

Initiative, Referendum, and Recall: “Direct Democracy”

While the United States of America was founded upon a federal republican form of government in which laws are passed through representative democracy, the original distrust of the common people deciding both their leaders and in some states even their own laws has subsided. Originally in the United States there was no direct election of the President nor direct election of US Senators. Since then the 12th and 17th amendments to the US Constitution have respectively expanded the power of the voters to select both their President and their Senators, albeit one's vote for President is still an indirect one due to the Electoral College.¹ In addition, several states have enacted several other measures that have increased the power of the people: the initiative, the referendum, and the recall.

A voter Initiative is a piece of legislation proposed by any citizen that is circulated through a petition phase to qualify for the ballot. If it receives a statutory minimum number of valid signatures it qualifies for the ballot and is then voted for by the electorate. Twenty four US States allow state-wide initiatives.

The referendum is a petition from citizens to seek an election to put legislation that has passed the executive and legislature up to a vote of the citizenry. The referendum provides a form of citizen veto for legislation. Sometimes even the referendum causes politicians to reverse course of legislation. In California the referendum process was used to qualify a referendum on SB60, a piece of legislation that would have extended drivers licenses to illegal immigrants. The legislature quickly responded by repealing the unpopular legislation instead of defending it in an spring election the following year.

Perhaps amongst the most controversial form of popular democracy is the recall. The recall is a process by which the people seek to remove a elected official from office. While it is commonly used in some municipalities, it has only been used successfully against a Governor twice, against Lynn Frazier in 1921² and against California Governor Gray Davis in 2003³. The exact details of state recall statutes vary, but it is amongst the least popular of the three different forms of direct democracy. Only 18 states allow for the recall of state officials.

None of these forms of direct democracy exists in the US federal constitution although popular opinion polls in California show that there is at least some interest in expanding the Initiative process to the federal level. There are several countries that have at least some form of direct democracy. A referendum or other type of plebiscite process exists in many countries including Australia, Canada, Ireland, Italy, Sweden, Switzerland, and the United Kingdom amongst others. While there are many nation-states with direct democracy provisions few rival the popularity of direct democracy in Switzerland. The Swiss were an early adopter of direct democracy by adding the referendum process to their Constitution in 1847 and the initiative process in 1891. Switzerland has historically had amongst the most commonly used direct democracy system in the world. Such controversial issues as membership in the United Nations to Medical Marijuana have been determined by the initiative process. The use of direct democracy is so commonplace that some have called Switzerland a semi-direct democracy.⁴

1 See wikipedia for description http://en.wikipedia.org/wiki/U.S._Electoral_College

2 http://en.wikipedia.org/wiki/Lynn_Frazier

3 http://en.wikipedia.org/wiki/Gray_Davis; http://en.wikipedia.org/wiki/2003_California_recall

4 <http://en.wikipedia.org/wiki/Switzerland#Politics>

Needless to say the initiative process has allowed voters to implement some ideas years before the political establishment was willing to adopt such measures.

Criticisms of Direct Democracy and responses to those criticisms

Clearly while direct democracy sounds good in practice there are criticisms, some of which have at least some criticisms. Amongst the most popular criticisms are that they inundate voters with an excessive number of choices, paid signature collecting, the excessive use of special interest groups of the initiative process, and the concern that voters are not qualified to govern.

A common criticism particularly in California is that voters are inundated with an excessive number of voter initiatives. On the November 2004 ballot California had 16 ballot initiatives, which may sound like a lot except for the historical average is 18!⁵ There is at least some anecdotal evidence that some people are overwhelmed by these long ballots and don't vote for this reason albeit some researchers not surprisingly have found the opposite to be the case.⁶ In a primary election in August 2004 in Missouri 39 thousand more voters voted for an anti-gay marriage initiative than for governor and 137 thousand more than voted for the US Senate race. One can reasonably assume that these voters would not have shown up to the polls had they not had the ability to vote for or against this controversial measure.

Another major criticism is that most signature collectors for ballot initiatives are circulated by individuals whom are paid for collecting signatures often via a bounty per signature. There is at least anecdotal evidence that some petition collectors lie and even deceive signatories in the pursuit of money. The LA Times in a July 2003 article went so far as to call signature collectors as "mercenaries." The obvious retort to supporters of indirect democracy is that politicians use paid campaign staff to sometimes deceive the public into voting in favor of them. Clearly eliminating direct democracy wouldn't eliminate half-truths or outright lying from politics. The state of Oregon instituted a ban against petition collectors getting paid by the signature in 2002. The arguments for and against the initiative are available for all interested in the arguments.⁷

There has been also criticism particularly in California that the initiative process favors conservatives. The most well known initiative in California history, Proposition 13 (1978), which lowered property taxes, Proposition 187 (1994), which would have limited illegal aliens access to state services, and Proposition 209 (1996), which banned racial preferences, were all backed by political conservatives, but California's history isn't without support for liberal causes albeit they are less frequent. Proposition 98 (1988), for example has protected K-12 funding from receiving less than about 40%. Proposition 39 (2000), reduced the supermajority requirement for school bonds from two thirds to merely 55%. There have been several different tax proposals that have been instituted through the initiative process that would have never passed in California's legislature which requires a 2/3s supermajority to increase taxes. One might accurately point out that until about 1998 when Gray Davis was elected to this first term that California was a

5 [http://www.iandrinstitute.org/BW%202004-4%20\(Cal%20ballot\).pdf](http://www.iandrinstitute.org/BW%202004-4%20(Cal%20ballot).pdf)

6 <http://www.clas.ufl.edu/users/dasmith/APR%202005.pdf>

7 Arguments in Favor: <http://www.sos.state.or.us/elections/nov52002/guide/measures/m26fav.htm>
Arguments in Opposition: <http://www.sos.state.or.us/elections/nov52002/guide/measures/m26opp.htm>

very Republican dominated state and hence it isn't very surprisingly that the state has leaned to the right on ballot measures. Even today one might easily argue that California despite its' Democratic majority in the state legislature is more conservative than the state legislature, but that is another topic.

There is also the criticism that the initiative process is dominated by special interests. Liberals have particularly argued that conservative initiatives are out using “mercenaries” when ironically liberal interests have qualified numerous ballot initiatives onto the ballot using the exact same “mercenaries.” While some individuals have attempted to bankroll initiatives such as venture capitalist Timothy Draper in California who in 2000 attempted to “buy” a voucher initiative into law with over \$20 Million dollars of his own money voters aren't don't always get fooled into passing special interest initiatives that have little backing of the vox populi. One could make it harder to qualify initiatives, but in all likelihood in order to eliminate special interests from the ballot one would also inadvertently eliminate grassroots efforts to qualify initiatives onto the ballot. In addition, one can note it isn't as though representative democracy isn't without special interests. In California, racial preferences would likely still exist if not for the initiative process. Liberal special interests, which apparently don't speak for the majority of Californians have the ear of California's Legislature, would never approve of such an initiative, but they would have the power to block any legislative initiative that would have done the same thing as Proposition 209.

Finally, there is the criticism that voters aren't intelligent enough to overcome the arguments that the proponents of sometimes “bad” initiatives. Ironically, liberals seem to be more likely to make this critique although some elitists tend to think that average citizens aren't bright enough to vote on such complex issues. While there are some issues that are better left to the legislature that vast majority of laws are still created at the legislature not at the ballot box. One can make a even more compelling case that voters can easily be fooled by politicians or that politicians can do unexpected things. Provided an intuitive is fairly simple voters are less likely to be surprised in how it is implemented.

Controversies with signature collecting

Sometimes petition collectors get intimidated for collecting controversial initiatives. Sometimes it is as harmless as being called a “racist,” but sometimes it raises to the level of violence. One classic documented example was the 2003 California Recall in which the San Francisco Chronicle found that the that anti-recall supporters were advocating illegal harassment of petition collectors. The guide advised their supporters that, "It is OK to stand in front of their table or approach potential signers before they do, or otherwise inhibit their activity." This is despite the fact that it against California law! Even after the San Francisco Chronicle story the Workers against the Recall(WAR) still had these instructions on their website.⁸ The resistance to the recall got so bad that there was even one case that made it onto television of WAR activists attacks pro-recall circulators.

Another issue is where can signature collectors legally collect? Ironically federal

8 “Foes of Davis recall post tactics on Web; Petition workers complain of intimidation.” by Robert Salladay. The San Francisco Chronicle, JUNE 27, 2003, FRIDAY, FINAL EDITION

postal regulations ban petition collecting on the property of a post office. There have even been reported cases of individuals being arrested for collecting petition in front of post offices. Whether this is constitutional or not is a matter ultimately for the courts to resolve, but courts have generally favored petition collectors in litigation on the right to collect petition signatures particularly on property that is open to the public.

Conclusion

Direct Democracy certainly isn't without its' flaws, but it has increasingly become important in the US political system. Understanding the controversies of the system are likely to remain a point of contention for years to come.

Further Resources

The Initiative and Referendum Institute at the University of Southern California:
<http://www.iandrinstitute.org/>

Initiative for Texas: <http://www.initiativefortexas.org/>