

Direct democracy in the US

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The tyranny of the majority: The fourth branch of government has run amok in parts of America

AS 2009 draws to a close, the voter-initiative industry is already frantically busy. In two dozen states new propositions are being readied to go before voters in 2010. Soon “bounty hunters”, paid by the sponsors, will appear on the streets to gather signatures in order to place initiatives on ballots. In states such as California voters will probably have to consider more than a dozen next year.

The lofty term for these initiatives, along with referendums and recalls (most famously of Gray Davis, California’s then-governor, in 2003), is “direct democracy”. They play the biggest and most excessive role in California, where voters have directly amended the state’s constitution or statutes in matters big and small, from how to spend to how to tax, from regulating how fowl should be kept in coops to banning gays from marrying.

The latter two initiatives happened to pass on the same ballot in 2008. Thus “chickens gained valuable rights in California on the same day that gay men and lesbians lost them,” as Ronald George, the chief justice of California’s Supreme Court, remarked recently. The court had previously ruled gay marriage legal, but was obliged to uphold the voters’ wishes.

This odd pairing illustrates the problem that direct democracy poses today. First, by circumventing legislatures in the minutiae of governance (chicken coops, for instance), direct democracy overrules, and often undermines, representative democracy. Second, by letting majorities of those voting—who are often a minority of the state’s residents—circumscribe the rights of minorities (gays, in this case), direct democracy can threaten individual freedom.

Put differently, it is the “tyranny of the majority” that James Madison, a Founding Father, warned about. His reading of ancient history was that the direct democracy of Athens was erratic and short-lived, whereas republican Rome remained stable for much longer. He even worried about using the word “democracy” at all, lest citizens confuse its representative (ie, republican) form with its direct one. “Democracy never lasts long,” wrote John Adams, another Founding Father. Asked what government the federal constitution of 1787 had established, Benjamin Franklin responded: “A republic, if you can keep it.”

But republican governance, even with its competing branches of government and elected representatives, did not perform well as America expanded westward. In California, according to a famous account from 1896, there was “only one kind of politics and that was corrupt politics. It didn’t matter whether a man was a Republican or Democrat. The Southern Pacific Railroad controlled both parties.” Enraged, the Progressive movement grew and took a new look at direct democracy as it was practised

in Switzerland, where its use was—and is—sparing and effective (even if occasionally controversial, like last month’s vote to ban minarets).



In 1898 South Dakota became the first state to allow voter initiatives, and others followed, including California in 1911. For many years direct democracy worked as a safety valve, if and when legislatures proved corrupt or unresponsive. But starting with California’s infamous Proposition 13 of 1978, which not only capped property taxes but required (thanks to a vote by a simple majority of those voting) a supermajority of legislators for any future tax increase, direct democracy changed.

It became a fourth branch of government, an industry and a circus. In the 1980s and 1990s the number of ballot initiatives soared, as tycoons from Silicon Valley and Hollywood, or special interests such as public-sector unions, threw millions of dollars into campaigns, paying college students a dollar or more for each signature they collected, blanketing the airwaves with demagogic attack ads and pestering residents with robo-calls at suppertime. The initiatives became longer—the longest rambled on for 15,633 words—and, with double negatives and impenetrable legalese, less comprehensible.

Ironically enough, Southern Pacific, now itself just another interest group, bankrolled an initiative in 1990 to issue billions in bonds to support rail transport. Even elected representatives, such as Arnold Schwarzenegger, the governor of California, often make use of initiatives nowadays instead of working with the legislature. Mr George wonders whether the voter initiative has now “become the tool of the very types of special interests it was intended to control, and an impediment to the effective functioning of a true democratic process.”

The bringer of gridlock

Direct democracy in this form contributes to dysfunction. California currently has America’s worst budget problems, but other states with extensive direct democracy, such as its neighbours Arizona and Oregon (which has had more initiatives than even

California), are close behind. In Oregon it will be voters who decide, in January, for or against a tax increase to help plug the latest budget hole.

Those budget holes often result from the cumulative consequences of voter initiatives as much as from economic slowdown. Since the 1970s voters have tended to like initiatives that promise better schools, new hospitals or tougher prison terms, but they are oblivious to the costs involved. At the same time, they loathe taxes and in many states they have insisted, by voter initiative, that two-thirds majorities are needed to raise them.

Robert Stern, the president of the non-partisan Centre for Governmental Studies in Los Angeles (and a drafter of initiatives since the 1970s), believes that direct democracy cannot and should not be ditched wholesale. Despite everything, “most Californians have more confidence in the initiative process than in the legislative process,” he says. That is a result of increasing polarisation between the two big parties, which has led to blocked and unresponsive legislatures and so bred a yearning to circumvent them.

But Mr Stern, like Mr George, believes that the process must be improved and supports the idea of a constitutional convention in California for that purpose. There are far too many initiatives because the signature-collection process is trivially easy for those with money (though daunting for those without it). There must be clearer and more accessible information for voters. And in California the legislature should be allowed at least to amend all initiatives, which it currently cannot. Its citizens should remember that they have a republic, if they can keep it.