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## The Birth of Direct Democracy: What Progressivism Did to the States

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### Abstract

*The Progressives' impatience with the Constitution, their antipathy for checks on government, and their longing to delegate power to administrative experts have had a lasting impact on American politics as Progressivism has gradually been carried forward in successive liberal waves throughout the 20th and now the 21st centuries. Yet Progressivism, for all of its impact on national government, had much more immediate and radical effects on state and local government. In many states and localities, Progressives were able to push through sweeping structural changes, many of which pertain to the common ways in which most Americans interact with government and have become such a familiar part of Americans' political participation that their departure from our constitutional principles is hardly noticed.*

It has been well documented, both in Heritage Foundation studies and in the scholarly literature of the past several years, that the Progressive Movement of the early 20th century had profound effects on American national government.<sup>1</sup> The Progressives' impatience with the Constitution, their antipathy for checks on government, and their longing to delegate power to administrative experts all have had a lasting impact on today's politics, as Progressivism has gradually been carried forward in successive liberal waves throughout the 20th and now 21st centuries.

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The original Progressives did not provide a detailed road map for the development of 20th-century liberalism as much as they laid the intellectual foundation for the concrete advances to be made by those who would follow them. As Charles Kesler has demonstrated in his recent book *I Am the Change: Barack Obama and the Crisis of American Liberalism*, the governing agenda of the Obama Administration was made possible by ground that had been prepared through the liberal advances of the Great Society, the New Deal, and some victories of the original Progressives themselves.<sup>2</sup>

Yet Progressivism, for all of its impact on national government, had much more immediate and radical effects on state and local government. Indeed, while Progressive Presidents, especially Woodrow Wilson, oversaw significant policy achievements—the national income tax, the Federal Reserve Act, and the Federal Trade Commission Act to name just a few—the Progressives were unable to achieve much

formal structural change in American government itself beyond the direct election of Senators in the Seventeenth Amendment, as significant as that was.

In many states and localities, however, Progressives were able to push through sweeping structural changes. Many of these changes pertain to the common ways in which most Americans interact with government and have become such a familiar part of Americans' political participation that their departure from our constitutional principles is hardly noticed.

This essay will address itself to these changes by examining what Progressivism did to state and local government: what happened in those states and municipalities where Progressivism effected the most profound changes in government and what the consequences of these developments have been for republican liberty. For constitutional conservatives, the fact that some Progressive mechanisms have been used to achieve conservative policy ends makes a principled examination of these mechanisms all the more necessary.

### Progressive Direct Democracy

To make sense of the specific changes Progressives brought to state and local government, we must first briefly recall the basic elements of Progressive political thought. Progressives disagreed fundamentally with James Madison and most of the other American Founders on the basic facts about human nature and its impact on democratic government.

As Madison explained in *The Federalist*, the greatest problem for republican governments throughout human history had been majority tyranny—or what the Founders called majority “faction.” The history of republican government was replete with instances of passionate majorities, fueled by their own narrow interests, governing in

a manner adverse to the rights of other citizens and to the common good. Even Thomas Jefferson, who is thought to have been less concerned about the abuses of republican government than his Federalist adversaries, had warned in his *Notes on the State of Virginia* that an “elective despotism was not the government we fought for.”<sup>3</sup>

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Madison was worried, with good historical evidence, that majorities would use the democratic process to expropriate the wealth of the minority. Since the ultimate purpose of civil government, as the Declaration of Independence proclaims, is to secure each man's natural right to life, liberty, and the pursuit of happiness, the American government would not last long if it was not structured in a way that provided for popular self-rule and protected the natural rights of all citizens, majority or minority.

The basic structural elements of the American Constitution—separation of powers, checks and balances, an independent judiciary, and the expression of popular will through the medium of representative institutions (in other words, republicanism instead of direct democracy)—were understood by the Founders as the best way of empowering government to do energetically what the people needed it to do, but also of checking the possibility of abusive government by carefully limiting and channeling its authority.

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1. A sampling includes Thomas G. West and William A. Schambra, “The Progressive Movement and the Transformation of American Politics,” Heritage Foundation *First Principles Series Report* No. 12, July 18, 2007, <http://www.heritage.org/research/reports/2007/07/the-progressive-movement-and-the-transformation-of-american-politics>; Ronald J. Pestritto, “The Birth of the Administrative State: Where It Came From and What It Means for Limited Government,” Heritage Foundation *First Principles Series Report* No. 16, November 20, 2007, <http://www.heritage.org/research/reports/2007/11/the-birth-of-the-administrative-state-where-it-came-from-and-what-it-means-for-limited-government>; and Sidney Milkis, “The Transformation of American Democracy: Teddy Roosevelt, the 1912 Election, and the Progressive Party,” Heritage Foundation *First Principles Series Report* No. 43, July 11, 2012, <http://www.heritage.org/research/reports/2012/06/the-transformation-of-american-democracy-teddy-roosevelt-the-1912-election-and-the-progressive-party>.
  2. Charles R. Kesler, *I Am the Change: Barack Obama and the Crisis of Liberalism* (New York: Broadside Books, 2012). For an abridged version, see Charles R. Kesler, “Barack Obama and the Crisis of Liberalism,” Heritage Foundation *First Principles Series Report* No. 45, October 15, 2012, <http://www.heritage.org/research/reports/2012/10/barack-obama-and-the-crisis-of-liberalism>.
  3. Thomas Jefferson, *Notes on the State of Virginia* (New York: Penguin, 1999), p. 126.
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These constitutional limits on government presented a fundamental obstacle for the original Progressives, who sought to free the power of the national government for the purpose of responding to a set of social and economic problems that the founding generation supposedly never could have envisioned. The Founders' institutional arrangements and concern for the natural rights of minorities were being abused, Progressives argued, by special interests who were simply trying to game the system for their own advantage and deny equality of opportunity for all citizens.

The Founders' fear of tyranny of the majority was outdated, Progressives contended; the real problem of their day was tyranny of the minority. Theodore Roosevelt fumed in 1912: "I have scant patience with this talk of the tyranny of the majority.... We are today suffering from the tyranny of minorities."<sup>4</sup> The people, argued Roosevelt, were calling for their government to take action—to regulate corporations and propertied interests, for example—yet the institutional structure handed down from the Founding placed too much distance between the people's will and those in government who actually make policy.

This is why one category of Progressive efforts at the state and local levels was aimed principally at getting around the institutions that stood between popular opinion and governing. If, for instance, a state legislature refused to heed a popular call for regulation of railroad rates (because, as Progressives contended, it was under the control of railroad special interests), then the people should be able to go around the legislature and enact such regulation directly through a popular ballot initiative. Related reforms included the popular referendum, by which a measure approved by the legislature could nonetheless be rejected by the voters, and the recall, by which officeholders could be ousted before the constitutionally prescribed conclusion of their terms.

Another category involved the role of political parties. If, for instance, legislators were too beholden to unelected party leaders and thus unresponsive to public opinion, mechanisms like the direct primary could be employed to reduce the power of political parties and tie political candidates more closely to rank-and-file voters.

For the authors of *The Federalist*, the essential character of American government was that it would be not only "wholly popular,"<sup>5</sup> but also entirely representative. It was by channeling popular will through representative institutions that self-government could be made consistent with safeguarding man's natural liberties. As Madison famously explained in *Federalist* 10, it was a purpose of the Constitution "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens" so that "the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose."<sup>6</sup>

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The Progressives believed, by contrast, that this filtering of public opinion through political institutions had resulted in a stifling of the public will altogether. They believed that human nature had progressed to the point where democratic majorities could be trusted with more direct control of government and that the time had come to get the institutions out of the way.

For Theodore Roosevelt, the Founders' institutional design had proved ineffective at bringing about real liberty and had failed to reach the real suffering of real people. Filtering popular will through representative institutions had empowered a minority to thwart the people's wishes, since those institutions had become beholden to special interests:

No sane man who has been familiar with the government of this country for the last twenty years will complain that we have had too much of the rule of the majority. The trouble has been a far

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4. Theodore Roosevelt, "The Right of the People to Rule," in Ronald J. Pestritto and William J. Atto, eds., *American Progressivism: A Reader* (Lanham, Md.: Lexington Books, 2008), pp. 251-252.

5. *Federalist* No. 14, in George W. Carey and James McClellan, eds., *The Federalist* (Indianapolis: Liberty Fund, 2001), p. 63.

6. *Federalist* No. 10, in Carey and McClellan, eds., *The Federalist*, p. 46.

different one—that, at many times and in many localities, there have held public office in the States and in the Nation men who have, in fact, served not the whole people but some special class or special interest.<sup>7</sup>

Roosevelt called for adoption by states of the initiative, the popular referendum, and the recall of elected officials in order to circumvent recalcitrant institutions of government. TR also called for the direct primary in order to circumvent unaccountable party leaders.<sup>8</sup>

TR went beyond some other Progressives in calling for popular referenda on key state judicial decisions. He was incensed that some state courts had been striking down Progressive legislation on constitutional grounds (including legislation enacted in New York under his governorship). He demanded that “in such cases where the courts construe the due process clause as if property rights, to the exclusion of human rights, had a first mortgage on the Constitution, the people may, after sober deliberation, vote, and finally determine whether the law which the court set aside shall be valid or not.”<sup>9</sup> The institutions of government were not carrying out the will of the people as he saw it, and that meant that these institutions had to give way.

Progressive writer Herbert Croly—founding editor of *The New Republic*, whose *Promise of American Life* had, upon its publication in 1909, profoundly influenced Roosevelt and helped push him back into national politics—shared Roosevelt’s belief that genuine democracy had to be achieved not by going through but by going around political institutions. Late 19th-century politics was dominated by corrupt bosses and political machines to which the people had been forced to resort when the regular political institutions had proved incapable of meeting their needs. If the legal and constitutional restraints

on government could be cleared out of the way, Croly reasoned, government might be able to meet these needs. Direct democracy was the vehicle through which this goal could be accomplished.<sup>10</sup>

In his book *Progressive Democracy*, Croly pointed to historical progress to justify the “faith” he had in the people to govern directly, without need of intermediary institutions. He rejected the Madisonian view that representation was needed to “refine” public opinion and countered that it was time for representative institutions to take on a new role:

Public opinion has a thousand methods of seeking information and obtaining definite and effective expression which it did not have four generations ago.... Under such conditions the discussions which take place in a Congress or a Parliament no longer possess their former function. They no longer create and guide what public opinion there is. Their purpose rather is to provide a mirror for public opinion.<sup>11</sup>

Direct democracy would provide a burst of energy to the system in order to wake it up to this new reality. Beyond this, Croly argued that it ought to become a permanent feature of state government, not simply a temporary corrective as some advocates of direct democracy believed, so that direct public opinion would always remain in a position of supremacy relative to representative institutions.

Even Woodrow Wilson, who as a rule had more regard for institutions than either Roosevelt or Croly (he did not, for instance, share Roosevelt’s antipathy for the judiciary), joined the Progressive cry for direct democracy. Not only did he advocate the direct primary and direct election of Senators,<sup>12</sup> which was ubiquitous among Progressives of all stripes, but he also joined in the calls for the initiative, the referendum, and the recall.<sup>13</sup>

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7. Roosevelt, “Right of the People to Rule,” p. 252.

8. *Ibid.*, pp. 253-254.

9. *Ibid.*, p. 254. In making this case, Roosevelt relied specifically on the sentiments of Justice Oliver Wendell Holmes, whom he had appointed to the U.S. Supreme Court and who dissented from cases like *Lochner v. New York*, 198 U.S. 45 (1905), in which the Supreme Court had struck down as unconstitutional state legislation regulating work hours.. He also made reference to the New York case of *Ives v. South Buffalo Railroad*, 201 N.Y. 271 (1911), in which the top state appellate court had overturned a worker’s compensation law enacted under Roosevelt’s governorship.

10. Herbert Croly, *Progressive Democracy* (New York: The Macmillan Company, 1914), pp. 254-256.

11. *Ibid.*, pp. 260-262, 264.

12. Woodrow Wilson, *The New Freedom* (New York: Doubleday, Page and Company, 1913), pp. 229-232.

13. *Ibid.*, pp. 236-238. This did not include, he clarified, the recall of judges. See pp. 239-242.

Wilson believed that the people were out ahead of their government and that a self-interested minority was pushing an excessively strict interpretation of the Constitution to prevent change that was long overdue. He relied upon the remark of an Englishman—presumably the 19th-century liberal realist Walter Bagehot—that “to show that the American Constitution had worked well was no proof that it is an excellent constitution, because Americans could run any constitution.”<sup>14</sup> Not only had legislatures become corrupt (something Wilson himself had witnessed in his battles with the Democratic Party bosses during his governorship of New Jersey), but the very idea of fixed terms allowed corrupt legislators and administrators temporary immunity from having fallen out of favor with public opinion.

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“You must admit,” Wilson argued, “that it is a little inconvenient sometimes to have what has been called an astronomical system of government, in which you can’t change anything until there has been a certain number of revolutions of the seasons.”<sup>15</sup> Hence Wilson’s particular attachment to the recall, the absence of which from the federal system Wilson would later lament when the Senate stood in the way of his beloved League of Nations. Wilson maintained that if the opposing Senators had had to stand for immediate popular judgment on the basis of their League vote instead of being able to ride things out to the ends of their long terms, public opinion would have been enough to push the treaty over the top.

In any event, like other Progressives, Wilson saw state direct democracy measures as means of tying institutions more directly and immediately to the public will. He spoke of “the growing conscious-

ness that something intervenes between the people and the government” and argued that “there must be some arm direct enough and strong enough to thrust aside the something that comes in the way.”<sup>16</sup>

Wilson, like all Progressives, sought to use the mechanisms of direct democracy to tie policymaking more tightly to immediate public opinion. Yet, while no Progressive sought to circumvent institutions entirely, there were differences among them on the necessary degree and duration of such mechanisms. Some saw them as important temporary measures, to be used occasionally when the ordinary institutions of government had become corrupt and needed correction. Others had a more ambitious vision for direct democracy, seeing it as a permanent and regular complement to traditional institutions.

### **Progressive Changes in State Government**

Many states heeded Progressive calls to make state government more directly democratic, and where changes did occur, they did so to varying degrees. The most popular measures by far were the ballot initiative, the referendum, and the direct primary.

It should be noted, however, that this was not the only assault on the institutions of state government. In addition to circumventing state legislatures through direct democracy measures, Progressives also sought to delegate power away from the political institutions in other ways, most notably by delegating some legislative power to commissions and other “experts.” Both kinds of moves—direct democracy and delegation of power to “experts”—came from the Progressive belief that politics itself had become corrupt and beholden to special interests, and thus that power had to be diverted away from traditional political institutions.

Yet these moves pull in opposite directions: On the one side, direct democracy measures seek to empower popular majorities and give them greater voice in state government, while on the other, delegation of power away from politicians (for whom the people vote, after all) to unelected administrators certainly reduces the accountability of policymak-

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14. Ibid., p. 234.

15. Ibid., p. 238.

16. Ibid., p. 236.



ers to the electorate. The major Progressive movements to change state government contained both of these seemingly contradictory elements.<sup>17</sup>

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**The Initiative, Referendum, and Recall.** While several Progressive measures—most notably the direct primary—were designed to “purify” political institutions, this was insufficient for many Progressives who sought to bypass political institutions altogether. The ballot initiative and referendum were their principal mechanisms of choice.

Both the ballot initiative and the referendum were devices that placed legislation or constitutional amendments directly before the voters. Initiatives did so by circumventing the legislature, relying instead on a petition process to force a vote on a particular issue either in the legislature or by the general public. Referenda were put on the ballot as a consequence of action in the legislature, giving voters the opportunity to approve or reject what the legislature had done.

These devices were used most widely in the West, where South Dakota first adopted them in 1898 and was joined soon thereafter by Utah, Oregon, Nevada, Montana, and Oklahoma. From 1908 to 1915, 15 other states adopted some variant of these devices, including several states in the East and South. The momentum slowed around 1915, and the devices did not spread thereafter to many other states.

The use of the recall followed a similar pattern of rise and decline and, depending upon the state, could be used for all elected offices or be restricted to specific ones. In the case of the recall, conservatives were successful in fighting it where they focused attention on efforts to implement the recall of judges. Even many Progressives who were sympathetic to the recall recognized the threat to individual liberty should voters win the power to remove judges who made unpopular decisions.

The origin of direct democracy in Oregon is a good illustration of the kinds of concerns that led to direct democracy in many states. As historian Steven L. Piott has observed, agitators for direct democracy in Oregon cited the influence of corrupt political machines on the electoral process. The process yielded the election of those who were described as “business failures” and “farmless farmers,” and corporations were often thought to manipulate the selection of state legislators. In 1892, writer J. W. Sullivan’s group Direct Legislation won a sympathetic ear at a meeting of the state Farmers’ Alliance, which is credited with providing a spark for the direct democracy measures that were passed later in the decade.

At roughly the same time, direct democracy gained steam in California, where many resented what was believed to be the control of state politics by the Southern Pacific Railroad. Sullivan, who had published his book *Direct Legislation* in 1895, gave speeches in California, and ultimately, the Direct Legislation League of California was formed and became a national movement. As would be the case with many states, the first concrete moves toward direct democracy were made at the municipal level: San Francisco and Los Angeles, in particular, were able to draft their own city charters due to the home rule provisions of California’s 1879 constitution.

In Washington, the influence of railroad interests was also a source of complaint on which Progressives seized; particularly galling to both shippers and farmers was the common practice of government officials receiving free railroad passes. In Michigan, the issues were similar, and they framed the debate between a Progressive governor—Hazen Pingree—and a conservative legislature that resisted

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17. For a further discussion of the tension in Progressivism between democratization and the empowerment of administration, see Ronald J. Pestritto, “Roosevelt, Wilson, and the Democratic Theory of National Progressivism,” *Social Philosophy and Policy*, Vol. 29, No. 2 (Summer 2012), pp. 318–334.

his attempts to enact railroad-rate regulation and other Progressive policies. Egged on once again by Sullivan, local direct-legislation groups sprouted up and led ultimately to the calling of a constitutional convention in 1906.<sup>18</sup>

In other states where direct legislation was adopted, the causes appear to have been similar—the influence of corrupt political machines and resentment over the dominance of particular interests in the political process—in addition to having gained momentum from the states that pioneered the effort.

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### The so-called Oregon System of direct democracy not only was one of the earliest enacted, but also led to the most far-reaching policy changes.

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The initiative and referendum finally became part of the Oregon constitution in 1902 after a process that required passage of the devices in two legislative sessions and approval by voters. Legislative approval came in 1899 and again in 1901, and voters approved the devices by a margin of more than 10 to 1 in 1902. The measures altered Oregon's constitution, requiring a petition of 8 percent of qualified voters to place an initiative on the ballot and 5 percent of qualified voters to force a referendum on a legislative measure.

In California, sweeping direct democracy measures were adopted in 1911. Like Oregon, California adopted a measure requiring an 8 percent threshold for initiatives and 5 percent for referenda, but unlike Oregon, it also adopted a recall mechanism for all statewide officeholders, allowing recall elections where petitioners had secured the signatures of 20 percent of the number of people who had voted in the previous election. While the initiative and referendum had no trouble being adopted, the recall provisions met with stiff resistance—even some Progressives hesitated to include state judges. In the end, however, in spite of arguments marshaled by opponents about abandoning representative government and falling victim to the tyranny of the major-

ity, both the legislature and state voters overwhelmingly approved all of the direct democracy devices.

The state of Washington also adopted the initiative and the referendum at roughly the same time, with legislative approval in 1911 and voter approval in 1912. There was more resistance to the measures there, where the state Senate made supporters increase petition requirements (to 10 percent for initiatives and 6 percent for referenda) and allowed the legislature to amend laws passed by initiative two years after their enactment.

In Michigan, the constitutional convention held in 1906 yielded only watered-down direct democracy measures, but by 1912, voters had become much more intense about the issue even though the legislature had enacted several laws favored by Progressives in the session following the 1910 election, including railroad regulation, revision of the state tax structure, a state primary law, and a worker's compensation law. In 1912, led by Progressive Democratic governor Woodbridge N. Ferris, the legislature enacted the initiative and referendum, which were subsequently approved by voters in 1913.<sup>19</sup>

**Policies Enacted via Direct Legislation.** The so-called Oregon System of direct democracy not only was one of the earliest enacted, but also led to the most far-reaching policy changes. The system was used extensively and very quickly after it was made available to voters. While South Dakota had actually been the first to adopt direct democracy mechanisms, Oregon did much more with them. Between 1902 and 1913, 108 ballot initiatives were brought before the voters, and 44 percent of them were approved. Major policies were enacted by initiative in 1908, when voters adopted the recall, enacted corrupt practices legislation, expressed non-binding endorsement of the direct election of U.S. Senators, and took the first steps toward a proportional representation system for the state legislature.

Even after Progressives took control of the governorship and state legislature in 1911 and were thus able to enact Progressive legislation without having to resort to the ballot initiative, the thirst for direct democracy did not wane. The election of 1912 included 37 initiatives and referenda, many of

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18. Steven A. Piott, *Giving Voters a Voice: The Origins of the Initiative and Referendum in America* (Columbia: University of Missouri Press, 2003), pp. 32, 148–151, 186, 199–200.

19. *Ibid.*, pp. 40, 164, 167, 192–194, 204.

them proposing quite radical changes in the structure of state government, though most of them were not adopted.

In Washington and other states, the new direct democracy devices were not used nearly as frequently as they were in Oregon. In Washington, as in Michigan, the legislature was not so progressive, and the ballot initiative and referendum were used there primarily to thwart legislative attacks on direct democracy. State legislators enacted several restrictions on the initiative and referendum process—requiring, among other things, that all petition signing be done in the offices of voter registration officials and only on certain days of the week—but these legislative enactments were overwhelmingly disapproved by voters in the referendum election of 1916. In Michigan, very little use was made of the initiative process once it was adopted.<sup>20</sup>

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## The other major aim of the movement for direct primaries and, ultimately, the elimination of parties altogether was to foster a stronger connection between citizens and the national government itself.

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**The Direct Primary.** While most of the new devices of direct democracy had a mixed record of use in the decades following their adoption, there was one fairly common use. In many states, the initiative process was employed to establish a critical change in state government that was often resisted by legislators: the direct primary. Progressives took aim at the role of parties in the nominating process, contending that the process was undemocratic because it placed control of ballot access in the hands of unaccountable party bosses. Officeholders thus became beholden to those who held the key to the ballot—the party bosses—instead of to the rank-and-file voters who ought to be their true constituency.

For many Progressives, the direct primary was an important step toward their ultimate goal of elimi-

nating the role of parties altogether. For Croly, reducing or eliminating the role of parties came from the same principle as circumventing the legislature with direct democracy mechanisms: The point was to undo the representative democracy that the Framers of the Constitution had thought essential. “The two-party system,” wrote Croly, “like other forms of representative democracy, proposes to accomplish for the people a fundamental political task which they ought to accomplish for themselves. It seeks to interpose two authoritative partisan organizations between the people and their government.”<sup>21</sup>

The other major aim of the movement for direct primaries and, ultimately, the elimination of parties altogether was to foster a stronger connection between citizens and the national government itself. As Croly reasoned, the traditional party system “demands and obtains for a party an amount of loyal service and personal sacrifice which a public-spirited democrat should lavish only on the state.”<sup>22</sup>

In 1902, Mississippi became the first state to institute a compulsory, statewide primary law. Wisconsin followed suit in 1903, during the governorship of the Progressive Robert LaFollette. In Oregon, the very first use of the ballot initiative—which had been put into the state constitution in 1902—was to adopt the direct primary statewide.

The Oregon legislature had been resisting expansion of the direct primary law, enacted in 1901, to include localities outside of Portland. Under the coordination of the Direct Primary Nomination League, a new, statewide direct primary initiative was put on the ballot in 1904 and was approved by voters by an almost 4-to-1 margin.<sup>23</sup> In Oregon, as was common in other states, the direct primary measure also included language that attempted to bind state legislative candidates to vote for U.S. Senate candidates who had been endorsed by a majority of primary voters, though such efforts were eventually obviated in 1913 by the Seventeenth Amendment to the U.S. Constitution, which guaranteed the popular election of Senators.

By 1916, the only states in the Union that had not yet adopted a primary system of some kind were Connecticut, New Mexico, and Rhode Island.

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20. *Ibid.*, pp. 44–50, 197, 204–205.

21. Herbert Croly, “Executive Versus Partisan Responsibility,” in Pestritto and Atto, eds., *American Progressivism*, p. 266.

22. *Ibid.*, p. 267.

23. Piott, *Giving Voters a Voice*, pp. 41–42.



**Commissions and Railroad Regulation.** The great paradox of Progressivism, as explained above, is that while it sought to circumvent traditional political institutions by pursuing direct democracy mechanisms, it also sought to take power from political institutions in ways that were not so democratic. Where state legislatures were seen as beholden to special interests, Progressives often sought the establishment of so-called expert commissions and delegated to them the regulatory power they believed the legislature was incapable of exercising. Ironically, delegation of power to unaccountable, allegedly nonpartisan administrators was seen as a way of achieving the public good—by removing authority from those whom the people themselves had elected to office. The most common and important instances of such moves involved the regulation of railroads.

Beginning with the establishment of railroad commissions by several states in the 1870s and punctuated by Wisconsin's adoption of LaFollette's railroad commission plan in 1905, the delegation of regulatory power to expert commissions became pervasive during the Progressive Era. By 1914, the effects of this regulation were clear: Railroad managers were going to Congress to beg for protection from state railroad commissions. A closer look at activity in five states—Illinois, Iowa, Minnesota, Wisconsin, and California—illustrates the empowerment of commissions and expansion of state regulation of business.

Railroad regulation began to gain steam in Illinois in 1871, when legislation was introduced to restrict rates and to set up a commission to supervise railroads. The momentum was carried forward by farming interests who needed to ship their commodities and wanted to keep rates low. They organized under the "Granger" movement, which successfully agitated for passage of the 1873 Railroad Act in Illinois, aided by the Illinois State Farmers' Association, which wanted regulation of all corporations. The act deemed it "extortion" for any railroad to charge anything other than a "fair rate." And what was a fair rate? This was to be determined by the state's Railroad and Warehouse Commission, which was also established by the act.<sup>24</sup> Commissioners

here and elsewhere were typically not elected, but appointed by the governor for fixed terms.

Iowa initially experimented with regulation of railroad rates by the legislature itself, which set a detailed schedule of maximum rates based on the rate published by the Illinois Railroad and Warehouse Commission for 1874. This law was repealed in 1878 and replaced by one that established the state's own supervisory commission. Minnesota followed the same course, initially fixing rates through legislative action in 1871 and then installing a three-member commission in 1874 with a law that mirrored the Illinois Railroad Act. Wisconsin, well before it adopted LaFollette's more sweeping plan in 1905, also followed this path in 1874 and also followed the Illinois model. In Wisconsin, the legislature itself set maximum rates, but the commission was empowered to lower rates even further.<sup>25</sup>

California may be the most familiar case of the Progressives' assault on railroad interests, but serious regulation did not come there until after the direct democracy provisions were put into the state constitution in 1911. The Southern Pacific Railroad had dominated the state's politics and economy for decades, and the desire to rein in the railroad's influence over state government was the driving force behind the progressive measures that were eventually adopted under the leadership of Governor Hiram Johnson. With the political institutions having ceded authority for railroad-rate regulation to a state commission, there was less inducement for railroad influence in state politics.

The moves in Illinois and elsewhere also illustrate another important feature of Progressive calls for delegation of legislative authority to expert commissions: belief that legislatures were simply not expert enough and lacked sufficient resources to regulate businesses in all of the new ways that Progressives had in mind. Such a belief stemmed not so much from the notion that politicians were too beholden to special interests (though Progressives certainly believed that too) as they did from the recognition by Progressives that they had far more regulation in mind than any traditional legislative body—corrupt or pure—was competent to administer. Historian George H. Miller expresses a sen-

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24. George H. Miller, *Railroads and the Granger Laws* (Madison: University of Wisconsin Press, 1971), pp. 84, 90–93.

25. *Ibid.*, pp. 114–115, 137–138, 157.

timent that was typical of this thinking: “Even the purest and most carefully limited assembly was not capable, by itself, of supervising and controlling the railroads of a single state; a permanent, expert body was essential.”<sup>26</sup>

**Consequences of Commission Government.**

While the Progressive Era featured the expansive use of commissions in state government, the period immediately following was characterized by attempts to manage the consequences of this movement. In many instances, Progressives became victims of their own enthusiasm for delegating regulatory power to commissions, as commissions multiplied and often brought about the very kind of overly complex and inefficient government that Progressives themselves had decried. Democracy was commonly thwarted in states due their mazes of commissions with overlapping jurisdiction and lack of political accountability. While many Progressives remained devoted to the commission model, many states nonetheless undertook the streamlining and reorganizing of their executive branches as part of an effort to return some power to politically accountable officials.

A common characteristic of states’ attempts to reorganize their executive branches was the consolidation of administrative authority into a smaller number of executive departments whose heads would be appointed by the governor in order to provide some measure of political accountability. New Jersey and Minnesota were among the leaders in these efforts.

Somewhat comically, both states launched their efforts to rein in commissions by forming special commissions to study the problem and advise on a remedy. New Jersey’s efficiency commission focused on the problem of overlapping jurisdictions, noting in just one example that the state had five separate commissions or bureaus charged, among other things, with the “preservation and improvement of the oyster industry”—all without doing any evident good for the value of oyster production. Minnesota’s “Efficiency and Economy Commission” also attacked the incoherent nature of the state’s commission structure and focused on restoring political

accountability by recommending the condensing of over 50 state commissions into six executive departments headed by gubernatorial appointees.<sup>27</sup>

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**The moves in Illinois and elsewhere also illustrate another important feature of Progressive calls for delegation of legislative authority to expert commissions: belief that legislatures were simply not expert enough and lacked sufficient resources to regulate businesses in all of the new ways that Progressives had in mind.**

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Illinois was also a leader in executive-branch reorganization—in this case by means of a special legislative committee that was formed to investigate the mess resulting from the 34 new agencies, boards, and commissions that had been established in the state between 1909 and 1913. This effort led the Illinois legislature to enact in 1917 the Civil Administration Code, which consolidated nearly 130 boards, commissions, and bureaus into nine departments headed by a gubernatorial appointee. Several states followed suit, including Nebraska and Idaho in 1919.

By the end of the 1920s, 17 states had adopted some kind of reorganization legislation aimed at curbing the proliferation of commissions that had been so popular just a decade or two earlier.<sup>28</sup> Reducing the number and inefficiency of commissions, of course, did nothing to change the fundamental nature of commission government, which remained unaccountable rule by experts.

**Legislative Reference Services.** Delegation of regulatory power to administrative bodies had been one way, and certainly the most lasting and influential way, to bring expertise to the Progressive move for sharply increased state regulation of business. In addition to problems of efficiency, it had also raised serious questions of consent—how can rules be made

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26. *Ibid.*, p. 94.

27. Jon C. Teaford, *The Rise of the States: Evolution of American State Government* (Baltimore: Johns Hopkins University Press, 2002), p. 72.

28. *Ibid.*, 72-74.

legitimately without the consent of the people's elected representatives?—and separation of powers—how can executive bodies be granted legislative authority? The reliance by some state legislatures on expert reference services to aid legislators in writing statutes was another way of bringing expertise into regulation without also raising questions of consent and separation of powers in the way that delegation to expert commissions had done.

In the case of legislative reference services, there was no delegation of legislative power to other entities; instead, lawmakers received the guidance of these services during the drafting process, much as today's Congressional Research Service operates at the federal level, with the final laws passed by legislators themselves. The advent of the legislative reference service also reflected the growing abandonment of the idea of the citizen-legislator. Progressives wanted regulation of business at a much greater level than could be accomplished by part-time legislators. With the Progressive policy agenda, government needed to be bigger and thus needed to be more than a part-time concern. Legislative reference services were one way of moving things in the direction of professionalization.

The use of legislative reference services became popular between 1900 and 1920. Arguably the most influential advocate for their use was Charles McCarthy of Wisconsin. McCarthy had been appointed the document cataloguer of a special reference collection established for Wisconsin legislators and from that position pushed his arguments for greater reliance on expert research and guidance by legislators in Wisconsin and other states. McCarthy contended that without the guidance of expert advice, lawmaking was amateurish and sloppy, leaving legislators at the mercy of lobbyists.<sup>29</sup>

The movement for legislative reference services picked up in other states. State libraries in California (1904) and Indiana (1906) established special legislative reference sections. As the movement picked up steam, reference services in Nebraska, Indiana, and Illinois actually began to prepare draft legislation between sessions of the legislature so that it would be ready for legislators to review and debate when they reconvened.

The degree of involvement in actual legislation by the reference bureaus varied greatly from state to state, but in some states, their influence was significant. In Wisconsin, all bills taken up during the 1929 legislative session had been drafted under the supervision of the special reference service, and 90 percent or more of those considered in Pennsylvania, Illinois, and Indiana had been produced by their respective bureaus.<sup>30</sup>

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### **Progressive Changes in Municipal Government**

More generally, as wide-ranging as the Progressive changes were in state government, most state-level movements grew out of experiments at the municipal level. As with state government, the changes ushered in by Progressives in local government have had a lasting effect.

The Progressive changes in state government under Governor Hiram Johnson in California receive significant attention from scholars—and for good reason, as those changes still greatly affect the politics of our most populous state today. But California's state reforms were modeled after what had gone on in its biggest cities in the 1890s, especially in Los Angeles and San Francisco. Because of the home-rule provisions of California's 1879 constitution, these cities could draft their own charters—the municipal equivalent of constitutions.

In Los Angeles, groups like the Municipal Reform Association and the League for Better City Government sought to limit the power of political machines. Again, much of this was railroad politics, as the Los Angeles machine was controlled by the Southern Pacific Railroad's political bureau in San Francisco.

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29. *Ibid.*, p. 77.

30. *Ibid.*, pp. 79–80.

In 1889, Los Angeles added the initiative, referendum, and recall to the city charter and adopted a civil service system. These changes all received overwhelming support from voters (as high as 6-to-1 approval for the initiative and referendum) and were approved by the state legislature in 1903.

Other major cities in California followed suit in adopting mechanisms for direct legislation: Sacramento in 1903 and San Bernardino, San Diego, Pasadena, and Eureka in 1905. San Francisco adopted the recall in 1907.<sup>31</sup> And these movements in California's municipalities spread to other states, where local governments likewise led the way for changes that were later to be taken up at the state level.<sup>32</sup>

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## Progressives came to realize that major victories over the city machines could be achieved only by weakening the two-party system.

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As a general matter, these kinds of changes in city government stemmed from the public attention that came to focus on corruption in cities in the latter part of the 19th century. Muckraking journalists had exposed some of the more scandalous instances of corrupt city government and brought to light the reality of machine control of municipalities.

In fact, most major American cities were greatly influenced by political machines: hierarchical organizations that controlled political offices and those who voted for public officials. Machine leaders could deliver blocs of votes to candidates, in return for which they would be able to dole out services and favors on behalf of public officials to those constituencies that had voted for them. Machine leaders maintained their power by appealing most often to the downtrodden. By providing social services that were otherwise unavailable, often by means of public officials who were under their control, political machines received the loyalty of their clients and could deliver their votes as they wished. Progressives took aim at these machines both by advocating structural reforms that would reduce

the power of traditional political institutions and by seeking to attach machine clients directly to the government itself.

In the 1890s, there were some isolated victories for Progressives at the municipal level, though more sweeping changes in city government had to wait until the first decade of the 20th century. New York's Tammany Hall was temporarily overthrown in 1894, and the Municipal Voters' League was able to wrest control of Chicago's Board of Aldermen from 1895 to 1897, but the more successful and sustained movements that came later ordinarily were led by charismatic leaders who took the mantle of nonpartisanship. Such was the case in Cleveland, where Tom L. Johnson was elected mayor in 1901 and went after the railroads and utilities.

Progressives came to realize, through the example of Johnson and others, that major victories over the city machines could be achieved only by weakening the two-party system. They sought consequently to dilute the influence of party bosses by pursuing the direct primary for municipal candidates and by introducing mechanisms of direct legislation. They also fought to maintain home rule—that is, they fought against the management of municipal affairs by state legislatures. The involvement of state legislatures was a problem for Progressive reformers in cities because local machines were usually part of larger, state machines. Often, if Progressives won a victory at the city level, the local machine bosses would appeal to the state organization, which would then work to influence the state legislature to preempt any municipal reform efforts.

In addition to primaries and mechanisms of direct legislation, Progressives at the local level also advocated new means of organizing city government itself through both commission government and city managers.

**Commission Government.** At the municipal level, as at the state level, Progressive attempts to thwart the alleged corruption of political institutions pulled in two opposite directions. While municipalities sought to empower voters directly by pursuing the direct primary and direct legislation, they also sought to move power away from elected officials and into the hands of nonpartisan experts. These moves made

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31. Piott, *Giving Voters a Voice*, p. 151.

32. See, for example, the case of Seattle or the cases of cities in Ohio like Cleveland, Columbus, and Cincinnati. *Ibid.*, pp. 174-177, 189.

city government simultaneously more democratic (in the case of the primary and direct legislation) and less democratic (in the case of delegating power to unelected experts). The move in cities toward commission government exemplified the latter.

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## Even with the popularity of the commission form, the debates over it in the Texas and Iowa state legislatures raised several critical objections from defenders of the republican principles of consent and constitutionalism.

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The movement for commission government in cities came about principally by means of an accident. In 1900, Galveston, Texas, was devastated by a hurricane. The city council proved incapable of restoring order, so the city appealed to the state legislature, which appointed a commission of administrators to rebuild the city, essentially granting it legislative as well as executive powers. It seemed to work well in this instance and was also popular; the commissioners continued in office and did so via election after 1903. The commission form of government was then exported to Houston, Dallas, Fort Worth, Austin, and El Paso.

Under the form implemented in Texas, a city commission consisted of five administrators, each of whom had responsibility for a single department of city government. The commission form quickly spread beyond Texas and was implemented in the most widespread fashion in the cities of Iowa. The state legislature there allowed cities over a certain population threshold to adopt the commission form, with commissioners selected in nonpartisan elections, and also to incorporate the mechanisms of direct legislation. It is for this reason that the full-blown commission form of government—paired with mechanisms such as the initiative, referendum, and recall—became known as the “Des Moines Idea.”<sup>33</sup>

Even with the popularity of the commission form, the debates over it in the Texas and Iowa state leg-

islatures raised several critical objections from defenders of the republican principles of consent and constitutionalism. Legislators in Texas pointed to the fact that this “reform” actually gave the people themselves less power by reducing the number of elective offices and delegating legislative authority away from their elected representatives on the city council and into the hands of nonpartisan administrators, elected or otherwise.

Historian Bradley Robert Rice notes that, while much opposition surely came from those whose interests would be affected by the change, “some legislators were more detached and sincere in their refusal to countenance the disenfranchisement of the city’s voters.” Rice’s summary of the opposition is worth quoting a length, as it gets to the heart of the opposition between Progressive reforms and republican government:

One [legislator] flatly stated, “I care nothing for the Mayor of Galveston, whether he wants this bill or not, it is not a question of whether the laboring men or the rich men want it; it is a question of the sacred rights of government.” Two house members had their impassioned statement of opposition entered in the journal: “We cannot chloroform our consciences by voting for the commission feature of this bill, which disenfranchises free citizens of Texas, destroys the right of local self-government, violates the Constitution of the State, holds in derision the Declaration of Independence, tramples underfoot the fundamental principles of a free republic, and repudiates the teachings, traditions and sentiments of the democratic [*sic*] party.”<sup>34</sup>

In Iowa, the objections raised were based not only upon consent, but also on the need to protect liberty through separation of powers. Drake University professor F. I. Herriott was among the most vocal making this argument, observing that the commission form vests commissioners with both legislative and executive powers.<sup>35</sup>

While it is beyond dispute that the commission form of government weakens the power of voters

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33. For details on the development of commission government in the cities of Texas and Iowa, see Bradley Robert Rice, *Progressive Cities: The Commission Government Movement in America, 1901-1920* (Austin: University of Texas Press, 1977), pp. 3-17, 34-46.

34. *Ibid.*, p. 13.

35. *Ibid.*, p. 42.



(though not as fully as the city-manager system, discussed below), the irony is that in many cases, these voters essentially disenfranchised themselves by adopting it. One of the principal modes by which commission government was spread was the mechanism of direct democracy. In cities where reformers were making a case to the public for support of commission government, they very often sweetened the pot by including in the proposals various provisions for the direct primary, initiative, referendum, and recall. These direct democracy measures made commission government easier to swallow, and advocates of the commission form figured this out and took advantage of it. The actual use of direct mechanisms, however, was not very common in cities with the commission form.<sup>36</sup>

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### The city-manager model also gave rise to the “professionalization” of city government. Progressives sought to undo the kind of local government praised by Alexis de Tocqueville when he visited America in the early part of the 19th century.

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**The City Manager.** The rise of the commission form reflected the desire to professionalize city government, which was to take place by moving power away from popularly elected city councils and into the hands of expert administrators. The same principle was at work in a closely related change in city government: the advent of the city manager. Just as Progressives believed that city councils had become corrupt and thus ought to give way to administrative commissions, they also believed that powerful mayors were obstacles to progress. They called for replacing strong mayors with nonpartisan, unelected city managers.

In many instances, the city-manager model developed out of the earlier forms of commission government. It became apparent that administrators elected to city commissions were not necessarily experts. For the Progressives, the real problem

was elections: Those who had to stand for election to their office, even if they were to be “nonpartisan” administrators, necessarily looked more to their own electoral self-interest as opposed to the objective good toward which their expertise was supposed to direct them. The city manager would not stand for election. Instead, a council or commission would be elected on a nonpartisan basis and would then appoint a qualified city manager. In this way, the executive arm of government would be insulated from direct popular control.

This council-manager model, which remains a popular form of city government today, developed in the 1910s and 1920s, as the examples of Dayton and Berkeley illustrate. Dayton’s turn to the city-manager model was one of the earliest and, as in the case of Galveston and commission government, came in response to a natural disaster. The city government responded poorly to a major flood in 1913, and subsequent scrutiny of the government uncovered evidence of widespread financial mismanagement. Under the home-rule provisions of the Ohio constitution, the city soon adopted one of the first city-manager systems in the country, with an elected five-member council that would appoint a city manager who would be the head of city government.

Berkeley’s turn to the city-manager model came after a calamity of a different sort—a deep economic depression in 1921 and 1922. The city adopted the city-manager model the following year, establishing an elected city council for legislative powers and an appointed city manager for executive and administrative powers. Berkeley’s city manager was a strong, unitary executive: The council was allowed to deal with city administration only through the city manager and was prohibited from giving orders to any part of the city’s administrative apparatus. The city manager could be removed only by a two-thirds vote of the council.<sup>37</sup> This example was followed in countless other cities in the 1920s and 1930s as the city-manager model spread quickly.

The city-manager model also gave rise to the “professionalization” of city government. Progressives sought to undo the kind of local government praised by Alexis de Tocqueville when he visited America in the early part of the 19th century.

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36. Ibid., pp. 72–76.

37. Frederick C. Mosher et al., *City Manager Government in Seven Cities* (Chicago: Public Administration Service, 1940), pp. 115–129, 265–272.

Tocqueville observed that the people became suited for self-government by means of practicing it at the local level: Power in localities was spread widely among a number of citizens who were elected to serve part-time. For the Progressives, cities had become too complex for the “amateur,” and they turned instead to professional city administrators—not only for the city manager, but for all elements of city administration. Serving as a city administrator was now to be a full-time occupation, taken up by those who had been specially educated and trained for the task. City government was to run less like a manifestation of citizen self-government and more like a business. The influence of elections—which, progressives argued, necessarily created inducements to corruption—would be minimized for the sake of making city government more “professional” and “efficient.”

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## There can be no question that the Progressives’ agenda for state and local government was aimed squarely at undoing the republican principles of America’s Founders.

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This is why the city-manager model was often accompanied by the “short ballot”—that is, a sharp reduction in the number of elective offices that went hand-in-hand with the concentration of power in the office of the city manager and with the push to remove “amateur” or ordinary citizens from positions of authority. From a Tocquevillean perspective, the trend toward professionalization would necessarily reduce opportunities for ordinary citizens to participate in self-government and would thus run the danger of interfering with citizens’ acquiring the habits requisite for maintaining a free society.

### The Legacy for Government Today

In addition to the legacy of the council-manager form of city government, which is still with us in many places today, and the nonpartisan character of many local elections, Progressive reforms at the

local level are most relevant to our analysis because of what they sparked at the state level. Municipalities were often the laboratories for Progressive changes in state government.

There can be no question that the Progressives’ agenda for state and local government was aimed squarely at undoing the republican principles of America’s Founders. The best evidence for this is the Progressives themselves, who were entirely open and honest about it. Progressive changes in state and local government undermined the Founders’ republican principles in two fundamental ways.

*First*, the Founders wanted to secure both democratic rule and protection for individual natural rights and thus established popular self-government through institutions that would “refine and enlarge the public views.”<sup>38</sup> Majority rule through the institutions of government would yield the “cool and deliberate sense of the community”<sup>39</sup> and filter out the factious or tyrannical tendencies of passionate, immediate majority opinion. For the Progressives, such thinking exalted the position of the minority at the expense of vigorous government action in pursuit of social justice. The Progressives were simply not concerned about potential tyranny by the government in the way that Madison and America’s other Founders had been. Progressive direct-democracy measures, at both the state and local levels, thus sought to circumvent the refining and enlarging process of America’s political institutions.

*Second*, while the Founders certainly believed in vigorous national administration (the lack of it had been a principal objection to the Articles of Confederation), administration for them had to be closely tied to electoral accountability in order to maintain the very idea of self-government. For the Progressives, this connection of administration to public opinion made government “unprofessional” and impeded the kind of expertise necessary to manage the vast agenda they had in mind for government. Administration would be good, from the Progressive viewpoint, only to the extent that it was liberated from electoral accountability, because that accountability is what leads to the opportunity for corruption. If officials did not have to worry about their electoral self-interest, then (Progressives falsely

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38. *Federalist* No. 10, in Carey and McClellan, eds., *The Federalist*, p. 46.

39. *Federalist* No. 63, in Carey and McClellan, eds., *The Federalist*, p. 327.

reasoned) they would be freer to do the objectively right thing. Progressive efforts to move governing authority—especially in cities—away from elected officials and into the hands of “nonpartisan” commissions and managers reflect this view.

In addition to these principled reasons for conservatives to think carefully about the Progressive agenda at the state and local levels, there is the more concrete objection that Progressive measures have turned state government into a chaotic mess. No one who has spent any time in the state of California—the state where the Progressive reforms described in this paper have arguably had the greatest impact—can rationally argue that it is well governed.

There are many reasons for this, but high on the list is the dizzying number of often contradictory pieces of direct legislation that have been made a part of the state’s constitution since the days of Hiram Johnson. Voters are regularly asked to decide on lengthy ballot initiatives that are not well understood but have a profound effect on state government; since these initiatives are usually put into the state constitution, the legislature is unable to improve them even when—as is often the case—the people themselves sour on them. As a result, the state constitution has become so long and convoluted that no one other than lawyers can possibly make sense of it. (The contrast to the federal Constitution in this respect is instructive.)

While these principled and practical problems with mechanisms of direct democracy ought therefore to give us serious concern about the effects of Progressivism on state government, it must also be acknowledged that in recent decades, these mechanisms have made possible many conservative victories that otherwise would have been unattainable. As bad as California government has become, and as much as Progressive mechanisms are to blame, conservatives there have used direct democracy to enact policies limiting property taxes (Proposition 13 in 1978), prohibiting the state from using affirmative action (Proposition 209 in 1996), and defining marriage as the union of a man and woman (Proposition 8 in 2008),<sup>40</sup> to name just a few. In light of these realities—and of the manner in which political institutions have become transformed into organs of progressive liberalism in the modern administrative state—the obvious problems of direct democracy

need to be weighed against the extent to which it might be used prudentially as a means of restoring limited, republican government.

The strongest argument in defense of direct democracy today is that our political institutions are in an entirely different place than they were before the advent of Progressivism. It can be argued that, as a consequence of the waves of Progressivism that have come ashore over the course of the 20th and now the 21st centuries, American political institutions have ceased to serve as filters for un-republican ideas and have instead become the bulwark of the modern administrative state. Direct democracy, by circumventing these now-corrupt institutions, may be the only means of liberating citizens from entrenched liberal interests. The landmark conservative victories in California’s initiative process stand as examples of what can be accomplished.

California also shows how another Progressive mechanism—the recall—can likewise be a tool to dislodge entrenched liberal interests from institutions of government. For years, the state government in Sacramento has been a haven for liberal special interests, especially public employees’ unions. In 2003, Democratic Governor Gray Davis became only the second governor recalled from office in American history, in a contest that pitted the public employee unions upon whom Davis had lavished unsustainable contracts against the taxpayers who were footing the bill.

The recall, of course, can be used by the Left as well, as was the case with the attempt to remove Wisconsin Governor Scott Walker from office in 2012. Though unsuccessful, it demonstrates that the Progressive mechanisms of direct democracy do not predictably lean themselves to any one side of the political spectrum, and the Left has certainly achieved its share of victories with direct democracy. While California voters enacted Proposition 13, they also enacted, just a decade later, Proposition 98, an amendment to the state constitution that guarantees that 40 percent of state revenues must go to education and is thus a huge boon to the public employees’ unions. One can easily foresee many issues today about which the Left could use the initiative process to enflame the passions of ill-informed majorities and overwhelm the rights of individuals.

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40. Subsequently rendered inoperative by the courts; see *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013).

Furthermore, in addition to its potentially dangerous effects, it seems plain enough that direct legislation has not even achieved the ends for which it was originally promoted by America's Progressives: the reduction of special-interest influence and the influence of establishment insiders. A comprehensive study by Daniel A. Smith and Caroline J. Tolbert has demonstrated that, nationwide, the initiative process has empowered special-interest groups rather than weakened them. In fact, the initiative process has often been the principal means by which interest groups have altered the balance of power within states. As Smith and Tolbert conclude, "Although Progressive Era advocates of direct democracy had hoped to use the initiative to eliminate interest groups' clout, we find that many political organizations have adapted to the presence of the initiative, educating themselves to use the process to advance their agendas."<sup>41</sup> If it had been a Progressive goal to reduce the influence of money in politics, that certainly has not happened through the initiative process, as the sums spent on initiatives in recent decades have come to dwarf spending on races for state political office.<sup>42</sup>

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Nor has direct democracy done much to curtail the influence of establishment insiders and party organizations. Parties have become deeply involved in initiative campaigns; not only do they seek particular policy outcomes favorable to their constituencies, but they also see in the initiative process itself

many ways to strengthen their own organizations. As Smith and Tolbert conclude from research on the California and Colorado initiative processes:

[P]arty organizations engage in citizen lawmaking for its procedural effects. Parties have learned that ballot measures have a real educative value because they can spur citizens to vote, divide the opposing party's core constituents, and generate contributions to the party.... Citizen lawmaking clearly has proven to be an ineffective instrument for reining in parties. Indeed, direct democracy may strengthen and energize state and local parties.<sup>43</sup>

These facts about the involvement of parties and money in the initiative process point to what may be the greatest problem with relying on direct democracy—that it clearly diverts attention from the thing that conservatives need to do in order to turn the country around: win elections. As Steven Hayward has observed about the California example:

[O]ne of the paradoxes in the last decade is that conservative ballot initiatives continued to flourish even as California went through a long, slow slide to the left.... The initiative process may partly account for the GOP's slide. With most of the big issues coming directly to voters, the initiative process has effectively become a political safety valve, diluting partisan political accountability. Accordingly, Democrats have been able to dodge voter sentiment on a wide range of issues. And money and energy that might have gone into winning offices were channeled into sponsoring initiatives instead.<sup>44</sup>

Furthermore, consider that within the past few years, conservatives have been able to achieve much more in state government by way of their victories in the 2010 elections than they ever have through the initiative process. It seems reasonable to ask why conservatives need to try co-opting Progress-

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41. Daniel A. Smith and Caroline J. Tolbert, *Educated by Initiative: The Effects of Direct Democracy on Citizens and Political Organizations in the American States* (Ann Arbor: University of Michigan Press, 2004), pp. 88–89.

42. *Ibid.*, pp. 90–92.

43. *Ibid.*, p. 140.

44. Steven Hayward, "Arnold's Wild State," *National Review*, September 1, 2003, p. 17.

sive mechanisms of direct democracy when the Tea Party movement shows what can be done the old-fashioned way: by winning elections and then governing through institutions.

The recent case of Michigan may prove an illustration of this point: Michigan—the home of the United Auto Workers—is now a right-to-work state. This achievement is due not to the initiative process, but to the traditional process of campaigning, winning legislative elections, and governing accordingly. Republicans won control of the state legislature and the governor’s mansion in 2010, due principally to the energy of the Tea Party. Unions responded in 2012 by attempting to enshrine the “right to collective bargaining” in the state constitution through the ballot initiative process. The measure was defeated at the polls. The Republican-controlled state government then enacted the state’s new right-to-work law through regular institutional channels.

And just as Michigan has learned what can be achieved by concentrating on winning elections, California has learned what cannot be achieved when elections are neglected. Even though California voters enacted Proposition 8 in 2008, homosexual marriage now reigns in California because the state’s attorney general refused to defend the proposition in court.

Conservatives everywhere might consider these examples as they weigh the limitations of Progressive direct democracy, as well as the dangers it poses to republican government.

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