

The
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SPECIAL REPORT
DEMOCRACY IN CALIFORNIA

April 23rd 2011

The people's will



The people's will

California is an experiment in extreme democracy gone wrong, says Andreas Kluth. But reform could make it a model for others

IN THE SWELTERING June of 1852, two years after California became a state and at the height of the Gold Rush, August Schuckman “came to the first sand desert” on the trail to the land of his dreams. It stretched for 41 miles. His wagon trek entered “at night and rode 19 hours in it”, Schuckman recorded in his journal. By the time they reached the next desert, the oxen died of thirst. “Thousands of cows, horses and mules were lying about dead,” Schuckman wrote. “The discarded wagons by the hundreds were driven together and burned.”

In his matter-of-fact tone, Schuckman, a German immigrant, described what many of the pioneers endured as they pursued the first incarnation of the California dream, a dream of El Dorado, of a Golden State. Hardship and risk-taking,

hopes and crushing disappointments have been part of Californian lives ever since, through booms and busts, euphorias and depressions.

Indeed Mr Schuckman, one of hundreds of thousands who came to California during the Gold Rush, was so typical that he might have remained anonymous, had he not sired an impressive line of Californians. One of his grandsons was Pat Brown, governor from 1959 to 1967. Brown played a big part in defining that generation's California dream—a vision of prosperous middle-class living—by building many of the freeways and aqueducts that today connect and irrigate the vast and dry state, and by turning its public universities into some of the world's best factories for talent and innovation.

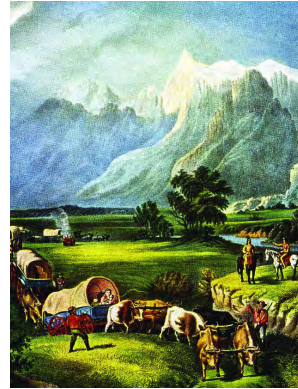
And one of Schuckman's great-grandsons is Jerry Brown,

Pat's son. This Brown was one of California's youngest governors between 1975 and 1983. This year he again became governor—at 72, California's oldest. And, commencing his third term during one of the worst economic crises since the second world war, Mr Brown chose to quote from his immigrant ancestor's journal in his inauguration address.

In doing so, Mr Brown wanted to remind Californians to keep dreaming and enduring as August Schuckman had once done, and to put today's troubles in perspective. Yes, many Californians have lost their homes, jobs, health care and welfare services, Mr Brown implied. But they are not burning wagons and their lives will improve again, as Schuckman's did.

It is striking that such a reminder should even be necessary in a state that once symbolised optimism. But such is the Californian state of mind today. Superficially, California might still resemble its old self. In becoming governor this year, Mr Brown succeeded a former Hollywood star (Arnold Schwarzenegger), just as he did in 1975 (Ronald Reagan). The palm trees, surfers and redwoods are still there. So is Disneyland. But the state has, at least for the time being, ceased to be the world's dream factory.

Instead, California is now called a “dysfunctional”, “ungovernable” and ▶▶



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Burn the wagons



CALIFORNIA DREAM,
CURRENT EDITION



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In brief

California's direct democracy explored

Key terms

Referendum:
A vote in which the citizens accept or reject a proposal such as a law passed by their legislature.

Recall:
A vote by the people to remove an elected official from office before the official's term expires.

Initiative:
A measure put on a ballot by a petition of citizens (usually called simply a "measure" if put on the ballot by the legislature).

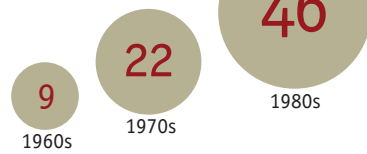
Proposition:
An initiative or measure that has qualified for a ballot and received a number in a cycle starting with 1 every ten years.

Sources: Centre for Governmental Studies; Field Poll; Legislative Analyst's Office; Census Bureau

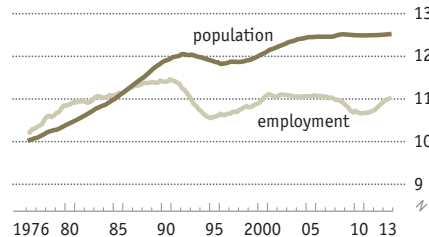
1 in **8**
Americans live in California



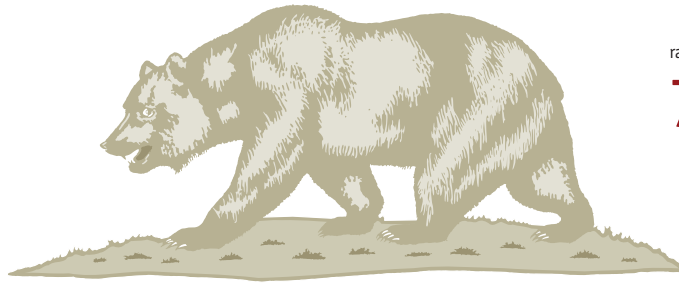
Initiatives qualified for ballot



California's % share of total US:



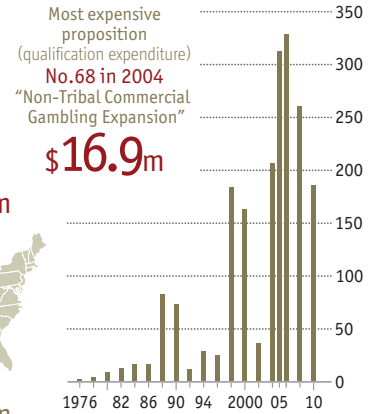
Total population = **37m**



CALIFORNIA REPUBLIC

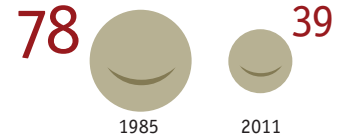
74
2000-10

Total ballot-initiative campaign spending
\$m, 2006 prices



% of Californians who:

rate California "one of the best places" to live



feel worse off financially than a year ago



▶ even "failed" state. When Mr Brown began his first stint as governor, California had an AAA credit rating, the best there is. Today its rating is A-, the worst among all 50 states and not much better than "junk". The boss of JPMorgan Chase, America's second-largest bank, last year told investors that he was more worried about California's solvency than Greece's. For three years and counting, California has been mired in a budget crisis. At its nadir, the state was paying its bills in IOUs instead of cash.

California is extremely unlikely to default on its bonds (if only because its constitution ranks bondholders ahead of everybody except schools to get paid). But it has already defaulted on the expectations and dreams of many of its citizens. Since the recession began, California has had to cut its spending by more than the size of the entire budget in most states. And it will have to cut a lot more.

Behind these cuts is human hardship—poor families who will no longer get subsidised child care to allow the parents to work, old and sick people who no longer receive visits from carers, pupils who sit in larger classes and get less attention, young people who can no longer afford to pay the higher tuition fees of the state universities. And things will get worse before they get better. California will face structural deficits of about \$20 billion a year for quite a while, according to Mac Taylor, the state's non-partisan legislative analyst.

The immediate cause for this cataclysm was the recession. The housing bust and foreclosure crisis struck hardest in the "sand states" of the south-west—California, Nevada and Arizona—and in Florida. At 12.2% as of February, California now has the second-highest unemployment rate (after Nevada) of all Ameri-

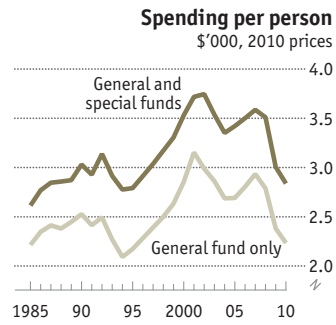
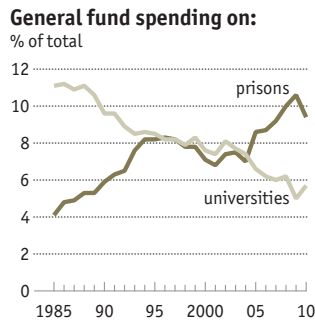
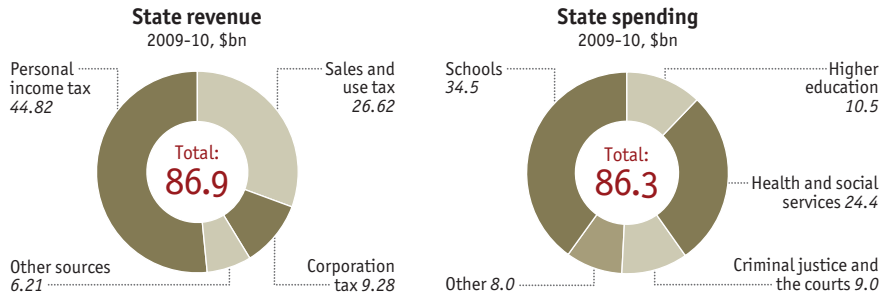
can states, compared with a national figure of 8.8% in March.

At first blush, the current crisis might appear to be just another iteration in the endless Californian story of boom and bust. To count just the gyrations since Mr Brown's previous governorship, there was the defence boom of the 1980s that made swathes of southern California (an aerospace centre at the time) prosper, which turned into a bust (the "peace dividend") in the early 1990s from which the region never fully recovered. There followed the dotcom boom in the late 1990s, which promised to make silicon the new gold in the San Francisco Bay Area. It became the dotcom bust after 2000. Then came housing.

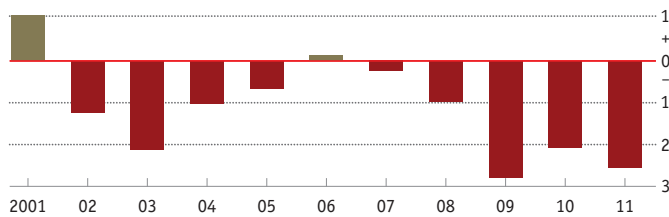
Culturally, Californians seem to accept such feast-or-famine living more than others. Their northern neighbours like to remind visitors of the famous fork (somewhere in today's Idaho) in the Oregon Trail that led the wagon trains to the Pacific coast. The builders and settlers, goes the story, followed the Snake and Columbia rivers and became Oregonians and Washingtonians. The gamblers and risk-takers turned south on the California Trail over the Sierra Nevada, ready to strike it big or not at all.

Indeed, California even today amplifies its boom-bust cycles. Consciously or not, it has built a tax system that is not only incomprehensible to its citizens but unusually volatile, relying disproportionately on income taxes, and especially on the capital-gains taxes of its wealthiest residents. When times are good, taxes spout. When times are bad, revenues disappear. The state, constitutionally barred from running deficits (as the nation as a whole may), thus expands and contracts in an automatic and anti-Keynesian wave pattern that exaggerates ups and downs.

But to conclude from this history that California merely ▶▶



Forecast of state budget balance
Based on projections at beginning of each budget cycle, \$bn



Californians earning over **\$100,000** contribute over **80%** of total income-tax revenue

representative, not a direct, democracy. “Pure democracies have ever been spectacles of turbulence and contention,” Madison wrote, “and have in general been as short in their lives as they have been violent in their deaths.”

This notion did not travel well to the vast emptiness of America’s frontier. The likes of August Schuckman were rugged individualists who trusted themselves more than any representative to run their affairs. So they instinctively embraced a direct and participatory form of democracy which they imported (with consequential alterations) from Switzerland, adding a fourth branch of government to the three existing ones.

For much of the 20th century the resulting governance structure did no harm because voter initiatives were used sparingly. But then, starting in 1978, the culture and system mutated. Jerry Brown was governor when Californians passed Proposition 13, ostensibly an anti-tax measure but in reality a fundamental constitutional change with vast, and mostly unforeseen, consequences. It led to hundreds of ballot measures as citizens increasingly legislated directly and in tense competition with their own representatives.

This special report will chronicle how such voter legislation stripped California naked, leaving it unable to respond to external shocks such as the current economic crisis. This story is of global interest, for California has inadvertently made

itself a negative model for other democracies. As Nathan Gardels, an adviser to the Think Long Committee for California, a new and promising reform effort, puts it, California has become a “diet-Coke civilisation of consumer democracy, of services without taxes, like sweetness without calories, of rights without duties”.

California thus stands as a rare, and perhaps unique, counterpoint to the many countries whose main problem is a lack of democracy. At a time of turmoil in the Arab world, California is a reminder that democracy, like capitalism, can take many different forms, and that it is intended as a means to an end, the end being liberty. Should it ever mutate into a counterproductive form, reform becomes necessary.

Fortunately, such reform has now become not only possi-

▶ needs to wait for the economic tide to turn once again would be disastrously wrong. Warren Buffett, renowned as much for his aphorisms as for his investing, has said that “you only find out who is swimming naked when the tide goes out.” And each ebb during the three decades since Mr Brown’s first reign has revealed California less dressed than before. Each flood then briefly restored its modesty. But this latest ebb has shown the state to be stark naked.

The rip tide of democracy

That nakedness, the result of a gradual stripping over decades, has nothing to do with housing or foreclosures or internet shares. Nor is it the fault of individual governors. Instead, it has to do with governance. For what is unique about California is not its set of challenges (pupils, pensioners, prisoners, to list just the ps), which differ in scale but not in kind from those elsewhere. It is its brand of democracy, as this special report will show.

California’s democracy is not at all like America’s, as conceived by founders such as James Madison. The federal constitution is based on checks and balances within and among three and only three branches of government—executive, legislative and judicial. That is because Madison feared that popular “passions” would undo the republic, that majorities might “tyrannise” minorities, and that “minority factions” (ie, special interests) would take over the system. America’s was therefore to be a



WHAT IS UNIQUE ABOUT CALIFORNIA IS NOT ITS SET OF CHALLENGES, WHICH DIFFER IN SCALE BUT NOT IN KIND FROM THOSE ELSEWHERE. IT IS ITS BRAND OF DEMOCRACY

ble but likely. For the state retains a potential unsurpassed elsewhere. It has the most diverse population and economy in America. From Stanford and Apple to Hollywood, it is a magnet for talent, which is why venture capitalists invest about as much money in California as in all other states combined. Californians still have the imagination and frontier spirit that August Schuckman once had. And they know that sometimes one must burn the wagons to keep dreams alive. ■

DIRECT DEMOCRACY

Origin of the species

From Athens via Switzerland to the Wild West

ONE HUNDRED YEARS ago Hiram Johnson, one of the most consequential governors in California's history, called a special election. Johnson was a leader of a movement called Progressivism that reacted to America's industrialisation by demanding women's suffrage, direct election of United States senators (originally chosen by state legislatures) and other expansions of democracy. In this Californian election voters had to decide on three new types of balloting: referendums, recalls and initiatives. They accepted them all with enthusiasm.

And thus, in October 1911, California adopted the three tools of modern direct democracy. It was not the first state to do so. South Dakota had adopted initiatives in 1898, and Utah, Oregon, Montana, Oklahoma and other states had begun mixing their own cocktails of direct democracy from the three ingredients. Referendums, in which voters approve or reject laws already passed by a legislature, were the least radical change. Recalls, in which voters remove elected representatives and even judges in mid-term, seemed more adventurous.

But initiatives (called "propositions" in California once they are listed on an actual ballot) had the most potential to turn politics upside down. They turn voters into legislators, since a successful initiative becomes statute. In states like California, initiatives can even turn voters into founding fathers who amend the state constitution. There are worlds of nuance in the detail. The package that California chose was especially powerful.

Californians thus explicitly chose a path that diverged from the one America's founders had taken. To understand California's problems today, you need to know what tradition California departed from. James Madison, Alexander Hamilton and their peers, as they met for the constitutional convention in Philadelphia in 1787, had deliberately rejected direct democracy. So why did Californians second-guess them?

Deeply versed in the classics, the founders had seen ancient Athens as the main historical example of direct democracy. In that city every male adult citizen voted in the assembly and there were no distinct executive or judicial branches. But this was also the Athens that condemned Socrates to death, rashly launched a disastrous pre-emptive war against Syracuse and barely survived repeated oligarchic coups before succumbing to undemocratic Macedonia.

Greek thinkers such as Aristotle and Polybius concluded that democracy was inherently unstable because it led to mob rule (in the same way that monarchy deteriorated into tyranny and aristocracy into oligarchy). Those three elements, monarchy, aristocracy and democracy, thus had to be balanced for a state to remain free, they argued. Rome (before the emperors) became the prime example of such a mixture. It was a republic, a "public thing", but not a democracy, a thing "ruled by the people". It had executives (in the shape of two annually elected consuls), an elite in the senate, and outlets for the *vox populi* in the popular assemblies.

To this Roman ideal of republicanism the thinkers of the Enlightenment added more liberal notions of freedom. John Locke injected a rather English emphasis on property and individualism. France's Baron de Montesquieu, a huge influence on America's founders, celebrated the commercial aspects of liberty. He also spelled out the separation of powers between the executive, legislative and judicial branches.

Against this intellectual backdrop, much of the famous debate that took place in 1787 and 1788, as the states had to ratify the proposed new constitution, was about how indirect America's democracy should be. Both sides showed fealty to the historical ideal by writing under Roman pen names. Madison, Hamilton and John Jay, in the Federalist Papers, wrote as Publius, one of republican Rome's first consuls. The Anti-Federalists opposing the constitution wrote as Brutus, the other consul, or as Cato.

The Anti-Federalists made a populist case for a direct democracy in which citizens participated actively, says Thomas Pangle, a professor at the University of Texas at Austin. The Federalists considered this view naive and dangerous. The society they envisioned was to be large, diverse and commercial. Madison, in particular, worried that a majority might oppress minorities, and that elected representatives might legislate out of "passion".

Above all, Madison understood that a large and diverse nation would necessarily have many antagonistic "minority factions", or special interests in today's language. He wanted to contain these interests safely within a republican structure. Yes, they should have representation. But they should all compete against one another in the House of Representatives. The resulting laws would then be filtered through the Senate and the two other branches. As George Washington memorably told Thomas Jefferson, this was to "cool" House legislation as a saucer cools hot tea.

The Federalists won the debate, and America's constitution (though much amended) remains the most durable in existence today. It balances not only minority factions, as well as populism and elitism, but also the federal and state governments. This is why, in the 19th century, Switzerland took an interest in it.

Switzerland after the Napoleonic wars faced a situation quite similar to America's a generation earlier. Several independent states (cantons) needed to band together in a stable confederation that preserved both unity and diversity, and thus freedom. After a small but traumatic civil war between Protestant and Catholic cantons the Swiss decided in 1848 to import America's constitution almost wholesale.

But Switzerland already had its own tradition of democracy. Starting in the 14th century, farmers in the Alpine valleys had formed assemblies not unlike those in ancient Athens in which all men made laws. They also sent delegates to co-ordinate poli-



VOTERS HAD TO DECIDE ON THREE NEW TYPES OF BALLOTING: REFERENDUMS, RECALLS AND INITIATIVES. THEY ACCEPTED THEM ALL WITH ENTHUSIASM

cy (building a road, say) with farmers in other valleys. Such agreements had "to be carried back", ad referendum in Latin, for approval in the assembly.

The Swiss grafted this tradition of direct democracy onto their American-style federal constitution. For the first time in history, initiatives and referendums thus became a regular part of national, as opposed to local, governance. But the details of this Swiss system were designed to serve its cultural and political purpose. As Corina Casanova, Switzerland's federal chancellor, puts it, "we strive to solve conflicts through consensus and com- ▶▶

BLAME IT ON THE
SOUTHERN PACIFIC
RAILROAD

► promise.” Direct democracy aids, rather than hinders, that.

Any amendment to the Swiss constitution, for example, requires a referendum. But it also needs a simple majority of the cantons in the legislature. So just over half the cantons, which might represent a minority of Swiss voters, can overrule the majority in a referendum, thus addressing Madison’s worry about majoritarian tyranny. The proposed amendment then goes back to the legislature for redrafting—ie, for Washington’s “cooling”.

The same applies to initiatives. Citizens may launch one, but the legislature then has the option to draft a counter-proposal. Long before any voting, two or more drafts of legislation circulate, all trying to address the same problem. “In practical terms this means that behind the scenes, initiative committees and the authorities engage in a process of bargaining,” says Ms Casanova. “This leaves no room for extreme solutions, only well-balanced solutions backed by all.”

If the legislature presents a good alternative, sponsors may withdraw their initiatives, and many do. This drawn-out vetting process prevents conflicting initiatives as the various committees iron out legal and logical wrinkles. Much as Madison envisioned, the various special interests in Switzerland must eventually find common ground in what Ms Casanova calls an “institutionalised search for compromise”.

This was not, however, what attracted America’s Progress-

sives to the Swiss model. John Randolph Haynes, a Californian doctor, founded a “direct-legislation league” after a trip to Switzerland. Nicknamed “Recall John”, he brought city-wide direct democracy to Los Angeles in 1903. He then joined William Rappard, a Swiss academic and diplomat who was teaching at Harvard at the time, and others, including Hiram Johnson, to extend the system to the whole state.

Unlike the Swiss, these Californian reformers had in mind a specific enemy, against which direct democracy seemed the ideal weapon. California was no Switzerland: much of it was still empty, geographically isolated and an institutional vacuum. Into this vacuum had stepped a private power: the railroad.

Founded in 1861 as the Central Pacific and later renamed the Southern Pacific, it was soon known as “the Octopus” because its tentacles corrupted every part of the state. The Southern Pacific bribed and cajoled legislators, judges, journalists and mayors. At one point one of its founders, Leland Stanford, was governor. He appointed a co-founder’s brother, who was also the railroad’s chief counsel, to the state’s Supreme Court.

As one reporter wrote in 1896, “it didn’t matter whether a man was a Republican or Democrat. The Southern Pacific Railroad controlled both parties, and he either had to stay out of the game altogether or play it with the railroad.” This was the corrup- ►►



THE VERSATILE MR BROWN

tion that enraged California's Progressives. Hiram Johnson was especially livid. He had begun as a fisticuffs prosecutor in bribery and graft trials where he won the fame that launched him into politics.

From the start, Californian direct democracy thus had the opposite social purpose of its Swiss mother. As Ms Casanova says, the Californian system was designed to be "confrontational". For example, it is quite difficult for petitioners to call a referendum, which merely passes judgment on a decision by elected representatives. But it is easy to launch an initiative, which circumvents the legislature by letting citizens make law.

California is also unique, in America and the world, in treating every successful initiative as irreversible (unless the initiative itself says otherwise). The legislature cannot change it. In effect, this makes initiatives a higher class of law. In California they often amend the constitution. And whereas Switzerland ensures that different initiatives are mutually compatible, California makes no such effort. A single ballot can contain directly contradictory initiatives, in which case the one with the most yes votes wins.

Direct democracy in California is thus an aberration. It has no safeguards against Madison's tyranny of the majority. It recognises no saucer that might cool the passions of the people. Above all, it is not a system intended to contain minority factions. Instead, it encourages special interests to wage war by ballot measure until one lobby prevails and imposes its will on all. Madison and Hamilton would have been horrified.

But in 1911 none of this was yet clear. The system had the potential to be coercive, but its actual effect would depend on context and usage. Indeed, the number of ballot measures, once the novelty wore off, declined and stayed low as the Southern Pacific's power faded naturally. For decades, immigrants populated the state, and most problems seemed to take care of themselves. But all this changed abruptly in 1978, with an unprecedented initiative that shapes the state to this day: Proposition 13. ■

PROPOSITION 13

War by initiative

A case study in unintended consequences

DURING JERRY BROWN'S first term in the 1970s his hair was still full and dark. His voice was not yet gravelly. Unlike his back-slapping father, he still bore traces of the Jesuit seminary where he had once studied to become a priest. He meditated on *Zen koans*. He declined the governor's mansion and slept on a mattress in a rented flat. He dreamed of large things whose time had not yet come, such as green energy. And yet, or perhaps because of all this, Jerry Brown failed to notice the anger boiling over in his state.

Californians were angry about property taxes. These local taxes were the main revenue source for school districts, cities, counties and California's many specialised municipal jurisdictions. And they had been rising. A homeowner's property tax was determined by two factors. One was the tax rate, the other the assessed value of the house to which the rate was applied. These assessments were soaring: between 1972 and 1977 home prices in southern California more than doubled, thus doubling homeowners' tax bills. Mr Brown and the legislature fiddled with relief measures, but their bills were half-hearted and the

taxpayers were angry.

Into that anger stepped a man named Howard Jarvis. In personality he was the antithesis of Jerry Brown, which made for a photogenic contrast. He was a Utah newspaper publisher who had moved to California, attempted and failed to become a senator, tried his luck in Hollywood and now ran an association of property owners. He, too, was livid. "I'm Mad as Hell", he later screamed in the title of his autobiography. Some posters showed him with a raised fist.

Jarvis decided to circumvent the legislature and take the matter directly to voters. In this sense, property taxes became the analogue to what the Southern Pacific Railroad had once been: the focus of popular anger, the obvious target on the next ballot, indeed a quintessential example of why the initiative process was necessary at all.

With a partner, Jarvis sponsored an initiative that would become known as Proposition 13. It cut the property-tax rate from an average of 2.6% to 1% in every county. It also capped the increase in assessed values to at most 2% a year, unless the property was sold. To prevent the resulting revenue loss from being made up with other charges, Proposition 13 also required two-thirds supermajorities in the legislature for any tax hike.

The opposition, which included much of the state's elite in both parties, stood little chance. Mr Brown tried to make a cerebral case for an alternative initiative, but hardly anybody paid attention. On June 6th 1978 Californians went to the polls and, by a margin of almost two to one, approved Proposition 13.

The first and immediate consequence was relief for homeowners and a corresponding emergency for local governments as revenue from property taxes dropped by more than half. Almost overnight, it seemed as though cities would have to close parks and counties would have to deny their residents medical and welfare services. Schools would have to lay off teachers and eliminate summer programmes and advanced classes.

Mr Brown, meanwhile, performed a stunning U-turn. Having campaigned against Proposition 13, he suddenly decided to implement it zealously. Jarvis was so pleased that he endorsed Mr Brown, who was re-elected five months after Proposition 13 passed. The governor's new nickname was "Jerry Jarvis".

But cities, counties and schools were not going bust after all. The state had a budget surplus and decided to bail out local governments by passing to them roughly the amounts they had lost in property-tax revenues. The following year that one-off transfer turned into a permanent financing mechanism. Even the remaining property-tax revenues would henceforth be allocated by the legislature in Sacramento.

In effect, cities, counties and school districts thus lost their funding independence. Instead of local governments setting their own taxes, they became tentacles of the state octopus. The resulting flow of payments is notoriously opaque—and also ironic, given that Mr Jarvis and his supporters thought of themselves as small-government conservatives. A central tenet of American conservatism is to decentralise power. But one unintended consequence of Proposition 13 was "the centralisation of virtually all finance in Sacramento", says Lenny Goldberg, director of the California Tax Reform Association. ►►

Today this centralisation is one of the biggest differences between California and other states. Bruce Cain, at the University of California, Berkeley, and Roger Noll, at Stanford University, identify it as the “distinctively dysfunctional element”. California transfers about 71% of its state revenue to local governments. Because the money comes from the state, local administrators no longer have much incentive to spend it efficiently.

Production-line politics

But Proposition 13 cast its shadow far beyond finance. It changed political culture. Up to this point, the initiative process had been described as a “safety valve”. Now it became an industry and a circus. Proposition 13 had made Mr Jarvis a celebrity. He graced magazine covers and made a cameo appearance in “Airplane”, a 1980 film. Hollywood types, Silicon Valley tycoons and other big egos took note and started their own initiatives.

So did James Madison’s “minority factions”, the special interests. The teachers’ union attacked from the left. The prison guards’ union charged from the right. From environmentalists and potheads to evangelical Christians and Indian tribes, from insurers to oil and tobacco companies, the initiatives poured forth. Ballot measures have amended the constitution to prohibit gill nets and to regulate how fowl are to be kept in coops. They have authorised faster trains and new hospitals, mandated ever tougher sentencing laws and governed DNA sampling and stem-cell research.

As the numbers of initiatives surged, the qualification process changed beyond recognition. Hiram Johnson and his Progressives had envisioned idealistic volunteers petitioning citizens for signatures and debating causes they believed in. But after Proposition 13, signature-gathering became an industry and access was determined by money.

An entrepreneur named Ed Koupal is usually credited with setting the precedents that circulators of petitions follow today. With his wife, Joyce, he developed the “table method” of signa-

PROPOSITION 13 CHANGED POLITICAL CULTURE. UP TO THIS POINT, THE INITIATIVE PROCESS HAD BEEN DESCRIBED AS A “SAFETY VALVE”. NOW IT BECAME AN INDUSTRY AND A CIRCUS

ture-gathering. A group of paid professionals put the paperwork on a folding table in a mall or public plaza and then roam around the table, approaching passers-by. They do their best to avoid discussing the subject of the petition, instead ushering people to the table, where another team member pressures them into signing in conveyor-belt fashion.

Another tactic is the “clipboard method”. A signature-gatherer finds a slow-moving queue at a bus stop or cinema, then “works the line”, from which people cannot easily escape. The

Stateside and abroad

Direct democracy is global and spreading, though the flavour varies

IN ALL 50 STATES citizens may occasionally have a referendum put before them by their state legislature. But only 24 states are considered to have statewide direct democracy, defined as a process in which citizens themselves place initiatives or referendums on ballots. The differences are huge. Of the more than 2,000 statewide initiatives in American history, the overwhelming majority have taken place in just a handful of states, led by Oregon, California and Colorado. In those states, direct democracy is in effect a fourth branch of government. Elsewhere it plays a negligible or minor role. Legally and culturally, says Dane Waters, an expert, “California is a different animal altogether.”

Three states allow initiatives only to amend the state constitution, and one of these, Illinois, makes this so difficult that only one binding initiative has ever qualified. Another six allow initiatives only to enact statutes. Some allow unlimited time to gather signatures, others a few months. (California, with 150 days, gives circulators very little time.) States such as North Dakota, Montana and Ohio require few signatures to qualify an initiative; others, such as Wyoming, ask for lots.

Such nuances affect the way the

process is used, even leaving aside the political culture. In California, a huge market with expensive media and with a short period to collect many signatures, money is crucial. In a small, homogeneous state that makes the process easy (Montana, say), signature-gathering might be done by old-fashioned volunteers.

Direct democracy is also on the rise globally, says Bruno Kaufmann, the Swedish-Swiss president of the Initiative and Referendum Institute Europe. Switzerland is still the gold standard. But countries from Uruguay to the Philippines and New Zealand have their own version, and places like Thailand, Brazil and South Korea are adopting or expanding theirs. The European Union has just introduced the first supranational initiative process, with very fancy electronic signature-gathering.

Referendums are often the main instrument. Those countries trying the initiative process, says Mr Kaufmann, usually aspire to the Swiss ideal of a “conversation” between voters and legislators, in which ballot measures are at best “screwdrivers” to tighten or loosen a bit here and there. The “antagonistic” Californian model, where initiatives are “hammers” to smash things, is one to avoid, he says.

record is apparently held by a circulator who once gathered 700 signatures in one day by going through a queue for the Tutankhamun exhibition at the Los Angeles County Museum of Art.

That circulator gathered signatures for Kimball Petition Management, founded by Fred Kimball and considered the seed of the industry as it exists today. Rather than wait passively for clients (ie, sponsors who need the signatures to qualify their initiatives for the ballot), Mr Kimball came up with his own ideas for initiatives, then sought out someone rich to sponsor them.

As his son, also called Fred Kimball, explained to *The Economist*, the pricing for signatures today is based purely on market conditions. The circulators are independent contractors who work for several petition-management firms at the same time and often have four or more petitions simultaneously on their folding tables. They “sell me their signatures”, says Mr Kimball, and he in turn charges the sponsor a mark-up.

Early in the 150-day collection period, prices might start at 10 or 20 cents per signature. As the deadline approaches, they rise, perhaps to several dollars. Some sponsors bid more than others, and a hard-working and determined circulator can earn up to \$50 an hour. Since paid circulators, unlike volunteers, are interested only in volume, not the underlying cause, the quality of the signatures is low. Many are illegible, incorrect or fake (some people sign ▶▶

▶ “Mickey Mouse”). Then a verification process gets going.

Several states, including Colorado, Idaho and Nebraska, have tried to ban paid circulation and return to volunteer petitioning. But America’s Supreme Court overturned these efforts in 1988, arguing that they would violate free speech. In California the result has been to push up the cost of qualifying an initiative into the millions.

But even that is small change compared with the cost of the media campaign that ensues once a measure is on the ballot. Before Proposition 13 spending on initiatives was about \$9m per election. A decade after Proposition 13 it was \$127m, as opponents in each campaign blanketed the airwaves and filled mail boxes across the huge state with propaganda. The upshot, as Karen Bass, a former Democratic speaker of the state assembly, puts it, is that “any billionaire can change the state constitution. All he has to do is spend money and lie to people.”

The initiative culture as it exists in California today may thus resemble James Madison’s worst nightmare. Passions are inflamed rather than cooled. Confrontation replaces compromise as minority factions battle one another with rival initiatives. In 2009 Ronald George, at the time California’s chief justice, worried publicly about the effect on liberty: “Has the voter initiative 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?”

As though to provide a historical bookend, even the Southern Pacific Railroad got into the game. In 1990—by which time it was just another special interest—it financed a successful initiative to issue \$2 billion in bonds for expanding rail transport. Few Californians appreciated the irony of their one-time bogeyman co-opting the process invented as a defence against it. ■

CALIFORNIA’S LEGISLATURE

The withering branch

How the initiative process has redistributed power

IN 1971 A CONFERENCE of state legislatures concluded that California’s “comes the closest to having all the characteristics that a legislature should have”. A lot of people agreed. In the mid-1970s a political scientist, William Muir, was so impressed by the collegiality, expertise and diligence he witnessed in Sacramento’s capitol that he called his book “Legislature: California’s School for Politics”. It was, he said, “the finest in the world”.

Alas, Mr Muir was working on an academic time scale and his book, though researched before Proposition 13, was not published until the 1980s. By then the initiative storms were buffeting the legislature. And thus another perfectly good book title became the victim of terrible timing as a model political institution turned into a caricature of itself.

Today Californians reserve a special disdain for their legislature. When Arnold Schwarzenegger called legislators “girlie men”, Californians for once agreed with him. In a poll last December by the Public Policy Institute of California (PPIC), a non-partisan think-tank in San Francisco, 81% of voters disapproved of their legislature and only 12% approved: blood relatives and paid staffers, as the joke goes.

California’s legislature must therefore have undergone a stunning decline in the past three decades. What role the initia-

tive process had in this deterioration is a chicken-and-egg question. In Hiram Johnson’s day initiatives seemed to be needed as a check on a venal legislature. Now perhaps a dysfunctional legislature is triggering a plethora of initiatives as citizens take matters into their own hands.

The alternative view is that the initiative process, by mutating into a virulent form after Proposition 13, caused the decline of the legislature. This side includes Joe Mathews and Mark Paul, authors of “California Crackup: How Reform Broke the Golden State and How We Can Fix It”. Because of the cumulative onslaught of citizen legislation, “lawmakers slowly lost their control over pieces of the law, then over the budget,” they argue.

Too small for the job

Clearly the legislature suffers from some problems unrelated to the initiative process. For a start, it is almost comically small, given California’s size. America’s most populous state has the 35th-largest legislature, with 120 legislators (80 in the assembly, 40 in the senate) representing some 37m people. A Californian legislator thus represents three times as many people as does his counterpart in New York or Illinois. This must be a bad thing. Voters in California tend not to know their representatives.

For candidates it means that money becomes a crucial issue. Politicians cannot shake enough hands and therefore need to saturate the media to make themselves known. This costs money and makes them beholden to big donors. That is why Democrats in Sacramento are often in the pockets of the teachers’ or nurses’ union and Republicans in those of the prison guards’ or cops’ union.

That dependence is one explanation for the hyper-partisan animosity in the capitol. This exists all over America, but California has more than its fair share. It did not help that primary elections have for years been partisan affairs in which candidates on each side are chosen by their respective extremists before advancing to the general election. Gerrymandering, the practice of legislators drawing their own district boundaries to suit themselves, made things even worse. (It might also explain why the same voters who claim to loathe their legislators re-elected every incumbent on last November’s ballot.)

The initiative process, in this case, may prove to have done some good. Last November voters approved a measure to adopt a so-called top-two primary system in which all voters, irrespective of party affiliation, vote in the same primary and the winners, also irrespective of party affiliation, proceed to the general election. In another initiative, voters handed the power of drawing district boundaries to an independent commission. In time, these two steps may help moderate candidates.

In other respects, however, initiatives have made partisan gridlock worse. Until last November an initiative required two-thirds supermajorities in both chambers to pass a budget (although yet another initiative has now returned this threshold to a simple majority). And Proposition 13 added the requirement of two-thirds supermajorities for any tax increase. Until very recently, California was thus the only state that required supermajorities to decide both revenues and appropriations.

As voters intended, this made it easier to lower taxes than to increase them. The legislature could provide a favoured group with a new tax loophole by a simple majority, but eliminating the same loophole at some later point would require two-thirds.

But there were also, as usual, unintended consequences. A supermajority requirement means that one “no” vote in the legislature counts the same as two “yes” votes. It thus doubles the power of the minority party, as long as that party has more than one-third of the legislature and can force its members to vote as a block. In California the Republicans are in that situation. ▶▶

▶ Messrs Mathews and Paul argue that the Republicans have become what game theorists call “hostage-takers”. They discovered that, although they could not pass laws by themselves, they could block the most important ones, including the budget. Simply by stalling, they could thus paralyse state government until the majority party made some concession to one of the Republican lobbies. This is the main reason why California has so often had late budgets. The Republicans gambled that voters would blame either the majority party or the entire legislature. The Democrats rejected blame as though they were the minority party. The initiatives that imposed the supermajority rules thus made the legislature less, not more, accountable.

At the same time many other initiatives, incrementally and stealthily, usurped power from the legislature through “ballot-box budgeting”. More than 100 of the initiatives of the past two decades promised something for nothing, such as cutting a tax or expanding a service. Of those initiatives, about two-thirds passed. Who could be against better mental-health care, or against locking up criminals longer to keep the streets safe? Public parks sound good, as does pristine nature. And so forth.

More and more of the budget thus became allocated before the legislature ever sat down to negotiate. Karen Bass, the previous leader of the state assembly, says that “we have control of only 10% of the budget.” Whatever the precise percentage is, voters long ago seized most power of appropriation from their legislature. This is highly undesirable. The mandate of representatives in a Madisonian republic is to analyse the trade-offs inherent in any policy. For example, an inmate in a Californian prison costs about \$47,000 a year to keep. If that inmate is non-violent, would this money be better spent on educating several

MORE THAN 100 OF THE INITIATIVES OF THE PAST TWO DECADES PROMISED SOMETHING FOR NOTHING, SUCH AS CUTTING A TAX OR EXPANDING A SERVICE

children (who might then avoid becoming prisoners a decade hence and instead pay taxes)? The ballot box does not allow for such deliberation.

Voters, however, see things differently. They do not blame themselves but their legislature for California’s recurring budget crises. In this, they resemble “the boy who murders his mother and then complains that he’s an orphan”, as Messrs Mathews and Paul put it. Increasingly irate, voters then want to chastise the legislature even more.

The best example was Proposition 130 in 1990, which made California one of the first three states to adopt term limits for legislators. Fifteen states now have these in some form, but California’s are among the strictest: six years in the assembly and eight years in the Senate. At a casual glance on a ballot paper, term limits might seem like a great idea. If legislators can’t be trusted, why let them get entrenched? Fixed terms might bring in fresh faces.



THE CAPITOL IS FIGHTING A LOSING BATTLE

In practice, however, term limits too have had unintended consequences. First, they banish expertise from the capitol on a regular basis. In the days when William Muir praised California’s “school for politics”, new lawmakers often spent years learning their trade in various committees before becoming leaders of their party or chamber. They had well-paid permanent staff who researched the various policy areas.

Such learning has become impossible. In every election cycle, at least ten senators and 27 assembly members are termed out. So term limits, says Ms Bass (who was termed out last year and is now a national representative in Washington, DC), really mean that “the first two years you’re trying to figure out where the bathroom is, the last two years you’re running for something else. That leaves two years in the middle.”

This once again contributes to partisan rigidity. “Knowing they won’t be around for a long time, there’s no incentive to compromise,” says Gary Moncrief, an expert on legislatures at Boise State University in Idaho. With so little time, every vote counts as legislators try to repay their debts to the donors who put them in the job and prepare their next career move. They need not worry about a politically convenient vote that has long-term costs because those will be the problem of a different set of legislators.

In 2002 Idaho’s legislature became the first to repeal that state’s term-limits initiative. Legislatures or courts in five other states have since followed. But California does not allow initiatives to be amended, so they remain until the issue comes to the ballot box again (which may be next year).

The net effect of all initiatives is that the legislative branch of California’s government has been split in two. The initiative process, originally meant as a safety valve, has in reality become a rival to the legislature. Two law-making bodies—the voters and their representatives—are in open competition. The tragedy is that this undermines democracy by eliminating one of its main purposes: accountability. Schools have suffered the most. ■

EDUCATION

A lesson in mediocrity

California's schools show how direct democracy can destroy accountability

EVERYTHING ABOUT CALIFORNIA'S school system is complicated, starting with the question of how bad its public schools are. Comparisons show that students in California fare worse than the national average in mathematics, reading, science and writing. But the numbers are unfair, says John Mockler, an expert in Californian education who has been following its fortunes since the 1960s. For instance, half of California's pupils are Hispanic, and 40% of those hardly speak English. Most other states don't face this problem.

Nonetheless, there is a broad consensus that California's public schools are not what they could be, nor what they used to be. California ranks 47th among the 50 states and the District of Columbia in spending per pupil (\$7,886, against an average of \$11,397). It ranks last in the number of students per teacher: California's legislative analyst estimates that most classes have 28-31 pupils. And it ranks 42nd in the proportion of pupils who graduate (63%, against a national average of 69%).

Indeed, it would appear that California, at some point in the past generation, must have decided to disinvest in its children and to reallocate resources to such things as prisons. When Mr Mockler first started examining school finance in the 1960s, California spent about 5.6% of personal income on schools. It now spends 3.5%. For a state that sees itself as a pioneer of the global "knowledge economy", that seems bizarre.

So who made this decision? Or, as John Syer, a professor at California State University, puts it sardonically: Who might be accountable for the bad schools? Is it local school boards, or the state board, or the education secretary, or the superintendent of public instruction, or the governor, or somebody else?

Start with the governor, who is elected, as in all 50 states. He appoints a secretary of education, a member of his cabinet. Oddly, however, that secretary (and thus the governor) does not have much power in this area. For the state's education department is headed by a superintendent of public instruction, who is directly elected and thus answers only to voters, not to the governor. He in turn chairs a state board of education (the other mem-



THERE IS A BROAD CONSENSUS THAT CALIFORNIA'S PUBLIC SCHOOLS ARE NOT WHAT THEY COULD BE, NOR WHAT THEY USED TO BE

bers of which are again appointed by the governor).

Californians, in fact, insist on this sort of confusion in their entire executive branch. Thus they directly elect eight statewide officers (governor, lieutenant governor, attorney-general, secretary of state, controller, treasurer, superintendent and insurance commissioner). Often these officers are at war with one another. For the two decades starting in Jerry Brown's second term, and again during most of Arnold Schwarzenegger's tenure, the governor and his lieutenant even belonged to different parties.

In this respect California is again unusual. Only 14 states separately elect a superintendent of public instruction, 12 a con-



THE DARK SIDE OF PROPOSITION 13

troller and ten an insurance commissioner. If democracy is about holding elections, the Californian mantra is: the more the merrier. This is especially true for education. Most power over the day-to-day running of schools belongs to the roughly 1,040 school districts. These are separate jurisdictions from cities and counties and have their own boards whose members are elected locally.

Yet in allocating responsibility for the prevailing mediocrity, all of these officials can plausibly point accusing fingers at voters. After all, they adopted Proposition 13, which cut the schools' main revenue source (property taxes). Voters, for their part, usually shrug and say that they only voted against the taxes, not against the services those taxes paid for. To prove that point, whose irony often eludes Californians, voters passed still more initiatives to restore the school spending whose tax financing they had cut.

The main such measure, on the 1988 ballot, was called Proposition 98. Its main sponsor was the California Teachers Association, the largest spender in Californian politics, which hired Mr Mockler to draft it. His original text, as he now describes it, was still simple enough to be comprehensible: "You lie, schools] get what you got last year, adjusted for the increase in students and the increase in personal income per capita." So school spending would generally rise in line with demand and affordability. Mr Mockler added a provision that, following good fiscal years, the

▶ base would be reset at a higher level so as to put a floor under school spending yet allow the possibility of additional growth.

Proposition 98 narrowly passed, sending yet another challenge to the beleaguered legislature. It now had to find money in the budget to comply with Proposition 98, even though Proposition 13 and other initiatives had taken away most of the main revenue source and now required supermajorities to raise other revenues. So in a sort of capitulation to the ballot box, the legislature itself put yet another measure, Proposition 111, on the 1990 ballot. Its intent was to make Proposition 98 more flexible so that the legislature would be able to pass budgets once again. But that is not quite how it turned out.

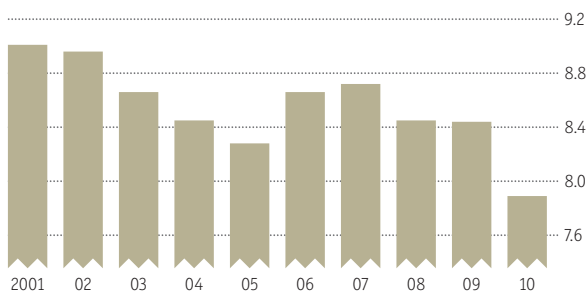
According to Mr Mockler, it was Proposition 111 that finally made the overall structure for education funding incomprehensible. It multiplied by six the “data sets you need to know” to calculate education spending, he says. He compares the resulting package of legislation to the general theory of relativity, quantum physics and the federal tax code in complexity, and reckons that he is currently one of ten people alive who understand Californian school finance. In a typical budget season, the state’s nonpartisan legislative analyst dutifully produces tomes analysing whether “test 1” or “test 3” applies, and whether the “maintenance factor” might kick in. Nobody really knows what that means, as the legislative analyst concedes in the official primer.

There is a lot to contemplate in this tale. First, what made voters think that they understood enough to pass any of these initiatives, given that nobody understands their results? Second, why did voters not become concerned about the ever denser thicket of unintended consequences? As Mr Mockler says, the need for Proposition 111 arose only because of Proposition 98, and the need for 98 arose only because of 13.

The unintended consequence of that overall bundle has been to invert the stated purpose of Proposition 98. Originally designed to be a floor under school financing, it has instead become a ceiling. No legislature will nowadays raise school spending any more than necessary, because the formulas would then require even greater increases the following year. (Journalists usually take a shortcut through all the calculations and simply say that Proposition 98 requires “about 40%” of the general fund to go to schools.)

Mr Mockler has been thinking about all this for decades. He drafted one of the most important ballot measures ever. And yet he calls the entire initiative process “mob rule” and blames it for keeping the state’s schools down. “If you put an initiative on the ballot that repealed every initiative of the past 40 years, I’d vote for it,” he says. The question of who is accountable for California’s mediocre schools has a surprisingly simple answer: everybody, which is to say nobody. ■

School spending per pupil
\$'000, 2010 prices



Sources: Legislative Analyst's Office

HOW VOTERS DECIDE

What do you know?

Citizens are not as well-informed as they think

“A POPULAR GOVERNMENT without popular information or the means of acquiring it is but a prologue to Farce or Tragedy or perhaps both,” James Madison wrote. “A people who mean to be their own Governors must arm themselves with the power knowledge gives.” The question in any democracy, but especially a direct democracy in which citizens legislate at the ballot box, is how much voters do in fact know.

A prior question may be what voters think they know. When the Public Policy Institute of California (PPIC) polled Californian voters in December, just after the most recent election, fewer than half the respondents said that they had confidence in their fellow voters to make public-policy decisions at the ballot box. This was the first time in PPIC’s polling that a majority appeared sceptical about the initiative process. But voters seem to be more concerned only about the state of other voters’ knowledge, not their own.

This must be why most respondents to the same poll said they were either “very happy” or “somewhat happy” that they had nine measures to decide on this latest ballot. This response was similar to that in 2008 (12 measures) and 2006 (13). Many Californians believe that the initiative process needs major (42%) or minor changes (34%). But two-thirds of voters are generally “satisfied” with the way it is working.

This implies that voters are reasonably confident in their own understanding of the state’s affairs. Indeed, in another poll in January a majority of likely voters told PPIC that they have either “some” or “a lot of” knowledge about how state and local governments spend and raise money.

But when presented with a list of the state’s four biggest spending categories, only 22% of likely voters correctly named public schools as the largest. The most guesses (41%) went to prisons, which are actually the smallest category of the four. More specifically, the largest group among those who expressed confidence in their own knowledge incorrectly chose prisons as the biggest item.

Their grasp of state revenues was no better. Only one in three likely voters correctly named the personal income tax as the main source of money, with many choosing motoring charges (a paltry 2% of state revenues). Only 9% of likely voters correctly identified both the largest revenue source and the largest spending destination. As PPIC drily summarises, “most Californians’ views about the budget are not based on an understanding of where the money comes from and where it goes.”

This was a very general knowledge test, but individual ballot measures require much more detailed understanding. So a different survey, the Field Poll, on two occasions in recent years asked specifically about the most famous initiative of them all, Proposition 13. Since voters passed it in 1978, it has remained in the news constantly because it touches every aspect of state policy and finance. One of the most basic facts about Proposition 13 is that it applies the same tax cap to all property, whether residential or commercial. A recurring reform proposal would introduce a “split roll” so that commercial property can be taxed differently. Proposition 13’s defenders then hit the airwaves to denounce the proposal. In short, it is hard to miss the fact of equal treatment for ▶▶

▶ all property. So the Field Poll asked what it considered the easiest question: whether Proposition 13's tax reduction applied "only to residential property taxes, only to commercial property taxes, or both". Only about one in three respondents correctly answered "both".

However, the main surprise was hidden in the details. Political scientists normally assume that the older, more educated, wealthy and attentive voters are, the better informed they will be. But Kimberly Nalder, a professor at California State University in Sacramento, discovered that in this instance the opposite was true. The factors that usually indicate greater knowledge instead predicted "not only a lack of accurate understanding but actual misinformation".

Thus Ms Nalder found that the best-educated (those with more than a master's degree) were most likely to answer incorrectly that Proposition 13 applies only to residential property. Those with the least education (high-school dropouts) were most likely to get it right. Similarly, those who were already of voting age when Proposition 13 passed were most likely to answer incorrectly and the youngest correctly. The same pattern held for income, with wealthier respondents being more likely to be misinformed. Perhaps most intriguingly, the largest group among homeowners (who directly benefit from Proposition 13) were misinformed, whereas the largest group of renters (who do not benefit) answered correctly.

These results are puzzling and troubling. As Ms Nalder suggests, perception (as opposed to knowledge) of issues such as Proposition 13 appears to have more to do with "self-interest and a potential blindness to issues outside of one's own experience" than with the content of the legislation. This would explain why those respondents who were "non-citizens" or "registered elsewhere" (probably recent arrivals) were more likely to give the correct answer than voters who are registered where they live.

It's all too difficult

The longer that people live in California, it seems, the more likely they are to be misinformed, and possibly brainwashed into ignorance. The supporters of Proposition 13, says Mr Nalder, have for three decades framed the debate as the "little guy versus the established powers", with images such as that of a grandmother being taxed out of her home. Homeowners who are happy with their low property taxes might therefore ignore the fact that large firms, trusts and hedge funds which own commercial property benefit just as much, because that would "disrupt that clean narrative". They also ignore the fact that property taxes elsewhere are high.

In theory, the solution to this misinformation already exists. It is the official voter-information guide issued by the secretary of state before every election. It is genuinely impartial and thorough. But it is also daunting. Depending on the number of ballot measures, it can be a tome and the perfect way to spoil a weekend. Only one in three voters told the PPIC that it was the "most helpful" information source in their decision. (Moreover, they did not specify how much of it they had actually read.)

The rest said they relied on advertisements, the internet, media coverage and the like. What this mostly means is attack ads, financed by the opposing campaigns and their proxies. In the run-up to an election all of California turns into a shouting match, with union members (or environmentalists, or marijuana lovers, or whoever) taking to the roads and shoving signs ("Yes on 19!", "No on 23!") under windscreen wipers. At home the robocalls continue the onslaught. In such an atmosphere Ms Nalder's findings about misinformation should not be all that surprising. For amid all this confrontation, there is virtually no deliberation and analysis.



Many voters are conscientious. They try to read the wording of the initiative, but find it forbidding. The language is dense legalese, often containing double or triple negatives. And the measures have inexorably been getting longer. In the 1980s each typically contained between 1,000 and 3,000 words, which seems more than long enough. But nowadays they often exceed 10,000 words apiece. Two measures on the 2006 ballot weighed in at more than 17,000 words (half as long again as this special report). And one ballot can contain a dozen of these.

So it is surprisingly common for a voter to cast a yes ballot when he means no, or vice versa. In one notorious example from 1980, the label on a measure was "rent control" (later changed to simply "rent"). It was in fact an initiative by landlords who wanted to get rid of rent control. A later study revealed that 23% of vot- ▶▶

WHAT NEXT?

Burn the wagons

California must move before its next crisis

CALIFORNIA IN THE 21st century faces a question that would fascinate the classical and Enlightenment thinkers who influenced America's founders. Most of them stipulated that participatory democracies must be small. Their populations should be culturally homogeneous. And they must be virtuous.

California, though, is the most populous and diverse state in America, and no more or less virtuous than any other modern society. The historical achievement of America's federal constitution was to create a republican structure that would preserve liberty and stability even in a large and diverse society. The price was to make democracy indirect and less participatory. Can California avoid paying that price?

This special report has shown how one of the three ingredients of direct democracy, the initiative process, has, cumulatively over the past three decades, caused much of the dysfunction that paralyses California whenever it suffers an economic shock, as it is doing at present. Does it follow that California must get rid of the initiative process?

It is a moot question because Californian voters would never agree (in what itself would have to be an initiative) to end initiatives. Ronald George, California's former chief justice, says that "people will never vote to give up their own power." The best we can hope for is to make the process "less extreme".

That, indeed, may be all that is required. In Switzerland, whence California imported the idea, the initiative process works well. In some of the other 23 American states that practise some variant, it works better than in others. So the problem is not direct democracy as such, or even the initiative process, but the details of its Californian variant. It needs to be fixed, not eliminated.

The main goal of reform must be to make the initiative process and the legislature work together, rather than against each other. That is the only way to stop what Bruce Cain at Berkeley and Roger Noll at Stanford call the "downward cycle of legislative failure and initiative reaction". The idea is to allow and encourage dialogue in law-making—between voters and the legislature, and among the special interests.

One option is to encourage referendums and to discourage initiatives. Referendums, by passing popular judgment on acts of the legislature, do not subvert representative democracy but hold it accountable. Initiatives, which are themselves legislation, can damage representative democracy. California would not be in its current mess if referendums, not initiatives, had become the main expression of direct democracy in the past century.

Initiatives should not only be rarer but also shorter, argues Bob Stern, the president of the Centre for Governmental Studies in Los Angeles. Their language should be simpler, so that more voters understand what they are deciding. As in Switzerland, the legislature should get a first look at any draft and be allowed to respond with its own alternative, or to refine the wording.

Once an initiative has run through these filters and succeeds on the ballot, the legislature must be able to revisit the subject in due course. California should consider allowing initiatives only to enact statutes, as many other states do, not amend the constitution. Another practice used in other states is to "sun-set" all initiatives—after a decade, say—by requiring explicit

ASK ME ABOUT
PROPOSITION 13

► ers wanted to preserve control but mistakenly voted yes, and that 54% were against rent control but voted no. The initiative was thus lost when it should have been won.

Indeed, voters constantly complain that initiatives are too complicated. Two out of three told the PPIC poll in December that the wording of the initiatives was confusing. But over-complex language is only one worry in a process where every statute and constitutional amendment interacts with every other to shape policy in this huge state. It raises the more general question of how large, diverse and dispersed populations filter information and arrive at decisions. "If those most likely to think they have a grasp on political information are in fact wrong," says Ms Nalder, there may be a need to "think twice about the wisdom of direct democracy". ■

► reauthorisation from voters or the legislature. This, too, offers protection against unintended consequences that usually reveal themselves only with time.

Together, these steps are likely to minimise the greatest problem with the initiative process, ballot-box budgeting. But reform must make this goal explicit. All initiatives must be clear about their effects on taxation and spending. A measure must indicate where the necessary revenues are to be found, or what other programme is to be cut. Today, “people vote for initiatives out of emotion, they do not realise that initiatives cost money,” says Karen Bass, the former assembly speaker. Once they understand the economic trade-offs, their emotions are likely to cool.

Because problems in the initiative process and the legislature are like chicken and egg, any reform must simultaneously deal with the representative arm of democracy too. That part, in fact, has already begun. Gerrymandering has ended as an independent commission is due to redraw the map for candidates for the first time this summer. The next primary election will be open to all voters irrespective of party affiliation. And an initiative to modify, if not eliminate, term limits on legislators will be on a ballot next year.

But reform should go further. Its aim should be to re-invest the legislature with the credibility it once had. Californians should make it bigger so that each lawmaker represents roughly as many constituents as his counterparts in other states do. And they should make the legislature unicameral, as Nebraska’s already is. America originally imported the idea of two chambers from Britain, where the bicameral system balanced two inherently different social classes (commons and lords). At the federal level, America applied that system to balance different sources of legitimacy (the people and the states). But California has nothing analogous to balance between the two chambers, so they just cause confusion.

The executive branch, in turn, must become more accountable. It might seem, but is not, paradoxical that this means electing fewer statewide and local officers and giving them more

chance of working, it is tempting to call a constitutional convention. America as a whole has not had one since 1787, but many of its states hold them quite frequently. Alaska, Connecticut, Georgia, Hawaii, Illinois, Louisiana, Michigan, Missouri, Montana and Rhode Island are among those that have had at least one since the second world war. California has not had one since 1879. The risk, however, is that in California such a convention would deteriorate into the same old food fight among the special interests, which tend to oppose reform.

The alternative is to use the same ballot box that has caused so much of the trouble. Indeed, many of the recommendations made above are being discussed by a new group called the Think Long Committee for California. Funded by Nicolas Berggruen, a wealthy international investor, this committee, half a year old, already has unrivalled cachet. George Shultz and Condoleezza Rice, Arnold Schwarzenegger, Google’s Eric Schmidt—all the state’s great and good seem to be part of it. Their deliberations will result in a string of initiatives that will be put before voters in 2012 and beyond.

Change has a better chance of coming about this way than through a constitutional convention. Thanks to Mr Berggruen’s support—he has already committed a first dollop of \$20m—the effort will not fail for lack of money (the fate that befell a push for a constitutional convention last year). The risk is instead that voters will pass some reforms but not others, not realising that they must be integrated.

One way or another, the next few years in California might see perhaps the liveliest debate about freedom and governance since Federalists and Anti-Federalists argued in 1787-88 about whether or not to ratify America’s new constitution. Lovers of democracy and liberty everywhere still study that old debate. They will now also pay attention to California’s, for it will provide lessons for everyone.

Such a global spotlight may elevate the debate as Californians are reminded of their responsibility. They may even rediscover the spirit of pioneers such as August Schuckman, the current governor’s great-grandfather—the man who came to California in pursuit of his life dream but had to brave the unforgiving deserts during his wagon trek, losing oxen, horses and mules along the way. When it became necessary, his group burned its abandoned wagons, then moved on and built a state. After the past few years of hardship, Californians might just be ready to do something equivalent today. ■



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THE NEXT FEW YEARS IN CALIFORNIA MIGHT SEE THE LIVELIEST DEBATE ABOUT FREEDOM AND GOVERNANCE SINCE FEDERALISTS AND ANTI-FEDERALISTS ARGUED IN 1787-88 ABOUT THE NEW CONSTITUTION

power. “I currently have 22 people I elect to represent me at all levels of government, and I can’t name them—and I’m president of the California Voter Foundation,” laments Kim Alexander, an expert on voter education. Ideally, Californians should elect just one statewide executive, the governor, and let him appoint the other seven. The people can then re-elect or fire the governor for his choices.

The recommendations above are essentially the same as those *The Economist* made in 2004 when it last examined California in a special report. It is encouraging that some of these steps (such as redistricting and open primaries) have already been taken, others are well under way and yet others are attracting increasing support among the policy elite.

But the urgency of reform has increased since 2004. Then, California was bouncing back from an economic shock (the dot-com bust) and entering several fat years when reform might have been less painful. Because the opportunity was (mostly) squandered, California remained unprepared for the current, and more severe, shock. It must not wait for another cycle to turn.

Because so many reforms—in the initiative process, the legislature and the executive—must be tied together to have a