

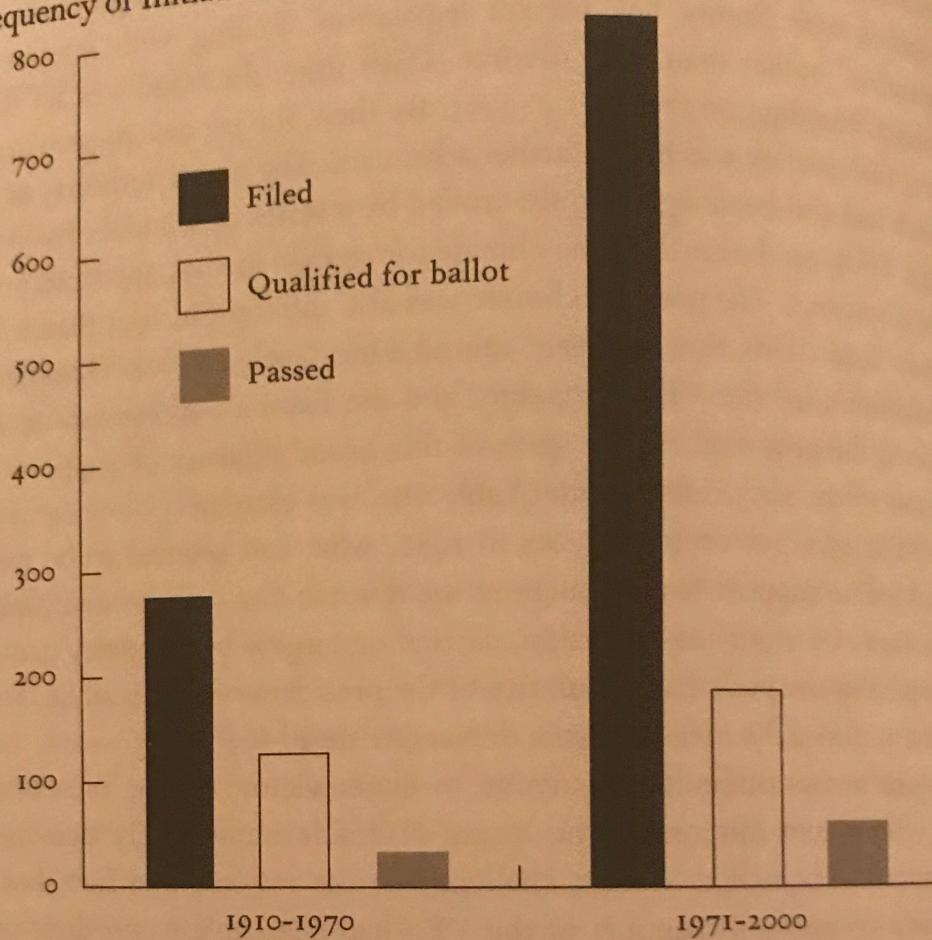
Like the abortion issue, the divorce question was not settled by the 1986 referendum, despite its decisive outcome. Successive Irish governments proceeded with family law reform legislation, dealing with matters of "separation" rather than legal divorce. Over time, the stage was set for a second referendum on the issue in 1995. By then, the process of secularization of Irish society was much further advanced. The moral authority of the Church had also been significantly eroded by a series of scandals involving clergy. Thus, on the surface, the climate for change in 1995 appeared much more auspicious. The partisan climate was also different in 1995 than it had been in 1986. This time, a more united Fine Gael/Labour/Democratic Left coalition led the YES campaign, and the Fianna Fáil opposition also endorsed the proposal. Yet in spite of this broad phalanx of support, the outcome of the 1995 referendum (Table 6B₂) was extremely close (50.3 per cent YES; 49.7 per cent NO). As in 1986, what had seemed to be widespread public support for a change in the divorce law deteriorated rapidly in the face of a vigorous campaign, carried on largely by nonparty groups. Perhaps only the personal popularity of the president of the republic, Mary Robinson, saved the measure from defeat (Adshead 1996).

Again it was difficult for anyone to claim victory in the face of the 1995 referendum outcome. The losing NO side immediately demanded recounts and launched a court challenge to the results. The fact that an all-party grouping in support of the YES had been able to produce only such a marginal result led to many questions regarding the efficacy of the parties and their leaders. However, the Catholic Church was undoubtedly the biggest loser, in spite of the narrow result. Irish voters had, however cautiously, voted in a referendum for a more secular future.

C. The "California Model"

The variations of direct democracy in the United States have almost no parallel elsewhere in the world, except perhaps in Switzerland (see section D of this chapter). Although there has never been a national referendum in the United States, all states except Delaware provide for amendments to their state constitutions to be submitted to a popular vote, and thirty-one of the fifty states permit some other type of referendum device. Twenty-four states have provisions for citizen initiatives. Western states such as California and Oregon have tended to use instruments of direct democ-

Figure 6C1
Frequency of Initiatives in California, 1910-2000



Sources: Bowler and Donovan (2000); Initiative and Referendum Institute (<http://www.iandrinstitute.org>); California Ballot Propositions Database (<http://www.uchastings.edu/library/ballotprops.htm>).

racy, particularly the initiative, more extensively, in part because of the populist traditions that are more firmly rooted in the political culture of the American West. These devices have been used with dramatically increased frequency in recent years, prompting an active debate about their effects on American democracy. Some see these developments as a healthy expression of American democratic values, while others believe that the initiative process, in particular, has been captured by well-financed special-interest groups and now represents a threat to the very democracy that such institutions were originally intended to enhance.¹⁷

Both the form and the frequency of referendums vary considerably among the US states. Some indication of this variation may be seen in Table 6C1, which lists all the propositions that appeared on state ballots

at the time of the US presidential election in November 2000. In all, 205 propositions appeared on the ballot on that date in 41 states. Twenty-six propositions, dealing with such subjects as a fund for war veterans, tobacco settlement issues, gun control, campaign finance reform, and utility rates appeared on the ballot in Oregon alone. But while Oregon has in recent years used the initiative process the most extensively (and controversially), California, more than any other state, has set the standard for direct democracy in the United States. With the election of a Progressive governor, Hiram Johnson, in 1910, populist devices such as the initiative, referendum, and recall came early to California politics. Although usage of these instruments declined somewhat in the middle part of the twentieth century, their frequency has exploded over the past two decades. Since 1970 nearly 800 initiative petitions have been filed with the California secretary of state, and of these 135 qualified for the ballot. Although many of these proposals failed to win approval by the voters, they have nevertheless exercised great influence in the state's politics and have often spilled over onto the national political scene in the United States, because of California's size and importance.¹⁸ One of the most famous California initiatives, the 1978 tax-limitation proposal known as Proposition 13, had profound effects on state finances and has effectively rearranged the political landscape in California. By prohibiting governments from raising property taxes without resorting to further referendums, Proposition 13 and its successors forced extensive cutbacks in spending for a wide array of public services, notably education. Peter Schrag (1998) argues that the ripple effects of Proposition 13 and subsequent tax-limitation amendments in California and other states have been as "profound and lasting as the New Deal" in reshaping the American political agenda.

One source of the variation in the use of initiatives among the fifty states is the stringency of the requirements for placing an issue on the ballot. California is fairly typical. To qualify for placement on the ballot, a proposed constitutional amendment requires the signatures of a number of registered voters equal to 8 per cent of the total votes cast for the office of governor in the preceding election. For a statutory proposal, the required number is 5 per cent. These signatures must be collected over a period no greater than 150 days and must be certified as valid by the secretary of state. Other states have similar requirements, but both the number of required signatures and the period within which they must be collected and certified varies widely. In Arizona, a higher proportion of signatures

is required (15 per cent and 10 per cent respectively), but the period within which they must be collected is longer (20 months). In Colorado, the time limit is similar to California's (6 months), but the threshold is lower (5 per cent for both constitutional and statutory proposals).

It is not an easy task to meet the legal requirements for placing a measure on the ballot in most states. In California, because more than eight million votes were cast for the office of governor in 1998, it was necessary to collect and verify more than six hundred thousand signatures in order to qualify a constitutional proposal for the 2000 ballot, or four hundred thousand for a statutory proposal. But in spite of such relatively high thresholds, the number of proposals filed has increased dramatically in recent years in California and in many other states (see Figure 6C1). As Table 6C1 confirms, many of these proposals do make it through to the ballot. The patterns suggested in Table 6C1 are fairly typical, although there is, of course, considerable variation from state to state and from one election year to another. California had only eight proposals on the 2000 ballot, but it had twelve in 1998 and seventeen in 1996. Oregon, with its high of twenty-six proposals on the ballot in 2000, had nine in 1998 and sixteen in 1996.¹⁹ One reason why so many proposals manage to reach the ballot is that groups and individuals with an interest in promoting an issue increasingly employ professional firms to collect the required number of signatures. This trend has spurred the growth of what Magleby (1984) calls the "initiative industry" and has greatly increased the role that money plays in many initiative campaigns. From collecting signatures to organizing and running campaigns, the initiative process in America, particularly in large states such as California, has come to require what Donovan et al. (2001) refer to as "extraordinary sums of money."

In addition to money, minority rights have become an important issue in the debate over the initiative and referendum process, because some of the initiatives on American ballots in recent years seem to target particular groups or to promote issues that appear threatening to minorities. California's controversial Proposition 63, for example, which was adopted in 1986, established English as "the official language of the state." Although couched in innocent-sounding language, this proposal was clearly perceived as an attack on California's growing Hispanic community and as a device that might be used to kill bilingual programs of education and other state services. Eight years later, California voters approved an even more controversial measure (Proposition 187), which

would effectively deny education and health and social services to illegal immigrants in the state.²⁰ In the same category was Colorado's notorious Amendment 2, adopted in 1992, which would have overturned various state and local laws that prohibited discrimination based on sexual orientation in areas such as employment and housing. Although Amendment 2 was struck down as unconstitutional by the courts, other such initiatives challenging gay rights soon appeared on the ballot in other states.²¹ In the past decade, it has become clear that the initiative process at both the state and the local level could indeed be used to "put civil rights to a popular vote" (Gamble, 1997).

Another common concern arises from the increasing number and complexity of ballot propositions. Oregon voters might well have balked at being confronted with twenty-six propositions on an already long presidential ballot. Voters might also feel that they do not have sufficient information to vote on such a wide array of proposals, or they may sometimes find the campaigns mounted by various groups misleading. Such criticisms are not new, although the intensity of the critique has grown in recent years along with the number of proposals. Yet these institutions of direct democracy remain generally popular in states such as California where they have long been established. While low voting turnout remains a concern, there is considerable evidence that voters can and do use the various sources of information available to them in voting on these propositions (Bowler and Donovan 1998a; Lupia 1992, 1994). They can, in the words of Lupia and McCubbins (1998) "learn what they need to know."

Nevertheless, the widespread and growing use of initiatives and referendums raises several difficult questions about democracy in America. When used to target vulnerable minorities, the initiative appears as a modern-day example of Madison's "tyranny of the majority." In the hands of powerful and well-financed interest groups, such devices might be used to undermine the regulatory powers of the state. But the wide variety of subjects treated in American ballot proposals makes such generalizations difficult. Although the initiative process in particular has sometimes been viewed as the tool of right-wing groups interested in limiting the scope of government, it remains relatively eclectic as a political device. A survey of the subject matter of recent ballot proposals in the various states shows that they continue to provide a means to raise and debate issues at the cutting edge of politics—questions concerning school vouchers, euthanasia, the legalization of drugs, environmental protection, and campaign-finance

reform. Even when a proposal succeeds in winning approval, the referendum is not necessarily the final answer on such issues, since the courts and legislatures continue to be engaged in the process. As the early populists intended, citizen initiatives continue to provide a means of raising issues outside the partisan and legislative arenas and forcing them into the political discourse. Nevertheless, the debate over the merits of the "California model" appears likely to continue. To some, it represents democracy at its best — placing power directly in the hands of the voters in a way that other political institutions do not. To others, it has indeed become "democracy derailed" (Broder 2000).

D. Switzerland: Government by Referendum?

Switzerland is the one country where the referendum is truly the centrepiece of the political system (Treschel and Kriesi 1996). There is literally no comparison between the number of referendums held in Switzerland over the twenty-five-year period surveyed earlier in this book (see Table 1.1) and the pattern found in any other country. During that period (1975–2000), Switzerland held 72 referendums on 222 separate issues. As is the case in other countries, the use of the referendum in Switzerland also appears to be on the increase. The number of separate referendum voting decisions made by the Swiss during this time is more than double that for the comparable preceding period.²² Like Californians, Swiss voters are being called upon more often to express their judgment on a wider array of political issues. At the cantonal level, the referendum is used even more extensively.

An issue can find its way to a national referendum in Switzerland in any one of four ways:

- As in Australia (see Chapter 3, section D), constitutional changes proposed by the federal assembly require a mandatory referendum.²³ Constitutional amendments must be approved by a majority of the voters in the country as a whole *and* by majorities in more than half the twenty-six cantons.²⁴
- A special constitutional provision (article 89) covers the procedure for ratifying international treaties.²⁵