

# A Continuous Referendum Assembly

*An approach to a long-term fix for California's dysfunctional government*

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The founders of our country were fully aware of the excesses of legislatures, but they were able to blunt only a few of them. They intended the three branches of government to check each other, reducing possible overreach by legislators and the executive (the judiciary was “the least dangerous branch”). It is clear today that these checks may prevent dominance of another branch, but they also produce a political arms race which results in every branch becoming larger and more powerful.

Many techniques have been tried to prevent the worst abuses. Different redistricting schemes, part-time legislatures, term limits, caps on spending, caps on taxes, Initiatives, recall elections, citizen watchdog groups, campaign finance reform, super-majorities to pass higher taxation, campaigns to reduce “waste, fraud, and abuse,” appointment of judges, election of judges, various voting schemes for the legislature and executive, elimination of voter qualifications, sunset laws, line-item veto power, defunding by executive inaction, lowering voting age, executive agencies to make regulation fair – the list could extend to infinity. We have not found anything that works, despite having tried so many ideas.

We have a professional political class, one that makes its living at politics. This class encompasses legislators, regulators, staffs, lobbyists, and consultants. Those that are not elected politicians either have been or aspire to be. They are the inevitable result of democratic adolescence - that period after the framers of our first constitutions have left us. The Public Choice theorists have written about the perversities of political agents for several decades. We understand this problem. We are at a loss for an effective solution.

Some of our solutions have proven to be worse than the disease. In California, the highest profile example is the Initiative. In the Initiative we see the defects Plato saw in democracy. The mob makes law, and the rest of the population then defensively also makes law or elects representatives who promise to protect them from the mobs. It is another form of political arms race, where more law is the solution. According to Plato, this kind democratic behavior leads to tyranny, which is to say that this is not new.

Let us admit that citizens and the professional political class have different strengths and weaknesses. The professional political class knows how to write law, interpret law, and enforce law. They know how to get things done in a political system. The downside is like the person whose only tool is a hammer yet who sees all problems as nails – the solution for everything is a law, or legal action. They have interests that are different from those who elect them.

Citizens, on the other hand, do not have law-making skill, but they do have common sense. Particularly in the United States, with a large middle class, nearly everyone identifies themselves as middle class

even when they are not. Common sense is in abundance. We tap this abundance only every two years. What a waste!

We need both the law making skill of the professional political class and citizen common sense. Rather than remake the legislature, executive, or judiciary, we need a way to inject citizens' common sense into government. To prevent the excesses of the Initiative, we should not give citizens law-making power. We should give them greater referendum power instead – the power to say “yes” or “no”, like current state referenda, and like jury trials. However, unless citizen referendum power can match the political class's higher volume and lower cost of law-making power, the professional political class will continue to run wild. I call this continuous referendum power.

We need a body of citizens, randomly chosen -- like trial juries, making Gerrymandering irrelevant -- who meet as long as the legislature, with the same investigative powers and pay as the legislature. They would both take apart laws recently passed and nullify the parts of them they deem unwise, and look at laws passed long ago to nullify if they are ineffective or inefficient. With fewer exceptions than the military draft of World War II, no voter should be exempt, and they cannot be challenged or opt out as in trial juries. They should serve for one term, and then be ineligible to serve again. In compensation, we should pay these randomly chosen citizens for life for the extreme disruption to their lives.

Continuous referendum power is orders of magnitude better than voting every two years. Legislatures will less often risk logrolling and earmarking – to name two abuses -- to get measures passed. A Referendum Assembly can and often will take apart the ingredients of a compromise to make sure that a true majority supports each portion. They will be able to say “no” to laws passed at midnight at the end of legislative sessions, dubious laws passed by voice vote, laws empowering agencies rather than the legislature to make tough decisions, or laws spending more than taxes take in. A Referendum Assembly will have sufficient people and time to review obsolete, perverse, complicated, undecipherable, and failed laws. Their bias will be less law. Their bias will be common sense.

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