

Putting the State Back into State Government: The Constitution and the Budget

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INTRODUCTION

* As we near California's sesquicentennial, we find that the state faces a myriad of social and economic problems, ranging from riots, illegal immigration, and the economic upheaval caused by post Cold War military cutbacks, to the occasional devastating earthquake, droughts, and floods that threaten to plunge us into either chaos, bankruptcy, or both. Californians are placing unprecedented demands upon their government, unfortunately, it does not seem able to accommodate their needs.

Many Californians seem to think that they cannot hold their government accountable. I agree. However, I disagree with those who attribute this lack of accountability to a characteristic venality among the state's political officeholders. Instead, I see both the socio-economic ills of California, *and* the accountability problem as symptoms rather than causes of the way government works. The real causes lie in decades of incremental, piecemeal reforms that were intended to increase government accountability, but have had precisely the opposite effect. That is, measures such as Propositions 13, 4, 98, and 99 have constrained California government to the point where it is nearly impossible to respond to pressing economic, social, and political problems. We are at the point where the current constitution provides state government with almost no flexibility, few resources, and little chance to earn voter trust.

Paper prepared for a Conference on California Constitutional Reform, June 8 - 10, 1995, Berkeley, California. I thank Bruce Cain and Roger Noll for their insightful comments and Robert Schwartz and Mike Thies for their research assistance.

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Well meaning but shortsighted reforms have led to a government that is largely incapable of serving the citizens of California. Voters perceive government to be unaccountable, so they pass initiatives¹ to restrict its actions. This constrains government further, and prevents it from responding to the state's pressing demands, which angers voters, and provokes them to press for ever more stringent constraints on the range of government's action. The vicious spiral of government inaction and unaccountability is due to the fundamental inconsistency in California's constitution that separates the legislature from both the statutory and constitutional initiative process, and thus from accountability for state policymaking (Gerber 1995, Cain et al. 1995).

This is the sad irony of California politics. Reforms by the Progressives in the early part of this century, meant to disenfranchise the corrupt power of the political machines, have been captured, and, in turn, corrupted by modern political machines. The reason modern economic powers have been able to turn the process of direct democracy against the general welfare is due to two tragic errors in the reasoning of the Progressives.

The first of these errors is that the current initiative system allows special interests to set the popular agenda by proposing statutory and constitutional initiatives directly to the people. There is no limit to the power of these agenda-setting interest groups, nor is there a check on the authority of "the people" to change the constitution. The Progressives sowed the seeds for the ultimate demise of our constitution by rejecting the basic principle held by the Federalists (the previous generation of American constitutionalists): that all power corrupts, and thus all power must be checked and limited or it will lead to tyranny. We are now living with the results of the basic inconsistencies in the California Progressives' experiment with constitutional design. During the last 150 years, more than 800 constitutional amendments have been proposed and more than half have passed. The cumulative effect of the unchecked use of direct democracy is a 135-page document, full of contradictions and irrelevancies. Perhaps more importantly, it makes adjusting public policy to meet the changing needs of California's people nearly impossible due to innumerable constraints on social policy and proactive mandates for earmarked spending.

¹Initiatives can take two forms, statutory and constitutional. Statutory initiatives are direct legislation, while constitutional initiatives are amendments to the constitution itself. Unless otherwise stated, by initiative, I mean both types.

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The second consequence of the Progressives' reliance on direct democracy is that initiatives place statutory and constitutional caps and limits on spending, but leave untouched the incentives of elected representatives to control their own spending. A legislator will always have an incentive to bring the treasury home, but reliance on caps and guidelines gives them an incentive to work around spending limits. If we truly want fiscal responsibility, we need to change the incentive to bring the treasury home, not add more incentives to act irresponsibly. We can and must do better.

The changes I advocate in this paper relate to fiscal policy. The paper proceeds as follows. I begin by analyzing the role of the Federalists and the Progressives in constitutional design, contrast these principles with California's example, then turn to the more specific case of budgetary policymaking. I advocate a new constitutional process that eliminate the causes of California's constitutional contradictions, and in turn eliminate the symptoms that, if left unchecked, threaten to consume the state.

THE FEDERALISTS

The Federalists were concerned with, among other things, protecting the populace from temporary majorities running rampant over the rights of others. The prospect of tyranny of the majority led Mill, Madison, Montesquieu, and others to argue that certain freedoms must be inviolable and that popular sovereignty must be tempered—limited in some way—to protect basic human rights (Mill 1947, Madison 1982, Rawls 1971). They understood that people are self-interested, and if possible, will abuse the institutions of government for their own benefit, “measures are too often decided, not according to the rules of justice and the rights of the minority party, but by the superior force of an interested and overbearing majority” (Madison, *Federalist* 10). They saw that power corrupts and the only way to halt corruption is to limit the power any one branch of government holds. The key was to contrive the internal structure of government so that each branch of government would have the ability and the motive to check the excesses of the other.

The Federalist, however, saw little need for direct appeals to the people. The process to amend the constitution involves state legislatures but does not include the electorate directly. The Federalists were concerned about the ability of majorities to change the constitution and thereby to deprive members of a political minority of their rights or liberties. They also

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worried about the ability of citizens, who are virtuous but inattentive to politics, to make reasoned, passionate decisions concerning the structure of government and the rights of others, “a pure democracy . . . can admit of no cure for the mischiefs of faction” (Madison, *Federalist* 10). They believed the people need to be protected not only from their own government, but also from each other.

To ensure that those who held office in the U.S. had the incentive to promote the general welfare, the Federalists created a republican form of government. Under the design of this government, officeholders must seek reelection from those whom they serve. To ensure that the limits on government were actually binding (i.e., balanced), so that the legislature was, in fact, unable to abuse its power, the Federalists sought to give each branch of government a separate and different mode of representation, so that, in striving to earn their reelection to office, politicians would have an incentive to serve different constituencies with separate interests. If the personal fate of the individual in office is connected to the fate of the office itself, “ambition” would be made to “counteract ambition,” (Madison, *Federalist* 51) and the internal checks on state power would provide the necessary safeguards to ensure that the powerful new central government would indeed be limited by the constitution’s design.

The Federalists created a strong, but limited, central government, based upon certain republican principles. The Federalists argued that the diversity of interests in a republic as large as the American nation would be a natural barrier to the concentration of political power, “the variety of sects dispersed over the entire face of [the Confederacy] must secure the national councils against any danger from that source” (Madison, *Federalist* 10). The Federalists were well aware that there could emerge concentrations of economic power. They believed, however, that this concentration could not be so large and pervasive, across the many differing regions of the United States, so as to seize the reigns of government. Perhaps the Federalists overlooked the possibility of logrolling within Congress, where special interests could make bargains with each other, and whereby the few could seize power from the many, but nonetheless, with the benefit of hindsight, we can see that the Federalists were somewhat naive about this belief. Special interests have been quite successful at using public policy for private gain.

THE PROGRESSIVES

Coming to political prominence in California and elsewhere as the 19th century gave way to the 20th century, the Progressives faced a problem different than the one that animated the Federalists and sought an answer based on different experiences and different beliefs than those held by Hamilton, Jay, and Madison. The Progressives lived in a world in which political power had indeed been captured and perverted by private interests. The concentration of economic power that arose as a result of industrialization led to political dominance by large economic interests. In California it was the Southern Pacific Railroad, whose dominance of state politics led to a revolt by the middle class that culminated in Hiram Johnson's gubernatorial victory in 1910 (Mowry 1976).

The Progressives sought to break the concentration of political power no matter what its source, therefore, "party organizations were deliberately weakened by Progressive reformers during the first decade of the twentieth century on the theory . . . that parties lead naturally to corruption" (Reichley 1985, 178). They believed that the scientific administration of public policy could replace the arbitrary and capricious nature of administration under the political machines of the day. They sought to replace the cronyism and favoritism of machine politics with the truth and fairness of scientific standards (Mowry 1976, 137). The Progressives, therefore, disaggregated government into numerous independent and separately elected offices, forever eliminating the corruption of party machines.

The Progressives believed people to be intelligent, educated, and attentive to politics. They also believed that people are, at least to some extent, other regarding, and that the citizens of the California Republic shared the same core values. Thus, while the Progressives feared and loathed the misuse of power that accompanied machine politics, they saw little to fear from direct democracy. They believed the people have the wisdom and the virtue to control their own destiny directly.

Thus, the Progressives reworked the Federalist's model. The Progressives created a government wherein the people could directly make law and change the constitution. Furthermore, California Progressives, relying on the wisdom and virtue of the educated middle class whose actions are guided by an enlightened view of the general welfare, saw little potential for a tyranny of the majority. The ability of the people to make law and amend the constitution therefore was left unchecked, and the recall and referendums were expanded (Mowry 1976, 142). This reliance on direct democracy, as a panacea for bad public policy, can either be merged with or substituted for republicanism. In the former case, it has lead to an improve-

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ment in government, however in the latter case it has been an unparalleled failure.

The failure of the California Progressives began with their rejection of Federalist principles. First, they discounted the fear of a tyranny of the majority, which arose from their lack of understanding the strategy of initiative agenda formation. Initiatives do not bubble up from the desires of millions of individual voters. Rather, special interests, who are capable of writing initiatives and getting them on the ballot, set the agenda for policy formation in the state. The most pernicious aspect of the agenda setting ability of these special interests is that they are responsible to no one. In effect the Progressives substituted “corporate tyranny” for the tyranny of the majority. This takes the form of professional campaign organizations that collect the necessary signatures to put initiatives on the ballot, often without reference to the content of the legislation involved. Thus, the process by which policy is often made in California is neither republican nor democratic, and thus fails to meet the minimum standards of any acceptable democracy.

Sadly, the Progressives did not consider the consequences of unchecked direct democracy in a state dominated by campaign machines rather than the traditional political machines. It is difficult for the electorate to consider a large array of either statutory or constitutional initiatives at any one time. Because of this, it is difficult for the people to explicitly face the trade-offs among policies that arise whenever legislation is passed. As a result, it is extremely difficult for policymaking by initiative to actually promote the general welfare. This is especially true if the people are not as well informed as the Progressives believed them to be. It follows that the failings of direct democracy in the end limit the government’s ability to pursue the general welfare. Indeed, this is one of the central concerns of the California Constitution Revision Commission.

Ironically, the California Progressives also failed to realize that, if left unchecked, direct democracy is, itself, self limiting. Ultimately, the choices made at one point restrict not only the government, but also limit choices in the future. Laws are, by nature, self limiting, but initiatives are more restrictive than any other type of legislation for, in the California system, they can be amended or repealed only by another ballot initiative.

Second, the Progressives rejected the Federalists’ dependence on the structure of initiatives. The use of caps and limits to control spending has lead to cycles of obfuscation, where the treasury is divided in increasingly imaginative ways. When the voters place a restriction on spending in one

area, creative legislators are quick to move to another. The only escape from these cycles is to address the basic legislative incentive to spend as much of the taxpayer's money as possible.

California's radical experiment in direct democracy is flawed in four ways. First, because the use of the initiative is unchecked (Gerber 1995; Cain et al. 1995), the Progressives merely substituted a pernicious variant of the tyranny of the majority for the tyranny of the Southern Pacific Railroad. Second, the end of unchecked direct democracy in a republic is that the accountability of our elected officials is greatly reduced. Third, the separate nonpartisan election of many of California's offices implies that trade-offs among differing policy goals and coordination across policy issues will be difficult or impossible. Fourth, the end of unchecked direct democracy is that California government is now in a position where it can do nothing. The radical California experiment in Progressive government is grinding itself to an end, and it is time that we revise it.

MERGING FEDERALIST AND PROGRESSIVE VISIONS OF GOVERNMENT

In thinking about how to revise the structure of California government, we need to come to grips with what we now believe to be true about human nature and the nature of government. My experience watching politics leads me to believe that the Federalists' premises concerning human nature (that power corrupts) seem more realistic than do the Progressives' (that a citizen has the necessary information to protect his interests from corrupt powers). If this is true, we must limit and check all aspects of policymaking—whether it be a component of republican (Federalist) or democratic (Progressive) government. The Progressives' fantasy that the administration of policy could be made scientific and could thus be divorced from politics, needs to be replaced with a more realistic view of the political forces that surround policymaking. The experience of the Progressives with the concentration of political and economic power, however, makes the Federalists' argument that power could not be concentrated in a large republic seem a bit naive as well. Having sketched the outline of my beliefs, how do I recommend we redesign our state constitution, and in particular the institutions by which the budget is made?

To be consistent with the Federalists' beliefs, we want to design a form of government that is, in its basic components, republican. We want a republican government that is self limiting, but that is capable of promoting

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the general welfare and securing the blessings of liberty for its people. If we also believe, as did the Progressives, that concentrated power poses a threat to the people of the state of California, we need to design a form of government that allows the people to check directly the actions of government, and, when necessary, to promote the general welfare themselves. Thus, there is a place for the initiative and referendums in a government consistent with both these sets of beliefs. The proper role of direct democracy in such a government, however, is more limited than has been the case in California.

If we are to return California government to a form of limited republican government consistent with the Federalist's reasoning and premises, we need to undo many of the most radical changes that have made modern California government unaccountable. Accountability is a necessary condition to ensure that republican government produces policies that enhance the general welfare. Only if the representatives of the people share an intimate sympathy with the people will republican government enact policies to advance the public good.

We know that neither the Progressives nor the Federalists effected a perfect government. We can either point to where they went wrong and make recriminations, or we can learn from their mistakes. The Federalists were unable to anticipate the concentration of power in the hands of special interests, and the Progressives were blinded by short-sighted benevolence. If we maintain a commitment to representative government and a system of checks and balances, while at the same time synthesizing the precepts of direct democracy as a check against powerful elites, we can create an effective, responsible, and accountable government. How it is we can accomplish this is the topic to which I now turn.

TOWARDS A NEW ACCOUNTABILITY

Why have Californians believed so fervently and for so long that their government is unaccountable? It is this belief that drove the public to modify the legislative and electoral processes almost 40 times each, and to place restrictions on fiscal policy more than 150 times in the last 115 years. To better design governmental institutions we must first decide what is necessary to make them accountable. Two requirements can be identified: first, the people must be able to identify who is responsible for policymaking, and second, they must have the means to discipline those decision makers who are responsible for the outcomes of government

policy. In other words, they must first know who to credit or blame for the policy emanating from the statehouse, and second, the people must have a check on government whether through the courts, the ballot box, or through direct intervention in the policymaking process.

In meeting these two requirements, I maintain that direct lines of accountability are the clearest and easiest for an inattentive public to comprehend. Thus, we need to reform California government so that policymaking authority is centralized. Centralizing policymaking authority, both at the state and local levels, will allow the people to hold their elected officials directly accountable for policy outcomes. I turn now to a discussion of four reforms that would increase government accountability in California.

THE FRAGMENTATION OF ACCOUNTABILITY: THE WHOLE IS LESS THAN THE SUM OF ITS PARTS

A necessary condition for accountability is the existence of a connection between policy emanating from the statehouse and ballots cast in November. By expanding the number of elected offices and by expanding the use of the initiative (both statutory and constitutional), Californians have greatly expanded their ability to intervene directly in the policymaking process. A consequence of this expansion in the avenues of direct voter participation, however, is that the people's ability to identify who is responsible for policymaking has declined commensurately. Well-meaning reforms, intended initially to break the power of local political machines, have had the perverse effect of destroying the accountability of government by making it all but impossible to figure out who is responsible for what aspects of public policy.

There was, of course, a good and earnest reason for separating partisan politics from local offices and decentralizing the state government. The downside of these reforms is that the costs and activities of government are now separated. An important consequence of this separation of powers is that the state legislature and the governor have created programs whose growth rates are determined in a manner divorced from growth rates in general revenues.² A second consequence is that local authorities spend

²A related problem, federally mandated programs, and the state's implementation of them, also tend to grow without reference to the ups and downs of the state's tax receipts. There is very little that can be done with respect to this problem by

money they do not raise, and the state raises money that it cannot spend. Both of these outcomes disrupt the connection between the people and their government officials.³

In order to increase both accountability and responsibility in government, we must reduce the number of both elected and appointed government offices. Centralized political authority provides ample incentive for legislators to act in the interest of their constituents by increasing their identifiability and decreasing their opportunity to blame others for their decisions. Since Californians are already protected from despotism by the federal constitution, and since the current system encourages irresponsibility and a lack of accountability, centralizing state authority has much to recommend it.

THE DISJUNCTION OF ACCOUNTABILITY AND POLICYMAKING

We must also establish a link between taxation and expenditures. Local governments must either do less or be responsible for more of their revenue. Particularistic spending or revenue-raising authorities should be eliminated. We must make clear the division of labor between the state, city, and county governments. Accountability can only be achieved if the electorate can recognize how, and on what level, decisions are made. Once politicians are

restructuring the state constitution. This is not a new problem; it is not even new to California, nor does it seem likely to go away.

³One of the most important contributions of the Progressives was eliminating patronage from state offices. They did this by decentralizing government and making many positions nonpartisan elected offices. While the initial effect was a more responsible government, eliminating party cues from the electoral process has further separated electors from their representatives. Party identification is a simple, clear cue that most people rely on to aid their decisions (Campbell et al. 1980). By eliminating party identification from the electoral process, the Progressives denied voters the only useful information most of them have.

Second, the effect of eliminating party competition from most offices is that there is no collective responsibility for the activities of government. If these offices were partisan, then the parties would have an incentive to monitor and coordinate the activities of these officials. As it is, a smorgasbord of individually elected “free agents” have no incentive to work in the interests of their constituents, to say nothing of working together in that pursuit.

held accountable for their actions, the budget problem can be properly addressed.

HUMAN NATURE: THE IMPULSE TO SPEND OTHER PEOPLE'S MONEY

Many of the reforms passed over the course of this century have sought to limit the mischief caused by human nature. Californians realized long ago that people prefer more (of good things) to less, and they prefer to pay later, if at all, to paying now. People are especially profligate when spending someone else's money. This problem is ubiquitous to all human endeavors. When the owners of a firm hire a manager, the manager will be more willful when spending the stockholders' money than when spending his or her own money. The same is true, of course, of our elected representatives. They will be less thrifty when spending the state's money, for their political gain, than they will be if they are spending their own resources. In response to this realization, Californians put into place nearly 150 restrictions on the government's ability to spend, tax, and borrow. At present, there are at least 170 sections in the various articles of the California Constitution that affect government budget policy. Many of these provisions contradict others. Further, few address the real issue: human nature itself.

While it is true that Proposition 4 (codified as Article 13B) sought to limit the mischief of profligacy, it also limited the satisfaction of other democratic ideals. Article 13B established an appropriations limit, based on the 1978-79 budget. Increases in the appropriations limit were to be adjusted for inflation and population growth. Under Article 13B, half of all revenues in excess of this limit were to be returned to the people within two years in the form of lower taxes. Article 13B thus also set a limit on the size of the tax increase that the government may impose in any one year.⁴

The problem with Article 13B is that while it constrains certain potential consequences of profligacy, it does not directly address the causes, for it does little to change legislators' incentives. Presently, this and other

⁴Proposition 4 was later amended, weakening many of these restrictions, demonstrating how difficult caps and limits are to enforce. There were several other restrictions on the ability of the state government to raise revenue as well. Article 13A (passed as Proposition 13 in 1978) restricts the ability of state and local governments to tax real and personal property. Article 13, Section 3 enshrines in the constitution a long list of tax exemptions—further reducing the choices available.

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constitutional provisions, in concert with constitutionally earmarked spending (such as Proposition 98) and strict constitutional limitations on the types and levels of taxes that may be imposed (such as Proposition 13), limit options and thus make decision making by representatives or by voters more difficult. This in turn creates the downward spiral of government accountability, unchecked spending, and direct constitutional amendments. Legislators need incentives, rather than guidelines, to control their own spending, as caps only lead to cycles of obfuscation (Ellwood and Sprague 1995, Kiewiet 1995), where creative accounting can be used to circumvent spending limits as soon as they are in place. The solution to the basic problem of human nature lies within the structure of these incentives (as I shall argue, by tying outcomes of the budget process directly to the electoral fates of government officials, they will have real incentives to act responsibly).

INCREASING ACCOUNTABILITY

In every republican system of government there is a trade-off between increasing the accountability of elected officials and limiting the ability of these same officials to exercise the powers delegated them by the polity. The more confining the limitations, the less responsible they are for the outcomes of government. Beyond making the lines of accountability as direct as possible, as just discussed, we must also choose the limitations so that they retard if not eliminate those governmental actions we most fear, but at the same time allow the government to do those things that we most desire (as long as these things are not mutually exclusive) and for which we hold our elected leaders responsible.⁵

To bring accountability to California government, the existing bicameral state legislature should be rendered effectively unicameral for the purposes of budgetary policymaking. That is, for most policy, we retain a two house legislature, where legislation sent to the governor must be approved by both houses. For budgetary policy, however, legislation that determines spending for authorized state programs, sets tax rates, or borrows money, the assembly alone would be responsible. Moreover, the

⁵I will assume for present purposes that there will remain in California an elected, bicameral legislature, and a separately elected governor. Of course, the discussion that follows can be revised easily to work with proposals to eliminate one house of the legislature.

governor's line-item veto over budgetary matters should be replaced with a simple package veto.

Unicameral legislative sovereignty on the budget is the norm around the world—even otherwise bicameral legislatures such as the Japanese Diet and the German Bundestag give all budgetary authority to the lower house alone (Cain and Persily 1995; Brady and Gaines 1995). Bicameralism, especially when augmented by divided government, is often associated with higher budget deficits. If a second chamber and a separately elected executive must also agree to any eventual budget, then budgets will be more difficult to pass, prone to logrolling, and less responsive. A package veto will not affect the governor's ability to check the creation of new programs, but it will help shift the balance of legislative accountability to those who actually make the decisions.

At the same time we need to amend the legislative rules by which budgets are passed. Under the current system all revenue and appropriations bills must pass both chambers of the legislature with a two-thirds majority (Article 13A, Section 3). The practical implication of this is that, because a single political party rarely, if ever, controls two-thirds of the seats in both chambers of the legislature, all spending and revenue bills require compromise between the two parties. While it might appear that compromise between the two parties could lead to policies that reflect the will of a larger portion of the populace, it is not a very likely outcome. What is most likely is that in some cases, the two parties' stands will be mutually exclusive, and deadlock will prevail. In other cases, such as with the budget, compromise takes the form of bargaining and logrolling, where funding is provided to everyone's favorite programs. Both insidious cases, gridlock and irresponsibility, can be observed much more frequently in California than mature compromise.

We should thus change the legislative process to a simple majority requirement and the budgetary process should run for the legislature's complete tenure in office. The majority party in the assembly will then be responsible for the budget, and can be judged by their performance in the subsequent elections. Finger pointing at the other chamber, intransigent bureaucrats, or the minority party will no longer be credible. One party will control a majority of the only chamber that matters, so it will be relatively simple for voters to attribute credit or blame for budgetary policy at the only time it matters, election day.

Two additional constitutional provisions serve merely to destroy accountability without providing any useful checks on government

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authority and should thus be eliminated. First, while the current constitution requires that the governor submit a balanced budget, the state need not enact one. The only requirement is that the estimates for spending equal the estimate for revenues. These estimates are highly sensitive. The spending estimates are always underreported while revenue estimates are inflated, and they are easily manipulated by accounting tricks. Last, of course, there is no practical means for enforcing the balanced budget provisions in the constitution. The details of the budget process should be left to legislation.

Second, the provisions of Proposition 140 that limit expenditures for legislative staffs do not serve the cause of democracy or republicanism. Rather they merely increase the legislature's reliance on interest groups and other outside experts. If the general will can be served better by allowing the legislature to determine the size of their staff, the restriction should be removed. Legislatures need information in order to assess the outcomes of their actions. If they cannot provide it themselves, they will be forced to rely on lobbyists and special interests to provide them with information that serves neither the legislature's nor the public's best interests.

These recommendations will enhance the ability of Californians to hold their government accountable for its actions. This will lead to an increased satisfaction among voters with the government and will lead to improved, more responsive policymaking.

THE ROLE OF DIRECT DEMOCRACY⁶

The Referendum

While I have argued that some of the internal checks on representative government should be eliminated, I also believe that external checks, through the referendum process, should be expanded. In a very real sense, the people should be asked to approve their government's decisions

⁶Direct democracy can take the form of a referendum that is proposed by the legislature or an initiative that is proposed by private citizens.

directly. Referendums on such matters as bond issues are built into the current California Constitution, and more categories of legislative policymaking should be subject to the veto of the people.

How might this work? The legislature will be asked to enact a budget for every biennium. The legislature will be subject to a variety of constitutional limitations with regard to the contents of the budget. Spending, tax, and borrowing ceilings may be imposed on the budget as passed by the legislature and signed by the governor. The legislature, however, may find it necessary or expedient to propose a budget that violates one or more of these constitutional limitations. The legislature would then be required to take the issue to the people and seek a waiver, through a referendum, for the constitutional violation. The legislature would offer the people a choice between two budgets, one in compliance with all constitutional proscriptions and one that requires a waiver. The referendum can be stated in such a way as to explain the differences between the two budgets and then to ask the people to approve the legislature's work.⁷ In this way, the people retain their ability to check legislative action, but, importantly, the legislature is the only player in the budgetary game, other than the negative check offered by the electorate.

While it is true that such limitations will reduce accountability, as with any trade-off there is a corresponding gain. The gain takes four forms. First, the people, through referendums, serve to check the excesses of government. This is common in many places including most states and several countries. Second, it helps to give the members of the legislature an intimate sympathy with the people of the state. Legislators must keep close to the people to know what sorts of referendums they will accept. Third, the fact that the legislature must go to the people to seek a waiver of a constitutional limitation implies that the people will be better informed with respect to their legislature's activities and will be better able to tie policy outcomes to their electoral decisions. This will work especially well if the referendums are voted on at the same time as legislative elections. It is in this way that incentives to act responsibly can be bound to government officials. Finally, the government, with the consent of the people, would have the flexibility to waive constitutional limitations that, at the time, are

⁷The people also have an option to reject both budgets, in which case the reversionary policy can be a current services budget, where all necessary programs are funded at the level of the previous balanced budget until the legislature's proposal can meet with the approval of the voters.

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doing more harm than good. Such a system would provide the legislature with the flexibility to respond to fiscal crises, as long as a majority of the voters believe the remedy to be better than the disease. Not only does the unicameral nature of the legislative decision make it easy for voters to know who is responsible for the policies being proposed (Brady and Gaines 1995; Cain and Persily 1995), but the referendum requirement allows voters to become informed about the legislature's actions.

In choosing the outlines of these constitutional budgetary proscriptions, it is important to keep in mind what the trade-offs are: each limitation comes with an associated loss of accountability. So which limitations are worth the loss? General limitations on the actions of government in the fiscal arena, such as tax, spending, and debt ceilings are very popular. Without these limitations the legislature could (and we might expect they would) make decisions contrary to the public will, benefiting narrow interests at the expense of the public as a whole.

To make the government more accountable and responsive when we impose budget ceilings (e.g., prohibiting borrowing of any kind, by any office of the state, without voter approval), we must also make sure they are simple, straightforward, and consistent. For example, the tax and spending ceilings could simply be a requirement that growth in revenues and expenditures (from all sources created by the state) are limited to either the rate of inflation or growth in population, whichever is greater. The tax and spending restrictions now in the constitution are so complicated that even the most diligent voter would be unable to master every detail. If we are to make such constraints binding, the people need to quickly understand when these constraints have been violated. We need to allow the state legislature to waive the budget ceilings with explicit voter approval. Finally, to make the planning of such budget referendums feasible, the process needs to be stretched, creating a two-year fiscal cycle.

The benefits from this system are apparent. No longer will one generation's reforms hamper another generation's growth. Government can and must change as the state changes. No temporary majority should have the power to alter the constitution without regard to the consequences. This system forces the electorate to take responsibility for their own decisions and allows them to assign blame for the decisions of their legislators. The flexibility and responsiveness of a unicameral, biennial budgetary process will restore the accountability that California has lacked for so long.

Several questions are raised by this proposal. First, would this lead to a geometric rise in the number of times voters would have to trek to the

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ballot box? The answer would appear to be no. In the normal course of events, the legislature would need only to exceed the growth limits imposed by the constitution occasionally, and the biennial budget cycle should further reduce the opportunity for the legislature to ask for more money. Second, would such a system allow a future legislature to effect large changes in the size of government if that was its mandate? Yes, the legislature would simply have to do as it promised in the election, then submit the bottom line of the plan for voter approval. The democratic ideal is well served by allowing people to change their minds.

Third, and most important, would this system solve the conflicts inherent in human nature? I believe it at least addresses these problems directly, and limits the mischief that these problems may bring about. The streamlined (effectively unicameral) legislative process will make decision making more efficient and legislators more accountable by altering their incentives. These features, along with the voter check on budgetary measures, will increase the accountability of government and force decision makers to face the trade-offs engendered by their policy decisions.

THE INITIATIVE

In *Federalist 49*, James Madison argues that “a constitutional road to the decision of the people ought to be marked out and kept open for certain . . . occasions. But there appear to be insuperable objections against the proposed recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits.” In other words, the people should retain some check on representative government other than elections, but that check should not devolve into an ubiquitous use of direct democracy. If we are to take advantage of the efficiency and accountability of a unicameral cabinet government for budgetary policy (Cain and Persily 1995; Brady and Gaines 1995), we should restrict the application of direct popular sovereignty.⁸ Further, if we believe that all

⁸There is precedent in California for limiting the ability of the voters to add nondiscretionary spending to the state’s obligations. Article 16, Section 2—added in 1962—reads:

No amendment to this Constitution which provides for the preparation, issuance and sale of bonds of the State of California shall hereafter be submitted to the electors, nor shall any such amendment to the Constitution hereafter submitted to or approved by the electors become

power corrupts those who exercise it, then we must place checks on the exercise of all power, including the power of the people of the state of California to make policy and to amend the constitution.

California's system of direct democracy is much less restrictive than any other state's in the union, and the consequences of this experiment in unrestricted direct democracy are now painfully evident. Twenty-six states have either the initiative, the referendum, or both (Gerber 1995, Cain et al. 1995), but none allow legislation without the participation of the legislature. The idea behind the initiative in other states is that the people can spur the legislature into action, but they cannot altogether replace republican government with direct democracy. Perhaps a small change is all that is needed.

What limits should be imposed on budgetary policymaking by direct legislation? First, and most important, the legislature should be given the ability to check any budgetary initiative (any statutory or constitutional initiative with a fiscal impact) before it reaches the ballot. I recommend therefore that initiative proposers first submit their drafts to the legislature for approval. The legislator then has the opportunity to either accept the proposal, reject it, or do nothing. If the legislature decides not to consider the proposal, then the initiative's proposers must convince five percent of the state's registered voters to sign a petition to place the measure on the ballot (which is the current system). If the legislature approves of the measure by resolution, then it is placed on the ballot as a legislative initiative.⁹ Again, this is feasible under the current system. The real change comes if the legislature rejects the initiative, which would then necessitate the signatures of 15 percent of the state's registered voters to place it on the ballot. While this would limit the ability of initiative machines to manipulate the initiative process, it would not prohibit the people from passing statutory or constitutional initiatives to correct a corrupt legislature. More important, it would put California in line with all other states and foreign governments, where the legislature has the authority to check the

effective for any purpose.

In other words, any bond issues decided upon by referendum may only be statutory, not constitutional.

⁹The approved initiative can, of course, be an amended version of the initiative as originally proposed. In this case the initiative's supporters can ask for a separate resolution approving or disapproving their unamended initiative proposal.

excesses of direct democracy, and make a tyranny of the majority, tyranny of initiative organizations, and corporate tyranny less likely.

Some would argue that this proposal puts an insurmountable barrier between the people and the initiative process. Thus, these critics would argue only well-heeled initiative organizations would get their initiatives to the ballot, for only they could afford “buying” the additional signatures needed to place a rejected initiative before the people. Such a criticism is flatly false. It only makes the barrier higher for initiative proposals that the professional policymakers in the legislature feel are unwarranted. It lowers the barrier for both statutory and constitutional initiatives that the legislature approves. The recommendation to put a prior check on the initiative proposals is borrowed from the Federalist premise that all government action should be subject to a system of checks and balances. The internal checks created by the Federalists make it difficult for the average constituent to get their favored policies enacted (if the legislature is accountable to the people, then the interests of the average constituents should be represented by the legislature itself), and thus only the well-heeled can afford to lobby the various divisions of government to have their favored policies become law. In response I would argue that the proposed process is not only better than the current system, unchecked direct democracy, but that the gain in efficiency and responsibility of this system can hurt only the corporate interests that dominate the process today.¹⁰

While checking the power of the initiative will go quite far to correcting the defects of our current system, problems will still remain. It is likely, for example, that voters will not face the trade-offs that their decisions involve. They will vote to spend now and pay later. Government spending must eventually be paid for, either through higher taxes or—if the public debt is never paid off—in lower income growth. Once either a constitutional or statutory initiative is passed, these trade-offs are left to state legislators, who must then find ways to pay for all of the spending (or tax cuts) that the voters mandate. Unfortunately, as in California today, the legislature may not be in a constitutional or political position to do so. There may be constitutional rules that make certain necessary decisions impossible.

¹⁰Other checks on the initiative are possible. For instance, many states allow the legislature, with certain limitations, to amend enacted initiatives. The danger here is that the initiative, then, cannot serve as a check on legislative authority. The initiative serves only to partly set the legislative agenda.

Putting the State Back into State Government

Trade-offs may not be feasible, and certain options may not even be desirable.

Removing restraints on legislators is only half of the solution. Voters must be accountable for their decisions as well. If we are to keep the initiative (as opposed to the referendum), then all direct legislation could be “pay-as-you-go” in regards to budgetary matters. All tax reductions would have to be accompanied by commensurate spending cuts, and all new spending must be accompanied by new revenues.

For statutory and constitutional initiatives concerning fiscal matters, we ought to impose sunset provisions. Each initiative will have a renewal requirement every four years. This will allow voters to examine a decision, once they have seen some of the trade-offs it entails. There is precedent for such “sunset provisions” in the California Constitution—Article 13B, Section 4 allows “the electors” to establish or change appropriations limits for a maximum of four years at a time. In all other states, there are provisions that resemble the sunset provision for legislative amendment of initiatives (Gerber 1995, Cain et al. 1995). Whereas a sunset provision means that an initiative only stands for four years unless the people renew their commitment to it, the temporary restriction against legislative amendment of initiatives means that the initiative stands only for two or four years unless the legislature refrains from changing it.

CONCLUSION

The current dilemma in California politics is that the more voters try to restore accountability to their government, the less freedom legislators have. I see the problem as twofold: we must restore accountability to government, and we must ensure that this accountability remains. This is impossible under the current constitutional framework. In order to reach the heart of the inconsistencies engendered by decades of incremental reform, we must recreate the framework. Armed with a new understanding of constitutional principles from the Federalists and the Progressives, we can create a better government.

This government can be limited in any fashion the voters desire, but not beyond the boundaries of reason. The electorate can work as a check against the legislature, and the legislature can act as a check against the electorate. Thus we can benefit from the experience of the Progressives who saw direct democracy as the only method to break the corruption of political machines,

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along with the wisdom of the Federalists who realized that all civic power must be limited and checked. By taking the lessons of these two groups and directly addressing the dangers of human nature, we can synthesize a new state, an accountable state, a state where legislators act in the best interests of the people, and the people act in their own best interests as well.

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