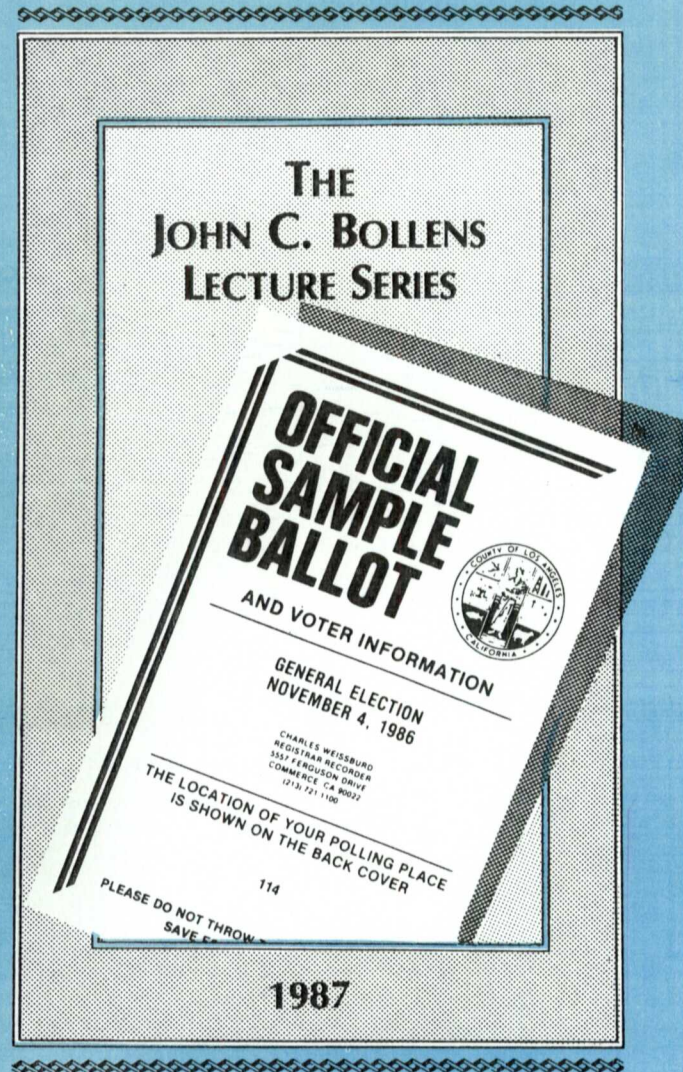


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**PLEBISCITARIAN DEMOCRACY
IN CALIFORNIA:**

THE INITIATIVE PROCESS


Dr. William Hamm

THE JOHN C. BOLLENS
LECTURE SERIES




The aim of the John C. Bollens Lecture Series is to bring together the worlds of academic exploration and practical politics so that the work of those who serve the public will be illuminated by discussion of the broader principles and ideas of representative government. The previous lecturers have been Professor James Q. Wilson and Hale Champion. The distinguished Professor of Political Science at UCLA, John C. Bollens, born in 1920 in Pittsburgh, Pennsylvania, earned his bachelor's degree at the College of Wooster, his master's degree at Duke University and his doctorate at the University of Minnesota. He began his association with UCLA in 1950 and became a full professor in 1960. He established himself as a most productive and influential thinker on local government. Not only did he write 26 books, including profiles of Mayor Sam Yorty and Governor Jerry Brown, and inspire hundreds of students, but he also held important positions with Los Angeles County, Los Angeles City and the cities of Seattle and Chicago. These positions included Civil Service Commissioner of Los Angeles County, member, Los Angeles Citizens Committee on Zoning Practice, and director, Town Hall Study of the City of Los Angeles' Charter and Governmental organization, which led to many changes in the City's charter.

We who know and worked with Professor Bollens as students, colleagues and friends began this lecture series as a legacy not only to the man, but to his unique brand of scholarship.


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Supervisor, Los Angeles County
Third District


MARVIN BRAUDE
Los Angeles City Councilman
11th District


DAVID WILSON
Professor, Political Science
University of California, Los Angeles
Chairperson, Lecture Committee

THIRD ANNUAL
BOLLENS MEMORIAL LECTURE

William Hamm, Ph.D.
Legislative Analyst
1977-1986

Plebiscitarian Democracy in California:
The Initiative Process

Supervisor Edelman, Councilman Braude, Mrs. Bollens and friends old and new, I am honored to be amongst you tonight and to be a participant in this series of lectures in honor of Professor John C. Bollens.

Honors aside, I am delighted to have this opportunity to share with you some thoughts about an important issue of public policy.

When I was Legislative Analyst, preparing and delivering talks, such as the one I am going to deliver this evening, was easily one of the most enjoyable tasks that I had to perform. Now that I'm in the private sector, it's still an enjoyable task, but it's a whole lot tougher than it was when I had one hundred very gifted people to help me pull together my thoughts and make them sound semi-intelligent so I wouldn't embarrass myself. With this in mind, I say to people like Bob Geoghegan and others of you who hold a staff position or graduate assistant position: it may take awhile before the full realization of just how valuable your contributions are sinks in. In preparing these remarks all by myself, I've certainly been more appreciative of the good people who helped me all those years that I was Legislative Analyst.

This evening, I will be talking about the increasing tendency of Californians to, in effect, take the law into their own hands by sponsoring statutory and constitutional initiatives. Before getting into this topic, however, let me lay a few cards on the table. Like Councilman Braude, I, too, am a strong supporter of the initiative process. It's a good process, and I'm not all that concerned about the popularity which the initiative process enjoys today. I am concerned, however, about the way in which we Californians are using that process. My purpose this evening is to

stimulate your thinking about some of these problems and to share a couple of ideas for improving the process.

By giving the people direct access to the basic laws and codes of California, the Constitution allows citizens to short-circuit the legislative process. You and I can be law makers. To do so, we don't have to get elected to the California Legislature, the City Council, or the Board of Supervisors. All it takes is two hundred dollars. We need only submit our proposed statutory or constitutional idea, along with the cash, to the Attorney General. He will put a title on it and give us permission to begin gathering signatures. And if we gather enough signatures, our idea will go on the ballot, giving the rest of the voters a chance to decide whether it should become law.

Our proposed initiative doesn't have to meet with the approval of the Attorney General; it doesn't have to be something that state government or local government can implement; it doesn't even have to be constitutional. The initiative can be pure gobbledygook and still get the green light from the Attorney General.

You think I'm overstating the case? I'll let you be the judge. Here is a proposed initiative that repeals every statute passed by the California Legislature since 1926 and prohibits the State's appellate and trial courts from interpreting the law! You don't believe me? Earlier this month, the Attorney General gave the sponsors of this measure the go-ahead to begin gathering signatures. The initiative has the Attorney General's file number SA87RF0002, and awaits your signature.

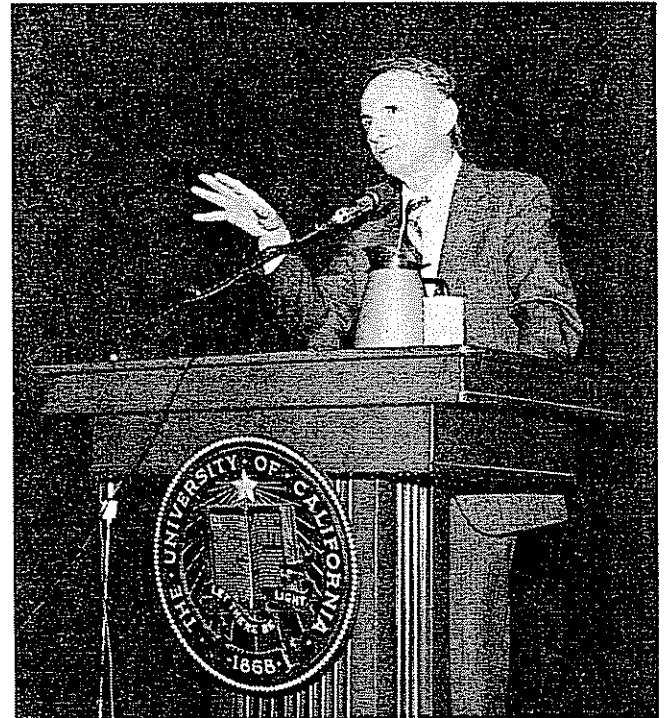
Date: March 4, 1987
File No: SA 87 RF 0002

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

LAW INVALIDATION. CONSTITUTIONAL AMENDMENT.
Repeals all statutes adopted by the Legislature since 1926. Requires all cases, if requested, to be decided by a jury. Prohibits judges and lawyers from interpreting the law. Mandates only one law on each subject. Prohibits questioning of jury's judgement. Limits appellate review to trial court's compliance with the Constitution, the letter of the law, or jury tampering. Abolishes the State Bar and prohibits all current members from practicing law or holding public office. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unable to be determined.

Naturally, getting the Attorney General's permission to circulate a petition still leaves one a long way from the state ballot. The proponent must convince somewhere between 372,000 and 595,000 registered voters that the proposal should go on the ballot and be put to a vote of the people.

Nevertheless, in the 75 years that Californians have had access to the initiative process, 195 sponsors have travelled this path successfully. Fifty-seven of these sponsors have gone on to win a plurality of the vote for their initiative at the statewide election.



Supervisor Edmund D. Edelman introducing Dr. William Hamm

During the last decade, there has been a sharp increase in the use of the initiative process by Californians. Since 1978, 233 initiatives have been titled, nearly double the number titled during the preceding ten-year period (1968-1977). Of these 233 initiatives, 34 made the ballot, compared with the 18 during the preceding ten years. And 15 of those 34 measures have been approved by the voters—nearly four times the number approved during the earlier period.

In short, the initiative process is used much more frequently today and the users are enjoying a much greater success rate.

Why are so many more individuals and groups taking advantage of the opportunity to sponsor initiatives?

Clearly, it is not because there is a lawmaking vacuum in Sacramento. Each year, the Legislature passes and sends to the Governor thousands of bills. And contrary to what you may have heard, the Governor, regardless of whether his first name is Jerry or George, ends up signing most of those bills.

Nor is the initiative process so popular because California Legislature is not accessible to individual citizens. You say you have an idea for a bill and you want to find someone in the Legislature to carry it for you? No problem. There are plenty of legislators, Democrats and Republicans, who still haven't finished putting together their legislative programs for 1987 and are looking for bills to carry. In fact, it's hard for me to imagine just how bad that idea of yours would have to be before you would come up empty in your search for a sponsor.

Alright, I confess: I am a little cynical. That's because, as Professor Wilson indicated, I spent nearly nine years sitting in the Capitol, or in my office across the street, wondering "how in the world Senator X or Assemblymember Y ever dreamed that one up." And on those occasions when I just couldn't contain my curiosity and asked Senator X or Assemblymember Y about the bill's origins (usually in a more tactful way), the response I often heard was: "One of my constituents came to me with the idea—I thought I'd drop it in and see if there is any support for it."

If the Legislature is so active and so accessible, why would an individual or group want to go to the trouble and not-inconsiderable expense of trying to qualify a proposal for the state ballot? There are several reasons.

First, sponsoring an initiative probably is the only way to secure the enactment of a proposal that alters the power structure within government itself. When it comes to proposals of this type, the legislative process, not surprisingly, isn't very accessible at all.

We can hardly expect otherwise. The men and women in the Legislature are the people who most benefit from the current rules of the game and they can hardly be expected to welcome proposals that would change those rules and perhaps lose their advantage. A change in the power structure, almost by definition, must come from outside the Legislature. Or to put it a little differently, if ever there is a groundswell of opinion in California that we would be better served by a unicameral Legislature composed of 40 districts, I'm just about positive it will take an initiative to convince the 80 members of the California Assembly that this is a good idea.

Among the initiatives which have sought to alter the

rules of game are the measure that established California's civil service system, the Political Reform Act of 1974, and Paul Gann's recent proposals to reduce legislative expenditures and the salaries paid to government officials. And I suspect that if anything meaningful is ever done to correct the abuses of campaign financing in California, it will be done through the initiative process and not by a vote of the Legislature.

1974 DIRECT PRIMARY ELECTION

9 POLITICAL REFORM INITIATIVE

Ballot Title

FINANCIAL DISCLOSURES AND LIMITATIONS AFFECTING POLITICAL CAMPAIGNS, PUBLIC OFFICIALS AND LOBBYIST—OTHER MATTERS. INITIATIVE. Requires reports of receipts and expenditures in campaigns for state and local offices and ballot measures. Limits expenditures for statewide candidates and measures. Prohibits public officials from participating in governmental decisions affecting their "financial interests." Requires disclosure of certain assets and income by certain public officials. Requires "Lobbyists" to register and file reports showing receipts and expenditures in lobbying activities. Creates fair political practices commission. Revises ballot pamphlet requirements. Provides criminal and civil sanctions for violations. Enacts and repeals statutes on other miscellaneous and above matters. Financial Impact: Adoption of this measure will increase state and local costs up to \$500,000 for the 1974-75 fiscal year and from \$1,360,000 to \$3,210,000 for each subsequent fiscal year.

Secondly, individuals and groups turn to the initiative process whenever the Legislature is unable to deal with an issue which has aroused a segment of the population. Among the issues in this category that have prompted initiatives in recent years are property tax relief, forced busing of school children, and whether English should be the official language of California.

Why was it that the men and women of the Legislature, who thousands of times each year are able to compromise out their differences and reach agreement on whether a bill should pass or fail, were not able to reach a consensus on issues such as property tax relief, at least in broad terms? There are many reasons.

First, the issue itself may not be very amenable to compromise. It may be too black and white, thereby preventing the State's best compromisers from finding a middle ground. This is certainly true of issues such as abortion and capital punishment.

Second, the Legislature may not be able to deliver, even though the need for action is widely recognized, because the legislative process breaks down. It was just such a breakdown that gave Howard Jarvis his opening in 1977 to come forward with Proposition 13.

In 1977, everyone in the Legislature recognized the need for some form of property tax relief; and several bills providing such relief were introduced. Each one, however, benefitted some groups more than others.

None of these groups was strong enough to secure enactment of its bill, but each concluded—wrongly—that by hanging tough, the others would give in. This miscalculation led to stalemate, preventing any action from being taken. Enter Howard Jarvis.

1978 CONSOLIDATED PRIMARY ELECTION

13

Tax Limitation—Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

TAX LIMITATION—INITIATIVE CONSTITUTIONAL AMENDMENT. Limits ad valorem taxes on real property to 1% of value except to pay indebtedness previously approved by voters. Establishes 1975-76 assessed valuation base for property tax purposes. Limits annual increases in value. Provides for reassessment after sale, transfer, or construction. Requires $\frac{2}{3}$ vote of Legislature to enact any change in state taxes designed to increase revenues. Prohibits imposition by state of new ad valorem, sales, or transaction taxes on real property. Authorizes imposition of special taxes by local government (except on real property) by $\frac{2}{3}$ vote of qualified electors. Financial impact: Commencing with fiscal year beginning July 1, 1978, would result in annual losses of local government property tax revenues (approximately \$7 billion in 1978-79 fiscal year), reduction in annual state costs (approximately \$600 million in 1978-79 fiscal year), and restriction on future ability of local governments to finance capital construction by sale of general obligation bonds.

Third, the Legislature may not be able to respond to an aroused public for institutional reasons. Opponents of a bill always hold a tactical advantage over the bill's proponents, simply because the measure must clear many hurdles before it gets to the Governor's desk. The proponents must win every battle; the opponents only have to win once. As a consequence, a key committee or a key legislator often is able to thwart enactment of a proposal that enjoys widespread support. Clearly, this is what has kept the Legislature from enacting bills calling for a constitutional convention to require a balanced federal budget, despite the fact that public opinion surveys invariably find widespread support for the idea.

These considerations help explain why citizens sometimes find it necessary or desirable to circumvent the process of representative government and take proposed laws directly to the voters, via the initiative route. They do not, however, shed any light on the increased popularity of the initiative process in recent years. Two factors, I think account for this trend.

First, the demands associated with financing political campaigns have increased sharply during the past decade. These demands can inhibit action by the Legislature, even when the public is all stirred up about an issue. These days, the members of the California Legislature are under enormous pressure to raise money, and raise money they do—nearly sixty million dollars during the campaigns for legislative races in 1986! Having come to believe that their jobs and careers depend on their success in raising money,

the members find it difficult to vote against the interest of a large or wealthy group that is politically active. Such a vote risks making the campaign treasurer's job that much more difficult. As a result, the Legislature is finding it increasingly difficult to make the tough policy calls. This is one reason for the sharp increase in the number of initiatives during the last ten years.

Frankly, I don't see any change in this sorry state of affairs coming out of the Legislature. It's up to us to come up with a better way of financing political campaigns. Once we have figured out how to do it, we will need an initiative to make the change.

The second reason why the initiative process has become so popular is the recent discovery by some enterprising individuals that sponsoring initiatives can be very, very lucrative.

Ten years ago, when I first came to California, the conventional wisdom held that sponsoring initiatives was a costly affair—something that only well-heeled groups could afford to undertake. Individuals, such as the late Howard Jarvis and Paul Gann, however, have shown that this isn't always the case. Sponsoring initiatives, in fact, can be downright profitable. With a high-speed computer, some good mailing lists, some marketing savvy, and a little seed money to get the process going, a sponsor can easily bring some money in the door that he spends to qualify an initiative for the state ballot (including the very handsome salaries that some sponsors pay themselves).

On what basis do I make this statement? Consider this: During the early 1980's the base cost of qualifying an initiative for the state ballot was somewhere between \$300,000 and \$400,000. That's what Don Sebastiani spent in qualifying his reapportionment initiative in 1982. That's what the backers of a water resources initiative spent the same year to get their proposal on the ballot. Sponsors of a measure that would have imposed a five cent deposit on all beverage containers managed to collect the signatures they needed after spending only \$266,000.

In contrast, Howard Jarvis raised and spent nearly two and a quarter million dollars in qualifying Proposition 36 for the 1984 ballot. Two years later, he spent \$1.8 million on what ultimately became Proposition 62. This money, I assure you, did not come out of Mr. Jarvis' pocket. He raised much of it through direct mail appeals for support. His success clearly demonstrated that a lot of money can be made sponsoring initiatives if it is done correctly.

When a group is in the business of qualifying initiatives for the ballot, the Legislature is worse than simply irrelevant: it's a competitor.

In sum, the combination of a Legislature weakened by the demand to raise money plus the lure of profits

from sponsoring initiatives have sharply increased the popularity of the initiative process in recent years. What are the implications of this trend for public policy in California? Not very encouraging, for two reasons.

First, the initiative process is being used increasingly to deal with complexities that cannot be addressed satisfactorily through a yes-or-no vote by ten million Californians at a plebiscite. Second, when the process is used primarily to make money, rather than to make laws, the public's welfare is at risk.

As a means of addressing complex issues of public policy, the initiative process has some fairly serious deficiencies. The most important of these is inflexibility. Once a measure has qualified for the ballot, it cannot be altered—not by the courts, not by the Legislature, not even by the sponsors. In fact, once the measure has received a title from the attorney general, the text is virtually set in concrete. If you're a sponsor and you suddenly discover a flaw in your proposal, you are stuck with it. All you can do is walk away from the measure and start over, sacrificing everything you've invested in the proposal up to that point.



Left to right: Supervisor Edmund D. Edelman, Mrs. Virgene Bollens, Dr. William Hamm, Professor David Wilson, Professor Marvin Hoffenberg.

As a result, between the time it is titled and when it becomes law, the initiative can neither be corrected nor perfected. This is in sharp contrast to the legislative process, where a proposal can be altered right up until the day the governor picks up his pen to sign it. (Yes, bills can be amended even after they have been passed by both houses and sent to the governor. In fact, the tax imposed on intrastate services for the benefit of the hearing impaired was added to a

measure that had been sitting on the Governor's desk before it was recalled for a little fine tuning.) The legislative process is flexible. When errors are made in a bill, they can be corrected. More importantly, the thrust of a legislative proposal can be altered as its consequences become more apparent, as new information becomes available, or as the public's views on the matter begin to take shape.

Not so with an initiative. Its provisions are fixed long before most voters are even aware of the measure—and often before the proponents themselves fully understand their handiwork. As a result, the voters have only two choices—yes or no. There is no middle ground.

A second deficiency of the initiative process when it's used to make laws involving complex subjects is the primacy of symbols over substance. This is almost unavoidable when the fate of the measure is to be decided at a plebiscite involving ten million people. Issues are presented to the public in the form of almost-rhetorical questions, such as "are property taxes too high?" "Is the judicial system too soft on criminals?" And "Should we eliminate toxins from our rivers and streams?"

While these questions may appropriately be raised in a plebiscite, the statutory changes that accompany them often are too complex for the yes-or-no approach. These changes often are much more controversial than the symbols to which they are attached. Moreover, the effects of the changes are likely to be hidden from the public's view because they can't be addressed in a thirty second T.V. commercial or put on a billboard. It's only when the sponsor of an initiative really blows it, as Paul Gann did in drafting Proposition 61 and as Howard Jarvis did two years earlier in drafting Proposition 36, that the voters are alerted to the specifics of a measure on the ballot.

These two shortcomings of the initiative process—inflexibility and the primacy of symbols over substance during the electoral campaign—can put a well-informed voter in a real bind. On the one hand, a voter who has become aware of a defect in a pending initiative may be tempted to vote "no" on the measure hoping that a clean version will be enacted at a later date. On the other hand, the voter may be reluctant to vote against the measure, even though it is ineffective, for fear that a "no" vote will be misinterpreted as a rejection of the symbol which the proponents have attempted to make the issue. For example, if I'm for tax relief, do I dare vote "no" on Proposition 13 because the measure would permit the owners of two identical houses that are side by side to pay vastly

different property tax bills? If I do, my vote may be interpreted by the politicians as a lack of support for tax relief itself. Similarly, if I vote against the so-called Victims' Bill of Rights because of the well-known defects in that measure, will I be sending a message that I'm happy with the judicial system and the way it treats criminals.

My dilemma in these cases underscores the strengths and weaknesses of the initiative process: it's much better at sending messages than it is at making or changing laws.

No proposition better exemplifies the strengths and weaknesses of the initiative process than Proposition 4 on the 1979 state ballot, a measure that was overlooked by many because the election was dominated by the issue of forced busing for school children.

Proposition 4 established a constitutional limitation on the amount of tax money that the state and local governments can appropriate each year. The thrust of this measure was easy enough to understand. It sought to limit the amount of money that the government can spend. In my view, one does not need any special legal training, or any particular expertise in order to form an opinion on this issue. Consequently, the proposal to limit governmental spending was an appropriate matter to put before the electorate at a plebiscite.

1979 SPECIAL STATEWIDE ELECTION

4

Limitation of Government Appropriations — Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

LIMITATION OF GOVERNMENT APPROPRIATIONS. INITIATIVE CONSTITUTIONAL AMENDMENT.

Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

Proposition 4 however, is a lot more than just a concept. It is a very skillfully woven fabric of specific provisions that have major implications for the public sector. Many of these provisions are exceedingly complex and, in contrast to the concept itself, are very difficult to grasp—particularly during the ten or twelve weeks leading up to the election when one is bombarded with information about issues in 30-second bursts.

It's not my purpose to analyze the specific features of Proposition 4. But let me call your attention to one

of these features which illustrates the difficulty of making complex laws through the initiative process.

The ceiling that Proposition 4 initially imposed on appropriations by the state was, if anything, fairly generous. Consequently, when the Legislature enacted the first budget subject to Proposition 4, the limit was the furthest thing from the Legislature's mind. The state didn't have nearly enough money in the Treasury to take full advantage of its limit.

The initiative was not nearly so generous, however, in adjusting the limit over time. Increases in appropriation cannot exceed the percentage increase in consumer prices and population. Thus, if prices go up 5%, the limit goes up 5%. If the number of California residents goes up 2%, the limit goes up 2%.

Although the dynamics of the measure may appear to be fairly reasonable, they put government—and those who depend on government—in a real bind. While the need for government services does, indeed, rise with inflation and population growth, other factors not recognized in Proposition 4 can be every bit as important in shaping these needs. What if the number of school age children increases more in percentage terms than the state's population? What if the cost of providing health care to the aged, blind and disabled

EARLY INITIATIVES		
1914	NO	Prohibition
1914	NO	Eight-hour working day
1914	NO	Regulation of investment companies
1914	YES	Abolition of poll tax
1914	YES	BONDS \$1,800,000 University of California buildings.
1914	NO	Qualification of voters at bond elections
1914	NO	Absent voting
1914	NO	Deposit of public moneys
1914	YES	City and county consolidation and annexation of contiguous territory
1914	YES	Prize fights
1914	NO	City and county consolidation and annexation with consent of annexed territory
1914	YES	Land Title Act
1914	YES	Suspension of Prohibition Amendment
1914	NO	One day of rest in seven
1914	NO	Drugless practice of medicine
1914	NO	Prohibition elections

Source: Los Angeles County Registrar - Recorder

goes up more rapidly than consumer prices generally? Under these circumstances, the appropriation limit, in effect, requires the Legislature to cut other programs in order to simply maintain services to school age children and the aged.

I'd be the last person here to tell you that cutting government spending is necessarily bad. As you know, I spent nine years pointing out to the Legislature where programs could be cut and many of these opportunities still exist. A prime example is the outrageously generous subsidy that the state provides to students enrolled in the UCLA medical school! My point is not that Proposition 4 all-but-guarantees cuts in government programs; it's that this feature of the measure was not addressed—or even considered—during the 1979 election campaign.

Here's the ballot pamphlet from 1979. The arguments for and against Proposition 4 appear on pages 18 and 19. Did the proponents and opponents of the measure tell the voters about the dynamics of the appropriation limit? No. The voters were told only that Proposition 4 will not "eliminate government waste"...or "eliminate users fee"...or "guarantee you a tax refund"...or "guarantee the fat will be cut from government." Proposition 4 is "smoke screen politics," we were told, and that's about as specific as the debate ever got in 1979. Sadly, I must confess that the Legislative Analyst didn't flag for the voters all of the significant ramifications of the measure, either. In fact, we didn't discover some of what I've told you tonight until after election day.

In short, the public was in a lousy position to fully understand the mechanism that it was being asked to write into the state's constitution.

It's possible that if the public had been presented with the question "should government grow more slowly than the state's economy," its answer would have been "no". Because the debate over Proposition 4 dealt with symbols rather than substance, however, this issue never made it onto the public's radar screen. Even if it had, the inflexibility of the initiative process would not have permitted this feature of the measure to be "fixed."

How can we correct the deficiencies in the initiative process without weakening its ability to act as an important "safety-valve" through which needed changes can be made? I don't have a complete answer for you, but I have a couple of suggestions I'd like to offer.

First, we need to establish a better mechanism for correcting defects in initiatives that have been approved by the voters.

Under existing law, if the voters approve a flawed initiative only the voters can fix it. The Legislature can't do the job unless the initiative's drafters explicitly authorized legislative amendments. The intent of this limitation on the Legislature, I suppose, was to prevent elected representatives from thwarting the will of the public. Frankly, however, there is not much danger of this happening. The Legislature may not always be a good listener before the people have spoken, but once the voters have cast their ballots, the member's hearing becomes acute. Because the prospect of the Legislature conspiring to sabotage an initiative passed by a majority of the voters is very remote, allowing legislative amendments to voter-approved initiatives would overcome some of the problems stemming from poorly drafted initiatives, with very little risk. Requiring a 2/3 vote to amend an initiative once it's been approved by the voters would diminish the risk even further.

Second, I think we need to create incentives for sponsors of initiatives to seek help in perfecting their ideas. This can be done by establishing an "indirect initiative" process as an alternative to the process that now exists.

The indirect initiative allows proponents to qualify their ideas for the ballot by collecting fewer signatures than the number required by current law. In return for this advantage, however, the proponents must give the Legislature a crack at the measure's specific provisions before they are set in concrete. The process would work something like this: sponsors choosing the indirect initiative process would submit their proposal to the Secretary of State with, say, 60% of the required number of proposal signatures. The Secretary of State would then refer the initiative to the Legislature for its consideration. The Legislature would be required to hold hearings on the measure at which the proponents would play a leading role. The Legislature would have the opportunity to amend the measure prior to voting on it, but a vote of both houses would be required. The measure couldn't be bottled up in committees. Thus, the proponents would be guaranteed some action on their proposal, even though they might not like the outcome.

If the Legislature approved the proposal, either in its original or modified form, the proposal would go to the Governor for signature (or, in the case of a constitutional amendment, the measure would be placed on the ballot for the voters to approve.) This would save the sponsors a whole lot of money, because they would not have to wage as extensive a campaign in order to qualify the measure and secure its approval

by the voters. In the event the proponents were dissatisfied with the outcome, however, they would still have the option of qualifying the initiative for the ballot by submitting the balance of the signatures required by current law.

For several years, the League of Women Voters has sponsored a bill that would establish the indirect initiative process. This year, the bill has been introduced by Senator Gary Hart as S.B. 1200.

Although the Hart bill would improve the policy-setting process in California, at no cost to plebiscitarian democracy, it is not a cure-all. Specifically, the bill would do nothing to overcome the problems that can result when initiative sponsors are more interested in making money than in making laws. To these sponsors, the specifics of an initiative are far less important than the measure's ability to attract public attention and contributions. Consequently, offering such sponsors an opportunity to have the Legislature fine-tune their proposal is not really offering them anything at all.

I doubt that we can fix this problem by passing a bill or sponsoring an initiative. A change in attitude, rather than a change in law, is our best hope for correcting this flaw in the initiative process. We're going to have to become a lot more sophisticated about initiatives—not such easy marks for direct mail and fund-raising solicitations. If somebody can figure out how to accomplish that through a bill, I'd certainly be willing to listen!

With that let me thank the organizers of this evening for including me on the program, and let me thank all of you for your attendance. I would be delighted to answer your questions.

I don't know if you could hear that or not but the gentleman has raised, I think, an important problem that I didn't cover: how to get more citizens involved in the electoral process, and not leave lawmaking by default to a minority of Californians.

Clearly, we need to continue our efforts at educating the public as to the importance of ballot measures. Improving the ballot pamphlet would be a giant step in this direction. If we make the document less intimidating by cutting out the statutory language (and maybe muzzling the Legislative Analyst when he or she gets a little long-winded) that will help.

I must confess, however, that on the question of citizen participation, I'm of two minds. I don't think we are well-served by encouraging cheap votes on important issues. While I'm distressed by the fact that only 41% of the public thought enough of the race for governor to cast a vote last November, I don't want people who have little interest in the process gumming up the works by casting ballots. I know that's not a

very popular point of view, but I see a real danger in having a lot of cheap votes cast at election time.

The question is whether or not the accelerating use of the initiative process is unique to California.

From reading magazines for state officials, my sense is that there has been a rise in the use of initiatives in other states. Oregon, Idaho, and Michigan have seen an onslaught of initiatives in recent years. But I don't have any statistics that can help me respond to the question.

The question is: if the Legislature was receptive to making the kinds of changes sought by proponents of initiatives, why would the proponents travel the initiative route in the first place? Is there really a likelihood that the Legislature will act in any kind of responsive manner when presented with an indirect initiative?

I think the answer to that question often will be "no," though in some cases it will be "yes." Either way, however, the indirect initiative process guarantees a debate over the substance of the bill prior to putting it on the ballot—and that is all to the good.

The second part of the question is, to what extent would the opponents have control over amendments to their proposal in the Legislature?



Hiram Johnson

Courtesy, The Bancroft Library

As I recall, the Hart bill allows the proponents to make changes in their proposal, even though they've already collected 80% of the required signatures, so long as the Attorney General agrees that those changes further the original thrust of the proposal.

So it would be possible to improve the measure before it goes to the public, based on the results of the hearings. Consequently, I don't think the indirect initiative would cost us anything, and it could gain us something by putting better-drafted measures on the ballot. That way, at least, we'll be able to interpret the propositions on which we must vote. I find it very difficult to form an opinion on measures when key terms are not defined and the relationships between them are not specified. And I'd much prefer to see the sponsors define these terms than the courts.

The question is: how did the initiative process get added to the constitution?

The initiative was proposed by Governor Hiram Johnson and his progressive allies as a means to break the power of the Southern Pacific Railroad, back in 1911. (Interestingly, another one of the proposals in Governor Johnson's package was women's suffrage.) The reformers believed that it would be much more difficult for a narrow interest group to dominate public policy if the people were involved, than if the interest groups simply had to buy off the members of the Legislature.

I don't think Hiram Johnson ever imagined what the tobacco industry would spend in opposing a measure to have smokeless areas in public places. Or what the beverage manufacturers would spend to defeat the bottle deposit bill. The influence of the narrow interest dollar is still very much a part of the process, to be sure.

The question is: aren't disparities in the ability of groups to back initiatives just as serious a problem as those I've identified tonight?

My answer is "no." The ability to spend does not give groups a veto power over propositions. If it did, we wouldn't have Proposition 65 (the toxic initiative). The opponents of this measure spent tons and they still couldn't derail it. Money is clearly important but it is not always decisive.

Yes, I'm distressed that money is as influential as it is, but I'm much more concerned about the influences of money in the legislative process than in the initiative process.

"Plebiscitarian Democracy in California: The Initiative Process" was given at the Schoenberg Hall Auditorium at UCLA on March 31, 1987.



Dr. William Hamm delivering the Third Annual John C. Bollens Lecture.

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