

## Direct Democracy: Constructive People Power or Weapon of Mass Destruction?

### Lessons from the American West

Direct democracy can seem at times like the troublesome, unloved child in the family of modern democratic tools. Political scientists teach that it has a valid role in democracies. Democracy promotion agencies like [International IDEA](#) create guides to its development. Studies of how to revitalize democracy, such as the [Power Inquiry](#), recommend its greater use. Yet many mainstream democracy reformers in both Europe and the US seem uncomfortable with it. Why is this so? A major reason may be California.

Press accounts of the American state of California often blame direct democracy for the state's impending insolvency and political paralysis. But is it really at fault? And, more importantly, does direct democracy necessarily lead to the kind of economic and political crises that California is now experiencing?

To find out, I joined a unique [study tour](#) organised by journalists [Joe Matthews](#) and [Bruno Kaufmann](#) to learn about direct democracy in the American states of California, Arizona and Oregon. We met with direct democracy proponents, critics, scholars, reformers, practitioners and consultants, from the libertarian right to the progressive left. In short, we were given a 360 degree tour of modern direct democracy in three of the American states that use it most. The truth about direct democracy, as it turns out, is much more complex, interesting and instructive than simplistic [press accounts](#) would lead one to believe.

### First a definition

[Direct democracy](#) is an umbrella term that encompasses a variety of tools whereby citizens decide on public policy themselves. Words used to describe specific direct democracy tools can be confusing. The same word can mean different things in different places. The three main direct democracy tools used in the American West are known there as the citizens' initiative, referendum and recall.

- The **citizens' initiative** enacts *new* legislation, either regular statutory law or a constitutional amendment.
- The **referendum** repeals an *existing* law.
- The **recall** removes *elected officials* before the end of their term.

All three are placed on the ballot by collecting signatures from registered voters equal to 5-12% of voters in the last gubernatorial election. If a majority of voters approve it during the next election, it

immediately becomes law. Depending on the state, initiatives and referendums are also known as "propositions" or "ballot measures".

State legislators can and do also refer new legislation to the ballot, particularly on politically controversial topics. Although also a form of direct democracy, this will not be discussed in this paper. Because the citizens' initiative is the most frequently used tool, it will be the focus.

## **A popular response to business capture of government**

Direct democracy in the American West was born at the turn of the last century in a political and economic climate surprisingly similar to that of today. Income inequality was high and business interests, especially big oil and railroad companies, virtually dictated policy through their control of elected officials. Economic depression was one result. In response, concerned citizens, often via labour and farm unions, rallied behind political reforms to restore political power to the people. Key amongst these were three direct democracy instruments inspired by [Switzerland](#): citizens' initiative, referendum and recall.

While "[Populists](#)" advocated the adoption of direct democracy throughout the US, strong established political parties squashed reforms in older American states. Direct democracy however took root and blossomed in young "frontier" states. Currently [27 American states](#) have some form of state-level direct democracy of which 24 have the citizens' initiative. Despite occasional efforts to create them, including the current [campaign for a national citizens' initiative](#), there are no federal (national) level direct democracy tools.

## **A vehicle for popular political dissatisfaction - from left to right**

Direct democracy tools are used typically at times when and on topics where legislators cannot or will not act. In the U.S., as well as in Europe, their use has thus risen and fallen in tandem with popular satisfaction with government: lowest in the tranquil 1950s and 1960s, highest since the turbulent 1970s.

The earliest initiatives in the American West were used to enact sweeping new laws such as minimum wage and women's suffrage, as well as for mundane regulations for dentists and grocers. In the 1930s, they were used (often unsuccessfully) to reduce poverty, including the failed California "[ham and eggs](#)" proposition for old age pensions. In the 1940s-1960s, as governments invested in public works and many citizens prospered, initiatives seemed unnecessary and were rarely used. Starting in the 1970s, mirroring declining trust in elected officials, citizens' initiatives have been used with increasing frequency for an ever-widening range of topics. They've taken on "hot button" ethical issues like the death penalty and same sex marriage. Special interests have used them to further their own ends -- e.g., Indian tribes to establish casinos, animal rights activists to ban trapping, companies to secure policies favourable to their financial interests. But the most controversial use of initiatives has been related to issues of taxation and government spending.

## **Budgeting and direct democracy: a potentially explosive mix**

Among democracy reformers, there is an ongoing debate as to whether the subjects that direct democracy instruments may treat should be limited. Those who oppose limits insist that ultimate power resides with the people, so they must be able to decide anything that impacts them, including

taxes. Those who support limits contend that some issues, particularly those with fiscal impact, are too complex for simple a "yes" or "no" vote and should be left to the legislature.

At first blush, the example of California would tend to support an outright ban on topics with fiscal impact. However, Oregon shows that, as long as the legislature has ultimate control of the budget, a ban is unnecessary. Arizona goes a step further to illustrate one way initiatives can be used responsibly for topics that impact budgets.

In 1978, California voters approved [proposition 13](#) to limit property taxes and require a 2/3 vote in the state legislature to enact new taxes. Worried about budget cuts, unions representing public employees such as schoolteachers retaliated with initiatives requiring a fixed percentage of the state budget go towards their work. Unable to obtain the 2/3 vote needed to raise new taxes, the state legislature resorted to bonds (loans) to fund state activities. The result has been budgetary chaos, near insolvency and an erosion of public services without "protective" initiatives.

In 1996, Oregon voters approved ballot [measure 47](#) which, like California's proposition 13, limited property taxes. With reduced revenues, public services suffered. However the Oregon state legislature was not handicapped like that of California and repaired much of the fiscal damage. But this was so complicated that it helped create a movement to limit direct democracy itself.

Arizona has taken a different approach. In 2004, it amended its initiative laws to include a PAYGO (pay as you go) provision. This means that initiatives that create a new government programme must also create a new revenue source to fund it. Critics claim that this violates the "one subject" rule for initiatives since voters are choosing a new programme and a funding source. However, so far PAYGO seems to work. For instance, in 2011 60% of Arizona voters approved an *increase* in sales taxes to fund public education. However, the total number of initiatives has declined and many now have no budgetary impact.

## Direct and indirect democracy must work together

Laws created by direct democracy typically have the same qualities as any other laws. Courts can declare them unconstitutional and legislatures amend them. This allows legislatures to fix mistakes in laws and mitigate negative consequences, as was done in Oregon following measure 47. It avoids the problem of the "tyranny of the mob" often cited by opponents of direct democracy.

In this regard, it is important to note that California's direct democracy is in a category all its own. Only in California is direct democracy outside the normal "checks and balances" of government. Citizens can repeal laws created by the legislature (by referendum) or recall elected officials. But the legislature cannot modify laws created by citizens. Only another citizens' initiative can. This peculiar rule has done more than anything else to wreck havoc with California's budget.

The citizen distrust of legislators that inspired California's draconian rules is not unfounded however. Sometimes legislatures do not honour the wishes of citizens and fail to implement laws created by citizen initiative. They also reverse laws that are actually very popular. In many states, this fear has led to an increasing use of the initiative to amend state constitutions rather than the initiative to

enact regular statutory law - because the former is much harder for legislators to repeal than the later.

One way to avoid these problems and encourage citizens and legislators to work together is via more [collaborative forms of direct democracy](#). For example, in nearby [Washington state](#) an initiative may be submitted first to the legislature. If not adopted into law, it goes directly to voters. The legislature may also put its own version of the initiative on the ballot. This is similar to what is done in [Switzerland](#) where initiatives are first debated by the federal council and the national parliament (which can propose a counter-proposal) before going to the people for a final vote.

## Don't touch our rights!

Direct democracy, where it exists, is extremely popular with citizens. It is seen as true "people power": a way for citizens to get laws they want when the legislature is unable to do so. Furthermore, it takes place where people live rather than in distant capitals.

Opinion polls show that citizens today are as distrustful of politicians as their turn-of-the century predecessors were and consequently loathe to relinquish the power direct democracy gives them. In California, for example, even with facts, expert input and time for deliberation, as in the 2011 ["What's Next California?"](#) deliberative poll, citizens still primarily blame politicians (not direct democracy) for their state's problems. They only accept minor reforms to the direct democracy laws, most notably enhanced transparency of campaign funding.

## Direct democracy mirrors surrounding political culture

In comparing direct democracy in different states (and countries) two things stand out. First, as noted above in regards to fiscal impacts, the design of laws governing direct democracy has a significant impact on their outcome. Second, direct democracy is a political tool like any other and so reflects a region's broader political culture. The differences between California, Oregon and Arizona clearly illustrate this point.

California's huge, exceptionally diverse population and historically confrontational political culture result in an "each man for himself" approach to direct democracy. Groups use these tools to advance their own narrow interests, often with no concern for the common good. This unwillingness to compromise, also present in the legislature, contributes to political paralysis.

Oregon's small homogenous population and dominance by one political party (Democrats) has resulted instead in a bitterly partisan approach to direct democracy. Unable to achieve their goals through the legislature, minority party (Republican) interests used direct democracy. Democrats retaliated with technical restrictions on the tools themselves, effectively stifling debate and thus weakening democracy.

Arizona, despite ethnic tensions between "Anglos" and "Hispanics" and pernicious political corruption, has a tradition of open political debate and a surprisingly lively direct democracy system. Direct democracy tools have been used successfully by both the political right and left. Its small population also allows grassroots campaigns to succeed, although big money increasingly drives

initiatives. Bipartisan reforms such as PAYGO and strong transparency laws for funding have actually strengthened the tools.

## **Political games - money, tactics and dirty tricks**

When foreigners look at direct democracy in America they often decry the blatant manipulation of public opinion, corrupting role of money and use of "dirty tricks". These critiques have merit. But it's important to note that they apply equally to indirect (representative) democracy. Election regulations and the design of direct democracy tools can however encourage or discourage these practices.

Money has become the determining factor in whether a signature-gathering effort to put an initiative, referendum or recall on the ballot is even begun, let alone if voters will approve it at election time. This is because signatures are almost always collected by paid workers. Professional marketing tactics then are used for many campaigns. One result is that topics tend to reflect the views and/or further the personal interests of wealthy funders. Furthermore, only topics that perform well in public opinion polls can attract funding.

Reforms of signature gathering systems have sadly tended to increase rather than decrease costs. Attempts to restrict campaign funding or spending, for both direct and indirect (representative) democracy, have been declared unconstitutional by courts. To make matters worse, there is no public funding for initiative campaigns as there is in some states for candidates to elected office. Where they exist, rules to improve transparency of funding sources have helped reduce corruption. However, funders can still hide their true identity with innocuous-sounding "front groups".

Direct democracy, like indirect (representative) democracy, is not immune to "dirty tricks". These include misleading advertising, confusing voters with multiple "lookalike" initiatives to defeat an opponent's initiative, placing initiatives in elections where turnout will be highest for its supporters and infiltrating and sabotaging opponents' campaigns. And of course, as some practices are outlawed, new ones arise.

Direct democracy tools are also used, quite legally, as tactics in broader political battles - e.g., to drive turnout for certain candidates in elections, to provoke a court ruling on the constitutionality of an issue, to distract opponents or deplete their resources. National conservative think-tanks have been especially adept at using state-level direct democracy tools strategically to further their causes nationwide.

## **Design determines costs. Costs determine the rest.**

Because direct democracy is so popular with citizens and its existence protected by state constitutions, battles to restrict it are typically fought in state legislatures and courts over "technical issues" - especially rules governing the signature-gathering process to get an initiative, referendum or recall on the ballot such as:

1. number of required signatures
2. time in which signatures must be collected

3. in what form signatures may be collected - paper or electronic (no state yet accepts electronic)
4. how signature gathers may be paid - per signature or per hour (per hour increases costs)
5. where signatures may be collected - what constitutes a "public space" (rapidly disappearing) and if geographic representativeness is required
6. how signatures are validated
7. punishment for violations of these laws

When direct democracy tools are unnecessarily restricted, the biggest victim is democracy itself. For example, in Oregon, when rules governing petitions were tightened, costs rose significantly. Many groups, such as consumer interest organisations, that used to regularly sponsor initiatives have been effectively "priced out" of direct democracy. Practically the only initiatives that can now make it to the ballot in Oregon are those favourable to "big money" interests.

## Direct democracy, data and deliberation

A common criticism of direct democracy, especially among proponents of [deliberative democracy](#), is that citizens are too poorly informed to make intelligent choices about public policy. They are thus vulnerable to manipulative or divisive messages.

Indeed, voters often have little or no information about the initiatives, referendums and recalls on which they vote. Nevertheless, historically they have tended to make more wise decisions than foolish ones. Initiatives that are clearly poorly conceived or frivolous are almost always rejected. Initiatives backed by excessively expensive campaigns often lose. Similarly, if there are too many initiatives on the ballot, voters tend to vote them all down. However, good initiatives have also been defeated by misinformation campaigns and other "dirty tricks".

Many states publish detailed [voter information guides](#) which typically provide the wording for an initiative, basic neutral analysis of its potential impact and statements from its supporters and opponents. Often these statements contain misleading or false information. Voters claim these guides are their main source of information on initiatives although no research exists on how they are actually used. Voter education groups such as the League of Women Voters also publish their own guides. Plus paid advertising can play an important information role, both positive and negative, in influencing voters.

In response to the problem of potentially poor voter information, in 2011, Oregon adopted the [Oregon Citizens' Initiative Review](#) (CIR) process. It uses the rigorous deliberation of a neutral [citizens' jury](#) to analyse an initiative and create a one-page summary of its strengths and weaknesses - then published in the voter's guide. [Scientific evaluation](#) of the CIR showed that voters who used this resource were more thoughtful in their voting than those who did not. Democracy reformers hope other states will follow [Oregon's example](#).

## Modern direct democracy clearly deserves a second look

Like many in the deliberative democracy field, I used to be a direct democracy sceptic. However I didn't realize how many different ways exist to design, regulate and use direct democracy instruments, each of which will result in different outcomes. California's direct democracy should in

no way be considered a classic example or model to follow: it is at once highly atypical and deeply flawed. As Arizona shows, when carefully designed, direct democracy can help keep democracy vibrant and relevant to citizens by providing a channel for issues the legislature ignores. Oregon demonstrates the potential of deliberative democracy to strengthen direct democracy as well as the dangers of overly restrictive regulations. These are just three states. There is even more to learn from studying direct democracy in other states and countries.

Direct democracy clearly deserves a second look. Although it has indeed on occasion caused mischief, this is no more inevitable for direct democracy than for indirect (representative) democracy. What can seem at times like a troublesome, unloved child may actually, once given the right environment, be a bright star in the democracy family.

To learn more about modern direct democracy in the American West and around the world:

- [Modern Direct Democracy in Switzerland and the American West](#)  
[Ballotpedia \(USA\)](#)
- Initiative and Referendum Institute (IRI): [Europe](#), [USA](#), [Asia](#)  
[Direct Democracy: The International IDEA Handbook](#)

*Janice Thomson, Involve EU Public Engagement Advisor, [janice@involve.org.uk](mailto:janice@involve.org.uk) (1.12.11)*