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POPULAR LEGISLATION IN CALIFORNIA

By MAX RADIN*

EVERY polity, Aristotle declared, may be divided into two parts, that which rules and that which is ruled. In a democracy, the many—who are also the poor—rule over the few—who are likely to be the rich. In an oligarchy it may be just the reverse. In a monarchy—shall we say dictatorship?—the few dwindle into a single person, which is very few indeed. Or else there may be a combination of all these systems.

This is a frequently quoted analysis and has the merit of being easily grasped. Unfortunately, society even on its political side, turns out to be not quite so simple. For one thing, we are not so sure as we once were that we know what “ruling” or “governing” is, and it is likely that whatever it is, it takes place only sporadically and intermittently. To be governed all the time, twenty-four hours a day, is a horror that we fortunately do not have to contemplate as an imminent probability, although apparently there are modern nations that seem not to mind it.

In the complicated process of government there is a function known as legislation, “law making.” It is much more difficult to describe than school books on civics or on political science would have us believe. But in any case we have for several centuries regarded this particular process as peculiarly the act of the “sovereign,” and as the most important part of our governmental scheme.

I think it may well be well considered the most important element in our system potentially, although, in actual experience, the destinies of the United States have in the past been more determined by executive and judicial administration than by legislation. In the last few decades, however, legislation has come into special prominence, and with this prominence has come a particu-

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lar interest in the legislative process and a special desire to change it.

There have been two attitudes to it. One is at least as old as Coke so far as its expression in English is concerned.¹ It is that legislation is at best a necessary evil; a curative or remedial act to which recourse should be had rarely, and which should be limited as much as possible in application. The other is that legislation is the chief and most effective instrument of general reforms, and that it ought to be framed in large outlines and applied broadly and generously to effect important transformations of our social life. The former attitude is commoner among conservatives than liberals; the latter confined chiefly to liberals. Neither group, of course, is completely consistent in its thinking or conduct in respect of these things. Conservatives have been known to favor drastic legislation when it served their interests. And liberals have sometimes preferred that existing laws be administered by sympathizers rather than that corrections be applied by hostile or indifferent legislators.

Still, it is a fact that the chief outcry against legislation has come from what may be called the conservative elements, who in the United States are practically identical with those who do business on a fairly large scale, merchants, manufacturers, and the groups engaged in transportation and in the exploitation of the country's natural resources. There are, in the opinion of these groups, far too many laws already and the yearly additional total is swelling the number to an extent quite unbearable. The chorus of "Let us alone" is raised again and again by leaders in industry who may not like to be reminded of the first recorded instance of this protest.²

And on the other side, liberals who seek to remedy existing injustices and abuses find that legislation instead of being excessive for the purposes they desire, is far too slight, that while laws are passed in reckless profusion to control minor incidents in our social and economic life, the laws they desire, the laws that are directed to the vital matters of securing a fair return to labor, the protection of civil rights or a reasonable incidence of taxation—such laws meet with direct or indirect resistance, and are either not passed at all or are passed in so maimed a form as to be practically useless.

¹4 Coke's Inst. 41.

²Mark 1, 23-24: And there was in their synagogue a man with an unclean spirit; and he cried out, saying "Let us alone. What have we to do with thee, thou Jesus of Nazareth?"

But both liberals and conservatives are at one in entertaining an extremely low opinion of our legislative machinery. The movement to lessen and shorten legislative assemblies—many states have only biennial sessions and brief ones at that—has had as a recent further development the agitation for a unicameral legislature. Apparently there is respectable opinion that the fewer legislators we have and the less they legislate, the better we shall be pleased.

Finally, toward the close of the nineteenth century another movement came into prominence, a movement of which the beginnings may be carried further back but which at that time first assumed the form of a definite scheme of legislation quite different from the one familiar to English speaking communities. This was the movement for direct legislation, for the "initiative and referendum" that had long been employed in Switzerland.³ Associations to urge this method of supplementing—or perhaps displacing—existing legislation were formed in many states, chiefly in the West, and efforts were zealously made to secure its introduction. The impetus may be traced to the same political and economic surge that followed the depression of 1893 and created new popular parties in the agricultural sections of the country.

The first states to adopt the initiative and referendum in some form were South Dakota (1898), Utah (1900), Oregon (1902). By 1932 there were twenty states in which the new method was in force to a greater or less extent. Of these, the largest was California, which in 1911 adopted a constitutional amendment establishing it.

It naturally met bitter opposition. The first attack upon it was on the ground of constitutionality. We had been trained to believe that "representation" was the essence of our system, and the idea as well as the term itself were clothed with virtues of their own, quite apart from the conditions that gave birth to the representative system and the function it was intended to perform. Of the new method of "direct legislation," it was declared that it violated the constitutional duty of the federal government to guarantee to each state a "republican form of government." A system in which the entire people made laws instead of selecting a small number to do so was—it was maintained—not a republican form of government. We may omit the paradox that representation was rationalized originally only because a large and

³Cf. Brooks, *Government and Politics in Switzerland* (1927) ch. VI. pp. 134-165, and the bibliography on p. 165.

scattered population had no machinery for making laws and representation was the next best thing. It seems strange to find representation to be desirable on its own merits, now that a machinery for making laws by a large and scattered population has been proposed. The Supreme Court of the United States, however, declared that it had no jurisdiction to determine that question, and that it was exclusively for Congress to deal with it.⁴

We may be assured by this time that Congress has no intention of finding that the initiative and referendum are contrary to republican institutions. And the objections that were made to the initiative and referendum are now mainly directed to the utility and reasonableness of the method rather than to its constitutionality.

It may be conceded at once that all respectable political scientists reject the initiative and referendum.⁵ It is declared to be absurd. Legislation requires a preliminary discussion. How can a voting population of two or three million people or more scattered over one hundred and fifty-eight thousand square miles—as in California—discuss anything together and vote on the basis of a common deliberation? And, most of all, how can a mass of untrained and imperfectly educated men and women deal with problems of all sorts, technical and general, which only political experts can be trusted to solve?

When the question is put in this way, there is little that can be said on behalf of direct legislation. It would obviously be better to have every proposed measure studied by a group of men who are in direct and daily contact with each other, who can offer objections and meet objections offered, raise queries and answer them, change statements and improve their phrasing, under the incessant and immediate criticism of all who share a joint respon-

⁴*Pacific States Tel. & Tel. Co. v. State of Oregon*, (1912) 223 U. S. 118, 32 Sup. Ct. 224, 56 L. Ed. 377. Cf. the report of Mr. Louis Bartlett to the Commonwealth Club of California, cited in Treadwell, *The Constitution of the State of California*, (6th ed. 1931) 286-292.

⁵There is a large literature on the subject. The most complete statement of the discussion up to 1909 will be found in C. S. Lobingier's book, *The People's Law*, which has a large bibliography.

Cf. also, Haynes, *People's Rule in Oregon*, (1911) 26 Pol. Sc. Quart. 32 seq. The Congressional Record, 62nd Sess. (1911) and the debates on the constitution of Arizona present a fairly complete account of the political reverberations of the idea. In a note in (1910) 24 Harv. L. Rev. 141, there is a brief discussion of the relation of the initiative and referendum to "republican" government in which Madison's definition of "republican" as "a government in which a scheme of representation takes place," is cited (*Federalist*, No. 10). A recent presentation is the brief article by W. B. Munro, in the *Encyclopedia of Social Sciences*, vol. VIII, pp. 50-52, where a full bibliography is given. Mr. Munro states all the accepted prophecies of how the referendum will work.

sibility for the adequacy of the measure. It would again be highly desirable that public measures be prepared and determined by men who have achieved a special competence in politics, law, economics, sociology and history.

But "direct legislation," i.e. the initiative and referendum, should in regard to these desiderata be compared not with the legislation of an ideal group of specialized and competent experts, but with that of existing legislatures, as they are now organized, and, if we maintain our system, as they must be organized. We have never really worked out a complete theory of representation. We do not know whether the essence of our system is the ideal of Burke which turns the "representatives" into officials who are, to be sure, selected by popular vote, and are charged with the duty of subserving popular interests, but are otherwise unfettered by anything but their own judgment in determining the methods and the details by which these interests are to be subserved. Or whether the proper theory is that the representatives are "deputies" or "agents," who are bound in large matters as well as small, by the instructions of their constituents. Both theories can cite respectable authority, and both are alternately held by liberal and conservative spokesmen.

But whatever our theory of representation, we do not regard our legislatures as composed of independent political experts who are responsible exclusively to their conscience for what they do. Even in what may be called the theory of Burke they are at least partially responsible to their constituents, and by a more widely accepted theory they are completely responsible to them.

In any case it is quite evident that if legislation needs a real deliberation and discussion, a canvassing and analysis of advantages and disadvantages, if legislation needs a group of trained political experts, our legislatures are as deficient as the mass of voters are assumed to be. If we know nothing else from an accumulated legislative experience in America, we know that very few of our legislatures, if any, are really deliberative assemblies. Whatever deliberation or investigation takes place is done by committees, and results in publishable reports that could just as well be addressed to the entire body of voters. What takes place in the actual meeting of the legislature itself is, as often as not, a series of absurdly rhetorical speeches, often as poor in form as they are thin in substance. Our parliamentary eloquence is not of a high quality. Or else the efforts of the legislature seem to be directed to the end of preventing action of any kind rather than producing it.

That is to say, our legislators have not impressed themselves upon us as having a higher competence or efficiency than the average man, and about a distressingly large number—a half dozen in each chamber would be distressingly large—there is reasonable doubt of their honesty. This disparaging estimate, it is true, is much more generally made about the state legislatures than about the federal Congress, but it will scarcely be contended that anywhere in the United States have we realized or approximated the ideal legislature which we are accustomed to contrast with mass legislation by the entire body of voters.

One other objection made against direct legislation and often conceded by the supporters of this method is that laws submitted to the people engage the interest and attention of only a small number of the electorate, compared with the votes cast for public officers, especially at times of especial political feeling. It follows, it is argued, that a small minority of voters will determine laws that will bind all of them, and that, therefore, the initiative and referendum does not secure legislation by the people after all.

A special comment about this argument will be made later. For the present, it may be enough to call attention once more to the fact that the mass-legislature should be contrasted not with an ideal condition, but with an actual and existing one. Laws are passed in existing legislatures by quorums that often are only a small fraction of the membership. The total number of the constituents of a majority of such a quorum is the proper basis for comparison with the total number of the electorate which succeeded in passing an initiative measure or a referendum. It will be found that if an average is struck, the contrast is not unfavorable and is becoming increasingly less so.

The curious thing about the extensive literature on the subject is the abstract and general character of most of the arguments used. "This will be the result;" "This must be the effect;"—these are the commonest types of phrases on which judgments of the value or lack of value of the system are based.

But, as a matter of fact, a system that has had a generation of detailed and complete experience in the United States and still greater experience of a more limited kind, need not depend on such generalities. We need not ask what the popular legislature might or would do, but we might profitably ask what it has done. In the discussion of these matters even by eminent authorities, there is a paucity of reference to any extended practice in the many jurisdictions that have adopted direct legislation. The references

to all actual experience are for the most part couched in very general terms and are often admittedly based on single incidents.

This situation is by no means unique in our political experience. Some time ago a great man on the Supreme Court, Mr. Justice Holmes, admonished his brethren that their efforts to declare laws unconstitutional had a bad tendency. Our federal system was ideally adapted for political experimentation in a way that did not commit the whole country. The States ought, therefore, to be allowed as freely as obvious—not excogitated and inferential—constitutional limitations permitted, to make such experiments as they liked, and the other states as well as the entire country might by the success or failure of these experiments be apprised of what to imitate or avoid.⁶

With considerable difficulty—for the courts have until very recently failed to heed the admonitions of their illustrious colleague—experimentation of one kind or another has gone on in the United States. But in an astonishingly large number of cases, extremely little information is available about the success of these experiments. This is eminently the case with what would normally seem an extraordinarily important and striking attempt to have legislation carried out by the entire number of voters, and not by a selected group of legislators. And it might be well to ask, after some forty years of trial, just how the experiment has worked.

A complete study would repay investigation.⁷ In what follows a partial examination of the experience of California will be presented. California is not properly speaking a typical jurisdiction. But it has all the characteristics which have been held to make the initiative and referendum ineffective. It has a large population—about seven millions—at least two metropolitan regions of over a million people living under modern urban conditions, a huge area of over 158,000 square miles, and a highly diversified economy in which agriculture still plays a major role. It is open to us to say that, if we may trust political scientists, direct legislation will find every conceivable obstacle to its successful application in California, if nowhere else.

What has happened in California? In the year 1929, the late Mr. Arthur J. Pillsbury of San Francisco, then over seventy-four years of age, presented a detailed study of the experience of Cali-

⁶*Truax v. Corrigan*, (1921) 257 U. S. 312, 344, 42 Sup. Ct. 124, 66 L. Ed. 254.

⁷Such a complete study is under way, but has as yet not been published.

fornia in the form of a report to the Commonwealth Club of San Francisco. It was the result of many years of investigation. So far, it has never been published, but manuscript copies are available in several public repositories.⁸

The full title is: "A Study of Direct Legislation In All of Its Forms as Exemplified in the Government of the State of California in State Affairs Only: From the Adoption of the Constitution of 1849 to the Presidential Election of 1928." It is a formidable title, and the report is a formidable document, but it remains the only thorough examination of the result of the initiative and referendum in any American jurisdiction.

Mr. Pillsbury's summary of the result of the vote up to and including 1928 needs a special explanation. It has long been the practice of the Commonwealth Club of San Francisco to take an active and energetic part in political discussions of all sorts. It maintains an open forum on almost every type of question. There is no point of view that has not been openly and vigorously advocated in its public meetings by accredited representatives, not even Communism.

At every election a special committee studies the proposals and institutes public debates for and against them. A vote is taken in which a large proportion of the membership takes part. The approval and disapproval of the proposed measures by the Commonwealth Club is published, and in every case is duly recorded in available documents.

It may be said of the Commonwealth Club that while it attempts to have a completely representative membership, its members are on the whole conservative in politics and in economic outlook. The majority are members of the Republican party. The average wealth is, of course, far beyond the community average. The approval of the club of a measure may be taken as having some tendency to indicate that it is not a radical proposal, not a demagogic one, not one calculated to excite fears for the stability of our institutions. We may, therefore, safely say that the designation "right" and "wrong" in accordance with the decision of the Commonwealth Club, would in most instances be affixed to these votes by the most "respectable" of political scientists whether practical or academic. The Commonwealth Club is quite in the tradition of Burke and Bagehot.

⁸One of these repositories is the Bureau of Public Administration of the University of California at Berkeley.

Mr. Pillsbury's summary is as follows:

TOTAL NUMBER AND KIND OF MEASURES SUBMITTED TO THE PEOPLE FOR DETERMINATION FROM THE ADOPTION OF THE CONSTITUTION OF 1849, TO AND INCLUDING 1928		
Total legislative constitutional amendments submitted:		269
adopted	189	
rejected	80	269
Total constitutional amendments submitted by initiative:		37
adopted	9	
rejected	28	37
Grand total constitutional amendments submitted:		306
total adopted	198	
total rejected	108	306
Of the total constitutional amendments submitted:		306
decided right	240	
decided wrong	64	
uncertain	2	306
Total number of "propositions" submitted during whole period:		28
adopted	18	
defeated	10	28
people voted right	21	
people voted wrong	7	28
"Acts" of direct legislation submitted by initiative:		28
carried	9	
defeated	19	28
Referendum appeals to the people:		
right	22	
wrong	6	28
legislature sustained	8	
legislature reversed	14	22
people voted right	20	
people voted wrong	2	22
Constitutional amendments submitted by initiative:		37
adopted	9	
rejected	28	37

Total measures submitted to the people, 1849 to 1928:		384
adopted	233	
rejected or failed	151	384
<hr/>		
On the entire submission of measures the people voted:		
right	303	
wrong	79	
uncertain	2	384
<hr/>		

What shall be said about this tabulation? Evidently that, measured by the approval of a public-spirited conservative body with an exceptionally high average of education and wealth, the people acting as a legislature acted rightly in nearly eighty per cent of the cases in which they had an opportunity to act.

Is that a bad or a good record? Still keeping ourselves at the point of view of Mr. Pillsbury and the Commonwealth Club, I think we must say that it is an excellent average, if we compare it with our impression of the results of formal legislatures. Do the legislatures of the country in general pass four "good" acts out of every five? That is clearly not the opinion of respectable citizens—those who have most vigorously opposed direct legislation.

Mr. Pillsbury gives us no figures for the Commonwealth Club's estimate of statutes passed by the legislature. A slight hint, however, is offered by the statement in regard to referendum. Up to 1928 only a few laws had carried from the legislature to the people. Of these the people sustained the legislature in eight cases, and reversed it in fourteen. Only in two instances, apparently, did the Commonwealth Club adjudge the people to have been wrong, and these two may have been instances in which they sustained the legislature. In other words, the legislature seems to have failed to achieve the approval of the Club as far as these twenty-two cases are concerned, in twelve or more instances, well over a majority, while the people failed only one time in five.

On the question of the participation, Mr. Pillsbury's statistics run only from 1912 to 1928, covering one special election and nine regular biennial ones.

At first blush his figures seem for the period under discussion to sustain the objection that important matters would be determined by votes constituting less than a majority of the voters. It is undoubtedly true that in all but two cases less than half of the total vote cast decided the proposal. But, as has been said, the

comparison must be made not with the total vote cast, but with the total vote cast for members of either branch of the legislature.

Mr. Pillsbury's table is as follows:

Election year	Prevailing Average on issues voted on	Prevailing Average on total vote cast	Prevailing Average on Registration
1912	67.45	40.34	29.19
1914	58.57	37.54	29.65
1915	60.95	55.71	24.00
1916	63.64	46.57	37.53
1918	57.29	33.93	23.08
1920	61.91	48.88	33.97
1922	64.51	54.43	29.48
1924	60.27	40.73	30.29
1926	61.90	45.64	28.12
1928	67.41	44.87	35.79
<hr/>			
Average entire period	62.39	44.86	30.11

Mr. Pillsbury's report gives a great deal of detail on the vote of each election he describes. Although he goes back—and quite justifiably—to 1849, the more significant and important elections are those which took place after 1911, when the initiative and referendum were placed in the California constitution.

The first ten elections in which such propositions were submitted to the voters are subject to the qualification that the system itself was new and its possibilities not fully developed. Nor was there a complete technique of managing them or of campaigning for them. We may use the modern expression "propaganda" and "pressure groups" if we like. At any rate, we can certainly say that these methods only recently have become self-conscious, and that their effect has been in consequence somewhat different from that of the older methods which resembled them.

It may be of service therefore to take somewhat in detail the last four elections, those of 1932, 1934, 1936 and 1938, of which two were presidential elections as well, and two gubernatorial elections.

In the election of 1932, twenty proposals were submitted to the voters of California. They may be briefly summarized as follows, and with them the votes cast for and against them:

- | | | |
|---|-----|-----------|
| 1. Repeal of the Wright Liquor Act (the state | Yes | 1,459,835 |
| Volstead Act) | No | 658,351 |
| 2. State liquor regulation | Yes | 1,308,428 |
| | No | 730,522 |

3. Assimilating enforcement of trust deed and foreclosure of mortgage	Yes	484,930
	No	1,386,098
4. Removing restriction upon use of state's half of highway taxes	Yes	564,222
	No	1,103,891
5. Creating a racing board	Yes	904,493
	No	956,895
6. Reduction of War Veterans' Tax	Yes	918,048
	No	898,563
7. Increasing legislature's daily expenses	Yes	276,878
	No	1,281,879
8. Requiring submission of initiative proposal to Attorney General	Yes	878,135
	No	543,541
9. School Funds. Regulating money to be spent of income tax	Yes	552,738
	No	1,144,449
10. Authorizing City of Escondido to hold stock in water company	Yes	1,095,977
	No	331,396
11. Tideland grant to City of Huntington Beach	Yes	709,438
	No	1,079,451
12. Authorizing City of Glendale to pay improvement assessments	Yes	1,065,420
	No	314,909
13. Amending State Athletic Commission to provide for boxing	Yes	810,147
	No	693,097
14. Exempting vessels of more than 50 tons from tax	Yes	941,775
	No	627,425
15. Authorizing deposit of public moneys by municipal corporations in state banks.....	Yes	873,288
	No	519,092
16. Ending tax liens after 30 years	Yes	785,197
	No	626,593
17. Regulating submission of city charters.....	Yes	815,428
	No	515,020
18. Authorizing Board of Supervisors to draft county charters	Yes	548,722
	No	805,357
19. Permitting cities to provide for proportional representation	Yes	639,306
	No	680,167
20. Permitting counties to provide for proportional representation	Yes	636,459
	No	701,115

The largest number of votes were, as might be expected, cast for the first proposal, the repeal of the State Volstead Act, 2,118,186. The smallest number were cast for No. 19, dealing with proportional representation in cities, 1,319,473. The average vote was just under 1,600,000. The largest majority was cast against No. 7, increasing legislative expenses, which was defeated by a vote of more than 82 per cent in a small total. The smallest majority was cast against No. 5, creating a racing board,

which was defeated by a vote of 51 per cent out of a relatively large total. The narrowest majority in actual votes by which a proposal was carried was in No. 16, which ended tax liens after 30 years. It was carried by a majority of 55 per cent in a total of 1,411,790 votes. Twelve proposals were rejected and eight accepted.

The average vote of 1,600,000, and the low vote of 1,319,473 looms small against the total vote cast for President in 1932, 2,235,358, which, however, was only 117,172 votes more than those cast for the repeal of the State Liquor Law. The average was 71 per cent of the total, and the lowest extreme was about 60 per cent. This compares favorably with Mr. Pillsbury's average of 44 per cent, but it must be remembered that the election of 1932 was a particularly exciting one.

But, as has been said, the real comparison should be made not between the vote for these proposals and the vote for governor, but between them and the vote for members of the legislature. In the election of members of the legislature for the year 1932, the total vote for the senate was about 100,000 and for the assembly about 1,700,000. At the next election, the vote was about the same, somewhat under 1,800,000. The reason for the small vote for the state senate in 1932 was that in California only half the senate is elected at any one election and in 1932, the districts that voted for senator were the less populous districts, whose combined total of population was about a fifth of the total of the state. But even if we take the largest number at any time we shall have represented even in the assembly a smaller actually voting number than the largest number of those who voted in the referendum.

If we remember that a bare quorum of the legislature may pass a law and in some cases did, it will be apparent that so far as public representation is concerned, the minimum of the electors whose representatives in the legislature actually decided important matters was substantially less than the smallest number that voted on the propositions submitted.

We may now turn to the following election, that of 1934, the one in which Mr. Upton Sinclair was not chosen as governor of California. At that time, twenty-three proposals—constitutional amendments and statutes—were presented to the electorate. Listed as before, they were as follows:

- | | | |
|---|-----|-----------|
| 1. The Veterans' Welfare Bond Act of 1933 | Yes | 1,023,496 |
| referred to the people | No | 659,818 |

2. Permitting public consumption of alcohol in hotels and restaurants	Yes	1,262,315
	No	714,303
3. Limiting popular selection of judges	Yes	810,320
	No	734,857
4. Increasing power of Attorney General.....	Yes	1,063,290
	No	449,275
5. Permitting comment on evidence by judges	Yes	1,087,932
	No	460,287
6. Permitting a plea of guilty before a committing magistrate	Yes	1,173,838
	No	317,090
7. Strengthening state civil service	Yes	1,216,141
	No	382,609
8. Providing for a constitutional convention in 1935	Yes	705,915
	No	668,080
9. Regulating chiropractors	Yes	662,548
	No	1,082,796
10. Requiring budgets from all state officers and	Yes	899,434
	No	429,426
11. Making Board of Education elective	Yes	577,377
	No	938,955
12. Modifying interest rates	Yes	783,535
	No	674,346
13. Permitting local option	Yes	497,542
	No	1,362,515
14. Limiting popular election of judges in Los Angeles	Yes	659,355
	No	733,075
15. Creating small judicial districts in Los Angeles	Yes	567,432
	No	746,253
16. Regulating municipal courts	Yes	684,598
	No	614,683
17. Regulating naturopaths	Yes	492,098
	No	1,115,122
18. Authorizing legislature to acquire water rights	Yes	537,828
	No	851,630
19. Regulating increase of state indebtedness by legislature	Yes	490,845
	No	867,686
20. Permitting cities to own stock in mutual water companies	Yes	1,014,082
	No	357,372
21. Regulating eminent domain for reservoir purposes	Yes	922,649
	No	437,536
22. Permitting several political subdivisions to exercise power jointly	Yes	630,156
	No	658,074
23. Providing unemployment relief bonds	Yes	1,209,096
	No	493,886

The total vote for governor was 2,360,916, which was more than the vote cast for president two years earlier. The largest vote on any initiative or referendum was 1,976,618, cast for No. 2, the liquor measure. The smallest vote was for No. 22, a pure matter of county organization, about which only 1,288,230 chose to express an opinion. The average was about 1,600,000. It will be noted, however, that even the lowest vote was 54 per cent of the vote for governor, and, therefore, a larger percentage than the average percentage of the earlier records.

If we now turn to the election of 1936, we find twenty-three propositions voted on:

1. ⁹		
2. Restricting power to impose income taxes....	Yes	737,629
	No	1,193,225
3. Creating a liquor control commission	Yes	748,486
	No	1,432,559
4. Authorizing slant drilling on tide lands.....	Yes	971,569
	No	1,081,346
5. Authorizing Los Angeles County Exposition bonds	Yes	645,279
	No	1,013,332
6. Amending Los Angeles charter to allow Exposition	Yes	670,587
	No	911,223
7. Providing for county and municipal civil service	Yes	670,407
	No	1,174,612
8. Changing method of registering voters.....	Yes	471,478
	No	1,193,690
9. Providing local option in sale of liquors.....	Yes	719,185
	No	1,474,571
10. Permitting motor vehicle taxes to be used in part for non-highway purposes	Yes	829,440
	No	1,061,114
11. Providing a special type of teachers' tenure	Yes	438,490
	No	1,259,603
12. Creating a new court of criminal appeals.....	Yes	278,498
	No	1,378,765
13. Giving eminent domain to exposition companies	Yes	322,526
	No	1,282,644
14. Extending the power of counties to consolidate government	Yes	793,050
	No	887,235
15. Giving legislature power to grant relief to assessment districts	Yes	857,818
	No	764,615

⁹The first proposition was ruled out as unconstitutional too late to effect the numbering of those submitted to the people.

16. Authorizing water districts to acquire stock of water service companies	Yes	706,307
	No	883,339
17. Computing taxes on unsecured property.....	Yes	967,896
	No	605,791
18. Taxing oleomargarine 10 cents a pound.....	Yes	400,367
	No	1,513,924
19. Regulating legislative printing	Yes	709,095
	No	836,882
20. Authorized counties to own museums and art galleries	Yes	705,417
	No	917,941
21. Creating a women's prison	Yes	879,010
	No	871,567
22. Taxing chain stores	Yes	1,067,443
	No	1,369,778
23. Changing the name and organization of Railroad Commission	Yes	306,831
	No	1,331,767
24. Regulating charters of cities and counties.....	Yes	834,864
	No	751,314

The largest total vote cast was for president, 2,712,342. The largest vote cast as to any legislative measure was the much discussed chain store tax, on which 2,437,221 voted, 89 per cent of the presidential vote. The average vote was 1,779,256, seventy-three per cent of the vote for president. In this instance, instead of dealing with approximate figures we may deal with precise totals checked by machine. The total number of votes for state senators was 366,032. The total number of votes cast for all the assemblymen was 1,996,429. In the case of the senators only half (20) of the districts chose a senator—the term of senator is four years—and the three most populous districts, Alameda, San Francisco and Los Angeles, were not among them. To render the comparison reasonable, we must more than double the vote for senator, but even if we trebled it, it would still be considerably below the number of votes cast for the measure that excited the least popular interest.

If we now attempt to list the measures that were accepted and those that were rejected by the people in the elections of 1932, 1934, and 1936, we should have the following:

ACCEPTED

1. Repeal of State Volstead Act (1932)
2. Adoption of Liquor Regulation (1932)
3. Reduction of War Veterans' Tax (1932)
4. Submission of initiative proposals to Attorney General (1932)

5. Authorizing City of Escondido to hold stock in water company (1932)
6. Authorizing City of Glendale to pay improvement assessments (1932)
7. Adding Boxing to State Athletic Commission (1932)
8. Exempting vessels of more than 50 tons from tax (1932)
9. Authorizing deposit of public moneys by municipal corporations in state banks (1932)
10. Ending tax liens after thirty years (1932)
11. Regulating submission of city charters (1932)
12. Veterans' Welfare Bond Act (1934)
13. Permitting public consumption of alcohol (1934)
14. Limiting popular selection of judges (1934)
15. Increasing power of Attorney General (1934)
16. Permitting comment on evidence by judges (1934)
17. Permitting plea of guilty before magistrate (1934)
18. Strengthening civil service (1934)
19. Providing constitutional convention (1934)
20. Requiring budgets (1934)
21. Modifying interest rates (1934)
22. Regulating municipal courts (1934)
23. Permitting several cities to own stock in mutual water companies (1934)
24. Regulating eminent domain for reservoirs (1934)
25. Unemployment relief bonds (1934)
26. Relief to assessment districts (1936)
27. Computing taxes on unsecured property (1936)
28. Creating a women's prison (1936)
29. Regulating charters of cities and counties (1936)

REJECTED

30. Making trust deeds like mortgages (1934)
31. Removing restrictions on highway taxes (1932)
32. Creating racing board (1932)
33. Increasing legislators' daily expense (1932)
34. Regulating expenditure of income tax (1932)
35. Tideland grant to Huntington Beach (1932)
36. Authorizing supervisors to draft charters (1932)
37. Proportional representation in cities (1932)
38. Proportional representation in counties (1932)
39. Regulating chiropractors (1934)
40. Making Board of Education elective (1934)
41. Permitting local option (1934)
42. Limiting popular election of judges in Los Angeles (1934)
43. Judicial districts in Los Angeles (1934)
44. Regulating naturopaths (1934)
45. Authorizing legislature to acquire water rights (1936)
46. Increase of state indebtedness (1934)
47. Joint exercise of power of political subdivisions (1934)
48. Restricting income tax (1936)

49. Liquor control commission (1936)
50. Slant oil drill on tide lands (1936)
51. Los Angeles County Exposition bonds (1936)
52. Los Angeles County Exposition (1936)
53. County civil service (1936)
54. New method of vote registration (1936)
55. Local option (1936)
56. Motor vehicle taxes for non-highway purposes (1936)
57. Teachers' tenure (1936)
58. New Court of Criminal Appeals (1936)
59. Eminent domain for exposition (1936)
60. Consolidation of county governments (1936)
61. Authorizing water districts to acquire stock in water companies (1936)
62. Taxing oleomargarine (1936)
63. Legislative printing (1936)
64. Authorizing counties to own museums and art galleries (1936)
65. Taxing chain stores (1936)
66. Changing Railroad Commission (1936)

Accordingly in these three elections, out of sixty-six measures, twenty-nine were accepted and thirty-seven rejected, maintaining the rule that in popular legislation more measures are likely to be rejected than adopted, and that the fear that proposals of moment would be hastily accepted has no real foundation.

As a matter of fact, we must modify that statement. The proportion varies decidedly with the particular election. In 1932, out of twenty measures, eleven were accepted and nine rejected; in 1934 out of twenty-three, fourteen were accepted and nine rejected; in 1936, out of twenty-three, four were accepted and nineteen were rejected. Whatever else can be said of the people acting as a legislature, it cannot be said that they acted without discrimination or according to any uniform pattern. They had a definite notion of what they wanted.

And if these sixty-four measures are glanced at, there is one thing apparent. There is not a single case in which it can be said at once that the result reached was obviously bad. In every single instance in which a proposal was rejected there was considered opinion by competent authority justifying that rejection. For example, Nos. 53 and 57, creating local civil service and teachers' tenure have much to recommend them in the abstract, but the particular form of the bills was such that many strong supporters of both ideas were opposed to them. Indeed, the majority of the persons directly affected were opposed to them.

Not only is it impossible to characterize the result reached in

any case as clearly bad, but in the overwhelming majority of instances, the popular decision was precisely that which had been approved of by most civic organizations that had given independent and disinterested study to them. Mr. Pillsbury and his Commonwealth Club would have called—indeed, did call—the decisions “good.”

And this must be particularly emphasized because, of the twenty-nine proposals accepted, a certain number were quite patently of a kind that would be reckoned “unpopular,” that is to say, they limited rather than increased popular action, and in some cases ran counter to our ancient and supposed inveterate popular prejudices. Such proposals were Nos. 4, 14, 15, 16, 17, 18. Similarly proposals were rejected which had always been supposed to have a strong popular appeal; e.g. Nos. 30, 32, 40, 49. Of some of these proposals accepted—all strongly advocated by competent political experts—it is not too much to say that no legislature would have passed them, although they constituted highly desirable reforms. And of many of the jobbing and reckless proposals rejected by the people, it is only too likely that the legislature would have passed them; indeed in several cases, the legislature did pass them.

The election of 1938, as has been indicated, may be treated as a special test of the conclusions reached in the foregoing pages. In the previous elections an increasing participation of the voters in the matter of direct legislation had been noted. In Mr. Pillsbury's summary the average percentage of the vote cast for these measures compared with the total vote cast was about 45 per cent. In 1932, the average was 60 per cent and the highest percentage was 95 per cent of the total. In 1934, the average was 68 per cent and highest percentage was 83. In 1936 the average was 73 per cent and the highest was 89 per cent. This successive raising of the average is a significant fact that must be kept in mind.

The election of 1938 was one that particularly tested the work of popular legislation. The gubernatorial campaign both in the primaries and in the final election was vigorous and protracted. The result was an emphatic victory for the Democratic candidates, candidates who represented the liberal—or, if one prefers, the left wing of the party. And besides this intense absorption in personal selections, several propositions were submitted to the people of the state, twenty-five in number, and in at least two of them, the first and the last, the campaign waged was as intense, colorful and

extended, as for the candidates. Indeed, it is currently reported that both of these issues involved a larger participation and a more extensive use of funds than the campaigns for governor or senator.

The propositions submitted were the following:

1. The Anti-Picketing Initiative which sharply restricted the use of picketing and boycotting in labor disputes.....	Yes	1,067,229
	No	1,476,379
2. The regulation of pounds. This was really an anti-vivisection measure, and substantially limited the sources from which animals could be obtained for experimentation	Yes	721,126
	No	1,581,258
3. Motor vehicle taxation. Required motor vehicle fuel tax to be used exclusively for public street and highway purposes.....	Yes	1,505,043
	No	766,063
4. Highway and Traffic Commission. This placed the repair and patrol of highways under a board with ten year terms.....	Yes	904,491
	No	1,358,351
5. Fishing control. Prohibits the operation in state waters of boats bringing fish reduction products from ships beyond the three mile limit	Yes	1,309,007
	No	795,023
6. Taxation of Insurance Companies. Taxing companies on gross premiums upon business done in state	Yes	1,424,076
	No	609,135
7. Relief administration. Gives legislature plenary power over relief administration....	Yes	1,166,589
	No	834,332
8. Apportionment of funds to political subdivisions. Permits legislature to apportion funds to counties or cities.....	Yes	479,500
	No	1,395,523
9. Veterans Tax Exemption. Including automobiles in the \$1,000 veterans exemption	Yes	839,379
	No	1,288,517
10. Huntington Beach oil leases. Fixes royalties to state for oil drilled at Huntington Beach	Yes	491,937
	No	1,666,251
11. Boards of Equalization. Reorganizes these administrative bodies	Yes	540,578
	No	1,371,153
12. San Francisco Exposition. Exempts property of Exposition from taxation.....	Yes	1,067,573
	No	943,533
13. Revenue Bond Act. Authorizes issuance of bonds without reference to debt limit by majority of voters instead of by the existing two-thirds vote.....	Yes	516,591
	No	1,465,841

14. Removal of judges upon conviction of crime.	Yes	1,782,350
Self-explanatory	No	346,701
15. Judicial Council. Reorganizes Judicial Council of state and increases its powers.....	Yes	806,742
	No	972,526
16. Retirement of judges. Permits judges to retire at seventy after twelve years service at half pay.....	Yes	822,982
	No	1,105,183
17. Initiative. Increases time of filing initiative petitions	Yes	985,255
	No	832,359
18. State money. Permits depositing of state agency money in interest bearing accounts	Yes	826,901
	No	998,421
19. Public money. Permits gift or loan of veterans surplus fund to veterans.....	Yes	405,552
	No	1,493,574
20. Taxation. The Single Tax Amendment combined with a repeal of the Sales Tax..	Yes	372,386
	No	1,836,585
21. Church orphanage and college exemption. Increased somewhat the tax exemption of these institutions	Yes	760,482
	No	1,323,176
22. City charters. Permitted charter changes at special elections	Yes	702,387
	No	1,086,405
23. Legislative help. Increased amount legislature may spend for special assistance.....	Yes	451,880
	No	1,378,262
24. Oil-drilling on state-owned tidelands. Regulated royalties for such drilling.....	Yes	309,795
	No	1,744,801
25. Retirement life payments. The "\$30 a week on Thursday" or "Ham and Eggs" measure	Yes	1,143,670
	No	1,398,999

Once more, no one of the lists of recommendations—whether those of the newspapers, or of public organizations, like the Commonwealth Club—was accepted completely. The largest vote was on the labor measure which ran to 2,543,608, which was very close indeed to the total vote cast for governor, 2,695,904. For the majority of the propositions the vote was over two million. The one that elicited least interest was No. 15, a technical matter dealing with the Judicial Council, for which the total vote was 1,779,268. Even this was quite two-thirds of the vote for governor.

The average of the popular vote was in this election no less than 76 per cent of the total vote cast. The highest vote was 94 per cent of the total.

Seven of the propositions were adopted and eighteen were defeated, a fact which confirms even more strongly the general tendency noted in popular elections. In far the greater number of cases, the adoption or the rejection was by a decisive majority.

No. 17, involving a slight change in the manner of placing initiatives on the ballot was carried by a majority of 152,896 in a total vote of 1,817,614. Nos. 15 and 18 were lost by a somewhat similar vote. But in all the other twenty-two instances, there was no doubt about the deliberateness of the popular approval or disapproval.

Of the twenty-five, No. 6, the taxation of insurance companies, No. 7, the unification of the relief administration, No. 8, the apportionment of funds to political subdivisions, No. 11, dealing with State and County Boards of Equalization, No. 15, dealing with the Judicial Council, No. 17, dealing with the Initiative, No. 18, dealing with the deposit of state money, No. 22, dealing with city charters, might be called technical measures. Three of them were adopted and five were rejected. In three of these eight cases, the vote was relatively light and the majority small, but only three. It cannot be said that obviously technical matters will be accepted or rejected by chance.

It is further possible to classify 1, 2, 10, 13, 20 and 25 as measures in which the acceptance might be normally assumed to be sure of popular support. This was particularly the case for No. 25, the much discussed "\$30 every Thursday" measure, which had eight hundred thousand signatures when the petition was signed, and which was supported by an organized group of more than two hundred thousand paying members. None the less, all these measures were defeated by majorities ranging from 250,000 in the case of No. 25 to 1,464,199 in the case of No. 20, which meant a vote of nearly five to one.

Again, Nos. 3 and 4 were both advocated by the automobile associations. No. 3 confined the funds of the sales tax to the service of the roads. No. 4 combined the repair and policing of highways in a permanent commission. Obviously both were primarily of importance only to motorists, and it must be assumed would excite only a tepid interest in the great mass of people. None the less No. 3 was passed by a vote of nearly two to one in a total vote of 2,271,106.

No. 4 had actually been approved by the Central Federation of Labor. But it carried an obvious implication of a well-organized and permanent state police, an institution which labor had always opposed. During the Salinas lettuce strike, and on several other occasions, the Motor Vehicle Police had been charged with definite acts of interference in the current labor disputes. This fact doubt-

less explains the rejection of the measure by 350,000 votes in a total vote of 2,262,842, although no campaign was waged against it and although there was almost no discussion of the proposition in the newspapers.

One of the most serious abuses of legislation as conducted in the ordinary form is that of lobbying. This has reached such proportions that almost any statute is *prima facie* suspect unless it is of a sort that lobbying could not possibly have affected. Obviously this does not mean that the lobbying is always based on corruption, but it sometimes is, and in any case, it means that the result is reached not by discussion even in committees but by whisperings in corridors or by confidential understandings in private rooms.

Now, lobbying of this sort is impossible in popular legislation. But it is quite true that something like it can be undertaken, and what that is may be best illustrated in the case of two measures, both submitted to the voters in the election of 1936. They were Nos. 50 and 65, in the preceding table on page 576.

In the case of No. 50, an intensive campaign was carried on. It was presented as a means of preserving the tide-lands permanently from oil drilling and making these lands consequently available exclusively for the use and enjoyment of the people as a whole. As an innocent rider, there was appended the provision that owners of lands adjacent to the shore might by slant drilling for relatively slight royalties to the state, pump the oil under the tide lands. The associations of public parks approved the measure. Most newspapers did. A great deal of billboard advertising and radio propaganda was used on behalf of it. Counter agitation pointed out that this in effect gave a particular oil company which happened to own a large part of the adjacent land an enormous share of the state's oil resources at a low figure. The propaganda on behalf of the measure—extensive as it was—was unsuccessful, but unsuccessful by only 110,000 votes out of more than 2,000,000.

In the case of No. 65, the chain store tax, the propaganda was predominantly against it. A recent magazine article has described the extent and force of the pressure used to prevent passage of the bill. Huge sums were expended. An advertising campaign of hitherto unknown dimensions in the newspapers and outside of them was undertaken.

And the effort was successful. The tax was defeated by a majority of 302,335 out of a total vote of 2,437,221. It was a

decisive majority as far as numbers and percentages went, and those who conducted the campaign of pressure and propaganda have a right to claim at least partial credit for the result. None the less, we must not forget that in the large cities there is a strong sentiment in favor of chain stores and the cheap prices they involve, and that in these places the propaganda had no need of creating a favorable reception.

Again, in the 1938 election, there were two propositions in which serious efforts were made by what may be called pressure groups to determine the result. One was No. 1, the anti-picketing ordinance, and the other was No. 25, the "\$30 every Thursday" pension.

The campaign in favor of No. 1 was conducted by powerful groups, most of which were covered by anonymity. There was, however, no doubt that a substantial number of the commercial, financial and industrial leaders of the community were actively engaged in attempting to secure its adoption. A vigorous campaign by newspaper advertisements, by telegrams, by broadcasts and by billboard announcements was conducted, in which special reference was made to the pending department store strike, which did in fact cause serious discomfort to hundreds of thousands of persons in all the income groups.

No such specific statement of amounts expended as is available for the chain store proposition in 1936, has so far been made. But in 1938 as in 1936, "publicity" experts were hired to conduct the campaign, and the expense incurred must have been considerable.

The opposition to proposition Number One was carried on, as might be expected, chiefly under the auspices of organized labor. A few independent committees of liberals were formed as well. An excellent account of the campaign on the side of labor may be found in an article by Paul Scharrenberg, for many years president of the State Federation of Labor. In this article there is further a full statement of the historic relations between organized labor and the initiative.

The feeling engendered was as strong, and the general discussion as full as those which were evidenced in the election of 1936 about the chain store proposition. The total vote cast was, as has been said, the highest of all votes recorded for all the measures submitted, 2,543,608 and the measure was rejected by the decisive majority of 409,150, and not by the bare majority freely predicted.

No less than 58 per cent of the voters on this proposition voted against it.

When this is compared with the vote in 1936 on the chain store proposition, it raises a real question whether even systematic and well-paid propaganda in such matters really has the effect that is often ascribed to it. "Propaganda" has become a business, involving considerable investments and an elaborate technique. The same effort, however, and the same kind of effort succeeded in 1936 and failed in 1938 by very nearly the same margin.

In other words, what determined the result was rather the conflicting interests of the groups involved than the mere mechanical device of "skilful" propaganda. Apparently you can induce the public to smoke or drink or gargle by means of tricks and slogans which almost everybody can learn. But they cannot be induced to vote so readily. Or we may say that while "selling an idea" to the people seems a feasible task, there are ideas and ideas, and "salesmanship" has not yet proved itself a completely effective political device when the people legislate in mass.

These cases illustrate two things, first, that a kind of lobbying is possible in the case of popular legislation as in the case of the ordinary type, and, secondly, that it is far less dangerous and far less likely to become an abuse. It is, above all, open. Not only he who runs may read it, but it is designed for the running reader, and it requires him to stop and read it long and carefully. It is expensive, so that it is not likely to be used often. And it needs a basis of popular approval to begin with, or it will be completely unsuccessful.

Evidently no final and convincing conclusions can be drawn from the facts here presented. But enough, I think, has been given to make it clear that the common objections to popular legislation are quite wide of the mark. On purely technical matters, on the basis of these figures, the popular judgment is likely to be better than that of the legislature and certainly less open to suspicion. On questions of important progressive reforms, it is vastly more likely to reach an acceptable conclusion.

One final comment may be made. Within the last few years, the anti-Administration press has conducted a vigorous campaign against a number of President Roosevelt's proposals, and has laid stress on the avalanche of telegrams which have been sent to the various Senators and Congressmen urging them to vote against certain particular measures. If these telegrams really represented

the views of the constituencies of the Congressmen and Senators in question, they would amount to a referendum on these bills. If we waive for a moment the fact that the newspapers and the political interests that have dwelt on the paramount duty of obeying these telegraphic mandates are the very ones that most furiously attack the notion of a referendum in general and most eloquently espouse the discretionary character of the representative function, we have this situation. The telegraphic referendum has been shown to be in very many cases fraudulent, and in all cases extremely incomplete. Might it not be advisable, in view of California's experience—if we really desire popular judgment on a proposed measure—to get it as California gets it, by securing a vote on it that is almost sure to be two-thirds of the total vote cast at the last most canvassed election, and so far as our experience shows, is quite likely to be appreciably more judicious and rational than the vote of the legislature?

There is, of course, another inference which might be hesitantly and deprecatingly drawn. It has been boldly asserted that there is no inherent virtue in a bicameral legislature as such. The bicameral system of England and of the federal Constitution has definite functions. These functions may, of course, be differently evaluated, but they have at least a historic basis. But where there is no such basis, the need of repeating in one legislative chamber the indirections, the squabbles, the purposeless oratory of the other is not immediately apparent.

One state, as we know, has abolished the second chamber. It is impossible as yet to appraise the success of the experiment. Will some practical or theoretical publicist somewhere have the hardihood to suggest that we might abolish the legislature altogether? As an alternative, it might conceivably be proposed that the administration of the state be left to the governor and a small board of financial comptrollers and that all real legislation—on general or special matters—be accomplished by popular vote.

It is not likely that this suggestion will be made at present. But if California—and doubtless many other states—continues to demonstrate that it is feasible, no one can be sure that it may not be suggested in the near future. At least it will not be urged that its source is Moscow, Rome or Berlin. In those political laboratories strange compounds and distillations have been produced, but none that at all resembles the notion that decisions shall be made by a free vote of all citizens after vigorous campaign and discussion.