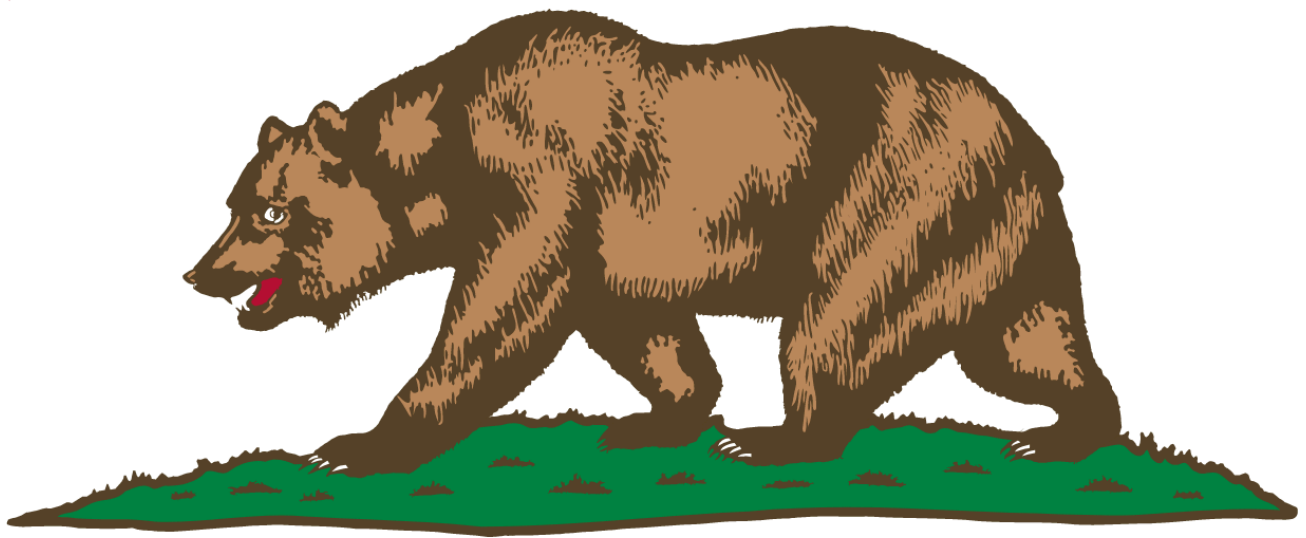


INTRODUCTION TO CALIFORNIA GOVERNMENT AND POLITICS

POLISCI-150



CALIFORNIA REPUBLIC

INTRODUCTION TO CALIFORNIA GOVERNMENT AND POLITICS

An Open Educational Resources Publication by College of the
Canyons

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Version 3

2022



Acknowledgments

College of the Canyons would like to extend appreciation to the following people and organizations for allowing this textbook to be created:

[California Community Colleges Chancellor's Office](#)

Chancellor Dianne G. Van Hook

[Santa Clarita Community College District](#)

[College of the Canyons Distance Learning Office](#)

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CHAPTER ONE: INTRODUCTION



Figure 1.1: California's State Seal¹

CHAPTER OBJECTIVES

1. To introduce political values that we will use to study California politics
2. To analyze contemporary political ideologies and parties
3. To compare representative and direct democracy
4. To distinguish among rival arguments regarding who really rules California
5. To identify how political systems theory organizes our study of California politics

WELCOME TO THE STUDY OF CALIFORNIA POLITICS

Politics is important because it addresses two fundamental questions that every group must address: what should be done and who should decide? It can be very confusing, but underlying the daily barrage of news, rhetoric, and name-calling, there is an underlying logic to the subject. This book concisely explains California politics and shows you how to participate.

California politics involves three major dimensions. It is first a matter of values, selecting the principles that we believe are important. Second, it is a matter of constitutional engineering; to create and continue to improve upon a government system that can promote our values. Third,

¹ [Image](#) is in the public domain

it is a matter of policy; the actions of the government should put our principles into practice. Naturally, there are both agreements and disagreements regarding each of these dimensions.

Studying politics is not only valuable to better understand California, but it is also helpful to understand ourselves. What political values do we believe in? What ideology should we adopt? What are our points of view about how California is governed? What policies do we favor? This book is an academic work as well as a primer about how to be political. It thoroughly explains the concepts, theories, and methods of political science used to study California politics. Each chapter includes questions that ask you to consider your own opinions and engage in further inquiry.

In this chapter, let's discuss these central questions of politics. First, we will introduce how political values and ideology shape our viewpoints. Then we will introduce some of the major debates among political scientists that animate the study of many different aspects of California politics. Last, we will introduce systems theory as a way to organize our study.

POLITICAL VALUES

What matters in life? What are the keys to happiness? At the micro-level, we may value good character, ambitions achieved, pleasures enjoyed, a life full of family and friends, and perhaps faith and virtue. However, politics is about the collective striving for values; approximately forty million Californians decide explicitly, informally, or absent-mindedly, what is essential, what matters more, and what matters less. Thus, let us begin by asking what principles do we care about?

In our everyday lives, we may not be aware of the principles that motivate us. However, we may observe people; for example, watching how they treat others or how they spend their money. Then we can infer principles. This person spends her day caring for her mother; the love of family matters. Another spends hours perfecting an athletic skill, seeking physical excellence. A third is always shopping, loving to accumulate stuff. Similarly, at the political level, we may observe the actions of forty million Californians and infer what matters to us as a state.

Naturally, there are so many political phenomena to observe and analyze. Often, we may infer that multiple values are at stake. In general, three are most evident: liberty, equality, and order. There are various definitions of each of these values, and any particular political issue may not involve all three. Let us consider each of them and then apply them to current policy debates.

Liberty, or freedom, is commonly defined in two ways. The first is negative liberty: freedom from interference, especially government interference. This version is rooted in the philosophy of John Locke and other social contract philosophers. The individual possesses autonomy and should be free to make their own decisions unless they interfere with the freedom of others. The second is positive liberty: when individuals find greater freedom by doing that which is good as defined by a collective philosophy. For example, a religion may prohibit certain behaviors to help the individual free themselves from moral failings.

A law may take away negative liberty and add positive liberty. In 1986, California began requiring everyone to wear seatbelts in automobiles. This law takes away negative liberty by telling us what to do but gives us positive liberty by making it more likely that we will survive an accident to enjoy the liberty of another day.

A second crucial political value is equality, which also may be defined in multiple ways. Drawing on the ideas of John Locke and others, the notion of intrinsic equality argues that every one, being human, is equal and hence has equal rights. For example, although there are dramatic differences in achievement among us, each person casts a single vote at the polling place. After this fundamental premise, we can distinguish between equality of opportunity and equality of outcome. The first advocates a “level playing field” with no discrimination based on personal attributes such as race, ethnicity, and gender. For example, federal and state laws prohibit employment discrimination. The second, equality of outcome, favors everyone receiving the same result or condition. For example, everyone is assigned a desk in a classroom; or perhaps in the future, everyone receives health care.

A third value is order. Our moral judgments evaluate the legitimacy of public policies. There are many examples of the value of order. Belief in a particular economic ideology such as capitalism or socialism informs our opinions about economic policies such as the minimum wage, tax rates, or welfare. Our religious beliefs may cause us to object to public policies upholding personal freedoms. Many people perceive obeying the law as good in itself. On the other hand, when Dr. Martin Luther King, Jr. and other civil rights protestors engaged in nonviolent civil disobedience, their sense of order led them to violate civil law to promote a higher law.

When considering an issue, values may harmonize or conflict. For example, equality of opportunity and negative liberty enhance each other. Let everyone pursue their dreams without government interference. On the other hand, equality of outcome is likely to clash with negative liberty because providing equal provisions of goods and services will require higher taxes and more regulations. The classic tradeoff is between negative liberty and order. We want to do what we wish, but this may clash with existing laws. For example, homeless people wish to camp in parks and other places where this is prohibited. The case study below illustrates this conflict in values.

FOR YOUR CONSIDERATION

Driving the Homeless out of Echo Park

A few miles north of downtown Los Angeles lies Echo Park Lake, a reservoir with a mile-long path around it surrounded by grass and trees. It is a place for nearby residents to play ball, have picnics, rent swan-shaped paddle boats, or simply walk. However, as the homelessness crisis worsened in Los Angeles County, the park began to fill with tents and other makeshift shelters, with approximately 200 people crowding out the usual park visitors. The city of Los Angeles did not enforce the “no camping” regulations.



Figure 1.2: Echo Park²

With sanitary conditions declining and reported crimes increasing, the residents in the surrounding neighborhood of Echo Park complained, arguing that they could no longer safely use the park. In late March 2020, city workers from several agencies notified everyone making the park their home that they would have to leave. They were offered shelter at hotels paid for by the city. Ultimately, the police had to forcefully evict those that remained, sparking street protests by homeless advocates. By May, the park was fenced off, renovated, and reopened with the resolution that the city would enforce the “no camping” regulation.

Considering this case study, what political values are evident? The first question that emerges is how, as a society, do we provide for housing? Is this addressed through the free market, that is, people are responsible for themselves, buying or renting? Is this addressed through

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FOR YOUR CONSIDERATION

public housing with units provided by the government? Is there a middle ground under which the government subsidizes rents? All three types of economic order are undoubtedly present in the state; the question is, what balance among the three do we prefer? As the price of housing increases in California with the stock of public and subsidized housing in short supply, advocates for the homeless in Echo Park argue that residing in the park is a reasonable short-term solution to help address the housing crisis.

Second, the Echo Park camp raises questions of liberty: should people have the freedom to camp where they please? If homeless people are free to camp in the park, does that infringe upon other people's liberty, namely local residents, to use the park for recreation? If so, whose liberty matters more? This is also a matter of equality: do the homeless have as much right to be in the park as local residents? And, drawing upon the concept of positive liberty, perhaps the homeless are best treated by providing them with homes, even if they prefer not to leave the park.

What do you believe? If you were on the Los Angeles City Council, would you favor removing the homeless people from the park?

FROM POLITICAL VALUES TO POLITICAL IDEOLOGIES AND PARTIES

Return to the first big political question that every society must ask: What should be done? Political values address this question. How much liberty do you wish? How much equality? How much order? Some people consistently favor one value more than another, and others try to find a middle ground. For example, with issues regarding negative liberty, you may find yourself consistently favoring non-interference by the government or you may be concerned with rising poverty and want more government interference across a range of social issues. Perhaps in some areas of policy, you want much more government interference, and in others, you want people to be left alone. As you consider the variety of your political opinions, a certain consistency in your thinking is likely to emerge. This is your political ideology.

To characterize your political ideology, ask yourself, "What role do you want the government to have in society?" Although there are many kinds of policies, we can identify your political ideology if we select two significant areas: social policy and economic policy. Examples of social issues include abortion and gay marriage. Examples of economic issues include taxation, the budget, and environmental regulation. The liberal believes in more government intervention in the economy, including more taxing and spending, but wants less government intervention in social affairs such as abortion. The conservative is the opposite, wanting less government intervention in the economy, with lower taxes and less government spending, but is willing to have the government intervene to regulate personal behavior such as abortion regulation. Libertarians want more freedom in all areas; socialists are the exact opposite, wanting

consistent government control. In the middle are the moderates, who seek to balance liberal and conservative ideologies. Of course, you can be more moderate or extreme within each quadrant of the figure below:

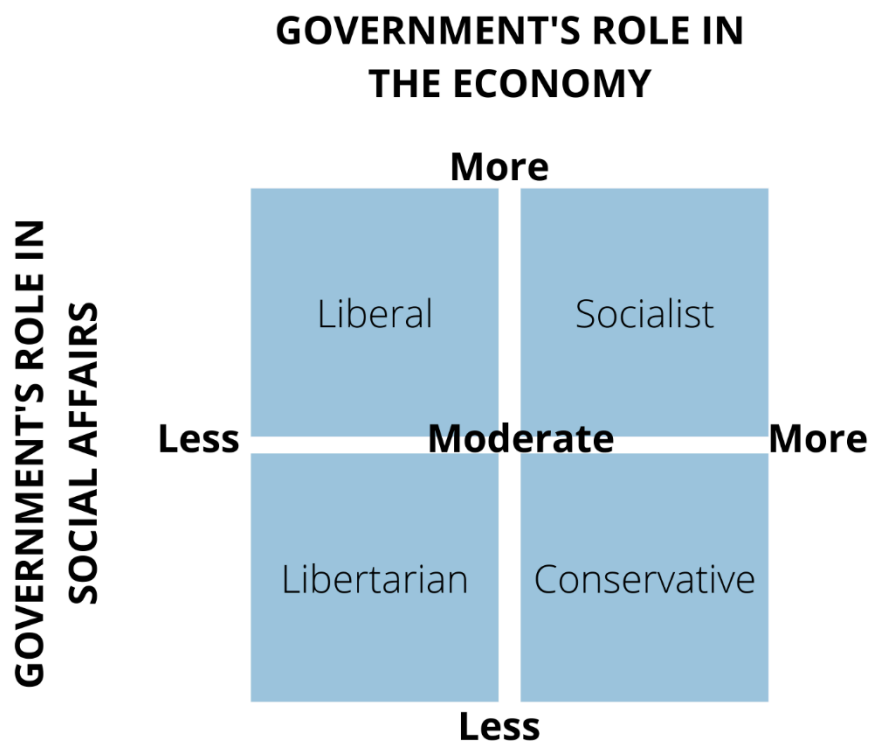


Figure 1.3: Political Ideologies³

Once you have determined your political ideology, it is a small step to identify the political party you would prefer. Today, just about all liberals join the Democratic Party, and just about all conservatives join the Republican Party. There is a small Libertarian Party, but there is no explicitly socialist party on our ballot. However, the Peace and Freedom Party and the Green Party have some positions that are socialist.

The evolution of parties in this state will be discussed in greater detail in subsequent chapters. Before the 1980s, party and ideology were less closely connected; there were many conservative Democrats and liberal Republicans. As the country has become more polarized, such people are less common.

If you register to vote (see “For Further Inquiry” below), you may choose to define yourself as a member of a political party or select “no party preference.” California has a top-two primary system where all candidates are on everyone’s ballots and the top two winners (regardless of party affiliation) go on from the primary (usually in June) to the general election (November). The one exception is with the U.S. presidential race, in which one or more of the parties may require you to be registered as a member to vote in their presidential primary (for example, the

³ Image by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

California Republican Party limits primary voters to registered Republicans). Thus, because you likely care about the U.S. presidential race, it still makes sense to register for a party.

Now that you have a better idea of who you are politically, compare yourself to other Californians. According to a May 2022 poll (Baldassare) about 35% of Californians call themselves liberal, 29% moderate, and 33% percent conservative. Approximately 48% of likely voters said they registered as Democrats, 24% as Republicans, 21% as independents, and 7% with a minor party, including the American Independent Party, the Green Party, the Libertarian Party, and the Peace and Freedom Party. More about these parties in a later chapter!

DEBATING WHO GOVERNS

Let us go from debating about what should be done—which is addressed by our political values, ideologies, and parties—to considering who should decide what should be done. Aristotle, the ancient Greek philosopher, categorized governments in terms of whether the one, the few, or the many governed. He then considered the virtues and vices of each form and argued that the ideal system is a mixture of all three. Modern political philosophers, such as Karl Marx, argued that we should also examine the underlying power dynamics that sustain a formal constitutional structure and ask, “Who really rules?”

The central historical controversy regarding the formal rules and organization of California government is about the balance between representative and direct democracy. Under representative government, the people elect leaders to the state legislature and executive branch who make laws for them. Under direct democracy, the people seize much of this power through the processes of the initiative, referendum, and recall. To what extent do we trust representatives in comparison to our fellow citizens to make wise public policies?

The framers of the U.S. Constitution, such as James Madison, believed representatives to be wiser, worrying that the people were often ignorant and emotional. The Progressives in California, who amended the California Constitution in 1911 to allow for more direct democracy, decried representatives as corrupt, arguing that they were the puppets of special interests such as the Southern Pacific Railroad and the oil companies. They believed that a growing educated urban middle class could exercise a wise check on Sacramento politicians (see Chapter 2).

The second debate among political scientists is the question of who really rules. Yes, we have competitive elections that are fairly administered. Yes, we have three branches of government that can check and balance one another as well as reasonably strong constitutional protections of our civil rights and civil liberties. While just about everyone acknowledged the need for reform in many areas, there are dramatically different perspectives on the power structure behind the constitutional system of representative and direct democracy.

There are three schools of thought. These schools of thought are more like arguments or perspectives rather than theories. The traditional approach is *majoritarianism*; government is

“by the people.” Leaders are accountable to voters in elections. Most people can and do vote in competitive elections among parties or candidates with diverse points of view. Civil liberties and civil rights may not be perfect, but they provide enough protections for us to characterize California as ruled by the people.

The second approach is called *pluralism*. Pluralists believe that while the people still have a say, it is primarily organized interests that run California. These organized interests include labor unions, large businesses, and influential citizen groups. They propel candidates into office and their support is crucial for bills to survive the legislative process. Groups mobilize their members and persuade the electorate to support their positions.

The third argument is more cynical; it is called *elitism*, the idea that government is simply the reflection of the will of wealthy people in society. A political class has concentrated power in society and manipulates the electorate to stay in power. The rules of the game are “rigged,” for example, drawing legislative districts to ensure that politicians are reelected. The expense of campaigns keeps poor people out of the political process. The constitutional system is simply a way to co-opt the people so that they do not revolt.

Political scientists argue about who really rules: the majority, the special interest groups, or the elite. As we study each aspect of California government, we will marshal evidence for each position, and you can decide for yourself. As participants in the political system, the question is an important one: why bother voting if the elite are the ones actually in charge? Is it better to join an interest group to make a difference? Perhaps, the elite may sometimes make better decisions than the people who may become an unthinking mob.

ORGANIZING THE STUDY OF CALIFORNIA POLITICS

So far in this chapter, we have examined political values and how they shape political ideologies and party positions. Then, we introduced debates about who should decide policy, considering direct and representative democracy and their underlying structures of power. As we study politics, there are so many phenomena that we observe that it is helpful to organize our study of politics still further.

Political scientists use systems theory as a better way to organize their inquiries. Systems theory simply conceptualizes a subject of study as including three parts: inputs, an exchange mechanism, and outputs. Many areas of life are systems, such as functions of the human body, the ecology of a lake, or the sale of cheeseburgers at a local restaurant. Politics, too, is a system composed of the people, policymaking institutions, and policies. Linkage institutions, such as voting, parties, interest groups, and campaigns connect the people to policymaking institutions that include the legislative, executive, and judicial branches that make laws that impact us. See the diagram below.

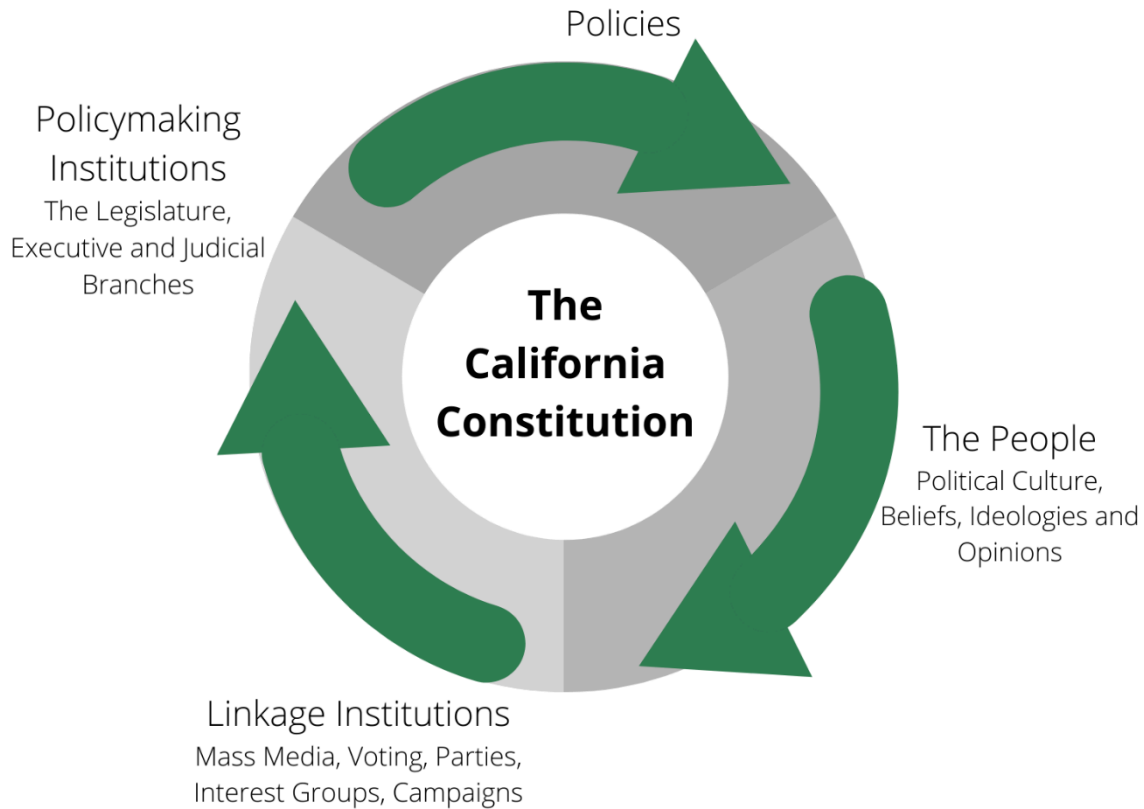


Figure 1.4: The Political System (Almond)⁴

Using systems theory, we can study how political phenomena interact, how the parts of the system create the whole and how the whole system impacts the parts. For example, whether we vote is based on the confidence we have in our own abilities to understand politics and on our confidence that our votes make a meaningful difference. Political parties organize our thoughts, organize elections, and organize legislative politics. Effective governors both follow and lead public opinion.

This text is organized according to systems theory. First, we will study the rules that organize the system: the California Constitution and federalism. The California Constitution organizes the relations among people, policymaking institutions, and policies. Federalism, established by the US Constitution and national law, situates California politics within the larger American context. Key court cases and laws about civil liberties and civil rights will also be discussed. Second, we will study the ways that we actively involve ourselves in politics; developing our public opinion, voting, and joining interest groups and political parties. Third, we will examine policymaking institutions and focus on how to address current issues and challenges facing our state. I welcome you to our study of California politics.

⁴ Image by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

FOR FURTHER INQUIRY

1. Many excellent websites investigate contemporary California politics and policy. Survey two sites: [Calmatters.org](https://calmatters.org) and the [Public Policy Institute of California](https://www.ppic.org/). Select one issue of interest to you. Evaluate the tradeoffs among political values when considering what is best to do regarding the issue. Consider liberty, equality, and order, thinking about how you are defining each value.
2. To ascertain your political ideology, find an online survey that will accurately pinpoint your political ideology after you answer quite a few questions. For example, the [Pew Research Center](https://www.pewresearch.org/) survey is a good one. See their accompanying articles about political ideology, too. Do you believe that the survey accurately defined your ideology?
3. To register to vote in California, go to <https://registertovote.ca.gov/>. You may also pre-register to vote if you are sixteen or seventeen. This will make you automatically able to vote when you turn eighteen. The deadline to register to vote is fifteen days before an election, although you may vote with a provisional ballot on the day of the election after which your residency is verified before your vote is counted. Did you find the process easy? How could it be improved?
4. Go to the [Secretary of State of California website](https://www.sos.ca.gov/) and examine some of the proposed ballot measures that proponents are promoting throughout the state. Some may be at the stage where signatures are being gathered by petitions. Others may have cleared this hurdle and be ready to be put on the ballot. Do you believe that they belong on the ballot, or would they be better addressed in the legislature or the Courts? You may also want to look at some of the [historical propositions](https://www.sos.ca.gov/elections/previous-ballot-measures/) for comparison.

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CHAPTER TWO: CALIFORNIA CONSTITUTIONAL DEVELOPMENT

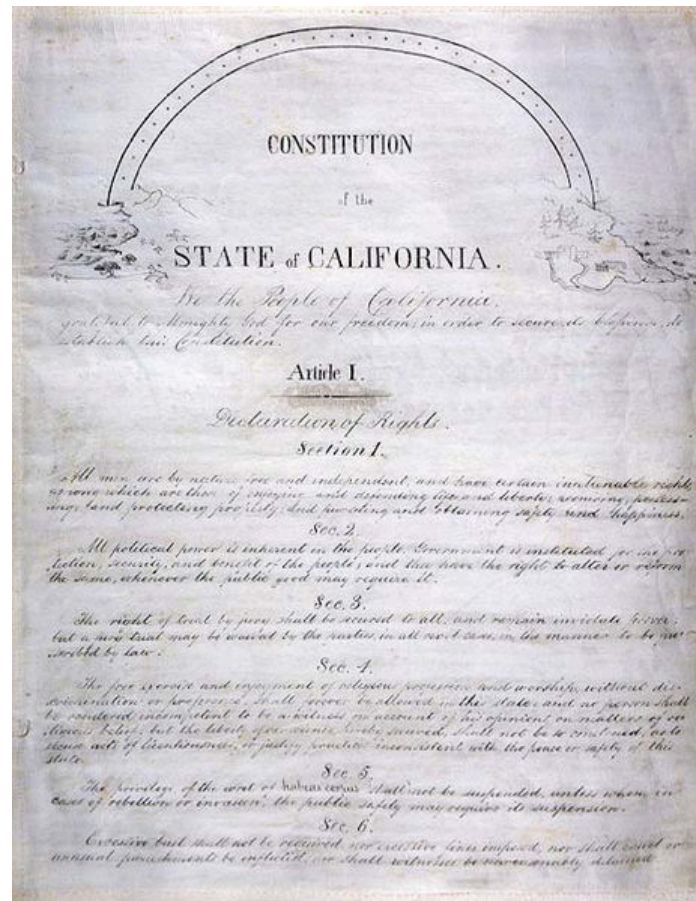


Figure 2.1: The California Constitution of 1849⁵

CHAPTER OBJECTIVES

1. To describe how the Constitution of 1849 established the basic framework for state government.
2. To analyze the impact of the Constitution of 1849 and the political events of this era on Native Americans and African Americans.
3. To examine how the events of the 1870s, in particular, increasing prejudice against Chinese Americans, led to the replacement of the Constitution of 1849 with the Constitution of 1879.
4. To analyze the political reforms of the Progressive Era in California, including the fight for women's suffrage.
5. To evaluate California's constitutional history with regards to the question of who rules.

⁵ [Image](#) is in the public domain

INTRODUCTION

Novelist William Faulkner wrote, “The past is not dead. It’s not even past.” The choices that we make today are framed and constrained by the past. Just as we better understand ourselves by learning about family history, we better understand California politics by studying its history. Let us focus on California’s constitutional development in this chapter.

A constitution is an act of political creation. People join together in a social contract to create a political community. A constitution establishes the organization of government, its powers, and the rights and responsibilities of the people. It provides the foundational answers to such questions as who should rule and what political values should be promoted. Using the standards for democracy asserted by Abraham Lincoln in the Gettysburg Address in 1863, do we actually have a “government of the people, by the people, and for the people?” Or do we invite some, but not all, to the political table? Our study of California constitutional development examines how the Constitutions of 1849 and 1879, and the Progressive reforms following the 1910 elections, shape our institutions and policies.

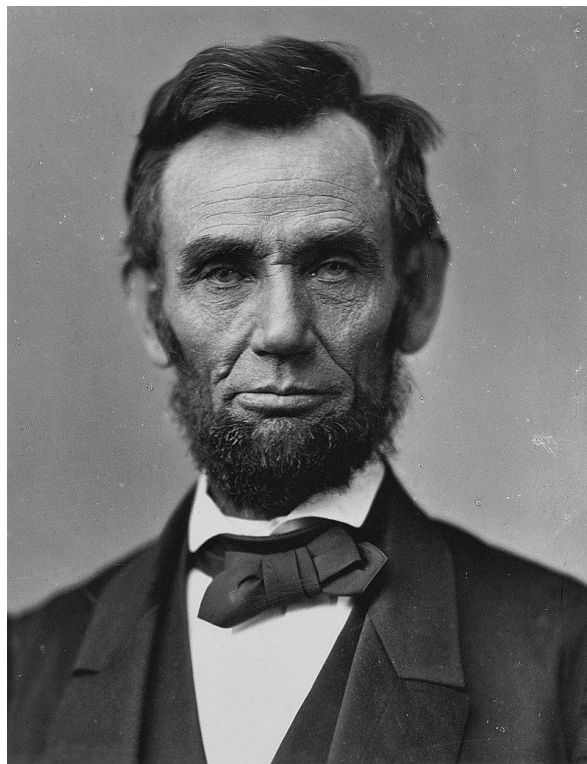


Figure 2.2: Abraham Lincoln⁶

The timeline on the following page (Figure 2.3) shows the critical shifts in California’s constitutional development in the modern era, beginning with thousands of years of Native American history followed by the comparatively brief Spanish and Mexican periods. The origins of today’s political system start with the state of California’s first constitution, the Constitution

⁶ [Image](#) is in the public domain

of 1849. This Constitution created California as a distinct political community within the United States. Thirty years later, discontent with political corruption and anti-Chinese prejudice led to the Constitution of 1879, our current governing law. Then a generation later, further dissatisfaction with corruption led to the Progressive reforms of 1911, adding direct democracy to our representative system. These three constitutional developments shape California's government and politics. Let us examine each one.

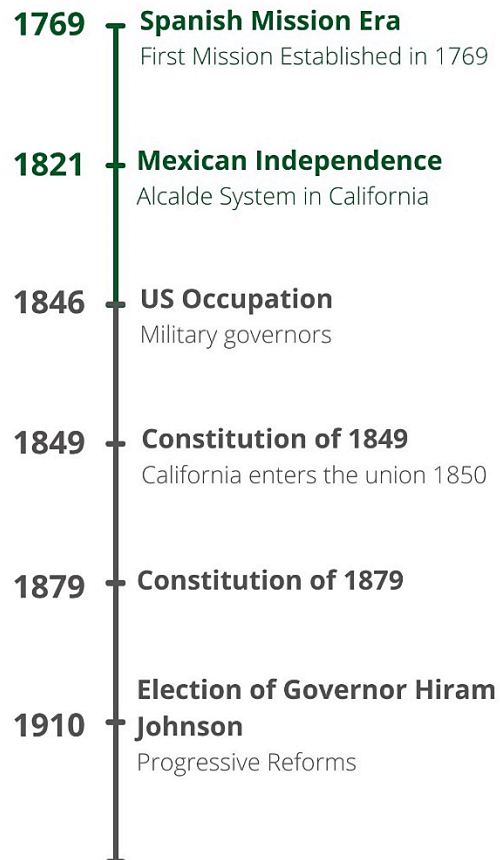


Figure 2.3: Timeline of Constitutional Change⁷

THE CONSTITUTION OF 1849

"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Article 1 of the California Constitution)

It was 1849. The Mexican War has ended, and American troops occupied California. Most people believed that the state would join the United States. The military governed California as temporary administrators using existing California laws originating from Mexico. General

⁷ Image by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

Bennett Riley, the military governor, called for a constitutional convention to meet in Monterey on September 1 (Saunders 450).



Figure 2.4: Colton Hall, now a museum, Monterey, California⁸

At Colton Hall, forty-eight delegates debated a constitution that the California people would then ratify. Most delegates had arrived in California very recently, and only eight were Latino. Delegates wanted to write a constitution based on American law by following the example of other U.S. states. Any vestige of Mexican law would be an exception.

They began the California Constitution with a Declaration of Rights that closely followed the US Bill of Rights and the declarations of rights of other state constitutions to protect civil liberties. Slavery was not allowed. There was little conflict about this. Abolitionist sentiment in California was high, and the Convention was dominated by miners who did not want to compete with southerners bringing enslaved people to the goldfields (Broussard).

The second Article of the Constitution discussed voting rights. There was agreement that all white males, Americans and *Californios* (Mexicans that remained in California), should have the right to vote. *Californio* delegates wanted to follow Mexican customs and allow California Indians the right to vote. However, the majority rejected this motion, and so it was referred to the future state legislature, where it failed.

⁸ [Image](#) by [McGhieuer](#) is licensed under [CC BY-SA 3.0](#)

The following articles established a government of three branches—legislative, executive, and judicial—emulating other state governments. As in many other states, the governor and other executive officers are elected directly by the people. Additional articles mandated the creation of local school systems, reduced the size of California dramatically by fixing the eastern border of California near the Sierra Nevada Mountains instead of in present-day Utah, and created local elections for tax assessors. The delegates debated and agreed to retain the Mexican civil law of allowing women to retain sole ownership of property acquired before or during the marriage.

On October 12, 1849, the delegates signed the Constitution. California voters ratified it on November 13, 1849, albeit with a low turnout, 12,061 in favor, and 811 opposed (Saunders). The US Congress accepted California into the union on September 9, 1850. The Declaration of Rights and the organization of the government into three branches remain the foundation for California government today.

Let us go beyond the organization of government established by the Constitution of 1849 and examine how the Constitution impacted Californians. Many prospered, but by the 1870s, economic turmoil led to calls for a new Constitution. Moreover, this era was marked by racial prejudices against Native Americans, African Americans, and Chinese Americans.

The Impact of the Constitution of 1849 on Native Americans

The population of California dramatically increased after 1849. At the end of the Mexican War, there were about 150,000 Native Americans (California Indians) and 12,000 non-Native Americans with a majority of the latter, *Californios* ranching and farming what was once considered a distant and quiet province of Mexico. After admittance to the US, the US census records the following:

Table 2.1: Growth in California Population

Census Year	Population of California
1850	92,597
1860	379,994
1870	560,247
1880	864,694

Source: US Census

During this time, California Indian tribes suffered steep declines in populations through murder, starvation, disease, and displacement. By 1870, only about 30,000 survived (Madley 659). Essentially, as the non-Native population increased by 600%, the Native American population decreased by 80%. Coercive labor practices often exploited California Indians.

We are accustomed to thinking in terms of freedom and slavery, free states, and slave states. California is a free state, according to the Compromise of 1850. The reality of labor relations is historically quite a bit more nuanced. The variety of legal and informal ways that California coerced Native Americans shows that forms of forced labor and indentured servitude that resemble formal slavery were still very much present during this period.

Historically, the Spanish and then Mexican law forced many Indians to work as agricultural labor, often using a “debt peonage” system; they had no choice but to work to pay what they owed to the *rancheros* (Madley). The US military governors continued Mexican practices while awaiting constitutional change. *Rancheros* could hold Indians as labor unless they chose to release them to another employer: “All Indians must be required to obtain employment and not permitted to wander about in an idle and dissolute manner, if found so doing, they will be liable to arrest and punishment, by labor on the Public Works, at the discretion of the Magistrate” (Madley 633).

White militias supplied more agricultural labor by attacking Indian villages and pressing prisoners into servitude. Authorities usually turned a blind eye to the atrocities of kidnappers and killers. The murder of parents to sell their children into slavery was commonly reported in the early 1860s.

In 1847, California instituted a statewide pass system for employed Indians. Those who objected, such as the United States Indian Affairs Commissioner Edward Beale, could do little without support from local authorities. Every Indian had to show a certificate regarding who was employing him, and an unemployed Indian needed to acquire a passport. The *New York Herald* recounted a correspondent sent to report on the gold rush in 1848 describing an Ohlone Indian “...kept in a kind of slavery and bondage by the rancheros, and often flogged and punished. Their {sic} performing all the drudgery and heavy labor, leaves but little demand for laborers of white complexion” (Madley 638).

Upon statehood, the California legislature denied Indians the right to vote and legalized Indian convict labor. When convicted of minor crimes such as vagrancy, Indians would be forced into the service of a white employer. Impressment was usually around harvest time. “Los Angeles had its slave mart,” attorney Horace Bell wrote. An Indian could not testify against a white man if he questioned his servitude.

In 1865, the Thirteenth Amendment to the US Constitution banned slavery and indentured servitude. When Governor Henry Haight persuaded the legislature in 1867 to allow Indians to testify in court, Indians could now testify against kidnappers giving them more protection from forced servitude. California did not formally abolish convict leasing until 1937 (Madley 661).

In 1850, the US government negotiated eighteen treaties in which Indians relinquished claims to land in exchange for 8.5 million acres of reservation land. The California legislature attacked the treaties as taking good land from whites, and they were defeated in the US Senate in 1852. Although much smaller reservations were set aside by the federal government over the next

several decades, they were far too small to sustain large numbers of people. In summary, one of the foundational acts of this state was California Indian genocide (McWilliams 53).

FOR YOUR CONSIDERATION

History is both a record of what happened in the past and a subjective understanding of our heritage, a story we tell ourselves about who we are and how we came to arrive at the present. Much of history-telling is very explicitly told to students from a very young age. There is also the history taught to the public in the form of government memorialization. We explicitly, or implicitly, ennoble, ignore, or villainize historical figures with the names of our streets, schools, and public buildings, the monuments we commission, with state and local holidays, and with parades, festivities, and commemorations.

Since the beginning of the modern-day civil rights movements of the 1960s, there has been a greater effort to teach honest history. Our textbooks are much more inclusive than they were in earlier periods. However, public history has often lagged behind these efforts. In the last few years, monuments to historical figures that elicited widespread admiration, such as to Father Junipero Serra, are now more controversial as the actions of the people that they memorialize are being questioned for their ethics (See, for example, [this analysis](#) of Father Serra.)

With regard to Father Serra, he is, on the one hand, a Catholic saint; on the other hand, as the one who is most often credited with spreading Catholicism in eighteenth-century Spanish California with the mission system, he is criticized for helping to conquer, enslave, and decimate Native American tribes up and down the coast of California. There are monuments to Father Serra in many places in California. If you were on a city council, and residents came to you asking for his monument to be removed, what would you do? How would you decide?

The Impact of the Constitution of 1849 on African Americans

How were African Americans treated during this time? One might think that California would not have the racism of other states. After all, the first Spaniards to settle in Los Angeles in 1769 had mixed African, Indian, and Spanish heritage (Moss 222). The 1849 Convention banned slavery (Grodin et al. 12). Moreover, as part of the Compromise of 1850, California entered the Union as a free state. It might follow that African Americans would enjoy economic opportunities and liberties promised “to all men” by the Declaration of Rights in the 1849 California Constitution. Sadly, this was not the case.

First, the Convention of 1849 is better characterized as anti-slavery *and* anti-African American. Miners were worried that African Americans brought here by their owners either as slaves or as contract labor would be used to work gold claims and thereby push out white miners. Thus, the Convention debated a motion to ban all African American immigration but then thought better of it because this might impede joining the Union (Grodin et al.12).

Second, part of the Compromise of 1850 that brought California into the Union included the Fugitive Slave Act. States were obligated to find and enslave African Americans who have escaped from southern states. The California government even passed its own Fugitive Slave Act in 1852. The first governor, Peter Burnett, preferred if all Black people were simply removed from California (Wee). Nevertheless, enslaved people sued for their freedom in California courts. One of the most famous cases was that of Biddy Mason, brought to California by Mormon settlers. When they wanted to return to Texas, Mason fled and then persuaded a state court to free her in 1856. She went on to work as a midwife in Los Angeles, and as she invested in real estate, she became quite wealthy. Mason helped establish the First African Methodist Episcopal Church of Los Angeles in 1872 (“Bridget ‘Biddy’ Mason”).

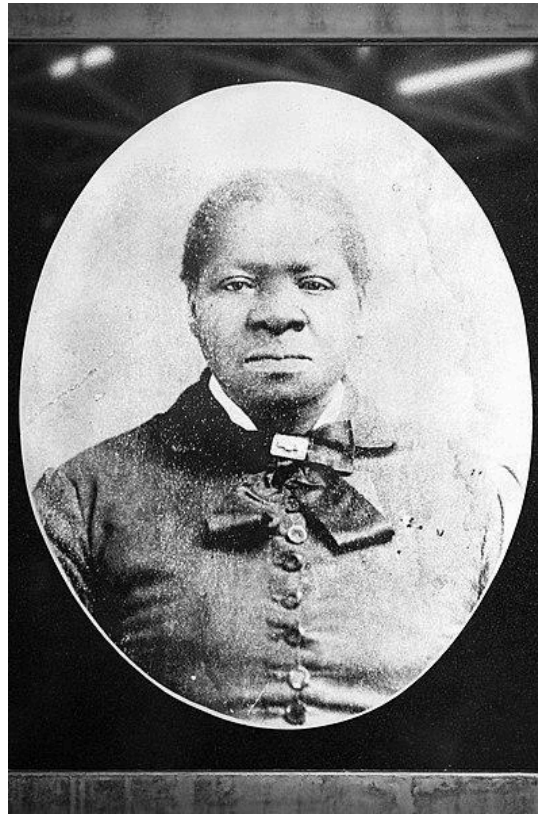


Figure 2.5: Portrait of Biddy Mason⁹

Third, African Americans did not have the same rights as whites. Suffrage was reserved for white men. Like California Indians and Chinese Americans, they could not testify in court if the case involved white defendants or plaintiffs. Four “Conventions of Colored Citizens” (1855, 1856, 1857, and 1865) met to consider African American rights and petitioned the state government to overturn discriminatory laws. In 1863, with Republicans controlling the state government, African Americans won the right to testify.

⁹ [Image](#) by [Levi Clancy](#) is licensed under [CC BY-SA 4.0](#)

However, when Democrats were in control of the statehouse and the Courts, African American rights languished. The Sacramento legislature rejected the Fourteenth Amendment (ratified in 1868 nationally) and the Fifteenth Amendment (1870). State courts ruled that school segregation was constitutional (*Ward v. Flood*, 1874), as well as segregated public accommodations such as streetcars. No laws protected African Americans from employment and housing discrimination. In short, for the relatively small population of African Americans in California (4,000 in 1860), the Constitution of 1849 was a set of rights for white men, with only some piecemeal civil rights improvements during this period.

The Impact of the Constitution of 1849 on Chinese Americans

How shall the immigrant be treated? More specifically, how should the non-citizen be treated under the law? Suppose a nation professes to establish that people possess natural rights. Are these rights extended to the immigrant that it invites to labor in its fields, dig in its mines, and lay track across the mountains for the transcontinental railroad? The delegates at the 1849 Convention pondered this question when confronted with whether to adopt the following amendment:

“No member of this State shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Mr. Botts moved to strike out the word “member” and insert “citizen...”

...Mr. Norton suggested the word “inhabitant....”

Mr. Hastings: ...Whether it is designed or not, the adoption of this section of the bill of rights would secure to certain classes, Indians and Africans (if Africans are ever introduced here,) precisely the same rights that we ourselves enjoy...The word “inhabitant” would not be proper. Indians are inhabitants, but they do not enjoy those privileges in any portion of the United States; they are disenfranchised.

...Mr. Botts withdrew his amendment” (Report of the Debates of the Convention of California 35-36)

This exchange shows the intent of the majority of the delegates. The Convention defined the scope of equality, democratic participation, and natural rights as only applying to those groups in California considered citizens, leaving the Californian Indian, Black, and Chinese residents with few legal protections.

As Chinese immigrants arrived in California in the late 1840s, they found that the new Constitution gave them few rights. Fleeing the war and disruption of the Taiping Rebellion and

hearing of the “Gold Mountain” in California, Chinese immigrants arrived in California to find their fortune. Many were able to make their way across the Pacific by promising to work for mining companies in exchange for the cost of their passage. By 1852, about ten percent of the non-Indian population in California were Chinese. Angry with the competition from these Chinese miners working to pay off their tickets, non-Chinese miners lobbied the California legislature in 1852 to pass a foreign miners’ license tax of \$3 a month, about 50% of what a miner earned a month. This tax was only levied on Chinese and Latin American miners.

Over time, Chinese immigrants settled in California cities and towns. Because only white people could become naturalized according to the Naturalization Act of 1790, the Chinese could not protect themselves through the vote. In 1854, in *People v. Hall*, the California State Supreme Court ruled that Chinese people cannot testify in court “either in favor of, or against a white man.” In 1863, Chinese children were excluded from public schools (“California Anti-Chinese Legislation, 1852-1878”).

The railroad kings (Collis P. Huntington, Leland Stanford, Charles Crocker, and Mark Hopkins) organized the Central Pacific Railroad to build the western half of the transcontinental railroad in the 1860s. They recruited 30,000 Chinese laborers from California and China to clear the rock, build the trestles, and lay the track across the Sierra Nevada and through the desert until the line joined the Union Pacific track at Promontory, Utah in 1869.

As the 1870s began, Chinese Americans benefited from the Reconstruction-era federal laws. Federal courts ruled that the Fourteenth Amendment applied to non-citizens: San Francisco could not cut off male inmates’ queues (waist-length hair braid). Discriminatory taxes such as the miners’ tax were abolished because they violated the Civil Rights Acts of 1870 that gave the federal government the ability to enforce the Fourteenth Amendment.

However, anti-Chinese attitudes remained severe in California, fueled by prejudice as more Chinese immigrants came to the state. The worst manifestation of this prejudice occurred on October 24, 1871, when a mob of five hundred murdered nineteen residents of Los Angeles’s Chinatown in reaction to the injury of a police officer and the death of a white man who had come to his aid (“Forgotten Los Angeles History”). When California plunged into a recession after the Panic of 1873, many California whites blamed rising unemployment, low wages, and generally poor business conditions on the Chinese Americans’ willingness to accept low wages either individually or as part of China’s immigrant labor contract systems. Anti-Chinese public demonstrations in California and harassment and intimidation of Chinese Americans became very common.

Many Californians believed that wealthy interests used Chinese immigrants to keep laborers poor. Led by Dennis Kearney, the Workingmen’s Association of California was formed in the summer of 1877. It aimed its wrath at two foes: the monopolies and the Chinese. The party’s slogan was “The Chinese must Go!” At the Constitutional Convention of 1878-1879, this rallying cry led to a host of discriminatory measures. Without the vote, Chinese Californians did not

have the political power to help protect themselves from discrimination (Rawls and Bean pp.191-97).

THE CONSTITUTION OF 1879

Recall the central principles of American constitutional thought: the Lockean social contract based on natural rights and the Madisonian notion of countervailing political power by separating powers and checks and balances among government branches. These fundamental concepts, narrowly defined to fully apply only to white men, motivated California's constitutional reform in the 1870s. The logic was relatively straightforward: just as one branch of government can check another, the government should grow in power to check corporations, especially the railroads.

Nationally, it was a time of ferment and activism. As the country was modernizing, farmers found themselves at the mercy of predatory railroad companies who exercised monopoly power over fares for freight costs. The National Grange of the Order of Patrons of Husbandry (the Grangers) helped pass laws in several states to regulate railroad rates and establish railroad commissions. California small farmers wanted to do the same to limit the power of the Central Pacific (which controlled some 85 percent of railroad tracks) to set freight prices. Moreover, farmers bore a disproportionate share of the tax burden because much of the land held by railroads and banks was exempt from taxation (Lustig 50).

The United States tumbled into a recession after the Panic of 1873, a banking crisis that led to the nationwide collapse of many banks and thousands of businesses, with the consequence that unemployment dramatically rose. In the largest city in California, San Francisco, Kearney's Workingmen's Association grew rapidly, blaming the Chinese for the sudden high unemployment of their heavily Irish immigrant members. At every meeting, they shouted: "The Chinese must go!" The party quickly spread across the state, providing political pressure for Sacramento to call for a constitutional convention to address the perceived problems of monopoly, unfair taxes, and Chinese immigration.

One hundred fifty-two delegates met in Sacramento in the fall of 1878. One hundred twenty were elected, three per senatorial district and the remaining thirty-two were at-large delegates. Fifty-one were from the Workingmen's Party, with the remaining majority composed of Democrats and Republicans. Their intent was straightforward: they believed that the legislature created by the 1849 Constitution was failing to safeguard the rights of California workers and small farmers. Therefore, the Convention must step in and directly add laws to the Constitution to address needed policy reforms.

The Convention successfully passed several reforms, creating a Board of Equalization to equalize tax rates across the state and a railroad commission to check the monopoly power of the Central Pacific to set rates. Workers' rights included an eight-hour day for public employees, limits on convict labor, and the abolition of debtor's prison. Then the delegates turned on the Chinese, writing an entire article of the Constitution (Article XIX) to persecute one group:

“No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ directly or indirectly, in any capacity, any Chinese or Mongolian...No Chinese shall be employed on any State, county, municipal, or other public work.”

The Convention delegates were well aware that the anti-Chinese language in the new Constitution violated federal law, especially the Fourteenth Amendment. They argued at the Convention that the federal government should not have jurisdiction over this issue because the “reserved powers” set forth by the Tenth Amendment give California the ability to discriminate (Willis 635). It is not surprising, however, that federal courts quickly overturned the enforcement of Article XIX (Scheiber). Then, as the Jim Crow years began nationally, opponents of Chinese immigration successfully pressured the US Congress to ban almost all Chinese immigration with the Chinese Exclusion Act of 1882.

The Convention ended on March 3, 1879. Railroads, mining interests, and water and gas companies spent three million dollars trying to defeat the constitution’s ratification at the polls. However, on May 7, the voters ratified the new Constitution, 77,959 to 67,134 (Lustig 61).

If the purpose of the new Constitution was to control private power, it was clear that its policy reforms were failures. A state constitution does not operate within a vacuum; it is a creature of national political and legal forces. The Central Pacific Railroad (merged with the Southern Pacific in 1885) gained political control over the railroad commission. The US Supreme Court declared that corporations were legally to be considered “people,” and therefore possessed property rights that limited government regulations over them. The desired reforms of the 1870s would not be accomplished until the Progressive era, a generation later (Rawls and Bean 198-200).

THE PROGRESSIVE REFORMS

After the Constitution of 1879, several trends propelled California toward the Progressive era. First, California’s rapid population growth, economic development, and incorporation into the national economy established the preconditions whereby progressive ideas gained a following in California. Second, just as California’s politics reflected national trends, the gender politics within the state also reflected the more prominent national struggles regarding this issue. Third, the Constitution of 1879 provided a historical precedent for open-ended reforms of California politics by progressives. When social and economic forces in opposition to the railroad grew in strength, the Progressives succeeded. Let’s examine each of these trends.

The Impact of Economic Growth on California Politics

Between 1880 and 1910, California nearly tripled in population.

Table 2.2: Population Growth

Year	CA Population
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1880	864,694
1890	1,213,398
1900	1,485,053
1910	2,377,549

Source: U.S. Census

Until the early 1900s, the California economy primarily focused on agriculture and mining. With the transcontinental railroads inexpensively connecting California to national markets, California became much more integrated into the national economy. Agricultural production began with wheat and livestock and then increasingly by the late 1880s, many kinds of fruits and vegetables. Farms were large “factories in the field,” employing thousands of laborers who migrated from farm to farm up and down the state. Manufacturing in California lagged behind the rest of the country until World War I (Rhode 11).

Nationally, the late nineteenth century became known as “The Gilded Age,” a time when bankers and industrialists dominated politics by controlling Congress with bribery and political favors. The federal government helped exacerbate this oligarchic system by giving vast amounts of land to the railroads to develop both transcontinental and intrastate lines. These bequests included prime farmland along each line, making the railways the largest private landowner in California. The “Octopus,” as the Southern Pacific was called by its critics, controlled the state legislature through bribery and favors (Rawls and Bean 232). Although it mostly ensnared the Republican establishment (dominant at this time nationally), party affiliation did not really matter so much as simple loyalty or patronage to the railroad.

Just as the federal planning and funding of the railroad created the “Octopus,” national trends were its undoing. The Progressive movement in the early 1900s had many incarnations; one manifestation was the presidency of Theodore Roosevelt, who ran his campaigns and his presidency (1901-1909) on a progressive Republican platform to oppose the power of monopolies and political machines. In California, Progressives were intent on promoting more popular control of government using mechanisms of direct democracy and the regulation of monopolies by government bureaucracies. Progressive demands were similar to those voiced by populists in the 1870s; the difference was that twenty years of California growth had created a much larger middle and working-class with much more electoral clout.

The three elements of direct democracy, the initiative, the referendum, and recall, were first added to the charter of Los Angeles in 1903. Then Lincoln-Roosevelt Republican leagues sprang up statewide to oppose the old Republican machine. By the end of the decade, Hiram Johnson was touring the state as the progressive Republican gubernatorial candidate touting reform, namely to “kick the Southern Pacific Railroad out of politics” (Rawls and Bean 261). Governor Johnson would introduce major reforms to the California government after his election in 1910.

Impact of Constitutional Developments on Women

The thread of women’s rights history in the nineteenth and early twentieth-century California began at the Convention of 1849 when there was a short debate among delegates regarding

whether inheritance laws should follow Mexican precedent or shift to American practices. Under Mexican law, a woman retained ownership of property acquired before marriage and gained community property acquired during the marriage. In contrast, American law at the time made men the sole owner of women's property acquired before marriage. The lack of community property statutes also meant that a woman had to assert claims to property in probate court if she were widowed and there was no will. The Convention of 1849 opted to retain the Mexican system perhaps out of deference to existing practices and to attract women to emigrate to California (Schuele 170). However, over the next several decades, subsequent laws and court cases undermined this constitutional provision and brought California inheritance laws in line with common practices in the rest of the US. Efforts to improve women's property rights were already underway nationally, and in 1872, a new civil code in California allowed women to have control of property acquired before marriage.

The national struggle for women's suffrage began with the Seneca Falls Convention in 1848 and did not succeed nationally until the Nineteenth Amendment to the US Constitution was ratified in 1920. The struggle for suffrage also occurred within each state. The territory of Wisconsin was the first, giving women the right to vote in 1869. The California Woman Suffrage Society was founded a year later. Petitions by suffragists to Sacramento legislators received press attention. Laura de Force Gordon's testimony in 1870 before a senate committee was reported favorably with the words, "None could deny the eloquence of this lady..." (Shuele 179). However, proposals for suffrage were defeated. One small success occurred in 1874, with women gaining the right to be elected to school boards and to become school superintendents. By the late 1870s, women's rights groups were not as well-organized, and as a consequence, there was no strong effort to lobby for suffrage at the Convention of 1878. The issue was briefly debated and rejected.



Figure 2.6: Clara Shortridge Foltz¹⁰

The Convention of 1879 improved the status of professional women. Supported by the California Bar Association, women's rights advocates Laura de Force Gordon and Clara Shortridge Foltz persuaded the legislature in 1878 to allow them to join the Bar. Then, at the Convention, they successfully secured and broadened this change to include a provision stating that no person is disqualified from "any lawful business, vocation, or profession on account of sex" (Schuele 192).

As California grew in population and developed economically and socially, women's clubs formed in many parts of the state. Many of these clubs went beyond social roles to support civic and political reforms, including helping to alleviate poverty, prohibit alcohol, and promote women's suffrage. Women's clubs successfully pressured the Republican Party to support suffrage in 1894. During a time of intense party competition, Republicans viewed suffrage as a way to attract more support. In 1896, the majority Republican legislature placed a referendum on the ballot for the enfranchisement of women. Suffrage groups campaigned hard throughout California for its passage, but the measure failed. Voters, especially in San Francisco, were afraid that the enfranchisement of women would mean greater success by the temperance movement to limit or ban liquor.

¹⁰ [Image](#) is in the public domain

Disappointed and demoralized, the women's clubs retreated from the suffrage fight for several years. However, California was rapidly changing, and by 1905 the conjunction of a rejuvenated suffrage movement with the rapid growth of the Progressive wing of the Republican party led to success. Suffragists, such as Lillian Harris Coffin of the California Club, adopted an explicitly party-oriented strategy of working to secure the endorsement of suffrage by all political parties which, with the exception of the Republican Party, they were able to achieve in 1906.

In 1908, delegates to the Republican Party state convention again rejected women's suffrage as well as not adopting the Lincoln-Roosevelt League progressive reforms. The suffrage and progressive movements now had a common cause to work together; both advocated for "good government" and new policies to address the ills of modern-day society, and both opposed the machine politics that foiled reform efforts and disenfranchised women. When progressive Republicans Hiram Johnson won the Republican nomination for governor, he promised that suffrage would be one of the reforms brought before the California people by referendum.

Suffragists did not limit the campaign for suffrage to their middle-class supporters. They reached out to unions, such as the Woman's International Union Label League, and worked hard for labor issues, especially the eight-hour day. In return, labor unions lobbied the state legislature in 1911 to support the suffrage referendum, and they mobilized the male working class.

On October 10, 1911, the progressives led by now Governor Johnson placed twenty-three proposed amendments before California voters in a bid to break the corruption of machine politics. Among them was Proposition 8, women's suffrage. It passed by a margin of two percent; its victory narrowly won with more working-class support than in 1896 (Gullet chap. 4).

Reform under the Progressives

On January 3, 1911, in his inaugural address, Governor Johnson set out his reform agenda. He argued that the purpose of government is to achieve the good of the people as directed by the people. Too often, since the Constitution of 1879, private interests have defined the public policy interests of the California government. For the government to live up to the ideals of American democracy, the Governor and his progressive coalition sought changes in three areas: first, in the electoral arena, the people should have more of a role in the selection of candidates through primaries. Second, the role of the people to directly propose and make laws should be expanded through the addition of three mechanisms of direct democracy: the initiative, the referendum, and the recall. Third, the government should play an active role in regulating private interests, especially those with monopoly power.



Figure 2.8: Governor Hiram Johnson¹¹

Under the Constitution of 1879, the legislature had the power to submit changes to the California Constitution through the referendum process. On October 10, 1911, the Progressives submitted twenty-three amendments for the approval of Californians in the special election. Of note are the following (Statement of the Vote of California, 1911):

- (1) Direct Primaries: Selection of party nominees for general elections by voters themselves
- (2) Women's Suffrage
- (3) Voters can directly place initiatives and referenda on the ballot
- (4) Voters can recall public officials
- (5) The legislature can create a system of workers' compensation insurance
- (6) The state railroad commission can regulate companies as public utilities

In his inaugural address, Governor Johnson stated:

"I do not by any means believe the initiative, the referendum, and the recall are the panacea for all our political ills, yet they do give to the electorate the power of action when desired, and they do place in the hands of the people the means by which they may protect themselves."

The Progressive Reforms of 1911 ended the power of the Southern Pacific Railroad to control California politics. Advocates of direct democracy argued that the legislature itself needed to be checked and controlled by the people through the initiative, the referendum, and the recall. Each device has specific procedures:

¹¹ [Image](#) is in the public domain

Table 2.3: Progressive Reforms of 1911

Rules regarding the Initiative, Referendum, and Recall, Source: Secretary of State of California
“Ballot Measures”

Mechanism of Direct Democracy for Statewide Elections	Procedure
The Initiative	<i>Initiative Statute:</i> Placed on the ballot by a petition signed by 5% of the number of voters in the last gubernatorial election. The initiative passes by a simple majority. <i>Initiative Constitutional Amendment:</i> Placed on the ballot by a petition signed by 8% of the number of voters in the last gubernatorial election. Passed by a simple majority.
The referendum	<i>Popular referendum:</i> voters repeal an existing law, same procedure as an initiative <i>Legislative referendum:</i> measure approved by $\frac{2}{3}$ of the legislature, and then by a simple majority (already present in the Constitution of 1879)
The recall	12% of the number of voters in the last gubernatorial election must sign the petition, a simple majority to recall

The Progressive reforms of 1911 added direct democracy to the Constitution of 1879. It allows the people to make policy directly to circumvent the state legislature and governor. In the 1912-2019 period, 2,018 initiatives were circulated. Of the 377 that qualified for the ballot, 133 were approved, 54 of which were constitutional amendments (“Secretary of State of California Ballot Measures Summary Data”).

SUMMARY: MAKING SENSE OF CALIFORNIA CONSTITUTIONAL HISTORY

As the founding document of the state of California, the Constitution of 1849 established the state’s territory, government, and a set of rights for its citizens. Its origins lie at a time when the oppression of Native Americans was severe, and although California was nominally a free state, slavery and indentured servitude were still present. The Constitution of 1879 created a new constitution during an era of populist revolt against business monopolies. This Constitution also reflects the social context of the time with its prejudices against nonwhite Californians and

other ethnic groups, as well as the prevailing sexism of the late nineteenth century. It utterly failed in its efforts to limit the power of monopolies. It would take the Progressive reforms of 1911 to tackle the goals set out some thirty years earlier. California continues to use direct democracy as a way to channel new social demands into law.

Formally, the trend of constitutional reform has been from a representative form of government to a hybrid form that includes both representative and direct forms of democracy. With regards to the question of who really rules California, there are several dynamics. Recall the debate is among those who say that we have an elite running the state versus those who argue that the people rule democratically, with a middle position occupied by pluralists who emphasize the role of groups. An alternative argument is that all three dynamics are at work, with their relative influence varying with the times.

The Constitution of 1849 was written by a rather exclusive elite, but then it was ratified by the public, although suffrage was by no means universal. The dominance of railroad interests in state politics also reinforces the elitist view of who really rules. On the other hand, as the state has grown, large social movements have significantly changed state politics. Dennis Kearney's Workingmen's Party in the 1870s, the Progressive Party in the early 1900s, and the suffrage movement show the influence of ordinary people. Pluralism matters in state politics, with the efforts of groups often ratified by the people through initiatives and referenda, illustrating the crucial role of majority rule. Hence, the impact of all three dynamics is evident.

FOR FURTHER INQUIRY

1. The story of Biddy Mason is absolutely fascinating. In the last few years, there has been a revival of attention about her life. Here is a [link](#) to her memorial park. Research her history and the history of African Americans in the Los Angeles area in the late nineteenth century. What lessons emerge from your study?
2. Locate a copy of the California Constitution and compare its [Declaration of Rights](#) to the US Bill of Rights. What do you notice? What explains the difference? Which do you prefer and why?
3. Four generations ago, women fought for the right to vote. Go to this [online photography exhibit](#) of the movement's history. What do you notice? How are there similarities with the civil rights movements of today?

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CHAPTER THREE: THE IMPACT OF FEDERALISM



Figure 3.1: The US and California Flags¹²

CHAPTER OBJECTIVES

1. To analyze the critical constitutional issues regarding federalism.
2. To describe the historical development of federalism
3. To develop our own opinions regarding three case studies about federalism.
4. To develop our own political philosophies about federalism.

INTRODUCTION

Federalism matters. Walk down the street, arrive at a crosswalk, and the ramp at the end of the sidewalk allows a disabled person to more easily make their way across the intersection due to the 1990 Americans with Disabilities Act enforced by the federal government. Go to a bar anywhere in the United States, and you better be twenty-one. Congress could not mandate a national drinking age without running afoul of states' reserved powers, but they made it a prerequisite for states to receive federal highway funds in 1984. Are you gay or lesbian and want to get married? For a time, states could decide for themselves if they wanted to have same-sex marriages or accept them from other states. Then, in 2015, the US Supreme Court (*Obergefell v. Hodges*) directed that all states define marriage as a union between two people. These examples show the impact of federal laws on the states.

Yet, there are many areas where state laws dominate. Want to smoke marijuana legally? It is legal in many states for medicinal purposes, with a smaller number allowing recreational

¹² [Image](#) is in the public domain

smoking. How about firearms? Where can you walk down the street carrying a loaded handgun in a holster? Open carry is permitted in many states, but not in California except in a few rural counties that only allow it with a permit. Then there are all the laws governing abortion. In the more liberal states, there is no required waiting period, no need for parental notification if the mother is underage, and the state government will pay for the abortion if the mother cannot afford to do so. However, go to a conservative state, especially in the South, and there are few abortion clinics, waiting periods and counseling are required, and no state aid is available. The point is that where we live matters. Laws vary by state because states have their own political cultures and traditions. The question is, to what extent should there be uniformity across the country? How “united” should the United States be?

In short, the concept of federalism may initially seem like a dry legalistic topic. However, federalism is fascinating because it is an intrinsically political topic regarding who should rule: the states or the federal government? Let us review the key constitutional issues as well as the history of federalism. Then three case studies will help you develop your own points of view.

CONSTITUTIONAL ISSUES

We might expect that the Constitution would provide clear rules regarding federal-state relations. However, the Constitution is often considered an “invitation to struggle” (Corwin 201) because there is so much ambiguity about the relations among its parts. For example, Article I, Section 8 sets out the expressed powers of the U.S. Congress, but then clause 18 of this section, the Necessary and Proper Clause, gives Congress the ability to extend its influence. Congress has the power:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Consider the expressed powers enumerated in clauses 12 and 13: Congress has the ability to create an army and a navy. If Congress can create an army and a navy, can it create an Air Force? A Space Force? With the Necessary and Proper Clause, these expansions of power are constitutional. However, at the time of the Constitution’s ratification after the 1787 Philadelphia Convention, many states demanded the addition of a Bill of Rights to stop the federal government from intruding on individual rights and on the traditional powers of state governments. Hence the Tenth Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

States have reserved powers, meaning that in all areas of law, states have jurisdiction unless the Constitution has expressly given control to the federal government.

The constitutional evolution of federal-state relations did not stop with its ratification, however. The federal government has gained much more power as the Supreme Court has required that

states incorporate the US Bill of Rights into state law as mandated by the Fourteenth Amendment added in 1868:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The chart below summarizes the most important parts of the Constitution that establish the relationship between states and the national government.

Table 3.1: Selected Constitutional Clauses and Amendments

Constitutional Clause or Amendment	Impact
Article I, Sec. 8, clauses 1-17: the Expressed Powers	Article I, concerning the organization and powers of Congress, establishes the enumerated powers of Congress.
Article I, Sec. 8, clause 18: The Necessary and Proper Clause	Congress has additional “implied” powers not necessarily specified in Article I if they are necessary and proper to exercise one of the expressed powers
Article IV: The Full and Faith Credit Clause	States shall “recognize” each other’s laws and legal decisions, but Congress may regulate these relationships
Article VI: the Supremacy Clause	The Constitution is the supreme law of the land
The Ninth Amendment	While the Constitution and the Amendments set out explicit rights, other rights are “retained” by the people
The Tenth Amendment	Powers that are not given to the federal government by the Constitution are “reserved” to the states
The Fourteenth Amendment	States cannot make laws that deprive their citizens of the rights they have as Americans or deny them the “equal protection of the laws.”

DEBATING WHO SHOULD BE IN CHARGE: THREE TYPES OF FEDERALISM

The Constitutional parameters that established the relations between the states and the national government, and among the states, gradually evolved. For analytical purposes, political scientists categorize them into three kinds of federalism. The first is dual federalism; the states and the national government have separate responsibilities based on a clearly delineated view of the federal government's expressed powers and the states’ reserved powers. This type dominated from the Constitutional founding to the Great Depression of the 1930s. For example, the federal government managed interstate commerce, and states managed elementary and

high school education. The second is cooperative federalism, marked by the dramatic increase in federal control over state and local affairs as our country fought the Great Depression and then the Cold War and tried to achieve various national goals such as civil rights and civil liberties for all. An example of the daily impact of cooperative federalism is the SNAP program, the Supplemental Nutrition Assistance Program, which provides money for food to tens of millions of Americans.

As the federal government increased in power, conservatives became alarmed by the growth of the central government and advocated greater state power. Beginning in the late 1960s, with the election of Republican President Richard Nixon, states started to share in decision-making regarding federal programs. The result was “new federalism,” the third type of federalism that blends dual and cooperative varieties. One example is welfare reform. In the 1990s, states were allowed to develop some of their own welfare programs using federal funding. Another example discussed later in this chapter is the Affordable Care Act (often informally called Obamacare), which allows states quite a bit of latitude regarding health care programs and coverage.

All three kinds of federalism are very much present today (see Table 3.2). States still control many policies, the federal government controls others, and then there are many areas of policy that are explicitly shared between the two levels of government.

Table 3.2: Types of Federalism

Type of Federalism	Definitions	Examples	Origins
Dual	state and the federal government have distinct responsibilities with separate programs, financed independently	Federal level: foreign policy State-level: state licensing for occupations, barber, teachers, attorney, etc.	1789 (implementation of the US Constitution)
Cooperative	The federal government directs policy, paying for programs for states.	Federal Level: SNAP (food assistance)	1933 (Roosevelt Administration)
New	The federal government pays for programs; states have the freedom to design programs for their residents	Welfare Reform: Temporary Assistance For Needy Families (CalWORKs in California)	1969 (Nixon Administration)

You Decide: Case Studies in Federalism

Imagine you are a policymaker deciding each of the following policy issues. A crucial question is how much freedom local and state governments should have. Think about your responsibilities based on your particular role in each of the following case studies, and then decide what you will do. Each section concludes with a discussion of what actually happened.

Case Study One: Shall all California high school students be required to take an Ethnic Studies Course?

You are the governor of California. The California legislature has passed a bill mandating that all high school students complete a one-semester ethnic studies course. The course emphasizes the history and culture of four groups: African Americans, Asian Americans and Pacific Islanders, Latina/o/x Americans, and Native Americans. Should you sign the bill?

Advocates for the course argue that traditional social studies do not sufficiently address multicultural history, leaving students ignorant of our state's rich heritage. They also say that ethnic studies help students have more pride in their own histories, improve general academic performance, increase intercultural understanding, and contribute to a more educated citizenry better able to understand the challenges that we face as a diverse society.

Opponents of the course favor teaching multicultural history, but they are concerned that the course omits many other groups such as Armenian and Jewish Americans. Additionally, they are worried that the curriculum may overly emphasize oppression as a theme and demand that

white students confess their “privilege.” They argue that existing social studies courses already use a multicultural approach. At best, the class should be an elective.

Under dual federalism, the state government is responsible for establishing the public-school curriculum. Your choices are to sign the bill and make ethnic studies a requirement or veto it. In your signing statement or veto message, you will be expected to justify your actions. What will you do and why?

What Happened?

In 2020, Governor Newsom vetoed the ethnic studies bill (“Veto Message”). Newsom expressed support for an ethnic studies curriculum, pointing out that he had already approved a bill requiring the course for California State University students. However, he asked that the curriculum be revised so that it “achieves balance, fairness and is inclusive of all communities.” For the next several months, the State Board of Education revised the curriculum and included the experiences of many more ethnic groups. In 2021, a bill reflecting these changes made its way through the California legislature and Governor Newsom signed it into law (Fensterwald).

Case Study Two: Shall all states be required to define marriage as between two people?

You are a US Supreme Court justice. You are one of nine responsible for deciding whether the laws and practices of government are constitutional. It is 2015. The case before you is regarding marriage. Shall states be able to define the nature of marriage as a union between only a man and a woman, or should the US Supreme Court tell states that they must define marriage as a union between two people?

Traditionally, the states have defined the nature of marriage. States respect the legitimacy of the marriage contracts of other states under the Full Faith and Credit Clause of the US Constitution (Article IV). There are precedents for the Supreme Court to intervene. In the nineteenth century, the Court ruled that marriage shall be monogamous in all the states (*Reynolds v. United States*, 1878), outlawing a man having multiple wives. More recently, the Court ruled that a state ban on interracial marriage was unconstitutional based on the Fourteenth Amendment’s equal protection clause (*Loving v. Virginia*, 1967).

There are also precedents for the Supreme Court with regard to gay rights. In 1986, the Court affirmed the right of a state to ban homosexual relations (*Bowers v. Hardwick*). It then reversed this decision in *Lawrence v. Texas* (2003), with the majority arguing that the right to privacy includes a right to consensual sex between two people.

State laws about marriage were rapidly changing beginning in the mid-1990s. Some states legalized same-sex marriage; others defined marriage as only between a man and a woman. A few had a middle ground of “civil union” that gives marriage rights to same-sex couples without

using the word marriage. The US Congress passed the Defense of Marriage Act (1996), permitting states to refuse to recognize same-sex marriages from other states.

California voters passed Proposition 22 in 2003 which defined marriage as only between a man and a woman. The California Supreme Court declared this proposition unconstitutional because it violated California equal protection laws. Then California voters passed Proposition 8 in 2008, which added an amendment to the California Constitution, again defining marriage as solely between a man and a woman. The drama continued with gay rights advocates turning to the federal courts, which ruled Proposition 8 unconstitutional. Meanwhile, similar messes were brewing in the rest of the country with a mishmash of laws and conflicting Court rulings causing legal and practical confusion.

Now let's move forward to 2015. The Supreme Court has consolidated several cases from multiple federal appeals courts to focus on whether the states shall be required to legalize same-sex marriage. The question before us is also very much a question regarding federalism. Shall the federal government impose its will on the states with regards to marriage? If so, this nation-centered approach is an example of cooperative federalism. Alternatively, the Court may choose to defer to the states and let their legislative or judicial authorities resolve the matter, an example of dual federalism.

Advocates for defining marriage as between two people make two arguments based on the Fourteenth Amendment and prior Court cases that provide the precedents for promoting privacy. First, lesbian and gay people are entitled to equal dignity before the law. Dignity means that states respect the autonomy and privacy of two people of the same sex to marry. The due process and equal protection clauses of the Fourteenth Amendment provide this fundamental right to dignity with respect to marriage. Second, particular costs burden gays and lesbians and their children if marriage is limited to heterosexual couples. Health insurance and family leave may be inaccessible. Hospital visits are off-limits. Property laws leave partners destitute in the event of the breakup of relationships. Marriage gives the children and spouses in same-sex families the same rights as those in heterosexual unions.

Opponents of same-sex marriage make two general arguments, one substantive and the other procedural. First, they argue that states have traditionally defined marriage as between a man and a woman. It is in the child's interest to receive the care and financial support from both their mother and father. Hence, the institution of marriage is central for one generation to raise the next. Second, procedurally, opponents argue that the Supreme Court should not have jurisdiction over this matter. Instead, elected officials, whether at the state or the national level, are the proper authorities to address this question. The Supreme Court should avoid establishing fundamental rights that are not clearly enumerated in the Constitution.

You are a Supreme Court justice. Redefining marriage will force all states to change their laws to increase liberty and equality. On the other hand, retaining the traditional definition of marriage respects the democratic process to address the issue and allows for a diversity of choices among the states. How will you rule?

What Happened?

In 2015, in *Obergefell v. Hodges*, the US Supreme Court ruled 5-4 to legalize same-sex marriage. The majority decision, authored by Justice Anthony Kennedy, argued that the Fourteenth Amendment requires that marriage should be defined as between two people in order to extend equal dignity, or marriage equality, to the same-sex couple.

No union is more profound than marriage, for it embodies the highest ideal of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.



Figure 3.2: The White House, the day after the *Obergefell* decision in 2015¹³

Chief Justice Roberts, in one of the dissenting opinions, argued that the Supreme Court was exceeding its jurisdiction with its decision, that elected officials rather than justices should decide this issue:

If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today's decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.

¹³ [Image](#) is in the public domain

After the Supreme Court decision, a single policy for all Americans applied: marriage is defined as between two people. The marriage contract, and all other laws related to marriage, changed to reflect the new view about our fundamental rights as Americans.

Case Study Three: Should the Affordable Care Act be repealed?

It is 2017. You are a Republican member of the United States House of Representatives representing the 25th district of California (in 2022, this district, encompassing the Santa Clarita and Antelope valleys, was renamed the 27th district as part of the redistricting process). The 25th district is what political scientists call a swing district; meaning that the district is evenly divided between Democrats and Republican voters with candidates winning with less than 55% of the vote. In 2016, you won reelection with 53% of the vote (“California’s 25th Congressional District Election”). However, the Democratic candidate for President, Hillary Clinton, won the district by 50.3%, suggesting that some voters engaged in split-ticket voting, voting for both Republican and Democratic candidates (“Presidential Election in California”).

The President is a Republican, Mr. Trump. One of Mr. Trump’s central campaign platforms was to repeal the Affordable Care Act (the “ACA”) passed under his predecessor, President Obama. You must decide whether to vote to repeal the ACA, which will improve your support among Republicans, especially the President, or reject the repeal to avoid alienating yourself from moderates and Democrats in your district.

Some background about the Affordable Care Act and the arguments by supporters and critics will help you decide this issue. The ACA is often called Obamacare for short because President Obama’s central campaign platform in 2008 was to help Americans with health care by improving existing health insurance coverage and expanding coverage to reach uninsured people. It was quite a political battle to push it through a very polarized Congress. When it finally passed in 2010, Obamacare had become the most significant change in healthcare policy in more than a generation. It also represented a substantial shift in the relations between the federal government and states. Some aspects of the ACA expand national power and hence represent a deepening of cooperative federalism. Other parts allow states to set their own policies, representing a deepening of new federalism.

The reach of the federal government increased in many ways. Some of the most significant were: first, employers with fifty or more full-time employees were required to provide health insurance, second, individuals were mandated to buy health insurance and received subsidies from the federal government if their income was up to 400% of the poverty level, and third, insurance companies had to cover preexisting conditions and preventative care. In addition, the ACA preempted, or displaced, state health insurance regulations and hence is an example of cooperative federalism where the national government takes control over a policy area and mandates changes in state policies.

However, aspects of the ACA gave states some freedom to implement the law and are therefore consistent with new federalism. First, states were allowed to create state health insurance exchanges for their residents to buy private insurance. If they chose not to, their residents would have to buy from the federal health insurance exchange. As of 2022, fourteen states and Washington D.C., have set up their own exchanges, including California ([CoveredCalifornia.com](https://www.coveredcalifornia.com)). The state exchanges allow states to have greater autonomy. Second, the ACA expanded Medicaid, the existing public health insurance plan for low-income people established in the 1960s, to cover people who make up to 133% of the federal poverty level. However, because both the federal and state governments fund Medicaid, the US Supreme Court ruled (*National Federation of Independent Business v. Sebelius*, 2012) that states were not required to expand Medicaid eligibility. Hence, eligibility and income requirements for Medicaid vary from one state to another. These variances in ACA policies and programs among the states illustrate the signature characteristic of New Federalism: giving states flexibility based on state political preferences (Health Reform).

Now we return to your dilemma as a representative. Should you vote to abolish the Affordable Care Act and replace it with the American Health Care Act? Most prominently, this 2017 bill ends the expansion of the Medicaid program and income-based subsidies, saving the federal government hundreds of billions of dollars, but causing approximately fifteen million people to lose coverage.

Advocates of replacing the ACA are motivated by ideological and partisan reasons. Ideologically, conservatives are skeptical of further government involvement in the health care sector of the economy. Individual consumers, businesses, and health insurance companies should not be subject to government coercion. Historically, states have been in control of their insurance markets. The ACA undermines state autonomy. Second, for many years, the health care debate has become intensely partisan, with this issue having a prominent role in the platforms of each party. Republicans had invested a great deal of importance in defeating President Obama's program. Mr. Trump promised that he would be successful in this regard when other Republicans had failed.

Supporters of the Affordable Care Act argue that millions more Americans have health insurance coverage, health insurance coverage is better, and, in the long term, these improvements will lead to a healthier population. Further, they argue that the appropriate role of the federal government is to devise a program that results in affordable and effective health care for all. It has long been noted that the US spends far more per capita with far worse health outcomes than other countries ("US Health Care from a Global Perspective"). The ACA is a significant step to remedy this situation.

Public opinion is split along ideological and partisan lines in your district as it is in the country. However, given that more people in your congressional district voted for Hillary Clinton than Donald Trump, it is likely that a vote in favor of repeal will make you less popular. On the other hand, if you vote to keep the ACA, you will likely be ostracized by Republicans in Congress and

publicly criticized by the President, making it harder for you to accomplish anything else. Will you vote to repeal and replace Obamacare?

What Happened?

This case study has assigned you the role of Representative Steve Knight. He was elected in 2014 to represent California's 25th district encompassing the Antelope and Santa Clarita valleys and a portion of Simi Valley. Representative Knight chose to vote with the Republican majority. The vote was intensely partisan and highly visible. The bill passed the House, 217-213, along party lines, but then a similar bill failed in the Senate, 49-51. Nevertheless, the Affordable Care Act survived.

As a representative, Mr. Knight found that he was in an increasingly difficult position. As a Republican in a swing district, he tried to chart a moderate course. Still, because of the increasingly polarized nature of party politics and the shift of the Republican party to the right, this was increasingly difficult. As a result, in 2018, Knight was defeated by his Democratic opponent.

DEVELOPING YOUR PHILOSOPHY ABOUT FEDERALISM

A cynic may argue that philosophy is simply a rationalization for self-interest. The wealthy glorify conservatism, the poor favor state help. A philosophy of federalism may be similar: we may merely favor that level of government that will provide what we want. If the cynic is correct, then constructing a general philosophy of federalism is at best irrelevant. However, such cynicism flies in the face of the framers of the US Constitution, who set out arguments for the value of federalism based on fundamental principles. For example, if we read the Federalist Papers, James Madison argued that federalism discourages tyranny and supports pluralism and liberty.

Thus, let us set out a premise that philosophy matters. Let us assume that our philosophies help shape our attitudes and opinions, which in turn direct our actions. Therefore, our beliefs about federalism are worth considering. I suggest three principles that are helpful to construct a federal philosophy. Consider the table on the following page (Table 3.3):

Table 3.3: Three Guiding Principles

Principle	Consideration
Unity	Should all Americans comply with the same policies and have the same rights and responsibilities?
Diversity	To what extent should local and state differences in needs and wants cause differences in policies, rights, and responsibilities?
Democracy	What balance between state and national control allows for the best democratic deliberations, considering questions about representation, rights, and policy effectiveness?

Consider the three case studies discussed in this chapter: an ethnic studies requirement, the definition of marriage, and health care reform. Each outcome presents an implicit preference for a particular federal philosophy. In the first case, it is up to the state to decide on the ethnic studies curriculum, a type of dual federalism. Do you agree? Presumably, the state government is best at responding to demands for a new class. However, could we not argue that this class is needed just as much in other states, and hence should be a national policy? On the other hand, the demographics of each state vary, so perhaps the substance of an ethnic studies curriculum would also change, and it might be best left to people within each state to deliberate among themselves about the nature of such a course.

Marriage equality falls under the category of debating about rights. Do you prefer rights to be defined at the state level or the national level? Since the civil rights movements of the 1950s and 1960s, the trend has been to nationalize rights, to argue that we have rights as Americans, and hence unity is far more critical than diversity. Moreover, the trend has been for an activist Supreme Court to step in often and define these rights, although the US Congress has also provided landmark legislation. The deliberation about same-sex marriage in this country was relatively quick, lasting from the mid-1990s until the *Obergefell* decision in 2015. In that time, the scope of the decision shifted from the state to the national level. As a result, same-sex marriage became a matter of federal authority, a form of cooperative federalism. States no longer have leeway; they must follow national policy.

The third example represents the most nuance. Unlike an issue such as marriage equality, which is mainly dichotomous (either yes or no), the extent and nature of health care policies allow for a blend of national and state laws, characteristics of new federalism. In this country, unlike under Marxist regimes, we don't conceive of economic needs as rights; so, if a state chooses not to provide health insurance, we don't usually argue that the state has violated the *rights* of the poor. Perhaps, if we lean politically more toward the left in the future, there would be a greater nationalization of social policies. In the meantime, a balance of unity and diversity as principles has yielded Obamacare with policy decisions occurring at both state and national levels.

What do you believe? When do you want the national government to decide policies, when do you want the states to choose, and when do you want decision-making to be shared? Consider your opinions about the three case studies above. Consider other issues. What is your federal philosophy?

FOR FURTHER INQUIRY

1. Throughout the pandemic, I have been struck by the disparities among the states regarding the efforts to reduce the spread of the coronavirus. I visit my elderly father in Arizona; about half of the customers at the local Safeway have masks on; when I go running in Santa Clarita, many bicyclists, off essentially by themselves, are wearing masks. Yet, both states have high infection rates.

It's pretty apparent that politics matters. Some states required face coverings in stores; others did not. It's also the political culture; some people may see a mask as an unwarranted infringement on liberty, others just see it as one's duty during a time of crisis.

The disparities among the states are due to federalism; if we had one strong unitary form of government, would we see these differences? And is the autonomy that federalism formalizes a good thing? Were we better off during this pandemic because of federalism? Governors are engaging in all sorts of policies; the federal government has its own divergences; the President's, the CDC's, Congress's, etc.

What have you observed about the role of federalism in this crisis, and do you think that it is a good thing? Those who praise federalism see strength in diversity; those who condemn it want the one right policy for everyone to follow. Perhaps like many issues, the best is in-between.

2. Survey the current news using your favorite media. Select a particular policy issue that is currently being debated. Ask yourself who is debating the issue? Is the scope of the debate at the local, state, or national level, or at more than one level? Do you believe that the issue is best considered at the level that you observe? Reflecting on your opinion regarding the particular issue, how does your consideration help you better understand your own political philosophy?

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CHAPTER FOUR: PUBLIC OPINION IN CALIFORNIA

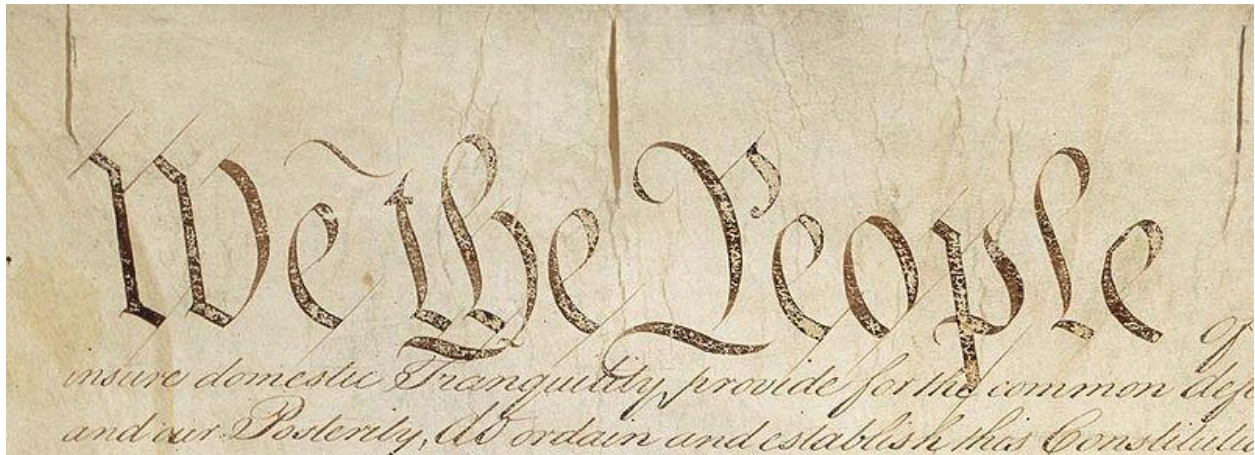


Figure 4.1¹⁴

CHAPTER OBJECTIVES

1. To consider the appropriate role of public opinion in the political system.
2. To analyze how to study California public opinion.
3. To survey the opinions and ideologies of Californians and consider theories about their origins.

INTRODUCTION

In a constitutional democracy, we expect the people to occupy the center of the political stage. We make our demands, the government listens, public policy changes. Yet, as you know from the study of the US Constitution, our system shields much of government from the people because the Framers feared that too much popular involvement might result in mob rule. Over the course of the nineteenth and twentieth centuries, however, the public's role in political affairs grew. Voting rights were dramatically extended multiple times. The Seventeenth Amendment (1913) allowed for the direct election of Senators. In California, the Progressives argued that greater involvement in politics by the people is an important check on the potential corruption of government and so the California Constitution was amended to include tools of direct democracy.

While in this country, public opinion provides the foundation for constitutional democracy, in other countries, dictators have often manipulated public opinion for totalitarian purposes. Americans have also worried that they may also be manipulated by many forces of modern-day mass society such as the media, political parties, and influential groups such as business interests. Attitudes that we have about the proper role of public opinion are often dependent

¹⁴ [Image](#) is in the public domain

on whether we believe that the public is wise and well-informed enough to make good decisions.

In this chapter, let's first develop our positions regarding the actual role of public opinion in our political system and our beliefs about what role it should ideally have. Several quotations will help you better understand your thinking. Then, after considering how to study public opinion, let's characterize Californians' public opinion and ideologies. Finally, we will examine how the origins of public opinion are studied.

WHAT SHOULD BE THE ROLE OF PUBLIC OPINION IN THE POLITICAL SYSTEM?

Below are five quotations. Consider the message of each quotation with regards to how public opinion is depicted. Which one(s) do you agree with?

Quotation One:

"I sometimes wonder whether in this respect a democracy is not uncomfortably similar to one of those prehistoric monsters with a body as long as this room and a brain the size of a pin: he lies there in his comfortable primeval mud and pays little attention to his environment; he is slow to wrath—in fact, you practically have to whack his tail off to make him aware that his interests are being disturbed; but, once he grasps this, he lays about him with such blind determination that he not only destroys his adversary but largely wrecks his native habitat" (Kennan 66).

Quotation Two:

"The voice of the people is the voice of God" (translated from the Latin, *Vox Populi, Vox Dei*).

Quotation Three:

"The individual is foolish, the multitude, for the moment, is foolish, when they act without deliberation; but the species is wise, and when time is given to it, as a species it always acts right" (Edmund Burke).

Quotation Four:

"Masses are rude, lame, unmade, pernicious in their demands and influence, and need not be flattered but schooled" (Ralph Waldo Emerson).

Quotation Five:

“The masses are absolutely being manipulated by those in power” (Louis Farrakhan, from “Excerpts of Interview...”).

A little background about each quotation may be helpful to consider each quote. The first is by George Kennan, a famous American diplomat stationed in the Soviet Union. In 1946, he warned the Truman Administration that the US must be prepared to “contain” or limit the influence of the Soviet Union. He worried that American democracy was not disciplined enough to sustain a long-term policy because public opinion was so fickle. Kennan wrote many diplomatic histories after he retired from the government. He preferred foreign policy to be delegated to diplomats and not be subjected to public consideration.

The second quotation is a famous Latin phrase used many times over the centuries. If you believe that the people are like God, then the government should closely follow public opinion. The third quotation is from a speech by Edmund Burke to his fellow members of the British Parliament in 1782 expressing his skepticism of democratic reforms. He believed that representatives should act as trustees by deliberating in elected legislatures about what is in the best interest of their constituents rather than simply echoing the demands of the people who often did not know what is best for themselves.

The last two are both very pessimistic. Emerson, an American transcendental poet, believed that an educated elite must teach the public to possess sound opinions. Otherwise, the people cannot be trusted. Finally, Farrakhan is a leader of the Nation of Islam. He argues that public opinion should not be trusted because it simply reflects indoctrination by racist forces.

So, consider your point of view. Do you agree with some of these quotations more than others? What influence does public opinion have on the government now? What influence should it have? Why?

How to Study Public Opinion

About forty million people in California from many different walks of life live in an incredible diversity of communities. How can we successfully understand so many opinions? Many of the academic inquiries about public opinion use surveys to ask people about their positions. How valid are people’s responses? They may not want to be truthful, or perhaps their views change. Are we capturing the intensity of people’s beliefs? Firmly held beliefs held by a minority may be far more influential than widespread beliefs that motivate little or no action.

These are some of the challenges of the study of public opinion. After World War II, political scientists addressed these challenges through the development of public opinion surveys that are administered in scientific ways so that we may understand their validity. Three characteristics should be evaluated. First, have the pollsters randomly selected the respondents from the defined population(s) that we wish to study? Random, or probability, sampling means that each respondent has an equal chance of being selected from a population for questioning. Data from reputable polling organizations are best to follow because their sampling techniques

will be more likely to be valid and published for our consideration as part of the survey. Be wary of ones that do not clearly explain how respondents have been chosen. They are likely to be for entertainment only.

Second, a scientific survey will clearly display its sampling error. This is a statistical measure of the probable difference between the sample and the population, based purely on a mathematical calculation. A good survey has a margin of $\pm 3\%$ or less, meaning that if there is a difference in responses of six points or less, we cannot say that two different groups have different opinions. How the survey randomly selected respondents is also important to note. For example, a few years ago, if a survey randomly selected only from landlines and not cell phones, the sample was likely to skew toward an older population.

Third, we must study the wording of the survey questions. Are the questions effectively addressing the issue that we want to study? Are they going to be understandable? Are the response choices fair or biased? If we are comparing surveys over time, have words changed in meaning?

Here is an [example](#) of a scientific poll from the Institute of Government Studies at UC Berkeley regarding if California should retain the death penalty. Five thousand thirty-six registered voters, including subgroups, were selected randomly to respond to an internet poll, with a random sample of $\pm 2.5\%$. Respondents were asked:

The legislature is considering placing a constitutional amendment on the 2022 statewide election ballot asking voters to formally abolish the death penalty as a punishment for certain crimes in California. If you were voting today, how would you vote on the constitutional amendment to abolish the death penalty in California?

Table 4.1 shows the responses by subgroup.

Table 4.1: Opinion about the Death Penalty

Registered Voters	Yes, Repeal the Death Penalty	No, keep the death penalty	Undecided
<i>All Voters</i>	44%	35%	21%
<i>Party Registration</i>			
Democrats	63	19	18
Republicans	12	68	20
No Party Preference	43	31	26
Minor Parties	29	41	30
<i>Political Ideology</i>			
Strongly conservative	12	69	19
Somewhat conservative	19	62	19
Moderate	33	37	30
Somewhat liberal	64	17	19
Strongly liberal	83	7	10
<i>Region</i>			
Los Angeles County	49	28	23
San Diego County	41	42	17
Orange County	36	44	20
Inland Empire	34	43	23
Central Coast	41	31	28
Central Valley	35	44	21
San Francisco Bay Area	54	27	19
North Coast/Sierras	44	34	22
<i>Gender</i>			
Male	41	40	19
Female	46	31	23
<i>Age</i>			
18-29	49	29	22
30-39	45	31	24
40-49	39	37	24
50-64	42	39	19
65 or older	44	38	18
<i>Race/Ethnicity</i>			
White	46	37	17
Latino	41	32	27
Asian/Pacific Islander	38	34	28
Black	54	22	24

Consider the validity of this poll. Respondents were randomly selected using state records of registered voters. Given that the poll asks about a proposed referendum, selecting registered voters rather than all adults makes sense. However, all California adults are not the target

population. We know that registered voters are typically a bit more conservative. If registration increases between the time of this survey and election day, its validity will be weakened. Second, consider the question that is asked and the possible response. The strength of asking about the death penalty is that nearly everyone is likely to understand the issue because of its relative clarity and prevalence in the media. The question wording may be confusing because the poll asks if the respondent favors a repeal of the death penalty, rather than just asking if they favor or oppose the death penalty. It is also likely that if the survey question were more complex to consider more choices such as “life imprisonment without possibility of parole” as an alternative, then support for the death penalty would decrease.

The challenges of studying Californian public opinion go beyond just survey design. An additional challenge is the relative lack of statewide surveys. General surveys about opinion are often conducted nationally by national polling organizations such as [Gallup](#) and [Pew](#). Many other academic institutions and polling organizations provide a constant stream of public opinion data. In California, there are very few polling organizations that concentrate only on state and local public opinion. The most prominent ones are the [Public Policy Institute of California](#) and UC Berkeley’s [Institute of Government Studies](#). Newspapers and television stations will also conduct surveys, but they are usually associated with predicting electoral outcomes. Election-year surveys have their value, but they are not often designed to investigate underlying beliefs. Moreover, the party-driven mass politics, advertisement blitzes, and the immediacy and drama of the campaign limit the scope and depth of these polls.

In summary, political scientists use surveys to learn about public opinion, but they must be evaluated critically for their validity. Moreover, systematic and regular surveys of California public opinion over the long term are limited. Instead, surveys often present a series of snapshots about public beliefs, attitudes, and opinions that present valuable although incomplete understandings.

CHARACTERIZING CONTEMPORARY PUBLIC OPINION IN CALIFORNIA

If we consider surveys to be like snapshots, which ones will best represent our opinions about politics? Let us consider a few key economic and social issues, general ideological beliefs, and partisan trends as a way to develop our portrait of Californians. Here are a few polls to inductively develop our picture.

Support for the Affordable Care Act

In 2010, the US Congress passed the Affordable Care Act, commonly called Obamacare. The law continues to be a subject of debate in many states. In California, there is strong support for it, according to this May 2021 poll by the Public Policy Institute of California (PPIC):

“As you may know, a health reform bill was signed into law in 2010, commonly known as the Affordable Care Act, or Obamacare. Given what you know about the health reform law, do you have a favorable or unfavorable opinion of it?”

Table 4.2: Support for the Affordable Care Act

Opinion	All Adults	Democrat	Republican	Independent	Likely Voters
Favorable	60%	86%	22%	59%	60%
Unfavorable	30	9	70	34	35
Don't Know	10	5	7	7	5

Support for LGBT rights

Support for protecting the LGBT community from discrimination is strong. Consider another May 2021 PPIC poll (Baldassare):

“Existing civil rights laws currently protect people from discrimination in the areas of housing, employment, and public accommodation. The 2021 Equality Act would add sexual orientation and gender identity to these laws. Do you support or oppose the 2021 Equality Act?”

Table 4.3: Support for LGBT Rights

Opinion	All adults	Dems.	Reps.	Ind.	Men	Women	Likely Voters
Support	71%	88%	41%	64%	65%	76%	70%
Oppose	22	10	48	27	27	18	25
Don't Know	7	2%	11	10	8	5	5

Support for a Path to Citizenship for Undocumented Immigrants

There is overwhelming support for providing a way for undocumented people to become citizens. Consider the following March 2021 PPIC poll (Baldassare):

“Would you favor or oppose providing a path to citizenship for undocumented immigrants to the US if they met certain requirements including a waiting period, paying fines and back taxes, and passing criminal background checks?”

Table 4.4: Support for Path to Citizenship for Undocumented

Opinion	All Adults	Dem.	Rep.	Ind.	African - Amer.	Asian-Amer.	Latinos	Whites
Favor	85	93%	68%	81%	92%	79%	92%	80%
Oppose	13	6	31	14	8	16	7	17
Don't Know	3	1	1	5	-	5	1	3

Let's turn to how Californians perceive their ideological identifications and partisanship (Baldassare, May 2021).

Table 4.5: Ideological Self-Identification

Would you consider yourself to be politically:

Ideology	Percentage
Very liberal	15
Somewhat Liberal	19
Middle of the Road	30
Somewhat conservative	19
Very conservative	12
Don't Know	4

When Californians register to vote, they choose to register as a party member or select "no party preference." As of February 2021, registration was as follows:

Table 4.6: Registration by Party

Party	Percentage of Californians
Democrats	46.2%
Republicans	24.1
No Party Preference	23.7
Other	6.0

("Elections CDN: CA Secretary of State")

These surveys are a small sample of polls that allow us to make some generalizations. First, many issues are marked by substantial differences of opinion driven by divergences among liberals, conservatives, and moderates. Second, these divergences push us into different parties,

with more Californians identifying as Democrats than Republicans. Many choose not to identify with any party, suggesting that party identification is weak or absent. Minor parties (discussed in a later chapter) receive little support. Third, even though opinions are often polarized, there are many areas of widespread consensus as well.

EXPLAINING PUBLIC OPINION

Now that we have characterized some general trends in California public opinion, our next consideration is about their origins. Political science draws on sociology and psychology to develop a research program to address this question. Sociologists understand people as social animals whose thoughts and actions are best understood as shaped by our environment. Hence, our opinions emerge from our interactions with others. This process of learning about politics is called political socialization. Agents of socialization, such as family, economic circumstances, race and ethnicity, gender, and sexual orientation, show us how to understand the political world.

A central premise of this socialization literature is that our opinions will be self-interested. If we want to understand why a particular group prefers one policy or another, we should understand how the group will gain. We don't even need to inquire about people's thinking. For example, as income increases, opposition to taxes will increase, as wealthier people will not want to pay more. Lower-income people will favor more government welfare. Students will want more financial aid for college, etc. Of course, the problem with this approach is that we can only engage in limited inferences about a group's opinions from its place in society. Moreover, we are not just members of single groups, there are many influences on our thinking, and our opinions may be more complex than a simple economic logic allows. For example, even if I am poor, I may favor low taxes hoping that when I am wealthy someday, the government will not take so much of my money.

Enter the role of political psychology. Political psychologists seek to use the tools of psychology to understand how people understand and evaluate politics. Instead of inferring opinions from social identity, psychologists gather evidence regarding how people are thinking through more complex survey questions and open-ended interviews. One prominent approach is cognitive theory that argues that people organize information using complex cognitive schemas or "mind maps." We add new information to existing understandings, and if this new information does not necessarily fit with our existing schema, we will likely doubt it. Therefore, public opinion develops from a complex web of social and psychological dynamics. An example from the study of California public opinion illustrates the sociological and psychological approaches.

In the spring of 2021, as the coronavirus pandemic began to wane, families faced a critical educational dilemma. As school partially reopened for in-person instruction, should children return to the classroom or remain at home for online instruction? There was a distinct difference of opinion based on race and ethnicity. According to a USC national poll, 60 percent of Black and Latino parents kept their kids home compared to 30 percent of white parents ("What's Behind the Racial Divide"). This was reflected in the opposition of urban school districts to fully reopening. For example, the Los Angeles teachers' union accused the state

government of perpetuating structural racism by promoting a premature reopening before vaccines could be widely administered and Covid infection rates could go down (Mays). In the meantime, rural and suburban districts in California made in-person instruction more widely available with higher student attendance rates (Jones).

It is not difficult to explain racial and ethnic disparities in opinion. Black and Latino voters were far more concerned about getting sick from the virus and losing work or being unable to pay for necessities (see table 4.7). A UC Berkeley Institute of Government Studies Survey (DiCamillo) showed the following:

“Voters who report the following as “very serious” or “somewhat serious” problems for themselves or their families due to the coronavirus - overall and by race/ethnicity (among California registered voters)

Table 4.7: Racial and Ethnic Differences of the Impact of Coronavirus Pandemic

Concern	Total	White	Latino	Asian/ Pacific Islanders	Black	Native American
Getting Sick from the Virus	66	59	79	66	71	57
Not being able to get medical care	45	34	65	44	43	61
Losing a job	40	28	63	39	44	43

In 2020-21, mortality rates caused by the coronavirus were the highest on a per capita basis among Black and Latino residents of California. Therefore, it is reasonable to expect differences in opinions based on differences in ethnic experiences with consequent differences in policies among school districts with different demographic populations. Our explanation is based on inference rather than actual investigation regarding how people are thinking. It is fundamentally sociological.

Now let’s turn to political psychology. To continue with our discussion of coping with the coronavirus pandemic, as the vaccine became widely available in the spring of 2021, public health officials made great efforts to vaccinate as many people as possible. However, vaccination rates varied a great deal based on many factors, including education, income, region of the state, and accessibility of the vaccine. An additional factor that emerged is vaccine hesitancy. Many people were not planning on getting the vaccine for various reasons, including concerns for its safety and efficacy.

In California, among all racial and ethnic groups, African Americans were most hesitant to receive the vaccine (Baldassare May 2021):

Table 4.8: Racial and Ethnic Differences in Vaccine Hesitancy April 2021

Vaccination	All adults	African Americans	Asian Americans	Latinos	Whites
Already had vaccine	39	36	46	29	46
As soon as it is available	26	15	35	31	20
A few weeks after	6	2	4	10	3
A few months after	9	18	2	7	9
A year or more after	7	11	9	11	6
Won't get vaccine	12	18	4	12	16

One factor that is hypothesized to be causing higher levels of vaccine hesitancy among African Americans is the higher level of distrust in health care in general. This distrust is caused by structural discrimination based on race and income (Bazargan). African Americans report lower levels of trust in physicians, worry more about lack of privacy, and are more concerned that they may be the victims of harmful experiments. Studies that show contemporary racial bias in patient treatment show that this distrust is not only the result of historical legacies but remains a current problem. Thus, investigating the underlying trust that respondents have in the healthcare system is necessary to understand attitudes about the vaccine. This requires the use of political psychology to understand public opinion.

SUMMARY

The study of public opinion remains a very dynamic field. There are significant debates about how much influence public opinion should have on policy making. There are many challenges regarding how to properly study public opinion, with the survey remaining the central tool for research. Public opinion research at the state level is far more limited than at the national level. However, we know that most Californians hold liberal points of view and are more likely to identify with the Democratic rather than the Republican party. The origins of opinions, ideologies, and ultimately partisanship lie with our socialization and the political psychology surrounding our opinion formation.

FOR FURTHER INQUIRY

1. Survey the [Public Policy Institute of California](#) website and select one or more studies that interest you. How are the survey results explained? Do you find these explanations sufficient?
2. Who has been most influential on the development of your political opinions? Political scientists identify the family as the most influential. But who in the family? And how? Think about how your family may have influenced you.

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CHAPTER FIVE: VOTING IN CALIFORNIA



Figure 5.1: Go Vote!¹⁵

CHAPTER OBJECTIVES

1. To describe how to register to vote.
2. To explain why people vote.
3. To evaluate to what extent voter turnout is important.
4. To analyze current controversies about voting.

INTRODUCTION

There are many ways to participate in politics. The most common form is voting. This chapter will describe how to vote, analyze why people choose to vote, and evaluate to what extent voter turnout is important. Voting laws remain a subject of significant contention that deserves our close attention.

How to VOTE

If you are eighteen, a US citizen and resident of California, and not currently serving a state or federal prison term for a felony, you can vote. Go to the [RegistertoVote.ca.gov](https://www.RegistertoVote.ca.gov) website managed by the California Secretary of State. Here, register to vote using their online system. You will be asked for your California driver's license (or Californian identification) number and the last four digits of your social security number. If you do not have one of these documents, a voter registration form will be mailed to you (also available at many government offices). Register to vote at least fifteen days before an election. If you miss this deadline, you can complete the conditional voter registration process and vote with a provisional ballot at a polling place (vote centers or polling place addresses are available on the county registrars' websites), and your vote will be counted once your eligibility has been verified. If you are sixteen or seventeen,

¹⁵ [Image](#) is in the public domain

pre-register to vote, and you will be able to vote when you turn eighteen. Re-register if you move.

When registering to vote, you will be asked to declare your party affiliation, or you may choose “No Party Preference.” California has a “top-two primary system,” meaning that every voter receives the same ballot. The top two candidates, regardless of party affiliation, go on to the general election. Except for the US presidential primary races, it doesn’t matter what party affiliation you declare on the registration form. A party may only legally restrict voting to its members for the presidential primary. For example, the California Republican Party only allowed registered Republicans to vote in its presidential primary in 2020. Thus, you may wish to register for your preferred party if you want to choose a presidential candidate in the primary (“Elections and Voter Information”).

Once you are registered, you will receive by mail two to five weeks before the election a sample ballot and a voter information pamphlet. Next, everyone receives their mail-in-ballots which you can choose to return by mail or if you prefer you may vote at a vote center or polling place. Counties offer early voting up to ten days before the election. Regulations regarding early voting and polling place locations vary by county, especially regarding whether the county is participating in the Voter’s Choice Act system.

In 2016, the California state government passed the Voter’s Choice Act (VCA), creating a new voting model for counties to voluntarily choose to join. Several counties piloted the program in 2018, with more counties joining in 2020 (including Los Angeles County). Fifteen of the twenty-eight counties in California adopted the Voter’s Choice model for the 2022 elections. Instead of neighborhood polling places, the VCA included:

1. Every voter is mailed a ballot that can be returned using the postal service, drop boxes, or at vote centers.
2. Vote Centers allow voters to vote in person regardless of where they live in the county. They also verify voter registration and provide for same-day registration.
3. Early voting is available ten days before Election Day at the Vote Centers.
4. Each county establishes an “Election Administration Plan” to ensure that language minority and disabled communities can vote. (California Secretary of State Voter’s Choice Act).

Once you are registered, you will receive a sample ballot in the mail two to five weeks before each election as well as a voter information pamphlet describing all the races. The sample ballot lists where you must vote in person and how you can request a mail-in ballot. In-person voting regulations vary by county. Traditionally, county registrars arrange for neighborhood polling places such as at schools and firehouses. A voter is required to vote at their designated polling place. They may also request a mail-in-ballot as an alternative. Counties offer early voting, but the regulations vary from place to place.

In 2016, the California state government passed the Voter's Choice Act (VCA), creating a new voting system for counties that chose to join. Several counties piloted the program in 2018, with more counties joining in 2020 (including Los Angeles County). Instead of neighborhood polling places, the VCA included:

- (1) Every voter is mailed a ballot that can be returned using the postal service, drop boxes, or at vote centers.
- (2) Vote Centers allow voters to vote in person regardless of where they live in the county. They also verify voter registration and provide for same-day registration.
- (3) Early voting is available ten days before Election Day at the Vote Centers.
- (4) Each county establishes an "Election Administration Plan" to ensure that language minority and disabled communities can vote.

For the 2020 elections, the California state government changed the regulations again in response to the pandemic. To reduce exposure to the coronavirus, all voters received vote-by-mail ballots. They could mail the ballots or drop them off at vote centers or neighborhood polling places, depending on the county. It is expected that after the pandemic, counties not following the Voter's Choice Act will return to a policy of voters needing to request vote-by-mail ballots (California Secretary of State Voter's Choice Act).

The justifications for the VCA are several. First, it is argued that a consolidated system of vote centers, open for an extended period, boosts voter turnout for people who prefer to vote in person, but find the one-day time frame to be a barrier (Stein and Vonnahme). Second, the consolidated centers are much easier to manage than neighborhood locations, reducing labor costs. The centers have instant access to voter rolls, reducing the need for provisional ballots. Presumably, the consolidated centers will be more secure as fears of electoral hacking and manipulation remain relevant. Third, the VCA, emphasizing voting by mail and vote centers that are open to all people in a county, simply makes voting easier to accomplish (McGhee).

In California, in-person voters do not need to show an identification card (such as a driver's license) unless they are voting for the first time and have registered using a voter registration form without including a driver's license (or identification number) and social security number. After voting in person or using a vote-by-mail ballot, voters can verify that their ballots have been counted using an electronic tracking system available at: <https://california.ballottrax.net/voter/>. In short, the registration and voting process is relatively easy, especially with just a little planning on the part of the voter.

If voting can be accomplished with such relative ease, why isn't voter turnout higher? Or, perhaps one might ask, why is turnout as high as it is? Below is the data from five recent statewide elections.

Table 5.1: Voter Turnout in California

Election Date	Eligible Voters	Turnout	Percentage
2012 Presidential Election	23,803,577	13,202,158	55.47%
2014 Midterm election	24,288,145	7,513,972	30.94%
2016 Presidential Election	24,875,293	14,610,509	58.74%
2018 Midterm Election	25,200,451	12,712,542	50.45%
2020 Presidential Election	25,090, 517	17,785, 151	70.88%

("Election and Voter Information")

WHY CALIFORNIANS VOTE

Why do some people choose to register and vote, and others, equally eligible, reject participating in the electoral process? Generally, political scientists focus on two variables regarding the social psychology of voting. First, to what extent do people feel confident about their abilities to understand and successfully engage in the voting process? Second, to what extent do people believe that their vote counts, that elections actually matter? The first variable is called internal efficacy, and the second is called external efficacy. Presumably, the higher the score on each of these subjective estimates, the more likely they will vote.

The logic of the impact of internal efficacy on turnout is straightforward. Drawing on an economic model of decision-making, the lower the cost of voting, in terms of time needed to educate oneself, make choices, and actually vote, the more likely a person will vote. The cost of voting will be high in terms of time and effort for someone who is unfamiliar with the issues for each local and state election. For example, we would expect relatively younger people to have lower internal efficacy as they are just beginning to learn about local and state politics and perhaps have recently relocated. The data show this lower turnout.

Table 5.2: Selected Characteristics of Likely Voters vs. Unregistered Voters, 2020

Who is Likely to Vote?

Characteristic	Likely Voter	Not Registered
Political Ideology		
Liberal	37	30
Conservative	33	31
Moderate	30	38
Age		
18 to 34	22	40
35 to 54	32	41
55 and older	46	19
Education		
No College	19	62
Some College	38	22
College graduate	43	16
Income		
Under \$40,000	27	57
\$40,000 to under \$80,000	27	24
\$80,000 or more	46	18

(Baldassare)

The correlation between external efficacy and voter turnout is also straightforward. The stronger the belief that the political system responds to voters, the greater the likelihood of voting. Multiple factors influence external efficacy. How much confidence do voters have that the voting technology will accurately tabulate their voters, free from fraud or manipulation? Even if the voting system is sound, do the rules of the game alienate the citizen from the government? For example, the winner-take-all system for the U.S. presidential electoral college vote (Nebraska and Maine are exceptions) means that voters of the minority party may feel disenfranchised.

A similar conclusion may be reached by voters who are in legislative districts (local, state, or national) that are perceived to have been drawn to favor one party (gerrymandering), leaving the minority party members feeling that it is hopeless to vote since their candidates are unlikely to win. Once candidates are in office, are voters perceiving that politicians are so trapped in the rat race of campaign fundraising that they have little time for them?

A 2015 Public Policy Institute of California poll showed that lack of confidence in the system was the number one reason that people did not register to vote (Baldassare). One might expect that Californian voters might have greater faith in direct democracy as a way to check the legislature and sidestep problems caused by special interests in Sacramento and gerrymandered electoral districts. A 2013 Public Policy Institute poll of California voters found two-thirds of Californians

are somewhat or very satisfied with direct democracy. However, majorities also worried that special interests were controlling direct democracy.

This survey showed that majorities favored direct democracy reforms that would allow for greater deliberation and transparency. This would include the legislature working with initiative sponsors, the legislature being able to amend initiatives after they passed, and greater deliberation about initiatives including volunteer-only signature gathering, televised debates, and independent commissions to evaluate and give recommendations to voters (“Reforming California’s Initiative Process”).

To summarize, the voter engages in a cost-benefit calculus regarding the choice to vote. The enforcement of voting rights and the successful implementation of efficient procedures for voting provide the basis for promoting high turnout. Then the subjective evaluations of our abilities (internal efficacy) and how responsive the political system is to our vote (external efficacy) will impact turnout.

This suggests that a variety of public policies may increase turnout. First, when the efficiency of voting (e.g., vote by mail, accessible vote centers with same-day registration) is improved, more people will vote. Second, an educational system that socializes the youth to understand politics and mobilizes them to vote through pre-registration should help. Third, electoral reforms, such as ending gerrymandering, may improve external efficacy and lead to higher voter turnout (California).

FOR YOUR CONSIDERATION

Think of someone you know who is eligible to vote. Do you believe they voted? Consider some of the characteristics of likely voters above and some of the reasons why people say they do not vote in the table below. Then, if possible, ask the person you are thinking about whether they voted and the reasons for why they did or did not vote. To what extent is what you found consistent with the survey data?

Table 5.3: Why Registered Voters Don’t Vote, 2015

Reason	Percentage
Lack of Interest	36
Time, schedule constraints	32
Confidence in Elections	10
Process Related	9
Other	10

(Baldassare)

To What Extent Should Voter Turnout Matter?

Most political scientists would argue that increasing voter turnout is good. We celebrate the fact that 70% of Californians voted in 2020, a jump of 15% from the previous presidential election. We bemoan the fact that in a midterm election, it might only be 35%, or if a county or municipal election was held in an odd year, we might only have ten or twenty percent of the electorate voting. A celebration of higher turnout may be based on two arguments.

First, voting is good in itself. In a constitutional democracy, the people are sovereign, and voting is a way for the people to exercise their power. Hence the more people who vote, the better. Just the act of voting, regardless of how people vote, is to be applauded, enhancing the political system's legitimacy. Moreover, it is also good for the individual citizen. We are better people by reflecting on and participating in civic life. Voting is an act of altruism, like serving on a jury or donating blood. It builds character.

Second, voting has instrumental value. Government policy should reflect the demands of the people and the function of elections is to identify the demands that are most salient and hold elected officials accountable for addressing them. The higher the turnout, the more an election reflects the diversity of opinion. If there are distinct differences of opinion based on income, education, or any other demographic characteristics, increasing turnout should better communicate the needs of previous nonvoters to the government. These two arguments—that increased voter turnout increases political legitimacy and improves policy representation in a constitutional democracy—suggest that as a society we should introduce reforms that enhance turnout. The question, of course, is what sorts of reforms are appropriate.

To help us consider this issue, let's conceive of a spectrum of voting procedures that we could place along a continuum of participation:

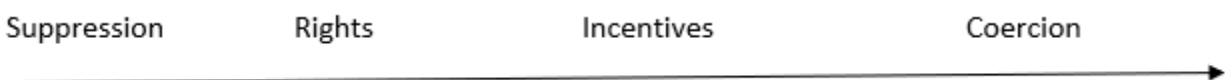


Figure 5.2

At the far left, a political system devoted to the suppression of the vote might allow only a small share of the total population to vote, and it may limit which offices can be popularly elected or what kinds of policies may be subject to direct democracy. Voter suppression was the norm in the United States from its founding until the Voting Rights Act of 1965. One may argue that voter suppression continues today with efforts to reduce electoral competition through gerrymandering or other ways to make it more difficult for people to vote.

Second, a political system devoted to rights might seek to legislate and safeguard universal suffrage for everyone. The best examples are the successive amendments and voting rights laws passed at the national and state levels. Currently, debates about rights include if and when

former felons may regain voting rights or if the voting age should be reduced further to allow teenagers to vote.

Third, a political system already devoted to rights might incentivize voting. Much of this is through the educational system and the social system. We encourage young people to vote; state law allows workers time off to go and vote, civic groups and the media praise the act of voting as virtuous.

Fourth, a political system might recognize voting as so vital that it requires almost all people to vote and imposes penalties on people who don't. One might argue that elections are the only way for the government to accurately reflect the will of the people and hence requiring the expression of that will should be coerced. This may seem rather strange. However, there are precedents. States mandate jury duty but provide waivers for people who are unable to serve for reasons of health or ability. Many other democratic countries, such as Australia, require citizens to vote, and when they do not, a fine is imposed. If something is so important, why not simply mandate it?

In the pursuit of universal suffrage, should we be free not to vote? Compulsory voting is not a popular idea in this country. Perhaps Americans value giving people the freedom not to participate. Requiring the expression of opinion may violate the First Amendment. Secondly, would the quality of voting suffer in the pursuit of increasing the quantity of voting? Would more voters be making poor decisions? The virtue of an act may also diminish if it is required.

Considering this range of possible policies, from suppression to coercion, suggests that our focus on only one statistic, voter turnout, is incomplete. We want increased voting to be voluntary and thoughtful. The choices need to be meaningful for the voters, a real competition of ideas and candidates. The citizens' right to vote must be safeguarded, and the citizens' ability to have the information necessary to make good choices must also be promoted. Voting rights deserve protection; electoral laws can make it easier to vote (such as how the Voter's Choice Act provides more time and ways to vote). Voters must commit to educating themselves: considering the issues carefully, determining what is right in terms of the promotion of constitutional values, and thinking about what is best for the public good and not just what is in their self-interest. In other words, voting is part of the practice of citizenship.

CONSIDERING CURRENT CONTROVERSIES

We might think that there would not be any controversies about elections in a country with a 230-year history of democracy. We would be wrong. Americans have argued and continue to argue about many issues: Who should have the right to vote? What regulations are reasonable and which are just efforts to disenfranchise people for, perhaps, partisan gain? Who should decide, the states or the federal government? A little historical discussion provides some necessary context for understanding current controversies.

The Elections Clause of the US Constitution establishes that the states and the federal government shall share the responsibility of holding federal elections. States are primarily

responsible for conducting the electoral process, but Congress establishes uniform procedures for federal elections. For example, Congress sets the date for the Presidential general election and requires that states conduct district rather than at-large elections for representatives. The U.S. Constitution states:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators (Article 1, Sec. 4, clause 1).

The expansion of suffrage occurred at both the state and the national levels. For example, states individually removed property requirements for voting in the pre-Civil War era. A few states (New York, New Jersey, and Pennsylvania) extended suffrage to Black men before the Civil War. The nationalization of voting rights begins with the Fifteenth Amendment to the Constitution which provided that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

Unfortunately, states and local governments often passed laws that undermined the Fifteenth Amendment. After Reconstruction ended in 1877, many states passed discriminatory laws that effectively removed minorities and many poor whites from voting. These included literacy tests and poll taxes. The era of “Jim Crow,” as it came to be called, disenfranchised most African Americans in the South.

In the 1950s and 1960s, Jim Crow ended when the civil rights movement, led by organizations such as the National Association for the Advancement of Colored People, the Southern Christian Leadership Conference, and the Student Nonviolent Coordinating Committee, successfully persuaded the US Congress and the US Supreme Court to make the fight for equal rights a federal responsibility. The Voting Rights Act of 1965 was the most significant legislation expanding suffrage at this time. Congress passed this landmark legislation at the urging of President Johnson after the events of “Bloody Sunday” in Selma, Alabama, when state troopers attacked peaceful civil rights marchers. The law begins, “An Act to enforce the fifteenth amendment to the Constitution of the United States....”

One hundred years after the end of the Civil War, the enforcement of voting rights for all people regardless of race and color led to a dramatic increase in voter turnout. The Act had real teeth. Section 2 stated:

“No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any Citizen of the United States to vote on account of race or color.”

Voters were now able to go to federal court and have state and local laws overturned. An additional tool to prevent discriminatory practice was Section 5. States who had a history of

discrimination (voting tests in place in 1964 and less than 50% turnout in 1964) could not change voting laws without “pre-clearance” from the US Department of Justice. The Voting Rights Act had a revolutionary effect on suffrage. Black voter turnout immediately increased, although it was not until the end of the twentieth century that African American and non-African American turnout were essentially the same. The Census Bureau graph below shows this change.

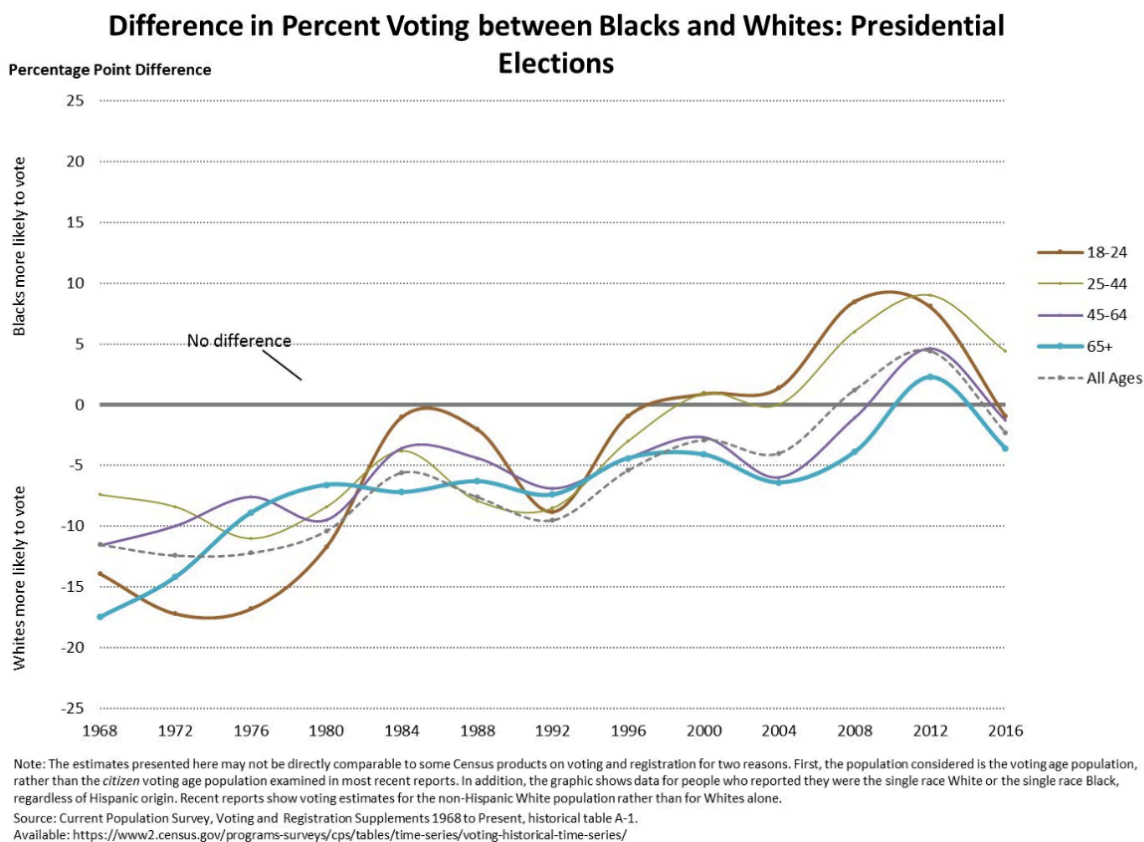


Figure 5.3: Voter turnout difference by Race (US Census Bureau)¹⁶

The fight for universal suffrage had been purchased by removing significant authority from local and state governments. Naturally, this would cause resentment and lead to efforts to reclaim authority from the federal government. In 2013, in *Shelby County v. Holder*, Alabama successfully argued before the US Supreme Court that Section 5, the Voting Rights Act preclearance procedure was unconstitutional because it treated states differently based on fifty-year-old data and practices. States could now pass voting and electoral laws without needing authorization from the US Justice Department.

In 2021, the US Supreme Court further limited the impact of the Voting Rights Act of 1965 in *Bronovich v. Democratic National Committee*. The case focused on the interpretation of Section 2 of the Voting Rights Act of 1965. How was discrimination to be determined: whether there

¹⁶ Image is in the public domain

was an intent to discriminate or if there was just a disparate (unequal) impact on different ethnic or racial groups? The state of Arizona had passed new electoral laws such as one that prohibited “ballot harvesting,” or allowing non-family members to collect and deliver ballots. Arizona argued that there was no discriminatory intent, only an effort to increase electoral integrity. Voting rights groups argued that the law imposed a greater hardship on Native Americans, many of whom lived on reservations in rural areas far away from mailboxes and postal services. Therefore, the Arizona law should be ruled unconstitutional because of the unequal racial impact.

The Court ruled in favor of Arizona. Voting regulations that had no racist intent but had a racially disparate impact were now constitutional. Lower courts should examine the totality of circumstances weighing the need to safeguard confidence in the electoral process against the increased inconvenience experienced by voters.

In the wake of the 2020 elections, voting regulations are receiving a great deal of political attention. President Trump’s arguments that there was voter fraud that contributed to his electoral defeat have led to many Republican-leaning states passing restrictive voting laws such as limiting vote-by-mail ballots, reducing early voting, and increasing identification requirements. On the other hand, more Democratic-leaning states are continuing to work toward making voting more convenient.

At the national level, the House of Representatives, controlled by a thin majority of Democrats, passed sweeping voting rights legislation and many electoral reforms. They include national automatic voter registration, uniform regulations for early voting, replacing legislatively-drawn electoral districts with ones drawn by citizen redistricting commissions, campaign finance reform, and returning pre-clearance for states that experience many allegations of voter disenfranchisement. Conservatives in Congress argue that these efforts amount to a federal commandeering of state responsibilities. They argue that new regulations are meant to ensure confidence in elections; they do not amount to voter suppression or a new Jim Crow. As of the summer of 2022, liberal reforms are stalled in the US Senate.

The likelihood is that there will be no new national plan to address voting rights. Instead, state policies will diverge more than in the immediate past, although no one is arguing that states will return to the severity of Jim Crow-era disenfranchisement. More Democratic states will continue to liberalize voting regulations; more Republican states, seeking to address voter concerns about fraud, will do the opposite. In California, more counties are adopting the Voter’s Choice Act for the 2022 electoral cycle, making voting more convenient for millions of more people.

Another significant electoral reform in California is the California Voters Rights Act of 2002 (CVRA). The focus of this act is to encourage locally elected bodies to be ethnically and racially representative of the people they represent. In particular, the concern is that the rights of voters based on race, color, or language to influence the outcome of an election are diluted by at-large elections.

Residents can use the CVRA to sue local governments, asking that a city switch from at-large elections to district elections. District elections may better reflect neighborhood demographic composition or the general demographics of an entire city. Under the threat of lawsuits, many city councils, school districts, and special districts are rapidly changing their electoral systems. By 2022, at least 88 cities in California changed to district elections. A survey of governments that have replaced at-large with district elections shows an increase in minority representation (Richomme). The pandemic delayed implementation but this change will continue in coming years (League of California Cities).

In summary, voting rights continue to be a very significant issue. Conservatives worry about voter fraud, liberals about voter suppression. In California, the trend is toward making voting more accessible and reforming the drawing of electoral districts to represent all ethnic and racial groups better. However, many of these reforms are dependent on a federal judiciary to rule that California reforms are consistent with federal law.

SUMMARY

Voting is the most common form of democratic participation and is at the very heart of constitutional democracy. The state of California has implemented many reforms to make voter registration and voting itself more convenient. Nonetheless, at least one-third of eligible Californians choose not to vote. Certainly, individual factors such as learning about the election and mastering the mechanics of voting can have an influence. However, there are also more underlying popular doubts about whether the government has the ability and willingness to respond to our demands. Alienation from voting has long been a cause of reduced turnout. In the last few years, debates about how to address low voter turnout are now complicated by allegations that easy access to voting leads to fraud. Efforts to protect election integrity may have an unequal impact on different demographic groups in our society, leading to the unintended consequence of decreasing confidence in democratic decision-making.

FOR FURTHER INQUIRY

1. The Public Policy Institute of California has the most comprehensive polling data on voter participation in California. Go to their [website](#) and investigate the latest polls about voter turnout in our state.
2. The League of Women Voters has provided voter education for decades. Go to their [website](#) for information about upcoming elections. You can type in your voting address and see your ballot.

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CHAPTER SIX: POLITICAL PARTIES

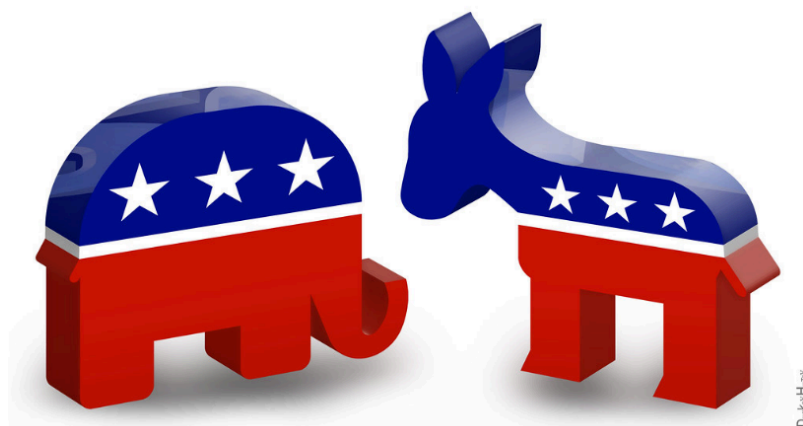


Figure 6.1: The Republican Elephant and the Democratic Donkey¹⁷

CHAPTER OBJECTIVES

1. To describe the parties that are on the California ballot including the choice of “No Party Preference.”
2. To examine how parties organize politics by considering their roles in the electorate, as party organizations, and their role in the legislative process.
3. To evaluate different perspectives regarding whether political parties are good for California politics.

INTRODUCTION

Republican! Democrat! Red vs. Blue! Then there are the minor parties: American Independent, Green, Libertarians, Peace and Freedom... In this chapter, we will describe the parties that are on the California ballot, considering their platforms and who is likely to register for each one. We will analyze the role of parties in the political system and consider different perspectives about the value of parties.

PARTIES ON THE CALIFORNIA BALLOT

There are dozens of political parties in the United States. Given the freedom of association guaranteed by the First Amendment, anyone can start a party, and voters can simply write candidates' names on their ballots (Here is a [website](#) that maintains a list of many of these parties). However, to be listed on the ballot by the Secretary of State, California law requires that a political party qualify in one of two ways: by voter registration or petition. The voter registration method requires .33% of the total number of registered voters to complete voter registration affidavits and write in the new party's name (in 2021, 73,109 voters). These cards

¹⁷ Image by [DonkeyHoney](#) is licensed under [CC BY 2.0](#)

are distributed and collected by the new party and delivered to each county’s election officials. This must be done 154 days before a primary election or 123 days before a presidential general election. Secondly, a new party may collect signatures by petition equal to 10% of the number of people who voted in the last gubernatorial election (in 2021, 1,271,255 voters). These petitions must be submitted to county officials 135 days before the primary or general election (“Political Party Qualification”).

Once qualified, a party maintains its status on the ballot by retaining at least 0.067% of the total number of registered voters and having at least one of its candidates for statewide office receive 2% of the vote; or it can retain .33% of the total number of registered voters prior to the next election. Let’s investigate the six political parties and the “no party preference” category on the California registration application.

Before the November 2020 presidential elections, the Secretary of State’s office estimated that there were approximately 25,090,517 eligible voters (“Record 22 million...”) of which about 88% registered:

Table 6.1: Registration by Party Preference (2020)

Registered Voters	Democratic	Republican	No Party Preference	Minor Parties/Other/Unknown
22,047,448 (87.87%)	10,170,317 (46.13%)	5,334,323 (24.19%)	5,283,853 (23.97%)	1,258,955 (5.71%)

Of the minor parties, registration data showed:

Table 6.2: Minor Party Registration (2020)

Minor Parties/Unknown/Other	American Independent	Green	Libertarian	Peace & Freedom	Unknown/Other
1,258,955 (5.71%)	646,830 (2.93%)	84,807 0.38%	196,108 0.89%	103,476 0.47%	227,734 1.04%

The trend in statewide voting registration is straightforward: Democrats are gaining registered voters, Republicans are losing them, and the number who express no party preference is almost the same as the Republican Party (“Record 22 million...”). The American Independent Party is the most popular of the minor parties, probably because voters mistakenly think they are registering as independents.

Table 6.3: Trends in Voter Registration

Party	1996	2000	2004	2008	2012	2016	2020	2022
Democratic	47.2%	45.4%	43.0%	44.4%	43.7%	44.9%	46.1%	46.8%
Republican	36.4%	34.9%	34.7%	31.4%	29.4%	26.0%	24.2%	24.9%
No Party Preference	11.3%	14.4%	17.7%	19.9%	20.9%	24.3%	24.0%	22.8%

SELECTING A PARTY UNDER THE TOP-TWO PRIMARY SYSTEM

When Californians register to vote, they select a political party or choose “no party preference.” Until recently, party registration mattered much more because California had a closed primary held usually in June to select the candidates for the general election in November. A registered party member received a party ballot with only candidates from their party running for each office. The candidates from each party that received the most votes went on to the general election in November. A typical general election race was then a runoff among the winning candidates from each of the parties.

In 2010, Proposition 14 shifted the primary election to become more candidate-centered and eliminate the less popular candidates from the general election ballot. At the time, Governor Arnold Schwarzenegger actively promoted this proposition to reduce partisanship by encouraging primary candidates to shift more toward the center of the political spectrum to attract more voters. Under this system, everyone receives the same ballot for most races, regardless of their party registration or whether they expressed “no party preference.” The top two candidates from the primary go on to the November runoff. They may be the top Republican and top Democrat. However, there might be a runoff between two people of the same party, or perhaps with candidates who are not identifying themselves with any party.

There are two exceptions to the top-two primary system: the presidential primary and the selection of political party central committee members for each county. The latter generates little popular attention. Voters care far more about the presidential race.

The presidential primaries are still a closed or modified closed primary election, depending upon the choice of the party, because the US Supreme Court has ruled that the right to freedom of association guaranteed by the First Amendment gives parties control over who votes in their primary races for president (*California Democratic Party v. Jones*, 2000). In 2020, the Green, Peace and Freedom, and Republican parties opted for closed primaries, allowing only registered party members to vote. On the other hand, the American Independent, the Democratic, and the Libertarian parties opted for modified closed primaries, allowing “no party preference” registered voters to vote. The parties decide whether to opt for a closed or modified system before each presidential election. With mail-in-ballots, the no party preference voters have to request a new ballot by mail or go to a vote center or polling place to vote. The Secretary of State communicated to voters before November 2020 election regarding what they must do:

Do you want to vote for President on March 3, 2020?

All voters can vote in a primary election.

Voting for President depends on the party you are registered with.

If you are registered with a political party:

You can vote for a candidate running for President in that party.

If you registered with no party preference, you can vote in the Presidential primary for the following parties:

- American Independent
- Democratic
- Libertarian

You can select the party ballot at your polling place. If you vote by mail, you will be sent details to select a party ballot.

If you registered with no party preference and want to vote in the Presidential primary for one of the following political parties:

- Republican
- Green
- Peace & Freedom

You must re-register to vote with that party by February 17, 2020, or you will need to register and vote conditionally



Register to vote: www.registertovote.ca.gov

Figure 6.2: Steps to Vote in the Presidential Primary in 2020¹⁸

In short, except for the presidential primary, party registration has no practical consequence. However, given the importance of the presidential race and the need to get the correct ballot in time to vote, it makes sense to register for a preferred party in advance.

THE MENU OF QUALIFIED PARTIES

Party politics in California follows national trends. In the 1850s, most Californians were against slavery which helped the Republicans (the GOP, or Grand Old Party) organize as a new party. In the postbellum period, Republicans continued to dominate state politics following national trends. In 1910, under the leadership of Governor Hiram Johnson, Progressive Republicans led constitutional reforms to add direct democracy. However, when the country underwent a Democratic realignment during the 1930s, a majority of Californians also registered as Democrats. Nonetheless, because one of the Progressive reforms allowed politicians to register as candidates in more than one party primary (cross filing), the Republican Party was able to maintain its dominance of state politics.

“Moderation is best. Avoid all extremes.” Governor Goodwin Knight’s motto (1953-1958) nicely summarized Republican strategy in the 1940s and 1950s (Putnam). Republicans presided over an era of rapid government expansion as the state coped with dramatic postwar population growth. The “neo-progressive” policy approach of pragmatic, moderate, and activist government, reinforced by the cross-filing system allowing a candidate to run in both Republican and Democratic primary races, encouraged candidates to pursue moderate policies to attract the most number of voters.

Republican Governor Ronald Reagan (1967-1975) continued the Party’s relatively moderate course and attracted many more voters with his anti-tax and “law and order” rhetoric, echoing Republican President Richard Nixon’s relatively moderate policy approach at the national level.

¹⁸ Image is in the public domain

A majority of Californians, attracted by a mix of economic and social conservatism, also voted for Reagan for President (1981-1989) and his successor George H.W. Bush.

The popularity of the Republican Party in the state faltered in the 1990s when it shifted more to the right with a strong anti-immigrant push led by Governor Pete Wilson to pass Proposition 187 in 1994. This Republican-sponsored referendum required state officials to report undocumented people to federal authorities and deny all social services to them, including schooling for their children. While this proposition passed with a large majority, in the long term it alienated the growing number of moderate and liberal voters in the state. Since the late 1990s, California Republican representation in Sacramento and in Washington D.C. has dwindled, without any statewide victory since Arnold Schwarzenegger's election as governor in the recall election of Democratic Gray Davis in 2003.

The 2020 California Republican Party [platform](#) emphasizes economic and social conservatism, including lower taxes, less business regulation, vigorous enforcement of immigration laws, gun rights, and pro-life policies. It opposes strong environmental regulation, affirmative action, and LGBT rights.

Historically, California Democrats trailed Republicans in organization and influence. Divided in their support for the Confederacy during the Civil War, the Party suffered from decades of poor organization. It was not until 1959 that Democratic Governor Pat Brown ushered in a new era of Democratic influence. The two major parties became quite competitive with one another for the rest of the century. By the 1990s, as the Republican Party became more conservative, Democrats gradually gained more seats in the state legislature. By 2018, the Democrats had supermajorities in both houses, meaning they had enough votes to meet the two-thirds majority to raise taxes or potentially override a governor's veto. Additionally, all the elected officers of the state executive branch were Democratic, and most California representatives in Washington were Democratic.

The Democratic Party of California's [platform](#) is economically and socially liberal. The Party promotes "economic opportunity" and "economic justice." Democrats pursue expansive government programs to help Californians address many social, economic, educational, and environmental challenges. The platform supports equality and diversity for all residents, extending and enforcing more civil rights.

Minor parties on a ballot are often called "third parties" because one of them comes in third place. A minor party typically represents a narrow slice of the ideological spectrum. A dedicated activist group of "true believers" receives a tiny fraction of the vote from a loyal following, election after election. The goal of the true believer is to make a statement rather than win. However, if a minor party starts gaining more support, a larger party will often adopt some of its messages to "steal" some of its votes. For example, the Republican Party may adopt a strongly anti-government message of a far-right party. The Democratic Party may adopt an environmental or social platform of a left-wing party. Thus, a minor party performs a Sisyphean

task: as soon as it achieves some success, new supporters are co-opted by a larger party, and it returns to relative obscurity.

In California, the minor parties that are qualified for the ballot have their origins in the political struggles of prior decades. The Peace and Freedom Party emerged from the anti-Vietnam War protests of the 1960s, the American Independent Party from Southern segregationist George Wallace's backlash against integration in the 1960s, the Libertarians as part of a neoconservative backlash against the Republican Party, and the Green Party from the environmental movement of the 1970s. Let's examine each of these minor parties.

The Peace and Freedom Party

In the late 1960s, the Democratic Party fractured over the issue of the Vietnam War. President Johnson and his heir apparent for the Democratic nomination, Hubert Humphrey, favored continued support of the South Vietnamese government in its struggle against communism. Many more liberal Democrats favored withdrawal. In California, there was enough support for the antiwar position for a new party, the Peace and Freedom Party, to qualify for the ballot in January 1968. The presidential candidate was Eldridge Cleaver, a civil rights activist. However, because he would not be 35 by the time of the inauguration, California did not list his name on the ballot. As the campaign of 1968 unfolded, many Democrats broke with the Johnson and Humphrey pro-war position, including Robert Kennedy and Eugene McCarthy. Kennedy was assassinated on the night of the California primary in June, and Humphrey went on to win the nomination. Eldridge Cleaver received .38% of the California vote in November (Statistics of the Presidential and Congressional Election).

In the 1970s, the PFP was unable to maintain its status on the ballot in other states due to low popularity. However, the California PFP consistently garnered enough support to stay on the ballot until 1998, when it fell below the 2% threshold. It regained its status in 2003 and remains on the ballot, fielding leftist candidates.

The Peace and Freedom Party characterizes itself as "committed to socialism, democracy, ecology, feminism, and racial equality." It commits itself to a wide range of socialist positions about state, national and global positions ("PFP"). In 2020, labor activist Gloria La Riva ran as the PFP nominee. She was also the nominee of the Party for Socialism and Liberation. She favored many standard socialist positions promoting economic equality, workers' rights, stopping racism, and respecting treaties with Native Americans. La Riva received .05% of the national vote and .03% of the California vote (Federal Election Commission and "California's Gubernatorial Election").

The American Independent Party

At about the same time that the Peace and Freedom Party emerged, Southern segregationist Governor George Wallace of Alabama left the Democratic Party and established his independent candidacy to run for President. The American Independent Party (AIP) formed in

California and successfully gathered enough signatures to qualify Wallace for the California ballot. Wallace received seven percent of the California vote in 1968. The Party has been active in California ever since, but it was sometimes subsumed under other national minor parties, most recently the Constitution Party. Although its roots lie in southern segregationism, its platform today focuses on promoting very conservative economic and social positions. Its manifesto begins, “We believe in liberty and justice for all under God. We want to keep America independent and safe. We will protect the family, marriage and work. We believe in individual responsibility and free enterprise...” The AIP Presidential Candidate, Rocky de La Fuente received .06% of the vote nationally and .3% of the vote in California (“General Election” and FEC). La Fuente was also the candidate for the Reform Party and the Alliance Party.

Based on the number of people registering as members of the AIP, it is the third-largest party in California. Given its far-right positions and low support of its candidates, it is easy to suspect that voters are erroneously registering as AIP members when they intend to register as “no party preference.” A *Los Angeles Times* poll of AIP members partially confirmed this suspicion: 58.9% of respondents were unaware that they had registered for a political party rather than as an independent (“Are You an Independent Voter...”).

The Libertarian Party

In 1971, the Libertarian Party (LP) was established by conservatives concerned that the Republican Party under President Nixon was no longer the party of small government. Nixon had instituted price controls in response to inflation, removed the currency from the gold standard, and supported most of the social welfare programs established by Democrats. The Party was influenced by Ayn Rand’s philosophy of objectivism, popularized by her many science fiction books such as *Atlas Shrugged*. The LP organized state and local party organizations rather quickly as the country became more conservative in the 1970s. By 1980, the LP was on the ballot in all fifty states and received about 1% of the vote.

The platform of the Libertarian Party (LP) begins, “As Libertarians, we seek a world of liberty: a world in which all individuals are sovereign over their own lives and are not forced to sacrifice their values for the benefit of others...” The Party appeals to both liberals and conservatives. The LP emphasizes personal liberty regarding sexuality and drug use and emphasizes the same for gun rights, free enterprise, and taxation. In 2020, the Libertarian presidential candidate Jo Jorgensen called for dismantling social security and replacing it with individual retirement accounts, stopping construction of the border wall, and ending state mask mandates to fight the pandemic. Jorgensen received 1.1% of the California vote for President and 1.18% nationally.

The Green Party

Just as other minor parties have grown out of social movements, the Green Party has its roots in the environmental movement that achieved widespread support in the 1970s as Americans realized the impact of industrial civilization on the natural environment. The Greens began to organize first in Minnesota in 1984. In part, they emulated the development of Green parties in

Europe. The organizing conference of the Greens proclaimed a set of principles that continues to guide their policy positions. They include ecology, sustainable economics, democracy, nonviolence, and social justice. By the late 1980s, state parties were forming around the country. In 1992, the Greens qualified for the California ballot. The Party received its most notoriety in 2000 when its Presidential candidate, Ralph Nader, garnered enough popularity (2.74% of the national vote) to help shift the electoral college vote to Republican George Bush. By that time, it was on the ballot in 43 states (“Early History...”).

In 2020, environmentalist and labor activist Howie Hawkins ran for President as the Green Party nominee. Among other positions, he favored Medicare for all, the “Green New Deal,” and a \$20 minimum wage. The Green Party received .5% of the vote in the California general election for president and .26% nationally.

THE SOCIOLOGY OF PARTIES

Political scientists conceptualize party membership as a long-standing identification that we learn from our families as part of our political socialization. In this view, we don’t act as individuals, researching and evaluating party platforms in terms of our personal interests and ethics. Instead, party membership becomes rooted in history; for example, the impact of the Civil War and the Great Depression shaped the partisanship of subsequent generations. The Civil War pushed many northern and western states toward the Republican Party and southern states toward the Democrats. The popularity of President Franklin Roosevelt’s New Deal programs and leadership during World War II motivated many more Americans to vote Democratic. Then, beginning in the 1960s, many southern whites abandoned the Democratic Party because they opposed the Party’s pro-civil rights policies. Younger southern whites today may not share their parents’ segregationist views, but they have been socialized to become Republicans.

This theory of political socialization lumps people together in various demographic groups who are buffeted by historical forces and pass on political viewpoints to subsequent generations. The sociological approach to party identification may not be as relevant today. Perhaps, ironically, a more individualistic culture lightens the weight of history on our socialization. Instead, it may be better to take a more individualistic approach to our choice of party.

Consider an economic theory of party preference. Begin with the premise that voters have distinct opinions. Parties are vote-seeking organizations that use their party platforms to attract supporters in the same way businesses seek customers with advertisements. The voters then give their support to the party that promises their preferred policies. If the party delivers, then they are reelected. Seminal events in American history, such as the Civil War and the Great Depression, fade in importance. Instead, voters focus on their own material success. They ask: which party will help the state economically flourish, reduce crime, provide for good schooling, and achieve many other necessary policies? The short-term rational calculus is far more relevant than long-term political socialization.

With these two theories in mind, the table below provides some sociological snapshots of California's two major parties and independents. The numbers for minor parties are just too small for large-scale survey research.

Table 6.4: Selected sociological characteristics of California Likely Voters (2020)

Characteristic	Republicans	Democrats	Independents
Political Ideology			
Conservative	77	11	31
Moderate	19	28	41
Liberal	4	61	27
Income			
Under 40000	22	32	20
40000 to 80000	29	26	28
80000 or more	49	42	52
Age			
18 to 34	13	28	20
35 to 54	29	29	40
55 and older	58	43	41
Gender			
Men	53	41	59
Women	47	59	41
Race/Ethnicity			
African American	1	9	5
Asian American	10	16	17
Latino	13	26	20
White	72	46	54
Other/Multiracial	3	4	5

(Baldasarre)

The distinctions between Republicans and Democrats are relatively straightforward. Republicans are older and more likely to be white, male, and wealthier than Democrats. These California distinctions parallel national trends. Republicans support their party because of its consistent pro-business platform, emphasizing less regulation and lower taxation. This foundation lies in a nineteenth-century *laissez-faire* philosophy. Older voters are also more likely to support social conservatism. Historically, Democrats gained more support in California as the working class grew with the growth of factory jobs. Then as the population became more multicultural in the last few decades, Democrats gained more support because of their solid support of civil rights legislation.

We can only draw so many conclusions based on this demographic data. First, many electoral outcomes are caused by short-term factors. For example, we know from voter turnout data that

the demographic groups that historically vote Republican are more likely to vote. So, if turnout surges across the whole voting population, we can expect a shift toward Democrats and independents. Elections are often won at the margins; just a shift of a few percentage points based on immediate or temporary voter impressions can alter which party controls the government.

Second, what do we know about the 24% of Californians who registered to vote without expressing a party preference? Political scientists know from national studies of voters that people who call themselves independents actually are “leaners” toward one party or the other regarding their actual voting behavior. Thus, it is not surprising that a 2018 Public Policy Institute poll found that 43% of California independents leaned toward the Democratic Party, 29% toward the Republican, and only 28% toward neither of the two parties. Independents have an unfavorable view of both parties (58% unfavorable rating of Democrats and 69% unfavorable rating of Republicans). Ideologically, however, their issues stances fall between Democrats and Republicans, expressing more moderate viewpoints on immigration and climate change than Democrats and more liberal views than Republicans (Baldassare).

The presence of one-fourth of the electorate that has little party allegiance leads to some interesting dynamics. First, to win statewide support, a candidate needs to be mindful of these centrist voters. Second, given the independent’s anti-party stance, politics may become quite volatile. Their relative skepticism of established parties may lead to direct democracy campaigns—initiatives, referenda, and recalls—that can catch on like wildfire and overturn the status quo. Third, given the relatively moderate nature of these voters, there may be room for one or the other of the major parties to gain quite a bit more support by heading more toward the center of the spectrum. Or, perhaps even more radically, a new party might develop that seeks to mobilize the center. The top-two primary system, and the rules of a recall election, where the contender with the most votes can win once the electorate has rejected the incumbent, may allow savvy candidates to mobilize these moderate independent voters.

It may be wise to consider both the social and individual factors that determine party preferences. As voters, we think about both historical and contemporary issues. In a time of rapid change, a successful party must provide both continuity for voters and a promising path to the future.

FOR YOUR CONSIDERATION

Think about your political socialization. First of all, did you grow up in a family where you spoke about politics? If so, how would you characterize the viewpoints that were expressed? Second, has your socialization shaped your preference toward one political party? If so, how? If you really don’t perceive much of a connection between your family and your points of view, how did you arrive at your preference regarding your party identification?

HOW PARTIES HELP ORGANIZE CALIFORNIA POLITICS

Political scientists often say that in comparison to other representative democracies, parties are relatively weak in the United States. They point to the fact that we have candidate-centered elections, meaning that candidates choose to run for office rather than being selected by party leaders. For local and county elected offices, by law (with its origins in the Progressive era), elections are nonpartisan. Parties do not formally organize the proceedings of city councils or county supervisors. Moreover, we have thriving mechanisms of direct democracy. Initiatives and referenda are often nonpartisan, focusing on how particular issues should be addressed. In California, the top-two primary makes registering for a particular party less important (except for the vote for president) and hence one-fourth don't even bother expressing a preference.

Despite these facts, political parties still have very significant functions in the political system. Political scientists focus on three roles: how parties organize the electorate, their role as mediating institutions between voters and the government, and how parties organize the state legislature. These three roles are called: party-in-the-electorate, party organizations, and party-in-government.

The party organizes the electorate by creating coherent points of view and platforms for the voter to understand and support, essentially creating teams of rivals to rationally manage the complexity of politics in a mass democracy. Voters participate in the political system as party members, identifying with one party or another. Even defining themselves as “independents,” voters think in terms of parties.

Parties are brands that are crucial to attaining office. Choose the wrong brand and political ambition is likely foiled, especially if a candidate embraces a third party. However, a candidate still personalizes his candidacy within the brand. For Democrats, the division is often between “progressives” who hold more dogmatic positions (not to be confused with early twentieth-century Progressives) on issues and “moderates” who are willing to compromise with Republicans to achieve common aims. For Republicans, the division after 2016 is between those who support President Trump and those who may be “RINOs” or “Republicans in name only” because they are too moderate to be worthy of conservative respect. Voters find their choices shaped by these internal party divisions. In turn, the relative electoral success of the different approaches within each party will then cause elected officials to shift their positions. Second, party organizations don't formally select candidates, but the local and state party committees do endorse their favorites. They also help party members devise coherent platforms, promote the party, and strategize about elections. Each party has a state central committee and county central committees that party members elect. Caucuses and committees meet to plan programs and positions on various contemporary issues. At biannual state party conventions, these party officials approve party platforms, candidates give speeches, and politicians network with one another (for the latest, see the [California Democratic](#) and [California Republican](#) Party websites). The minor parties have similar organizational structures, although their organizations are not as well-developed across the state.

Third, the parties help organize the California state legislature and the legislative process. The Democrats hold a majority in both the State Assembly and the State Senate. Thus, the Speaker of the State Assembly and the President pro Tempore of the State Senate are both Democrats. The chairs of all committees are also Democrats. The Democratic leadership is in charge of which bills reach the floor for a vote. In recent years, the number of Democrats has grown so much that their supermajority (two-thirds) now can override a governor's veto or pass a revenue (tax) bill.

In short, political parties are central to the conduct of California politics. Parties organize our thinking, our elections, and the lawmaking processes of government. Of course, there are exceptions, such as with initiatives and with local elected offices. The question is whether the role of parties has been good for our politics.

ARE PARTIES GOOD FOR CALIFORNIA?

There are different viewpoints about whether parties help or hurt a constitutional democracy. The Framers of the US Constitution warned of the dangers of parties. When President George Washington left office, he issued his Farewell Address, with much advice for our young country. It is well worthwhile to read this extended quotation about parties:

“ . . . I have already intimated to you, the danger of parties in the state, with particular reference to the founding them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party, Generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments more or less stifled, controlled, or repressed; but in those of the popular form, it is seen in its greatest rankness and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissention, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual: and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight) the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise People to discourage and restrain it.”

Parties divide us, and most insidiously, can do so along geographic lines. Parties beguile our thinking, encouraging emotion over reason and public mindedness. Finally, parties may lead to despotism as we embrace the leader of one faction over another. Therefore, from the point of the Framers, parties ought to be discouraged.

Washington's warnings did not stop the development of parties. Divisions among the Framers led to the formation of parties. Party politics came to drive American politics, directing our political ideologies, our campaigns, electoral processes, and legislative politics.

By the mid-twentieth century, the viewpoint of most political scientists was the exact opposite of Washington's. E.E. Schattschneider's often quoted statement epitomizes the modern attitude: "Modern democracies are unthinkable save in terms of political parties." Parties serve as important linkage institutions connecting the people to government. Parties are important mediating institutions that help overcome the problems of mass democracy by channeling politics into organizations that interact in constructive ways in the electoral and legislative arenas.

Perhaps a middle ground between the Framers' fears and Schattschneider's optimism is best. Governor Hiram Johnson believed that special interests, especially the Southern Pacific Railroad, had corrupted parties and state politics. The Progressives promoted reforms to reduce the power of parties and give the people the ability to control them. Major reforms included the following:

1. Primary elections: instead of party leaders select candidates, anyone qualified can choose to run; and it is up to the people to discern the best candidate (passed by legislative referendum, 1909).
2. Nonpartisan elections (local races, such as for city councils and school boards).
3. Ballot reforms:
 - a. The secret ballot (originating in Australia and thus often called the Australian ballot) was instituted in California beginning in 1891.
 - b. The office block ballot—showing all the candidates running for each office.
4. Civil Service Reform: The party patronage system ("the spoils system") in which the party in power doles out jobs to supporters is replaced by the California State Civil Service System in 1913 under Governor Johnson.
5. Direct Democracy: the referendum, the recall, and the initiative allow the people to change officeholders and policy directly and sidestep parties entirely (Peterson, King).

The Progressives were realists. Parties are necessary for a modern democracy, but they must be limited in their power and made to reflect popular demands rather than only narrow special interests. As with many aspects of politics, crafting the appropriate role for parties in California remains an important task.

SUMMARY

The menu of six parties on the California ballot provides a range of political choices for the voter. Each party has distinct party platforms, and in today's polarized political climate, dedicated supporters are readily distinguishable by ideology and a range of demographic characteristics. The parties provide crucial functions for the political system, organizing political viewpoints, electoral contests, and the legislative process itself. However, Californians have a rich tradition of reform to limit the power of parties in our politics.

FOR FURTHER INQUIRY

What is your party preference? Review the statements of purpose of each qualified political party published by the [Secretary of State](#). What do you think of each party? If you wish to re-register, go to this [link](#).

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CHAPTER SEVEN: INTEREST GROUPS



Figure 7.1: MeToo Movement Protesters, 2018¹⁹

CHAPTER OBJECTIVES

1. To analyze how interest groups attract members and how they seek to influence public policy.
2. To evaluate the role of interest groups in the political system.
3. To analyze and evaluate current campaign finance regulations.

INTRODUCTION

There are many ways to make a difference in California. For many people, voting may be too solitary an activity—a ballot received in the mail, a consideration of the contests over a cup of coffee, and then a walk to the mailbox. Rather alienating! The political parties offer another way to become involved. Still, the scope of the contests, the wide breadth of the issues, the focus on helping to satisfy someone else's political ambition may not be your cup of tea, either.

There is a third way of becoming involved in politics. Think about a cause that you really care about. Maybe it is work-related, and you want to improve career opportunities in your field. Perhaps you care about civil rights, an environmental issue, or a charitable cause to help people

¹⁹ Image by [Meredith Nutting](#) is licensed under [CC BY-NC-ND 2.0](#)

struggling with particular health challenges. You may have been personally affected by a tragedy such as a school shooter or a drunk driver and want to dedicate yourself to reducing the probability of such a trauma affecting other people. Next, look for a group that is dedicated to the cause. There are often student chapters of various organizations on campus or in the local community. Interest group participation allows you to learn a great deal about a particular issue, network with other people who share similar interests, and work to accomplish specific goals that will make you feel proud of yourself.

You may wish to join a civic group that primarily focuses on helping community members, such as supporting women choosing STEM career fields. Maybe you arrange for mentors of students and peer tutoring. Political involvement might be limited to working with educational administrators to provide more support services for women. On the other hand, you may join a group with a particular public policy goal, for example, a statewide group seeking the governor's immediate recall. The focus is immediate, gather enough signatures and organize a successful campaign. This group is less about helping members and more about short-term results.

Regardless of the type of interest groups, they all seek to change public policy. Business and labor groups organize about fundamental economic issues such as taxation, regulation, working conditions, and pay. Citizen groups lobby about environmental, civil rights, gun rights, fighting crime, and social and religious concerns such as abortion. Occasionally, interest groups will trigger broader social movements that sweep across the state, demanding change, and upending politics as usual.

In this chapter, we will analyze how political scientists study interest groups and apply these methods to understanding California groups. How do groups organize, change public policy, and what are their effects on the political system? We will examine campaign finance reform as a case study to regulate interest groups.

How Groups Organize

In the business world, Americans love entrepreneurs. Create and market a new product, and you may become wildly successful while receiving social adulation in the process. In the political world, another kind of entrepreneur fuels progress. This is the political entrepreneur who creates an interest group to fight for a cause. Their genius lies in persuading and organizing people to work for policy change. Historically, think of the abolitionists, the suffragists, the Prohibitionists, and in the post-World War II era, the civil rights organizations, the environmentalists, and the conservative groups fighting for traditional values. Let's examine the ways that interest groups entrepreneurs attract members to their causes.

A political entrepreneur has a vision of a better future and perceives the opportunity and the means to take advantage of the opportunity to change public policy. Leaders use three incentives to attract new members. First, persuade prospective members of the legitimacy of the cause. Link the cause to other values that are important such as larger American ideals. Second, appeal to material interests. Perhaps the cause itself is material, a tax cut, a new

benefit, a college scholarship. Or maybe an interest group provides an incentive to join, even something relatively small such as store discounts, t-shirts, or coffee cups. Third, provide social opportunities, what political scientists call solidary incentives. People love to make new friends as they are working for a common cause.

Interest groups that provide a significant material benefit will have an easier time organizing people. In contrast, a citizen group whose members are working toward a more general benefit for the whole country, such as civil rights or environmental protection, must overcome the free-rider problem. It is all-too human to want to gain the benefit from the hard work of an interest group without contributing to the cause. Effective interest groups can overcome this issue by organizing strategies that mobilize people to join.

The cascade of social activism beginning in the 1960s, easier access to communication with the development of the Internet and social media, and savvy interest group entrepreneurship have been very helpful tools to organize a diversity of groups. [Project Vote Smart](#) maintains partial lists of California interest groups.

WHAT DO INTEREST GROUPS DO?

Interest groups seek to change public policy. There are two strategies to achieve this: direct and indirect lobbying. Interest groups directly lobby when they pressure government officials to make policy changes. They are indirectly lobbying when they seek to influence public opinion to be more sympathetic to their cause with the long-term goal of changing public policy. Of course, interest groups may have many other purposes. Many groups form to help their members with any number of issues. For example, a group may provide social and economic support for its members and interact with the political system only as necessary. Consider all the information, counseling, financial help, and social support people fighting cancer gain by joining the American Cancer Society. This group's political lobbying for more research and health care funding is only part of its mission.

Groups may directly lobby by meeting with legislators to sponsor or amend a bill. Legislators may ask interest groups to send members to testify at committee hearings to provide insight about a particular public policy challenge. Second, they may also meet with bureaucrats from executive department agencies who are drafting regulations. A third route is litigation. Many groups seek public policy goals through lawsuits that will force public policy changes.

By law, interest groups cannot give campaign contributions to candidates in exchange for votes. However, it is in the interest of groups to help candidates who are likely to further their agenda in the future. With sympathetic legislators in place, a group knows that it will be far more successful at lobbying. Thus, money doesn't buy votes, it buys access to lawmakers who are more willing to listen. Ultimately, however, an interest group will have more influence if it is popular with the legislator's constituents.

Interest groups engage in indirect lobbying when they seek to influence public opinion in their favor. Groups may enlist the help of celebrities to advertise causes, hold marches and demonstrations, and use social media to persuade and recruit more supporters. A sympathetic public is crucial to an effective presence in state or local government.

FOR YOUR CONSIDERATION

Think about an interest group that you have joined. Maybe you are a bit of a recluse, but perhaps someone you know is a member of a group. How has the group attracted members? Is it through the use of persuasive, material, and solidary incentives? Next, think about what the group does politically. Is it focused on changing policies or more on public outreach? In other words, how does it lobby? How do you find this group to be beneficial to the community or to the state?

INTEREST GROUPS IN CALIFORNIA

Any discussion of interest groups in California often begins with two stories: one about the power of the Southern Pacific Railroad in the 1870 to 1910 period, and the other about Artie Samish, an influential lobbyist who manipulated the legislature between the 1920s and early 1950s.

The Southern Pacific Railroad (SP) was the most powerful organized interest in California history between the 1870s and 1910. Originally started as the Central Pacific, the “Big Four” (Charles Crocker, Leland Stanford, Collis Huntington, and Mark Hopkins) constructed the western half of the first intercontinental railroad. They then built and controlled fourteen thousand miles of track in the western United States plus ferry boats, steamships, and other ventures. With land grants from the federal government, they owned about eleven million acres of land in California. Their monopoly power allowed them to control freight rates throughout California. Through bribery and manipulation, the SP controlled much of the politics of the state. After the infamous 1880 Mussel Slough incident in which farmers died protesting high land sale prices from the railroad, critics branded the Southern Pacific the “Octopus” for its stranglehold on commerce and politics throughout the state. California could not effectively regulate railroad routes until the Progressives came to power in 1910 (Howe).



Figure 7.2: The “Octopus”²⁰

As the economy grew and diversified in the twentieth century, the landscape of California interest groups became far more complex. Agriculture, mining, industry, real estate, transportation, entertainment, and many other groups exercised influence in Sacramento politics. Their lobbyists could legally give legislators unlimited gifts and campaign contributions without any required disclosure to the public.

The most infamous lobbyist of the first half of the twentieth century was Artie Samish. Raising money from his interest-group clients, he paid for politicians’ campaigns. He kept a secret book of everyone’s habits, legal and illegal, to help bargain in the backrooms of Sacramento bars. He was so powerful that in 1949 he boasted in *Collier* magazine, “I am the governor of the Legislature, to hell with the governor of California” In the same interview, he even pulled out a

²⁰ [Image](#) is in the public domain

ventriloquist's dummy, he called “Mr. Legislature.” Eventually, Samish ended up in jail for federal tax evasion (“Lobbyist’s Ego”).

The situation began to improve in the 1960s. Speaker of the State Assembly Jesse Unruh spearheaded constitutional reforms (Proposition 1A passed in 1966) that replaced the part-time state legislature with a full-time one. Legislators were paid better salaries with professional staff to attend to the business of lawmaking. A few years later, in the wake of the Watergate scandal, and promoted by then-Secretary of State and gubernatorial candidate Jerry Brown, voters passed Proposition 9, the Political Reform Act of 1974. Now all contributions and lobbying had to be reported to a new state agency, the Fair Political Practices Commission. Public disclosure reduced corruption and restored faith in the democratic process by creating accountability to the public.

The Range of Interest Groups in Sacramento

When considering the role of groups in politics, how should we count and categorize them? The most common approach is to use the [database of lobbyists](#) compiled by the California Secretary of State. This office publishes a directory of lobbyists, their employers, and all campaign contributions of \$100 or more. About four thousand lobbyists work in Sacramento, including in-house lobbyists who work for a particular interest and contract lobbyists representing many interests.

Let’s categorize interest groups according to who they represent. We can discern four types: business, labor, government, and citizen groups. A business interest group directly represents one business (such as a single utility or oil company), or it may represent hundreds of organizations such as the California Chamber of Commerce. It may also be an association of professionals, such as realtors or doctors. A labor group is typically a union. Its members are employees who contribute dues that pay for political activities. Government groups are groups that represent local governments. They seek to inform and persuade lawmakers about local preferences. Government groups cannot give campaign contributions. Finally, citizen groups are all the groups that represent a myriad of contemporary concerns such as social, environmental, or civil rights issues. In the last few decades, citizen groups have proliferated! Table 7.1 lists selected groups under each category.

Table 7.1: Types of Interest Groups

Types of Interest Groups	Examples
Business	1. California Chamber of Commerce 2. Chevron, USA 3. California Farm Bureau 4. California Medical Association
Labor	5. California Teachers Association 6. Service Employees International Union
Government	7. League of California Cities
Citizen	8. Mexican American Legal Defense Fund 9. Howard Jarvis Taxpayers Association 10. Right to Life League

Table 7.2 shows the expenditures of lobbyists in one legislative cycle.

Table 7.2: Lobbying Expenditures by Economic Sector

Lobbyists Categorized by Economic Sector	Expenditures in the 2019-2020 legislative session (millions)
1. Agriculture	10.1
2. Education	47.7
3. Entertainment	14.1
4. Finance	53.1
5. Government	116.3
6. Health	87.7
7. Labor Unions	24.0
8. Legal	13.0
9. Lodging/Restaurants	3.5
10. Manufacturing/Industrial	72.7
11. Merchandising/Retail	12.3
12. Miscellaneous	148.9 (self-designated)
13. Oil/Gas	38.5
14. Political Organization	.6
15. Professional Trade	29.9
16. Public Employee	8.9
17. Real Estate	16.8
18. Transportation	20.8
19. Utilities	55.5

(California Secretary of State)

Total spending for state legislative races, including individual, party, and interest groups expenditures in 2020, were \$103,508,616 for the State Assembly races and \$56,819,236 for the State Assembly. The top interest group contributors to state legislative races in this election are listed in Table 7.3.

Table 7.3: Top Ten Contributors to State Legislative Races in 2020

Top Ten Interest Group Contributors to State Legislative Candidates	Expenditures (in millions)
1. California Association of Realtors	4.5
2. California State Council of Laborers	4.0
3. Service Employees International Union California State council	3.9
4. State Building and Construction Trade Council	3.9
5. California Teachers Association	3.5
6. California Professional Fire Fighters Association	2.9
7. Pechanga Band of Luiseño Mission Indians	2.9
8. AT&T	2.8
9. California Dental Association	2.8
10. California State Association of Electrical Workers	2.8

("At a Glance")

Reviewing the data above about lobbying and campaign finance shows that lobbyists and campaign finance contributions represent a diverse group of organized interests: businesses, labor, government, and citizen groups. Many sectors of the economy are represented and there are many unions represented by their labor groups. However, it is clear that if a group of Californians does not organize into an interest group and lobby, their voice will not be as well-represented. Thus, the voices of poor people and other marginalized groups are not very well represented with interest group politics.

ARE INTEREST GROUPS GOOD FOR CALIFORNIA?

Central to political science is the question of the relationship between the parts and the whole. An analogy is helpful. Think of your family. Each of you has needs and wants, and then there is what is good for the family. Perhaps the two go together. The adage, "If mama ain't happy, then no one's happy," suggests one kind of harmony. But how often have you set aside your preference to help out someone else in your family? If a family shopping can only afford one carton of ice cream, which flavor is picked? A vote will leave some unhappy, a consensus may

not be found. Of course, a parent might snap, “this isn’t a democracy!” and grab the flavor that is the cheapest.

The same goes for a nation. In *The Federalist Papers*, Madison wrote about the challenge of reconciling the parts and the whole. Seeking to persuade the states to ratify the Constitution after the Philadelphia Convention of 1787, the parts that he worried about were not individual family members but factions, typically economic interest groups that seek government policies that benefit them and that may undermine the good of the whole. In *Federalist #10*, he wrote:

Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

Madison argued that establishing a larger country with more centralized control checks the “mischief of faction.” Such a diversity of interests and groups prevents any one faction from abusing its influence. For example, farmers in one part of the country check the merchants someplace else. The demands of the bankers balance those of their customers. Of course, the purpose of *Federalist #10* was to help persuade states to ratify the US Constitution.

Nonetheless, his theory of countervailing power is an original American contribution to understanding interest groups in a democracy: factions are likely to be selfish, in a free society this selfishness cannot be simply abolished, and instead the selfishness of one group can and should be checked by that of other groups.

Madison believed that groups are fundamentally good; in a free society, people should be able to organize and seek public policies that will improve themselves. Madison was a realist. He knew that these factions, as he called groups, could well bias public policy in ways that might hurt other groups or the country in general. He hoped that the diversity of groups in a large country would limit the “mischief of faction.” Madison also relied on the institutional devices of having three branches of government that could check and balance each other as an additional way to address the problem of faction.

Fast forward to the twentieth century. Social scientists debate the very same issue: is democracy captured by special interests? Cynics say yes. After all, you don’t have to be a Marxist to see government as representing the interests of the wealthy. In 1956, the sociologist C. Wright Mills argued in *The Power Elite* that a mix of very rich people, celebrities, big corporations, the military, politicians, and bureaucrats ruled the country. These groups are not representative of most Americans, and they do not necessarily have the interests of most Americans in mind as they run America. Special interests steal American democracy from the people.

Political scientists responded to Mills by researching the relative influence of different interests. In *Who Governs* (1961), Robert Dahl argued that his investigation of city politics in New Haven, Connecticut, shows that interest groups are not biased toward the wealthy. Many groups interact with one another, and public policy is a result of this bargaining. This argument becomes known as the theory of pluralism. So, the debate between elitists and pluralists continues, with elitists arguing that interest groups are more likely to represent wealthier people and pluralists claiming that groups are essentially a democratic device for everyone to organize.

One way to address this question is to institute rules that promote pluralism and discourage elitism. Pass regulations that channel interest groups toward the kind of politics that we prefer. In other words, just as Madison recommended “curing the mischief of faction” through federal design, Californians should likewise regulate interest groups to promote pluralism. The area that receives the most attention in this regard is campaign finance law.

REGULATING INTEREST GROUPS: THE ROLE OF CAMPAIGN FINANCE LAW

The role of money in politics remains a controversial subject. On the one hand, one fundamental value, protected by the First Amendment, is liberty. Voters, parties, and interest groups want to exercise their voice as part of the democratic process. But on the other hand, we also care about equality. If politics is flooded with money, won’t those with money come to dominate everyone else? So, our concern for equality then leads us to want to impose rules on campaign spending, which of course, may interfere with our love of liberty. Hence, we have a dilemma.

California has made multiple efforts to regulate campaign finance by limiting contributions and requiring disclosure. The first significant law was Proposition 9, the Political Reform Act of 1974. First, the law limited lobbyists’ gifts to lawmakers to \$10.00 a month. Second, the law mandated the public disclosure of all campaign contributions of \$100.00 or more. This data is now readily available on the Secretary of State’s website. Third, Proposition 9 also limited expenditures by candidates. However, the US Supreme Court, in the case of *Buckley v. Valeo* (1976), ruled that candidate spending is a type of free speech and therefore must not be limited. Although several propositions in the next few decades attempted to limit campaign contributions, they foundered in court. It was not until 2000 that Proposition 34 limited contributions, a regulation that has withstood US Supreme Court scrutiny. These limits are adjusted for inflation regularly.

Table 7.4: Campaign Contribution limits for 2021-2022

Candidate or Officeholder	Source of contribution: Person (individual, business, political action committee)	Source of contribution: small contributor committee (donations less than \$200)	Source of contribution: political party
State Assembly/ State Senate/ City and county candidates that have not enacted limits	\$4900	4900	No limit
Statewide Candidates	8100	9700	No limit
Governor	32400	32400	No limit
Political Party account for state candidates	40500	40500	40500

(CA Secretary of State, California Fair Practices Commission)

After *Buckley v. Valeo*, the next significant US Supreme Court case to impact California elections was *Citizens United v. Federal Election Commission* (2010). The Court ruled that the First Amendment also protected independent expenditures. This means that the government must not limit spending that is not coordinated with candidates. Contributions may be limited but not the advertisements or any other expenditures of parties, groups, or individuals expressing their opinions about a race. Groups that engage in independent expenditures are often called SuperPACs. In 2020, about 19% of over one billion dollars of spending for statewide campaigns fell under this category of independent spending.

It is also important to note that campaign contributions and expenditures for ballot measures have no limits. For example, in 2020, about \$775,000,000 was spent fighting for and against various propositions with Proposition 22, allowing Uber and Lyft drivers to remain as contracted drivers, exacting over 222,000,000 in costs for both sides. In contrast, all of the state legislative races combined cost \$165,000,000. California's direct democracy has become the Wild West when it comes to campaign spending ("At a Glance").

Reviewing the history of campaign finance reform, California has been more successful in implementing regulations requiring disclosure rather than limiting money in politics. In part, this is due to the US Supreme Court rulings to protect free speech rights. California voters have also rejected ballot measures to institute public financing of campaigns, probably because they don't want their hard-earned tax money going to politicians. Campaign finance law remains unsettled.

For example, California attempted to require nonprofits to disclose donations used for political purposes. The US Supreme Court ruled that this law was unconstitutional because it violated the First Amendment (*Americans for Prosperity v. Bonta*, 2021).

SUMMARY

Interest groups provide a key linkage institution for the people to influence the government. Traditionally, economic groups have biased representation toward elites, but there are ample opportunities for citizens to become involved and represent many different concerns. Since the 1970s, campaign finance reform has helped limit elitism and promote more pluralism in Sacramento.

FOR FURTHER INQUIRY

Choose a California political race of interest to you. Go to followthemoney.org and research the record of campaign contributions. Do you believe that more limits or disclosures are necessary?

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CHAPTER EIGHT: THE LEGISLATURE



Figure 8.1: The California Capitol²¹

CHAPTER OBJECTIVES

1. To analyze the California legislature considering the formal, substantive, and descriptive dimensions of representation.
2. To describe recent efforts to improve representation through electoral reform.

INTRODUCTION

“THE great end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power.... (Chapter 11. Of the Extent of Legislative Power, John Locke).”

Recall John Locke’s social contract theory. All people are fundamentally free and equal to lead their own lives and make their own decisions. Without government, the lack of law, judges, and law enforcement quickly make the state of nature into a state of war. Thus, to safeguard our property, we leave the state of nature and form a political community through a social contract. We create a Constitution that establishes a government whose legitimacy to make and enforce laws is dependent upon the consent of the governed. We consent by first ratifying the Constitution and then through the regular elections of representatives who are dependent on the people to maintain their rule. Thus, the legislature is the central device of modern

²¹ [Image](#) is in the public domain

democratic theory to resolve the difficult question of how the government may legitimately exercise power.

Our focus in this chapter is on the California State Assembly and Senate, our bicameral California legislature. Historically, Californians have been skeptical of the ability of the legislature to fulfill its Lockean role. We often prefer to directly make the law rather than elect representatives. The Constitutional Convention of 1878-79 convened to circumvent the existing state legislature and pass legislation to limit the railroad monopolies. The 1911 Progressive Reforms deepened this process through direct democracy. In the last few decades, public opinion polls of Californians show this skepticism about the California legislature, with approval of how the legislature is doing its job varying from the low teens to about fifty percent (“Californians and their Government”). In contrast, about seventy percent of Californians support the initiative process (“Reforming California’s Initiative Process”).

Despite the state’s fondness for direct democracy, the vast majority of policies that impact our daily lives—regarding education, health care, social spending, food, water, power, transportation, and on and on—are the consequences of traditional legislative actions in Sacramento. We expect the politicians to represent us: to look after our welfare, to echo our demands, and to lead the state. This chapter focuses on the different ways that the state legislature represents us and how representation may be improved through reforms.

THE LEGISLATURE AS A REPRESENTATIVE INSTITUTION

The concept of representation is multidimensional. In the most direct sense, the legislature acts in place of the people to fulfill the constitutional goals of self-government. Much work in the field of political science has sought to study representation both philosophically and empirically. Perhaps the most well-known philosophical work is Hannah Pitkin’s *The Concept of Representation* (1967). Pitkin considers four kinds of representation: formal, substantive, descriptive, and symbolic. The first three are particularly helpful to study the state legislature. First, we should understand the rules and practices governing the formal representation of the state by the legislature. Second, the legislature engages in substantive representation, which includes lawmaking, oversight of government, and constituency service. Third, legislators descriptively reflect the demographic qualities of their districts, defined according to any number of categories such as race, ethnicity, and gender.

Formal Representation

Formal representation refers to the rules and practices governing the selection of legislators. According to Pitkin’s framework, formal representation is successful when, first, representatives have gained their seats through a process of elections that is considered legitimate by most voters, and second, when voters can hold representatives accountable for their actions by being able to remove them from office in the next election (“Political Representation”). Figure 8.2 provides a snapshot of the California State Legislature.

Table 8.1: The Organization of the Legislature

Chamber	State Assembly	State Senate
Number of Members	80	40
Length of Term	2	4
Term Limits	12 (total years in both chambers)	12 (total years in both chambers)

Our state legislature has always been bicameral. A bicameral Congress has an upper house and a lower house. Historically, bicameral legislatures developed in Europe, with the upper house representing the nobility and the lower house representing the common people. For example, the United Kingdom’s Parliament is composed of the House of Lords and the House of Commons. The American colonies also developed a bicameral structure over time, with upper houses including representatives of the English government and lower houses representing free men. Upon independence in 1776, states developed legislatures following this colonial legacy except upper houses represented geographic areas instead of the nobility. New states followed this bicameral division. In California, up until 1967, forty state senators represented California geographically by county, with no senator representing less than one county or more than three. In *Reynolds v. Sims* (1964), the US Supreme Court ruled that this apportionment of Senate seats was unconstitutional because it gave disproportionate influence to rural over urban areas by violating the “one man, one vote” principle. Districts should, as closely as possible, have the same number of people. Ever since *Reynolds*, the forty state Senate districts are redrawn after every census along with the districts for the eighty members of the State Assembly.

One might argue that if both the California State Assembly and the State Senate are organized by population, what is the point of having a bicameral system? For example, in 1937, Nebraska voters were persuaded that bicameralism was wasteful and redundant and approved a unicameral system (Myers). On the other hand, perhaps redundancy leads to better deliberation. Although Nebraska’s unicameral experiment received some attention after the *Reynolds* decision, the other forty-nine states ultimately opted to maintain tradition over innovation.

As the lower house, the State Assembly is intended to respond to the people more closely by having two-year terms, whereas state senators have four-year terms with staggered elections such that only half are up for election every two years. Currently, state legislators are limited to twelve years of service in either or both houses combined. This term limit law was passed by Proposition 28 in 2012.

Substantive Representation

Substantive representation refers to advocating for the interests of the people. Our focus is on the heart of the legislator’s job: lawmaking, oversight, and constituency service. As representatives, the legislators are acting in place of the people to fulfill their needs and wants. They are both delegates, mirroring the demands of the people, and trustees, doing what they

think is best for their constituents. Legislators, ever mindful of the next election, will act as delegates when the people have strong opinions. Much of the time, however, voters have not expressed a clear preference regarding a proposed law and expect their representatives to make informed decisions as their trustees.

The legislative process is relatively straightforward. Both chambers approve a bill and then the governor signs it to become a law. A state senator or assembly member authors a bill, but the actual legal drafting of the bill is done by the Office of the Legislative Counsel. This office is a nonpartisan agency established in 1913 to provide many professional services including drafting bills, providing legal opinions to the legislature and the governor, and compiling records of all bills and statutes passed each session.

After the Legislative Counsel drafts the bill, the author then submits it to the full Senate or Assembly where it is formally presented; this is called the First Reading (the bill number, the title of the bill, and author are announced). The bill is then printed and sent to the Rules Committee, which assigns it to a policy committee and a fiscal committee if it involves spending. No action can be taken for thirty days after it is introduced in committee. If a majority of the committee votes for the bill, then it goes to the full Senate or Assembly for a second reading. After debating by the full body, a third reading is made before a roll call vote where a simple majority is required to pass most bills. The bill must then go through the same procedure in the other chamber. A conference committee reconciles differences between Assembly and Senate versions of the bill and then the bill goes to the governor for approval. A two-thirds majority of both chambers is necessary to override a veto. Legislative overrides are extremely rare. Figure 8.2 shows the process.



Figure 8.2: How a Bill Becomes Law²²

While committees organize the formal processes of deliberating and voting on bills, political party leaders set the chambers' priorities. The party that has the majority of members in each chamber elects leaders who control the process of legislation. Each partisan leader selects the chairs of the important committees and decides through the Rules Committee when bills will be heard by committees and on the floor of each chamber. The leader of the majority party caucus is the Speaker of the Assembly. In the State Senate, the President pro Tempore is elected by the majority caucus to lead this chamber because the President of the State Senate is a separately elected person, the Lieutenant Governor. The Lieutenant Governor holds no legislative power in the chamber except to break a tie vote.

²² Image (based on [source](#)) by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

In addition to lawmaking, committees engage in oversight or reviewing the actions of executive branch agencies as they implement laws. Committees will hear from many stakeholders (those involved in a particular issue area such as interest group leaders, bureaucrats, and constituents) to consider further actions and hold bureaucrats accountable to implement the law.

Table 8.2: Standing Committees in the California State Legislature

State Senate	State Assembly
<ul style="list-style-type: none"> • Agriculture • Appropriations • Banking and Financial Institutions • Budget and Fiscal Review • Business, Professions and Economic Development • Education • Elections and Constitutional Amendments • Energy, Utilities, and Communications • Environmental Quality • Government and Finance • Government Organization • Health • Human Services • Insurance • Judiciary • Labor and Industrial Relations • Natural Resources and Water • Public Employment and Retirement • Public Safety • Rules • Transportation and Housing • Veterans Affairs 	<ul style="list-style-type: none"> • Accountability and Administrative Review • Aging and Long Term Care • Agriculture • Appropriations • Arts, Entertainment, Sports, Tourism And Internet Media • Banking and Finance • Budget • Business and Professions • Communications and Conveyance • Education • Election and Redistricting • Environmental Safety and Toxic Materials • Government Organization • Health • Higher Education • Housing and Community Development • Human Services • Insurance • Jobs, Economic Development, and the Economy • Labor and Employment • Local Government • Natural Resources • Privacy and Consumer Protection • Public employees, Retirement and Social Security • Public Safety • Revenue and Taxation • Rules • Transportation • Utilities and Commerce • Veterans Affairs • Water, Parks, and Wildlife

(Source: https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/Joint_Handbook_2019-20_ADA.pdf)

Lastly, the third substantive role of legislators is to serve as liaisons or ombudspersons between their constituents and government. Citizens may be seeking services from government agencies (for example, health care, educational services, care for the elderly or disabled, etc.) and finding it challenging to navigate the complexities of so many offices and communication in the age of emails and online forms. The Sacramento or local staff of a legislator resolves problems to provide needed services.

Descriptive Representation

Do the state legislators need to look like the people that they represent? Two arguments answer this question in the affirmative. First, representatives need to understand the needs of their constituents. Using the premise that personal identity informs our understanding, a diverse legislature will better understand the needs of a diverse California. Second, the legislature will have greater legitimacy because diversity is a signal that many people from diverse backgrounds are able to run and win.

On the other hand, a certain degree of skepticism regarding descriptive representation is warranted for a few reasons. First, a simple comparison of demographic ratios of different groups in the legislature to that of the population of California may be misleading. Immigration patterns are changing rapidly, and there is bound to be a gap between a comparatively younger California population compared to an older set of legislators who are likely to reflect the immigration patterns of a generation or more ago. Second, defined demographic categories, such as race or ethnicity, may be problematic because they may group people together in such a way as to obscure diversity.

Regardless of these philosophical issues, most would agree that one sign of a healthy legislature is diversity, with the caveat that this diversity should be considered in complex rather than simply stereotypical ways. The data in the figures below show that the legislature reflects the diversity of California, although whites are somewhat overrepresented, and Latinos are underrepresented. Women remain underrepresented.

Table 8.3: Selected Demographic Characteristics of Californians and the California Legislature

People	Percentage of CA Population (2019 estimates)	Percentage of CA Legislature (2020)
Female	50.3	38
African American	6.5	8
Asian	15.5	12
Hispanic	39.4	23
White	36.5	55

(Sources: <https://www.census.gov/quickfacts/CA> and the [California Research Bureau](#))

FOR YOUR CONSIDERATION

To what extent do our identities help shape our understandings? If we don't share the same characteristics of the people that we are representing, is it more difficult to represent them well? Think of an example in your own life when you have tried to understand someone who is very different from you. How have you tried to close this gap to develop better empathy?

CONTEMPORARY CHALLENGES

Sometimes it is helpful to return to the fundamentals of any human action and ask two simple questions: *what* should be done and *how* should it be accomplished? John Locke provides clear prescriptions to address both questions. The “what” is answered by the Lockean-based assertion that the legislature should pass the laws necessary for California to successfully address its policy challenges. The “how” is answered by Lockean prescriptions that the legislature, with regards to its elections, its organization, and its processes, conducts itself in ways that are considered to be legitimate in the eyes of the California people. In recent years, there has been a great deal of progress in reforming the “how”—the democratic processes of the legislature—with the hope that these reforms will then allow the “what”—the policy challenges that we face—to be better addressed.

Since the 1990s, the California legislature, like the US Congress and many other state legislatures, suffer under the growing strain of political polarization. The ever-increasing ideological distance between the parties prevents the government from passing meaningful legislation to address the problems that we face.

There are different arguments about the causes of this polarization. One view is that polarization is caused by a variety of institutional rules and practices that push people apart from one another and that we just need to reform these rules and then we will have an easier working together. Another argument is that the rules aren't dividing us; it is about differences in values, lifestyles, and economics. In other words, we have a hard time working together because we are so diverse.

Consider just three institutional reforms that have been implemented since 2008 to address polarization. Gerrymandering has been blamed for creating districts that are more ideologically extreme. It was argued that it was in the interest of lawmakers to clump voters together who would support them and to assent to other lawmakers doing the same with their voters. So, Proposition 11 in 2008 removed this role from lawmakers and gave it to a Citizens Redistricting Commission who would endeavor to put communities of interest together in districts in a way that would not engage in partisan bias. The result has been a very modest increase in the competitiveness (won by less than ten percentage points) of elections from about five percent of CA state legislative races to about fifteen percent (McGhee).

Next, partisan primaries were blamed for pushing representatives to the ideological extremes as they first competed for voters on only one side of the spectrum before facing a more moderate electorate in November. This resulted in a runoff between two candidates who were more ideologically extreme than the average voter in their district. The antidote was Proposition 14, passed in 2010, which implemented the top-two primary system. Now party registration (except for the US Presidency) does not limit voter choice. The top two candidates go on to a runoff in the general election. It is in their interest to moderate their positions right from the beginning to attract the most number of voters. Once elected, representatives needn't worry as much about partisan attacks with the consequences that legislative voting would head more toward the center. The few academic studies that have been done about this show this effect (Miller).

A third reform reduced the two-thirds majority required to pass a budget in the California legislature to just a simple majority. Sponsored by the public employee unions, Proposition 25 in 2010 ended the ability of a partisan minority to exercise such leverage over the majority. The result is that California budgets have been passed on time ("Rewriting the Rules"). The two-thirds majority is still present for any tax increase (as mandated by Proposition 13, passed in 1978). The net result of these and other political reforms is to help the legislature overcome partisan polarization and avoid gridlock.

The alternative argument is that polarization is caused by a deadlock between firmly held viewpoints held by roughly equal-sized partisan groups in the state. Tinkering with electoral rules will not resolve the problem, instead polarization will ease when one party surpasses the other in popularity. Hence, in this view, during the last ten years, the state overcame party polarization because the Democratic Party became far more popular than the Republican Party. This is confirmed by statistics from the California Secretary of State in October 2020, showing that 46% of California voters registered as Democrats with only 24% registering as Republicans ("Report of Registration"). Since 2020, Republicans have lost ten percent of the electorate. The only counties that have a majority of Republicans are rural. Republicans have failed to make significant inroads in the state's ideologically moderate and liberal demographically diverse urban areas.

Even if gridlock has diminished from changes in partisanship, political reforms such as the top-two primary system, the Citizens Redistricting Commission, rule changes in the legislature, and earlier reforms such as term limits and campaign finance do enhance the legitimacy of the

institutions of government. If Californians believe that democratic processes are fair, the institutions themselves will be rated more favorably, and they will have a greater capacity to address necessary policy reforms. According to the October 2020 poll of Californians by the Public Policy Institute of California (PPIC), just 51% of respondents believe that the California legislature is doing a good job.

In short, efforts to reform the legislature are important in themselves. The legitimacy of elections, the organization of the legislature, and its processes matter to the electorate. However, performance also matters. As a state, California is confronted by many long-term challenges, many of which directly affect millions of Californians' health, welfare, and general well-being. Unless the legislature addresses these problems, *political* reform will simply not be enough to fulfill Lockean promises; *policy* reform is also required.

SUMMARY

The very heart of a representative democracy lies with the state legislature. We scrutinize formal, substantive, and descriptive representation to analyze the structure and processes of the State Assembly and State Senate. We evaluate current reform efforts to understand ways that the California legislature can better live up to our Lockean ideals.

FOR FURTHER INQUIRY

Investigate Sacramento politics. One of the best sources is [Calmatters.org](https://calmatters.org). [Rough and tumble.com](https://roughandtumble.com) has links to many statewide newspaper stories (you may need to use the college library subscriptions services to access articles because many are behind a paywall). [Capitol Weekly](https://capitolweekly.com) is excellent as well. What is on the agenda in the Capitol? What opinions do you have about the stories that you are finding? Are these issues widely reported in the regular media that you use?

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CHAPTER NINE: THE EXECUTIVE BRANCH



Figure 9.1: The Seal of the Governor of the State of California²³

CHAPTER OBJECTIVES

1. To describe the executive branch.
2. To analyze the roles of the governor and describe the formal and informal powers that the governor uses to fulfill these roles.
3. To use case studies of Governors Pat Brown and Jerry Brown to illustrate the roles of the governor.

INTRODUCTION

Americans have always had their misgivings about executive power. At the national level, we hold the President responsible for the state of the nation. Bad economic news, international calamities, or domestic difficulties will lead to swift rejection at the next election, and the President's party is likely to suffer as well. At the same time, with our system of checks and balances, this country gives the President relatively little power. The President must rely on his powers of persuasion to rise about the constitutional constraints of his office.

²³ [Image](#) is in the public domain

This paradox of executive power—of expecting so much from the officeholder but giving relatively little power to the office—is exacerbated at the state level because the executive branch is a plural office in California. A plural executive means that the heads of multiple executive departments are independently elected by the people rather than appointed by the governor. The rationale is the same: whether at the 1787 Philadelphia Convention or at the 1849 California Constitutional Convention in Monterey (and also in other states), the delegates feared the potential of executive tyranny. Nonetheless, just as with the president, voters hold the governor responsible for the “state of the state,” regardless of the fact that powers are shared among the executive officials, the legislature, and judicial branches.

In this chapter, we will examine the structure of the executive branch and then focus on the governor’s roles and the formal and informal powers used to fulfill these roles successfully. We will hypothesize about how a governor may be successful based on a consideration of these roles. Case studies of two governors, Pat Brown, and his son Jerry Brown, will help bring these roles to life.

THE EXECUTIVE BRANCH

The responsibility of the executive branch is to implement the law. Instead of just one person elected as the Chief Executive, California elects nine: the governor, the lieutenant governor, and the heads of seven other departments. In addition to the governor and the lieutenant governor, the elected executives include the Attorney General, the Board of Equalization, the Insurance Commissioner, the Secretary of State, the State Controller, the State Treasurer, and the Superintendent of Public Instruction.

Like all other California elections (except for US President), these officials attain their positions through the “top-two” primary system. The top two candidates from the primary election, regardless of party, are in a runoff election in the general election. Officeholders are limited to two terms as established by Proposition 130 (1990). Table 9.1 describes the role of each of the offices of California’s plural executive. Each executive leads offices staffed with mostly civil servants working in many bureaucratic agencies that implement government programs. This [organizational chart](#) from the Governor’s office is also helpful to survey.

Table 9.1: The Plural Executive

Office	Role
Governor	Head of Government
Lieutenant Governor	Substitute for Governor and President of the State Senate
State Superintendent of Public Instruction	Oversees California K-12 school districts
Insurance Commissioner	Regulates insurance rates and services
Secretary of State	Oversees elections, manages legal and business records
Attorney General	Chief Law enforcement officer
State Controller	Manages tax collections and write checks for the state
State Treasurer	Invests state funds
Board of Equalization	Ensures uniform taxation of property (four members from four districts and the state controller is the fifth officeholder)

(Source: <https://www.gov.ca.gov/wp-content/uploads/2020/06/Exec-Branch-Org-Chart-6.1.20.pdf>)

THE ROLES OF THE GOVERNOR

In theory, the plural executive diminishes the governor's power because the other offices are accountable to the people rather than dependent on the governor for their appointments. In practice, the agenda-setting role of the executive remains almost entirely with the governor. Another executive office holder will rarely step out from the governor's shadow.

As with the U.S. President, the governor campaigns for office on a platform of promises. The governor is the de facto political head of their state party. When the governor's party holds the majorities in the State Assembly and State Senate, the governor exercises a great deal of sway over legislation. Lawmakers will introduce and prioritize the governor's agenda. If the legislature is recalcitrant, governors may use the initiative and referendum mechanisms of direct democracy to change policy, organizing petition drives and advertising campaigns for various economic and social causes.

The Governor's most powerful tool to set the agenda is the state budget. The budget details all the revenues and expenditures of the government, revealing the priorities of state government, and by inference, of the California people (or at least the party coalition that supports the governor) as well. The governor organizes his fiscal priorities for each government agency as a single budgetary document compiled by the Department of Finance. The governor submits the proposed budget to the state legislature by January 10, who must approve it by June 15 in time for the beginning of the fiscal year, which starts July 1.

Revenue sources are many. The state of California is most dependent on income and sales taxes. Consequently, in a recession, receipts abruptly fall, causing a great deal of difficulty. Governor Brown enlarged the rainy-day fund to \$20 billion to address sudden downturns in income. On the expenditure side, the largest expenditure is for education. California voters passed Proposition 98 in 1988, which established minimum funding levels for K-14 education, including that it must receive approximately 40% of general fund revenues. For complete data regarding the budget, visit the Department of Finance [website](#).

The governor's proposed budget is reviewed and debated in legislative budget subcommittees by issue areas and revised and amended according to legislative preferences. These committees hold hearings at which testimony from citizen groups, agency leaders, the Department of Finance, and the Legislative Analyst's Office helps provide information and judgment for lawmakers. However, the governor has an integral role in this process, partially because the governor has the line-item veto power. The line-item veto allows for specific appropriations to be changed or eliminated by the governor, so it behooves legislators to work with the governor rather than at cross purposes. The governor only has the line-item veto power regarding the budget and appropriations bills, not with other bills where he can only veto or approve the entire bill (Micheli 219-27).

Up until 2011, a two-thirds majority of each legislative chamber was necessary to pass the budget. A dedicated minority of lawmakers (such as fiscal conservatives in the Republican Party) might stop the budget process in this situation. Budget impasses sometimes even shut down the government. In 2010, voters passed Proposition 25, which shifted the percentage needed to pass a budget to a simple majority. Tax increases still require a two-thirds majority. As Republican seats diminish in number, the Democrats can reach this two-thirds majority more easily.

THE GOVERNOR AS POLITICAL LEADER

The institutional characterization of the executive branch provides us with the basic facts. However, let's delve into two case studies to explore how a governor exercises leadership. These case studies illustrate leadership theory and provide insight into California history.

Studies of leadership often break executive actions into different roles. First, the governor is the chief executive, administering laws. Second, he is the chief legislator, spearheading a political agenda through the legislature. Third, he is the chief of state, the symbolic leader representing all of California. The study of roles is a helpful organizing principle for describing leadership, but to understand successful leadership, we need an explanation of the relative effectiveness of the governor. Drawing on the classic work of Richard Neustadt, who argued that presidential power is the power to persuade, we can explain gubernatorial effectiveness in the same way. Governors, just like presidents, have very little command power. Instead, they must seek to persuade other stakeholders—parties, the public, the media, legislators—about the validity of their ideas. Let us examine two governors, father and son, whose influence on California is

important in itself to consider, but who also illustrate the argument that executive power in America is the power to persuade.

Diving into these case studies will help us better understand the frenetic pace of California history in the post-World War II era. The dramatic growth of California as a leader economically, technologically, and culturally is best represented by Governor Edmund “Pat” Brown, who held the office from 1959 to 1967. Second, his son, Edmund Gerald (“Jerry”) Brown, had a very different leadership style, serving as governor twice, from 1975 to 1983 and then again from 2011 to 2019. In both eras, these governors confronted challenges to the state in ways that left lasting legacies.

FOR YOUR CONSIDERATION

Take a moment and think about the nature of leadership. What are the qualities of leadership that you find most effective? Do you believe that these qualities should also be present in political leaders?

GOVERNOR PAT BROWN



Figure 9.2: Governor Edmund “Pat” Brown²⁴

Leadership requires vision. Whether in politics or any other area of life, a leader should have a clear purpose. Why am I here? What are my goals, what is the theme that I wish to promote during my tenure? Governor Edmund Brown, Sr. served two terms as California’s governor, from 1959 to 1967. He acquired the nickname of “Pat” Brown as a twelve-year-old, selling Liberty War bonds on the streets of San Francisco. Brown would finish his speeches with Patrick Henry’s famous revolutionary cry, “Give me Liberty or Give me Death!” From then on, he was known as “Pat,” and he carried this youthful patriotic energy all the way into the governor’s office (Rarick 13). Driven by the Democratic party philosophy of the New Deal, Governor Brown sought to fashion public policies to help California residents live happier, more productive lives and to

²⁴ [Image](#) is in the public domain

persuade Californians to spend more for public purposes to benefit the common good. His efforts were rooted in the optimism and wealth of the post-World War II era, and his successes were a product of his ability to join his persuasive skills to the liberal sentiment of the times.

Second, a leader must have a practical strategy to achieve his goals. The strategy involves persuading the different parts of government in California—the people, the legislature, the bureaucracies, etc.,—to work together. Pat Brown’s approach was very old-fashioned, the ability to be the ever-present politico, ebullient, extroverted, the organizer, reaching out at the retail level to build relationships and patronage. His was not the slick-media candidacy that would become more common by the 1970s; he was the hand-shaker, the listener, the bargainer, the politician who sought to gather support in the pursuit of the vision that he saw for California. In short, Pat Brown was a pragmatist, seeking practical political solutions to the social problems facing a rapidly growing state.

Third, a leader’s character—worldview, values, and style—is revealed through their goals and strategies. What ultimately matters to the governor as a person? Governor Brown had a very strong sense of public obligation, that it was his duty to harness his strong work ethic to help the state of California in the best way that he knew how: through politics. An exploration of his political life as governor shows each of these leadership qualities.

Pat Brown grew up as one of four children of Ida and Edmund Brown in San Francisco. His father owned a cigar store and engaged in many other business enterprises. Pat learned to hustle odd jobs as a child, selling newspapers and sodas. He went to Lowell High School, the best public high school in San Francisco, where he showed leadership talent. He was the president of student clubs, student government secretary, and a yell leader. After high school, he went to work at his father’s cigar store, running his own card games, and for leisure, visiting Yosemite National Park with friends. Brown wanted to go to college, but his father had fallen on hard times, so he decided to go directly to law school at night and work during the day for a local attorney. By the late 1920s, he had become an attorney himself.

He turned toward civic involvement as a member of the Elks and the Chamber of Commerce. While his first foray into politics was a losing bid for state assembly at the age of 23, he started a clean-government reformist political organization in San Francisco known as the “New Order of Cincinnatus.” The organization gained many promising honest politicians as members. Brown became more well-known. Historically, most Californians were Republicans, as was most of the country outside of the South. Brown, however, drawn to New Deal liberalism, decided to switch parties, and become a Democrat in 1935 (Rarick, Ch. 4).

As his law practice grew, Brown became active as a fundraiser for the Democratic state party and began running again for local office. In 1943, he was elected San Francisco District Attorney. By 1950, he was elected to his first statewide office, attorney general. Politically, he was a moderate, supporting the pragmatic Harry Truman over the left-wing candidacy of Henry Wallace. As attorney general, he supported liberal civil rights causes such as protecting the

rights of Native Americans and liberal civil liberties positions such as banning religious instruction in public schools.

When Republican Governor Earl Warren decided not to run for reelection in 1958, it was a perfect opportunity for Pat Brown to run for this seat. Brown ran on a platform of government activism promising more consumer protections, economic development, protection of civil rights, and spending for roads, schools, and water projects. He ran against the incumbent senator from California, William Knowland, who conducted a lackluster campaign focusing more on fighting Chinese communism than about addressing the problems of a rapidly growing state. Brown also benefited from the support of labor with whom he shared opposition to an anti-union “right to work” proposition that was also on the 1958 ballot (which was defeated). Pat Brown won easily, taking all but four of California’s fifty-eight counties and a plurality of over one million votes. Moreover, it was a landslide for Democrats who took control of the state legislature and almost all the elected executive positions (Rarick, Ch. 5).

In his inaugural address of January 5, 1959, Governor Brown set out his platform of “responsible liberalism” (California State Library). California’s government must do more. It needed to provide the public services to match the need and the growth of the state: new elementary and high schools, colleges and universities, roads and highways, more water projects, deeper commitments to civil rights and to workers, and on and on. With strong support from Democratic majorities in the state legislature, the Governor asked and received increases in revenues—income tax, capital gains tax, tobacco taxes, among others—to pay for his ambitious agenda.

In his first term of office, the Governor’s most notable accomplishments were in four areas. First, in the area of civil rights, a strengthened Fair Employment Practices Commission to investigate and adjudicate job discrimination claims, was established. Second, the Governor shepherded the Master Plan for Higher Education through the legislature which separated the missions of the University of California, the state university system, and the community colleges. He promoted legislation to fund more campuses for each level. Third, the Governor planned the California State Water Project to create the California Aqueduct. This project dammed the Feather River, bringing its water over the Tehachapi mountains to southern California. Then the governor successfully campaigned on behalf of the multimillion-dollar bond proposition to fund the project. Fourth, funded by the gas tax, the state embarked on massive highway and freeway building projects across the state to accommodate a California population that by 1963 would exceed that of any other state.

Brown, in his first year, signed more than one thousand bills. Among the bills, disabled people received more health care and financial help. Unemployment insurance was expanded. Air pollution curbs were instigated. State workers received pay raises. Such historically Republican papers as the *Los Angeles Times* praised the Governor for his stewardship of a well-thought-out program (Rarick, Ch. 10).

What explains these successes? Indeed, a new governor may enjoy a honeymoon period at the beginning of his term, but far more was at play here. Governor Brown was riding a wave of partisan energy to address the needs of the state with very little opposition from more conservative forces. The enthusiastic boosterism of his projects caught the liberal imagination of Californians. A similar wave would sweep the whole country in 1960 with the election of Kennedy and the inauguration of more vigorous national Democratic activism. Brown succeeded because he took advantage of a relatively rare opportunity to make significant policy changes.

In his first term, the one episode that caused his popularity to plummet was the Caryl Chessman death penalty case. Governor Pat Brown was torn about whether to grant a stay of execution in February 1960 for Chessman who had been convicted of multiple counts of rape, kidnapping, and robbery. In the early 1960s, the abduction connected with the other crimes made him subject to the death penalty. Chessman had spent many years representing himself, proclaiming his innocence, and gaining the sympathy of Hollywood stars such as Marlon Brando to publicize his plea for clemency.

With his past as a district attorney and attorney general, the Governor was sympathetic to supporting the criminal courts' judgment of death. However, his Catholicism and his son Jerry Brown's personal entreaties on Chessman's behalf caused him to ask the legislature for a moratorium on the death penalty. They rejected his request, the State Supreme Court rejected clemency for Chessman, and ultimately Chessman was executed. Brown's waffling made both opponents and proponents of capital punishment dislike his dithering about the issue (Pawel 113). This would not be the first time where he would find it hard to respond to contradictory advice.

In 1962, the Governor prevailed in his reelection campaign against former Vice-President Richard Nixon. In his second term, Brown's most notable accomplishment was helping to pass the Rumford Fair Housing Act of 1963. This act banned housing discrimination based on ethnicity, race, sex, marital status, physical handicap, or familial status in public and private housing of five units or more. Governor Brown was part of a coalition of liberals who sought to end the severe segregation of African Americans in the inner cities of California. At this time, it was next to impossible for many non-whites to purchase or rent housing in most suburbs. The passage of this Act sparked the first major reaction to the Governor's liberal agenda. The real estate industry-sponsored Proposition 13, to repeal the Rumford Fair Housing Act, arguing that private rights trumped racial equality. The Governor fought vigorously to persuade the California electorate to vote no on 13, but he failed. However, the US Supreme Court ruled Proposition 13 to be unconstitutional, and thus the Fair Housing Act prevailed and was reinforced by national legislation in 1968 to achieve similar purposes (Pawel, Ch. 10).

By the mid-1960s, California politics was changing. Conservatives criticized Brown for being too liberal. Within his party, younger Democrats criticized his pro-law enforcement attitudes. The issue came to a head at UC Berkeley with the free speech movement.

Traditionally, the University did not allow anyone to demonstrate on campus. In 1964, civil rights activists wanted to raise money for the Student Nonviolent Coordinating Committee and the Congress on Racial Equality to help organize voter registration drives in the South. One of the activists was Mario Savio, who was arrested while staffing a table on campus. This sparked massive sit-ins in the administrative buildings on campus to protest this lack of freedom. The Governor saw the students as spoiled brats who should be grateful to be able to attend college. The University administration wanted to negotiate with the students; the California Highway Patrol wanted to arrest every trespasser. Brown went with the law-and-order solution, and the subsequent media images of students being dragged away by the police caused Brown grief on both sides. Liberals derided his tactics, conservatives associated his governorship with the disorder (Rarick, Ch. 14). Once again, Brown showed that he was a better booster for an extensive infrastructure program than a decisionmaker under pressure.

A year later, the positive spirit of California received its most severe blow yet when a drunk-driving arrest in the south-central Los Angeles Black community of Watts led to widespread rioting, looting, arson, dozens killed, hundreds injured, and millions of dollars in damage. Policing issues were but the tip of the problem. Housing, job, and educational discrimination imposed on African Americans through both *de facto* and *de jure* means was the underlying cause.

This time the Governor was in Greece attending a convention and found himself rushing back to restore order. By 1965, the excitement of liberalism had worn thin. The left criticized moderate Democrats' failure to address the core problems of society. The right argued that liberalism caused chaos, promoted the wrong values, and pushed California government into becoming some sort of ineffectual nanny-state.

Pat Brown ran for re-election in 1966 against Ronald Reagan. Brown underestimated the attraction of Reagan, considering an actor with hardly any political experience to pose little threat to his future. Reagan was a new-style politician adept with the medium of television and at magnifying conservative ire. The hand-shaking ebullient style of Pat Brown belonged to an earlier era, in a less populated California where politics could still be somewhat of a retail experience. Brown lost (Rarick, Chs. 15 and 16).

In summary, Governor Brown's natural gregariousness led him to be able to reach out and build a coalition of supporters. Catching the liberal wave of the late 1950s, Brown used his strong party majorities to effectively address many of the challenges of the late 1950s and early 1960s. His administrative skills would sometimes fail him, as the Chessman and Free Speech movement examples show. Ultimately, the times changed, and Brown's politics and leadership style lost their luster.

GOVERNOR JERRY BROWN

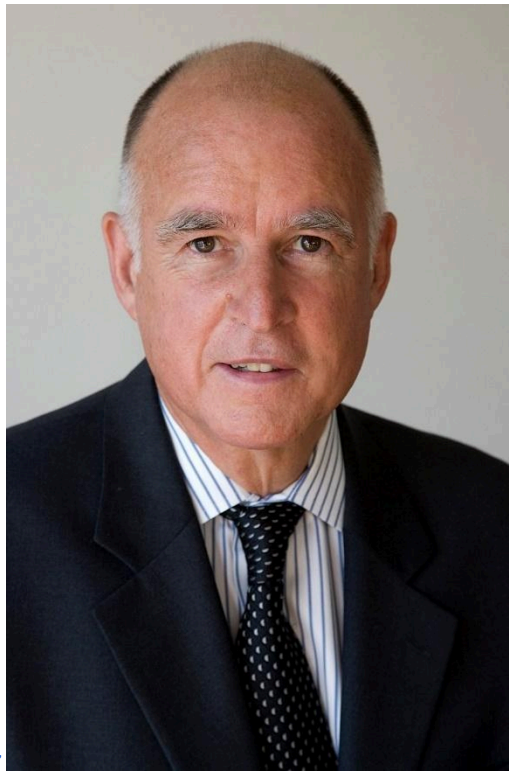


Figure 9.4: Governor Jerry Brown²⁵

Pat Brown's son, Jerry, was governor for two sets of two four-year terms each, as the youngest California governor between 1975 and 1983 and as the oldest California governor between 2011 and 2019. Brown's political philosophy unifies his two administrations. He was never the backslapping politician of his father's day; instead, he embraced an ethically self-conscious intellectual middle-of-the-road politics energized by Catholic humility, Jesuit inquiry, and a 1970s sensibility to embrace a limits-to-growth mentality. Brown did not aspire to be a philosopher-king; he adopted a democratic philosophy regarding the limits of leadership in a representative democracy. With the people's assent, the governor must pursue creative strategies to prepare for the future.

Jerry Brown grew up in San Francisco. He was a very religious young man, attending St. Ignatius High School and then studying for the priesthood at the Sacred Heart Novitiate in Santa Clara for three years. Realizing that he wanted to be more involved in secular life, he switched to UC Berkeley and then went on to study law at Yale. His father's influence helped secure a clerkship with Justice Mathew Tobriner of the California Supreme Court, followed by work as a lawyer in Los Angeles (Newton, part one). By 1969, he had a seat on the Los Angeles Community College Board, and by 1970 he was elected as Secretary of State of California. His father's famous name

²⁵ [Image](#) is in the public domain

certainly opened many doors for Mr. Brown, but he quickly charted an independent political course. Distinct from a standard New Deal-liberal approach, Brown responded to the challenges of the 1970s in new and more moderate ways than previous generations of Democrats.

First, as Secretary of State, he championed campaign finance reform, leading an effort in June of 1974 to pass Proposition 9, a proposition placing limits on contributions and mandating their public disclosure. In the wake of the Watergate scandal, such good government measures were very popular, and it was not an accident that Brown was running in the primary for governor in this very same election. Brown won the primary and went on to win in November 1974, becoming the youngest governor in California history (Newton 104-106). The strategy of not just riding a new wave of public sentiment, but leading it, would propel Brown to victory again and again in his career.

In his first term, Brown showed his commitment to labor and environmental causes. Farmworkers acquired better working conditions and the ability to unionize with the passage of the Agricultural Labor Relations Act. State employees were also unionized with his support. Environmentally, the California Air Resources Board (started under Governor Reagan) set more stringent standards for air pollution. With the establishment of the California Coastal Commission, the California coastline gained much more protection from environmental destruction because all new development had to meet its approval. Spending for schools and welfare increased, and the California Conservation Corps, a jobs training program, was created. The governor was a careful spender; the state budget soon enjoyed a five-billion-dollar surplus.

Thrift has its rewards, but the increase in tax revenues attracted the frustration of conservatives who believed that property taxes were too high. The result in June of 1978 was Proposition 13, an initiative to limit property tax to 1% of the assessed value of a home with no more than a 2% increase each year tied to inflation. Brown opposed the proposition because it was predicted to cause draconian cuts in state programs. However, after it passed and facing re-election in November, he changed his mind and embraced the new anti-tax spirit. Re-elected in 1978, Brown ran into more trouble when he delayed insecticide spraying for the Mediterranean fruit fly in urban areas. Ultimately, he approved spraying as the infestation threatened the viability of agriculture (Newton, part three).

Brown's first two terms in the 1975 to 1983 period reflect the common experience of many elected officials. A governor comes into an office with an ambitious agenda and enjoys support from a broad bipartisan coalition. Then new political forces, such as the anti-tax movement of the 1970s, enter the political arena, and his ability to implement his vision is cut short. Of course, there is always the possibility of the unpredictable occurring; a scandal, a crisis, a natural disaster, whether an earthquake or an insect infestation, undermining the best-laid plans.

Like his father, Jerry Brown always had national political ambitions. He ran for President three times, in 1976, 1980, and again in 1992. In 1982, he ran for the US Senate and lost to Republican Pete Wilson, who would later become California governor in the 1990s. Brown's campaigns for

national office were quixotic on the one hand because they were long shots, driven more by personal charisma and philosophical ideas than widespread popular support. On the other hand, Brown was seeking to shift debate within the Democratic Party to embrace a newer politics to address the late twentieth century's emergent environmental, civil rights, and technological issues. Brown's national campaigns did bring attention to these goals and himself as a young leader full of exciting ideas (Newton 198-204). However, by the early 1980s, the political winds had shifted from Jerry Brown's liberalism to a revitalized conservatism. A re-energized Republican party helped elect former California Governor Reagan to become President in 1980. Jerry Brown returned to private life.

In his forties, Brown spent part of the 1980s deepening his intellectual and religious spirit. He started two think tanks, the National Committee on Industrial Innovation, and the Institute for National Strategy, focusing on domestic and international policy innovations. Brown studied Zen Buddhism, traveling to Japan, and deepened his Catholic faith by working with Mother Teresa in India. By the late 1980s, he decided to return to California politics, running and winning the office of chairman of the California Democratic Party. He resigned to run in the Presidential primaries, losing to Bill Clinton in 1992.

His return to political office began with his election to be the mayor of Oakland, CA; he then was successfully elected to a statewide office again as Attorney General in 2006. The governor at this time was Arnold Schwarzenegger, a relatively moderate Republican whose second term ended in 2010. With term limits passed in 1990, "the Governator" could not run for a third term, but Brown, who served as governor before term limits passed, was eligible to return to the governor's mansion (Newton, part four).

It was an opportune time for a Democrat to run for governor. The Republicans had veered to the right, favoring smaller government, an anti-immigrant platform, and rejecting greater civil rights for LGBT people. However, the state as a whole was becoming more liberal again, especially as the demographics of the state shifted to an even more ethnically diverse population. Brown ran for the governorship in 2010, promising to address the state's fiscal problems, particularly the considerable deficit, without raising taxes unless he had the support of Californians in the form of a referendum. He won. The youngest governor had now become the oldest governor. Twice then, his tenure followed that of an actor, first Reagan and then Schwarzenegger.

In 2011, Governor Brown, now in his third term, confronted a twenty-five-billion-dollar budget deficit with a proposed sales and income tax increase. As promised, he took the proposal to the voters and placed Proposition 30 on the 2012 ballot, persuading voters of the necessity of tax increases. As the economy continued to grow throughout the decade, and with the increased revenues from the tax hikes, the budget no longer was the cause of political crises. The state soon started gaining some surpluses that could be put in a reserve account (Newton, part five).

After addressing the fiscal crisis, Brown turned to some other issues needing attention, some of which were of perennial concern and others that were relatively new. The criminal justice system is, of course, one of the longest-standing issues of government. Reforms in the 1970s

and 1980s in response to crime waves had caused many more crimes to result in incarceration and much longer sentences. In his first term, the prison population stood at about thirty-five thousand Californians out of a total state population of about twenty-one million residents. When he returned to office in 2011, there were more than 160,000 Californians locked up from a population of about thirty-seven million (“Prison Policy Initiative”). The ethics of imprisoning people for so long was questionable on multiple grounds. How many years should someone be locked up for something they committed, most likely as a young person? To what extent was there racial bias regarding who was charged and the length of sentences? Many sentences were due to drug rather than violent crimes. Shouldn’t drugs be treated more as a health issue rather than a criminal issue? Did locking people up reduce crime in the long run or just lead to recidivism as people with felony records found it difficult to find work, homes, and stable lives? Moreover, the California Supreme Court in 2011 (*Brown v. Plata*) ruled that overcrowding in state prisons violated the Eighth Amendment’s prohibition against cruel and unusual punishment.

Brown led several efforts to address this problem, supporting propositions to liberalize get-tough-on-crime efforts such as the three-strikes law (which gave twenty-five years to life sentences even when the third strike was relatively minor) and realigning incarceration to house people committing less serious offenses to county jails rather than to the state system. By the end of the decade, state prison populations had decreased by about thirty percent, and voters were in general support of reforms that lightened sentences (“Public Opinion and Sentencing Reform”).

Another issue was environmental protection. In the 1970s, reductions in smog had been led by the California Air Resources Board. Now, this same board was instrumental in tackling global warming by creating a cap-and-trade system for greenhouse gases. First developed by Governor Schwarzenegger and then extended by Brown, it set overall goals for emissions and then created a market for industries to buy a declining number of credits to pollute. California was able to meet its goal of reducing emissions to 1990 levels by 2016 (Newton 339-43).

Brown returned to two other infrastructure issues that were reminiscent of his father’s efforts. Just as his father had developed the California aqueduct and freeways, he started the planning for two new projects: a tunnel system to deliver water from the Sacramento Delta to southern California and a high-speed train project to connect northern and southern California. As Brown left office in 2020, the tunnel was still in the planning stages. The construction of the train project from Modesto to Bakersfield had begun.

Brown left office in 2019 more popular with the California people than previous outgoing governors. Brown had a 51% popularity rating, double that of outgoing Governor Schwarzenegger in 2010 (“What Approval Ratings Say about Jerry Brown’s Legacy”). State finances were in order, mainly due to his engineered tax increases and a growing economy. Brown’s popularity was based on performance and also on the more liberal composition of the electorate that sought to distinguish California politics and policies from the more conservative philosophies and policies emerging from the Trump Administration at the same time. Thus, we

can attribute the relative success of the second two terms of Governor Brown to the ability of the governor to propose and implement policies that fit the politics of the state in the 2011-2019 period.

SUMMARY

Governors matter. Even though the Constitution of 1879 and progressive reforms of 1911 sought to diminish the governor's power by creating a plural executive and the initiative, referendum, and recall, the governor remains the focal point of political energy in the state. Pat Brown is credited with successfully addressing the state's titanic economic and population growth with huge government infrastructure programs, education, and social welfare spending. His son, Jerry Brown, represented the shift in political culture in California to a centrist vision for the Democratic party. Successful governors can persuade the electorate to follow their agendas and change California politics and policy.

FOR FURTHER INQUIRY

Investigate the leadership of the current governor. What aspects of his leadership are effective? What aspects need improving? The [Capitol Weekly](#) is one of the best sources for news about state politics.

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CHAPTER TEN: THE JUDICIAL BRANCH



Figure 10.1: California Supreme Court Chief Justice Tani G. Cantil-Sakauye²⁶

CHAPTER OBJECTIVES

4. To describe the role and organization of the California judiciary
5. To describe how judges are selected
6. To analyze the growth in descriptive representation in the judiciary
7. To describe the decision-making processes of the California Supreme Court
8. To analyze the leadership of two Chief Justices: Rose Bird and Tani G. Cantil-Sakauye

INTRODUCTION

In the early morning hours on January 18, 2015, behind a dumpster on the campus of Stanford University, nineteen-year-old student-athlete Brock Turner sexually assaulted unconscious twenty-two-year-old Chanel Miller. He was sentenced to a jail term of six months by Judge Aaron Persky, served three, and returned to his home in Ohio. He was now a lifetime registered sex offender.

Outraged by the lenient sentence, Stanford Law Professor Michele Dauber led the effort to recall Judge Persky. The recall law required her to submit the valid signatures of 20% of the number of people who voted in the last Santa Clara County Superior Court election (58,634 for the 2018 June 5 ballot). The campaign gathered almost twice this number (Brassil). Persky's defenders pointed out that the judge was merely following the recommendation of the probation department. The public defender's office as well as that of the district attorney also

²⁶ [Image](#) is in the public domain

opposed his recall, calling it an example of public hysteria and a threat to judicial independence. Nonetheless, Santa Clara County voters recalled him with a vote of 62% to 38%. He was the first California Superior Court judge to be recalled in eighty years. (“Aaron Persky”).

This case shows both the role of the California courts and the controversy surrounding them. We expect our judicial system to fairly interpret and apply the law, and not be swayed by political pressures from other branches of government or from public opinion. Historically, independence has been the norm, but periodic unhappiness with the performance of the courts leads to headline-grabbing episodes where politics disrupt the practice of law, sometimes for the better, other times for the worse.

The Brock Turner case raises more general questions about the role of the court system as it administers and interprets the law. Even if you are not the victim (or perpetrator) of a terrible crime such as that of Brock Turner, you are likely to be involved with the court system in many ways. This chapter discusses the role and organization of the courts in California as well as the selection of judges. We consider also consider the responsibilities of the Chief Justice of the Supreme Court by describing the tenures of Chief Justice Rose Bird and Tani Cantil-Sakauye.

THE ORGANIZATION OF THE CALIFORNIA COURT SYSTEM

Most of us, at one point or another in our lives, will have a case before the California courts. Criminal law involves crimes against the state. The mildest crime is an infraction, such as a parking ticket. Next, misdemeanors, such as shoplifting, are more serious crimes. Most serious of all are felonies, like robbery or murder. Civil law, on the other hand, concerns cases where the matter is between people, a divorce, or perhaps a disagreement with an insurance company. Even during the pandemic, in the 2020-21 fiscal year, the Court system managed about 4.1 million cases.

A case, whether criminal or civil, begins in a local trial (superior) court. There is one superior court for each of the fifty-eight counties (with each superior court having many judges). Most cases do not go to trial. Criminal attorneys will prompt their clients to reach plea bargains prior to trial, and civil attorneys will reach settlements often saving thousands of dollars in legal costs. With many low-level offenses, a defendant will avoid trial by agreeing to an alternative such as drug treatment. In the last few decades, many superior courts have specialized collaborative courts that help people receive social services as their cases are addressed by the court. For example, country social workers offer help to victims of domestic violence.

A case may be appealed to the next level, the California Courts of Appeal. The state is divided into six districts with each court hearing cases for its area. From there, a case may be appealed to the California Supreme Court. Death penalty cases are automatically appealed from the district court level to the high court.

The Judicial Council of California oversees the three-level court system by formulating and implementing policies and procedures to manage the courts in a consistent way across the state. As an administrative agency, the Council is headed by the Chief Justice and is composed of

twenty-one members who include other justices from the Supreme Court, the Courts of Appeals, the superior courts, members of the state legislatures, and attorneys.

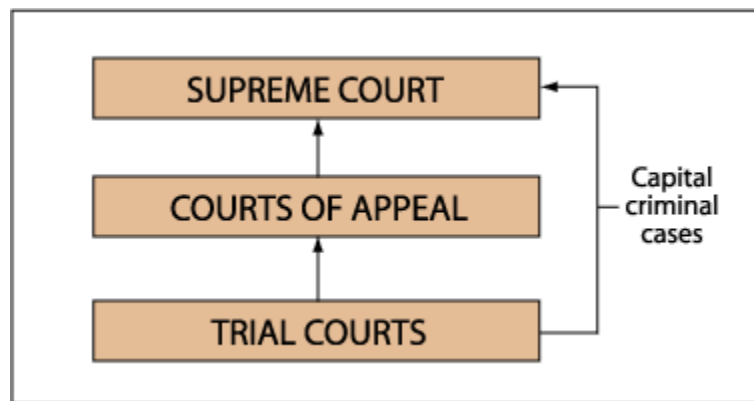


Figure 10.2: The California Judicial System (Source: Judicial Council)²⁷

A case usually begins at the trial court level. In the 2020-21 fiscal year, about 5.3 million cases were filed in these local courts administered by 1,755 judges. In contrast, the Courts of Appeal, with just 106 justices managed 17,889 cases. The one chief justice and six associate justices at the highest level, the Supreme Court, only issued seventy-eight opinions (“About California Courts”).

BECOMING A JUDGE

Superior court judges are elected for a six-year term on a nonpartisan, county-wide ballot. A candidate must have served as an attorney in California for at least ten years.

The process used to select justices for the courts of appeals and the Supreme Court is more complicated. The California Governor appoints the justice. Then the appointment goes to the Commission on Judicial Appointments comprised of the Chief Justice of the California Supreme Court, the California Attorney General, and the senior presiding judge of the court of appeals where they will be working. They will hold a public hearing and formally approve the nomination. The nominee then goes before the electorate and is confirmed in the next general election. This is called a retention election.

The seven justices of the Supreme Court undergo a similar process; appointment by the governor and confirmation by both the Commission on Judicial Appointments and the voters. Justices may serve additional terms if they are elected again by the people at the end of their twelve-year term in the retention election (“Fact Sheet”).

Most judicial appointments receive little public scrutiny or attention. In the absence of controversy, voters often retain incumbents or confirm gubernatorial appointments. This leaves the governor with some discretion. While judges cannot run for office as partisan candidates,

²⁷ [Image](#) is in the public domain

governors are more likely to nominate judicial candidates who have similar beliefs to theirs. A liberal governor may lean more heavily on candidates with experience representing defendants. A conservative governor may promise a get tough on crime policy and appoint judges whose background is with the district attorney’s office.

In short, the responsibility for selecting judges is shared among three actors: the administrators of the Court system who review candidates for the appropriate qualifications, the governor who appoints appeal court and Supreme Court justices, and the people who confirm or may occasionally recall a judge. The latter is rarely exercised. The case of Judge Persky is the exception.

DESCRIPTIVE REPRESENTATION

When studying the legislative and executive branches, political scientists often study issues regarding descriptive representation—to consider how these branches are working toward greater racial, ethnic, and gender diversity. This issue is also important for the California judiciary. It was not so long ago that most lawyers and most judges were white men. In the last two generations, law schools have undergone an astounding transformation and now much better reflect the California population. It is natural that the demographics of the Court would lag behind the younger population of law students. Below is a demographic snapshot of the California court system regarding race, ethnicity, and gender (“Demographic Data”).

Table 10.1: Gender and California Judges

Gender (%)		
Court	Female	Male
Supreme Court	50	50
Courts of Appeal	40.4	59.6
Trial Courts	38.4	61.6

Table 10.2: Racial and Ethnic Characteristics of Judges

Court	Race/Ethnicity (%)								
	Am. Indian	Asian	Black	Hispanic	Pacific Islander	White	Other	More than one	Information not provided
Supreme Court	0	16.7	33.3	0	0	33.3	0	16.7	0
Courts of Appeals	0	5.3	11.7	7.4	0	70.2	2.1	3.2	0
Trial Court	.5	8.9	8.1	12	.3	62.8	.9	4.4	2.1
Total	.5	8.7	8.4	11.7	.3	63.1	1	4.4	1.9

Compare the summary data above with US census data (Quick facts) regarding the total population of California.

Table 10.3: Comparing the Demographics of the California Population and California Judges

Group	Percentage of the total population	Percentage of all Judges
Men	50	61.4
Women	50	38.6
Am. Indian	1.7	.5
Asian	15.9	8.7
Black	6.5	8.4
Hispanic	40.2	11.7
Pacific Islander	.5	.3
White only	35.2	63.1
Some other race	n.a.	1.0
More than one race	4.2	4.4

White men are overrepresented, and Hispanic, Asian, and Native American people are underrepresented. African American judges are roughly proportional to the population.

There are four reasons why descriptive representation is an important goal for the judiciary. First, the growth in diversity shows that there are greater opportunities for lawyers from many backgrounds. This is a sign of more equal opportunity. Second, the legitimacy of the courts is

enhanced when they have greater diversity. Because most judges begin their tenure as appointees by the governor to fill positions made vacant due to midterm retirements, a more diverse judiciary reflects the commitment of governors to select judges from many California backgrounds. Third, the greater diversity of judges helps the Courts better understand the circumstances and needs of Californians when they interact with the judicial system. This is even more important as courts confront new legal issues. For example, the overturning of *Roe v. Wade* requires that state courts will now have much more of a role in regulating reproductive rights. Voting regulations and rights, electoral redistricting, and many other issues remain very much in flux such that state courts will find themselves wading into controversial issues that address questions of race, gender, and class. Diverse courts will bring greater knowledge, understanding, and legitimacy to address these complex questions.

THE DECISION-MAKING PROCESS OF THE CALIFORNIA SUPREME COURT

Trial courts focus on the facts: did you violate the speed limit? If yes, pay the fine. Of course, the more serious the case, the more complex the factors to determine culpability and impose a just sentence. If a party perceives that there is an error in judgment, they may appeal the case to courts of appeal and ultimately to the California Supreme Court (a case may also be heard in federal court when there is a question about federal law). The California Supreme Court is required by the California Constitution to review all the death penalty convictions from the trial courts. In most of the remaining cases, it is the Court's discretion regarding if the Court will grant the appeal and hear the case. For example, in the 2020-21 fiscal year, 6,522 cases were appealed, and the court issued fifty-nine opinions ("Judicial Council"). Thus, in all but a fraction of the cases, the lower court has the last word.

When the Supreme Court receives a petition, staff attorneys working for each of the seven justices review them and make recommendations regarding which ones should be put on the court docket. On most Wednesday mornings, the judges meet in conference to decide. Four must agree. A case is likely to be accepted when there is an important question regarding the constitutionality of a state law or practice.

The Chief Justice then assigns the case to a specific justice who creates a memorandum to address the questions of the case which is then circulated among the other justices for their responses. This process shows the likely opinions of the justices, with the possibility of a majority opinion emerging. Next, oral argument: attorneys for the parties in the case present their summary arguments and responds to questions from justices in one hour. They are usually held in the first week of every month. On the same day of oral argument, the justices meet in conference. The justice assigned the case sets out their position, as do the other justices in the order of seniority, with the Chief Justice speaking last. The Court may coalesce around a single opinion or concurring or dissenting opinions may develop that are also issued formally by the Court. Typically, an oral argument functions to clarify positions and sort out details of an opinion

rather than playing a crucial role in the formulation of an opinion. By law, the Court must announce an opinion within ninety days of oral argument (Liu).

How a Supreme Court justice decides a case or should decide a case is a subject of great debate. There is often a gulf between how judges understand what they do versus how the public perceives their work. First, the court only hears actual cases, they cannot decide whether a law is constitutional prior to its passage and prior to someone bringing a lawsuit to the court. Thus, there may be a hard-fought campaign to pass a proposition in California only for that proposition to be ruled unconstitutional after the election when someone goes to court and the case eventually makes its way to the California Supreme Court. Second, the Court does not hear new evidence from the parties, it only reviews the lower court proceedings and hears oral arguments to decide the constitutionality of a lower court decision. Thus, constrained by the facts of a specific case, justices will develop their opinions using the state constitution, existing laws, and prior cases which function as precedents; and only then exercise their own philosophies regarding what is just in a particular situation. The major philosophical divide is about the degree to which the Court should alter the interpretation of the California Constitution based on evolving beliefs about justice. Typically, a conservative justice follows precedent more, with liberal justices altering the interpretation of the Constitution to fit changing times and values. In practice, in the twentieth century, a liberal California Supreme Court expanded constitutional protections such as civil liberties and rights. These labels of “conservative” or “liberal” are, of course, imposed on the justices by observers of the Court. By law, justices are nonpartisan and run for office in nonpartisan elections. A justice may see themselves as simply approaching each case using the best framework of analysis that is appropriate for the relevant facts.

THE IMPORTANCE OF THE CALIFORNIA SUPREME COURT

The California Supreme Court is one of the most influential state courts in the nation. A little context is necessary to understand how this occurs. First, the Court may be influential with innovative reasoning that addresses a new legal question in an effective way. This will, of course, affect the people of California, since the case arises from a state case. Second, every state case can function as a precedent for other state courts, or the federal government to use as a guide for their own decision-making. Two areas exemplify this leadership: civil rights and product liability.

The California Supreme Court led the nation with many decisions that promoted civil rights. Many racist laws were judged unconstitutional in California and then similar actions were taken subsequently by other state and federal courts. For example, in the twentieth century, many areas of Los Angeles County became segregated as new housing developments limited who could buy or rent a property using racial covenants. A covenant is a regulation placed on the buyer of a property as a condition of ownership. One covenant that was common was that the property could only be sold to white purchasers. Even though the US Supreme Court had banned the use of racial covenants in *Shelly v. Kraemer* (1948), realtors continued to limit sales and rentals to only white people in many neighborhoods. In reaction, in 1963, California

Governor Pat Brown pushed the Rumford Fair Housing Act through the state legislature which banned racial housing discrimination in apartment dwellings of five or more units. In retaliation, the California Real Estate Association sponsored Proposition 13 to overturn Rumford, arguing that freedom of choice should dictate real estate transactions rather than the Fourteenth Amendment. The California electorate agreed, passing Proposition 13 by 65%. Soon after, a Black couple who had been denied an apartment sued, arguing that the new constitutional amendment violated their civil rights. Soon after, in *Mulkey v. Reitman*, the California Supreme Court ruled that the new California constitutional amendment violated the Fourteenth Amendment of the US Constitution. Realtors appealed the case to the US Supreme Court which reaffirmed the California Supreme Court decision in 1967 (Scheiber, pp. 356-59).

Another area where the California Supreme Court led the country is in product liability law. One of the leading justices on the Court was Roger Traynor, an associate justice appointed in 1944 and the Chief Justice between 1964 and 1970. In 1944, in *Escola v. Coca-Cola Bottling Co.*, Traynor introduced the idea of strict liability to the Court. When a product is judged defective, even if its producer had no intention of hurting anyone, they are still liable for any damages suffered by its use. This notion of strict liability soon was emulated in state courts across the nation.

In short, the California Supreme Court is important. As the third branch of government, it functions as an important constitutional check on the other branches. That independence of course is not absolute. The justices and judges are appointed by political leaders and confirmed by the people. Any of them may be rejected in a retention election or recalled by the electorate. Just such an event occurred in 1986, when the California electorate rejected three judges in a retention election. The justice that was the most controversial was the Chief Justice: Rose Elizabeth Bird. Studying the career of Justice Bird and her rejection by California voters helps us better understand our own philosophies regarding the proper role of the judiciary in the political system.

FOR YOUR CONSIDERATION

The Story of Chief Justice Rose Bird and the Retention Election of 1986



Figure 10.3: Rose Bird, Chief Justice of the California Supreme Court, 1977 - UCLA Library Digital Collections²⁸

In the eyes of the Framers of the US Constitution, the ideal judiciary is entirely independent of politics. The judges of the highest court of a state, like those of the US Supreme Court, should function as a referee, checking to make sure that the actions of the legislature, the governor, and the people are constitutional. They should be above politics, only representing the state constitution rather than any faction or party.

California Progressives at the turn of the twentieth century were skeptical of the impartiality and objectivity of judges. Judges, after all, had to be appointed, they are ambitious and given they are but human, they are likely to be tempted by the vagaries of public opinion rather than hew to the idealistic standards of the Framers. So how could judges be held accountable, to make sure they were responsibly fulfilling their roles? The remedy is to have the people confirm the nominations of justices, to make these elections nonpartisan, and to have retention elections for appellate and supreme court justices if they wish to remain in office. Thus, our current system (dating from amendments to the Constitution in 1934) seeks a balance between judicial independence and accountability. Most of the time, the people essentially ratify the status quo, retaining incumbent judges and confirming gubernatorial appointments. However, in times of political ferment, judges may find themselves in the center of a political storm. Just such an event occurred with the retention election of Chief Justice Rose Bird in 1986. The story illuminates the stress between judicial independence and accountability. If you were voting in 1986, would you have retained Justice Bird? Consider the following history.

²⁸ [Image](#) is licensed under a [CC-BY 4.0 International License](#).

FOR YOUR CONSIDERATION

Justice Bird's biography did not fit the typical mold of a judge. She was not from a wealthy well-connected family, she was not male, she did not ascend through the ranks of a lower court or have many other political positions. Her story shows how she was very much a pioneer for women and for people of more modest means.

Bird grew up poor, raised by her single mother in Arizona and then in New York. She said that one of the central lessons that she learned from her mother is the importance of becoming self-sufficient and that the key to achieving this is education. She studied hard and flourished in college, attending UC Berkeley Law School with just a handful of other women, and graduating near the top of her class. She had trouble finding work as an attorney (believing that it was because of her gender) but eventually began her career in the Santa Clara County Public Defender's office as a deputy public defender. There she gained valuable experience and started also to get involved in politics by volunteering (among other duties, as the governor's chauffeur) for then gubernatorial candidate Jerry Brown's campaign. Smart and assertive with her views, Brown appointed her to his transition team and then catapulted her into prominence when he appointed her Secretary of the Agriculture and Service Agency, one of the most influential positions in his administration (Cairns, chs. 1-2).

As detailed in the previous chapter, Governor Jerry Brown sought to break with the traditional Democratic party establishment by appointing fresh faces with new ideas, more women, and people from many diverse cultural backgrounds that sought to address contemporary problems in new ways. Bird rapidly adapted to her new political role in the administration; gaining prominence by shepherding the Agriculture Labor Relations Act through the state legislature which dramatically improved the working conditions and bargaining power of farm laborers. Her front-page success led the Governor to exert his counter-establishment proclivities by appointing her in 1977 to become the next Chief Justice of the California Supreme Court (Cairns 53).

Just as her appointment to be Agricultural Secretary broke with tradition, Bird's appointment to the Court was also groundbreaking. She was relatively young with no judicial experience, a woman during a time when few women were attorneys, let alone judges, and she was very liberal. The latter would not represent a huge break from the Court's record because the Court for decades had broken conservative precedents and become a judicial trendsetter nationally. Nonetheless, beginning with her confirmation hearings before the Commission on Judicial Appointments, Bird's tenure at the Supreme Court was turbulent.

She was too soft on crime. She was too liberal. She did not have enough experience. However, there was no doubt to the Commission that she was intelligent and an excellent administrator. Ultimately, the Commission confirmed her 2-1. Justice Bird went before the voters a year later, winning just 52% of the vote, an election which justices usually win with

FOR YOUR CONSIDERATION

ease. The controversies about her from the confirmation had solidified into considerable electoral opposition (Cairns ch. 4).

By the late 1970s, the political climate in the state was changing as was that of the nation. Many Americans had grown tired of liberalism. The economy was stagnating with higher inflation and fewer job opportunities. Crime was up and many more Americans agreed with a conservative law and order critique that courts needed to get tough. In the 1970s and 1980s, the death penalty was incessantly debated. Liberals argued that it was barbaric, disproportionately administered to poor and nonwhite defendants, and ineffective as a deterrent. Conservatives blamed the increase in crime on liberal sympathies for the accused and perceived the death penalty as a reasonable punishment for a series of heinous crimes splashing across the headlines with sickening regularity.

By law, the California Supreme Court must review every death penalty conviction. As death penalty cases grew, this job loaded up almost a quarter of the docket. Over and over again, Justice Bird and other justices found errors in lower court proceedings significant enough to overturn the penalty. The Court reviewed sixty-four cases between 1979-1986 and affirmed only 7.8% of them. Not one did Bird affirm.

By the November 1986 elections, conservatives in California had had enough and led a campaign to oppose the retention of not only Justice Rose Bird but also that of Cruz Reynoso and Joseph Grodin, two other justices who also often rejected the death penalty (Uehlmen). But the campaign ads full of heartfelt stories of Californians mourning the loss of their children to murderers were not paid for by common people worried about crime. No, they were paid for by California industrial and agricultural interests who had an ulterior motive: get rid of the liberals on the court and select new justices who would support businesses over consumers or workers (Schreiber 480). For decades, the Court had sided against businesses in cases involving employment, the environment, and consumer rights. Now if three justices were gone, and if a Republican were elected governor, the Court might change its stripes.

The Chief Justice did not respond with an effective campaign. She perceived her role as representing the Constitution, focusing on her job, and being above politics. What little campaigning she engaged in consisted of seeking to educate the public about the role of the Court to safeguard civil rights and civil liberties. She hoped that the California voter would appreciate the role of an independent judiciary. Unfortunately, the California voter was more concerned about rising crime than about constitutional issues and removed her with a 2:1 vote, with Justices Grodin and Reynoso also losing their jobs.

After she left office, the California Supreme Court reversed course and in seventy-one cases between 1987 and 1989 affirmed 72% of them. Sometimes the administration of justice really depends on who is judging. Thrown out of office, Bird found no legal opportunities for herself.

FOR YOUR CONSIDERATION

She took care of her ailing mother, worked as a volunteer, and died of cancer in 1999, at the age of 63.

Two lessons emerge from the story of Justice Rose Bird in the 1977-1986 period. One is that the Courts occupy a point someplace between the touchstones of independence and accountability. Independence is not the ideal in California, accountability is demanded and if a justice strays too far away from public opinion, the processes of confirmation and retention may force more adherence to public opinion. Second, as the first woman on the Court, let alone as Chief Justice, Justice Bird was a pioneer for women's rights. She broke new ground for the next generation of female attorneys who would be far more numerous, but it was a lonely job for her that required a thick skin to endure constant scrutiny and criticism.

What are your reactions? First of all, do you believe retention elections for judges are wise? Prior to 1934, justices ran in party elections rather than a yes-no vote, so this system represents the relative depoliticization of the process. Should the positions be even more depoliticized such that the state Supreme Court resembles the US Supreme Court with lifetime appointments? Second, if you were voting in 1986, would you have voted for or against Justice Bird? Why?

CHIEF JUSTICE TANI CANTIL-SAKAUYE



Figure 10.7: Chief Justice Cantil-Sakauye (center) and the other members of the Court²⁹

More than thirty-five years have passed since the voters removed Justice Rose Bird from office. The growth in the number of women, the growing diversity of the state, and the recognition and institution of programs to promote equal representation prompt us to wonder how would Justice Rose Bird have been treated today? Perhaps, she would not have had such a sudden and

²⁹ [Image](#) is in the public domain

ignominious end to her legal career. The story of the current Chief Justice suggests just such a possibility.

Chief Justice Tani Cantil-Sakauye is a Filipino-American who grew up in Sacramento, attended community college there, and completed her law degree at UC Davis. Her legal career began with the Sacramento District Attorney's office but within a few years, she had joined Republican governor George Deukmejian's administration as a legal affairs secretary. Soon, Governor Deukmejian appointed her to be a trial court judge, and then she received successively more important appointments by subsequent Republican governors to become first a superior court judge, then an appeal court judge, and in 2010, Governor Schwarzenegger appointed her to become the new chief justice. Voters retained her in the fall 2010 elections ("Chief Justice Tani Cantil-Sakauye").

The most pressing problem that she faced in 2011 were budget cuts. At this time, the California legislature was stuck every year in a political gridlock with a mismatch between revenues and expenditures. Tax revenues dramatically varied every year because they were based primarily on income, sales, and capital gains taxes. Justice Cantil-Sakauye, as the head of the Judicial Council, had to lobby the legislature to protect funding. The budget situation eased considerably after Governor Brown's election because taxes were raised, and the economy improved as the Great Recession eased.

The resolution of the budget crisis helped free the Chief Justice to pursue systematic improvements in the administration of justice in California. As head of the Judicial Council, her role is not just that of a justice, but she is also the manager of a large bureaucracy whose mission is to provide for an effective and just system of administering civil and criminal law. She has promoted several initiatives: greater access for the people of California, greater openness or transparency, and innovative programs to improve the administration of justice. Several programs have helped improve access; with the revolution of internet services, legal self-help for people to address many everyday issues is available on court websites. Interpreter services have been expanded to include not just criminal cases but also civil ones. Also, in the era of the Internet, the Chief Justice has led initiatives to open more proceedings such as those of the Judicial Council and the Court itself to public viewing on the Internet.

Several programs have brought more innovation to the administration of justice. The Chief Justice has developed many more collaborative courts that combine addressing a civil or criminal case with help from social service agencies to address issues of drug and alcohol abuse, domestic violence, homelessness, and veterans' issues (The Chief Justice's Timeline). More recently, the Court has ruled that in criminal trials, when someone is eligible for pretrial release, their ability to pay bail must be considered before setting the amount. In *re Humphrey*, in March 2021, the Court ruled that Courts must consider the ability to pay in setting bail. They may impose bail if no other conditions of release could be used to help ensure that the defendant appears at their trial. Additionally, local governments adopted a no-bail standard temporarily during the pandemic, engaging in their own efforts to reduce or abolish bail as part of criminal justice reform.

Chief Justice Cantil-Sakauye has almost entirely avoided partisan politics. Other than beginning with the Deukmejian administration, her career has been within the judiciary. She did make headlines in 2018 when after watching the US Supreme Court confirmation hearings of Justice Kavanaugh, she changed her voter registration party membership from Republican to “no party preference” (Wang). At a Public Policy Institute of California talk, the Justice declared herself to be a “Deukmejian Republican.”

Despite these nominal signs of partisanship, most of her public pronouncements have been to provide better access, equity, and justice for the people of California. She speaks about the courts as “social justice centers” for Californians. This is certainly not the language of a law-and-order Republican of the 1980s. Instead, her public stances are that of a public administrator seeking to provide better services to the California people.

So, what can we make of the difference in the experiences of Chief Justices Bird and Cantil-Sakauye? Just forty years ago, women in law were trailblazers. They were breaking into a relatively insular network of mostly wealthy white men and their heirs. The lawyers and the judges of the 2020s reflect the diversity of the state as well as a political as well as a legal culture that has made it much easier for women to succeed. Moreover, the approaches of the two women were very different. Bird emphasized doing the right thing even when it was not popular, such that decisions on the Court were often divided. Cantil-Sakauye prides herself on the consensual practices of memoranda sharing before oral arguments and the frequency of unanimous decisions (“A Conversation...”).

The consequences of different times and different approaches lead to an easy reelection.

SUMMARY

The role of law in the everyday lives of Californians is important. This chapter points out that much of this law is state law, organized, administered, and developed by Californians. The Supreme Court of California has exercised leadership in many areas of law. One way that law collides with politics is when we consider the degree to which the courts should be independent of the other branches, or the degree to which they should be accountable. Our system seeks to find a balance between the two, enough independence to not be subservient to the other branches, but enough accountability to respond to the needs of the people.

As the culture of our state has changed, so has the Court. The Court far better reflects the diversity of peoples and backgrounds than it did forty years ago. The difficulties experienced by Justice Rose Bird were due in part to the prevailing bias against women at that time. Today, the experiences of the current Chief Justice reflect a political and social environment where there is more opportunity in government for everyone.

FOR FURTHER INQUIRY

1. Read the [biographies](#) of the Justices of the California Supreme Court. What stands out about them?
2. Browse the materials that are available at the [website](#) of the California Supreme Court History Society. A wealth of articles in their journal provides a treasure trove of research about the history of the Court.
3. Visit the [oral argument website](#) of the Supreme Court, survey a few cases, and listen to the oral argument of a case for a few minutes.

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CHAPTER ELEVEN: LOCAL GOVERNMENTS



Figure 11.1: Memorial to Dominic Blackwell and Gracie Anne Muehlberger, Central Park, Saugus, California, victims of the Saugus High School shooting of November 14, 2019³⁰

CHAPTER OBJECTIVES

1. To describe the forms and structures of local governments in California
2. To analyze current electoral reform measures for local governments

INTRODUCTION

Local politics feel fundamentally different. Their immediacy and daily impact make grand ideological and partisan differences among us seem less important. Local issues are often about resolving traffic jams, providing good schools, planning for safe neighborhoods, and many other topics that do not polarize us in the same way that state and national politics may. They are not trivial, however. For example, the tragedy of a school shooting illustrates the role of multiple governments in our community.

On the morning of November 14, 2019, at Saugus High School, a student murdered two of his classmates, injured three more, and then killed himself. The Saugus (and the larger Santa Clarita) community mourned the deaths of Dominic Blackwell and Gracie Anne Muehlberger

³⁰ Image by [College of the Canyons ZTC Team \(Alex Gavilan\)](#) is licensed under [CC BY 4.0](#)

with a vigil attended by 15,000, many efforts to better address school safety and gun violence, and a memorial placed in the nearby Central Park to honor them (Aubachon).

This episode and its aftermath show the interlocking roles of many local governments in our lives. Saugus High School is part of the William S. Hart School District, which is responsible for school safety as mandated by the state of California. The school district, governed by a Board of Trustees elected by Santa Clarita voters, contracts with the County of Los Angeles Sheriff's Department to provide school resource officers. The City of Santa Clarita also contracts for its police, fire, and paramedic services from the County, resulting in these county departments also responding to the shooting. The victims were rushed to Henry Mayo Newhall Hospital, a not-for-profit hospital licensed by the state of California. Saugus High students and their families organized the vigil for the following weekend at Central Park, which is managed by the Parks and Recreation Department of the City. The City leases the parkland from the Santa Clarita Water Agency, a special district, with an elected board responsible for delivering water to the area. This agency agreed to the addition of the memorial to the park. Setting aside a further consideration of the complexity of local, state, and federal laws that regulate gun ownership, the response to this shooting illustrates the vital roles of multiple local governments in our community.

Local governments were first established by the California Constitution of 1849. Article 11 provides uniform procedures for the establishment of counties and cities as legal subdivisions of the state. California grants local governments their powers and hence they are but “creatures of the state.” This doctrine of state control became known as Dillon’s Rule (1868), after an Iowa state court decision that was followed by courts across the country. However, California, like many other states, delegates limited autonomy to local governments when they create charters. This gives them home rule status and Dillon’s Rule no longer applies. Hence, cities and counties are established as either charter cities and counties or “general law” cities and counties that only follow Dillon’s Rule.

In total, there are fifty-eight counties ranging from the most populous Los Angeles County with nine-million-plus people to tiny Alpine County in the Sierra Nevada with just over one thousand people. Thirteen of these counties have charters. These include some of the largest counties including Los Angeles, San Diego, Sacramento, and San Francisco. As of 2017, there are 482 cities, with 125 having more autonomy from state law as charter cities. And then there are over four thousand special districts, including school districts and all sorts of other specific purpose districts to manage many issues such as water, pollution, and medical care (Micheli). Finally, there are 109 federally recognized Indian tribes in California (“California Tribal Communities”). We will discuss each of these in detail. As we survey these many local governments, we will consider the following: How are they constituted? Who governs them? What are their responsibilities? Last, we will examine some of the current debates regarding electoral reform.

CALIFORNIA COUNTIES



Figure 11.2: Counties of California³¹

³¹ [Image](#) is in the public domain

The borders of California's 58 counties have been the same since 1907 when Imperial County was created from the eastern half of San Diego County. Establishing a new county or altering county borders requires, according to 1894 amendments to the California Constitution, a majority vote in the counties affected by the change. Before 1894, local groups could effectively lobby the California legislature to add counties or change their borders without the consent of the voters ("The History of California's Counties").

The rules governing the organization of county governments are dictated by state law (California Government code). General law counties simply follow these rules. A county, by majority vote, can choose to declare itself to be a charter county giving itself "home rule," meaning more autonomy in organizing its government and policies. All counties are governed by a nonpartisan five-member board of supervisors whose members are elected to four-year terms. Nonpartisan elections for the sheriff, district attorney, and tax assessor are also required in all counties. General law counties will typically have elections for additional offices including the coroner, tax collector, auditor, and county clerk. In a charter county, the board of supervisors will usually appoint these and many other positions to consolidate more power under its authority.

Counties are especially important because just about all major social, health, and educational programs that we rely on are administered by county governments and agencies. The access and quality of services that we receive as county residents depend on how well these governments function. According to the California State Controller's Office, in the fiscal year 2020, counties spent close to \$97 billion on a range of these services. These expenditures were paid for from local revenue sources such as property taxes and state and federal funds ("Counties Financial Data").

A map of Los Angeles County below shows the incorporated cities and unincorporated areas and the five supervisorial districts.

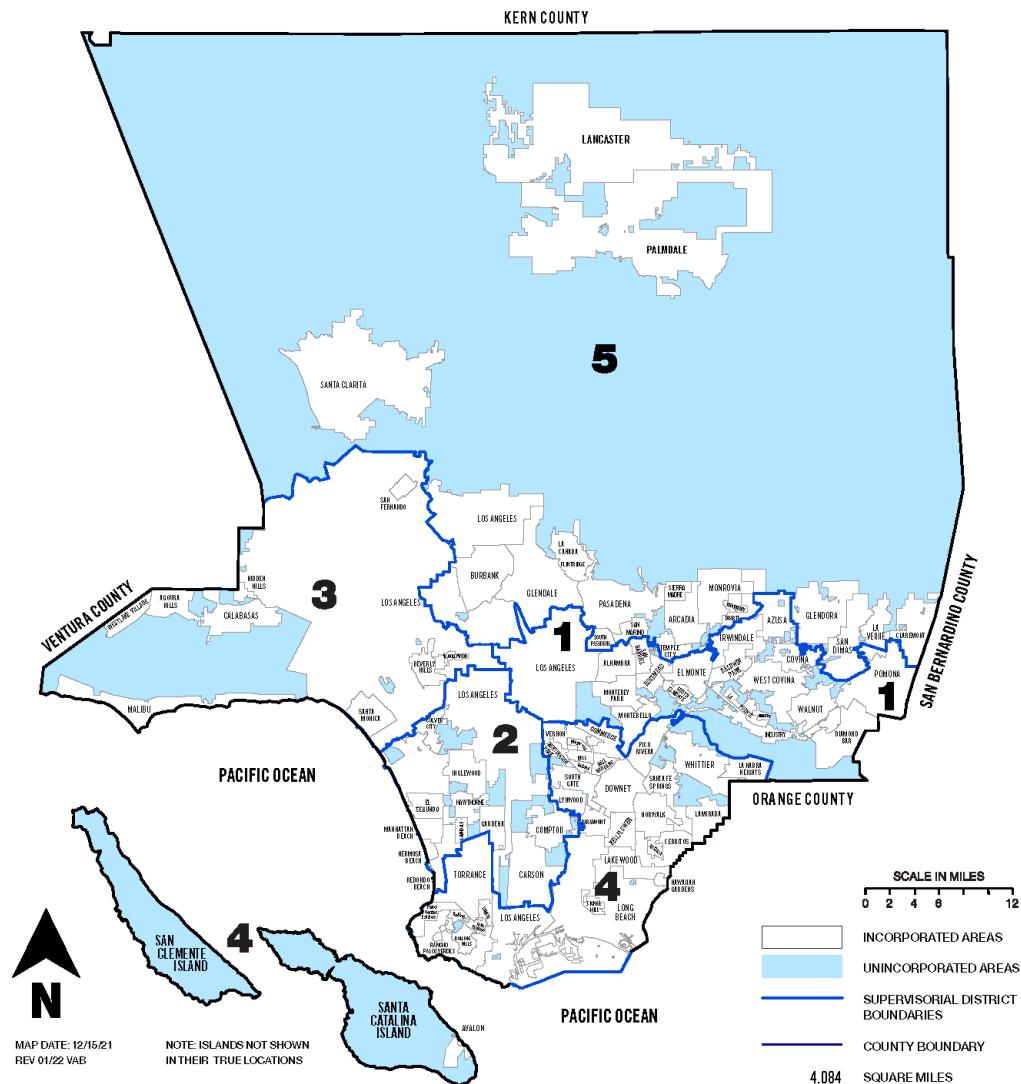


Figure 11.3: Los Angeles County³²

³² Image by the [LA County Board of Supervisors](#)

CALIFORNIA CITIES

Counties are created by the state of California. Cities, on the other hand, are created by residents of counties. They incorporate, as a city (formally called a municipality) by petitioning the Local Agency Formation Commission (LAFCo) in their county. The LAFCo is responsible for approving the formation of cities and addressing many other jurisdictional issues within each county. Residents often want to form a city to have more control over local services and government decisions and thus gain some independence from county control. As with counties, a city may be incorporated as a general law city (most California cities) or create its own charter which gives it relatively more authority over municipal affairs. For example, in 1987, the residents of the unincorporated towns of Valencia, Saugus, Newhall, and Canyon Country successfully petitioned Los Angeles County LAFCo to create the city of Santa Clarita as a general law municipality. It approved the petition; the issue was put to the local voters and Santa Clarita was incorporated (“City Profile”).

Cities are governed by city councils, a five-member body that combines both legislative and executive functions. Most cities have adopted a council-manager system in which the ceremonial job of the mayor rotates among the five members. A city manager is hired by the City Council who is the chief administrator of the city and is answerable to the council. A city council position is typically a part-time job that provides just a small financial stipend. Some cities have a mayor-council system under which the mayor is separately elected, has more administrative authority, and may veto proposed ordinances. In the mayor-council system, city councils may override mayoral vetoes with a two-thirds majority. Elections for city council members and mayors occur every four years and are nonpartisan.

The Council-Manager Form of City Government

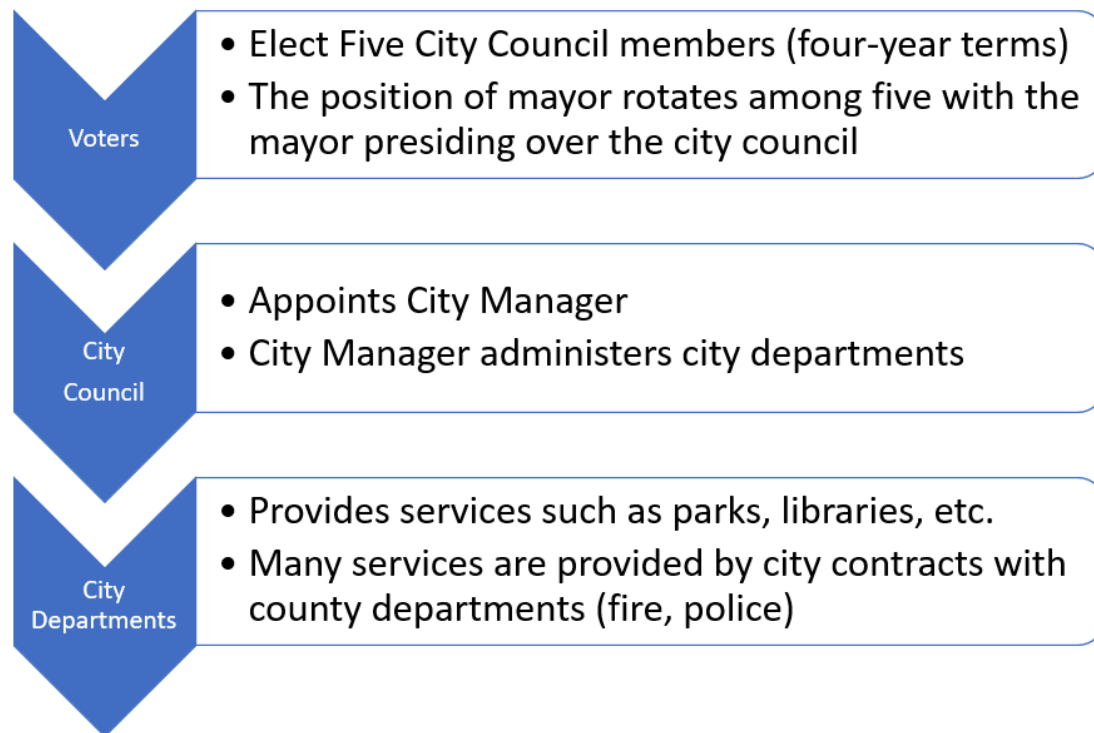


Figure 11.4: The Council-Manager Form of City Government³³

An interesting exception to the general form of cities and counties is San Francisco. It is a consolidated city and county, with a mayor and a ten-member board of supervisors. The mayor functions as the chief executive and has the power to veto legislation like in other cities with strong mayor systems.

Cities provide many services for their residents. Drawing on local property and sales taxes, user fees, and money from the county, state, and federal governments, they provide utilities such as water and electricity, transportation, parks, and engage in community development. City councils often create many boards and commissions to make recommendations for new legislation. At regular city council meetings, the members pass ordinances or new laws for the city. Residents have a right to speak to the council for short periods of time (“City Fact Sheet”). City Council meetings must abide by the Ralph M. Brown Act which requires “open meetings,” meaning that they are announced in advance and open to the public, with some exceptions regarding confidential matters (“The Brown Act”).

³³ Image provided by author

SPECIAL DISTRICTS

Voters may also create special districts that are dedicated to particular functions within a county (or even more than one county). The process is the same as with creating a city, first approval by LAFCo, and then by the voters who live within the boundaries of the special districts. There are many kinds of special districts: over one thousand K-12 school districts, over one hundred community college districts, and approximately 4,800 others, focusing on a range of services from providing health care, managing transportation, collecting garbage, or killing mosquitos. About 1400 of the latter are Joint Power Authority special districts whose governing boards are appointed by cities or counties rather than being elected (“Special District Data”).

REGIONAL GOVERNMENTS

Regional governments have been formed by the state or by other local governments to regulate or have an advisory role to address issues that affect more than one county. Some of the most influential regulatory regional governments are the thirty-five air quality management districts that monitor and govern air pollution emissions across the state. The boards are appointed by city governments in each area and enforce federal and state pollution laws.

Local governments have also created regional councils to make recommendations to elected officials about a range of common issues. For example, the Southern California Association of Governments provides a forum for regional planning to address issues such as the housing shortage and transportation problems in the area (“President’s Report”).

TRIBAL GOVERNMENTS

109 federally recognized tribes reside in California. According to US law, these tribes are sovereign, meaning that they are not “creatures of the state” of California. Instead, they are sovereign nations like the United States or other countries. Federal law and courts have established the parameters of law and policy on tribal lands. They are administered by tribal governments under the jurisdiction of the Bureau of Indian Affairs of the federal government. Federal laws and court decisions introduce autonomy for tribes in many areas of civil law, and in California, as in several other states, the federal government has stipulated that states and tribes jointly share authority over many criminal matters.

In the last twenty years, tribes have become much more prominent in California politics because of Indian gaming. After the US Supreme Court ruled in 1987 that tribes have a right to develop gambling businesses on their land, Congress passed the Indian Gaming Regulatory Act. This Act stipulated that tribes must negotiate compacts with states specifying the kind and extent of gambling that was to be allowed. The tribes gained a new source of revenue and the states also benefitted with new tax revenue. The new wealth derived from casinos has enabled tribes to become significant players in state politics using advertising and campaign donations to influence many electoral contests.

DIRECT DEMOCRACY AT THE LOCAL LEVEL

Just as the voters of California have recourse to the tools of direct democracy—the initiative, the referendum, and the recall—so do the voters residing in cities, counties, and special districts. The usual forms of direct democracy are referenda presented to local voters to raise taxes. By law, changes in parcel tax (a type of property tax), sales, business, hotel, and utility taxes must go before the voters and require two-thirds approval to be implemented. If a local government desires to borrow money for infrastructure (such as for hospital construction, and transportation), it must also receive two-thirds majority support from voters. In 2000, with Proposition 39, California voters changed the requirement for bonds for school construction to only 55% (“A Look at Voter-Approval Requirements for Local Taxes.”)

Citizens may seek changes to local ordinances through initiatives and referenda. As with efforts to change state laws, supporters must gather signatures of registered voters to qualify the measure for the ballot. These requirements vary depending on the type of local government. In a general law city of more than one thousand residents, ten percent of the signatures of registered voters are required for an initiative to be placed on the ballot (“Laws Governing Local Ballot Measures in California”). A simple majority approves a non-revenue ordinance.

Finally, elected officials in local governments may be recalled by voters. For example, in 2021, disgruntled with the perceived leniency of the policies of Los Angeles County District Attorney George Gascón, voters circulated petitions to recall him. They failed to gather the requisite 10% of registered voters required to put the measure on the ballot. Most recall efforts fail, often because of the expense and difficulty of gathering enough legitimate signatures.

ELECTORAL REFORM EFFORTS

Just as there are debates about electoral reform at the national level, such as considering the efficacy of the filibuster, the electoral college, and campaign finance laws, they have their corollaries at the local level and have led to significant electoral reforms. We can think of democracy as a grand experiment to find the right formula to have the best representation possible yielding the best policies for local governments. Two recent reforms that have been implemented deserve our attention. The first seeks to improve descriptive representation by replacing at-large with district elections. The second seeks to increase voter participation by requiring that the dates of municipal elections correspond with state and national elections. Additionally, many other proposed reforms are intriguing. For example, one that is gaining more attention and has been implemented in some local elections in California and in other states is ranked-choice voting.

District Elections

Which is better: at-large or district elections? In an at-large election, all voters select five members who represent the entire city. In a district-election system, the municipality is divided into five geographic districts, and voters in each district select a council member who only

represents their constituents. In the early twentieth century, the at-large system was favored because it reduced the power of party machines that were often based on ethnically defined neighborhoods. The belief was that at-large elections would encourage city council members to think of the good of the entire city rather than just single neighborhoods. However, we can anticipate the problem that may result; a neighborhood, whether because of prejudice or poverty, could be easily neglected by a governing council. In contrast, district elections have the virtue of potentially avoiding this problem. If districts are drawn fairly, the probability is that governing bodies will draw representatives from all areas of a city and thus better descriptively represent the demographic characteristics and the real needs of all voters.

It is precisely these concerns that led the California State Legislature to pass the California Voting Rights Act of 2001 which makes it illegal for local governments to organize elections in such a way that minority groups would have difficulty obtaining descriptive representation on local governing bodies. Local governments did not immediately make any changes in response to this law; instead, voting rights groups such as the Southwest Voter Registration Education Project have sued or threatened to sue local governments. The response has varied. Some local governments have fought the lawsuits and usually lost, others are more sympathetic to the law and changed to district elections, or pragmatically, some did not want to engage in litigation and simply abandoned at-large elections. Cities, school districts, and special districts are changing electoral rules across California, especially in the last ten years. Over four hundred local governments have switched to district elections since the passage of the act (“Updated Counts of CVRA-Driven Change”).

The logic of these lawsuits is straightforward. If there is a disparity between the racial or ethnic makeup of a governing board and that of the voting population, then the at-large system of elections is suspect. Confirmation of this descriptive representation gap is shown by evidence that cities that have switched to district elections have experienced an increase in minority representation by about ten percent or the equivalent of one seat for every two city councils (Collingwood and Long). Thus, the California Voters Rights Act is that greater descriptive representation leads to better representation of constituency needs and increased legitimacy for local governments.

Once local governments have switched from at-large to district elections, the next step is to divide up the municipality into five districts. Districts need to be reasonably equal in population and comply with the 1965 US Voting Rights Act. Local governments also strive for the geographic compactness of districts and to keep “communities of interest” (based on, for example, culture or economic concerns) intact within a district. In some local governments, the existing governing body supervises redistricting after the federal census (which occurs every ten years). In others, non-politician citizen volunteers are solicited for the task. The Los Angeles County Board of Supervisors has a Citizens Redistricting Commission which operates in an equivalent way to that of the statewide commission. Citizens of Los Angeles County volunteer to serve, and then following a review of requirements and qualifications, fourteen are randomly selected. They then draw the map with influence from local citizens and groups that voice their concerns during local hearings (Los Angeles County Redistricting”). The growth of citizen

redistricting commissions reflects the concerns that if local government leaders draw districts, they may be gerrymandered or biased to favor particular factions or parties.

In summary, the growth of district elections accompanied by citizen redistricting commissions at the local level has at least two consequences: first, it is likely to increase the racial and ethnic diversity of governing bodies of local governments. Second, making sure that more geographic areas of a municipality are represented will enrich democratic deliberation.

The Timing of Local Elections

Should voters pick their representatives, or should representatives pick voters? The temptation of elected officials is to manipulate the electoral system so that their supporters are more likely to be the ones voting. Timing elections so that your supporters are more likely to turn out is one way. Historically, local elections are often held on odd-numbered years or a different month than state and national elections. The result is that an election with only local contests will typically have a turnout that falls to about twenty-five percent of the eligible voters, perhaps about half of the number that vote in a statewide or national election. These voters are likely to be older and more conservative, more likely to reelect the incumbent than anyone else. Of course, the origins of off-year elections may simply be caused by tradition and not be motivated by any mischievous purpose to limit turnout.

In 2015, the state legislature passed the California Voter Participation Rights Act that mandated that cities move municipal elections to statewide election dates if the average local turnout in the last municipal election is 25 percent less than the average turnout in the previous four statewide general elections. Ostensibly, the motivation of the legislature was straightforward: address waning political participation by consolidating elections. However, it would not escape the understanding of a more liberal state legislature that the increased turnout of consolidated elections would cause a much higher turnout from more liberal and moderate voters who are less likely to turn out for elections that garner relatively little attention.

For the most part, in response to the legislation, municipalities have complied with little fuss. However, some charter cities have argued that the law should not apply to them and have taken the matter to court. In 2020, the California Supreme Court ruled in their favor in *City of Redondo Beach v. Padilla*. As part of home rule, charter cities have the power to set their elections. Thus, we can expect asynchronous elections to continue if charter cities so choose to continue this practice, although there may be political opposition to the expense and inconvenience of this practice.

Ranked Choice Voting

Ranked-choice voting (often called instant runoff elections) is touted as one way to reduce polarization. Instead of the top two candidates from the primary election going on to a runoff in a general election in the fall, ask voters to rank their top five preferences in a single election. If a candidate wins more than 50%, the election has been decided. If less than 50%, the candidate

with the lowest number of votes is dropped and their votes are then reassigned to the voters' next highest preference until the candidate with more than 50% of the vote is determined. Proponents argue that such an electoral system motivates candidates to head to the center of the spectrum to be more likable to the greatest number of voters. Opponents suggest that it is difficult for voters to formulate preferences for five candidates. Moreover, having a runoff election between two candidates helps voters decide and gives the winner greater legitimacy.

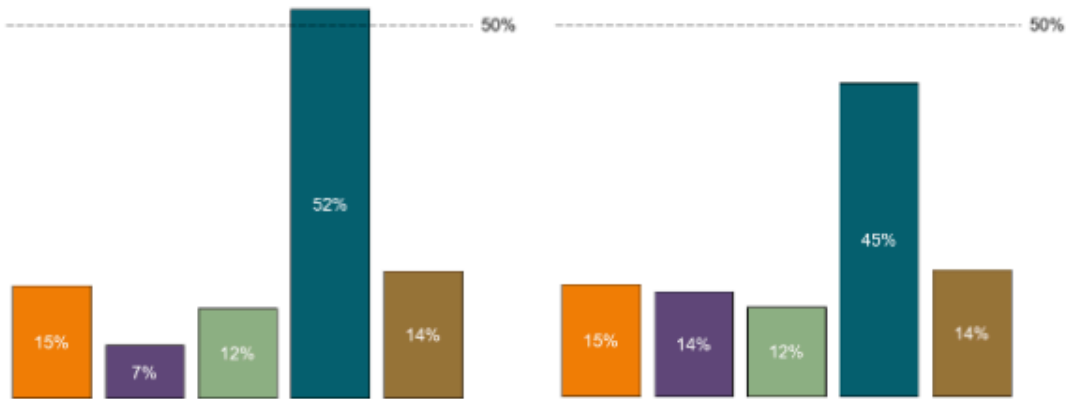
There is not a huge groundswell of support for this reform. Various places in the United States have adopted ranked-choice voting in one form or another. New York City used this process for the mayoral race, the states of Maine and Alaska use it for some of their elections, and, in California, several cities, including Oakland and San Francisco, have adopted the system ("Data on Ranked Choice Voting."). At root, Americans are used to being able to pick a clear winner rather than having a winner emerge by winnowing one out through a multi-step calculation. In an era where there is skepticism about the validity of the voting process, the instant runoff system is less transparent than traditional systems and may encounter skepticism.

▼ How does ranked-choice voting work?

For ranked-choice contests, everyone's first choice is counted. If a candidate receives a majority (50%+1) of first-choice votes, that candidate wins. If no candidate receives a majority, the last-place candidate is eliminated, and voters who selected that candidate have their votes counted for their next choice. This cycle repeats until there is a majority winner.

★ Round 1 ★

Everyone's first-choice is counted.



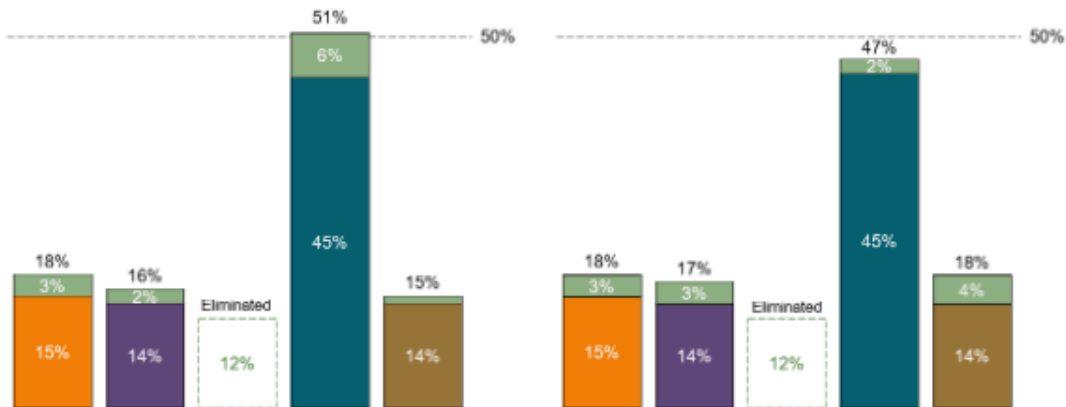
If a candidate receives more than 50% of first-choice votes, that candidate wins.

If no candidate wins in Round 1, counting goes to Round 2.

★ Round 2 ★

The process of eliminating candidates begins. The last-place candidate is eliminated and voters who chose that candidate now have their vote counted for their next choice.

The votes are counted again.



If a candidate receives more than 50% of the votes in Round 2, that candidate wins.

If no candidate wins in Round 2, the rounds continue until there is a winner. During each round, the last-place candidate is eliminated, and voters who chose the eliminated candidate will have their vote counted for their next choice.

Figure 11.5: How Ranked Choice Voting Works³⁴

³⁴ Image by [San Francisco Department of Elections](#) is in the public domain

Considering these three reforms—district elections, consolidated elections, and ranked-choice voting—a few conclusions are in order. First, although electoral practices vary among local governments, the trend across the state is to promote more descriptive representation and more voter turnout. In a time of increased concern for civil rights and equal opportunity, local governments are giving greater consideration to their election laws. Notwithstanding these concerns, local governments also like to guard their relative autonomy, and not all embrace change so quickly. The attraction of maintaining past practices causes change to occur not as quickly as reform-oriented people would prefer.

FOR YOUR CONSIDERATION

Consider the reforms discussed above. Do you prefer that cities be divided into electoral districts or to have at-large elections? Is it better that citizens draw electoral districts or should they be drawn by local governments? And would you prefer ranked-choice voting?

SUMMARY

Beneath the headline-grabbing actions of national and state governments, lie the everyday management of so many necessary services of local government: water, powers, schools, police, parks, transportation, medical care, sanitation, and on and on. The administration of these policies must be accomplished according to the same principles that we seek to uphold with state and national government in general. We seek to have governments that are fairly elected by the people, which manage policies effectively and equitably, and that are responsive to the contemporary concerns of voters. Local governments provide a rich laboratory of democracy for us to study these issues.

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CHAPTER TWELVE: PUBLIC POLICY ANALYSIS



Figure 12:1: The State Flag³⁵

CHAPTER OBJECTIVES

3. To show how policy analysis synthesizes our understanding of political science.
4. To identify some of the major policy challenges facing the state.
5. To explain how to engage in policy analysis.
6. To describe some of the ways that Californians believe that policy challenges should be addressed.

INTRODUCTION

Public policy analysis examines what governments do to address specific challenges. Much of political science describes, analyzes, and evaluates discrete parts of the political system. Policy analysis animates the entire process of politics by pragmatically showing how all the parts interact.

An analogy may be helpful. Athletes may study the workings of the heart, lungs, and muscles, investigate the best nutritional strategies, and read about the rules and regulations of their preferred sports. But there is no substitute for actually playing the sport to apply all that has been learned. Practical knowledge illuminates theoretical knowledge.

It is the same with policy analysis. Follow a policy question through the maze of public opinion, voting, interest groups, parties, the media, debate in the legislature, approval by the governor, and possibly by the courts, and it is like understanding how a runner's rigorous training led to a

³⁵ [Image](#) is in the public domain

marathon victory. Thus, we synthesize many different strands of knowledge, leading us to a greater holistic understanding of California politics.

This chapter first identifies some of the state's significant challenges and describes two ways to analyze them. Then, we examine some of the approaches that Californians consider to respond to these challenges.

MAJOR POLICY CHALLENGES

How do we know what policy challenges face us? As in our personal lives, there are many issues that deserve our concern. First, there are the issues that we understand, and it is just a matter of mustering the political muscle to get things done. This is the public policy equivalent of getting in shape: exercise, lose weight and stop smoking. Cigarettes actually provide an excellent public policy example, too. Health advocates had to prevent the tobacco companies from fogging the public debate with misinformation. A whole generation struggled with lung cancer not because of a lack of knowledge but because of the failure of the political system to do the right thing.

Second, sometimes we have incomplete knowledge about an issue, and we know it. With open minds and good research, policy analysts believe that they can close this gap. On the personal level, uncertainty about college majors may be reduced by finding real-world experiences, such as internships, which allow students to evaluate their choice of majors. In the policy world, the same thing occurs. Epidemiologists study the spread of the coronavirus and make recommendations based on new evidence. Entomologists investigate the collapse of the monarch butterfly population, discover that forest fires destroyed vital habitats, and urge gardeners to plant milkweed to help the butterflies make their migration to Mexico. Inquiry leads to knowledge to improve policymaking.

Third, an even more difficult situation exists: when we don't know that we don't know about something. Logically, there must be issues that we should be investigating but are not because we don't know that they exist. This omission may emerge because we assume that the past is a good guide to the future. For example, on a personal level, we may have learned to weather crises stoically and quietly. Just soldier on and don't say anything. Then, unaware of the impact of neglecting our mental health, we may set ourselves up for post-traumatic stress syndrome years later.

In the same way, as a society, we may focus too much on historical lessons, preparing for the last crisis rather than seeking to adapt to current conditions. Air transportation officials prepare for potential hijackers rather than terrorists. Then on September 11, 2001, the military was not prepared to defend US cities against civilian airplanes. In California, we know that we have to investigate the impact of long-term climate change on the environment. We also need to prepare more for the increased frequency of natural disasters such as floods and fires, which are killing more people.

Let's return to the question of identifying the significant policy challenges that face California. Just as there is no formal time for people to take stock of their lives and determine what is important to pursue, as a state and as a nation, we leave such critical thinking to the political process. Thus, it makes sense to start with public opinion. The Public Policy Institute of California regularly investigates public perceptions of the most important issues facing the state. A May 2021 poll shows Californians were most concerned about the state of the economy, followed by the pandemic, homelessness, and the housing crisis (Table 10.1).

Table 12.1: Most Important Issue Facing California

Issue	The percentage saying that this is the most important issue
Jobs, economy	20
Coronavirus pandemic	16
Homelessness	10
Housing Costs, availability	10
Government in general, problems with elected officials, political parties	5
Environment, pollution, global warming	4
Health care, health insurance	4
Immigration, illegal immigration	4
State budget, deficit, state spending	4
Race relations, racial and ethnic issues	3
Education, schools, teachers	2
Water, water availability, drought	2
Other	13
Don't know	5

These surveys are like thermometers, showing what is on our minds compared to previous polls asking similar questions. While insight into current attitudes provides a helpful snapshot, the scope of this question conducted with phone interviews of strangers doesn't allow for much introspection. We don't learn how Californians link their thinking about an issue to the larger historical context of the state. Do people credit themselves for their good fortune? Blame the government when they lose their jobs? Connect the international economy to their own livelihood? We don't know. Nonetheless, the survey provides insight for government officials who seek to be responsive to public concerns.

A second way to identify the challenges the state faces is to turn to organizations that systematically study California politics and public policy. Three kinds of organizations do this sort of work: think tanks with nonpartisan or partisan orientations, university centers devoted to particular policy concerns, and government agencies tasked with presenting information to elected officials. The Public Policy Institute of California conducts regular public opinion surveys. It presents nonpartisan [systematic studies](#) of all major public policy issues, including the budget,

criminal justice, the economy, education, energy, the environment, government reform, health care, housing, transportation, and water. UC Berkeley's [Institute of Government Studies](#) examines many state public policies and conducts regular public opinion surveys. Turning to government, the [Legislative Analyst's Office](#) provides thorough nonpartisan research and analysis for representatives regarding all major policy areas. Drawing on these sources, let's survey many of the major policy questions facing the state. I invite you to go to these links above to investigate more current deliberations.

The State Budget

Can the state pay for all its policy commitments? Most revenues come from taxing wealthy people, and so amounts fluctuate dramatically depending on whether the bulls or bears are running on Wall Street. On the other hand, expenditures continue to grow as demand for government services increases. Additionally, the state depends on federal funds for many programs, which may be unreliable depending on the politics in Washington.

Criminal Justice

How can the state reform the criminal justice system? Since the 1990s, crime rates have decreased, and incarceration rates have increased. In recent years, the state has reduced its prison population by returning some inmates to county jails. The state legislature also seeks to reduce the length of sentences and find alternative ways to punish and rehabilitate offenders. However, crime rates across the state are going up again, leading to worries that criminal justice reform may lead the state to become too soft on crime.

The Economy

Will California continue to be a place of economic opportunity and growth? The state has experienced dramatic changes in the last fifty years. A well-balanced economy based on agriculture, manufacturing, and services came under pressure beginning in the 1970s as industry declined or went overseas. However, in the subsequent decades, a flourishing technological sector driven by computer technology and biosciences revitalized the state. Still, regional disparities and educational deficiencies have led to pockets of poverty and severe economic inequality.

Education

How can we improve the educational system for Californians from infancy to college? The major effort of the state government is to provide universal access to preschool, increase funding for K-12 education, and make college and universities more affordable and accessible. Although half of the state budget goes to education, many Californians want a more significant state commitment to schools.

Energy

Can the state continue to provide reliable energy for its forty million inhabitants in a way that is economically and environmentally sustainable? California is in the midst of a dramatic shift in how energy is generated as it seeks to reduce greenhouse gas emissions. Utilities are increasing their use of wind and solar power. Conservation efforts have been highly successful concerning electricity but have fallen short with regard to transportation. In fact, energy policy goes hand in hand with considering questions about environmental and transportation policies.

The Environment

Will California meet its environmental goals to protect natural habitats and reduce pollution while addressing its energy, transportation, and economic goals? The state was a national leader in reducing smog in the 1970s and cutting greenhouse gas emissions in more recent years. Yet, today, the health of many Californians is still at risk. Environmental concerns will remain a central part of energy, transportation, and economic policies.

Government Reform

Will California political institutions be able to govern effectively? Over the last several decades, piecemeal reforms such as ending gerrymandering and the top-two primary have helped reduce gridlock. One of the central questions remains the appropriate balance between representative and direct democracy. Periodically, prairie fires of populism overturn the status quo (such as Proposition 13 or a recall election). Another concern is to make sure everyone has a voice. In a state with many recent immigrants, it is important to welcome all communities to the political process.

Health Care Reform

Will all Californians receive quality health care? Following the federal passage of the Affordable Care Act, California expanded health insurance coverage. State funding is supplementing the federal funds to cover even more people. It is unclear if the state will be able to maintain this commitment.

Housing

Will the state be able to provide more affordable homes? California has some of the most expensive housing costs in the country. Homelessness is a huge problem as well. As housing costs increase, both residents and businesses leave the state for more reasonable places. Historically, housing policy has primarily been left to local governments who have not mandated the construction of enough affordable homes. With local governments guarding their authority to zone their own communities, the state government will have to find innovative ways to provide more housing.



Figure 12.2: Downtown Los Angeles, March 2021³⁶

Transportation

Will California be able to provide for the transportation needs of its citizens in an effective and environmentally acceptable manner? There are dramatic changes in transportation technologies, including the electric car and the high-speed train connecting southern and northern California. Addressing transportation challenges directly impacts environmental, energy, and housing goals as well. Progress in this area is extremely slow.

Water

Will Californians have sufficient water resources in the future? The growth of the state depends on a far-flung network of reservoirs and aqueducts delivering water from northern to southern California, from the Sierras to coastal cities, and a diminishing supply from the Colorado River. Agriculture uses eighty percent of the water. As climate changes, water resources will be impacted by periods of drought and flooding. Many technological improvements in water resources management for agriculture, industry and urban uses are possible and necessary. In short, there are many complex challenges facing the state. Policy planning has to be sufficiently flexible to address many demands. Let's examine two ways to study public policy.

³⁶ Image by [Russ Allison Loar](#) is licensed under [CC BY-NC-ND 2.0](#)

HOW TO ANALYZE PUBLIC POLICY

The traditional approach to public policy analysis is to employ the rational actor model. Treat the government like a person who identifies a problem, selects the best option to address it, implements the new policy, and then evaluates the outcomes. Policy options can be easily analyzed and evaluated in terms of their costs and benefits.

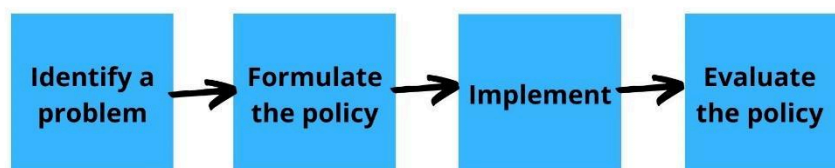


Figure 12.3: The Traditional Model of Policy Analysis³⁷

There are drawbacks to this approach. The definitions of problems are not purely rational. They emerge from particular constellations of power, social contexts, and beliefs that thrust them onto the political agenda. The relative influence and perceptions of stakeholders including interest groups, representatives, and bureaucrats shape the formulation of policies. Government agencies implement policies according to their own standard operating procedures and regulatory processes, which may undermine the intent of other stakeholders. Evaluation of policy may be absent or ineffective.

As a result of understanding these and other drawbacks to the traditional model, political scientists often consider more factors. For example, how do bureaucratic routines influence policy decisions? How do interest groups frame issues and influence policy debates? Moreover, new policies are usually made within the context of existing practices, resulting in glacial change. Such incrementalism may only be interrupted when crises disrupt existing practices. For example, in 2020, the pandemic generated calls for dramatic social welfare reforms, including universal health care and a guaranteed minimum income.

In light of the weaknesses of the traditional model, we need a framework to study public policy that allows us to integrate many different factors in a single approach, compare policy developments among states, and consider historical and social contexts. We don't have to look far.

This book and most other introductory political science textbooks use systems theory to organize the subject into chapters. This approach is also handy for policy analysis. Recall that systems theory conceptualizes politics as an exchange among inputs, institutions, and outputs. Californians make demands on political institutions, which then generate policies that impact people. Systems theory allows for generalizability and understanding of the historical and social context of policymaking. The steps to engage in policy analysis using political systems theory are straightforward. Take a particular policy question. Consider public opinion regarding an issue.

³⁷ Image by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

Reflect on these opinions in their historical and contemporary social contexts. Study how these opinions are pressuring the government through many factors, including interest groups, the media, voting, parties, campaigns, and elections. Next, examine how policymaking institutions address these popular pressures. Are the State Assembly and Senate deliberating about new legislation? What is the governor doing? Is the issue subject to litigation? Are bureaucracies addressing the issue with new studies and proposing new regulations? Finally, examine the policy that emerges and study its impact. Is the policy successfully addressing the problem?

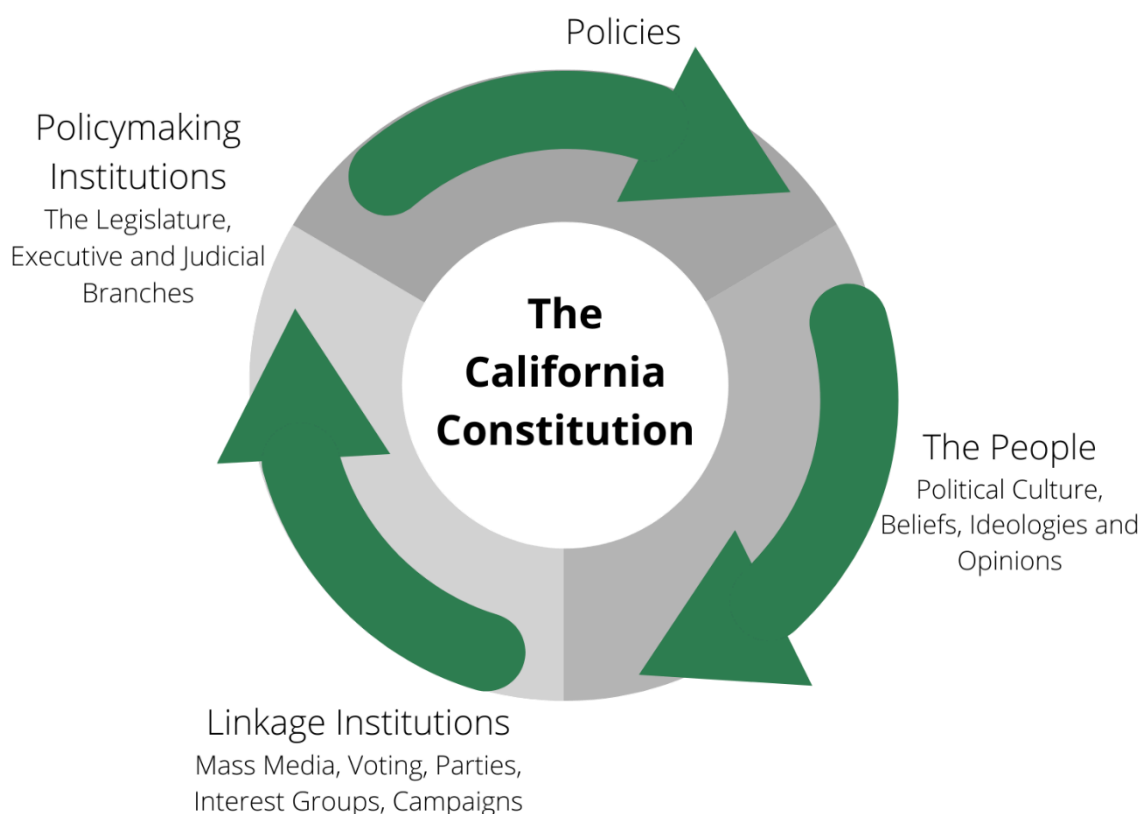


Figure 12.4: The Political System (Almond)³⁸

Systems theory allows us to link each part of the political system to the whole and see how they interact to formulate government policy. It is well-suited to a democratic form of government where inputs from the people will be substantial. Systems theory does not propose any specific policy prescriptions. It is essentially creating empty boxes to be filled by political demands and policies. However, there are some common policy approaches to address California's policy challenges. They are embedded in California's political culture and ideologies.

³⁸ Image by Alexa Johnson of the [College of the Canyons ZTC Team](#) is licensed under [CC BY 4.0](#)

ADDRESSING POLICY CHALLENGES

There are at least six general policy approaches to address the many challenges facing the state. These approaches developed over the course of California history and are also based on ideological divisions. Social movements have also generated many creative policy responses and political energy to change public policy.

The Technocratic Solution

The first approach focuses on expert planning. Any policy conundrum can be resolved by engineering an appropriate strategy. Often this approach focuses on physical infrastructure. For example, if there is a water shortage, build an aqueduct. If the cities are crowded, create suburbs. Build more schools, harbors, invite more industry. Grow, grow, grow!

Managed Capitalism

This solution partners with the previous one. The government provides the infrastructure for business development but then regulates businesses to stop monopolies and enforce labor and consumer protections. California limited the power of the railroad monopoly in the Progressive era. In the 1960s and 1970s, Californians pioneered auto emission regulations to reduce smog.

Progressivism

With so many government programs, progressives worry that government may become corrupt, with politicians forgetting who elected them. It is the role of the people to periodically step in and stop corruption through direct democracy. Proposition 13's property tax cuts of the late 1970s, or the efforts to recall governors and local officials, keep the politicians in check.

Incrementalism

Few Californians are revolutionaries. Maintain the core of the electoral system as it was set out by the Constitution of 1879 and the Progressive reforms of 1911 and then implement reforms as needed to enhance government efficiency and democratic accountability. This is best done on a piecemeal basis, such as electoral reforms like the top-two primary system or the Citizens Redistricting Commission.

The Market Model

Not all Californians favor New Deal-style managed capitalism. Conservatives prefer reducing the role of government and finding solutions that promote individual initiative and responsibility. Minimize regulations and Californians will have more opportunities and poverty and homelessness will decrease. Help people in trouble, but don't make them dependent on the government.

The Ideals of Social Movements

Beyond the major currents of history and ideologies that have shaped policy debates and deliberations, California has always had social movements and utopian visionaries influencing policy considerations. Sometimes these efforts were very reactionary. Think of Dennis Kearney's Workingmen's Party, with its shouts of the "Chinese Must Go!" Kearney's actions led to a new Constitution for California and national legislation limiting Chinese immigration.

Other times, the social movements were far more liberal, such as Progressivism at the turn of the twentieth century and its successful implementation of direct democracy. Sometimes, they were radical, such as Upton Sinclair's 1934 campaign for governor, in which he ran on a platform of massive redistribution of income called End Poverty in California (EPIC).

More recently, successive waves of social movements in the 1960s and 1970s reformed state policies and had national repercussions. Civil rights movements promoting equality based on race, gender, and sexuality have organized thousands of Californians, altering state and federal legislation. On the right, revolt against high property taxes led to the successful passage of Proposition 13 and an anti-tax movement that swept the nation in the 1970s and 1980s. The ideas of these social movements have fundamentally changed public opinion, elevating the power of interest groups, increasing the power of the Courts and bureaucracies, and reshaping social relations in fundamental ways.

SUMMARY

I invite you to study the policy areas that most interest you. Follow a particular issue as it is considered by all the different parts of the political system. Examine the solutions proposed by different actors. Explain the policy choices that have been made in terms of the confluence of power and ideology. The policy areas themselves are fascinating, and policy analysis leads to a better understanding of how all the parts of the political system fit together.

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