

6-23-2014

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Recommended Citation

Glen Gendzel. "The People versus the Octopus: California Progressives and the Origins of Direct Democracy" *Siècles* (2014). <https://doi.org/10.4000/siecles.1109>

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**Electronic version**

URL: <https://journals.openedition.org/siecles/1109>

DOI: 10.4000/siecles.1109

ISSN: 2275-2129

Publisher

Centre d'Histoire "Espaces et Cultures"

Printed version

Date of publication: 1 June 2013

ISSN: 1266-6726

Electronic reference

Glen Gendzel, "The People versus the Octopus: California Progressives and the Origins of Direct Democracy", *Siècles* [Online], 37 | 2013, Online since 23 June 2014, connection on 10 June 2022. URL: <http://journals.openedition.org/siecles/1109> ; DOI: <https://doi.org/10.4000/siecles.1109>

This text was automatically generated on 10 June 2022.

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The People versus the Octopus: California Progressives and the Origins of Direct Democracy

Le peuple contre la Pieuvre : les progressistes californiens et les origines de la démocratie directe

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- 1 Direct democracy is an old idea that has come a long way from its origins in ancient Greece. In the United States, direct democracy is a political artifact of the Progressive Era left over from the early twentieth century. Almost every state with direct democracy adopted it at that time; none adopted it before 1898 and very few have since 1920.¹ Direct democracy in the United States is also a regional phenomenon of the American West. About half of the fifty states have direct democracy, but 80% of them are in the West.² And of course, no state has made more use of direct democracy, for good or ill, than has California, the big western tail that wags the American dog when it comes to direct democracy and just about everything else. In recent years it has become fashionable among media pundits to blame direct democracy for California's political paralysis and financial basket-case status.³ So how did California become America's poster child for reform gone awry and for good intentions leading to catastrophic unintended consequences?
- 2 The story of how direct democracy turned California into a political train wreck begins, appropriately enough, with a railroad. Californians had high hopes for the transcontinental railroad project, completed in 1869 with generous public subsidies. The railroad was supposed to usher in a new era of rapid growth and prosperity for California. By connecting the state more closely to the rest of the United States, the railroad could bring people out west, while carrying the products of California's farms and factories back east.⁴ Most Californians imagined that the railroad would be a simple, benign technology, but in fact it was a monopoly corporation, known as the Central Pacific Railroad, which soon enjoyed near-total control over all transportation into, out of, and within the state – and this corporation was anything but benign. Some

historians praise the railroad for its contributions to California's growth and development; it certainly did represent a drastic improvement in transportation efficiency over the days of covered wagons, stagecoaches, and sailing ships.⁵

- 3 No one suggests that the railroad on balance was bad for California, given that the state's agriculture, industry, and commerce all depended on it. The railroad was California's biggest employer and biggest private landowner; it promoted local products and lured hordes of tourists and settlers to the state as well. The problem with the railroad was that it insisted on controlling California's growth and development for its own benefit while reaping an unfair share of the profits.⁶ In the late nineteenth and early twentieth centuries, California suffered from some of the highest, most complicated, and least predictable railroad rates in the world. Charges for carrying passengers and freight varied capriciously between different destinations, different customers, and for different cargoes; rates also changed constantly, rising and falling not with actual railroad costs but with the market price of products being transported. The railroad, not the producer, grabbed most of the profit to be earned by shipping products from one place to another. As a result, California's farmers, merchants, and manufacturers often found themselves priced out of national markets due to transportation costs.⁷ And the railroad routinely blackmailed California towns and cities into handing over taxpayer subsidies and land grants in exchange for the privilege of a rail connection. Charles Crocker, co-owner of the Central Pacific, told the Los Angeles City Council in 1872 that if they did not pay the ransom he demanded, "I will make the grass grow in the streets of your city."⁸ Nowadays large employers and professional sports teams play this hardball game of corporate blackmail, but western railroads such as the Central Pacific invented the technique in the late nineteenth century. In 1882, the Central Pacific changed its name to the Southern Pacific after a complex merger, but it was the same railroad company with the same monopoly power – and with increasing political power as well.
- 4 California adopted a new constitution in 1879 to start regulating and taxing the railroad, and this seems to have spurred the company into politics.⁹ Railroad lobbyists and attorneys dispensed a torrent of bribes and favors to "influence" California legislators, officials, judges, and newspaper editors in exchange for favorable legislation, regulations, rulings, and press coverage. Behind the scenes, agents of the Southern Pacific controlled party conventions, legislative sessions, court hearings, regulatory decisions, and even the outcomes of elections.¹⁰ Corruption in California politics was like wind or gravity: people couldn't see it directly, but they could observe its effects in the form of relentlessly pro-railroad public policy, year after year. Periodic upsurges of reform failed to bring the Southern Pacific to heel; the company went on charging high rates, paying low taxes, blackmailing communities, monopolizing land, and paying off politicians while soaking up subsidies and tax breaks.¹¹ California was not unique in this regard: many western states in the late nineteenth century suffered from the twin evils of corporate domination and political corruption. But California was exceptional in the extent to which it was dominated by a single corporation: the Southern Pacific Railroad, locally known as "The Octopus."
- 5 Long before Frank Norris' novel by that name appeared in 1901, California cartoonists were depicting the railroad as a monster Octopus with tentacles of steel wrapped around farmers, workers, merchants, and manufacturers, squeezing the lifeblood of commerce out of them.¹² After 1900, Californians watched with envy as self-styled

“progressives” gained power in other states and brought their corporate adversaries to heel, notably in Wisconsin under Governor Robert La Follette. Why not in California, too? Anti-railroad reformers in California did wage several campaigns through the Populist party and the Democratic party without success in the 1890s and 1900s, but the breakthrough came in 1910, when progressives seized control of the state’s Republican party.¹³ They nominated Hiram Johnson, a fiery anti-railroad attorney, to run for governor that year. Johnson had distinguished himself as lead prosecutor in the San Francisco graft trials of 1906 to 1909, when he put San Francisco’s corrupt political boss behind bars. Hence there was reason to believe that when Johnson vowed to “kick the railroad out of politics,” he meant it. Johnson and his fellow progressive Republicans swept the state elections of 1910, and when the next state legislature gathered in 1911, reformers had control at last.¹⁴ They did not, however, presume that their victory would be permanent. Governor Johnson and his comrades expected that the Octopus would recover from its temporary setback and somehow outmaneuver them in the next election. This is why California progressives acted so boldly after their smashing victory in 1910, because they figured they might have only one chance to tame the Octopus.

- 6 The 1911 session of the California legislature ranks as the single most important session ever held in the history of the state. Besides passing landmark legislation to regulate the railroad, and other major reforms of state government, the progressives also acted to permanently increase the power of California voters.¹⁵ Governor Johnson and his fellow progressives believed that more democracy was the best way to prevent a return of political corruption and corporate rule in the future. Confident in the people’s wisdom, the progressives assumed that more power in the people’s hands would mean less power for the Southern Pacific or any other wealthy interest that might try to dominate state government in the future.¹⁶ As a sign of their trust in voters, the progressives quickly approved woman suffrage, and California would become the sixth state in the nation, by far the largest yet, to let women vote.¹⁷ But woman suffrage, which practically doubled the size of the electorate overnight, was not the only technique that the progressives had in mind for increasing democracy. As Governor Johnson said in his 1911 inaugural address:

“How best can we arm the people to protect themselves hereafter? . . . We can give to the people the means by which they may accomplish such other reforms as they desire, [and] the means as well by which they may prevent the misuse of the power. . . . The first step in our design to preserve and perpetuate popular government shall be the adoption of the initiative, the referendum, and the recall.”¹⁸

- 7 By 1911, California progressives were already familiar with these basic mechanisms of direct democracy. Progressive reformers across the American West were taking up the initiative, the referendum, and the recall as promising solutions to problems of corruption and corporate influence in politics. Starting with South Dakota in 1898, eight western states had recently adopted direct democracy, including California’s neighboring state of Oregon in 1902. Progressives in Oregon used direct democracy to enact sweeping electoral reforms, and there was hope that California might follow suit – especially since several California cities and towns had already adopted direct democracy on the local level and had even begun using it.¹⁹ California’s leading advocate for direct democracy was Dr. John Randolph Haynes, a wealthy physician and real estate investor in Los Angeles who developed a strong interest in this particular

reform. Dr. Haynes founded the Direct Legislation League in 1900 and for decades he devoted his time and his sizeable fortune to lobbying and publicity on behalf of direct democracy.²⁰ Haynes helped convince many progressives, including Governor Johnson, that direct democracy was the best insurance policy against future corruption. As Haynes explained:

“Even the election of good men to office . . . frequently fails to produce any marked effect because these men often . . . fail to preserve their integrity. . . . The remedy is a plain and simple one. . . . Give the honest majority . . . the power to initiate and enact legislation which their legislative bodies . . . may refuse; this is the initiative. Give to the honest majority the power to veto the undesired acts of their legislature; this is the referendum. Give to the same honest majority the power to discharge from office at any time the inefficient and incompetent . . . public servant; this is the recall.”²¹

- 8 Although he never ran for office himself, Dr. Haynes was a savvy politician. He remained non-partisan while soliciting endorsements from labor and reform groups and extracting pledges of support from candidates in both parties. Governor Johnson let Dr. Haynes help draft the direct democracy amendments to the state constitution, which the legislature approved in 1911.²² Californians were already accustomed to voting on constitutional amendments passed by the legislature; but the initiative, the referendum, and the recall would give them the power to legislate directly for themselves.²³ This power of direct democracy, and its frequent exercise, would become the most distinctive feature of California politics – for better or for worse. The initiative allows registered voters in California to sign petitions in order to place laws on the ballot for approval or rejection by the electorate. Anyone who can get enough signatures – a number equal to 8 % of the total number of ballots cast for governor in the last election – can place any law on the ballot at the next state election as a numbered “proposition.” If a majority votes “yes” on the proposition, then it becomes law, even though the legislature never approved it and the governor never signed it. The initiative process can be used for regular statutes (with a lower signature requirement) or for constitutional amendments, but it is almost always used for amendments because initiative sponsors hope this will render their laws more impervious to court challenges. Initiatives themselves are immune to amendment except through another initiative. California’s all-powerful initiative, not subject to legislative amendment or approval, is proof that the progressives wanted voters to have supreme authority to pass their own laws irrespective of politicians and parties, which the progressives considered suspect and prone to corruption anyway. The Southern Pacific and other wealthy interests might be able to bribe delegates to party conventions and members of the legislature, but they could never bribe a majority of the voters. Hence the initiative appealed to progressives as a bulwark against the return of corrupt politics. As Johnson said in his inaugural address, the initiative would “place in the hands of the people the means by which they may protect themselves.”²⁴
- 9 The second form of direct democracy in California is the referendum. Once the legislature passes a law, anyone who gathers enough signatures of registered voters – a number equal to 5 % of the total number of ballots cast for governor in the last election – can suspend implementation of the law, place it on the ballot at the next state election, and give voters a chance to repeal the law. The referendum is essentially the initiative in reverse: the legislature has already passed a law, and the governor has signed it, but the voters can repeal it with a referendum. Progressives believed that this

would provide another method for voters to overrule corrupt politicians in the legislature and reassert the will of the people in defiance of wealthy interests. The referendum, like the initiative, was supposed to help California voters protect themselves against any future return of corporate influence in politics.²⁵

- 10 The third form of California's direct democracy system, the recall, is the one least often used, and yet it attracted worldwide attention in 2003, when California voters recalled their governor and replaced him with a Hollywood movie star.²⁶ In a recall, anyone who thinks an elected state official is unsatisfactory for any reason, or for no reason, can try to gather enough signatures from registered voters – a number equal to 12 % of the number of ballots cast for that official's office in the last election – and in this way give the voters a chance to remove the official from office. Even if an officeholder was elected fair and square, if enough voters later find that person unacceptable, they can “throw the rascal out.” A recall election is actually two elections at once: voters get to vote yes or no on the recall, and at the same time vote for a replacement if the recall is successful. The recall was another electoral weapon that California progressives wanted voters to have in their arsenal for future use. If politicians were frequently dishonest, at least the voters were not, so the assumption was that empowering voters to remove politicians who had betrayed the people's trust would deter such malfeasance in office even after the progressives themselves had passed from the scene.²⁷ Opponents of the progressives protested that with direct democracy, the “ignorance and caprice and irresponsibility of the multitude” would reign supreme and it would “play merry hell with the business and prosperity of the state.”²⁸ Critics focused their attacks on how the recall would affect the judiciary. Giving voters the power to recall judges would upset the constitutional balance of powers, endanger property rights, and undermine judicial independence, the critics charged. Such arguments held little sway, however. Speaking for all progressives, Governor Johnson declared “our deep-rooted belief . . . not only in the *right* of the people to govern, but in their *ability* to govern,” which was difficult to argue against. Johnson defended the recall by asserting that “if the people have the right, the ability, and the intelligence to *elect*, they have as well the right, ability, and intelligence to *reject* or to recall.” He dismissed concerns about intimidated judges this way: “You can't make a coward of a man by holding a pistol at his head; you can only demonstrate whether he is one.”²⁹
- 11 In October 1911, California voters approved the initiative, referendum, and recall amendments by a three-to-one margin. They also approved women's suffrage, railroad regulation, workmen's compensation, and a raft of other progressive reforms in the same election. No less than twenty-two amendments to the state constitution passed all at once, revolutionizing California government overnight and thrusting Governor Johnson into the national limelight as a progressive champion.³⁰ A year later, when ex-president Theodore Roosevelt ran for president again as candidate of the new Progressive party in 1912, he praised California's reform accomplishments and chose Johnson as his running mate. Roosevelt and Johnson lost the 1912 election, but the legacy of direct democracy that Johnson and the progressives bequeathed to California has remained in place ever since with only slight changes along the way.³¹
- 12 Conservatives predicted that disaster would ensue from the passage of “freak legislation” in California. Business was expected to flee the state, investors to pull out their funds, and home-seekers to look elsewhere. In fact, however, the progressive revolution of 1911 ushered in two decades of rapid growth and prosperity such as the

state had not seen since the Gold Rush. Dire warnings that direct democracy would lead to rule by tyrannical majorities goaded on by demagogues never came true. Nonetheless, there were some early indications that direct democracy might not serve the ends that Governor Johnson and the progressives originally had in mind. For example, the first successful state recall elections in 1913 and 1914, using this tool of progressive politics, removed two progressive legislators from office. One of them, State Senator Edwin Grant of San Francisco, had voted for anti-liquor and anti-prostitution bills, which prompted saloon and brothel owners to seek revenge by gathering signatures, some of them forged, and mounting a successful recall against him.³² In 1915, the first statewide referendum, using another progressive electoral tool, repealed a key progressive law, backed by Governor Johnson, which would have made all state elections non-partisan. The legislature had approved Johnson's plan, but outraged party leaders gathered signatures and forced a referendum on non-partisan state elections – which the voters rejected. The progressive legislature then passed an open primary law, which would at least encourage non-partisanship, but state party leaders forced another referendum on this law in 1916, and the voters rejected it, too.³³ These early uses of the recall and the referendum – to expel progressive legislators and to repeal progressive electoral reforms – did not bode well for progressive hopes for direct democracy.

- 13 The initiative also yielded some unintended consequences in its early years. A variety of minor matters were placed on the ballot by fringe groups interested in them, but the most controversial initiatives pertained to taxes and alcohol. Advocates of a “single tax” on land values to replace all other taxes sponsored a string of initiatives that cluttered state ballots for years. None of the measures passed, but progressives were displeased that the “single tax,” which most of them opposed, made its way onto the ballot no less than six times between 1912 and 1938. Opponents of direct democracy even began calling themselves “anti-single taxers” in order to gain support for curtailing the initiative process itself.³⁴ Like single-taxers, California's prohibitionists also pounced on the initiative to force votes on a number of anti-liquor laws. Most California progressives outside of the state's southern half were not prohibitionists, and yet thanks to the initiative process, anti-liquor measures repeatedly cropped up on the ballot – going down to defeat every time. Some voters grumbled over the proliferation of propositions in November 1914, when an all-time record seventeen initiatives appeared on a single ballot, but the measures were all fairly minor and most of them failed anyway. This was typical of the early years of the initiative: fewer than one in three initiatives passed before 1920, and about a quarter of voters participating in any given election refused even to vote on the propositions.³⁵ Already in this period, paid signature gatherers for initiative campaigns were a cause of complaint. As the *San Francisco Chronicle* editorialized in 1917:

“The abuses of direct legislation are the result of paid solicitation. When the people really wish to stop these abuses they will make paid solicitation a penal offense. It will probably require a little more time . . . to produce that result.”

- 14 Ninety-five years later, we are still waiting; most initiative sponsors make use of paid signature-gatherers to help qualify their measures for the ballot.³⁶
- 15 In the 1920s, the total number of ballot initiatives in California began to rise, but the proportion that passed remained below one in three. Anti-liquor initiatives continued appearing on the ballot even after the onset of federal prohibition in 1919. California voters voiced their displeasure with the federal law by using a referendum to reject

state enforcement of prohibition in 1920, but curiously, they reversed themselves two years later – the only time California voters ever approved an anti-liquor measure. Eventually, Californians changed their minds again: in 1932, the voters repealed the state prohibition enforcement law at the behest of grape growers, bottle manufacturers, and hotel owners who supplied funds for a successful initiative against it. Thereafter California voters returned to their usual pattern of rejecting every anti-liquor measure that came before them. The last was a “local option” initiative in 1948 that was rejected by a 70 % majority.³⁷ Other high-profile initiatives of the 1920s included a strengthened ban on land ownership by Asian immigrants that was backed by large farmers, and a referendum sponsored by margarine producers that successfully repealed taxes and marketing restrictions on their product. Dairy companies in the butter business spent heavily against this referendum, but margarine companies calling themselves the “Anti-Food Tax Association” spent more than twice as much and prevailed. Business interests were already learning how to use direct democracy for their own self-interested purposes.³⁸

- 16 In 1926, California voters approved a legislative reapportionment initiative backed by rural interests that severely reduced representation for the state’s burgeoning cities, creating one of the most unfairly apportioned legislatures in the nation. This was an early indication that direct democracy could have profoundly undemocratic consequences.³⁹ Progressives also learned in the 1920s that contrary to their expectations, big business had little to fear from direct democracy. On three occasions, California voters rejected initiatives that would have created a state-owned hydroelectric power authority to compete with privately owned power companies. All of the leading California progressives, including Johnson and Haynes, backed these public power initiatives, but private power companies spent over half a million dollars against them, and they were all defeated by wide margins.⁴⁰ The ability of wealthy corporations such as Pacific Gas & Electric and Southern California Edison to spend lavishly on advertising and publicity in order to defeat progressive initiatives showed that direct democracy might not always work to protect “The People” against “The Interests,” given the pronounced imbalance of financial resources between the two. In 1923, a special committee of the California legislature investigated the role of private power companies in defeating the public power initiatives. The legislators concluded that in direct democracy elections, “Victory is on the side of the biggest purse.” They bemoaned “the power of money in influencing public opinion, [and] its ability to carry popular elections through vast expenditures for propaganda, advertising, literature, and organized campaign workers.”⁴¹
- 17 The anti-public power campaigns of the 1920s started the trend toward growing usage of direct democracy by the very sorts of wealthy interests that it was supposed to hold in check. The next phase in the gradual diversion of direct democracy away from its democratic intentions came in the 1930s, with the rise of California’s so-called “initiative industry.” This is a California shorthand expression for political campaign consultants who can gather signatures to qualify virtually any ballot measure and who can craft advertising and mass mailings to get the measure passed – for a very high fee. By relying on such campaign consultants, large corporations with ample funds – money that once might have been spent on lobbying and campaign contributions – can bypass the politicians in the legislature and translate their economic clout directly into political outcomes. Investing in direct democracy does not always pay off, but apparently wealthy interests with ample funds are always willing to give it a try. This

pattern became clear in the 1930s, when corporations and trade associations relying on the “initiative industry” began spending millions of dollars to gather signatures, buy advertising, and send out mass mailings in order to promote ballot measures that might increase their profits – or to defeat ballot measures that threatened to reduce their profits. Either way, the rise of the “initiative industry” and the commercialization of direct democracy was definitely not what the progressives had in mind.⁴²

- 18 The first California consulting firm to specialize in direct democracy campaigns on behalf of wealthy interests was the husband and wife team of Whitaker and Baxter, also known as “Campaigns, Inc.”⁴³ Their clients were usually corporations, trade associations, and other business groups impressed by Whitaker and Baxter’s devastatingly successful campaign against Upton Sinclair, the radical socialist Democratic candidate for governor in 1934. California’s biggest banks, utilities, newspapers, radio stations, and movie studios spent at least a million dollars to defeat Sinclair in what some historians consider “the birth of media politics” with a decidedly negative tinge.⁴⁴ Two years later, national retailers led by Woolworth’s and Safeway hired Whitaker and Baxter to craft a successful referendum that repealed a statewide tax on chain stores. It was the first million-dollar direct democracy campaign, funded by big national corporations, and it struck a blow against small local retailers, whom legislators had tried to protect with the chain store tax.⁴⁵ Also in 1936, California voters were offered a chance to repeal the state income tax and to require a two-thirds majority vote for any future income tax, but this initiative lost. The attempt to constrain the state’s power to tax the wealthy foreshadowed many later initiatives, but California voters did not fall for it in the depths of the Great Depression.⁴⁶ In 1938, they rejected a pair of hard-fought initiatives that drew heavy spending on both sides. One measure would have severely restricted labor union activities in California, and the other, known as “Ham and Eggs,” would have created a state pension for elderly residents. Business groups tried to pass the anti-labor initiative and defeat “Ham and Eggs,” but they were only half successful: both measures lost. This was an early sign that heavy spending in direct democracy elections is most effective on the negative side. “Ham and Eggs” pension proposals made it onto California ballots for a few more years, but business opposition helped to defeat or neutralize them all.⁴⁷ It was at this point in 1939 that the first comprehensive study of California’s initiative process by political scientists appeared, with this startling conclusion:

“The history of direct legislation shows a marked change in the character of the groups utilizing the initiative. It appears that now well-financed interest-groups initiate measures more frequently than do . . . reform groups. . . Initiative measures do not originate with ‘The People.’ The moving forces in politics are relatively small groups of men animated by some ‘interest’ . . . to promote legislation of value . . . to their group.”⁴⁸

- 19 Direct democracy was supposed to help the “People” against the “Interests”; instead, it usually worked the other way around. However, this dispiriting trend slowed down in the next few decades, as the overall use of direct democracy declined. Californians voted on thirty-two initiatives in the 1930s, but only twenty in the 1940s, twelve in the 1950s, and just nine in the 1960s. Not a single referendum qualified for the ballot for thirty years after 1952. Probably the main reason for the decline of direct democracy in these years was California’s exploding population, which caused the total number of ballots cast in each election to soar into the millions, jacking up the threshold of signatures required to place measures on the ballot. There were also new restrictions

on the gathering of signatures: direct democracy petitions originally could circulate for unlimited periods of time, but this was reduced to two years in 1943, and then to just 150 days in 1973.⁴⁹ A key ruling by the state Supreme Court, *McFadden v. Jordan* (1948), banned initiatives that qualified as constitutional “revisions” rather than a constitutional “amendments.” Ever since 1948, the *McFadden* rule has banned the use of initiatives for sweeping, fundamental changes of the California constitution that would normally require a constitutional convention or action by the legislature. Initiatives can only be used to amend, not revise, the constitution – and only courts can tell the difference. Also since 1948, any initiative must restrict itself to a single subject; no initiative is allowed to lump together a bundle of omnibus reforms in a single package. This rule, too, is subject to judicial interpretation and frequently requires litigation.⁵⁰

- 20 Despite the declining use of direct democracy in the postwar era, wealthy business interests in California continued to rely on it. In 1956, oil companies spent millions on an initiative that would have loosened state regulation of their industry, but it was called the “Oil and Gas Conservation Act,” which seemed to confuse voters, so the measure failed.⁵¹ In 1964, California landlords, realtors, and real estate investors spent even more heavily on an initiative that would allow racial discrimination in housing. The measure was denounced as clearly racist by liberals and civil rights groups, but they never stood a chance against the real estate industry juggernaut that outspent them nearly ten to one. Courts ultimately struck down this initiative despite its popularity with California’s white majority, most of whom had voted to protect their right to practice racial discrimination.⁵² Thereafter a variety of tax limitation measures of the sort that would later become familiar appeared in the late 1960s and early 1970s, but all of them were rejected. Business groups were divided on these measures because they seemed to invite fiscal chaos; apparently, this was not yet seen as a desirable condition to inflict on California state government.⁵³ Environmentalist groups were able to pass some initiatives in the 1970s to protect California’s incomparable heritage of natural beauty from pollution and development, but business interests thwarted several more such measures by spending heavily against them. For example, in 1976, anti-nuclear activists placed an initiative on the ballot that would have banned nuclear power plants in California. In response, the nuclear power industry spent millions to convince California voters that nuclear power was perfectly safe. The anti-nuclear initiative went down to defeat – but less than two years later, after the Three Mile Island nuclear accident in Pennsylvania, some Californians may have wished to change their votes.⁵⁴
- 21 The evolution of direct democracy from a progressive standby into a tool of wealthy interests culminated in Proposition 13 in 1978. This measure was packaged and sold to California voters as tax relief for average homeowners, when in fact it mostly benefited big landlords and investors in commercial real estate who put up the money behind it.⁵⁵ Observers of California politics recognize that direct democracy has changed significantly following Proposition 13. The number of ballot initiatives has risen sharply since the late 1970s – and so has the amount of money spent on campaigns. Wealthy special interests ranging from casino owners and lottery consultants to the insurance and tobacco industries have willingly invested millions in initiatives that promise to deliver billions in profits. The gamble does not always pay off: studies of direct democracy show that the side spending the most money in the election does not *always* win – but it *usually* does. Heavy spending is especially effective on the negative

side which can neutralize those rare few progressive-style measures on behalf of workers, consumers, small business, minorities, or the environment that do occasionally make it onto the ballot.⁵⁶ Campaign spending for and against ballot propositions is loosely regulated by the California Political Reform Act of 1974, which originally tried to limit such spending – but those limits were removed just two years later, following the U.S. Supreme Court decision in *Buckley v. Valeo* (1976) which equated campaign spending with free speech. Money raised and spent in California to support or oppose ballot propositions has to be reported, but it has no limits, and in any case the final report of campaign expenditures does not appear until a month after the election, which deprives voters of access to this information until it is too late to matter. Spending on direct democracy campaigns in recent years has sometimes topped tens of millions of dollars per proposition and is rising fast.⁵⁷

- 22 Unlimited campaign spending on direct democracy, combined with the high cost of gathering the hundreds of thousands of signatures now needed to qualify measures for the ballot, virtually guarantees that only well-funded interests are able to sponsor such measures – or block those they oppose. Hence California’s progressive heritage of direct democracy has fallen prey to what scholars now call the “populist paradox”: a reform that was supposed to help the people reduce the power of wealthy special interests is now a tool of those interests, which they use for distinctly un-progressive purposes.⁵⁸ Perhaps part of the problem is the failure of Governor Johnson and his comrades back in 1911 to foresee the rise of electronic mass media, which has enabled wealthy interests to exert more influence on public opinion than the progressives ever could have imagined by blanketing the airwaves with clever, often deceptive advertising that is expensive to produce and even more expensive to disseminate. This is how direct democracy enables those with enough money to exert a strong and grossly disproportionate effect on public policy in California.⁵⁹ The irony is that corporations and business groups opposed direct democracy in 1911 – but once it passed, they learned how to exploit it for their own ends, while progressives are left wondering if it is even possible to reform the system without betraying its democratic original intent.
- 23 Once upon a time in California, corporations bribed legislators in order to obtain desired legislation; now they can skip the middleman and go directly to the voters. A substantial investment in gathering signatures and buying airtime can usually persuade – or deceive – enough voters into going along with whatever legislation those who foot the bill want passed. The point is not that money controls direct democracy, because it does not: spending millions on a proposition is no guarantee of success. It does, however, cost over two million dollars just to gather enough signatures within the allotted time in order to place a proposition on the ballot in the first place. Anyone without that kind of cash is priced out of direct democracy, while anyone with that much cash lying around can force a vote on anything – and spend any amount of money to get it passed. Rather than purge the influence of organized wealth from California politics, direct democracy seems instead to have rendered it more sophisticated, more respectable, more insidious, and perfectly legal. Sadly, if Hiram Johnson were alive today to see what has become of his beloved direct democracy, it would probably kill him.

NOTES

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ABSTRACTS

Direct democracy, for better or for worse, has become California's most distinctive and emblematic political institution. Initiative, referendum, and recall elections were added to the state constitution in 1911 as part of Governor Hiram Johnson's "progressive" movement, which redeemed the state from control by "The Octopus", meaning the Southern Pacific Railroad monopoly that had a stranglehold on the state's economy and government. Progressive reformers expected that California voters would use direct democracy to tame the Octopus and to protect themselves against such wealthy special interests in the future. Over time, however, those same interests proved adept at using direct democracy to serve their own interests. This article surveys the origins of direct democracy in California's progressive movement and traces its history up to the 1970s.

La démocratie directe, pour le meilleur ou pour le pire, est devenue l'institution la plus marquante et la plus emblématique de l'État de Californie. Initiative populaire, référendum et révocation des représentants ont été introduits dans la Constitution de l'État en 1911, dans le cadre de la réforme « progressiste » du Gouverneur Hiram Johnson, destinée à soustraire l'État au contrôle de « La Pieuvre », à savoir le monopole de la Compagnie des chemins de fer du Pacifique sud qui avait la mainmise sur l'économie de l'État et le gouvernement. Les réformateurs progressistes pensaient que les électeurs californiens recourraient à la démocratie directe pour « dompter » la Pieuvre et pour se protéger à l'avenir contre des groupes d'intérêt si riches. Avec le temps, cependant, ces derniers se sont avérés très habiles à utiliser la démocratie directe pour servir leurs propres intérêts. Cet article retrace l'histoire de la démocratie directe, depuis ses origines – qu'elle puise dans le mouvement progressiste de Californie – jusqu'aux années 1970.

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Mots-clés: histoire politique, démocratie directe, référendum, Johnson (Hiram), mouvement progressiste, Proposition 13, ère progressiste

Keywords: California political history, direct democracy, initiative, referendum, recall, Johnson Hiram, Progressive movement, Proposition 13, United States, California, Era, 19th century (late), 20th century

Chronological index: XIXe siècle, XXe siècle

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