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How to Fix a Broken State

We tell ourselves stories in order to live. . . We look for the sermon in the suicide, for the social or moral lesson in the murder of five. We interpret what we see, select the most workable of multiple choices. We live entirely, especially if we are writers, by the imposition of a narrative line upon disparate images, by the “ideas” with which we have learned to freeze the shifting phantasmagoria which is our actual experience.

Or at least we do for a while.

—Joan Didion, “The White Album”¹

We tell ourselves stories in order to govern, too. In California, governing by the old stories has led us into a canyon of permanent crisis.

The old stories tell us that if we enact the right silver bullet of political reform, a fractious state now sharply polarized by party and clumped into communities of the like-minded can once again enjoy what we recall as the more civil politics of a bygone era.

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The state had no Founding Fathers. It was made by miners who rushed here and invented a state suddenly, in less than a year. The California they created had no settled system of government.

The old stories tell us that some fiscal outcomes are too vital to leave to the ordinary push and pull of legislative budgeting and democratic politics—so vital, in fact, that they must be locked into the constitution.

And as ever, these aging narratives tell us of comings and goings. At one moment California gazes at itself in the mirror and worries about its attractiveness—will they keep coming (or might they and their businesses even leave)? In the next moment the state worries that too many people, and of the wrong sort, are crowding our valleys and golden hillsides.

These old stories no longer make sense of “the shifting phantasmagoria which is our actual experience.” After decades of shooting silver bullets of reform at the state’s constitution, California voters have never been so dissatisfied with their government. The 2010 approval rating for the legislature—in which Democrats, Republicans, and independents showed striking agreement—was lower by half than in any previous state fiscal crisis. Seventy-three percent of those surveyed by the Public Policy Institute of California in 2009 said the state was run by a few big interests looking out for themselves. Californians, always a cynical lot in matters of governance, have never been more cynical.²

After decades of packing its constitutional closet with the nation’s biggest collection of budget whips and shackles, California is also home to the nation’s longest-running fiscal mess.³ The current crisis is defined by more than big budget shortfalls. What makes this moment different is that Californians seem unable to talk about the crisis in a way that gets to the bottom of things and points toward solutions. The state lacks a language equal to its current calamity.

California needs new narratives—one to explain how we arrived at this place and why we can’t keep going on the same way, another to show how we might rewrite the rules so that California is governable again by whatever team and with whatever agenda voters may democratically choose.

Building and Breaking California

California’s government has never quite worked. The state had no Founding Fathers. It was made by miners who rushed here and invented a state suddenly, in less than a year. The California they created had no settled system of government. It was an improvisation, a hastily constituted mishmash of Iowa’s state constitution and American, Mexican, and Spanish law.

Such is the history of California’s government. Changes are made to the constitution, often rapidly and haphazardly, occasioned by emergency or by spasms of popular anger at the status quo. These amendments often have the quality of hurried improvisations and are subjected to little scrutiny. The state’s would-be reformers rarely bother to check their work, so it isn’t long before the reform fails, popular anger spasms again, and another wave of changes comes.

Five such waves have crashed onto California’s shores. First came the hastily scribbled original constitution, drafted at a rogue gathering convened in 1849 by the military on behalf of a state the US government had failed to recognize. In the early days of the Gold Rush, Peter Burnett, who became the state’s first governor, described the predicament: “We have here in our midst a mixed mass of human beings from every part of the wide earth, of different habits, manners, customs and options, all, however, impelled onward by the same feverish desire of fortune-making. But, perfectly anomalous as may be the state of our population, the state of our government is still more unprecedented and alarming. We are in fact without government—a commercial, civilized and wealthy people, without law, order, or system.”⁴

California at the time operated under laws that had been drawn up by Spain and administered by that country’s military and the Catholic church. The system, with three branches of government that gave special power to mayor-judges known as *alcaldes*, was also a product of the Mexican

constitution drafted a decade earlier, in 1837. A visitor to California, in the rare moment when such a person paused long enough from gold mining to ask exactly who was in charge, would have been told: everyone and no one. It is a measure of the steadiness of California's unsteady personality that the same answer is given to that question today.

In 1848 General Bennett C. Riley, the seventh and last military governor of California, knew that he was not in charge. Congress, three thousand miles away and consumed by the fight over slavery, was no help. It could not decide on a course for California. So Riley, citing no law and no authority because there was none in such matters, called a convention to figure out what to do. He suggested that some sort of civilian government be drawn up, based on Mexican law.

Ten delegates showed up on Saturday, September 1, 1849, at Colton Hall in Monterey. By the following Monday, twenty-eight delegates were present. Forty-eight people, elected to represent the state's regions, eventually took part. They were strangers to each other and in many cases to California. Twelve had been in the state one year or less. Only seven delegates, all Mexicans, had been born in the state. Of these only two spoke English. The original preamble to the new constitution was drafted in Spanish. More than half of the delegates were younger than forty. The oldest was fifty-three. Records say there were fourteen lawyers, eleven farmers, and seven merchants, but at that moment most of these men were miners, having abandoned their homes and professions to seek their fortunes.

With so little shared history and no existing rivalries, they made decisions quickly and easily. They voted to form a constitution for a state, presuming that the United States would have to let the gold country in sooner or later. They voted overwhelmingly to bar slavery. They borrowed liberally from a copy of the constitution of Iowa, because it was one of the most recently drafted state constitutions, and also one of the shortest.⁵

The constitution they wrote was a strange, short, weak document. It established the basic governmental structure of California: a legislature divided into two houses; an executive branch with power divided up among several elected officials, including an attorney general, a lieutenant governor, and a superintendent of public instruction. It put limits on what the executive branch could do and on how much the legislature could borrow, but neglected to spell out

either branch's affirmative duties. Many of its most specific provisions were quickly a dead letter: San Jose was declared "the permanent seat of Government"; no one who participated in a duel could hold office or vote—a provision that, if enforced, would have disqualified several of the state's early leaders.⁶

Glorious as it was to see the people seize power, the new state constitution's serious defects soon became clear. The 1849 convention had failed to design a regime for taxation and provision of government services. A convention subcommittee acknowledged the absence of such services—"We are without public buildings, Court Houses, jails, roads, bridges, or any internal improvement"—but said it was simply too difficult to collect enough taxes to hire people to collect more taxes. "The smallest amount of taxes, that would justify the appointment of an assessor and collector, would be oppressive to these people already reduced to poverty and . . . in the more recently populated districts, the vast majority of the people have no property to be taxed except the gold they took of the earth and which would be difficult if not impracticable to ready taxation."⁷ The committee recommended that the state figure out how to pay for itself sometime later. Maybe the federal government would help.

The second wave of constitutional change rose in the three decades of failed attempts to put meat on the bones of that first constitution, culminating in the 1878–79 constitutional convention, perhaps the greatest civic disaster in the history of a state with a talent for disaster.

The men who gathered at the state capitol in September 1878 were not strangers; they were political rivals. The convention had been advanced by a new organization, the Workingmen's Party, based in San Francisco's growing labor movement. The Workingmen were known as Kearneyites for their leader, Denis Kearney, an ex-vigilante who called publicly for "a little judicious hanging" of millionaires and adopted the charming anti-immigrant slogan "The Chinese Must Go!" A demand for anti-Chinese laws was part of a Kearneyite platform that included the eight-hour day, the direct election of US senators, and state regulation of banks.

The rise of the Kearneyites had stirred both parties to combine forces to block them at the convention. Democrats and Republicans, through a joint slate known as the "nonpartisans," had won election to 78 of the 152 original

delegate positions. The Kearneyites managed to win 51 seats. From its very first day, when nonpartisans loudly objected to the presence of the California governor, who was a member of the Workingmen, the convention was a bitter struggle between the parties.⁸

The rules of the convention opened the door to prejudices of all kinds. Small subcommittees, often dominated by men of similar viewpoints, met to draft the actual language of the new document. Each delegate was permitted to propose at least two amendments without interference. The nonpartisans, in the manner of California good-government advocates before and since, favored high-minded amendments, among them a proposal to bar from office anyone who was so vulgar as to seek said office in any way. The Kearneyites feverishly pushed anti-Chinese restrictions, including one amendment prohibiting Chinese from catching fish, “by hook or net.”⁹

As the delegates went about the work of drafting a new constitution, the convention quickly became a demonstration of a difficult fact of California political life that endures today: supermajorities are dangerous. The Kearneyites, being in the minority, lost contested votes on convention officers, which required only a simple majority. But on matters related to convention rules and the content of the constitution, approval of two-thirds of the delegates was required. The Kearneyites, by organizing themselves into a solid minority bloc of fifty-one votes, exploited this two-thirds rule to get their way on issue after issue. The Workingmen found they could win by simply opposing the nonpartisans (along with the dozen or so other delegates affiliated with a variety of parties) on every single vote until the majority of delegates surrendered to their particular demands. When pressed on the floor of the convention about this tactic, the Kearneyites pretended they didn’t know what was going on. “When gentlemen talk about the minority in the convention,” said one Workingmen’s Party delegate, “I must confess that I do not know to whom that language is addressed.”¹⁰

The constitution that passed was widely described as a Kearneyite document. It had a few democratic advances. Ownership of property was no longer a requirement for those who wanted to hold office. Appropriations could no longer be made for private enterprises. Local government was put on a firmer footing, with cities permitted to create their own charters. The courts were reorganized, eschewing

the Mexican model and establishing the seven-member state supreme court Californians know today. A commission was set up to regulate the railroad, which would soon capture its intended master.

But the zeal of the Kearneyites also produced lasting damage to the document—and to the state. They codified their hatred of the Chinese in a whole article of the constitution that, in violation of the US Constitution, prohibited the immigration of Chinese to the state and barred corporations from employing them. This provision was not only a racist abomination; it also created a problem for American foreign policy in the Far East for the next half-century.

On March 3, 1879, the secretary of the convention began to read the delegates’ work back to them. The constitution they had approved was long: it ran to twenty-two articles, had hundreds of new, complicated provisions, and had only that morning been assembled into a single document, which no delegate had reviewed from beginning to end. After a few minutes of listening, the delegates grew restless. They did not want to sit still for a reading that might take most of the day. A motion was made to suspend the reading. It carried overwhelmingly. Moments later, the delegates voted to adopt the constitution, unread, by a count of 120 to 15.¹¹

The new constitution, narrowly approved by voters that May, proved to be a landmark, though not in a favorable way. Much of the next half-century of political reform efforts in California would be devoted to undoing its worst provisions.

The third wave of constitutional reform brought sixty years of amendments, more than three hundred of them, nearly all aimed at remedying the consequences, intended and not, of the 1879 disaster. These included the Progressive changes of 1911 and the not-so-progressive changes of the following thirty years.

In his first months in office in 1911, Governor Hiram Johnson convinced the legislature to place twenty-three constitutional amendments on the ballot in an October special election. Taken together, the amendments were as ambitious as the 1878–79 convention. Among these measures were women’s suffrage, the establishment of a workers’ compensation system, greater autonomy for cities and counties, and new standards for school textbooks and criminal appeals. A new railroad commission was established to replace the old corrupt one.



But the three amendments that were to contribute most to California's governing system were the direct democratic tools: the initiative, the referendum, and the recall. The main controversy involved applying the recall to judges, a provision that drew criticism from President Taft, among others. The establishment of the initiative process, which quickly became central to the conduct of state politics and government, was the subject of almost no debate at all. Twenty-two of the twenty-three measures won. (A measure permitting public officials to ride for free on the railroads

lost.) The controversial recall received support from 77 percent of voters. The initiative process won 168,744 votes, with only 52,093 against, according to state records.

The success of the 1911 measures touched off a thirty-year public rewrite of the constitution, amendment by amendment. Among these was one, first suggested in 1933 by State Controller Ray Riley when California faced a then-record \$50 million budget deficit, to require a two-thirds vote to pass appropriations when spending grew by more than 5 percent from one two-year budget to the next. With

little debate, the two-thirds supermajority was added to a ballot measure approved by voters in November of that year.

By 1940 the 1879 document had been amended 343 times. It ran to more than 65,000 words. In effect, California had a new constitution, its third. This new document required a government far larger and more complex. Authority was distributed among elected leaders, a large new civil service, and a growing maze of boards and commissions with unelected members. It was nearly impossible for one party or boss to dominate in such a system. It was not easy to govern either. And it was becoming harder and harder for voters to know whom to hold responsible for problems. Interest groups were already busy using the initiative to protect their pet projects and resist democratic accountability. As V. O. Key and Winston Crouch wrote in 1938 for their study *The Initiative and Referendum in California*, “the groups using the initiative have not differed from the organizations lobbying before the legislature . . . representing interests—commercial, industrial, financial, reform, religious, political.”¹²

For all its profound advances, the new Progressive system launched in 1911 also made the state’s politics bigger and louder. Debates on big issues played out in the context not of legislative debate but of campaigns. Since ballot initiatives were rarely a product of one particular party or politician, the campaigns could not rely on party managers. So the new constitution helped launch a new class of professional campaign managers. Together, these pros became a permanent and powerful force in the state’s governing system, building and preserving a political culture that, in the Progressive tradition, revered public opinion, loathed partisanship and ideology, and encouraged as many campaigns as possible. The *San Diego Union*, worried about direct democracy in 1911, editorialized: “California appears doomed to be continually in the throes of politics. As soon as one election is over, long-range campaigning for the next one will begin. This sort of political endless chain is not alluring.”¹³ The newspaper was right. But this is the same political culture that prevails in California today.

After a break for World War II came the fourth wave, an attempt to edit out the worst of the amendments and turn California’s amateur government into a professional one. Having asked and received voter permission in 1962 to draft revisions to the constitution, the legislature—declaring

that the constitution had grown “to be bad in form, inconsistent in many respects, filled with unnecessary detail, and replete with matter which might more properly be contained in the statutory law of the State”—established the California Constitution Revision Commission the following year.¹⁴

Composed of sixty volunteer citizen members and six legislators (as well as sixteen ex-officio legislative members), the revision commission focused mainly on removing nonessential parts of the constitution and converting them to statutes. Barry Keene, a member of the commission, later recalled his clear instructions from legislative leaders: “Avoid anything that steps on important political issues.”¹⁵ In all, about 16,000 words were deleted from the document and seven articles substantially revised. Voters approved the revisions in 1966 overwhelmingly, with both candidates for governor—the Democratic incumbent, Pat Brown, and the eventual Republican victor, Ronald Reagan—in support. (Voters approved further deletions and some technical changes, particularly in rules on local government, in 1970 and 1974.)

Uncontroversial at the time, these changes later fueled a backlash. The revisions were driven by two contradictory impulses: to create a more professional government while at the same time granting more power to amateurs, mostly through the initiative process.

In the name of creating a more professional legislative branch, the revision commission permitted the legislature, which had been limited to 120-day sessions, to meet full-time. The commission also lifted a requirement that had restricted budget sessions to every other year. The revision mandated new conflict-of-interest statutes and restrictions on legislators’ expenses and retirement benefits. The revised constitution permitted the legislature to set its own compensation, provided that increases were no more than 5 percent.

In the name of amateurism the revision commission opened up the initiative process—slightly, but in ways that have proved profound. The commission formally removed the legislature from having any role in initiatives by deleting the “indirect initiative,” a little-used provision that had permitted initiative sponsors to offer their initiatives to the legislature first for action. More seriously, the commission eased the qualifying standards for initiatives that merely changed statutes (as opposed to initiatives that changed the

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constitution). Previously, initiative sponsors had to collect a number of valid signatures equal to 8 percent of the number of people who had voted in the most recent gubernatorial election. Now, initiative statutes required only 5 percent of gubernatorial voters.

The loosening of constitutional requirements for initiatives, followed by legislative and judicial actions that made life easier for initiative sponsors, set off the fifth wave, a breaker that took off in the 1970s and has still not crested: a tsunami of ballot initiatives that, in the name of putting the fear of public anger in California's professional politicians, has created a self-reinforcing cycle of institutional failure and voter dissatisfaction. The most far-reaching of these measures was Proposition 13, the Jarvis-Gann initiative. When California voters went to the polls in June 1978 to cut their property taxes, little did most of them know that they were also writing a new operating system for California government. Prop 13's limit on property taxes, important though it has been in giving homeowners stable and predictable taxes, turns out not to have been its central feature. At the core of the new system was the requirement for a two-thirds vote in each legislative chamber to raise revenue. It made California the only state to require a two-thirds vote for both spending and tax bills.

The timing couldn't have been worse. The two-thirds requirement for revenue increases undermined the legislature's ability to decide big issues—precisely at the time that Prop 13, as an example of a successful political and media enterprise, turned the initiative process into an alternative to the legislature. Prop 13's success, not unlike the discovery of gold, created a rush of interest from the state's movers and shakers—politicians, advocates, donors, pollsters, media consultants, reporters. The legislature and the initiative became competitors; the contest was over which would

have primacy of place as the center of political debate and discussion.

The big idea behind this shift toward supermajority rules and restrictions was that a simple majority of legislators couldn't be trusted to set California's course. But here's the irony: the same measure that signaled voter mistrust of the legislature also gave state government even broader control over California life. By slashing local property-tax revenues, putting up higher barriers for local passage of taxes and bonds, and giving the legislature the authority to divvy up remaining property-tax dollars, Prop 13 was the Great Centralizer.

Prop 13 and the resulting concentration of power in the state capitol made government opaque, inflexible, and unaccountable. It shackled the legislature even as it gave Sacramento greater responsibility for governing. The state had grown too large and complex to be managed from above through institutions established in 1879, when it had fewer than a million people. California's new operating system, delivered in a spasm of voter frustration, has proved best at breeding more frustration.

Wave following wave. New mess built upon old mess. One disaster toppling the previous disaster. This is California's governing history. The state has changed its system by most of the known methods—at the direction of military authority, by convention, by special commission, by legislative action, by popular vote. Since the day in 1879 when delegates fled Sacramento without bothering to check their work, the constitution has been amended more than five hundred times.

Three Systems

As a result of this string of improvisations and hasty reforms, California is governed today not by one system but by three. One is the electoral machinery by which it elects the legislature, a system of single-member legislative districts elected by plurality. This structure is well known to restrict representation to the two major parties, exaggerate the majority party's strength, empower the ideological bases in each party, and render the votes of millions of Californians essentially moot in most legislative elections. The system's driving principle? Create a majority and let it rule.

Superimposed on the first system is a second: a constitutional web of rules requiring supermajority legislative



agreement about the very subjects—spending and taxes—over which the parties and the electorate are most polarized. The driving principle of this second system? Do nothing important without broad consensus. In practice, let the minority rule.

Then there is the third system, direct democracy. In response to gridlock, voters have repeatedly used the initiative process, another majoritarian institution, to override the consensus principle, which was itself put in place to check the majority-rule principle.

The collision of these three systems and two contradictory governing principles—one majoritarian, one so focused on consensus that it amounts to minority rule—has produced gridlock, rising debt, and political schizophrenia.

California has become a place of paradoxes. Its political architecture is the most explicitly democratic of any state, but too much of the government seems beyond the reach of democracy. California teems with governments—there are thousands, from the state to the cities and counties

and water districts—but the state often feels ungoverned. California's system, with its hundreds of commissions and agencies, gives authority to so many people that it is never quite clear who is in charge. The governing system has so many different structures that, to the citizen who wishes to engage it and to the shrinking news media that seek to report on it, it seems to be without focus.

California doesn't work because it can't work.

The California Fix

Having broken California's government, how do we repair it? Any successful California fix will begin by minding the narrative of how we reached this unhappy moment. Weak reform medicine, administered to address only symptoms and with little attention to its interactions with other parts of the system, has not been the antidote; it is the poison.

California today needs what it has never had—a true founding. The whole system must be rethought to make

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the pieces work together and with an eye to the sheer scale of the state, a place grown too large and too various to be successfully governed from the top. Democracy and accountability would be the watchwords. Windows must be opened so Californians can see in, peer out, and keep an eye on each other. This will require a Great Unwinding of old rules.

In *California Crackup: How Reform Broke the Golden State and How We Can Fix It* we offer one vision of how the rules might be changed to create a new, more democratic operating system.¹⁶ Many of our specific proposals are not themselves novel. In fact, most are ideas and practices well tested and proven to work in other states and countries. Our California fix uses the method that shapes so much of California life, from its cooking to its architecture to its iPhones: fusion, synthesis, and openness. It pulls together the best from all over to create an integrated system, designed to be more democratic, accountable, and flexible.

It starts by junking the current election system, which produces a polarized legislature that is neither fully representative nor accountable to voters. In its place goes a more representative legislature, its members closer to the voters.

Many reformers and pundits dream that small tweaks at the edges of our current system can take California back to the golden years of post-World War II, when Democrats and Republicans alike championed public investment in education and infrastructure and worked in the legislature across party lines. But this is no longer the California of the 1940s or 1950s, when liberals were sometimes Republicans and conservatives were often Democrats. Californians have brought their partisan identities more in line with their ideological preferences and clumped themselves into communities of the like-minded, creating a new political geography, with a solid Pacific coast of Democratic blue lapping a Republican red inland of valleys and mountains. There seems no end to our desire to sort ourselves into

neighborhoods where everyone goes to the same church, watches the same cable news shows, trolls the same websites, and rarely hears a contrary word. And because these changes are deeply rooted in our ideas and choices, they are not susceptible to cure by small adjustments, such as the recent measures creating an independent redistricting commission and eliminating direct party primaries.

What we *can* do is reshape our political system. We can design it so that it faithfully reflects our disagreements and accurately weights them in public representation. This requires borrowing the best practices of the rest of the democratic world, where nations have increasingly rejected single-member-plurality electoral systems in favor of multimember districts and proportional representation. These systems would work best if California also followed another trend, creating a unicameral legislature with more lawmakers (we suggest moving from 120 to 360), each representing fewer people—California Assembly districts today contain three times more people than those in the state with the next largest districts, and ten times more than in the average state.

These changes would make every voter's vote count. They would end partisan gerrymandering and increase political competition. By conducting legislative elections separately in each of California's diverse regions, they would create more issue-focused campaigns and permit more media coverage of elections. They would provide a more accurate representation of California's diverse population and regions, bring legislators closer to the people, and increase the amount of talent and specialized knowledge in the legislature.

Creating a fully representative and accountable legislature permits a second change: the end of the system of fiscal whips and chains, in which supermajority-vote requirements are clamped on lawmakers because the public does not trust them. If voters are brought closer to their

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representatives and can hold elected officials accountable at the polls, elections can replace mechanical restraints as the method for holding state government to the fiscal path citizens prefer.

If the nation's richest state has come to have the nation's lowest credit rating, it is not for lack of constitutional efforts to impose fiscal discipline on government. California is America's house of budget bondage. Voters may have repealed the familiar two-thirds-majority vote requirement for passing budgets in November 2010, but there remains the supermajority requirement for passing nonschool appropriations. And the two-thirds vote requirement for tax increases. And the new two-thirds vote requirement for fee increases, approved at the same election that removed the supermajority vote on the budget. And the state spending limit. And the balanced budget rule. And the rainy-day fund in which money must be set aside in good times. And the limits on borrowing, both in the financial markets and from transportation accounts and local government. And the Proposition 98 funding guarantee for schools and community colleges. In addition to these direct controls, California permits voters, through the initiative, to conduct a second budget process limiting the discretion of elected officials. California voters have used that power vigorously to create spending obligations for health, mental health, prisons, drug treatment, environmental protection, parks, early-childhood education, and after-school programs, mandates that often cannot be altered except with the voters' approval.

The old narratives say that such restraints are essential to achieve balanced budgets and set the right budget priorities to make the economy strong and our schools effective. The reality is that the nation's most rigid constitutional budget rules and the most extensive supermajority voting requirements have pushed California toward fiscal collapse, left it with underfunded and underperforming schools, and weakened the public underpinnings—education and infrastructure—upon which California's riches were originally built.

In our solution, policy choices on taxes and spending would be removed from the constitution. Fiscal discipline would be established through commonsense practices, such

as honest accounting and pay-as-you-go budgeting, and enforced by voters at elections in which control of the legislature would always be a live political issue. The new operating system would further advance accountability and fiscal responsibility by realigning state and local governments so that more of the decisions about funding programs and running them are made by the same people, at the same level of government, often closer to the voters.

The third big piece of the California fix reimagines our system of direct democracy. The current system is uniquely inflexible; only in California does an initiative create a privileged class of law that cannot be amended except by another vote of the people. It is also heavily weighted toward the initiative, a process by which voters confront and circumvent the legislature, and against the referendum, through which voters assess and pass judgment on the legislature's work.

In a reimagined system, an improved initiative process would have more flexibility, permitting fixes and legislative amendments both on the front end (during drafting and qualification) and at the back (after it passes). Initiatives would first go to the legislature, where they could be amended and adopted in consultation with sponsors. Once passed by voters, they would become, after a few years, ordinary law, subject to change by lawmakers.

Just as legislators would gain new power to amend the work of voters, voters under our solution would receive new power of their own, making it easier for them to pass judgment upon the work of lawmakers. This would happen by granting voters and those who use the ballot greater power to qualify referendums of legislative actions.

In sum, elected officials would have more authority over the drafting and amending of legislation, including that passed via initiative, while voters would have greater authority to use the referendum to intervene directly in the legislation that Sacramento produces. These changes would make it harder to circumvent the normal processes of government by embedding policy preferences in the constitution. But they would also give voters more choices among ballot measures and make direct democracy more of a conversation and less of a confrontation.

These are not random reforms. Our California fixes are designed to work as an integrated whole. Each reform builds on the others. More democratic and representative election processes would make it easier to hold lawmakers accountable and reshape the legislature. In turn, lawmakers would have more freedom to reshape the law with the times and hold powerful interests at bay. And finally, the people, via new and more forceful powers of referendum, would have more authority to reshape the legislative product of these legislators.

We know that these proposals push the boundaries of the politically possible. But in California almost every proposal pushes those boundaries. Even modest reforms that will do little or nothing to fix the state's structural problems receive less than majority support in polls.

When small changes in California's system are so politically difficult, common sense suggests that we should target our energy and attention on the bigger, systemic changes that would fix the problem. Or to put it another way, when defeat is likely, why not try what works?

The state's current stalemate, while a formidable obstacle, is no greater than that faced by the framers of the state's constitution in the nineteenth century or than that confronted by the Progressives a century ago, when they elected a governor in the face of opposition from both parties and the railroad. The changes we propose are far less radical than the Progressives' push for direct democracy, which represented a sharp break with American history and its Madisonian system of divided government, checks and balances, and suspicion of democracy.

The fall of 2011 will mark the centennial of the 1911 special election that saw the Progressives enact their program and remake the constitution passed in the 1879 convention more than 30 years earlier. Today, 130 years after that convention, a century after the coming of statewide direct democracy, and three decades after Prop 13 remade the state's operating system, it is long past time for an update. **B**

Notes

Portions of this essay appeared, in a somewhat different form, in Joe Mathews and Mark Paul, *California Crackup* (Berkeley: University of California Press, 2010.)

- ¹ Joan Didion, "The White Album," in *We Tell Ourselves Stories in Order to Live: Collected Nonfiction* (New York: Everyman's Library, 2006), 185.
- ² Mark DiCamillo and Mervin Field, "Schwarzenegger and the State Legislature Both Get Very Poor Job Ratings: Four Out of Five Voters Say State Is on the Wrong Track" (San Francisco: Field Research Corporation, 2010); Mark Baldassare et al., *California Survey: Californians and Their Government* (San Francisco: Public Policy Institute of California, 2009).
- ³ Bruce E. Cain and George A. Mackenzie, *Are California's Fiscal Constraints Institutional or Political?* (San Francisco: Public Policy Institute of California, 2008), 8–9.
- ⁴ Carey McWilliams, *California: The Great Exception* (Berkeley: University of California Press, 1949), 42.
- ⁵ John Ross Browne, *Report of the Debates in the Convention of California* (Washington, DC: J. Towers, 1850).
- ⁶ *Ibid.*, 418–61; original handwritten notes of the convention, on file at the Bancroft Library, University of California, Berkeley.
- ⁷ Convention notes, on file at the Bancroft Library.
- ⁸ E. B. Willis and P. K. Stockton, *Debates and Proceedings of the Constitutional Convention*, vols. 1–3 (Sacramento: State Printing Office, 1880).
- ⁹ *Ibid.*, vol. 1, 59.
- ¹⁰ *Ibid.*, 149.
- ¹¹ *Ibid.*, vol. 3, 1525–26.
- ¹² V. O. Key, Jr., and Winston Crouch, *The Initiative and Referendum in California* (Berkeley: University of California Press, 1939), 487.
- ¹³ *San Diego Union*, June 18, 1911.
- ¹⁴ J. Gould, "Report on Materials of Constitution Revision Commission Relating to Provisions in California Constitution Recommended or Endorsed by Commission," December 10, 1974, 1.
- ¹⁵ Barry Keene, remarks, Matsui Center panel on constitutional reform, Sacramento, October 14, 2009.
- ¹⁶ Mathews and Paul, *California Crackup*.