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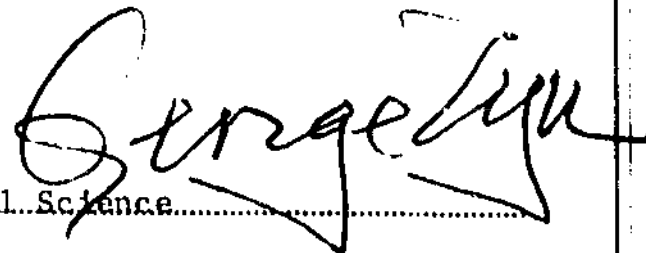
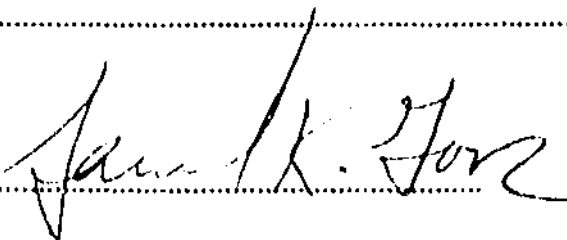
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**THE INITIATIVE AND REFERENDUM  
IN CALIFORNIA:  
HISTORICALLY AND RECENTLY**

**BY  
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DEGREE OF BACHELOR OF ARTS  
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## 1. INTRODUCTION

During the 1988 election, national attention was drawn to the states, not because they were crucial in the presidential race, not because of who would win the Congressional seats, but because of the initiative and referendum battles.

The initiative and referendum have become powerful and frequently used weapons of the public. The citizens don't want to wait for the elected representatives to deal with issues considered important. In fact, the issues may never be dealt with. The people have taken legislating into their own hands, with the tools provided to them by that very same legislature. As these states move into the 1990's, the initiative and referendum are showing themselves a force to be reckoned with. No voter is safe from television, radio, and printed advertisement bombarding. States without the initiative and referendum have been discussing it more frequently. Groups supporting the institution of these measures are pushing for it in the yet unclaimed areas. The issue seems to be in the forefront of state government and politics. This paper will look at the history of the initiative and referendum, and how it came to be used at the state level in the United States. In particular, California will be focused on, both historically, and reviewing the recent November 1988 election.

States using these measures have their own rules regarding them, but there is some common ground. At this point, some

discussion of what the initiative, referendum, and also the recall entail, is called for.

## DEFINITIONS

Referendums, available in some form in every state except Delaware, are held on statutes or state constitutional amendments which have been approved by the state legislature but which are submitted to voters for approval before they take effect. Initiatives are held on statutes or constitutional amendments placed directly on the ballot by voter petition. The recall is a device which enables voters to remove an elected official from office prior to the expiration of his term. All three instruments--the initiative, referendum, and recall--are designed to bypass political institutions and encourage direct participation by voters in public affairs (Stewart).

Initiatives can go two routes. "Direct initiative" is the option which permits petitioners who collect a fixed number of signatures to have a measure placed directly on the ballot. Some states, however, require the "indirect initiative". Under this procedure, propositions must first be sent to the state legislature. Only if lawmakers fail to act on the proposal within a prescribed period is it placed on the ballot.

No state allows gubernatorial veto of an initiative. Legislative review is also limited. Legislators rarely amend or repeal in the first

several years after approval of an initiative because it is viewed by most as a mandate from the public. In the years directly after the passing of a proposal, feelings and emotions are still high on the subject. If legislators moved against it, the voters would take note. Then action would be taken by the voters either through the recall, or the more patient method of waiting till the next election to have their wishes known.

All initiatives are subject to judicial review. Of the ten initiatives passed by California voters between 1960 and 1981, six were declared unconstitutional in whole or in part (Stewart).

Initiative provisions of one kind or another are found in the constitutions of twenty-three states. In fifteen of these, voters are permitted to amend the state constitution or make state laws by initiative. In two states the initiative may be used only to amend the constitution; in the remaining six the initiative may be employed only to make laws (Crouch, p.4).

Constitutional provisions describing how the initiative procedure is used vary considerably in length and detail. Most contain six basic features: 1) the number of signatures required on initiative petitions, 2) the deadline for filing petitions, 3) the vote total required to adopt a proposal, 4) the effective date of approved measures, 5) the method for repealing or amending a measure adopted by initiative, and 6) restrictions concerning proposal subject matter (Crouch, p. 7).

The 1911 provisions for direct legislation (this excludes the recall) in California involved four distinct concepts and procedures: 1) the constitutional amendment initiative--proposed by popular petition and submitted to the voters; 2) direct statutory initiative, statutes proposed by petition and submitted to the voters; 3) indirect statutory initiative, statutes proposed by petition, submitted to the legislature and, failing of passage by that body, then submitted to the electorate (this was repealed in 1966); 4) referendum, suspension of the enforcement of a law until it has been referred to the voters and approved by them. These four measures also have to be considered in a political and electoral context of other propositions directly submitted to the voters by the legislature: constitutional amendments, bond issues, and amendments to statutes originally adopted by the initiative and requiring voter approval (Butler p.89).

#### CALIFORNIA'S CONSTITUTIONAL PROVISIONS

Each state can pick and choose from the available means of direct democracy, thereby tailoring them to the state. The specific amendments passed by the legislature, to include direct democracy in the state government of California as taken from the state Constitution follow. Article II of the current state constitution describes the process of the initiative, referendum, and recall. Sections 8 through 10, and 13 through 15 describe the procedure:

Section 8 a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to five percent in the case of a statute, and eight percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

Section 9 a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to five percent of the votes for all



candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors.

c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special election for the measure.

Section 10 a) An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election, unless the measure provides otherwise. If a referendum petition against a part of a statute the remainder shall not be delayed from going into effect.

b) If provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors.

Section 13 Recall is the power of the electors to remove an elective officer.

Section 14 a) Recall of a State officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

b) A petition to recall a statewide officer must be signed by electors equal in number to twelve percent of the last vote for the office, with signatures from each of five counties equal in number to one percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number twenty percent of the last vote for the office.

c) The Secretary of State shall maintain a continuous count of signatures certified to that office.

Section 15 An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures. If the majority vote on the question is to recall, the officer is removed, and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy

for an office filled pursuant to subdivision (d) of Section 16, Article VI.

Section 16 The Legislature shall provide for circulation, filing, and certification of petitions, nomination of candidates, and the recall election.

These are the relevant direct democracy provisions which exist in California today. The most major change made was in 1966, when the indirect initiative was repealed.

## 2. HISTORY OF DIRECT DEMOCRACY

The initiative, referendum, and recall--also called direct democracy--have been more and more evident in the 1980's. These measures have become popular, and profitable, in today's politics. These tools are once again being discussed heatedly in legislatures and meeting rooms. Because of its prominence in California, direct democracy has become one of the top subjects in the nation. Direct democracy is hardly new, however. It has been in existence for hundreds of years.

Direct democracy dates back to the time of the ancient Greeks, but the first referendum in the form known in the United States today occurred in Massachusetts in 1778, when the state legislature adopted a constitution and submitted it to voters for approval (Stewart).

When the American colonies were started, direct democracy was present in the form of the town meeting. For nearly 20 years after the founding of Plymouth colony, lawmaking was done in a primary assembly of freemen from every quarter, and when the colony grew so large that it was difficult for people to meet in this way four times a year, every town elected two delegates to join in enacting ordinances, and the whole population met once each year to have general oversight, to repeal all acts deemed ill advised, and to pass any new legislation desired. It lasted from 1638 to 1658, and in a modified form until 1686 (Tallian, p. 10). These town meetings

were convened in all the colonies until populations grew so big that the gatherings were impractical. When populations began to grow, the idea of representational democracy came about. Even after representational democracy was established, the colonists still held direct democracy in high regard. Town meetings are still in existence, in New England most notably, however, the trend in the United States in general was to abandon direct democracy and to place trust in elected representatives.

After the war of Independence, the states adopted their own constitutions. While the citizens were consulted and had the power to ratify or reject the proposed documents, these constitutions did not provide for direct democracy--except in the case of approving a Constitutional amendment. Direct democracy slipped out of the public eye, while the new Americans were getting used to their governmental system.

Prior to this period the people of Switzerland's small cantons were ahead of other democracies. These cantons had made use of direct democracy almost before other areas knew of it, dating back to 1309, and had given that country its reputation for century-old free political institutions. These meetings pointed the way for freedom of the people to find expression. They also raised the question of whether similar measures could be well-used in a larger arena.

The next real surge of interest in direct democracy in the United States came near the end of the 19th century. Voters who were angered by political corruption and the strong-armed influence

of business interests in state capitols, demanded greater control over political and legislative machinery. The central programmatic thrust of this "Progressive" Movement was for a number of reforms in the nation's and states' law-making machinery, all intended to increase ordinary citizens' participation in and power over governmental decisions. The main Progressive reforms included the Australian (secret) ballot; nonpartisan elections, especially at the local level; legal regulation of the organization, membership requirements, finance, and campaign activities of political parties; the direct primary; the recall of elected officials; and the initiative and referendum (Butler, p. 27). Principle leaders of the national Progressive movement included Robert M. LaFollette of Wisconsin, Hiram Johnson of California, Theodore Roosevelt of New York, and Woodrow Wilson of New Jersey.

Newly formed Western states, rather than the established Eastern states, were more easily guided towards instituting the measures by reformists. During the 20-year period from 1898 to 1918, 19 states adopted the initiative. All but four of these (Michigan, Ohio, Massachusetts, and Maine) were west of the Mississippi River. Since that time, only two states have adopted initiative to pass laws--Alaska when it became a state in 1959, and Wyoming in 1968. In addition to these, Florida in 1972 adapted a provision allowing initiative limited to constitutional amendments, and the Illinois Constitution of 1970 allowed constitutional amendment by initiative limited to "structural and procedural"

subjects in its legislative article (Crouch, p.1). For the most part, though, the spread of the initiative stopped about 60 years ago with the end of the Progressive Era.

### SWITZERLAND'S DIRECT DEMOCRACY

In Switzerland, during 1858, the national legislature subsidized a railroad, under somewhat suspicious circumstances. This convinced the Swiss that their representative system was an incomplete expression of democracy, and that it should be supplemented by additional devices to express the public will. Some of the ablest citizens for years had directed attention to the referendum as practiced in a few forest cantons and advised its use in other cantons and in the central government. The people, suffering disenchantment with legislatures, rejected faith in political parties, and the game of guessing which candidates would resist corruption of power; instead, they decided to trust themselves (Tallian, p. 12).

Mr. Theodore Curti, a distinguished Swiss Assembly member wrote in the early 1900's of direct democracy:

The system has taken root so deeply in the hearts of the Swiss people, that today no party or faction would either oppose or dispense with it .... The Swiss people recognize in the initiative and referendum their shield and sword. With the shield of the referendum they ward off legislation they do not desire; with the sword of the initiative they cut the way for the enactment of their own

ideas into law ... it has broadened and improved the political life of the citizens.

Direct legislation is, therefore, the best political school for the people...."Indeed, then, the mere existence of the institution of direct legislation operates favorably, forcing the legislators to a better consideration of the feelings, the desires, the will, and the needs of the body politic ... Consequently the occupation of the minds of the people with the proposed laws is much more valuable as a civic educator than is the ordinary campaign.

A nation possessing the initiative and referendum is far less liable to become the victim of political apathy and lethargy than the one which has the representative system alone. The former will be better informed, more watchful of public affairs, and less apt to become fettered by a bureaucracy or fall into pitfalls of corruption (Letter to George Judson King, April, 1909).

The Swiss people seem to be remarkably content with their government. They participate in initiatives and referendums, but their system has made the politicians less corruptible. An example of this is that even though they possess the recall, little use has been made of it. Although elections are held at regular intervals, officeholders regularly are returned to their positions: as members of the Federal Council die in office, successors are found. Only once has one been refused office, although he wished reelection. This happened nearly a hundred years ago. On the average they remain in office ten years, and the record is 32. From 1848 to 1966, a period of 119 years, there have been only eighty Federal Councilors (Tallian, p. 15). This isn't too surprising, though. The Swiss legislators seem to be very cautious of what they do while in office. They are aware of the power of the people to recall them, and they



are also aware that the people can put into law measures which may not pass the legislature. The voters do use this method when it suits them, and controversial issues don't stop them. The legislators can sit back and let the electorate legislate, then be re-elected.

## RETURNING TO THE UNITED STATES

In California, interestingly enough it was again a railroad which started people thinking about changing the legislative process. The Southern Pacific Railroad had infiltrated the state legislature and controlled it. They also established a monopoly in their industry. The Southern Pacific Railroad during this period was the personal devil of reformers: without regulation of rates it charged at will whatever the traffic would bear, and its henchmen operated at all levels of government (Tallian, p. 22, 23). Reformers saw direct democracy as the way to end this monopoly power. The Progressives saw the government was less anxious to please the people than please the politicians and big business who then became an irresponsible ruling class. Americans began demanding access to an additional and alternative system, namely, direct legislation by the initiative and referendum.

The situation confronting the reformers, as they saw it, was a minority maintaining corrupt control, while the majority of the electorate remained honest. Their remedy was a plain and simple one. To secure honest and efficient government and the one that is

truly representative, their reasoning was to give the "honest" (in their opinion) majority of the electorate the power to initiate and enact legislation which their legislative bodies representing them may refuse; this is the initiative. Give to the majority the power to veto the undesired acts of their legislature; this is the referendum. Also give to this majority the power to discharge from office at any time the inefficient and incompetent officer or public servant; this is the recall (Tallian, p. 24-25). Some arguments in favor of the initiative and referendum used by reformers in the early 1900's were that in addition to encouraging informed voting in regular elections, the use of these measures would eliminate gross misrepresentation of the electorate (Beyle, p. 20).

A remarkable group of political innovators in the Populist-Progressive movement in the latter part of the 19th century went to Switzerland, where they observed direct democracy in common use. "It was one of the fortunate accidents of history that Dr. John R. Haynes, called the father of the recall in California and dedicated advocate of direct legislation, spent several years in Switzerland" (Tallian, p. 9).

Dr. Haynes was an established physician and citizen in Los Angeles, California during the reform age. He became involved in the Progressive movement, and spent the rest of his life fighting for the initiative, referendum, and recall to be instituted in the government of the city. The men of the Direct Legislation League of California, which he founded in 1900, were doctors, lawyers, and bank officials,

practical men of affairs and leaders of the business community. Seated in the audience at the University Club and applauding his sentiments, were men of the same experience. In 1887, when he first arrived in Los Angeles from Philadelphia, he began his campaign, and in 1903 direct legislation became a part of the Los Angeles charter. At first he was ridiculed, but slowly he built a following and became friends with the most influential men in the state (Tallian, p. 25).

Dr. Haynes spent his time in Switzerland watching their system of initiative and referendum. He saw no political corruption, and far less controversy and protest than in the United States because the people were very involved in ongoing politics, and policies. Dr. Haynes wanted to bring this system to the United States along with other planned reforms of the movement.

Haynes' observations of the Swiss democracy met with favorable results for the reformer movement: he believed democracy to be most successful when the people have the greatest participation, and he would not accept the idea that well educated Americans were not as competent as Swiss citizens. "The power of the state rests on the people as a whole. It is exercised directly through the citizens and indirectly through the authority of officials." This thought, included in the constitution of the city of Zurich, was the guiding principle of Dr. Haynes' life. To Dr. Haynes transfer of all authority to officeholders between elections promoted dishonesty;

therefore, he condemned not the man but the system that created such temptation.

Due to the strong conviction that direct legislation was the answer to these problems, Dr. Haynes and the others accomplished their goal of instituting the reforms. The initiative, referendum, and recall were voted into the Los Angeles city charter in December, 1902, and this was ratified by the legislature in 1903.... The Los Angeles Examiner of July 31, 1907 states the problem of American cities: "The groundwork of the Los Angeles city charter of 1889 was gotten up by the Southern Pacific politicians and other corporation agencies. It provides a form of local government without responsibility and with virtually all civic powers in the hands of councilmen elected by wards. The design, which is admirably carried out, was to make it easy for the corporations to get what they wanted and to seize such franchises as they desired without paying for them"

The long fight in Los Angeles didn't make efforts in other places easier though. Resistance was met every time the reformers tried to move in. Voters weren't too sure about this new process, and questioned it. Haynes answered their questions with this:

"When facts and theories conflict, theories must give way. Why need we use the subjunctive mode in discussing these provisions of direct government, speculating on what might happen, when the experience of Los Angeles and other cities, states, and nations enables us to use the indicative mode of expression, stating under

their operation such and such things have happened. Opponents of the initiative, referendum, and recall, without specifying instances where these provisions have failed, contend that they would, if adopted, cause continual disturbance, hamper honest officials, injure business, prove expensive to operate, result in hasty and unwise legislation, mean a government by the minority instead of the majority, and in short, be a government by the mob" (Tallian, p. 27).

Haynes then affirmed his tremendous faith in the power of the people: "Better, temporarily, a faulty government by the people, who gain increased civic wisdom, conscience, and responsibility through reason of this civic responsibility, than a perfect government under a despot. Therefore, a government shall give the people power to initiate legislation that their representatives have refused to enact; to veto legislation they do not want; to recall from office their representatives found unworthy of their trust." (Haynes).

After Dr. Haynes succeeded with his efforts to institute direct democracy at the municipal level, California reformers pushed for it at the state level. The Lincoln-Roosevelt League, organized in 1907, was very interested in direct democracy and urged the passage of the initiative, referendum, and recall as three of the propositions it sought to establish. Hiram Johnson was elected governor in 1910 on the Lincoln-Roosevelt platform. His administration worked to pass constitutional amendments securing these three devices at the election in 1911. After the legislature had submitted the amendments to the people, Governor Johnson took to the campaign

trail, battling for votes. These issues were debated intensely during the campaign, but the public showed itself to be strongly in favor of direct democracy. Governor Johnson, being a smooth orator, captivated audiences up and down the state with talk of "the truths of democracy". The opposition changed tactics midway, withdrawing all arguments against the initiative and referendum, and concentrated their efforts on the recall, in particular as it applied to judges, trying to keep control of the courts. Their efforts were in vain, however; all three amendments won by a large majority (the initiative and referendum by a vote of 168,744 to 52,093; and the recall by a vote of 178,118 to 53,755 (Tallian, p. 39). The initiative, referendum, and recall were adopted into the California state constitution.

Governor Johnson died knowing he had won his fight. The Progressives tapered out thinking their job was done. The challenge didn't end there however. A group called the Anti-tax League fought the reforms as much as they could. Several years after the death of Johnson, this group made their major moves. They used the weapon of the Progressives against them, and proposed an initiative banning the reforms. The remnants of the Reformers quickly reorganized to fight off this attempt. They succeeded, and the efforts of the Anti-tax League were overcome in the next trials also.

## POPULARITY OF INITIATIVE AND REFERENDUM

From those early years, till the 1940's, the initiative and referendum were used in moderation. Voters showed restraint if not wisdom in what they proposed. They also judged fairly well, which proposals were worthy of approval, and which should be rejected.

There was a definite decline in the use of the initiative during the 40's and 50's. In the 1960's it appeared that sponsors had difficulty in meeting the initial requirements, since only nine out of forty-four submitted were titled by the attorney general. But from 1970 through 1976, 104 initiative measures were titled. In 1978 a ballot measure radically altering the state's tax system--the now famous Proposition 13--dominated the primary election, while an antismoking initiative, a measure designed to bar homosexuals from being employed in schools, and a proposal to change and expand categories of murder for which the death penalty could be applied, qualified for the November general election ballot (Butler, p. 93).

Attention once again focused on the political realities of direct legislation in the nation's largest state, on its uses and abuses, and on Proposed "reforms". Many asked if direct democracy could work in an electorate of over 9 million registered voters.

Ever since Proposition 13, the initiative and referendum have been gaining momentum. It seems as if the electorate has rediscovered what their abilities are, and they are anxious to test

them. There have been more initiatives proposed in the 80's than in the history of Californian direct democracy.



### 3. PROS AND CONS OF DIRECT DEMOCRACY

Many arguments are given on both sides of this debate, and both make valid points. Not all the questions are dealt with here, since there are new places of conflict as new dimensions of direct democracy show themselves. The points in favor of direct democracy will be given below, then, after each point or group of similar points, will be arguments against it. The first point stated when arguing in favor of direct democracy is the issue of legitimacy. Different types of regimes have felt the need to demonstrate the popular basis for their policies. Democratic governments have normally relied on ordinary elections for their authority, but since all parties have a multiplicity of policies an election victory cannot prove the popularity of a specific measure. A direct appeal to the people has sometimes been needed to show that the public is behind a policy (Butler and Kitzinger, p. 279). The most legitimate form of democratic government is that which comes straight from the people. Legitimacy is the conviction by a polity's citizens that the institutions and processes by which its political decisions are made are, by law, custom, and moral principle, the right and proper ways to make such decisions (Butler, p.24). If the general voting public is seen as moral, right, and proper, then direct democracy definitely fulfills this.

It is not surprising, then, that perhaps the most widely accepted case for referendums concludes that decisions by

referendums are the most legitimate of all. The argument given goes something like this, "People may or may not trust legislators, cabinets, and prime ministers, but they certainly trust themselves most of all". Hence a decision in which all have participated (or at least had a full opportunity to participate) is more legitimate in their eyes than one in which they have not participated. Moreover, decisions in which popular participation is direct and unmediated by others, as in referendums, produce more accurate expressions of their will than do decisions in which they participate only by electing others who make the decisions for them, as in acts of legislatures and cabinets.

Accordingly, even people who feel that most political decisions should be made by experts in public office rather than by uninformed ordinary citizens agree that the most important, the most fundamental decisions should at least be ratified by referendums. This explains why in some polities where ordinary laws are made exclusively by elected officials, amendments to the constitutions must be approved by referendums. It also explains why governments sometimes find it prudent to hold referendums even when they are not required to (Butler, p.25).

A 1911 Fabian Society pamphlet pointed out why this argument has been especially compelling in Switzerland and the United States. Historically the referendum is the offspring of the primitive mass-meeting of self-governing citizens. Both in

Switzerland and the United States, the only countries where it prospers today, the whole body of citizens were from the earliest times accustomed to exercising all the functions of government for themselves in open assembly. This direct control over the affairs of State was never entirely surrendered, and when the assemblies of all the citizens became impracticable and more and more powers had to be delegated to representative councils, the referendum came into being gradually and naturally, not as an accession of popular power, but as a mere retention by the sovereign people of certain important powers in their own hands (Sharp, p.3).

Putting more power into the direct hands of the people, however, is a bypass of the legislative branch of government, a major part of the entire system (separation of powers, and checks and balances) of American government. Refuting all the arguments which deal with bypassing the legislature, opponents of direct democracy say that the legislature does not need to be bypassed. The system of representative democracy is best, since a smaller number of people can deal more easily with issues, and with each other. The current system was set up to deliberately slow down the passage of bills. Nothing was to be decided on too quickly. Experts would have time to comment on and debate issues.

Critics say that most initiative proposals are too complex to decide in a "yes" or "no" manner and contend that laws should be made with the deliberation, compromise, and attention to detail the

legislative process was designed to provide. Instead of laws being shaped in open committee meetings, during floor debates, and with gubernatorial approval, they fear that too many statutes will be conceived in the back rooms of special interest offices and will be difficult or impossible to amend after passage (Crouch, p.21).

The problems facing modern governments are numerous, complex, and demanding. Only a person who spends full time thinking about them can hope to understand them well enough to cast intelligent votes. Ordinary people simply do not have this time. Hence elected representatives are better qualified to make such decisions, not because they are necessarily more intelligent or more public spirited, but because they are paid to spend full time on government affairs. Representative assemblies are far from perfect, but they have several crucial advantages over referendums: their members meet face to face regularly; they do not immediately or necessarily vote up or down every measure that comes before them; they discuss, refer, study, delay, amend, and give and take. Their decisions only occasionally approach unanimity, but their discussions approach the small-group ideal far more closely than the discussions preceding referendums. Even in national legislatures votes are mainly expedients to get decisions when the time available for discussion has run out. In referendums votes are the very essence of the decision process (Butler, p.36).

A second argument made in favor of direct democracy, is that it keeps the legislature honest. When elected officials know that their actions are being heavily policed by civic-minded voters, they will feel compelled to stay on the straight-and-narrow.

Decisions by initiative and referendum are always made in the open air of true democracy. The signatures on the petitions, the propositions on the ballots, the speeches on the issues, and the results of the votes are all matters of public record, freely available to all. They hide nothing and have nothing to hide. Therefore they cannot do anything underhanded or illegal or shameful. Open government guarantees honest government, and the initiative and referendum are the best possible guarantees that government will become and remain honest (Butler, p. 30-31).

Lewis Jerome Johnson, writing 75 years ago commented on how the legislature in theory was fine; they were nominally under public control. It was pointed out by Johnson that control could be exerted by those other than the common voter. "Pressure on individual representatives by the greedy and highly organized few, rather than the merely interested and unorganized many, occurs. A legislative system which may have been safe once begins to look highly defective."

Next, similar to the previous point, as much as they'd like to, representatives cannot always know how their constituents feel on every issue. Representatives also sometimes vote only for the

proposal they like, voting their own conscience, not what their constituents would favor. Direct democracy is a way to circumvent this. Through referendum, voters can check up on their representatives, and see if the popular interest is being served. The voters can reaffirm what the legislature has done, if they agree. Direct democracy adds one more level to the checks and balances of American government. The voters act as a watchdog on the legislature to ensure that it is still acting in the interests of the people, and not that of the politicians.

The problem with these arguments, and the core beliefs of direct democracy supporters, is the great faith they place in the common voter. Haynes in the early 1900's said it, and others since then have also, that the people know what's best for government. Unfortunately, the average voter is not the honest, civic-minded, truly good democratic citizen the direct democracy supporters want to see. Legislators are only human, of course they're not perfect, but voters are human too, and there are more voters than legislators. This would lead one to believe there is a greater number of mistakes and less than desirable goings-on in the electorate than in legislative chambers.

A fourth reason for direct democracy is to have the ability to remove unwanted officials. Without the recall, voters must wait until the end of the term of the aforementioned official before action can be taken. This has been paralleled to a business setting, where

such things would never be allowed. Voters are supreme only during the moment of casting ballots; when that act is finished, they retain only the right to dismiss at the end of the period of service this employee that they have hired, and they have forfeited the very essence of democracy, the right to decide issues. Private employers would not behave like this with an employee; they would retain the right to overlook his work and to make decisions.... As problems become more acute, thousands of people need to communicate with government, and indeed, our Constitution guarantees this right (Tallian, p.2).

Up to this point, voters have shown restraint in using the recall. Voters, knowing if things get out of control and unacceptable they have this means at their disposal, have not yet fallen on it as the latest craze. It seems if a situation becomes flagrant, and there is gross abuse of position, the legislature will move with their own procedures, such as impeachment.

A fifth argument is that through initiative and referendum there is undisputable proof of what the will of the people truly is. Ballots are cast for or against, and totals are tallied. The results are clear-cut and cannot be ignored by the government.

However, this method of counting votes doesn't give a complete picture of what the voters wanted. There is no scale with which to judge intensity of feeling toward the proposition. In every referendum every recorded vote counts the same as every other.

Even though most votes in favor of an issue may represent only unenthusiastic marginal preference, while most votes against represent passionate opposition, if there are more votes for than against the proposition wins. But elected representatives can and do--indeed, must--assess not only how many of their constituents approve or oppose a measure but also how intensely. If, say, 60% favor the measure but with little enthusiasm, while 40% oppose it as gross injustice, then the representatives not only can defeat the measure but are likely to do so if for no loftier reason than that an angry 40% is much more dangerous to their electoral future than an unenthusiastic 60% (Butler, p.35).

Next, as has been said before, direct democracy brings the act of governing right to the people. Citizens become very involved in government, since they are voting directly on statutes and amendments. It has been noticed that the voting record of Americans has been getting progressively worse for almost twenty years. The growing separation between people and government is indicated by the failure of many to vote in Presidential elections. One fourth of the potential voting population failed to register, and half of the registered voters did not vote, thus the election was decided by only a fraction the people. This increasing number of nonvoters is too great a multitude to ignore. By refusing the ballot, they are saying that meaningful dialogue by this method is no longer possible (Tallian, p.1). Who can blame the people for not voting and



for feeling cynical about the whole sorry business of politics? If legislatures constantly ignore the people's wishes and sacrifice the public interest to special interests, who can blame the people for ignoring public news and political discussions? And if the whole apparatus of government is nothing more than a flimsy facade, poorly masking the machinations of the special interests, who can blame the people for feeling powerless and alienated? (Butler, p.32). So say the proponents. They believe that the initiative and referendum are the answer to a prayer for conscientious voters who are tired of the system not responding to them.

The proponents also firmly believe that direct legislation will end all that. It will enable people to control the law-making process and to know that they control it. When popular votes become the true coin of political power, people will know that their votes count, and they will make it a point to cast them at every opportunity. People will participate in their government because they believe in it, and they will believe in it because they participate in and control it (Butler, p.32).

Voting in direct legislation elections, the Progressives said, not only is a desirable activity in itself but also stimulates other forms of participation as well. The people know that their votes will make and break laws and thereby determine how government will impinge on their lives. Knowing this, in sheer self-interest they will inform themselves on the issues, defend their positions against those

who feel otherwise, and seek to persuade others to vote with them. Thus, where voting truly controls government, as it does in initiative and referendum elections, it leads to the other forms of popular participation. Indeed, in a modern mass democracy, voting may well be the only activity that can have this result for most citizens.

Conscientious voters are expected to educate themselves on each measure, being their own motivation, and will be able to cast an informed vote on proposals. As Richard Hofstadter, sums it up: Far from joining organizations to advance his own interests, he would dissociate himself from such combinations and address himself directly and high-mindedly to the problems of government. His approach to politics was, in a sense, intellectualistic: he would study the issues and think them through, rather than learn about them through pursuing his needs. Furthermore, it was assumed that somehow he would really be capable of informing himself in ample detail about the many issues that he would have to pass on, and that he could master their intricacies sufficiently to pass intelligent judgment. Without such assumptions the entire movement for such reforms as the initiative, the referendum, and recall is unintelligible.

In America there is an overriding feeling of distrust in government. Voters view politicians in a bad light, and think the worst will happen. With initiatives and referendums, they themselves are determining policy, without "seedy politicians" getting involved. Given the Reformers faith in the free individual

and their hostility to intermediary organizations, they were confident that the initiative and referendum would give the citizens the best possible weapons for overpowering grasping corporations, greedy special interest groups, boss-ridden political machines, and weak and corrupt legislatures.

Some advocates of participatory democracy, however, are not enthusiastic about direct legislation as the right path to human development. They do not agree that voting in initiative and referendum elections is the kind of participation that best elicits the human potential. After all, they argue, voting demands only the most minimal commitment and effort by the citizen. Voters need no qualification to participate other than legal proof of their presence on the roll of registered voters. Voting is conducted in secret and therefore irresponsibly. Voters need not engage in any confrontation between their preferences and opposing preferences. All in all, then, voting is a most passive, undemanding, uninspiring, and unimproving kind of civic participation, vastly inferior to taking an active part in the discussion of issues in town meeting, local caucuses, and other types of face-to-face assemblies.

Through the initiative and referendum, any issue, however novel or divisive or offensive to those in power, can be put on the law-making agenda by concerned citizens and brought to decision. In this way all the issues that concern the people are faced, not just the few that the special interests find unthreatening. Supporters say

all people have an equal chance of pushing an issue they believe should be dealt with, and hasn't been.

Opponents say it is generally not "the people" who use the initiative, but well-financed special interest groups who reduce complex problems to slogans with which they bombard voters by radio and television in hopes that their pet project will become public policy. Interest groups are exactly that: a group with one interest in mind, usually one particular issue. This means that proposals put on the ballot for voters to decide are relatively minor issues, being pushed by a small organization. Constitutions are meant to be somewhat vague, to leave flexibility for the future. When specific items are placed via the initiative in the constitution, this idea is being thwarted. Where special interests rule in their name, the public interest cannot and will not be served (Butler, p.33).

Another problem developing in this area with the initiative and referendum is campaign funds. Special interests can raise the large amounts of money needed to collect the signatures and advertise their position to the voters. Since all the voters can never meet face to face, most of the discussion takes place in the mass media. Indeed, what the media choose to print or televise has a very great, perhaps too great, influence on how the choice is perceived. And media discussion provides no opportunity for the participants to discover that B is better than either A or not-A, that C is better still,

and that in the ultimate judgment of most, D--which no one thought of at the beginning-- is best of all.

Another central argument against referendums, not always voiced explicitly, is that they threaten the control over the political system of the elected and other established authorities. In a free society the outcome of a referendum cannot be guaranteed. Moreover, a referendum on one subject may lead to demands for referendums on others--and on some subjects the verdict of the people will run counter to the consensus of those who hold public office (Butler, p.34). Accordingly, the government controlled referendum is the only acceptable type because only it poses no significant threat to the power and prestige of public officeholders. And governments are well advised to use it only in circumstances in which its short-run advantages clearly outweigh the long-run dangers it poses.

When referendum and initiative are made easy, some fear a flood of frivolous legislation. The opposite seems to be true, in Switzerland. From 1944 to 1966, there have been 37 constitutional amendments, and 11 have been rejected. During this test period, the people accepted eleven optional referenda and rejected twelve. Support for the Assembly is indicated by the fact that 400 projects were voted into law without demand for a referendum, and thus it can be computed that the Assembly erred, according to the people, upon only three per cent of the total number of bills and decrees. In

the same period the people voted on only seventeen initiatives, accepted sixteen, and rejected one (Tallian, p. 14).

Contesting this, especially since this paper is dealing with California in particular, there needs to be a brief comparison of California and Switzerland. Switzerland covers less area, has a lower population, and a mostly homogeneous population. California is one of the largest states in America with more than three times the population of Switzerland, and dwarfs many other entire nations. Another difference is that California shows a definite dichotomy in the state, between the north and south. Neither half would be comfortable in allowing the other to determine laws for it. Issues are read very differently in the two areas. Because of the large diverse population, a larger more diverse set of propositions are expected.

Lastly, initiative and referendum are ways for the public to let off steam against the government. Even if proposals don't pass, the legislature is warned that there are some feelings of frustration and maybe even resentment among the voters. It serves as a caution to legislators that voters aren't satisfied with the jobs being done, and gives them notice to start paying more attention to the interests of the people. Even those with reservations about the desirability of direct democracy see these devices as playing a continuing role in American politics, at least at the state level. As one proponent declared "Citizens need to have this relief valve open to them."

In any case, with direct democracy, the price will be a grave weakening of representative government. As legislatures lose power they will lose popular respect, and outstanding citizens will be less inclined to seek public office. Even those who remain in office are likely to behave less responsibly, for their behavior is bound to be adversely affected by the knowledge that anything they do, good or bad, may be overridden by a referendum (Butler, p.37).

Many people ask whether the people make errors in legislation, and others cite particular mistakes as evidence that direct legislation does not work. It has been conceded by proponents of direct democracy that anyone who legislates may blunder: the people, legislatures, Congress, and the President in the United States are often mistaken. The people err as well as their elected representatives, and direct legislation furnishes a cure, since another initiative will correct the mistake, or the legislature may return a referendum to the people (Tallian, p.16). An easily seen defect in this, is poorly planned initiatives being passed, then when and if it's implemented, its faults come to the fore. Only another initiative can alter it once the voters have passed a measure. The process boils what may be a complicated, multifaceted issue, down to a simple "Yes" or "No" vote. A carefree attitude will develop in the electorate if the solution is to circulate another measure modifying or repealing the first.

As stated at the beginning of this section, there are strong forces on each side of this idea, and they both have validity. Some aspects of the arguments outweigh others. It is up to each political unit whether they will use direct democracy or not.

### COMPARING PROS AND CONS WITH EXAMPLES FROM CALIFORNIA

One of the big assumptions of the proponents of direct democracy is that voters will actively seek out information, so they can make an educated choice. This has not proved to be case. In the description by Hofstadter is a fictional "voter", one who has perfect knowledge, and perfect morals; unfortunately people aren't really like that ideal. The average voter doesn't completely involve himself with every measure on the ballot. Especially during these last several elections in the state, the large, and it seems, still increasing number of measures is working against citizens truly thinking out their decisions. The 29 measures last November overwhelmed even the most committed political junkie. California voters may become burned out on the initiative and referendum if ballots such as the last one continue.

Special interests in California have made a living out of raising money for initiative campaigns. Approximately \$10 million was spent by proponents and opponents of Proposition 15 on the 1982 California ballot. Multimillion dollar campaigns for and against these



measures are not unusual. In 1978, opponents of a California initiative which would have created "No smoking" sections in all enclosed public places spent \$6.4 million (Stewart). Unfortunately, "the amount of money spent on an initiative and referendum measure is the best predictor of its success" (Houseman, p.145). Governor Hiram Johnson introduced the ballot initiative in 1911 so that California voters could bypass a state legislature controlled by self-interested businessmen. This year [1988], however, all but two of the state's 29 initiatives were sponsored by special interests which spent a record \$130 million ("Money Isn't Everything").

"The initiative and referendum are fraught with difficulties, not so much because people are not wise enough to govern themselves but because the fights over ballot propositions are highly manipulated by political advertisers... Confusion reigns when voters are told that passage will increase their taxes, decrease their taxes, provide better education, provide energy reserves for the future, promote fairness, promote unfairness, or, as the proponents of the state lottery in California recently claimed, provide fun for everyone..." (Houseman, p.145).

#### 4. WHAT'S BEEN HAPPENING RECENTLY

##### CALIFORNIA TRENDS IN INITIATIVE AND REFERENDUM

One of the trends already mentioned is that of reemerging popularity of direct democracy measures. In recent years there has been an upswing in initiatives activity which many observers attribute to anger over governmental action or inaction. Others attribute this increase to the growth of special interest groups... (Stewart).

The issue of direct democracy has been receiving a lot of attention lately. The history of direct democracy has gone through cycles ever since it's been in existence. There are periods of high activity and popularity, and also low periods when it was very difficult to put anything into effect. The 1980's have been a time for direct democracy to build up popularity once again. California has been a major factor in accomplishing this. The 1978 Proposition 13 became nationally known and brought direct democracy to the attention of voters across the country. Throughout the 1980's the initiative, referendum, and recall have grown both in number and in prominence. It has again become an issue nationally.

In the November, 1988 election, California's 29 ballot proposals--including twelve initiatives--gained tremendous publicity across the country. Until recently, it would have taken a ballot initiative with the national allure of California's tax-cutting

Proposition 13 to grab national attention and dollars. But with three weeks to go before the election, ballot initiative campaigns that were once run on a shoestring were being waged with multimillion-dollar media fanfare in as many as a dozen states (Grover, p.28). The fear that a winning initiative would ignite similar measures elsewhere fueled much of the new interest. State initiatives often spring up because antibusiness movements find it easier to organize at the state level. Once sufficient support is gained, then they can proceed from there.

Several other trends in California are the sheer number of initiatives being proposed, the fierce campaigning which goes into the measures, and the unbelievable amounts of money being spent on the campaigns.

The most expensive California race wasn't for Senate or the White House--it was the battle over five automobile-insurance reform initiatives. During the last election, there were record-breaking amounts spent on either side of several propositions. There used to be a comforting theory that if enough money were spent in opposition to an initiative, even one that was popular at the outset, it could be beaten at the polls, while the reverse--carrying a weak measure with a lot of money--was believed not to be possible. But the insurance industry was expected to spend \$43 million testing that theory in November in a multi-initiative fight over auto insurance reform. The industry actually spent \$90 million, for both fighting other insurance propositions, and advertising its own. That

made it the most expensive political campaign (other than presidential) in American history (Schrag, 1988). By far, it was the election's costliest and most confusing campaign. The three-way struggle involved ancient enemies: the insurance companies, trial lawyers and consumers. The stakes were enormous: \$10 billion in annual auto-insurance premiums, not to mention premiums for other types of insurance; and \$2 billion every year in contingency fees to trial attorneys. The only true consumer measure on the ballot was Proposition 103. If more than one had passed, the November results could have lead to a legal quagmire (Salholz). As it turned out, only 103 passed, and there was legal action waiting in the wings to challenge it, before the final count was made. If more care isn't taken to prevent conflicting proposals on the same ballot, the courts will soon be overrun with cases such as this, on top of a heavy load already.

Others see in California, that the referendum process has finally run amok: faced with 29 measures, voters could have had to violate a statute barring them from spending more than ten minutes in the booth. Measures are placed on the ballot in the order in which they qualified. Hence, the five insurance initiatives were not in consecutive numerical order. Voters wanting to directly compare them had to skip back and forth, passing over an AIDS initiative, and a Public Disclosure initiative. Another confusing aspect for the voter is dealing with measures which cover the same ground. Similar initiatives are constitutionally provided for by adopting the one with

more total Yes votes. This doesn't help the voter, in the booth, trying to discern the differences in measures. This case recently was seen in the June primary election, where two campaign reform measures--Proposition 68, sponsored by Common Cause; and Proposition 73--both passed. Although both measures passed with solid margins, 68 by more than 5 percentage points, and 73 by 16 points, the two have numerous areas of conflict and the message of the voters is unclear ("Complete results", p. 295). A majority of voters approved Proposition 68, and it would provide for taxpayer financing of legislative campaigns. But Proposition 73, which got an even bigger margin of approval, specifically banned the use of taxpayer money at all levels of government. According to the state Constitution, 73 should be adopted since it won by a larger margin than 68. However, backers of Proposition 68 say that some provisions of their measure are not covered by Proposition 73, and those provisions should still be valid. Both the Attorney General and the Fair Political Practices Commission are studying the two measures. Most of the provisions of Propositions 68 and 73 are scheduled to take effect at the first of the year.

It appears that the modern group of voters in California isn't as easily taken in by industries dumping money on an initiative, whether in favor or opposed. Supporters of direct democracy were pleased with the public's ability to resist high-powered persuasion in the 1988 initiative battles. The insurance industry with its millions backed four contradictory and confusing auto-insurance

referendums. All were defeated, except a consumer initiative calling for deep cuts in auto, home and commercial insurance rates seemed close enough to ensure a recount. But Proposition 99, which proposed a \$.25 tax on cigarettes to fund medical research and education, passed despite the tobacco industry's \$16 million campaign to defeat it ("Money Isn't Everything").

Another problem with the initiative and referendum are the relatively few restrictions on it. If a Proposition fails one year, there is no reason for its supporters not to try again and again--if they have the funds for an extensive campaign. In the November election great emotion was aroused by Proposition 102, which would abruptly shift the state away from the policies that have put California in the forefront of the fight against AIDS. It was sponsored by the antitax crusader Paul Gann. Despite strong early support, Proposition 102 was rated a toss-up one week before the election. Proposition 96, a less controversial initiative was leading by a considerable margin. If both measures were rejected, however, the crusade against AIDS victims was likely to resurface when another election came around ("HIV"). Proposition 102 finally lost by an almost 66% No vote. 96 succeeded with 62% of the vote. As just mentioned though, the group can keep trying until they give up.

When any of these proposals do pass, the only way to reverse it would be to carry out another initiative campaign. This would require spending at least equal amounts of time and money as the original measure. Some initiatives seem like a good idea at the time,

but later on voters regret their decision. This is the case, for some voters, with Proposition 13. Led by Gann, the antitax group built up a believable scenario for older people in California, that they shouldn't have to pay as many taxes. People react magically whenever taxes are mentioned, and the voters approved the measure. They didn't stop to think of what it would mean to the school system in the state. California now has one of the highest high-school dropout rates, which climbed sharply when Proposition 13 forced the cancellation of nearly all summer school programs (Schrag, 1986).

Another Californian trend in the initiative, is the more frequent occurrences of legislators authoring or sponsoring Propositions. 'Kelly Kimballi of the signature-gathering firm of Kimball Management, noted, "Prior to the 1970's most California legislators were only vaguely aware of the initiative process and how it worked. They rarely thought about it as a potential option for them to use in pursuing their legislative objectives." Indeed, many state legislators would have viewed initiative authoring by members as a breach of legislative protocol' (Bell and Price, p.380).

Now, in contrast, many legislators, current and past, have been earning a name for themselves through the initiative. Authoring or sponsoring measures gets them publicity they otherwise wouldn't receive. They are being successful at it also. Legislators have experience in campaign fundraising, and in political processes. "Elected officials have been proponents of more than one-third of all

the initiatives qualifying for the ballot over the last two decades" (Bell and Price, p.381). There is talk from supporters of the initiative of how the people, if unsatisfied with the legislature, can move on their own with this weapon. In California, it has also become a weapon for officials who don't want to bargain and debate on the floor. They can take their unamended ideas straight to the people, bypassing their peers.

#### HAS CALIFORNIA BENEFITED FROM INITIATIVE & REFERENDUM?

Ever since Hiram Johnson got the initiative process written into the California constitution back in 1911, this device for bypassing the legislature and submitting Propositions directly to the voters has been a time bomb waiting to blow. From 1922 to 1978 there was no year in which more than ten initiatives got enough signatures to be placed on the ballot and no decade in which more than nine were actually passed. But with the passage of Proposition 13 in 1978, initiative backers discovered how to work the process--for signatures, for votes, and for big dollars. The result has been an eruption of initiatives that is rapidly crippling representative government (Schrag, 1988).

With commercial signature-gatherers and modern direct-mail technology, enough money will get almost anything on the ballot. (The average cost is now about \$1 million a crack.) In the decade since 1978, 17 initiatives have been passed. To say this causes



confusion is an understatement. The campaign initiatives approved in the June primary election are a prime example. The latest chaos was the five initiatives dealing with auto insurance.

Other states have the initiative, but none of them has taken up the practice with such a vengeance. One explanation is that it is because of California's size, the impersonality of its media politics, and the rootlessness of its voters.

Changing the requirements or procedures wouldn't curb the electorate's appetite for direct democracy. Stringent petition signature and filing requirements do not decrease the number of initiatives, according to political scientist Charles M. Price, who concluded, "Indeed, if anything, the results seem to go in the other direction; i.e., the tougher a state's qualifying procedures, the more initiatives that tend to get qualified."

In California, initiatives have become important state issues, voters are fairly knowledgeable about the processes. However a poll conducted just before the 1980 election in Colorado found that only 30% of voters knew what was meant by the phrase "initiative and referendum process" (Stewart). With the number of items on the November ballot, it would be surprising to find an average California voter who knew specifics of each one.

**WHICH METHOD IS USED MOST OFTEN**

Constitutional amendments proposed by the legislature are by far the most numerous of the ballot measures, as indicated by the length and detailed nature of California's constitution.

On average there have been three Propositions proposed by the legislature on the ballot for every initiative measure, competing for voter attention with state and county candidates and local Propositions--a critical factor in the overall process of direct legislation. "In total, a voter must make approximately fifty separate decisions in the average election, fifty marks he must place on the ballot" (Owens).

Comparing voters who use direct democracy in different states, shows that there isn't much of a common denominator. It is clear that the citizens in the fourteen states using both statutory and constitutional initiatives have not agreed: they voted on almost as many constitutional initiatives as statutory initiatives (538-553). Moreover eight states (Arkansas, California, Colorado, Michigan, Missouri, Nebraska, Ohio, and Oklahoma) voted on more constitutional than statutory initiatives--often because the legal requirements for getting Proposed constitutional amendments on the ballot were as easy or easier than those for Proposed statutes (Butler, p.75).

In a majority of the states using both types of initiatives, then, there is no reason to suppose that measures to change the

constitution are approached more gravely or more suspiciously than measures to change the laws. Voters seem fairly nonchalant about the entire process, in regards to the end result--statute or amendment.

The initiative and referendum can be seen as being at cross-purposes with representative government..."most of those who were responsible for the enactment of the initiative and referendum constitutional amendment... expected them to be used as reserve powers and not for the purpose of establishing a new independent legislative body..." (Beyle, p.23). Overuse of these measures can lead to a stance of inaction in the state legislatures. If the voters insist on going over the heads of their representatives, the representatives may as well not be there. The politicians can also take the low-risk route when voting on the floor. If there is a controversial issue pending, they can ignore it, counting on some interest group to pick up the crusade in an initiative. This is the transfer of decision making. Governments have been reluctant to settle issues on which they were themselves divided; they have wanted to avoid responsibility for decisions which would be unpopular with a significant section of the public. Referendums have offered a way of passing the buck.

California, by having the direct initiative, has invited all these problems. These initiatives being passed on small, mostly unimportant items, is also contributing to impractical Constitution of the state.

The legislature of a state without the initiative and referendum can go about its business, without worrying about what next initiative is being cooked up by an interest group. "Unencumbered by referendums the General Assembly does have the ability to move expeditiously in making constitutional revisions without the loss of time or public support that might occur in taking Proposals directly to the electorate for approval", (Beyle, p.31).

The initiative and referendum has many good aspects to it, and the California proponents of it surely meant well by including it. It does encourage more citizen involvement in government. Voters have the feeling they can do something to help themselves. A compromise suggested by some is the indirect initiative. The indirect initiative is sent to the legislature to look at, instead of being voted on by the public. This measure can make citizen demands and needs known to the legislature. Representatives can find out how their constituents truly feel about an issue, and can act accordingly.

## 5. LOOKING AHEAD

### WHAT THE FUTURE HOLDS FOR THE UNITED STATES

As stated previously, there has never been a national referendum or initiative in the United States. Talk has floated around concerning instituting direct democracy measures nationally. This is mostly talk. Senator Jack Kemp is probably the most known proponent of this most recently, but he hasn't passed any bills dealing with it. The closest the Congress has gotten to instituting the initiative nationally was in 1977, when a bill was proposed by Senator James Abourezk (D-SD) in the Senate and Representatives Guy Vander Jagt (R-MI) and James Jones (D-OK) introduced similar bills in the House. Abourezk's bill called for legislation on most subjects to be put before the voters by a popular petition. Signatures equalling 3% of votes cast in the last Presidential election would be necessary and 3% of voters in at least 10 states would need to sign. The bill was aimed at statutory initiatives only. Constitutional amendments, declarations of war, and calling up the militia were specifically not eligible. The petition would then be certified by the Secretary of State and put on the first congressional election ballot. Congress could repeal the law by a 2/3 majority in both houses during the first two years after the approval, and after that length of time a plain majority could repeal it.

The Abourezk bill was pressed mainly by a small pressure group called Initiative America, founded in 1977 by Roger Telschow and John Forster, two young veterans of state initiative campaigns. Its prospects of immediate adoption by Congress were very slight, but a Gallup poll showed that 57% of the nation's adults favored it and only 21% opposed it, with the rest undecided. Some observers felt the proposal might eventually gain support from the same forces that were supporting such other extensions of the principles of direct democracy as the abolition of the electoral college and the institution of a national direct primary (Congressional Quarterly Weekly Report). Until that moment arrives, however, American experience with direct legislation will continue to take place entirely in the states and localities.

#### WHAT THE FUTURE HOLDS FOR CALIFORNIA

In California, the use of the initiative has gotten out of hand. California voters have sometimes been confronted with as many as 65 measures to decide in a single election (Houseman, p.145). Many initiatives are proposed by special interest groups, trying to get their concern passed. These groups aren't attempting to merge their ideas with the Constitution, or with the state's policies. Small, minority interests can often pass an initiative, since the majority is silent and apathetic.

Oregon is the runner-up in frequency of using the initiative and referendum. Until the 1980's, Oregon was having the voters choose more often than any other state including California. The rather infrequent use of the initiative in other states where it is allowed suggests that neither the hopes of its supporters nor the fears of its opponents are completely justified. In states where numerous initiated propositions are circulated, especially California, there is some evidence that the public has developed psychological resistance to initiatives. However, they may be useful as a safety valve allowing the public to express dissatisfaction with existing conditions. Probably the basic question in evaluating the merits of the initiative is whether this advantage is outweighed by the prospect of having to fight, in the mass media on a regular basis, other propositions that are ill-conceived or unfair although attractive on the surface.

There has been some speculation as to whether California will swing back towards decline of the initiative and referendum. This will not be happening in the next two decades at least. Californians may not be passionate about the initiative, but no one is willing to change it, especially at a time when the conventional wisdom portrays the legislature as being so ineffective. And that makes for a vicious cycle. Because so many of the initiatives passed by California voters in the past decade in some way restrict the leeway of elected officials--most obviously by imposing tax and spending limits--it

becomes harder for the legislature to act on or to evaluate competing budgetary demands in any reasonable form (Schrag, 1988).

These California voters are especially susceptible to the electronic and computerized campaign technologies that have been developed in the past decade and the profits that can be made through them. Whatever the cause, there is now a whole initiative culture, with its own technology and its own institutions, gradually replacing the institutions of representative democracy.

Hiram Johnson and his Progressives regarded the initiative as a way of wresting control from "the interests"--specifically the Southern Pacific Railroad-- and restoring it to the people. But when voters are asked to evaluate 25 or 30 separate and sometimes conflicting ballot measures, often on the basis of a 30-second television commercial, they are getting not more democracy but less.



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