote to pass the 2009 budget in return for a promise from Democratic legislative leaders that they would put the Top-Two Primaries amendment on the ballot in 2010. The proposition was supported by Governor Schwarzenegger, the state chamber of commerce, several business associations and corporations, and a few Democrats. Opponents included all registered political parties, which held a joint press conference to announce their opposition. The other new election procedure, also a constitutional amendment, resulted from initiatives in 2008 and 2010 sponsored by an unusual coalition that included the League of Women Voters, the Southern California ACLU, the state NAACP, the LA Chamber of Commerce, Arnold Schwarzenegger, and Gray Davis. The two initiatives remove redistricting from the legislature and give it to a fourteen-member citizens commission chosen through a
complex process designed to keep out current officials; provide regional, ethnic, and
gender diversity; and maintain a political balance among Democrats, Republicans, and
nonpartisans. The commission is charged to create districts based on communities of
interest and to ignore partisan registrations. Its supporters argued that this would
create more competitive districts where candidates would have to appeal to independent
and moderate voters. Again, the goal was to create a less partisan legislature and to make
members of the legislature pay more attention to voters other than those in their party’s
base.

The new districts took effect for the 2012 primary elections, and there have been some
major changes. The new districts are likely to give Democrats a two-thirds majority in the
state senate, so Republicans have launched both a referendum and a court case to block
the new districts from being implemented. They failed, however, to prevent them from
being used in the 2012 primary elections. The new districts do not protect incumbents in
the way that incumbents were protected when the legislature did the redistricting. Seven
members of Congress chose not seek reelection, including some whose districts were
substantially redrawn. But the new system has also produced anomalous results. In the
2012 general election, there are several districts where both candidates are Democrats
and a few where both candidates are Republicans. Two powerful congressional Democrats
have been thrown into the same district and are fighting it out under the new primary
rules. One very senior Democrat faces a serious challenge from another Democrat. Several
of the new districts have no incumbent. In one district with a Democratic majority among
the voters, the two candidates will both be Republicans, because a large number of
Democrat candidates split their partisans’ votes in the primary.

Taken together, these two new election laws represent interesting experiments in
reducing intense legislative partisanship. Only the outcome of the 2012 elections and the
behavior of state legislators in the 2013 legislative session and after will indicate if the
experiment proves successful. However, the basic assumption behind both changes is that
legislative dysfunction results primarily from hyperpartisanship, and neither change
addresses the many constraints on the legislature created by direct democracy. The
legislature will still be tightly constrained by the various initiatives that mandate
expenditures, restrict taxation, or otherwise remove policy decisions from the legislative
arena.

What’s To Be Done?

While these election procedures may produce a more moderate legislature, they seem
unlikely by themselves to alter the dispiriting chronicle of legislative dysfunction just
presented. Is it possible to restore the legislature’s ability to legislate without doing away
with direct democracy? Here are my suggestions, some of which appear in direct
democracy procedures in other states or in various proposals that have appeared in
California in recent years:

- Increase the number of signatures required for a recall to that of most other states with
  recall procedures;
- Require that any initiative mandating spending must include a new tax to fund the
  spending and that any initiative restricting state revenues must specify the programs to
  be reduced or eliminated because of the restriction of revenues;
- Permit the legislature to amend initiatives after a year or two, subject to the

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referendum;
- Require that any proposition mandating an extraordinary majority for governmental
action must be passed by the same majority;
- Repeal the two-thirds majority requirement for increasing taxes;
- Limit campaign contributions to registered voters in California;
- Return to party primaries;
- Eliminate term limits.

These changes would at least begin to restore the legislature's ability to legislate. And, if
voters could reasonably expect parties to deliver on their campaign promises and would
not re-elect those who fail to do so, these changes might promote more responsible
parties.

NOTES

1. This essay has been in progress in various forms since 2004, and my thinking has been
significantly influenced by Peter Schrag's *Paradise Lost: California's Experience, America's Future*
(Berkeley: University of California Press, 2004) and *California: America's High-Stakes Experiment*
(Berkeley: University of California Press, 2008); his influence runs throughout this paper. *Remaking California: Reclaiming the Public Good*, edited by R. Jeffrey Lustig (Berkeley: Heyday Books, 2010) appeared after I had written much of this, but is also full of insights. Some parts of this essay have previously appeared in chapter 13 of Robert Cherny et al., *Competing Visions: A History of California* (Boston: Houghton Mifflin, 2004) or will appear in the 2nd edition of that work, now in press.

2. For the origins and procedures of the initiative, referendum, and recall in California, see the
article in this issue by Glen Gendzel.


5. Prop 13 is Article 13A of the state constitution, http://www.leginfo.ca.gov./const/article_13A.


7. More generally, see *Proposition 13* (San Francisco: Public Policy Institute of California, 2008);
Arthur O'Sullivan et al., *Property Taxes and Tax Revolts* (New York: Cambridge University Press,
1995); Helen C. Paik, *Local Government Finances Since Proposition 13* (Sacramento: California
Research Bureau, California State Library, 1995); and Don F. Speich and Stephen Weiner, *In the
Eye of the Storm: Proposition 13 and Public Education in California* (Washington: Institute for
Educational Leadership, George Washington University, 1980). See also Howard Jarvis and Robert
Department of Education, http://www.cde.ca.gov/da/, accessed at various times over the past
ten years.

prop_98_primer/prop_98_primer_020805.htm, accessed 22 March 2012; Proposition 98,


15. Under Prop 140, an individual may serve no more than three terms (six years) in the state assembly and no more than two terms (eight years) in the state senate. Officials elected statewide are limited to two terms (eight years).


18. This and subsequent summaries of state politics are based primarily on the coverage in the SF Chron, LAT, and California Journal; see, e.g., SF Chron, Nov. 6, 1990, A-1; LAT, Nov. 8, 1990, A-1.


29. LAT, Jul 1, 2000, 1.


31. Spivak, "California’s Recall," 34.


40. Election events can be tracked through the newspapers; e.g., LAT, Nov. 6, 2005, B-1, Nov. 9, 2005, A-1.

41. LAT, Nov. 10, 2005, C-1.


51. Proposition 11, Ballotpedia http://ballotpedia.org/wiki/index.php/California_Proposition_11,_Creation_of_the_California_Citizens_Redistricting_Commission_2008, accessed 22 March 2012; Proposition 20, Congressional Redistricting (2010), http://ballotpedia.org/wiki/index.php/California_Proposition_20,_Congressional_Redistricting_(2010), accessed 22 March 2012. Prop 11 (2008) created a citizens commission to redistrict the state legislature; Prop 20 (2010) extended the authority of the commission to congressional districts. California state and local government has long relied on commissions consisting of citizens, appointed in various ways, to recommend or implement policy. The complex process for selecting members of the redistricting commission was intended to accomplish many goals simultaneously, including selecting commissioners who had the necessary expertise to understand the complex issues. In addition, the commission was provided with significant resources including staffing.
ABSTRACTS

Critics have condemned California’s legislature as seriously dysfunctional and have blamed direct democracy, especially the initiative. This paper examines the use of direct democracy in California since 1978, focusing on the use of direct democracy by political conservatives to limit revenue and otherwise restrict state government, and on the use of the initiative by other interest groups to protect state-funded programs. These actions have constrained the ability of the legislature to govern and have shifted power from elected legislators to organized interest groups and the governor.

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Mots-clés: histoire politique, démocratie directe, référendum, politique californienne, Proposition 13, conservatisme politique, groupes d’intérêts, législature, gouverneur
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