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THE FEDERALIST VOTER
THE TALE OF EDUCATION FINANCE REFORM IN
CALIFORNIA

2014년 8월

서울대학교 대학원
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이 논문을 외교학석사학위논문으로 제출함

2014년 7월

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Abstract

The literature on direct democracy presents a false assumption that its institutions create good governance. A study on education finance reform in California (1978-2012) illustrates the paucity of support for the literature's principle assertion. This research shows that voter determined fiscal policy through the passage of tax limiting and education finance reform measures has not only crippled the California budget but has also reduced the quality of public education. The externalities caused by state and municipal level fiscal tribulations has also altered the balance of power in California in regards to the responsibility over education finance. While education finance before 1978 was largely a local matter, feedback effects caused by voter trends in supporting lower taxes and increased state obligations to support education has centralized the state role by controlling the means of governing expenditures. The minimum obligations to be spent on education has further diminished the ability of the state government to fund all obligations, including education which was the intended recipient. These feedback effects that have continued to limit the ability of state and local governments to meet their basic obligation have increased reliance on federal block grants and direct to local funding. This research concludes that while voters do not vote with the federal system in mind, the results of their actions nevertheless increase the federal government's encroachment into the state and local domains of education.

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1. Introduction

It has been observed that a pure democracy if it were practicable would be the most perfect government. Experience has proved that no position is more false than this. The ancient democracies in which the people themselves deliberated never possessed one good feature of government. Their very character was tyranny; their figure deformity.

- Alexander Hamilton, (June 21, 1788)

Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question. ...Every man, and every body of men on earth, possesses the right of self-government. ...The right of representation in the legislature, a right inestimable to, and formidable to tyrants only. ...It is the people, to whom all authority belongs. ...The hand of the people has proved that government to be the strongest of which every man feels himself a part.

- Thomas Jefferson, (March 4, 1801)

Hamilton and Jefferson found tyranny in different places. Founding his position upon his knowledge of ancient Greek democracy, Hamilton stood in staunch opposition to the “utopia” that was the pure, direct democracy of the “ignorant” masses. Jefferson, on the other hand, felt that pure democracy was preferable to representative government, which could be no better than a monarchy. While Jefferson's position was generally considered to be dangerous at the time, and Hamilton's caution would be woven into the Constitution, the tables have since turned, and greater voter participation in governance in the form of direct democracy has garnered significant standing in contemporary America. While the pairing of direct democracy and federalism would surely strike most of the founders as antithetical, the modern-day voter no longer appears to be phased by the juxtaposition that has now come to be regarded as central to good governance in the federal state. This conventional assumption in the literature on direct democracy is contradicted by the most prominently cited example of its success: California,

whose dire fiscal situation suggests that direct democracy may be the culprit, not the savior. This research will offer a refutation of the conventional wisdom, and hypothesize that direct democracy is in fact responsible for creating fiscal pressures at both the state and municipal levels that alter the federal balance of power.

To prove this hypothesis, this research will focus on education finance reform in California. While conducting research on other state responsibilities may also prove fruitful, education is particularly apropos because it represents an area of power predominately controlled by state and local power. Education finance as a focus of research is worthwhile because the largely limited nature of the federal government in the area makes determining the extent of the federal role in a hitherto primarily state and local domain practical. In addition to this, education makes up the largest single obligation of state and local budgets, making assessment of fiscal health a sensible approach. To explore the development of education finance reform in California, this research focuses on the narrative of important ballot measures from the period of 1978 to 2012.

California went from being one of the best-funded states in terms of per-pupil education spending in the 1960s to consistently ranking among the bottom in the last two-and-a-half decades. During this period, drastic changes in the way education was funded not only altered California's ability to appropriate sufficient funds for education year after year, but also its ability to meet its other responsibilities. Education financing reform was not the result of stoic legislators enacting laws, but rather the consequence of voters.

Empowered by the tools of direct democracy, voters went to the polls and decided on bills ranging from tax limitations to education finance. Did voters actively intend to diminish the quality of education, or did their actions stem purely from self-interest? While the intentions and competency of voters will be questioned later in this research, what is of particular interest at this point is how direct voter participation in formulating state and local fiscal policy, or "ballot box" budgeting, as it came to be called by some, has worked to unduly hinder the California General Fund and to place mounting barriers against future attempts to reform already hamstrung education finance goals.

These fiscal aspects are not solely limited to the capacity of the state to properly meet its obligations; more importantly, this research asserts that there are repercussions for the intergovernmental relations inherent in a federal state. This fact points to the overarching reality

that direct democracy does not just have implications on the state and local level but on the federal, or national, level as well. Throughout this research, the intention is to explore and critically examine the question of whether direct democracy has a salubrious effect, as claimed in the scholarly literature, or, as contended here, a deleterious one.

2. Literature Review

This literature review is divided into three sections. The first section will present the historical role the United States federal government has come to play in supporting state and local-level education finance nationwide. This section will put particular focus on the historical foundation for bargaining and dependence between the states and the federal government in regards to fiscal obligations. While there is much antecedent history that can be delved into, the evolution of the nature of the purview of American governmental bodies (federal, state and municipal) on education finance (focusing primarily on federal administration policy in the last six decades) will be succinctly reviewed, specifically with regard to the increase of services, and the consequently necessary funding obligations that entails, requested by the states and lower level municipalities. The second section will provide a brief background of direct democracy in the United States, showcasing the development of the institution and its rise to prominence in the Progressive Era in the early twentieth century. Tying in with the earlier section on the historical dynamic between federal and state responsibilities on education finance, California, being the primary model of the success of the institution of direct democracy in the literature, will serve to link the two foci of this research. This section will present many of the assertions of the pro-direct democracy crowd and assess them. Lastly, the third section will present the development of the literature on federal theory, with particular focus on the American species of federalism. A subset of federal theory, fiscal federalism will be given particular emphasis; what effects direct legislation has had on the fiscal health of state and local governments will be closely examined.

2.1. The Federal Government's Education Policy and the States

When speaking of education in the United States, one invariably hears how it is largely a state and local matter. This blasé description does little to elucidate the reader about the particular role the federal government has come to play. Part of the reason why the federal government's role is left out is because its participation is largely behind the scenes. The state and local governments are visible actors; the average voter does not readily see the flow of federal monies to their state and local governments. Nor do they recognize the strings attached to these rich federal estuaries.

Another reason for this common saying is that the volume of federal funding on the surface appears small, making up approximately only 8% of state budgets (New York State Archives 5). But in truth, states are not capable of fully funding education in their own right, and the small percentage that is awarded by the federal government is fought hard for. More importantly, local governments, particularly in urban areas, have a harder time making up the downfall in their budgets. While some are able to turn to the state government for assistance, the federal government has evolved to primarily take up that role, with up to half of municipal funding on education coming from the federal government.¹

Nevertheless, what makes this expanded, behind-the-scenes federal role in education unique is that, as far as anyone can tell, the division of powers has largely gone unaltered. It is likely that any other domain of power is either a primary federal responsibility or that the federal government occupies a key position in setting policy and administration for it. Health care and transportation are prime example of areas once solely the prerogative of states, but now they are so integrated into federal administration that states have to engage in some sort of federal bargaining to alter federal policy at all.

Education in the United States is largely a state and local matter, and while this dynamic has evolved to include federal participation in the last half-century or so, the primary arrangement has largely proven stable. However, this being said, it is important not to understate the caveat: the role the federal government plays may be small, but it has evolved to be fundamental.

2.1.1 Federal Education Policy Comes into its Own

The idea that the federal government should provide aid to the states for education became prominent during the Eisenhower administration, in spite of initial reservations over redefining the federal government's role. The reservations resulted from concerns over funding making their way to parochial or religious schools and thereby supporting segregated institutions (a serious issue due to the intractable problem of racial segregation). However, the Supreme Court case *Brown v. Board of Education of Topeka, Kansas* (1954), which directly forbade supporting any segregated school systems, as well as the launching of Sputnik in 1957, decreased

¹ This is in addition to the fact that education funding makes up the largest portion of most local budgets, particularly in the case of California.

reluctance among administration officials and changed priorities. The focus shifted to creating scientific competitiveness to deal with the Soviet technological threat. The Eisenhower administration realized that the only way to create a generation of above-average students would be to enact substantial and immediate increases in federal education aid. With the pretext that national defense was on the line, Congress authorized the National Defense Education Act (1958), pumping an unprecedented level of federal funds into public schools (New York State Archives 11-12).

Eventually, however, as the seat of the presidency slipped out of Republican hands, the goal of federal involvement shifted towards that of addressing inequality. Engineering compensatory federal education policy became a core part of Johnson's War on Poverty (1960-1965). The Elementary and Secondary Education Act (ESEA) of 1965, which has endured to this day, marked the first and most significant shift in the way responsibility for education was divided between state and federal levels. Launched at the same time, Head Start shared the goal with the ESEA of addressing inequality in student performance by providing early childhood education and summer school. Ultimately, the Civil Rights Act of 1964 was able to address the ongoing debate over federal involvement in segregated public schools, tying federal funds to the condition of non-discrimination.

As a result of the trend of white flight in the 1950s and 1960s, driven by the growth of suburbia, many major urban centers were largely hollowed out, and as an important tax base dried up, many inner-city schools were left in worse financial situations. This relocation of the tax base affected large cities most acutely, in particular New York, Philadelphia, Boston, and Los Angeles; state legislatures often had more incentive to spend monies on the sprawling suburban and rural districts at the expense of under-represented inner cities. As a result, many democrats who represented urban districts saw the potential federal largess of Johnson's ESEA's Title I and Head Start, which directed the offering of educational opportunities to those who lived in poverty-stricken neighborhoods) as a means of propping back up long-standing urban school districts. In the end, however, the disparities between white suburbia and the ethnic metropolises could not be fully equalized; however, federal monies stemmed the tide and cut the disparity roughly in half, with funds comprising 30 to 40 percent of local education costs (New York State Archives 5-7) (Rury 198).

In regards to this research, perhaps the most important part of these programs is how

federal monies were allocated. Head Start differed not only from the ESEA in the way federal funds were appropriated, but also from most other federal programs. Rather than awarding them to the states in block grants as is done under the ESEA, funds were allocated directly to needy schools and municipalities. Head Start is remarkable in that it violated this long-standing federal arrangement. In truth, the sheer volume of federal funds flowing to Head Start centers was small, but this arrangement offered a sort of ill-defined constitutional violation that irked many conservatives and states' rights supporters. However, in defense of the practicality of this arrangement, large cities, traditionally slighted by state legislatures, became the primary beneficiaries of Head Start funds. The yearly request for funds from municipalities created a new federal-urban dynamic that would play against states for funding.

As mentioned above, ESEA funds are allocated in block grants to the states. However, this presents an interesting problem. How would the federal government be able to ensure compliance of federal programs if the states control the means of implementation? On average, states (and local entities) are responsible for approximately 92 percent of education costs (New York State Archives), while the federal government picks up the tab for the remaining 8 percent. While eight percent may not seem like a lot, states' budgets can be sufficiently strapped to make that amount seem like a godsend. In general, one of the most powerful tools the federal government has to ensure compliance is the power of the purse strings. While this tool only works if the states need the funding and cannot make up the shortfall in any other way, part of what will be argued later in this paper is that certain intra-state institutions (e.g., direct legislation) make states more reliant on federal funds, and thus more susceptible to the "fiscal safeguard" (see Section 4.1).

Another aspect of an increased federal role created during this time stems from the Higher Education Act (HEA) of 1965, part of Johnson's larger Great Society initiative. As opposed to the ESEA and Head Start, which had compensatory aims, the HEA was largely in the vein of financial assistance for students pursuing a post-secondary degree. This was not the first venture by the federal government into student loans; the first began in 1958 under the National Defense Education Act. These were direct loans that came directly from government coffers, yet the scope of the program was limited. Under then-congressional rules, the direct student loans were booked as federal debt; however, this served to lessen the political will to increase lending under this program. Prior to the creation of the guaranteed student loan program known as the

Federal Family Education Loan (FFEL) program as authorized by the HEA, banks had little incentive to offer loans to students, viewing them as potentially poor investments. On the off chance that they would issue a student loan, exorbitant interest rates above 14% were typical (Mettler 9-11). However, with the promise that the federal government would guarantee the loans, even in the instance of a default, these new student loans became very popular with both private banks and non-profit lenders. In response, the Student Loan Marketing Association (Sallie Mae), a former government-sponsored enterprise, was soon established to market and manage the increasingly large amount of loans the federal government would back.

Later, during the Clinton administration, the federal government would once again begin to offer direct loans.² Direct lending created a more visible role for the federal government in offering student lending; however, the popularity of the less-visible government subsidized loans was only temporarily diminished and still constituted the primary mode of federal lending until 2010 when Congress eliminated the guaranteed student loan program and converted all new loans to the direct lending variety. This increased federal role is not visible to most Americans because few realize the extent of the guarantee the federal government is obliged to provide. While not the largest aspect of the federal government's role in education, student loans represent another component of federal aid (in addition to Head Start and direct municipal grants) that sidesteps the states.

The Nixon and Ford administrations attempted to divert the federal government away from the approach towards education policy taken by their predecessors by focusing on consolidating federal aid to the states so they would have the discretion to spend it as they saw fit. However, in response to the 1974 case of *Milliken v. Bradley*, federal support for compensatory education, rather than mandated integration, became the focus, in spite of the Nixon administration's efforts to avoid that shift.

Two important court rulings characterized the changing nature of education on the state level, and while ultimately neither did anything to alter the role of the states or federal government in guaranteeing education, they provided a noteworthy discussion of what responsibilities the states should meet. The first and oftentimes cited case was the *Serrano v. Priest* ruling in 1971 (Serrano I), revisited in 1976 (Serrano II), in California, which stated that

² Direct lending essentially used the central government's capital to guarantee bank loans.

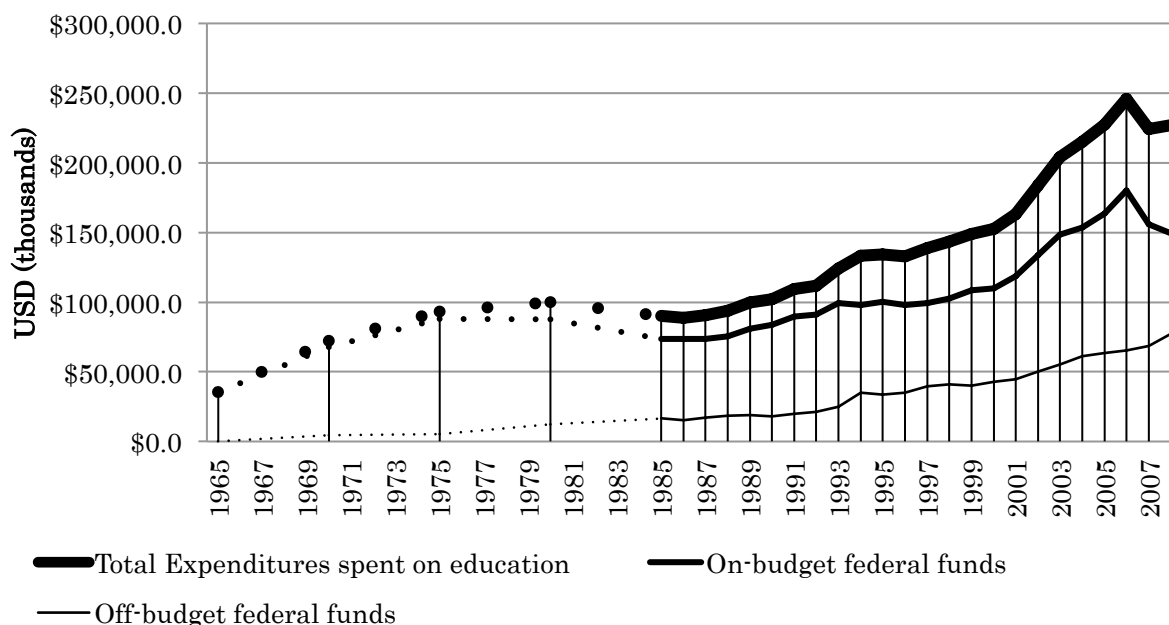
failure to meet the educational requirements of Californian children was tantamount to “wealth discrimination” (Education Policy and the States 30). The second case (which was ultimately struck down by the Supreme Court) was *San Antonio Independent School District v. Rodriguez* (1973), a follow-up to *Serrano v. Priest*, which sought to guarantee quality education as a federally protected right (Education Policy and the States 31-32). While *Serrano* would not apply to the other states as activists had hoped, the ruling was able to stand in California. To ensure the ruling held, the California Legislature took it upon itself to equalize educational funding between the disparate school districts. An important characteristic of this period of social activism is that aside from public school integration, attempts to fundamentally increase the federal government’s role in state education were largely met by failure. Even though the focus was primarily placed on compensatory education modes, the ability of states to bypass federal strings stayed largely intact; in fact, the *Serrano* ruling served to deflect local revenue away from education and contributed, for a time, to an increased state role, while increased federal funding, such as from the Nixon administration’s Education Amendments of 1974, helped in part to stem the municipal level deficit in California during the period of equalization payments; yet it could not alter the balance.

In the early 1980s, as part of the Reagan administration’s crusade for accountability reform, legislation was undertaken to transfer as many powers and responsibilities as possible back to the states. At the same time, almost paradoxically, Reagan took action to broaden the scope of federal education programs while simultaneously seeking to drastically reduce funding for them so that he could, in effect, kill them. The Educational Consolidation and Improvement Act of 1981 (ECIA), the reauthorization of the ESEA, compressed categorical programs into smaller block grants that would make their way to the states. In the first year alone, the ECIA cut federal education funds by 15 percent (about \$1 billion USD). The way funds were allocated to the states changed as well, for the formula of weighting funding, under Chapter 2³ of the ESEA, changed and states were encouraged not to follow the weakly suggested obligations for use; instead, they could use Chapter 2 funding for whatever they deemed appropriate, education-related or not (New York State Archives 45-46).

The ESEA and Head Start programs survived the “new federalism” of the Reagan years,

³ Formerly referred to as “Title”.

but only after having incurred severe damage. The Reagan and subsequent Bush administrations were, more generally, responsible for the drastic withdrawal of what had previously been a steadily growing federal role. Although states now had far greater discretion in setting their own education policies following the newly established trend of sensible devolution to state authority, the important and immediately negative consequence of all this on the state level was that urban areas felt the squeeze of tightening federal funds most acutely.



Graph 2.1 Federal Tax Expenditures on Education

Source: U.S. Department of Education, Budget Service, unpublished tabulations. U.S. Department of Education, National Center for Education Statistics, unpublished tabulations. U.S. Office of Management and Budget, Budget of the U.S. Government, Appendix, fiscal years 1967 through 2010. National Science Foundation, Federal Funds for Research and Development, fiscal years 1967 through 2008, Digest of Education Statistics (2009), http://nces.ed.gov/programs/digest/d09/tables/dt09_373.asp.

In the 1990s, Clinton largely increased funding for federal education programs and, with the passage of the Educate America Act of 1993, sought state participation in the creation of national education standards. However, state governor quid pro quo demands along with a newly resurgent House republican majority largely undermined federal-state cooperation. The Clinton and Bush years converge with respect to an increase in federal funding for the states. While the passage of George W. Bush's signature legislation, the No Child Left Behind Act (NCLB), in 2001, created a new federal role for testing and school accountability different from the compensatory aims of preceding democratic administrations, it nonetheless increased the federal government's role.

Looking at Graph 2.1, the overall trends in federal funding of education in the United States beginning from the Johnson Administration can be seen. 1965 marked the year the federal government officially entered into the fold of education responsibilities; even during the conservative Nixon years there was an explosion of funding. However, the conservative-minded governance and ethos of the tax revolution during the Reagan years hampered the growth of the federal government's role. An important feature of the 1980s was the reliance on unfunded mandates, which called for quality improvements but offered no fiscal route to get there. The Clinton, G.W. Bush and Obama years have set the trajectory back on track and federal grants to states and localities have continued to increase.

2.2 Direct Democracy

2.2.1 Origins, the Progressive Movement, and the West

While the tradition of direct democracy can be traced back to the 17th century in the United States to the use of open town hall meetings in New England, the modern origins of direct democracy were inspired by the Swiss example. American labor theorist and social activist James Sullivan popularized direct democracy after a visit to Switzerland in the latter part of the 19th century. Other prominent figures, such as Eugene V. Debs and William Jennings Bryant, fervently supported the cause as well. Just two years after the foundation of the National Direct Legislation League in 1896, direct democracy advocates had their first victory. South Dakota was the first of any state in the union, adopting the institution in 1898. Between 1898 and 1992, twenty-eight states adopted some form of direct legislation (see Figure 2.2). It is important to note that direct democratic devices such as the initiative, referendum and the recall were not solely limited to state level elections; in fact, they enjoyed greater and more frequent usage at the local level, where the majority of municipal governments nationwide allowed for some form of direct legislation.

As will be covered in a later section, it is worth noting that the structure of the American federal state possesses a series of safeguards that act to prevent serious transgressions by one part of government against another. The complementary and redundant nature of these safeguards increases the amount of veto points and has created barriers to prevent one part of government from gaming the system. The evolution of the federal system, as illustrated by federalist literature, shows that even with the best intentions of a state's founders, a balanced state cannot

be purely engineered; other factors such as a legitimized judiciary, integrated party system and a federally-minded civil society must develop later on. Consequently, as the young United States grew and expanded westward and added new states to the union, these states continued in the tradition of emulating the republican forms of representative government that had existed for decades prior. However, many of the newer western states that would later be admitted to the Union during the mid- to late-nineteenth century found that porting the federalist model of layered institutions was creating a system at the state level that was inherently flawed. The perceived inability of many western states to faithfully represent their citizenry, the employment of a tried-and-true federalist model notwithstanding, can, in large part, be attributed to the absence of a preëxisting civil society, a state of affairs rooted squarely in conditions of demographic composition (these states consisted largely of disparate migrant groups). Concerns and frustration over rampant corruption in government and the undue influence of industry led, in part, to the Progressive movement's rise to prominence. Direct participation in state affairs via the initiative, the referendum and the recall was recognized as a means of giving voters a more direct way of affecting outcomes, while at the same time reining in unresponsive legislatures and unruly public officials, and it was touted as a democratic panacea by Progressive advocates. Although Progressives championed many causes, the implementation of direct legislation in a handful of western states in the first several decades of the twentieth century has proven to be one of their most enduring legacies.

California provides a prominent example among western states. California's admission to the Union in 1850 was so rushed that in less than two years after the signing of the Treaty of Guadalupe Hidalgo, officially ending the Mexican-American War, California would skip the territorial phase entirely and adopt a piecemeal constitution lifted from the examples of Iowa and New York. California's constitutional history is especially germane in that its 1849 constitution illustrates how the state attempted, in essence, to port East Coast federalism to the West Coast.

The majority of the settlers who made their way west to California, the Oregon territory and other not-yet-organized territories, had little intention of staying and cultivating the land; rather, they came with dreams of striking it big and heading back wealthy. Consequently, political institutions were primitive, not designed to last, and not sufficiently able to provide state services for a small (albeit rapidly increasing), largely transitory citizenry. The eventual revision of the constitution in 1879 created a cap on the number of representatives in both of California's

legislative bodies; the California Assembly was limited to 80 and the California Senate was limited to 40. This representative cap created state districts that were larger and even more diverse than its congressional districts and generated a strong impression among Californian voters that their representatives did not, or could not, represent them effectively in a state that was soon to become the most populous in the Union.

The key point of contention in the Californian system would relate to its representative government. As early as the 1870s, citizens' dissatisfaction with their representatives was plainly evident. Historians such as Kevin Starr tend to believe that the problem was that California's political economy was underdeveloped and susceptible to an influx of special interests into representative government. Key among them was the Southern Pacific Railroad Company, which was able to set the state legislature's agenda and committed blatant examples of graft and peddling in state halls. Public outrage, headed by the populist Lincoln-Roosevelt League, began to materialize in the first decade of the twentieth century. The progressive crusade finally seized Outremer, and in control of the state government and the governorship, governor Hiram Johnson introduced the initiative, the recall and the referendum in 1911.

The dawn of direct democracy in California coincided with the adoptions of similar referendum and initiative provisions in other states, first in the West and subsequently the Midwest. Many such conversions were spurred similarly as California's was by anti-corporatist sentiment, but in other states adopting direct legislation they were seen as an outlet to address the issues of women's disenfranchisement, alcohol prohibition and labor rights. Whatever influence these movements provided, it is important to understand that many interest groups realized that being able to bypass legislatures could advance their self-interest. Though Southern Pacific's notorious graft is commonly viewed as a prime example of corporate indiscretion and overreach, such lobbying was nevertheless endemic, with many other industry players contriving to benefit from anti-competitive behavior. What is clear is that while direct legislation may have been the brainchild of moral crusaders, it was also a tool leveraged by many interest groups, such as competing commercial interests, to garner public support for their causes, bypassing unfriendly legislatures. Direct democratic devices like the initiative, referendum and the recall were not solely limited to state level elections, and they in fact they enjoyed greater and more frequent use at the local level.

2.2.2 A Review of Ballot Measures in California (1911-2012)

Direct democracy in California brought about a proliferation of initiatives in the first three decades of the institution (Figure 2.3). The enthusiasm of the Progressive movement would eventually fade, but during this period the initiative's staunchest supporters, headed by Dr. John Randolph Haynes, would successfully defend the initiative against anti-initiative forces championing institutional limitations that would have prevented its use. Two particular successes involved abolishing the Head Tax in 1914 (Proposition 10) and striking down a legislatively referred bill that would have required a supermajority for passage of initiative bond bills. While Haynes and the Direct Legislation League would successfully defend the ease of usage for the initiative process, its use would fall out of fashion by the 1940s. Contrary to what many elites feared, the public did not enact any truly radical laws, and initiatives only had about a thirty percent success rate to begin with.

The domestically stable period from the 1940s until the mid 1970s saw a respite in the use of the initiative. During this interim period, some of the rules regulating the use of the initiative were changed; most importantly, beginning in 1960, initiatives began to appear on the primary ballot in June as well as the typical general election ballot in November.⁴ However, by the end of the 1970s, several trends across a nation characterized by an intense identity crisis and social activism reignited the use of the initiative. The general consensus is that the high profile bill, Proposition 13, was responsible for the renewed interest in tax cutting and the institution that delivered the tax relief – direct democracy. While Proposition 13 would have one of the most lasting and irreversible effects on everything ranging from the California budget to the quality of publically supported day care, many other ballot measures would go on to make their mark as well.

Looking at the usage of direct democracy from 1911 to 2012, it can be seen that 34 percent of all initiatives passed while 66% of all propositions passed. Many direct democracy theorists focus their research solely on the use of the initiative and seek to explain and explore

⁴ In 1984, ballot initiatives no longer followed the numbering scheme of the previous year but began from the number one again. If initiatives appeared on the June primary ballot as well as the November general election ballot, voters could be faced with two Propositions 1s in the same election year. This potentially confusing arrangement for voters prompted the California Senate in 2011 (Senate Bill 202) to revert to the pre-1960 model and mandated that all initiatives appear only on the November general election ballot.

the implications of its revitalized use in the last three-and-a-half decades. While not as interesting as the initiative, the proposition, or legislatively referred measure, was once the most voted-on type of ballot measure. During the same time period that initiative use rebounded, the practice of referring bills to the public by the legislature had slowly waned.

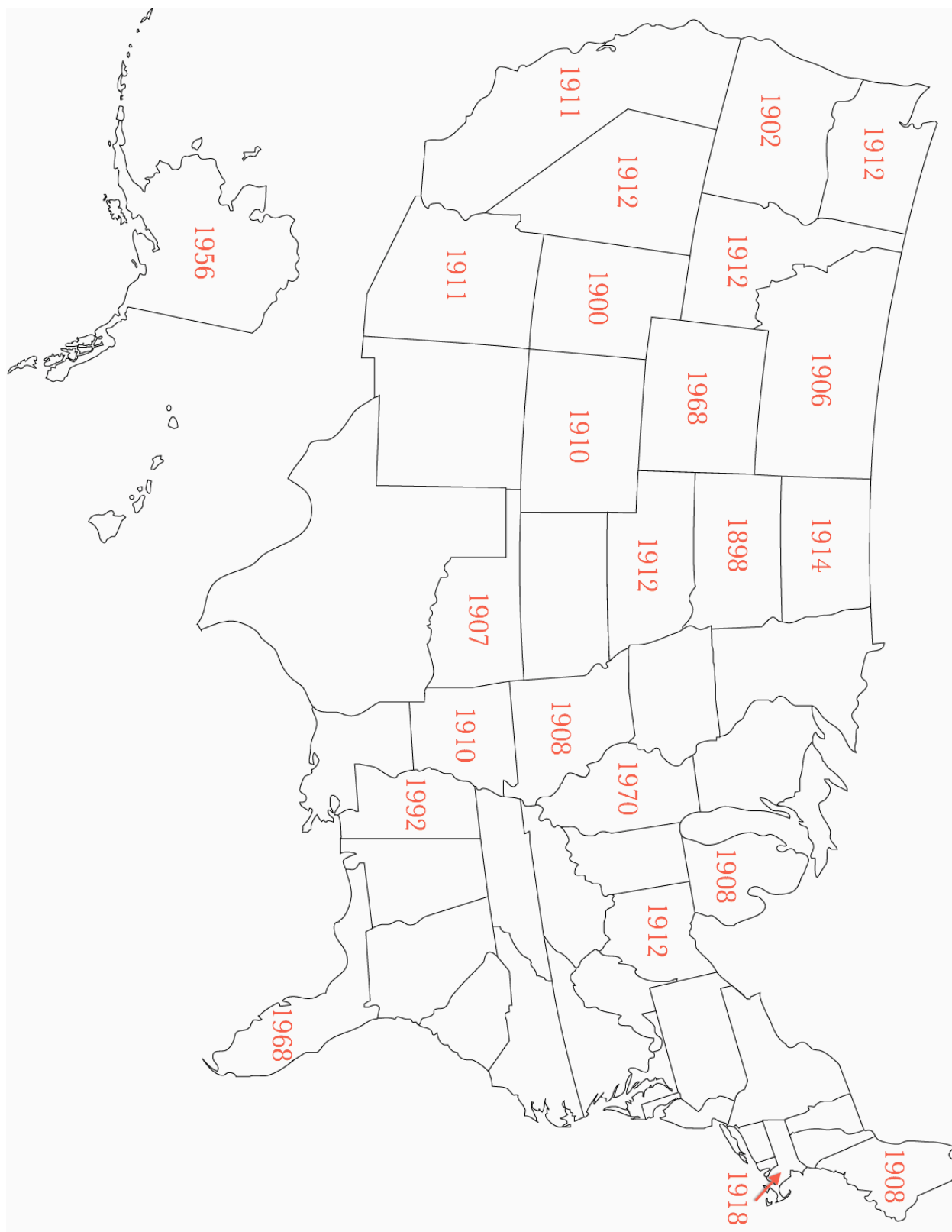


Figure 2.2 State Adoption of the Initiative by Year

Source: Matsusaka, J.G., *Journal of Economic Perspectives*—Volume 19, Number 2—Spring 2005—Page 189

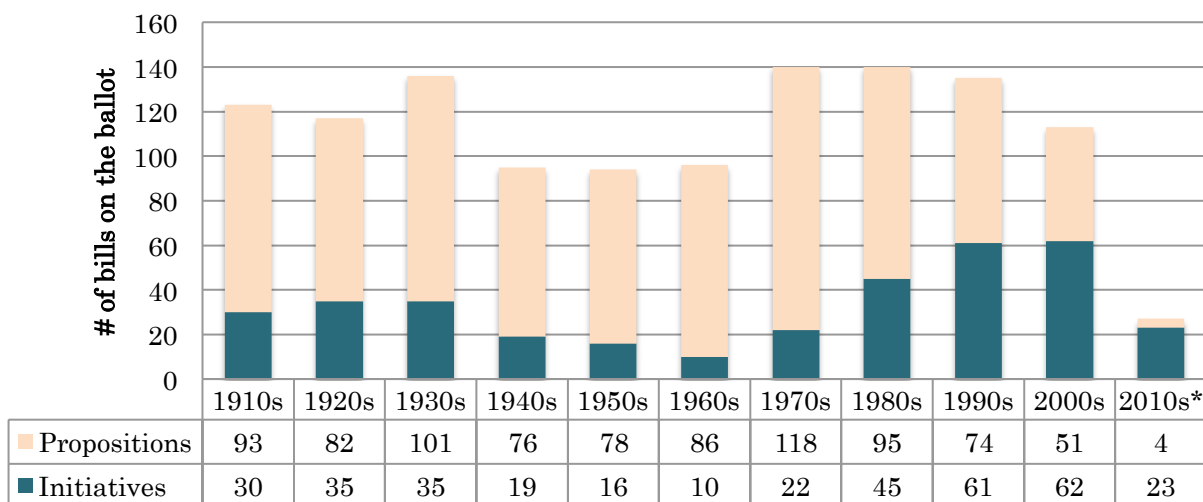


Figure 2.3 Propositions and Initiatives in California by Decade

Source: Public Policy Institute of California, October 2013.

While bills related to education have enjoyed slightly larger passage rates of 43% for initiatives and 75% for propositions, it is not clear whether these numbers are statistically significant. This is due to the fact that bills dealing with education make up such a small percentage of all proposed legislation.⁵ However, this is not necessarily a major impediment to this research. While education bills are few in number, their appearance on the ballot is frequent and any one such bill may have a significantly greater overall impact than any other non-education related bill. Education takes up a proportionally large percentage of California's budget and bills that seek to change the balance and source of funding tend to result in a feedback effect, particularly in other fiscally related fields. This research will look at the development of these feedback effects in California as the effects of tax limiting bills and education-funding bills have played against each other. For a fuller account of this feedback effect please refer to section 4, *Education Finance in California*.

2.3 Fiscal Federalism

While fiscal federalism only comprises a subset of the field of public economics, the ever-increasing focus on fiscal decentralization and the economic structuring of a state has

⁵ This categorization includes only education bills that deal with the funding, either directly or indirectly. Education bills related to moral matters, e.g. school busing, prayer in school, etc., are excluded.

accorded it a disproportionate amount of attention in recent scholarly literature. This being the case, this section only endeavors to provide a basic overview of concepts germane to this research. Put simply, fiscal federalism is concerned with how governments are structured and how those parts and/or levels of government interact to shape the allocation and flow of capital throughout the state.⁶

According to the literature on decentralization presented by Manor (1999), while there are two other types of decentralization that may occur in a state, most predominantly administrative and democratic, fiscal decentralization, viewed from a more traditional economic standpoint, acts to more efficiently distribute capital throughout the entire state, both vertically and horizontally. However, Oates (*An Essay on Fiscal Federalism*) views the way in which capital is distributed between vertical governmental components slightly differently. While the word “decentralization” sounds like it contrasts with “centralization”, the nature of a federal state shows that there are decentralized actors and larger centralized one. Oates’s understanding of vertical structuring of capital in a state better reflects the idea of federalism, where there is a greatly centralized government and multiple subnational entities. However, Oates views the way in which capital is distributed vertically within a state differently, decentralization not necessarily implies that all services are devolved to lower constituents but rather that they represent a distribution of fiscal authority that best represents the strength of each governmental body. Accordingly, this allows for a strong central government to play a supporting role to the economy while multiple decentralized subnational entities contribute to the system through commerce and the supply of provisions. This arrangement essentially underlies the federal state.

It is possible for the balance of vertical distribution to change, and that may affect the dynamic between federal and state transfers. Vertical Fiscal Imbalance (VFI) is where the revenue powers and expenditure authority are mismatched. The (local or state) governmental entity has more financial burdens than it has ability to raise revenue to cover the outlays. One example is where the local government has, by raising expenditures for K-12 school systems,

⁶ While fiscal federalism has been traditionally applied to federated and confederated states, in theory the principles of fiscal decentralization can just as easily be applied to unitary states where devolution or decentralization creates semi-sovereign governing bodies (most likely municipal ones).

exceeded the ability to raise revenues through property taxation and other means, including bond sales, to cover those costs. The VFI is created when the federal government has to transfer funds to the subnational entity to alleviate the deficit. The Vertical Fiscal Gap (VFG) is the difference between the summation of all possible revenue sources and the total indebtedness as it relates to the funding required from the federal government to close the state or local government deficits. The VFG has an optimal level (Boadway and Tremblay), and it undergoes an undesirable shift, in either a positive or negative direction, when the VFI arises from a mismatch between the level of federal grants and local or state budgets. A positive VFI occurs when the federal government provides excess funding to the subnational entity over and above actual budgetary needs.

Increased and continual asymmetry in revenue sharing between federal and state governments may serve to undermine the division of fiscal accountability (Yi 31). Decentralized bodies, such as states or localities, that suffer from asymmetrical vertical imbalances in the VFI and the VFG, may need to turn to the central government for financial remedies. While the American federal state is constructed in a manner that limits federal over-interference in the domestic economies of the states, it is not hard to fathom a circumstance where state budgets are mismatched or in debt and must receive an influx of federal monies to augment a lower level imbalance.

While equalization transfers from richer regions to poorer regions within the European Union at the supra-national level, and in states such as Germany and Spain on the national level, are more represented in the literature, driven by horizontal fiscal imbalances among the states and metropolitan areas in the United States re-distributional transfers of capital has been used here as well as a means of addressing vertical imbalances. Concerns such as these are behind the federal government's allocation of grants to impoverished districts to support welfare programs such as compensatory education through ESEA Title 1 grants.

The disparities that arise in a federal state, as has been noted, are not solely between the central government and the states. Horizontal imbalances between neighboring municipalities and vertical imbalances between municipalities and state governments drive most of the asymmetry between the subnational and the central government. While much of the literature on fiscal federalism focuses on what arrangements of bodies in a federal state increase accountability and aid the flow of capital, this research is more keen in discovering how different state structures can magnify vertical imbalances. Voters surely play a key role in creating

differing state fiscal policies.

While voter competence will be grappled with later in this research, theorists such as Oates (On the Nature and Measurement of Fiscal Illusion: A Survey) belay their misgivings about voter's ability to act anything other than opportunistically (though this viewpoint is not universally shared in the field). Stating that voters may suffer from a "fiscal illusion", Oates categorizes this so-called effect into five basic misunderstandings the voters hold in regards to making fiscal decisions at the ballot box. Two of particular interest to understanding voter behavior are the *complexity of the tax structure* which has lead to voters often passing initiatives that result in overfunding and thus overspending by local governments, and *debt illusion*, which could be considered analogous to consumers running up debt on a credit card in being that it is a rather painless process at first and does not carry the impression of spending real money. This purported act of voter behavior could be linked with the practice of passing bond bills to fund local budgets, which in turn increase municipal and state debt loads. Understanding voter behavior as economic actors also connects with understanding their behavior as republican actors within the federal state, which in turn ties together into the larger model of rationale choice.

3. Research Model

3.1 Theories of Federal Design

The principle of federalism is rooted in the conception of state polity structure. As opposed to other forms of state structures, states that conform to the design of a federally constructed government possess multilayered vertical and horizontal divisions of power. Put simply, this means that powers are shared between different branches (executive, legislative and judiciary) and levels (federal, state and municipal) of government; because powers and responsibilities overlap, these different actors have a stake in ensuring that no one part of the system deviates too much from its obligations. To further illustrate the design of the federal state, it will be instructive to delineate how power is shared vertically between the central, or federal, government, the constituent states⁷, and lower-level municipal governments. In any federal state, these states may or may not have equivalent scopes of power; the case where one or several constituent states is exempted from complying with federal mandates or possesses a greater devolution or enumeration of powers in comparison with other states in the union is denoted an asymmetrical federation. One prime example would be the Canadian federation vis-à-vis Québec. On the other side of the spectrum are states where the distribution of powers between the federal government and the constituent states is uniform; these are denoted symmetrical federations. The United States, the focus of this study, is the primary example of this model. How power is divided horizontally between the various branches of government (executive, legislative, judiciary) can also be detailed. In many federal states the legislative branch is further divided into two bodies as is the case of the United States Congress, which is composed of the Senate (the upper house, which is based on equal representation for each state) and the House (the lower house, which is based on demographic appropriation). The states as well, are constructed off the

⁷ While in the United States these entities are referred to as “states,” in other federal states secondary level administrative divisions go by a variety of names, including but not limited to: providences, Länder, federal subjects, and so on.

national-level federal model. Each state itself is a mini-model of federalism, each with a republican form of government, and all but one with a bicameral legislature.⁸

Another such characteristic of federal states is that power is not just divided between the parts of government, but to what body powers are enumerated. That is, what powers the federal government possesses are defined in the constitution. In the American Constitution, on the basis of the tenth amendment, unenumerated powers were to be relegated to the states. In large part, states are responsible for their own governance, and in the absence of conflict with federal law, they set their own policies. As the number of powers specifically enumerated to the central government was small, states have historically played the role of administering and enforcing many areas of powers without federal interference.⁹

While there is no one model of federalism, there is much debate about what sort of variation in federal states functions best. The framers of the U.S. Constitution held many concerns about the division of powers within the new republic. With the memory of the tyranny of crown rule still fresh in their minds and the all too present realization of the dysfunction of the states and inability of the central government to function under the Articles of Confederation, the framers sought to balance against the aggrandizement of power and the despotism of factions while at the same time devising a more energetic central government (Hamilton, *Federalist*, no. 23, 146-51).

Much of what makes a well working federal state in the original American case can be attributed to the careful machinations of the framers, but this purely structuralist view leaves out developments that affected the way the American federal state (and other early federal states) evolved in its formative years and beyond. While much of the literature on federal models bases itself on the comparison of national cases, such as the German hybrid model¹⁰ and the asymmetrical Belgian and Canadian models, serving as frequent destinations of study in the

⁸ Nebraska possesses the United States' sole unicameral legislature.

⁹ While the federal government has gradually encroached on most areas of power traditionally administered by states, the focus of this study, education, has remained largely a state matter even with increased federal interest in a national education program.

¹⁰ The German federal model is a hybrid in the sense it possesses the American presidential system along with the British parliamentary system. The President, while a largely ceremonial post serves the function of upholding federal law. The Federal Chancellor acts much like a Prime Minister, responsible for policy administration and is for directing foreign policy. The German Länder are symmetrical much in the way the American system is.

literature (Gunlicks 385 & Burgess 136), the American model has served as the principal focus of the field. This is largely due in part because the American system is the first true federal system¹¹ but also because it has largely been a successful one - providing researchers with over two centuries of data to mull over. Because of the success the American system has enjoyed, the federal model as a whole has been touted as a cure all panacea for dysfunctional and or developing states. These states, primarily located in sub-Saharan Africa (some notable examples include: Zaire (Congo, 1960-65), Uganda (1962-66), Cameroon (1962-72), Ethiopia (1995-), South Africa (1996-), Nigeria (1999-) (M. Burgess)) were (and some still are) federations, but federations in name only. In the end, these states have not enjoyed (ethnic) faction reconciliation or a newfound sense of good governance. The federal model indeed does possess a sort of versatility and adaptability, but there is something missing from the purely structural introduction of federalism provided thus far. As much of the literature reveals, the mere presence of a transplanted federally structured government is not sufficient to yield a functioning one. The problem these developing states faced was a lack of other necessary antecedent conditions necessary for the development of a federal state. What some of these attributes are will be covered more fully in the following section introducing Bednar's *Model of Federalism*, but briefly they include but are not necessarily limited to such aspects as intercommunal, interstate, intragovernmental (federal and state) and interinstitutional partnership and comity; respect for state autonomy and integrity; preëxisting republican civil society; republican institutions; a healthy party system; and an independent and supreme judiciary.

3.1.1 A Model of Federalism

This research will utilize theoretical models from Jenna Bednar's book on federal theory, *The Robust Federation: Principles of Design* (2008). In *The Robust Federation*, Bednar grapples with a problem federal theorists have been dealing with for quite some time: what makes an effective, or in her words, a "robust", federation? Using the most predominant model, the American one, as her focal point, she devises a model of complementary institutions that work to hedge against transgression and maintain balance between the complementary pieces of a federal

¹¹ While the United States may lay claim to the first federal system, there are several notable cases of confederation (the Articles of Confederation excepted) preceding the American Constitution on which many of the concepts of the federal state are plainly based, e.g., Switzerland (1291-) and the Holy Roman Empire (962-1806). Aside from the United States, Switzerland is the most commonly cited model of "con/federated" government in the literature.

state.

The Triangle of Federalism

To aid her hypothesis, she expands on the literature and devises several complementary models, the first of which, the triangle of federalism (Figure 3.1), elegantly encapsulates the nature of transgressions that occur within the federal state. Her claim is that, essentially, federalism represents a public provision problem where parties are compelled to act opportunistically.

The first such transgression is known as encroachment. As power tends to concentrate when the opportunity arises, the federal government may at times encroach on the states. Such a fear compelled revolutionary figures to bring the states under an ineffectual, confederated central government, as this transgression most closely resembles tyranny (69). Even under the present constitution, many worry that the federal government would inevitably encroach on the powers left to the states. These fears may not be entirely unreasonable; the responsibilities of the federal government today make it a behemoth compared to what it was at the time of its inception.

Conversely, as can be seen in the second such transgression, shirking, states may feel the urge to slack on their obligations to the federal government. Under the Articles of Confederation, the central government had no way to ensure that the states met their proper troop requisition quotas or paid their proper dues. Even today, this is a problem that still affects states: they may not want to fall in line with federal (or administration) policies or they may attempt to supersede an area of power possessed by the federal government.¹² Another such type of shirking exists when a state is unable to meet its domestic responsibilities and becomes reliant on federal aid to augment state resources.¹³ It will become clear that while this problem may have turned out to be a greater threat than encroachment was ever considered to be, there are nevertheless remedies that can be undertaken to ensure compliance. The most prominent remedy possessed by the federal government is known as the “*power of the purse strings*.” Essentially, when states are reliant on or beholden to the federal government for funding or aid, these monies can be used as

¹² The Nullification Crisis of 1832 represents an extreme case of the latter. South Carolina declared in its *Ordinance of Nullification* that federal tariffs enacted in the previous federalist Adams administration were null and void. While the act was repealed over the threat of force from the federal government, this event would set the stage for future stand-offs over states' rights.

¹³ While, in a sense, such an example may also represent encroachment due to an increased federal role, the states' defaulting on their domestic obligations makes the states the transgressing parties. This form of shirking is the primary kind with which this research will be dealing.

bargaining chips to encourage the state to follow federal policies.

The last of the transgressions is burden-shifting. States export externalities to other states by attempting to game the system. They may construct barriers (such as tariffs) to hamper the flow of goods or people. While barriers to intra-state trade are no longer issues, other forms of burden-shifting are commonplace. Some states contribute more to the collective federal pool, while other states are more reliant on their counterparts' contributions. Externalities include, but are not limited to, downstream or downwind pollution, cross border movement of illegal firearms, and the transfer of residents.¹⁴ These last two kinds of transgressions are forms of governmental abdication of responsibility when such behavior best suits its interests. Bednar refers to shirking and encroachment as “unauthorized acts of authority migration” (69).

Bednar’s model does much to illustrate the rich and complex interactions between the central government and the states in a simplified and masterful schema. However, this model seems to downplay the importance of local actions entirely. While local governments do not necessarily possess similar federally devised structures and divisions of powers as state governments, their interactions with the state government, and, most importantly, the federal government do indeed have consequences for states' abilities to meet their obligations; at the same time, they may also invite federal encroachment. Later in this research, the possibility of

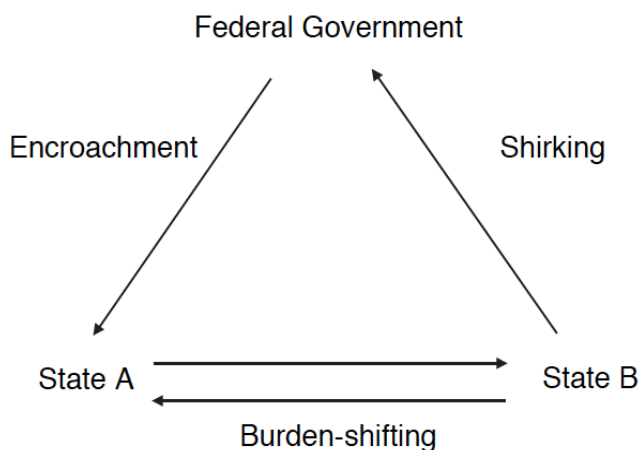


Figure 3.1 The Triangle of Federalism

Source: Bednar, Jenna. *The Robust Federation: Principles of Design: Types of Opportunism: The Triangle of Federalism*, 2009, Print, figure 4.1, page 68.

¹⁴ The transfer of residents can be seen as a form of burden shifting because some states may do little to address socio-economic problems, and those residents leave to find better opportunities. They migrate to other, wealthier states, which must divert its resources to support them.

augmenting Bednar's *Triangle of Federalism* to incorporate the municipal aspect of the federal state will be explored.

The Popular Safeguard

Bednar introduces a complementary model that she coins the "Safeguards of Federalism." The purpose of this model is to explain how actors (both governmental and non-governmental) within the federal state are able to sanction actions by other parts of the federal state that partake in a spectrum of opportunism that degrades the robustness of the federal whole. While her model is founded on complex mathematical equations that can be difficult to grasp, the concepts of transgression, compliance and utility are more readily comprehensible. In a robust federal state, a series of well-oiled safeguards - structural, such as the enumeration of powers, the division of government, and the incorporation of states into the decision making process; popular, such as the will of the people espoused through the electoral process; political, such as the long-standing party system; and judicial, such as the supremacy of the court - act in concert to prevent any one part of government from unduly burdening the system. Two important points to note are, first, that these safeguards do not work in a vacuum; in a federal state such as the United States, endowed as it is with a plethora of safeguards, numerous minor sanctions trigger often against frequent minor acts of opportunism and a seldom few, strong sanctions trigger in face of flagrant violations. This complementarity, as Bednar asserts, is what underlays healthy federalism. The second point is that even though these safeguards work to limit perceived acts of opportunism, state actors will invariably exhibit opportunistic behavior. This is because ensuring full compliance is not only taxing to enforce, but also not desirable. The margins where minor opportunism flourishes can serve to create a more responsible and flexible federal state; a commonly cited, and notable, example is the laboratories of federalism, where differing state policies have brought about a system that rewards experimentation and allows for deviation to foster innovation in governance.

The most germane aspect of Bednar's System of Safeguards for the purposes of this research is the popular safeguard.¹⁵ As was briefly mentioned, the popular safeguard is essentially the will of the electorate. When voters perceive a transgression by their elected

¹⁵ For a fuller explanation of the various safeguards and how they work to ensure compliance in the federal state, please refer to the appendix on page 74.

officials in local, state, or federal government, they may choose to use the ballot box as a means of punishing the (perceived) responsible party. While the popular safeguard requires voter consensus about punishing the offending party (a comparatively time-consuming and sloppy process), it is nevertheless an indispensable part of a republican government. And while the literature on direct democracy asserts that this safeguard, in its rudimentary form, is ineffective at fully punishing opportunism by political actors, Bednar's model suggests that, in combination with the other safeguards, there is no need to devise a stronger popular safeguard. Regardless, some states have adopted an expanded version of the popular safeguard. This expanded popular safeguard, known as direct democracy, allows citizens greater participation in state and local-level government via options to propose and vote on laws that bypass the authority of the legislature. California is the most prominent state that has fully adopted the expanded popular safeguard. While California's adoption was largely driven by the inability of structural safeguards to properly sanction local and state-level corruption during the 19th century, the effect of the expanded popular safeguard on states such as California and the federal system has been rather poorly understood, an issue that will be examined to better understand the effect of direct democracy on the American federal state.

In addition to this line of reasoning, it is important to understand some of the finer points associated with the expanded popular safeguard. The expanded popular safeguard has some problems in regard to its reliability when it comes to actually carrying out punishment. It is safe to say that voters, for the most part, have only a sketchy knowledge of constitutional law, and they will therefore seek to punish when they have merely perceived a violation when, in fact, there was no real transgression at all (examples might include the failure of an elected official to uphold a campaign promise or the shocking "revelation" of an adulterous affair). In addition, if voters are not well-informed about the issues on which they are voting, they cannot act as impartial arbitrators. Moreover, most voters are self-interested, and that is a trait that does not in any way enhance or support the popular safeguard's robustness. It is only natural for voters to support policies that benefit them at the local and/or state level while ignoring the consequences those policies might have on the federal whole (Bednar 111-112). In voters' defense, though, many theorists of democratic institutions have pointed out that while voters may not know the details of any one bill or proposition on which they're voting, voters as a whole, paradoxically, can exude something like wisdom and restraint. While the issue of voter competence is still an

open question, it seems likely enough that direct democracy advocates have an overly optimistic view of the voter.

When considering the effect of the expanded popular safeguard on the functioning of government entities, it can be seen that, instead of making state governments more responsive to voter wishes, the expanded popular safeguard actually serves to hamper their proper functioning. In opposition to the literature on direct democracy, this research suggests that the expanded popular safeguard has evolved to trigger *too often* and *too harshly*. This effect appears to cause the other safeguards to become less effective and invites further opportunism by the federal government as the result of direct democracy states' inability to function properly.

While Bednar's list of safeguards is impressively detailed, it should not be considered exhaustive, as she only compiled safeguards relevant to a system's complementarity. Other actors, either institutions or individuals, can impact a federal system. Even though by now cliché, the "power of the purse strings," is another key aspect of a federal state and should be considered as well for this role. Put simply, the nature of finance in a federal state causes some parts of government to become reliant on other parts. A *fiscal safeguard* might reduce opportunism (or, in some cases, possibly invite encroachment) by state and/or local governments.

3.2 Theories of Direct Democracy

The literature on direct democracy holds that whatever faults there may be in the system, all other things being equal, increased voter participation in the decision-making process leads to better governance. Yet what "better governance" actually means isn't entirely obvious. How is it to be defined, let alone measured? Is it to be gauged by the extent to which citizens' opinions, beliefs, and desires are taken into account in the process of governing? If so, it would seem plausible to claim that direct democracy does indeed better represent the populace. However, such an assessment would fail to duly recognize the marginalization and disenfranchisement of smaller constituencies that would likely result from such a system, since they might not hold the majority view. This research asserts that the best method for measuring "good" governance is a determination of the degree to which governments actually fulfill their responsibilities. Naturally, this would be presented in fiscal terms. In direct contrast to the scholarly consensus, it would be fair to say that if certain ballot measures were to make it more difficult for a state to meet its mandated obligations, then those measures would be bad for governance.

While theorists such as Cronin and Magleby don't present their arguments in terms of Bednar's federal model, their optimistic view of the literature on direct democracy nevertheless suggests that they subscribe to the belief that the expanded popular safeguard is complementary, functioning as a patch when the more rudimentary popular and structural safeguards are weakened, thus preventing further opportunism between federal components. However, their theoretical construct seems incompatible with a more realistic assessment of the situation; indeed, the increasing reliance by California and its localities on the federal government suggests that it was premature as well. The simple observation that many direct democracy theorists also advocate the position might indicate endemic bias, or even hidden agendas. Even more alarmingly, the debate over direct democracy is often framed by special interest groups, who are generally more concerned with the system's utility in meeting their own ends than its inherent value. While there are contrarians, they are outnumbered, and idealists and special interests have largely commandeered the debate over direct democracy's merits.

The following section will present a methodological review of direct democracy theory and the usage of the institution as a complimentary safeguard. In an effort to assess the validity of this inquiry it is also necessary to show correlation between trends in ballot measures and consequent fiscal realities. Further elaborating on this inquiry, such trends are stated as one where voters in direct democracy states are predisposed to support lower taxes while at the same time favor increased provision of services from the state, making said states more fiscal unstable and consequently more reliant on federal funding. In further elaboration, voters choose to support increased provisions from the state when their obligated tax burdens are not visible or readily understood. This phenomenon of budgetary constraints and increased state obligations in many ways is readily observable in California, noticeably because of two highly controversial propositions: Proposition 13 (1978) and Proposition 98 (1988), both of which ultimately passed and fundamentally changed statewide institutions in a very visible way. However, a series of propositions: Proposition 111 (1990), Proposition 8 (2006), Proposition 49 (2002), Proposition 30 (2012), and Proposition 38 (2012), along with attempts to change bond laws: Proposition 4 (1966), Proposition 9 (1972), Proposition 46 (1986), Proposition 170 (1993), and Proposition 39 (2000), had the equally important effect of amplifying this dynamic.

Although on the surface of things it is easy to understand that people want more things without having to pay for them, in the field of scientific inquiry a single case of observations or

brass generalizations are not sufficient to yield thorough causal relationships. Thus, in order to illustrate whether this trend is representative of predilections in direct democracy states, it is necessary to establish whether such constraints are also present in the literature. One such model (Matsusaka) offers a statistical look at fiscal trends in direct democracy states as a whole. This section will present a methodological literature review of direct democracy theories. The focus of the following section will first be on the nature of the institution in the United States and the problems associated with it, and secondly on the fiscal effects of direct democracy.

3.2.1 Factions of the Initiative

While the initiative, the proposition¹⁶, and the recall are the three primary tools of direct democracy; the initiative has received the primary attention of the literature. The recall has largely been ignored outside local level elections, because a recall of a high level state official such as a governor is an extremely rare occurrence. There have only been two successful attempts to unseat a governor by use of the recall process in American history: Lynn Frazier (ND) in 1921 and Gray Davis (CA) in 2003 and only one unsuccessful attempt, Scott Walker (WI) in 2012. Propositions, on the other hand are more numerous, even more so than the initiative, however because the laws put to a public vote come out of the legislatures and not from individual citizens the interest in their passage by direct democracy theorists appears to be lessened. While it is possible that a typical proposition that would appear on a ballot may represent an ideological mean of the members of the legislatures that is apart from the mean of

¹⁶ The term “proposition” can be vague to what exactly is being referred to, as it can be used as a refer-all terminology for ballot measures. The initiative has often been referred as a “ballot proposition” as well as a “ballot measure”. In addition, there is another kind of proposition, referred to as the “legislative proposition” or “legislative measure”. In this research the second, or legislative proposition, where proposed bills are placed on the ballot by the legislature will be used to refer solely as proposition. In addition, the referendum, sometimes referred to as “popular referendum” is another important tool of direct democracy, where voters can submit a proposal to repeal a law already by passed by the Legislature. The referendum, while deemed an integral tool of direct democracy advocates has been infrequent in its use outside the first several decades of the twentieth century and all further figures presenting the proposition has the referendum included in them.

the average state voter¹⁷, because the nature of divided government is one that bills are tempered by compromise and reconciliation most propositions are likely not to be perceived as too radical, and thus of only middling interest.

The initiative is of particular interest to researchers because it allows voters an opportunity to directly create laws. Researchers are interested in what laws voters propose and how they vote on them. Because there is a concern that voters are not competent in such matters, researchers such as Cronin have sought to show that voters do indeed possess a sort of collective wisdom and are no more radical in the things they propose than the legislatures. Briefly, this research will take a look at the reason voters have adopted and continue to use the initiative and what are some problems associated with the institution.

Why voters use the Initiative

There are many reasons voters have turned to the initiative process as their preferred means of participating in governance, rather than merely engaging with their representatives and rewarding (or depriving) them with their votes come the next election cycle. Voters may use the initiative process to bypass the legislatures (Kenneth 138). Recalling that earlier it was noted that propositions, which are referred to voters by the legislature might represent an ideological mean different from that of the voters. Bruce Cain, a Harvard educated theorist, refers to this dynamic as the “two constituencies problem”. The left or right leaning of the legislature may encourage voters to propose laws that better represent their otherwise different political leanings. Voters may also harbor distrust of future legislatures and see gains made for their cause through traditional means liable to reversal, prompting them to place their measures on the ballot as a sort of preëemptive guarantee. Accordingly, initiatives are immune from being overturned by future legislatures unless the measure in question specifically allows it.

Undoubtedly, the most important reason voters revel in their usage of the initiative is because many citizens feel that government does not directly represent their interests. Voters may feel that they are given little opportunity to influence events while lobbied interests receive a direct line to their representatives. While this may not entirely be the case, as voters have many

¹⁷ The California legislature since the 1970s has been considerably more liberal than the statewide electorate. This is particularly evident when looking at issues dealing with taxation, bilingual education, criminal punishment and moral issues such as gay rights and affirmative action (Kenneth).

means of influencing their representatives and letting their voice be known there is certainly a voter perception of alienation that is accompanied by a perception of a loss of trust in the legitimacy of state and local governance. Never is this aspect more apparent than in California, where similar concerns prompted the initial adoption of direct democracy and where the institution is most frequently used in the nation. While the concerns of lobbied interests have partially been dealt with, the ratio of voters per state representative remains the highest in the nation owing to the 1879 Constitution that placed a cap on the number of representatives in the then sparsely populated eight hundred and sixty-five thousand large state.

Direct democracy has done little to regain a sense of trust of state institutions in voters, as the initiative process still remains the preferred route. Accordingly, the initiative process has also become an outlet for specific interest and moneyed groups such as tax reduction lobbies, moral crusaders, and occasionally pro-education activists, and also as an outlet of expression of symbolic support for world peace and nuclear nonproliferation. Most importantly, the initiative process provides a means for citizens to directly influence how their state governments function.

Problems with the Initiative Process

While supporters of direct democracy downplay some of the minor problems associated with the institution such as ballot access, voter demographics, signature drive deceptions, ballot measure wording drafting confusion, discrepancies in voter turnout and falloff, and the weakening of the legislatures, other more serious concerns such as tyranny of the majority, voter competence and ballot-box budgeting are harder to downplay.

One of the major concerns is that certain majority groups would devise laws that unfairly discriminate or disadvantage other minority groups. There are many prominent examples of ballot measures directed to deprive African Americans and gay Americans of their rights. Cronin points out that these tendencies merely represent a moderate shift towards the public median opinion on what governments should do or how society should be. He goes on to assert that judging what laws are passed by initiative is not a fair measure as it lacks a comparable basis for comparison against what laws are passed through purely republican forms of governance, e.g. the legislature. Consequently, he argues that the fairest method would be to accurately gauge the asserted increased frequency of more radical laws (laws being deemed as against the public or minority interest) being approved is not to merely count up the number of such laws passed through initiative but to compare the initiative track record against state legislatures. Advocates

such as Cronin believe that while initiative devices may prove to pass more "unacceptable laws", in total the discrepancy with legislature's actions are not deemed to be statistically significant. In short, legislatures are more often equally as guilty.

However, this assessment lacks several important aspects. Firstly, even Cronin admits that there seem to be more radical initiatives, but in spite of that fact he downplays the significance. While both laws passed by the initiative process and by the legislature are subject to judicial review, the legislature possesses institutional checks and balances that do indeed work to weed out radical bills. This process creates an atmosphere that in normal circumstances creates moderate and encompassing bills. If same-sex-marriage is used as a prescient and recent example, the reader can see that the numerous campaigns, not to prevent the legalization of same-sex-marriage but to decriminalize a potential institution, have been met by voter approval in more than a majority of states. In addition, voters may not consciously mean to target certain groups, however majoritarian voting patterns may lend to ballot measures that unfairly target minority or under-privileged groups. This turns the discussion to the question of voter competence.

As mentioned earlier in this research, the true nature of voter competence is open to debate. The debate isn't about whether any one voter is competent or not, but rather about whether voters as a group possess competence in regards to the matter they've voting on. This is part of the assertion by Cronin that voters possess a kind of "hive mind" or crowd wisdom that, when compared against the record of legislatures, is not more or less radical in its actions; moreover, it has been argued that they're even able to display more rationality in their collective decisions than legislative bodies. While some may find the notion of the collective rationality of voters appealing, this idea is based on the presumption that voters, even when acting as a group, possess more knowledge of the issues than legislators and policy makers who, one would think, would be far more knowledgeable about such things. Theorists like Cronin believe that voters act responsibly and work to enhance state institutions in positive ways; however, this assertion requires voters to possess more than crowd-level competence regarding the workings of state government. It would be naïve to assume that voter interests would never conflict with proper governance. In this research, it is asserted that not only are voters not sufficiently competent to understand all the possible impacts of their decisions, they're also intrinsically selfish. This is not meant to be insulting but simply to acknowledge that voters vote in alignment with their own interests. Voting is essentially an example of rational choice; for voters, that means maximizing

the amount of services they can receive from the government while minimizing their own personal tax burdens. Although there are exceptions, this dynamic generally holds true, and while things play out under this rule, the third main problem with direct democracy must be considered; what has been coined as “ballot-box budgeting”.

Economists have frequently warned against the troubles caused by voters administering the state budget through the practice of passing ballot bills that determine the fiscal policies of the state. Obviously, these concerns tie in with questions of competency. Given the complexity and seriousness of state fiscal policy, it is reasonable to believe that even the most competent voters may not fully grasp what choice would be best for the economy. What is important, additionally, is that voters are keenly aware of their personal tax burden. With several historical movements that have put this issue front and center, when tax reduction measures have been passed, they have fundamentally altered the ability of the state to meet its fiscal obligations. For instance, according to a 2003 study conducted by Matsusaka, approximately one third of California's appropriations could not be overridden by legislative efforts, since voter initiatives were uncircumventable by design.

3.2.2 Correlation Between Direct Democracy and Fiscal Pressures

While the literature on fiscal federalism is quite vast, the sub-field dealing with the relationship between direct democracy and its effect on economic performance is less studied. The majorities of these studies relate to the cases of Germany and Switzerland, which are known for their fiscal minded nature of governance. However, this is not to say that the American case is entirely neglected. Examples of the American case are dominated by contrarians of direct democracy theory; this small yet important literature focuses on the deleterious aspects direct democracy has on state budgets.

Taking a step back, there are two primary schools of thought over the effect direct democracy has on fiscal performance. One such school of thought espouses the belief that greater the form of direct participation in government by the citizenry the more favored redistributive policies will be. Commonly known as the “*Robin Hood effect*”, the logic goes that the greater involvement any one voter has in the decision making process, i.e. contributing in getting laws on the ballot and voting on them, the more responsible the voter would feel for ensuring good governance, hence he or she would be willing to fork over more taxes being that

they are now have their pieces on the table. As mentioned earlier in the section covering the background and implementation of direct democracy there is much debate as to how informed and involved voters actually are in any initiative. How capable are voters of understanding complex policy issues and casting a reasoned vote? While some suggest that voters have a good record for being cautious and pragmatic when it comes to their turn in the ballot box (Cronin), that does not necessarily imply that voters now feel that that they own a piece of the pie. This argument also ties into well with the idea of proximity; while the *Robin Hood effect* may hold true at the local level, voters must truly be altruistic to ascribe to the practice en masse at the macro level.

The other school of thought, and perhaps the more prominent one, asserts that greater participation of the populace in directly crafting laws leads to both lower state revenue and expenditure. One such study, whose statistical model this paper will be drawing on to help draw the connection between direct democracy states and the hypothesized trend that they are more fiscally reliant on the federal government for expenditure intervention, is Matsusaka's (1995) model of fiscal outcomes in both initiative and non-initiative states during the time period 1960-90. Matsusaka conducted a statistical analysis of state and local finances of all fifty states -- twenty-three initiative and twenty-seven non-initiative. Because this study only concerned matters of a fiscal nature and not of social legislation, Matsusaka, in selecting what constituted an initiative state, grouped together all those states where citizens were allowed to create laws regardless of whether amendments to the state's constitution were permitted or not. The idea behind this is that fiscal matters are not guaranteed by state amendments. Non-initiative states, coined pure representative states, are those in which a law, which may be voted on by the populace, must almost always originate in the legislature. The statistical model employs several basic regressions, taking into account a number of variables, including a state's per capita income, population, population density, metropolis population, population growth, value of mineral production, and a measurement of Senators' conservativeness.

The results of the regression suggest that initiative states do indeed have statistically relevant lower spending. On average, expenditures are 4 percent less than in non-initiative states. Drawing from others in the field such as Peltzman, such a finding could possibly be a positive confirmation that elected representatives do indeed deviate from median voters spending wishes, and that putting fiscal matters to a vote by constituents allows for a better expression of what the

median voter thinks is reasonable regarding state taxes or service charges. In a case where they are unduly exorbitant (or merely perceived as such), the initiative would offer a means to lower state spending.

Interestingly, this statistical model illustrates that while the average state-level expenditure spending of any initiative state may be as much as 12 percent lower, much of it is offset by higher-than-average local spending, which is about 10 percent higher than non-initiative states. This may have to do with proximity, in that voters may be more willing to endure higher expenditure costs at the local level because they can better see where their tax dollars are going and where monies are more closely tied to municipal level figures. Or, as this research may illustrate, it is also possible that voters may be willing to run up local debt to fund increased spending. Looking at the casual municipal-level practice of issuing bonds to fund education; as the largest single expenditure, voters may not fully understand they are committing their future tax dollars to service their future debts. It may be that visibility of a voter's tax obligation on a ballot question is directly responsible for the willingness of the voter to support funding bills. Voter appropriated debt could possibly be viewed as an area of low-visibility.

Combined with the final finding of Matsusaka's statistical analysis -- that initiative states tend to rely less on taxation as a form of expenditure (about 8 percent lower) and more on charges for services (such as fees and sales routing from commodities or commercial activities, about 7 percent higher) -- it can be concluded that the tendency for redistributive fiscal policies in initiative states is not only lessened but hampered as well. Not only this, but the fact that those who consume services for which government charges "bear more of the associated costs" means that less redistribution is involved. Redistributions also call into question what role the federal government plays supplementing redistributive programs in states, which have a less redistributive fiscal policy.

An interesting caveat noted by Matsusaka's statistical analysis was that the lower the signature requirement, i.e. the percentage of signatures needed for a prospective initiative to make it on the final ballot, the more likely divergent fiscal outcomes were to occur. The model initiative state that has the signature requirement of 5 percent experienced the previously listed statistical mean in reduction of general expenditure. For states approaching the 10 percent required signature margin, the higher the signature requirement goes, the higher the convergence with non-initiative state fiscal structures. Especially with larger states, it is reasonable to expect

that lower signature margins can still be daunting. For example, even though California has a relatively low 5 percent signature margin to qualify, that may still entail obtaining hundreds of thousands of signatures. Regardless, only a few initiative states have signature requirements near the 10 percent threshold.

Lastly, it is worth noting that while it is obvious that direct democracy is not the primary variable affecting a state's fiscal makeup, it does affect it at the margins, and that has a statistically significant effect on a state's ability to manage its own expenditures. Apart from legislation that has actually been enacted, it has also been suggested that the possibility of initiatives on fiscal matters may perhaps act as a soft power to coerce state representatives into cutting taxes and reducing spending. In addition, it is uncommon to find spending or taxation caps come out of state legislatures. There is more of a tendency for balanced budget laws, spending caps, and flat tax laws to be perennial ballot issues (California's Proposition 13 is perhaps the best known successful example). This also may induce legislatures to be more cognizant of the median voter's expectations of what a state legislature should be doing financially and to enact moderate cuts to appease voters.

3.3 Data Selection

This research conducts a single case study of California. In order to address concerns of validity of doing a single case study this research will compare different time periods in regards to ballot measures and education funding. While in the long run a larger sample may prove to be helpful, time constraints associated with data selection limit the ability of this research to have such a large scope. In addition the fact that outcomes in California have not met with the expectations that direct democracy literature purports this research poses an unique opportunity to investigate the factors responsible the contradicting observation that ballot measures have seemed to create greater federal reliance and not less.

While this research does not conduct a statistical analysis it will incorporate various fiscal data sources to augment the narrative of this research. Extant models that have already been mentioned, Bednar's model of federalism will provide the analytical basis of this research, while other models such as Matsuyama's statistical analysis serve to augment the background literature.

To illustrate the development of this outcome in California, this research will present a narrative that will utilize primary and secondary sources. Major primary sources include, data on ballot initiatives, fiscal data and research on Californian direct democracy. Data on ballot

initiatives was obtained from several sources. This research primarily relied on the University of California Hastings Law Library's online *California Ballot Measures Database*, *The Miller-Rose Initiative Database*, John Matsusaka's *Initiative & Referendum Institute*, and *Ballotpedia.com*. The first of which, the UC Hastings Law Library's online *California Ballot Measures Database* is a collection made available by the federal LSTA (Library Services and Technology Act) grant in coordination with the offices of the California Attorney General and the California Secretary of State. This database offers a source for all initiative drives -- both those that qualified or failed to meet the necessary signature thresholds. In addition to providing detailed information on the content of ballot measures this database offers a description provided by the attorney general detailing the contents of the proposed initiatives. The second source, the *Miller-Rose Initiative Database* developed at California located Claremont McKenna College provides information on all statewide initiatives that passed between 1904 and 2013. In addition this database includes information on legal challenges to directly adopted legislation post election. The third source, John Matsusaka's *Initiative & Referendum Institute* at the University of Southern California presents modeled data from all direct democracy states. His resource is one of the primary sites dedicated to a more thorough critique of the usage of direct democracy. And this research's final source for initiative data, *Ballotpedia.com* made available by the *Lucy Burns Institute*, a nonprofit organization offers a wiki-styled but professionally fact-checked American election database. While this resource may lack the detail of the preceding three, it presents each initiative in the larger context of events, offering access to a wealth of information on individual initiatives.

The principle sources of fiscal data were obtained from the California's Legislative Analyst's Office, the California State Treasurer's Office and the U.S. Department of Education Budget Office. These sources provide fiscal data on topics ranging from federal ESEA block grants and other federal funding to the states and municipalities, state and local bond data and California General Fund spending. In addition to the California's Legislative Analyst's Office additional websites such as *californiataxdata.com* provide information on the development of the tax and funding system in California. Lastly, organizations like the National Education Association (NEA) provide data on the break down of federal, state and local education funding.

Secondary sources such as election coverage, newspaper articles, and interviews dealing with the various ballot measures will be presented to further illustrate the effects of the changing

funding system had on voter perception of federal, state and local institutions.

This research will analyze the development of education and tax limiting ballot measures in regards to the effect they have had on the ability of state and local governments to fund education. The important ballot measures will be looked at in depth chronologically and their effects, both intended and unintended will be assessed. This research will examine the distinct periods: 1978 to 1987, 1988 to the mid 1990s, and the mid 1990s to 2012. Each period represents either a shift between funding responsibilities as a result of ballot measures or an effort to alter the arrangement.

4. Education Finance in California

4.1 Proposition 13 (1978) and the Tax Revolt

(After the end credits finish rolling, the incredibly patient passenger is still waiting in the unattended taxicab. Hitting the \$113 mark on the meter and still rising, he looks at his watch and says:)

"Well, I'll give him another twenty minutes, but that's it!"

- Howards Jarvis, from his cameo in the movie *Airplane!* (1980)

While few would outside of California in 1980 likely have understood that joke in the now cult-classic movie *Airplane!*, voters in California likely recognized Howard Jarvis in the film as the outspoken force behind the success of Proposition 13. The irony of Howard Jarvis's cameo likely was not lost on him, as the oftentimes-colorful crusader against high taxes sat in a *tax-i* letting the fare meter continue to run in a decidedly uncharacteristic manner. Proposition 13 is considered to be the tipping point that set off the tax revolt not only in California, but also led to a series of successful tax reduction and limited government oriented ballot measures in western states and even in New England-liberal Massachusetts. Two notable successful initiatives were the *Massachusetts Local Property Tax Limitations Act* (1980), commonly referred to as Proposition 2½, which limited annual municipal tax increases to 2.5% and the *Colorado Taxpayer Bill of Rights* (1992)¹⁸, which capped state spending and linked future increases in spending to population and inflation growth.

Not Your Typical Tax Revolt

The tax revolt, which began in the late 1970s, was not a unique phenomenon, and actually is considered to be the second period of major tax revolts in the United States. The important events during the formative years of the 1790s and the Whiskey Rebellion notwithstanding, the early 1930s marked the first major period of tax resistance in the United

¹⁸ The success of the Colorado Taxpayer Bill of Rights, led to other TABORs movements nationwide, though none experienced similar success to the original bill in Colorado.

States. While the Great Depression dug in, individual tax burdens increased, real estate values nose-dived and local governments lost solvency all the while the federal government sought to push the country out of recession. However, deep suspicion of expansive government was already predominate during this time among many Americans and the depression merely created the opportunity to bind together the movement, which would go on to see numerous successes at the ballot box. However, by 1933 the success of tax limitation ballot measures waned as “Pay Your Taxes” campaigns surfaced and economic conditions gradually improved. Eventually, the beginning of Word War II put an effective end to the short lived but energetic movement. An important aspect that can be gleamed from the literature on tax resistance such as from Beito’s *Taxpayers in Revolt* is that taxpayer revolts are not simply reactions against government stimulus during times of economic downturn, as a thorough review of the literature would show that tax revolts have occurred under a plethora of economic circumstances. In fact, the literature gives the 1973-75 recession only a secondary role in bringing about the second wave of tax revolts in California during the late 1970s.

The popular hypothesis championed by William Fischel, an economics researcher at Dartmouth College, is that the success of Proposition 13 is the result of feedback effects stemming from the court ruling *Serrano v. Priest* (1971) (*Serrano I*); and (*Serrano II*) (1976). He speculates that the passage of radical legislation such as Proposition 13 cannot be properly explained by voter habits alone because of the surprisingly large margin of passage, almost 2 to 1 but also because similar tax limitation bills failed to pass in 1972 and 1968, both of which were rejected by a 2 to 1 margin (Serrano and Proposition 13). This hypothesized correlation holds great appeal to many and is frequently cited in the field.

Serrano v. Priest was a landmark court case introduced to the Superior Court of Los Angeles County in 1968 by John Serrano, a parent of several children who attended a local Los Angeles public school. The arrangement that was being challenged was one of school district funding. Education during this time was a wholly local matter; school districts were funded directly through local property taxes. However the problem seen with the arrangement was that poorer municipalities, even those with higher property tax rates, could not afford to provide the same level of education funding richer municipalities could at lower tax rates, in effect unduly favoring the wealthy. The court ruled in 1971 (*Serrano I*) that the existing state funding was inadequate to bridge the divide between districts and offer equal opportunity of education to all

California children. Basing their decision on the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article IX, Section 5 of the California Constitution, which mandated the provision of a system of free common schools by the state legislature and also on the wording from *Brown v. Board of Education* guaranteeing “equal educational opportunity”, the court determined that education was a fundamental constitutional right and that the state must address the imbalance (New York State Archives).

The legislature took up the mantle of *Serrano* immediately after the ruling and passed the Property Tax Relief Act of 1972. The new legislation essentially retained the pre-*Serrano* arrangement of funding education through property taxes, but changed the primary actor. Seeking to equalize spending among the districts, the new law placed a limit on the amount of revenue a school district could raise through local property tax, siphoning off excess revenue to poorer districts and it also created foundation programs where local funding would be supplemented by state aid (Karst). Fischel notes that *Serrano* broke the connection between local property taxes and local school spending. Prior to the Property Tax Relief Act, voters may have been able to see a direct connection between the property taxes they paid and the quality of their local schools. Even voters who did not have children would benefit, seeing increases in home values as a result of better local schools (Fischel 1-3). The most important aspect of *Serrano* (*I*) was it minimized the role local governments had traditionally played, as their revenues were requisitioned to support statewide equalization payments as the pendulum shifted to the state, it encroached on municipal powers. Voters would view this shift as one of a loss of proximity; they no longer could see where their tax monies were headed and no longer could they clearly draw the connection of their contribution with the benefit it created.

The U.S. Supreme Court ruling in 1973, *San Antonio v. Rodriguez*, inspired by the prospects of constitutionally guaranteed education in the model of *Serrano*, was struck down by a 5-4 vote. The justices ruled that the U.S. Constitution provides no fundamental right to education, in that it overlooks the domain of education in its entirety and in that sense education is an unenumerated right left to the states¹⁹; thus the states have the prerogative to provide (or not

¹⁹ Federal level education policy and subsequent funding is usually justified by Article I, Section 8, Clause 1 of the U.S. Constitution, more commonly known as the Taxing and Spending Clause. This clause suggests an implicit power for the federal government to spend.

provide) education and it is up to the states to determine of what quality that education should be. While *San Antonio v. Rodriguez* struck down the possibility of a guaranteed federal level compensatory education system, the ruling of *Serrano v. Priest* abided in California because the ruling in part was still based on the California Constitution and not the U.S. Constitution alone. In 1976, *Serrano II* was reaffirmed and stated that the original response by the legislature to *Serrano I* was inadequate and consequently further mandated that the legislature must reduce funding disparities between districts to less than \$100 per student. In 1977, in compliance with that ruling, the legislature passed California Assembly Bill 65 (AB 65) mandating the statewide implementation of financial equalization of the California school system. AB 65 would continue to draw from property taxes as the primary means of implementing equalization; the new system nicknamed “the Robin Hood system” would require revenue limits. As opposed to an unfunded mandate, the revenue limits authorized by AB 65 essentially drove up property taxes statewide, combining local property tax and statewide funding (coming from property tax) with any excess local tax revenue (Weston) serving to raise the direct funding needed to meet the mandated ruling.

During this same period the 1973-75 recession hit the housing market harshly. The stagflation, or high interest rates during this recession, coincided with rocketing population growth and an insatiable market for new housing that would lead to a series of countless reassessments of property taxes on rising home prices. Some properties were reassessed as much 50-100% higher in just one year with the property tax increasing accordingly, with assessments as high as 30 percent in Orange County (California Tax Data). Increased state government spending became increasingly reliant on income tax revenue and in some cities property taxes became so high many Californians could not afford to stay in their homes.

Californian’s discontent with rising property taxes was not lost on legislators. As the “People’s Initiative to Limit Property Taxation” or known less formally as the “Jarvis-Gann Amendment” a proposed initiative to limit property taxes started to gain traction garnering over one million valid signatures²⁰ to put it on the June 1978 ballot, the momentum jolted the legislature into action, which then in turn passed the Property Tax Relief Act of 1978, known

²⁰ More than double the obligatory number needed to qualify on the ballot for an initiative constitutional amendment.

primarily by its sponsor Sen. Philip Behr as the Behr Bill. The Behr Bill was coupled with Proposition 8, which would appear on the same ballot in June. Proposition 8 would have separated property tax rates for different classifications of property allowing commercial and industrial property to be taxed at higher rates than domiciles, and cap revenue on state and local government thus providing for over \$1 billion worth of tax relief in the following year. The scope of Proposition 8 was rather modest if placed in comparison with Proposition 13, as was largely favored by liberal Democrats and African American voters (Allswang 106-110). Fischel asserts that the principle difference between Proposition 8 and Proposition 13 was that Proposition 8 applied to all property tax except for that portion which went to education while Proposition 13 on the other hand was designed specifically to target the increased income tax routing from education funding. In defense of this assertion he notes that school districts that were most affected by increased property taxes because of *Serrano* and AB 65 voted in a greater percentage for Proposition 13 (535-538). The attempt to appease voters with Proposition 8 floundered and on June 6th, 1978 Proposition 13 was passed into law by 65% of voters (which received a majority of support from both Democrats and Republicans) while Proposition 8 failed to pass, receiving only 47%. If earlier preëemptive action had been taken, it is likely the modest tax cuts of Proposition 8 would have sufficiently assuaged grumpy voters, but it was too little, too late.

While the connection between *Serrano* and Proposition 13 has its particular appeal, there are detractors. Stark and Zasloff question the statistical significance of the claims made by Fischel. While questioning the dynamic of the swing between Proposition 13 and Proposition 8 is too close, asserting that Proposition 13 supporters should have been inclined to actively campaign against Proposition 8 rather than offering luke-warm support, the principle question offered by Stark and Zasloff is whether districts that suffered the most because of *Serrano* swung disproportionately towards supporting Proposition 13. With these objections in mind Stark and Zasloff offer a possible refutation of Fischel's hypothesis, however they readily admit they cannot gauge what role *Serrano* truly did play.

While the assertion that *Serrano* played the principle role the passage of Proposition 13 is debatable, important court decisions does tell us important things about the period leading up to the passage of the tax revolt movement's golden bill. Firstly, it showcases the aspects of proximity and visibility. Voters were willing to pay property tax to support provisions of services,

the principle local budget item among them – education, because they could see their personal tax contributions being directly tied to the quality of schools in their own constituencies. Even those voters who did not receive direct benefits likely understood the secondary benefits they would enjoy such as higher property values and better education services that would serve to reduce crime in the long run. While AB 65 arguably would provide greater benefits to those constituents in the long run, especially those in medium to low wealth districts, the state-level effort to equalize educational funding between districts, the distant proximity of their tax contributions made it difficult for many voters to see the benefits. The change of managing property taxes from the local governments to the state government was also quite visible to the voters, it is likely that after the decline of great orators (Governors like Ronald Reagan), voters became less likely to trust their state institutions, primarily the legislature, viewed the state capture of local property tax as a potentially dangerous transgression. It is likely that voters didn't recognize this with any federal model in mind, but understood the change in responsibility and sought to use the ballot box to right the situation. This in part could explain voters' distrust of Proposition 8, being that it originated out of the legislature, and instead favored the more radical Proposition 13, which was initiated by popular concern.

This first point in this research, the passage of Proposition 13, represents a prime example of the expanded popular safeguard triggering to meet opportunism by the state government. By looking at this example, it is evident that voters are not aware of the federal arrangement. Nor is it clear exactly what constitutes the proper arrangement of the federal state in the constituent federal states. The local-state dynamic is largely ignored in the literature, however as constituent's states follow the same model it is possible to observe the federalism in federalism. At the moment one example of the changing federal dynamic between local and state level power has been presented. At this point the federal government has only played a secondary role at the local, apart from the infusion of funding as part of the Education Amendments of 1974 during the Nixon Administration (New York State Archives).

Proposition 13 and the Unintended Consequences

Along with other high-profile bills such as Proposition 8 in 2008²¹, California's Proposition 13 is perhaps one of the most well known examples nationwide of direct democracy at work. In some ways Proposition 13 represented some of the fears of anti-direct democracy advocates; not only would voters choose a radical bill drafted by the public over one that came out of the characteristically abstemious state legislature, but also in addition to setting off the tax revolt movement many students of direct democracy credit Proposition 13 with reigniting the direct democracy movement in California. While the anti-direct democracy school laid largely dormant as the institution was pushed into a figurative triggered latency, Proposition 13 also served to reignite the debate over direct democracy in the United States among lay folk and also among many political theorists who are responsible for much of the literature we have today. They would ask whether the institution truly possesses the danger of majoritarian faction (Griffin).

Proposition 13 not only prohibited ad valorem tax on real property from exceeding 1% of the value of any property but also restricted the increase of assessed value to not exceed 2% per annum and prohibits reassessment of property values unless change of ownership occurs, which keeps properties below market value as market value increases in most years exceeds 2%. Proposition 13 also required that California state tax increases be approved by a two-thirds vote of the legislature and that local taxes initiatives be approved by two-thirds of the voters. Proposition 62 further amended this requirement in 1986 by establishing new requirements for the adoption of new or increased taxes by local agencies which now have to pass by a two-thirds plurality by either the governing body or the voters. Both these measures would serve to make future efforts to raise taxes to support education funding harder to achieve, even as voters came to recognize their education system was underfunded.

The passage of Proposition 13 had an immediate effect on California's budget. Prior to its passage, there was at least a 7 to 8 billion dollar surplus in the general fund (Fig. 4.1), however as a result of the precipitous drop in local revenues from the 1% property tax increase limit, the following years were spent burning away the surplus to underpin municipal budgets. Proposition

²¹ As opposed to Proposition 8 (1970) and Proposition 8 (1978), Proposition 8 (2008) was a high-profile initiative on the ballot in California that banned same-sex marriage.

13 also had the effect of punishing new home buyers, as they were subject to market value property assessments which had the effect of forcing them to contribute more in property taxes compared to those who remained in their homes that were purchased pre-Proposition 13. It is estimated that Proposition 13 saved voters and starved the state and local governments of \$528 billion USD in future revenue.

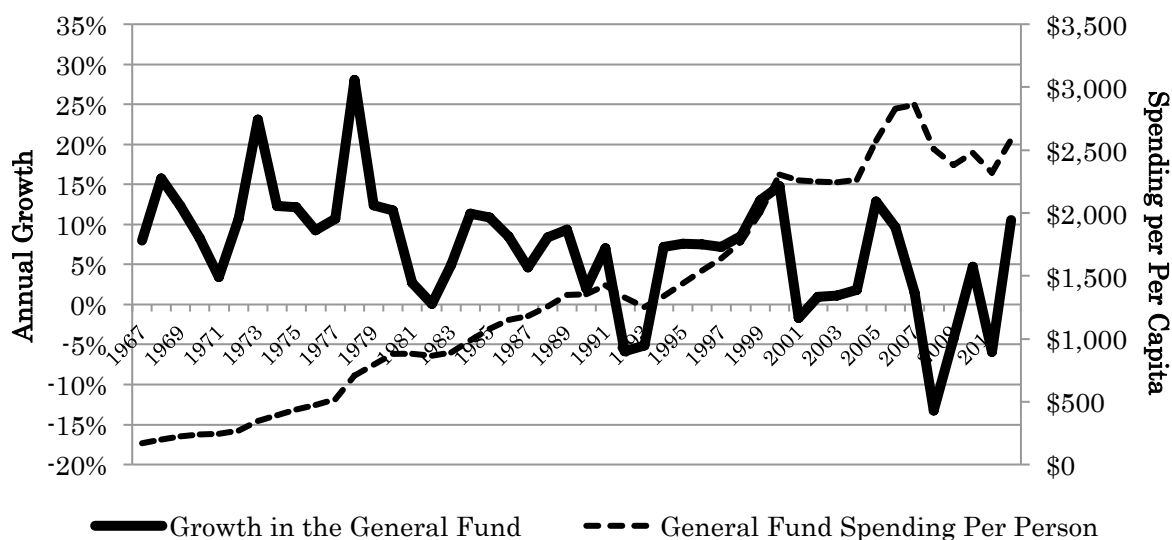


Figure 4.1 Growth of the General Fund (1967-2012)

Source: California Department of Finance

Proposition 13 had a devastating although not immediate effect on education in California. The use of the state budget surplus in the following years kept local school districts afloat and worked to allay fears for a time that the educational system would unduly suffer. An interview in 2010 with Isaac Martin, a professor of sociology at University of California San Diego broadcast on KPBS, noted that while people expected to see consequences from the passage of Proposition 13, possibly some loss of state and local government services, this concern in the end did not hold a deep sway for voters concerned about keeping their homes. Phrasing the dynamic as so he remarked: *“You know, if the tradeoff is, well, the schools are going to get a little worse but I don’t have to be on the street, people decided they were going to, you know, let the schools get a little worse.”* He went on to continue to assess the situation as being where: *“The long term impact has been quite dramatic but in the short term, immediately after Prop 13, people thought they’d actually sort of dodged a bullet. The headlines from the time were all about how, you know, the impact of Proposition 13, not as dire as people predicted.”*

And it's because the state really stepped in and spent down a big state budget surplus to bail out local governments that were suddenly strapped for cash because of Proposition 13 (Martin)."

The growth of the general fund could no longer keep up with annual demands since anticipated future tax income was far short of that which was projected pre-passage of Proposition 13. In addition because of the 1% limit on annual property tax increases, the state's obligation to fund equalization between school districts through property tax receipts (which are distributed by the state government because of the education finance system), the state government's overall contribution to education funding declined. While local municipalities could no longer issue bonds to support education funding (because bonds are serviced by property tax receipts) local governments became predominantly reliant on the ever-shrinking portion of California's stagnant general fund. Proposition 13 had the ultimate effect of neutering the mandates of *Serrano* and AB 65, making them nearly impossible to fund, the redistribution effects of the progressive legislation were short lived. Whether intended or not, Proposition 13 had the rapid effect of stripping education funding from the local domain, thrusting the incapable state finances into the position as the principle guarantor.

It was not just only the source of funding that changed. School finance reform brought about a perceived reduction in quality as well. By 1985 the state budget surplus payments to the municipalities had run dry and the effect of limiting of property taxes finally began to take its toll, which in turn, began a trend of per pupil spending reductions. 1985 also marked the year California's funding per pupil began to fall below the national average (Chapman 16). In comparison to the 1960s, when California was consistently ranked as one of the best states nationally in several measures of student and school performance, the 1980s saw the significant decline of California's standings in those statistics. By the 1990s California would rank near the bottom in terms of per pupil spending. In the face of these reductions, school districts chose to hire fewer teachers, which resulted in a dramatic increase in the pupil-teacher ratio, which had a negative effect on the quality of education in California public schools (Sonstelie).

The change in the quality of the educational system was not lost on voters and soon became apparent. One such example from the administrative side illustrated the change in the quality of services offered to students, quoting an assistant superintendent at a school in Huntington Beach, California education writer David Savage recorded that because of the cutbacks "[They] had to reduce the number of courses [they] offer", and that courses with

smaller numbers of students enrolled were no longer economical to keep, pointing out that “some of those lost courses are art or music, but others are the fourth year of English for some students (Savage 250)”.

It was clear that state and local governments possessed no administrative remedy to address problems in the failing education system and earlier judicial rulings were preempted by ballot measures. By the late 1980s voters had perceived a transgression by the state government, and initiative campaigns to fix the education problem were underway. While five initiative attempts at education finance reform did not make it onto the final ballots between 1980 and 1984, in 1988 the appetite of the electorate for election funding reform was sufficiently whetted to place Proposition 98, a K-14 funding bill, on the November ballot.

4.2 Proposition 98 (1988), Proposition 111 (1990) and the Unfunded Mandates

Proposition 98, a combined constitutional amendment and state statute originating out of the initiative process, known officially as the “Classroom Instructional Improvement and Accountability Act” passed with 50.7% of the vote in the November 1988 election. Simply put, Proposition 98 amended the California Constitution to mandate a minimum level of education funding from the general fund. The minimum floor for education spending was set at 39% of the General Fund tax revenues.

Previously, roughly seventy percent of K-12 funding and about two-thirds of state community colleges funding already originated out of the General Fund. Part of the logic behind Proposition 98 was that by increasing the percentage that was mandated to spend on education it would in turn increase total education funding, as the natural growth in the population and in the economy would engender an increasingly larger general fund (Legislative Analyst's Office | The California Legislature's Nonpartisan Fiscal and Policy Advisor). While the focus was an ever increasing and stable source for education funding, the constraints of the requirement became readily apparent: as the percentage of spending on education increased, the absence of new taxes or increased revenue created a situation where there was less money for other state expenditures (Chapman 16-17). Legislatures and administrators found this basic formula too restricting and sought to create a new law to ease the severity of the mandate.

In 1990 the legislature referred Proposition 111 to the June ballot. Proposition 111, also known as the Traffic Congestion Relief and Spending Limitation Act, passed voter approval.

While Proposition 111 was primarily framed not as a tax hike but as a means to reduce severe highway congestion, the act placed an industry specific tax increase on truck weight fees and a more encompassing general tax increase of 5¢ per gallon on the state’s fuel tax, it also included some less prominent measures; namely to alter the conditions of Proposition 98. Firstly, Proposition 111 altered the way the Gann Limit was calculated²², and affected the way the minimum funding guarantee created by Proposition 98 worked. In regards to education funding appropriations it added two additional formulas. The first formula was generally to be utilized during years of strong earnings while the second formula was to be used during years of slow or negative growth. Since the passage of Proposition 111, the original 39% minimum formula has not been utilized since. In addition to the two additional tests for determining K-14 funding, Proposition 111 inserted a clause that allows for at least a one-year suspension of guaranteed education funding. This clause can be activated by a two-thirds vote of the legislature. Thus far, the legislature has suspended the minimum guarantee for funding only once, during the 2004 – 2005 budget year.

The new appropriation formulas take five principal factors into account: General Fund revenues, K-12 average daily attendance, local property tax rates, state wide personal income and annual state population. Because these factors are liable to changes throughout the year, the minimum guarantee of education funding is also liable to changes. To meet the mandates of the preceding years, it is the responsibility of the Governor to provide additional funds. Because of changes ERAF property taxes in the early 1990s the actual percentage of General Fund revenues set for education is closer to 34% rather than the mandated 40% (Chapman 16-17).

While Proposition 98 was passed in reaction to the dire fiscal consequences Proposition 13 had on the budget, in retrospect it did little to improve the educational funding problem in California. Chapman remarks that, “Proposition 98 has acted as more of a ceiling than a floor”. In fact, it limited more than expanded funding. For example, if the legislature decided to provide education funding above the minimum guarantee, that additional fund must be factor into

²² The Gann Limit was a measure authorized in 1979 by the passage of Proposition 4, more widely known as the “Gann Limit” Initiative. Proposition 4 extended the tax reduction measures begun by Proposition 13 in 1978. It placed limits on the growth in appropriations made by state and local governments. It also mandated that in state and local governments must return tax revenue to taxpayers if the annual amount exceeds the appropriation for that year.

account for the next year's budget. Basically, the good will of the legislators on any one-year's budget would become a permanent obligation for the next. Budgetary fights ensued in the legislature not over how to meet the necessary funding, but to see how little they could fund it. During times of economic downturn, the budgetary minimum worked to hamper state services not only in education, but also in various domains of state responsibility.

Proposition 98 and 111 continued the earlier trend of moving power away from the localities and towards the state government. As Proposition 13 limited the funding sources, under Proposition 98 and 111 school funding underwent further centralization, almost being completely managed at the state level; during this period local governments became secondary actors, merely recipients of state largess.

Authors such as Sonstelie and Brunner argue that Proposition 98 was a conscious choice by voters to spend less on education. They argue that voters weighed the possibilities of higher taxes necessary to funding against the benefit of better schools. While it is reasonable to say that voters are innately conscious of their perceived tax burden when they vote, ballot measures such as Proposition 98 offer a different route to voters. Because the visibility of potential taxes is not evident, voters are not conscious of the connection of future necessary spending. On the contrary bills with unfunded mandates allow voters to express their best intentions. Given the opportunity, when ballot measures that offer an increase in services while not offering any means of taxation or funding that would seem to unduly burden the voter, they tend to support such measures. What is important about Proposition 98 is not the intention of voters to improve the education system; it is that they, and also the creators of the legislation, did not fully understand the consequences to the state budget of setting the minimum-funding guarantee. Even by amending the bill through Proposition 111, the formulas work to hamper education funding rather than expanding it. While Proposition 111 could not be characterized as an unfunded mandate as could Proposition 98, the way Proposition 111 was marketed and whom it targeted (trucking industry) offered great appeal to voters. While the gasoline tax had further reach, the timing of the bill did not coincide with an oil crisis. Lastly, the way Proposition 111 would alter the way education funding was formulated in the state was likely not considered by voters at the polls because it was included as an attached appendix of sorts.

4.3 Attempts to Alter the Balance (1990s-2012)

The early 1990s were a difficult time for the state of education funding. Accompanied by slow economic growth and consequent stagnation in the General Fund, per pupil education funding in California continued to drop. On the legal side, school finance cases throughout the country struck down *Serrano* based rulings, with judicial rulings pontificating that equity should not be the concern for state funding; rather that funding must also be adequate (Adams Jr.). While this contributed to the growing debate on what form school finance reform should take, aside from bond funding it would not be until the 2000s that voter awareness of the need to redo education finance reform hit a critical level. During the 1990s the refunding of education by the federal government did much to dampen concern over the ability of the system to adequately support itself. Accordingly, federal block grants to California and localities increased substantially during this period.

In 1998 the first non-bond education related bill appeared on the June ballot, however Proposition 223 was clearly an anti-education bill. It sought to limit the amount of funding any one school district could spend on administrative costs. Most importantly the limited government backers of Proposition 223 wanted to link improvements in school performance with school funding, failure to meet those bar would result in funding cuts and penalties fees. Because Proposition 223 was not guised as part of the greater tax revolt, but rather a direct attempt to diminish the quality of education, it suffered a resounding defeat.

In 2002, riding on the gamble of Arnold Schwarzenegger's entrance into politics, Proposition 49, the first non-bond related pro-education bill made its debut. Voters approved the measure by a margin of 56.7%. The successful passage of this measure would help launch Schwarzenegger's gubernatorial campaign during the recall of Gray Davis. Proposition 49 did not just increase state obligations for before-and-after school programs but it also specifically targeted school districts with disproportionately low income students. Most importantly Proposition 49 mandated that funding not come from monies already guaranteed under Proposition 98 and that education funding must receive priority in the event of growth in General Fund expenditures. In sum, Proposition 49 created an additional \$455 million USD of funding obligations per annum.

Proposition 49 could certainly be considered an unfunded mandate. The wording of the question posed to voters illustrates clearly that no additional means of funding the measure were obligated:

Should funding for before and after school programs be substantially increased, and starting in 2004-05, should general funds be permanently earmarked for this program?

While afterschool funding is not the largest of state education obligations, the fact that Proposition 49 prevents the reduction of funding without voter approval has essentially created an autopilot funding provision, which has resulted in significant growth in state funding of before-and-after school programs (Graves). However this increased funding must come from somewhere, and non-K-14 education funding has been what has suffered, with \$1.2 billion USD less in funding for childcare and preschool programs in 2012 than in 2002.

Unlike Proposition 49, Proposition 88 in 2006 linked increases in taxes directly to school funding. Supporters of Proposition 88 sought to place a \$50 dollar tax on most parcels²³ of land. While the provision would have guaranteed that any other government program would not be adversely affected by the new mandated funding, the raising of funds through property taxation did not sit well with voters. Proposition 88 was soundly defeated by 76.6% of the vote. Supporters of the bill noted that California then ranked among the lowest in per-pupil funding in all of the states and the only way to address this disparity was to raise taxes. However anti-tax crusaders and limited government activists still held great sway even among Democratic constituencies. Opponents argued against giving greater means for the state to control education and asserted that powers should be devolved back to the local governments.

2012 marked the last and most recent of the attempts to reform education finance. A total of two bills offering similar prescriptions for higher taxes appeared on the ballot. Proposition 30 passed while Proposition 38 failed. What accounts for the passage of one pro-education bill and the failure of the other? Although both propositions were designed to support education through the levying of taxes they did so in very different ways.

²³ A parcel as defined by the Legislative Analyst's Office of California is defined as any unit of real property in the state that currently receives a separate local property tax bill.

Proposition 30, titled *Temporary Taxes to Fund Education Act* increased the personal income tax rate for annual incomes exceeding \$250,000 and the California state sales tax by 0.25% bringing it to 7.5%. While Proposition 30 clearly connected an increased tax rate and thus revenue with supporting education it was marketed to appeal to middle and low-income voters. Even though it applied to some people who had earnings below the million-dollar mark, it was marketed as the “millionaire tax”. Similar to campaigns for sin taxes on tobacco and alcohol, supporters of the bill sought to assuage concerns that the average voter would bear any additional personal tax burden.

On the other hand Proposition 38, titled the *State Income Tax Increase to Support Public Education Act*, also would have increased income tax rates to fund education. Unlike proposition 30, Proposition 38 would have raised the income tax rate on most Californians. The backers of Proposition 38 were unable to characterize the bill as only targeting wealthy individuals as Proposition 30 did. Proposition 38 suffered a hard defeat after being characterized as the Middle Class Tax Hike Bill, receiving only 28.7% of the vote in favor. The nature of the tax burden imposed on voters can likely be attributed as the primary reason for Proposition 30’s failure. While passages of pro-education bills are largely supported, undue broad taxation in the voters’ mind lends itself to rationality taking the front seat.

The tax and thus revenue limiting effects of Proposition 13 and 98 culminated with a generalized state-level economic collapse occurring during the period of national economic turmoil known as the “Great Recession” which began in late 2007 and ended in mid-2009 with an end result of pushing the states’ General Fund to go into disrepair. Governor Jerry Brown proposed in his California State Budget for 2012-2013 a \$6 billion USD budget cut for education funding in an attempt to bring the state out of deficit spending. The passage of Proposition 30 and the estimated \$6 billion in additional revenue negated that planned education cut and the education budget remained intact for those years.

Californian voter’s practice of ballot box budgeting over the last three decades has created many feedback effects that both voters and experts did not fully anticipate. As was the case in Proposition 98 when voters passed Proposition 49 (2002), a pro-education bill that was crafted with the best intentions, they sought to increase the quality of education in their state. These bills however have been held hostage to a voter’s sense of personal tax burden. Supporting tax bills that would clearly fund education with no strings attached or without embedded

complicated formulas would clearly be the best method of creating a quality and well funded education system. However, voters do not necessarily support measures with broad public benefit or interest; rather, they vote in a manner reflective of self-preservation. Not linking increases in taxes with necessary revenue appeals to voters. If they do not see a direct personal burden, following the logic of rational choice it makes sense voters would want to maximize their personal benefit while simultaneously benefiting from a supposed increase in quality of services.

The effect of the ballot measures covered at the state level has served to aggrandize the state role in education in California. Education policy and funding obligations (aside from bonds) are currently almost entirely a state responsibility. As these ballot measures have worked to make it difficult for California not only to meet its education obligations but all state obligations as well, in order to adequately fund education California has become exceedingly reliant on federal grant funding. The nature of this dynamic will be covered in section 6 after looking at the local dynamic created by bond measures.

Accordingly, the following section on bond measures will cover approximately the same period of time and will overlap with several important ballot measures. In addition to funding through tax revenue, this section will explore the practice of funding education through the issuing of bond debt instruments in California.

5. Bond Finance Practice in California

The practice of bond issuance to finance government is likely the least understood fiscal responsibility entrusted to voters. Nevertheless, even while lacking appropriate knowledge voters are faced with approving these measures at the state and local levels nearly every election cycle. What is bonding and how precisely does it prop up education budgeting? Bonds are fundamentally debt. If a company or, in our case, the government, needs funds for a project, it can issue bonds. Investors meet the bond request by purchasing bonds, which is essentially a process for loaning the government money, and for that privilege the government promises to pay back the investors the face amount of the bond plus the published interest on the loan at the agreed upon maturity date. Issuing bonds allows the government to carry debt while simultaneously supporting important programs. The full faith and credit of the government provides security to the investors and assures them that the government will pay back the money borrowed.

In California, the practice of putting bond issuances up to a public vote in support of various programs and proposals essentially allows the government to take on new public debt (of course, it is assumed the voter understands that they will be paying back the face value of the bonds plus interest through tax revenues). This has been common practice in California since the initiation of direct democracy in 1911. Between 1914 and 2012, 183 bond bills have appeared before voters on the California ballot; of those, slightly over a quarter of them (49) have been related to education funding (Figure 5.2). Frequent topics for these education bond bills include but are not limited to: new school construction, school retrofitting (as a result of the earthquake risk being endemic to California), textbook purchases, literacy and library campaigns, and general funding for schools ranging from pre-school to post-secondary²⁴. Since the inception of direct democracy in California in 1911, of state-level education related bond bills, an average of 81.6% have passed, while the passage rate for the remaining non-education bond bills enjoyed a slightly lower average passing rate of 71%.

²⁴ California has one of the largest publically supported post-secondary education systems in the United States.

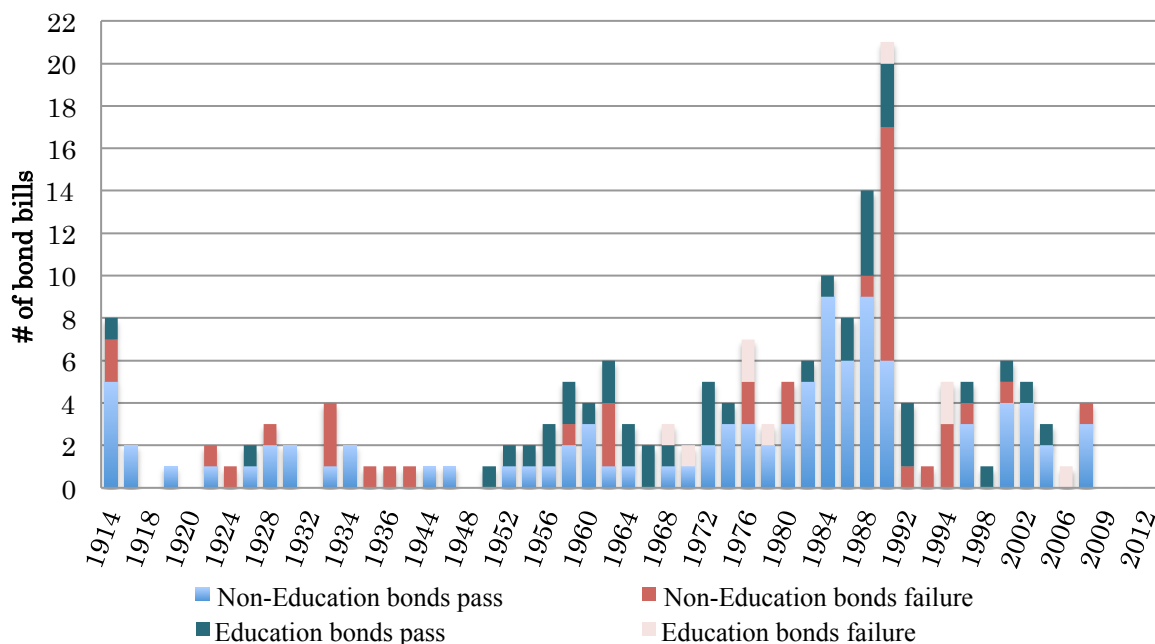


Figure 5.2 State-Level Bond Bills in California (1914-2012)

Source: Public Policy Institute of California, October 2013.

The second adopted constitution of California in 1879 defined the method by which bond bill would pass; by a simple majority of the Legislature. In the following decades there were debates over state debt. In 1908 the Legislature amended the state constitution extending the maturity (pay-back) period from twenty-five years to seventy-five years (The California Constitution Revision Commission 48). However, concern that the interest due could surpass the amount borrowed prompted the Legislature in 1956 to reduce the maturity limit to fifty years. While there were several earlier failed attempts to implement a supermajority for passage of bond bills such as Proposition 7 in 1915, ultimately in 1962 Article XVI, Section 1 of the State Constitution was further amended to stipulate a super-majority was needed to pass bond bills by the Legislature before it could be brought to voters for passage by a simple majority (Legislative Analyst's Office | The California Legislature's Nonpartisan Fiscal and Policy Advisor 834). In the 1960s the conditions of repayment and the requirements for passage of bond bills were tightened which resulted in a slight lull in the number of bond bills. However the need for increased funding as California's population continued to skyrocket likely resulted in a greater willingness to turn to borrowing as an option to fill tightened budgetary constraints in the 1980s.

After the passage of the new supermajority requirement for bond bills originating out of the legislature various attempts began to alter this arrangement, but only in regards to education

related bills, seeking to lax the requirement need to pass. In 1966, Proposition 4 represented a failed attempt to lower the requirement to a 60% margin for legislative approval on bond bills for schools and libraries. However, in 1972, Proposition 9, a legislatively referred bill passed voter approval and changed the in legislative bill passage requirement to a simple majority for bond bills that allocate funding to public school buildings that are deemed unsafe for occupancy (UC Hastings Law Library).

However the ability to issue bonds is not solely the prerogative of national or state governments, municipalities can issue bonds as well. Before Proposition 13 in 1978, the state role in funding local school districts was limited although was somewhat increased in the prior two years as a result legislation in accordance with *Serrano v. Priest (1971) (Serrano I)*; and *(Serrano II) (1976)* created state operated equalization payments between school districts. As it was during the adoption of the common school model in the 19th century, the aggrandizement of state roles before the 1970s was largely structural rather than fiscal. As local school district had the primary responsibility for funding, they would frequently issue general obligation bonds as a means of meeting spending obligations. However, Proposition 13 changed local school-districts' ability to pay back their bond indebtedness through the levying of property taxes, since it was now limited to 1 percent of assessed valuation (Allswang), choking off important local revenue streams. The sixteen state-level education-related bond bills approved between the passage of Proposition 13 in 1978 and Proposition 39 in 2000 generated tens of billions of dollars for local districts, helping to stem the loss of important revenue. Nevertheless, because state-level bond bills only needed to receive a simple majority for passage (once out of the legislature) and local-level bond bill were subject to the 67% supermajority public vote passage requirement, the state government was able to wrestle authority away from local governments, particularly in their ability to administer, refurbish and authorize educational facilities.

The central role Sacramento played was somewhat lessened in 1986 with the passage of Proposition 46, which allows municipal governments and local school districts to increase the property tax rate above the 1% ceiling as limited by Proposition 13 if only for the purpose of paying off newly issued general obligation bonds and also for their purpose is for the improvement of land or buildings (school facilities). Proposition 46 also generated some state-level fiscal concerns where districts that do adopt increased tax rates would become subject to greater deductions and need greater tax relief from the state government. While the ability for

local governments to issue bonds was restored, the supermajority restriction still limited its use (Kemerer).

Proposition 170 (1993) sought to alter this arrangement by lowering the passage requirement for school facility bond measures to a simple majority and to allow property tax to exceed the 1 percent rate for all school bond measures. Several newspaper articles from 1993 illustrate how much local school districts had fixated their attention on the passage of Proposition 170. One such article from the Los Angeles Times reporting on election night after the loss of the bill remarked that *“School districts had pinned their hopes on Proposition 170--which would have made sufficient a simple majority--to end their increasing reliance on a dwindling supply of state funds to finance the building of badly needed campuses”*, thus viewing the defeat bitterly they lamented how much easier it would have been to prop up local school districts *“Since 1986, more than 90% of school bond measures statewide have received simple majorities... But only half of them cleared the two-thirds hurdle (Chu).”* The following year, Proposition 1B (1994) appeared on the ballot as an effort to make it easier to pay back bond bills that happened to pass the super majority threshold. Aside from being a bond issuance bill, it also provided for the appropriate of General Fund revenue to pay of bonds (UC Hastings Law Library), however this measure failed to meet voter approval. The failure of this movement would not be redressed until 2000 when this arrangement was successfully challenged by the passage of Proposition 39.

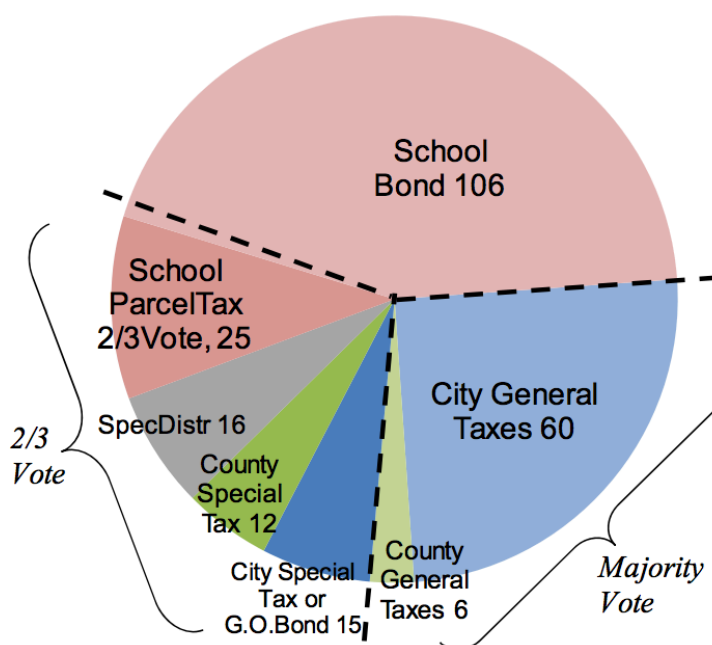
Proposition 39 amended Article XIII A of the California constitution (Official California Legislative Information) to allow for a new passage threshold of 55% for local elections on bonds related to school facilities (Kemerer). Many tax-conscious voters opposed Proposition 39 for fear that it might add a further blow to the 1% income tax ceiling. Opponents from the Howard Jarvis Taxpayers Association described the pro Prop-39 argument as frivolous:

When addressing the public, bond backers are frequently encouraged to put the cost in simple, friendly sounding terms that usually begin with "it's only." "It's only a few cents a day," or "it's only a few dollars per month." (The Los Angeles Community College District Chancellor compared the cost of its bond to the cost of a "latte a month.") Officials try to make it sound like the coming property tax increase is trivial and that anyone who is opposed must be a cheapskate who doesn't care about children. (Howard

Jarvis Taxpayers Association - Dedicated to Protecting Proposition 13 and Promoting Taxpayers' Rights)

While the anti-tax lobby enjoys broad support and continues to hawkishly defend Proposition 13, it was likely concerns over the inadequacy of Californian schools that buoyed Proposition 39 to passage. The passage of Proposition 39 made it significantly easier for municipalities to generate funding for school administration and maintenance. While institutional barriers preventing the return of local level responsibilities to the pre-1978 level were still in place, the influx of fresh funding, though debt that needed to be paid off later, managed to reinvigorate municipal support in meeting its fiscal responsibilities. To better understand the ease with which bond bills would pass after Proposition 39, one only need to look at passage rates for local-level school bond bills pre- and post-2000: 80% on average following its passage. Prior to 2000, where only 60% of local education bond bills passed.

Looking at two election years - 2008 and 2012 - in regards to local revenue measures on ballots statewide in California, it is clear that school bonds, in most election years, make up the majority of ballot items throughout the state. While 2012 (figure 5.3) shows the breakdown of the different types of ballot measures at the local level, data from the 2008 local elections shows the passage rate for bond bills. Of 162 local school bond issues presented to voters in 2008,



**Figure 5.3 Proposed Local Revenue Measures in California
(2012)**

Source: (Coleman) CaliforniaCityFinance.Com 2012 Results

85.9%, or 140, passed. However, if that election cycle were to have been subject to the earlier 67% requirement, 18 bills that would have added \$2.3 billion USD in new borrowing would not have been able to meet the former threshold for passage.

Moving the focus back to the state of bond issuance in California at the state-level as a whole, it can be seen that, as of 2014, California possessed \$148 billion USD in general obligation bonds approved by voter initiatives and propositions (California State Treasurer's Office). Of that amount, \$128 billion USD, or roughly 86%, is to be paid for out of the General Fund. As a result of Proposition 98 (1988), a minimum of 40% and an actual percentage of 50% of the General Fund must be spent on education. Of the total General Fund obligated debt authorized by voters, 43% is earmarked for spending on education from kindergarten through post-secondary levels. However, when looking at outstanding bond bills, or those bonds that are currently being serviced through the General Fund, a greater percentage (53% or \$45 billion USD of the \$75 billion USD) is servicing education debt. Between 2008 and 2012, the percentage of the General Fund used to service existing bond debt steadily increased from 5.52% to 7.81%.

Both the voter authorized amount and the long-term outstanding bonds are of the non-self liquidating variety. The important aspect of these bonds being non-self liquidating, means that the state of California issues bonds for consumption, e.g. the funds needed to administer education that come from bond issuance do not work towards their eventually repayment - that is, non-self liquidating bonds essentially stay on the books for an extended period of time.²⁵ As these bonds continue to stay on the books as additional future bonds are issued to fund Californian municipalities' growing needs, the ability of municipal and state government to

²⁵ Contrarily, self-liquidating bonds are considered to spur investment that would create income, which in turn would eventually be put towards repaying long-term bond debt and are more readily retired. Hypothetically, it is conceivable to argue that supporting compensatory education through bond issuance perhaps could be seen as a means of investment in human capital that would augment future earnings and thus tax revenue. In this way, servicing bonds to prop up the educational system of the states and municipalities could lend credence to classifying those bonds as of the self-liquidating variety. However, there is no evidence that bonds are being used for anything significantly more than keeping the system afloat by in part supporting school administration and facilities. While this essential keeps the system running, it is unlikely to do little to engender a future population of highly educated and wealthier taxpayers.

service extant and future bonds has not increased in a comparable manner, thus placing a steadily growing reliance on the federal government to fill this fiscal responsibility vacuum.

Looking at the state-level use of bonds during this period, it can be noticed that, since 1986, the California State Legislature has been funding educational facilities through a mix of state general obligation bonds, local school district revenues, and developer fees; after this point, the amount of state bonds for funding school construction increased substantially. According to the Public Policy Institute of California, bond-funding measures approved in elections during the (Public Policy Institute of California)1980s averaged \$685 million (in constant 2008 USD); in contrast, measures approved during the 2000s have averaged \$5.15 billion – a nearly 635% increase (Public Policy Institute of California). In the recession that began in 2008-2009, California froze spending of most of the funding provided by voter and/or legislature-approved bonds due to the state's sudden inability to sell new bonds, as well as the drain on the state's monetary reserves that would have occurred should bond spending have continued unabated. In the FY 09 (2008-2009) school year, at the very height of the "Great Recession," thirty-one states declared fiscal emergencies resulting from local and state revenue shortfalls totaling over \$13 billion USD. Subsequently, the federal government stepped in to help, passing the State Fiscal Stabilization Fund (SFSF) in March of 2010). In applying for grants from the SFSF, individual state applicants identified were required to report their FY09 and FY10 education budget shortfalls to qualify for federal bailouts. The state requests totaled over \$33 billion for both K-12 and higher education. California was no exception – its budget deficit for K-12 education amounted to nearly \$3.5 billion USD for FY 09. Indeed, California's reliance on federal funding to shore up its education budget was never as acute as it was during this period. It has been estimated that without ARRA stabilization funding, which ultimately restored budget equilibrium, over 6,300 schoolteachers in Los Angeles alone would have been furloughed without pay due to municipal and state education budget shortfalls. (U.S. Department of Education)

Impact of State Fiscal Stabilization Fund on California -- FY 2009

| K-12 FY09 actual without ARRA | K-12 FY09 restored due to ARRA | K-12 FY09 actual including ARRA | Percent K-12 FY09 Restored |
|--------------------------------------|---------------------------------------|--|-----------------------------------|
| \$34,383,000,000 | \$3,423,000,000 | \$37,806,000,000 | 9% |

Impact of State Fiscal Stabilization Fund on California – K-12 FY 2008 compared to FY 2009

| K-12 FY08 allocation | K-12 FY09 actual without ARRA | K-12 FY09 restored due to ARRA | K-12 FY09 actual including ARRA |
|----------------------|-------------------------------|--------------------------------|---------------------------------|
| \$38,031,000,000 | \$34,383,000,000 | \$3,423,000,000 | \$37,806,000,000 |

Impact of State Fiscal Stabilization Fund on California – K-12 FY 2010 (Projected)

| K12 FY10 projected without ARRA | K-12 FY10 restored due to ARRA | K-12 FY10 projected including ARRA |
|---------------------------------|--------------------------------|------------------------------------|
| \$32,877,000,000 | \$1,632,000,000 | \$34,509,000,000 |

Fig 5.4 ARRA data compiled by the U.S. Department of Education

Source: Report by the Domestic Policy Council, Executive Office of the President, The White House. Published October 19, 2009

It is reasonable to believe that since California is such a populous state it would receive a greater proportion of federal assistance dollars than other, less populated states. And indeed, the data presented in this research bears this assumption out; and, moreover, it shows that not only did California receive a higher percentage of federal funding than the remaining states average, it received even more funding proportionally than other states that also had large populations. On the other hand, Texas, while also a recipient of federal monies, received surprisingly little federal assistance, totaling only \$6.4 billion USD in 2009, according to data retrieved from the American Recovery and Reinvestment Act database (Dallas Morning News February 19, 2011 (Holloway)). There, local political units that strongly oppose federal assistance prevented municipal and state government agencies (which, in comparison to California, have limited responsibilities to begin with) from favoring a greater federal role. An example of a state that has assumed the mantle of providing (and financing) a progressive state-wide education system is New York, which, as illustrated in the data set, did not need to request any federal funding the during the Great Recession. While it is hard to say decisively, the converse nature of direct voter participation in California and New York vis-a-vis education finance does suggest that there are some underlying, structural reasons for the differing degrees of federal intervention in that domain.

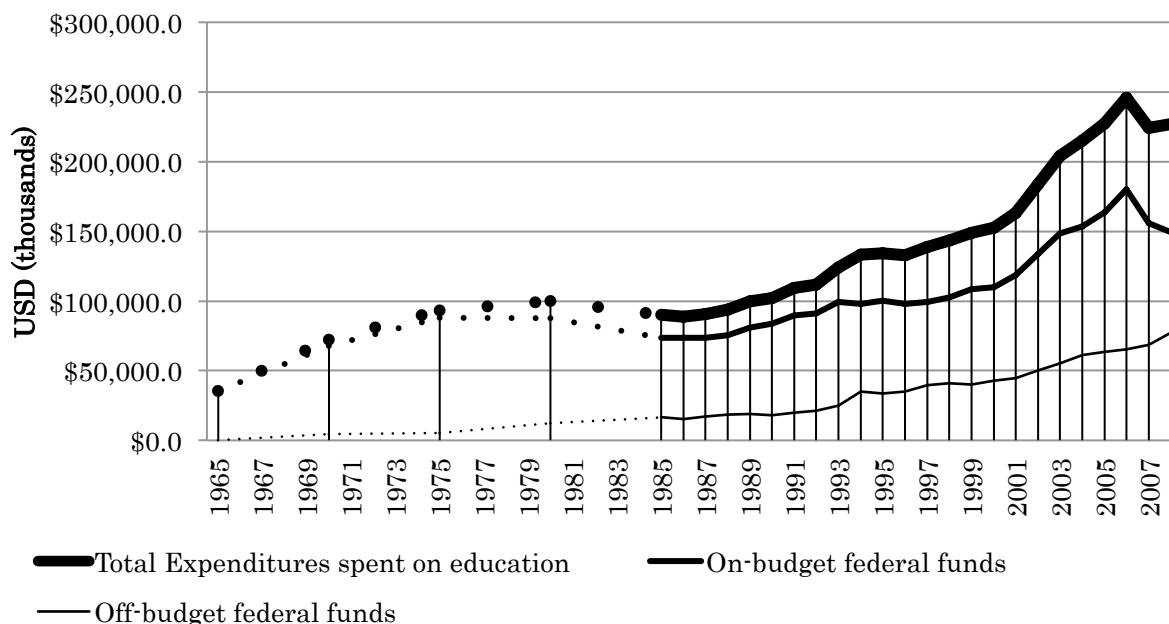
In conclusion, the practice of bond issuance has made California more susceptible to fluctuations in its budget as well as downturns in the economy. As the recession made abundantly clear, relying on bonds as a significant source of education financing is an inherently

flawed strategy. This trend has been driven largely by voters, who generally have remained blissfully unaware of the pitfalls their state and local governments will likely face in repaying future debt, and who are for the most part willing to support their educational institutions given that their perceived individual financial burden is low. This is not to say, however, that running up debt is necessarily a bad thing; indeed, it might be said that the renewed interest in issuing local bonds that took hold during the past decade has had a mostly salubrious effect, as it has begun to reverse the strong trend towards centralization in California by reverting fiscal tools to local governments. These benefits notwithstanding, carrying heavy debt does nevertheless create at least some fiscal weakness, and that in turn may invite greater federal budgetary participation.

6. A New Model of Federalism

The preceding section has presented an account of the development of ballot measures and school finance in California. In it, particular attention was given to the effect tax limiting measures have had on local and state governments' abilities to meet their educational obligations. When shifts in authority did occur, it was noted where and when the state government took over local responsibility and vice versa. For example, prominent state-level ballot measures generally had the effect of centralizing the state role, while changes in bond laws during the 2000s returned some degree of autonomy to localities. It was also carefully noted where federal monies augmented this arrangement and the degree to which they did so. By looking at ballot measures in California from the 1970s to the 2010s, the development of feedback effects could be seen; however, only a partial story of what role the federal government played emerged. This section will help fill in the gaps and provide a fuller account of the dynamic between federal, state and local entities. While this narrative has illustrated that the conclusion -- that both local and state governments are now more reliant on federal aid -- is clear, the changing nature of this arrangement will be examined via a slightly different perspective, one utilizing Bednar's model of federalism to understand how changes at the ballot box served to alter the federal triangle.

6.1 Fiscal federalism and Education Spending Trends



Graph 6.1 Federal Tax Expenditures on Education (duplicated)

Source: U.S. Department of Education, Budget Service, unpublished tabulations.

Looking at the trend of education funding in the United States as a whole, two concurrent trends can be seen. Firstly, since the inception of the ESEA in 1965, the federal role in funding education has greatly expanded. Aside from programs such as Head Start, the federal government does not administer education; rather, it utilizes lower-level governments to administer funding, with states and local governments being the principle actors. The federal government experienced an increase in expenditure funding on education until the mid 1970s. As proponents of limited government obtained key policy-making positions not only in state but in federal government as well, funding in the 1980s became stagnant. However, changes in the national ethos led to the election of administrations more responsive to funding requests, bringing about a two-decade period of rapidly increasing federal funding. The other trend was the coöpting of responsibility for education from local entities by state governments (Figure 6.2). While education had originally been a purely local responsibility, the average American state now splits its funding obligations nearly equally between the state and local levels. The two periods of growth in the federal budget are also apparent in this graph, with the Johnson-Nixon and Bush-Obama years clearly indicated by an increased share of federal revenue. In comparison to the combined sum of federal, state and local funding, the federal government represented and still continues to represent the smallest portion of the amount. However, since federal budgeting is not subject to many of the same constraints vis-à-vis bond issuance and formulaic expenditure calculations that local and state governments are, federal education funding comprises an important source of support for these lower institutions on the likelihood that their primary sources of funding dry up. As far as the share of education funding goes, a continuum exists, ranging from more reliant states (e.g., South Dakota @ 16.4%) to less reliant ones (e.g., New Jersey @ 4.1%)²⁶. A closer look at the focus of this study, California, reveals that in the 2008-2009 budget, 13% of funding came from the federal government, 57.4% from the state government and 28.8% from local governments. Perhaps the most striking, and unexpected, finding is that even though California occupies the upper end of the federal reliance continuum, education finance is nevertheless still considerably more centralized than the national average,

²⁶ FY 2009.

suggesting that state and federal roles in education are not necessarily inversely proportional in nature.²⁷

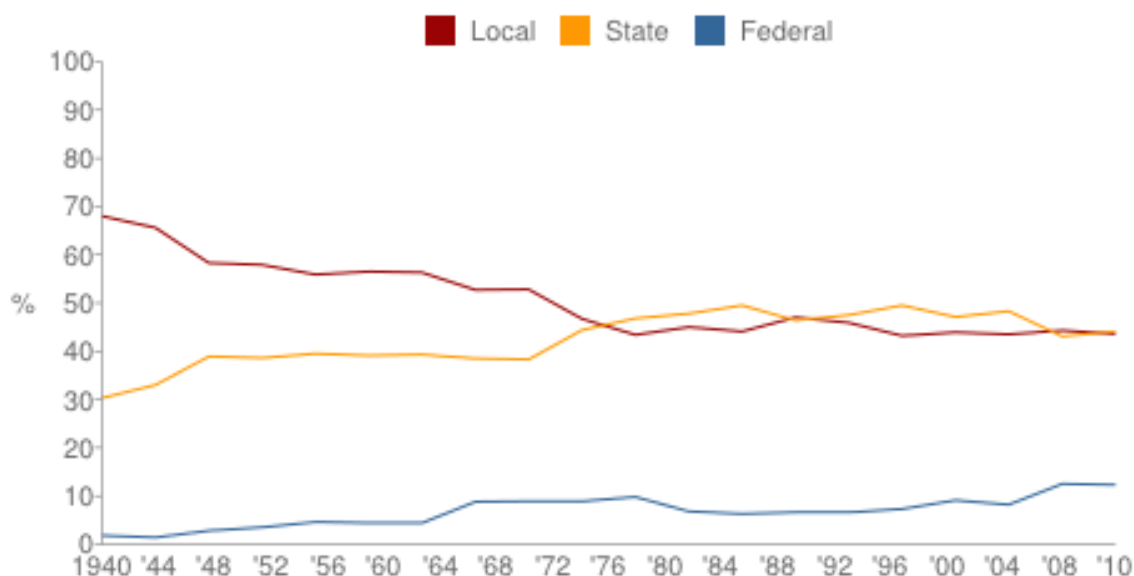


Figure 6.2 Source of Elementary and Secondary School Education Funding

Source: National Center for Education Statistics; <http://febp.newamerica.net/background-analysis/school-finance>

Looking at Figure 6.3 the long-term trends in California are apparent in regards to the share of education funding. This graph illustrates the effects of *Serrano*, as the state began to adopt more responsibilities. At the end of the 1970s the effects of Proposition 13 are readily apparent, showing a complete reversal in the role of guarantor of education. It is clear the vanishing of local property taxes severely constrained local governments in their ability to fund education. The period of financial difficulty in education funding from the state during the mid 1990s is illustrated by a dip in funding. While the several education bills in the 2000s sought to change the dynamic, they did little to alter the overall formula. In addition, the restored ability of localities did not necessarily mean that local governments would increase their funding burden, but rather it allowed them to meet their obligations.

²⁷ Having said this, there are nevertheless several extreme outliers, with Hawaii and Vermont both having 81.6% of education revenue come from state expenditures.

While the graph does not illustrate a major increase in the percentage of education funding originating from the federal government, it nevertheless illustrates the high share of funding through the last two decades. In addition, the trends in federal funding are also present, though slightly harder to decipher. This is because the changes in federal funding are represented by smaller percentages (though no less important or significant); the peak in funding during the democratically controlled congress in the beginning of the Clinton administration, the implementation of No Child Left Behind and the increased federal funding during the Great Recession can be discerned in Figure 6.3. What this graph does not illustrate well is the dispersed nature of federal funds. A large portion of federal funding arrives in the form of block grants or directly to municipalities; these bodies consistently rely on this funding in the event state or local bodies shirk on their responsibilities. This federal funding in most circumstances is not just going to prop-up local budgets but also to disadvantaged school districts, which desperately need the aid. Because the data presented here is of the aggregated variety, the changes in internal distribution as a result of compensatory aid are glossed over. Lastly, it is important to understand that this graph only shows how the responsibilities of education are divided between the federal, state and local governments and does not represent swings in over all funding.

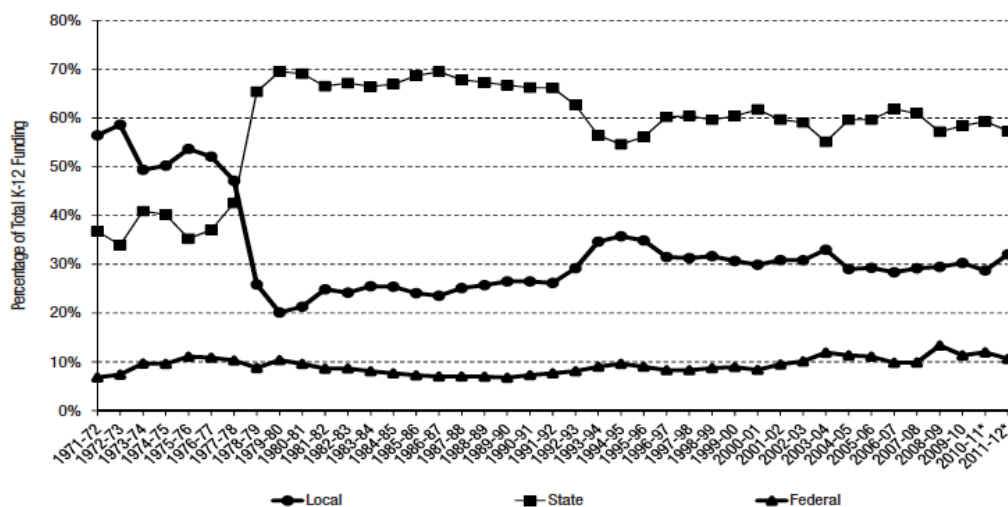


Figure 6.3 Source of Elementary and Secondary School Education Funding

Source: National Education Association, 2013

6.1 A Model of Fiscal Federalism

The following section will attempt to envision the expanded popular safeguard in action. The expanded popular safeguard can be understood as anticipated by the steadfast supporters of direct democracy by viewing it as a complementary safeguard that would work to make

governments more responsive to the wishes of voters. This expanded popular safeguard would theoretically work in cohort with the other safeguards such as the judicial, institutional, and political safeguards to hedge against undue opportunism.

The expanded popular safeguard works well to punish perceived institutional incompetence or inaction. When it seems that legislators are not properly representing their constituencies, initiatives campaigns are launched in a heartbeat. While institutional barriers such as signature drives and sufficient funds to run a PR campaign limit the frequency of the use of the expanded popular safeguard, the use of the initiative nevertheless has continued to enjoy a heyday, with particular fervor at the local level. In fact, the ease by which the expanded popular safeguard can be triggered in and of itself poses a problem. In this light, the frequently triggering and strong punishment it delivers to governing bodies like the legislature, local councils and other offices serves to make it more difficult for these institutions to function. While it is true that the expanded popular safeguard provides incentives for the legislature to offer bills that assuage voter concerns over a controversial or difficult issue like tax-cuts (Proposition 8 – 1978) or education finance reform, as preëemptive measures to combat the more extensive initiative bills, it also provides cause for the legislatures to avoid difficult topics or to refer politically liable bills to the public for a vote. In California, the frequent use of the expanded popular safeguard has created a voter population sensitive to perceived transgressions in state and local governance. The focus of Californian voters on personal tax burdens suggests continued problems stemming from a mal-developed civil society. This continued distrust has affected a bi-partisan collection of voters, and has helped to maintain the distrust in state institutions and has led to the continued usage of the expanded popular safeguard.

When the expanded popular safeguard itself transgresses, the complementarity of the federal model should work to hedge against the opportunism of ballot measures that are too far reaching. Judicial review has generally filled this role. *The Rose Institute of State and Local Government's* database of post-election challenges to initiatives plainly shows that the court is active in monitoring infractions on federal and state constitutional law. However, ballot measures may be radical but can still be constitutional. While the courts struck down parts of Proposition 13, the most important aspects of the act remained on the books.

Apart from judicial review what safeguards exist to counter the opportunism of the expanded popular safeguard? The legislature makes a poor counterweight to the expanded

popular safeguard. This is because most ballot measures have provisions that prevent the legislature from overturning the peoples' verdict. The popular safeguard itself can provide a check on itself, but the vote requirement to overturn a law already passed by a previous election's voters is usually too high of a threshold. The California example has illustrated that while voters have passed some laws, such as Proposition 98, with the best of intentions, the unanticipated feedback effects that have made the co-existence of education funding and maintaining other government funding obligations exceedingly precarious. Attempts to bypass, thwart or overturn aspects of the original bill have proved unsuccessful because of the high bar set for the legislature and for voters.

Political safeguards on the other hand work to enhance the frequency of popular safeguards to trigger. By appealing to voter drives and working up their core constituencies, political parties have utilized ideology to drive the success of many ballot initiatives.

The expanded popular safeguard not only reduces the complementarity Bednar described in her model of safeguards but also fiscal accountability. The judicial safeguards only work well for preventing certain kinds of opportunism but, unfortunately, do not impede voters' ability to practice mild to medium levels of opportunism vis-a-vis transgression. Accordingly, it is important to note that the rudimentary popular safeguard is a more tempered and moderate version of the peoples' will. While voters are not able to directly craft laws, their indirect hedging against institutional actors can create a powerful counterbalance - one that isn't too harsh and doesn't punish too frequently. While the framers of the Constitution were not perfect, they did worry about the potentially excessive power of factions and sought to create veto points between the will of the people and the executors of government. While the primary trend has been to largely alleviate these pressure points, by allowing for the direct election of senators and increasing enfranchisement, the expanded popular safeguard places the collective voter in the position of one executor of government - as opposed to the original system, which was devised not just to prevent governmental tyranny, but also to prevent popular tyranny.

7. Conclusion

As this research has illustrated, there is little evidence to suggest that direct democracy can have a positive effect on a state's ability to manage its budget. This is not because voters are spiteful or antagonistic, but rather because they are self-interested, and therefore vote in such a manner. This is not necessarily compatible with effective governance. The institution of direct democracy in the case of California has elucidated by this research to be a contributing factor in creating fiscal pressures at both the state and municipal levels resulting in an ongoing alteration in the balance of power in the federal state. Ultimately, this research has unearthed trends have had the consequential effect of making state and local governments more reliant on the federal government.

In addition, this research has contributed to the literature by confirming that Bednar's model of federalism does provide persuasive explanations for the nature of bargaining with, compliance, and interaction between government bodies in the United States. Understandably, additional applications would be necessary to add credence to this model. However, it is worth noting that this research may have hinted at a shortcoming to this model, reasonable being that this research has been original in the literature in its application to a real world case. While the scope of this research does not reach beyond the purview of a single case study of California, the narrative provided by her model in this research has been proven to possess an explanatory appeal. However, this research has uncovered several areas possibly overlooked by her model. The first aspect unnoticed is the importance of local level governments. While local government structures don't strictly fit into the model of federal design as the republican constituted states do, these local entities play off the state and federal government for funding and negotiate in similar ways as the states do with the federal government. This research has sought to include local governments into this extant model as much as possible to further illustrate the layered structure of federal governance. In regards to understanding how the institution of direct democracy affects the federal arrangements, factoring in how local governments appeal to the federal government to hedge against state encroachment is an undeniably important aspect. The second aspect not included in Bednar's model is the effect budgetary dependency can have on influencing federal interactions between the federal government and the states. A possible area

for future research would be an augmentation to the *Triange of Federalism* by incorporating the municipal aspect as well as an augmentation of Bednar's system of safeguards by adding some sort of fiscal safeguard. It is feasible to imagine a fiscal safeguard triggering when states are more reliant on the federal government when it becomes more difficult for states to shirk on certain responsibilities when they are beholden to the central government's purse strings. In addition to the state action or limiting shirking, it would also serve to limit the ease of encroachment on the local level. One of the foreseeable problems of the fiscal safeguard is that it could possibly invite further encroachment by the federal government into state administration and funding.

Theoretically, the increased amount of dependency on federal largess may serve to affect the dynamic of encroachment and shirking at both the federal-state and state-local level. California suggests that other direct democracy states may also be susceptible to factors affecting state institutions as a result of the expanded popular safeguard and in turn presents an additional area of future study to better understand how direct democracy states respond to pressures in the federal system.

In California, direct democracy allowed for the passage of laws that limited the ability of local governments to fund education. The *Serrano* ruling shifted the court towards state centralization of education administration in the name of equalization payments. The state government began to encroach on local responsibilities; at the same time, because local funds were being diverted away, local governments began to shirk on their obligations. The passage of Proposition 13 amplified this trend ten-fold. Without revenue from property taxes or the ability to service bonds, education finance became aggrandized by the state. However, the increased responsibilities created by the passage of Proposition 98 and Proposition 49 caused an increased strain on the state budget in supporting its obligations. Unable to fully state expenditure obligations for various domains, the state implemented measures to sidestep the mandates for minimum funding and became increasingly reliant on the federal government to hole up the education funding responsibility it did not want. The state shirked on its obligations and became increasingly subject to the federal purse strings attached to block aid money coming from the federal government. This increased reliance served to increase the negotiating ability of the federal government in steering federal monies towards school districts targeted for compensatory improvement. Slowly, the federal government has encroached on the state administration of

education, supporting the compliance with the national education policy. Lastly, while municipalities regained the ability to issue debt to fund education, this ability for already underfunded districts did little to lessen reliance on the state, in fact it served to help create federal encroachment on the local level as larger cities became better able to play horse-trading games of Washington against Sacramento.

Lastly, this research has bridged a connection between increased fiscal reliance and direct democracy. In the case of California, ballot budgeting has unmistakably created severe fiscal problems in the state. With a particular focus on education it is evident that attempts to increase the quality of education through direct democracy has not only had the opposite effect of diminishing the prospects of a quality education system but has had far reaching effects on all parts of the Californian budget. The problem with ballot budgeting stems in large part from questionable voter competence in what they are voting for and an overriding, keen awareness of their tax burden. With the oxymoronic yet sincere words of Jodine White, a participant at a political event, who, when questioned about her Social Security benefits, unaware that it is a service provided by the federal government, remarked: *"Maybe I don't want smaller government. I guess I want smaller government and my Social Security."* While most voters cannot be characterized as limited government activists, the basic idea that people want more and to pay less is apparent. This rational choice has been one of the driving factors behind state finance run by direct democracy. While the last thing on the minds of California voters was to effectively increase the federal role while sweeping the power away from their local areas, direct democracy in California has accomplished just that.

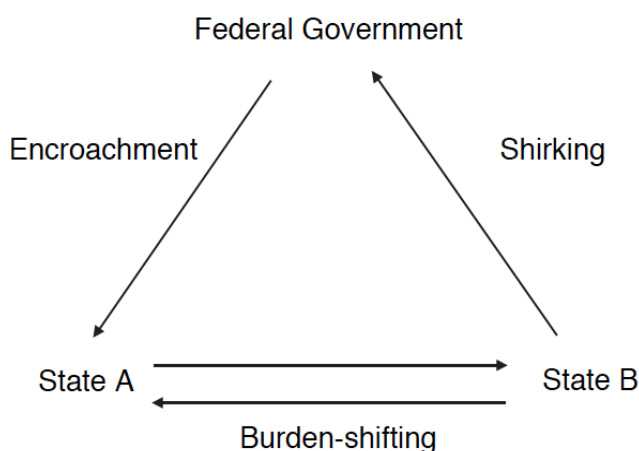
Appendix I

A Closer Look at Bednar's Model

Jenna Bednar's book on federal theory, *The Robust Federation: Principles of Design* (2008), presents several theoretical models of a well-functioning federal state. While her models are far from being universally accepted in the federalism literature, they nevertheless offer an appealing way of visualizing and understanding the workings of a federal state. In order to aid the reader in comprehending how this research incorporated aspects of Bednar's theory, a thorough, albeit compressed, account of *The Robust Federation* will be covered in this first section of the appendix.

1. The Triangle of Federalism

Below once more is Bednar's Triangle of Federalism (Appendix Figure 1, for earlier reference in text also see p. 25*). The graphical representation of the model utilizes the geometrical shape of the triangle to clearly convey the principal opportunistic actions in a federal state. Just as it is taken as axiomatic that individuals are self-interested and desire to maximize benefits while minimizing costs, so to, according to Bednar's model, do government bodies and actors. Depending on the type of opportunism, different governmental bodies are more or less prone to take action. The federal government, which lies at the top of the triangle, may fail to meet its obligations; however, the act of opportunism most commonly associated with the federal



Appendix Figure 1. The Triangle of Federalism (Duplicated)

Source: Bednar, Jenna. *The Robust Federation: Principles of Design: Types of Opportunism: The Triangle of Federalism*, 2009, Print, figure 4.1, page 68.

government is one of encroachment, where it acts opportunistically to supersede or fill the vacuum of authority held or left by the states and municipalities. Conversely, the government bodies that make up the base of the triangle are the constituent states. These actors tend to partake in two different kinds of opportunism. The first kind, shirking, as has been often referenced in this research, occurs when a state, either through policy decisions or through negligence, fails to meet its obligations, either to its own constituents or to its agreed-upon role within the federal state. The second kind, burden shifting, which has not been that relevant to this research, is essentially where opportunistic behavior on the part of one state exports externalities to other neighboring states.

2. A System of Safeguards

Bednar presents a model that she refers to as the “Safeguards of Federalism” (Appendix Figure 2.). In order to make sure each party of governance is fulfilling its agreed-upon responsibilities, various state actors, both institutional and popular, have the ability to sanction non-compliant actions. She notes that, while many of these safeguards can exist in different type of states, it is the complementarity these state actors provide that makes a federal state robust. Next, she delves into further detail about the safeguards themselves, pigeonholing them into five primary categories.

The first safeguard is also the most extreme, and the possibility of its use is inherent in all states: intergovernmental retaliation. While this is normally an indication that all attempts at reconciliation have failed and armed conflict is inevitable, intergovernmental retaliation is nevertheless the simplest and most basic method of resolving non-compliance. In a robust federation, additional safeguards exist to prevent non-compliance from escalating to this level. Among them are structural, popular, political and judicial safeguards.

Structural safeguards are institutional in nature. These organizational aspects of a federation (the enumeration of powers, the division of government, the incorporation of states into the decision making process) can help increase cooperation. While mere words on a piece of paper may strike the reader as having little real world applicability, the self-regulating nature of some aspects of authority can have a powerful effect on actors. In addition, the distribution of powers gives all members a stake in governance, so that if one party holds out it may find itself on the losing side.

Popular safeguards are based on the belief that people are able to control their own government and determine when it oversteps its bounds. Even though voter competency remains an open question, the popular safeguard is most prominently exercised through elections. An example of the popular safeguard in action is wave elections, where one party is flushed out of power and the other is washed in; they represent strong public dissatisfaction with the status quo.

Political safeguards are embodied by the party system. The founders likely did not envision the emergence of political parties, let alone a two-party system, as a core aspect of American politics. Nevertheless, the party system has helped create vertical integration between the state and national levels and horizontal integration between states. As elected officials are likely to be representative of their party's platform and as they work towards those states' goals as opposed to solely local aims, the anachronistic relationship between state and federal bodies is diminished.

Lastly, judicial safeguards are perhaps best able to address non-compliance, as they are imbued with the authority of constitutional review and, when compared to popular and political safeguards, are deemed nonpartisan. However, the judiciary has one glaring shortcoming: it lacks the power to enforce its rulings. Somewhat ironically, it is reliant on the actors upon whom it passes judgment to carry out its rulings. While this serious caveat might make it seem that the judicial safeguard must be the weakest of all the safeguards, it is in fact one of the strongest in the United States. The recognition of its legal supremacy by the other branches of government is what gives it its power. Such a state of affairs is not always a necessity in a federal system, but without an impartial arbitrator, interstate retaliation may be seen as the only recourse for resolving otherwise intractable disputes.

| | <u>Stage I</u> | <u>Stage II</u> | <u>Stage III</u> | <u>Stage IV</u> | <u>Stage V</u> |
|---|----------------|--|---|--------------------------------------|----------------|
| Structural, Political, Judicial Safeguards | Inactive | Active | Active | Active | Active |
| Popular Safeguards | Inactive | Inactive; Consensus on Procedures | Latent; Consensus on Threshold | Active; Consensus on Signal | Active |
| Inter governmental Retaliation | Inactive | Inactive | Inactive | Poised | Active |

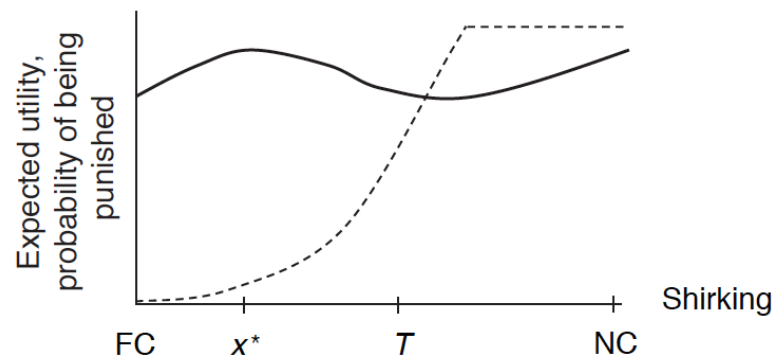
Increasing transgression →

Appendix Figure 2. System of Safeguards

Source: Bednar, Jenna. *The Robust Federation: The System of Safeguards*, 2009, Print, figure 7.2. page 192.

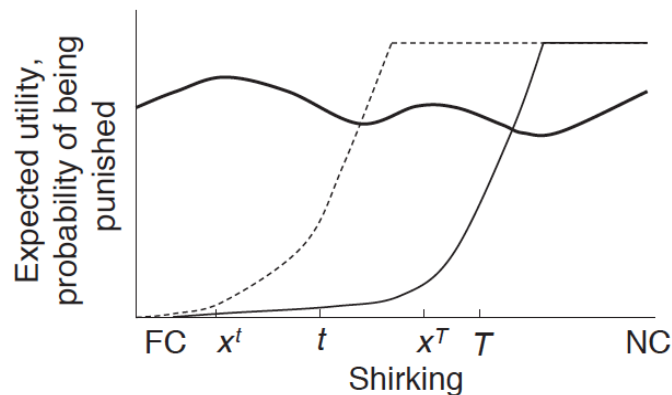
3. Graphing Opportunistic Behavior

Even with these safeguards in place, it is practically impossible to ensure full compliance. Institutions acting opportunistically will chose behavior that maximizes utility while avoiding punishment. As can be seen in Appendix Figure 3., when intergovernmental retaliation is the only safeguard in place, there is abundant leeway for non-compliance while opportunistic behavior is maximized. Only when punishment is triggered by a fragrant violation is there no choice for the offending state but to bear the full cost of intergovernmental retaliation.



Appendix Figure 3. Opportunism without Federal Safeguards

Source: Bednar, Jenna. *The Robust Federation: Intergovernmental Retaliation Generates Inherent Opportunism*, 2009, Print, figure 3.4. page 82.



Appendix Figure 4. Complementary Safeguards

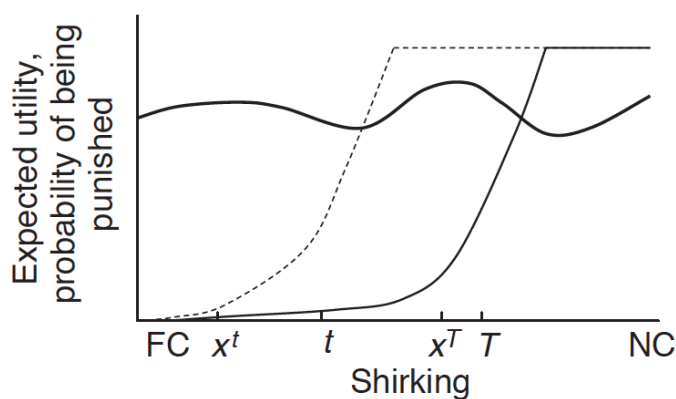
Source: Bednar, Jenna. *The Robust Federation: Complementary Safeguards*, 2009, Print, figure 6.3. page 151.

In contrast, in looking at figure 3.4, it can be noted that the addition of a safeguard (along with the multiple complementary safeguards that have been mentioned previously) allows for minor transgressions but creates earlier triggering thresholds (t) that minimize the amount of allowable opportunism without the receipt of an unwanted sanction. If the safeguards are sufficiently complementary, the parts of a federal state will function even while partaking in minor opportunism.

Bednar's system of safeguards (Appendix Figure 2.) illustrates its complementary nature, as each safeguard does not work in isolation but rather in cohort, triggering at different times, some more or less frequently. The five stages represent increases in the severity of opportunism or transgressions; in a balanced system, mild safeguards tend to trigger early and often while harsher, latent safeguards tend to trigger less frequently at higher stages of transgression. The

popular safeguard, in the middle row, has been of particular importance to this research, as mentioned previously. Once an issue has achieved public recognition and a consensus on which party or actor is to blame has been established, an electoral threshold is reached. However, popular safeguards do not reach stage IV often, as change elections are not common.

This research has sought to apply Bednar's model to the state level, in addition to the national level. Because the states mirror the structure of the federal government, it is not too difficult to understand the behavior of state and local governments as well. However, it is important to note that not all states have been blessed with this same “robust” system of safeguards. While states like New York and Massachusetts possess strong institutions that appropriately mimic the federal government in having an abundance of complementary safeguards, other states such as California deviate from that balanced system, as seen in Appendix Figure 4.



Appendix Figure 5. California pre-Direct Legislation
The Insufficient Mild Safeguard

Source: Bednar, Jenna. *The Robust Federation: Insufficient Mild Safeguard*, 2009, Print, figure 6.4. page 154.

California and many other western states lacked a strong civil society that, if it had existed, would have assisted in the development of the formation of strong structural safeguards. However, distrust in governmental institutions prevailed, and in an attempt to compensate for ineffective government, greater power was given to its fledgling voter population. Viewed through the lens of Bednar's model, the situation in California in the late 19th and early 20th century is indicative of an insufficient mild structural safeguard (Appendix Figure 5.). The insufficient mild structural safeguard is essentially where increasing opportunism (on the part of the legislature, and, more specifically, its corrupt representatives) yields higher utility despite

receiving mild punishments (voters may vote for new representatives, of course, but unfortunately the new representatives are often just like the ones they replaced)²⁸. To reduce the utility of non-compliance, the popular safeguard has evolved to become more easily and more frequently triggered (moving the threshold (T) closer to full compliance (FC)). This trend of adopting the expanded popular safeguard was prevalent in California and other, primarily western, states during the progressivists' push for the adoption of direct democracy (1896-1918). In such a climate, voters may be more likely to perceive that state institutions are not fulfilling their roles and thus may be more willing to punish them.

²⁸ It could also be argued that such a circumstance represented the failure of popular, judicial, and political safeguards to trigger appropriately. While this may have been the case, it's certain that, eventually, the popular safeguard reached a threshold, and fed-up voters punished the high level of transgression by the California legislature by adopting direct democracy to keep their representatives in place.

Appendix II

Chronology of Important Ballot Measures and Bills in California

| <i>Year</i> | <i>Type</i> | | <i>Title</i> | | <i>Effect</i> |
|-------------|-------------|---------------|---|----------|--|
| 1911 | LRCA | Proposition 7 | <i>The Initiative & Referendum Amendment</i> | P | <i>This proposition granted California voters the right of initiative & referendum and reserving to the people of the State of California the power to approve or reject at the polls any act or section or part of any act of the legislature.</i> |
| 1915 | LRCA | Proposition 7 | <i>Initiative and Referendum Amendment</i> | F | <i>This proposition would have amended Proposition 7 that passed in 1911 to require a 2/3rds supermajority vote of qualified electors to approve bond indebtedness propositions.</i> |
| 1960 | LRCA | Proposition 3 | <i>State Indebtedness</i> | P | <i>This proposition permitted bond issues to go directly on primary ballots if 2/3rds of state legislature so directs.</i> |
| 1966 | LRCA | Proposition 4 | <i>Indebtedness of Local Agencies</i> | F | <i>This proposition would have permitted local bonds for schools and libraries to be approved by a 60% vote by qualified electors rather than a 2/3rds vote.</i> |
| 1970 | CICA | Proposition 8 | <i>Taxation for Schools and Public Welfare</i> | F | <i>This proposition would have required the state to provide at least 50% of public school costs from sources other than property taxes.</i> |
| 1972 | LRCA | Proposition 9 | <i>Bond Vote for Structurally Unsafe School Buildings</i> | P | <i>This proposition permitted the sale of bonds to fix unsafe schools that could be passed by a simple majority, rather than supermajority, of qualified electors.</i> |
| 1977 | ----- | AB 65 | <i>Assembly Bill 65 (AB 65)</i> | P | <i>California Assembly Bill 65 attempted to equalize California school finance and improve school programs. The school finance portion of the bill arose as a response to the 1976 Serrano v. Priest decision in which the California Supreme Court said that the existing school finance system was unfair to both students and taxpayers. AB 65 provided additional state assistance to increase per pupil expenditures in low-wealth districts and imposes new limits on the growth of expenditures in districts with high per pupil property values.</i> |
| 1978 | LRCA | Proposition 8 | <i>Post-Disaster Taxation Act</i> | P | <i>Proposition 8 amended the California constitution to provide that real property reconstructed after a disaster, as declared by the Governor, shall not be considered "newly constructed" for property tax purposes if the fair market value of such property, as reconstructed, is comparable to its fair market value prior to the disaster. Further, there shall be a reduction in full cash value of real property for property tax purposes to reflect substantial damages, destruction or other factors causing a decline in value.</i> |

| | | | | | |
|------|----------|------------------------------|---|---|--|
| 1978 | CICA | Proposition 13 | People's Initiative to Limit Property Taxation | P | The effects of Proposition 13 were to freeze the tax-assessed value of properties at the time of purchase with a two percent cap on annual assessment increases, and to require that when legislative bodies (state or local) wanted to raise taxes, a two-thirds majority vote is required. After Proposition 13 was approved, property tax rates in the state dropped an average of 57% |
| 1979 | CICA | Proposition 4 | Limitation of Government Appropriations | P | This proposition enacted a cap on the extent to which state and local government spending can increase every year. It also required that state and local governments to return any funds to taxpayers in excess of the amount appropriated for a given fiscal year and required the state to reimburse local governments for the cost of complying with state mandates. |
| 1984 | ----- | Proposition Numbering Change | [Change in proposition numbering convention] | - | 1984 was the first year that statewide ballot propositions were numbered sequentially based on numbers from previous years. In 1982 and earlier, measures on the ballot in June started with "Proposition 1," as did the numbers on the ballot in November. This resulted in a situation where a "Proposition 1," and so on, would be on the ballot in June and a different Proposition 1, and so on, would be on the November ballot. |
| 1986 | LRCA | Proposition 46 | Property Taxation | P | Proposition 46 allowed local governments and schools to increase the property tax rate above 1% for the period necessary to pay off new general obligation bonds under these conditions: If two-thirds of those voting in a local election approve the issuance of the bonds And; the money raised through the sale of the bonds must be used exclusively to purchase or improve land and buildings. |
| 1988 | CICA /SS | Proposition 98 | School Funding | P | Proposition 98 required a minimum percentage of the state budget to be spent on K-14 education, guaranteeing an annual increase in education in the California budget. As a result of Proposition 98, a minimum of 40% of California's general fund spending is mandated to be spent on education and the actual percentage of the general fund spent on education is over 50%. |
| 1990 | LRCA | Proposition 111 | The Traffic Congestion Relief And Spending Limitation Act Of 1990 | P | Proposition 111 enacted a 55% increase in truck weight fees and a five-cent-per gallon increase in the state's fuel tax effective August 1, 1990, with an additional one cent tax starting on January 1 for each of the next four years. It changed how the appropriations limit and the minimum funding guarantee for public schools works. It also changed several laws |

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| | | | | | <i>relating to transportation funding.</i> |
| 1993 | LRCA | Proposition 170 | Property Taxes. Schools. Majority Vote. Development – Fee Limits. | F | Proposition 170 would have amended the California constitution to allow school facilities bond measures to be approved by a simple majority vote of the voters in local elections and allow property taxes to exceed the then-current 1 percent limit in order to repay the bonds. |
| 1998 | CISS | Proposition 223 | Schools. Spending Limits on Administration. | F | Proposition 223 would have limited certain administrative costs, starting in 1999-2000, to 5% of all funds received. The remaining 95% of funds would have had to be spent on what Proposition 223 defined as "direct services." "Administrative costs" under the proposition were defined as activities involving central school district management, including general district administration and central data collection, while "direct services" were defined as services directly serve students, school site employees, and school facilities, including salaries of classroom teachers, and would have required each school district, starting in 1998-1999, to link its annual budget to specific outcome objectives related to improving student performance. It also would have imposed a penalty for non-compliance that would have come to about \$175 per student. |
| 2000 | CICA | Proposition 39 | School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. | P | This proposition authorized bonds for repair, construction or replacement of school facilities, classrooms, if approved by 55% local vote rather than a two-thirds vote of the local electorate. The fiscal impact was to increase bond debt for many school districts. There were also potential longer-term state savings to the extent school districts assumed greater responsibility for funding school facilities. |
| 2002 | CISS | Proposition 49 | Before and After School Programs Act | P | Proposition 49 increased funding for before and after school programs in California. Starting in 2004-2005, it permanently earmarked a portion of the state's general fund for before and after school programs. |
| 2006 | CICA /SS | Proposition 88 | Education Funding, Real Property Parcel Tax. Initiative Constitutional Amendment and Statute. | F | Proposition 88 would have added four entirely new sections to four different articles of the California Constitution and would have levied an annual \$50 real property tax on most parcels with the funds allocated to five specified K-12 education programs. |
| 2008 | CICA | Proposition 8 | Eliminates Right of Same-Sex Couples to Marry | P * | Proposition 8 created a new amendment to the California constitution, which said, "only marriage between a man and a woman is valid or recognized in California." It was found unconstitutional by the United States |

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| | | | | | <i>Supreme Court.</i> |
| 2011 | ----- | SB 202 | <i>Senate Bill 202: Limit initiatives and referendums to the November general election ballot.</i> | P | <i>California Senate Bill 202 changes the dates of ballot proposition elections in California so that all such elections take place only on November general election ballots or, specifically, "only the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year.</i> |
| 2012 | CICA | Proposition 30 | <i>Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding.</i> | P | <i>The passage of Proposition 30 increased taxes on earnings over \$250,000 for seven years and sales taxes by ¼ cent for four years, to fund schools. Guarantees public safety realignment funding. Fiscal Impact: Increased state tax revenues through 2018–19, averaging about \$6 billion annually over the next few years. Revenues available for funding state budget. In 2012–13, planned spending reductions, primarily to education programs, would not occur because of the approval of Proposition 30.</i> |
| 2012 | CISS | Proposition 38 | <i>Tax to Fund Education and Early Childhood Programs</i> | F | <i>Had this Proposition passed, it would have increased personal income tax rates for annual earnings over \$7,316 using sliding It would have provided K-12 funds on school specific, per-pupil basis, subject to local control, audits, and public input and it would have prohibited the state from directing or using new funds. Although Proposition 38 was defeated, Proposition 30 passed in the same year providing sufficient funding to stave off the planned school budget cuts.</i> |

* Overturned by the U.S. Supreme Court in *Hollingsworth v Perry* on June 26, 2013.

Key: **LRCA** (legislatively-referred constitutional amendment), **CICA** (initiated constitutional amendment), **CICA/SS** (combined initiated constitutional amendment and state statute), **CISS** (initiated state statute)

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요약

집적 민주주의에 관한 문헌은 그 이론에서 나온 정부 기관들이 좋은 거버넌스를 만드는 잘못된 가정을 나타낸다. 캘리포니아(1978-2012)의 교육자금법 개혁에 관한 연구는 이러한 문헌의 원칙적 주장의 결함을 보여준다. 이 연구는 투표자가 선택한 재정정책이 세금 제한과 교육 재정 개혁의 조치들을 통해 캘리포니아 재정을 망칠 뿐만 아니라, 공교육의 질을 감소시킨다는 결론을 제시한다. 주, 시 정부의 재정문제에 의해 야기된 외부효과들은 또한, 교육재정을 넘어서는 책임감에 대한 캘리포니아 주의 자치권의 균형을 변화시켜왔다. 1978 년 이전의 교육자금법은 대체적으로 시 정부의 관할이었지만, 낮은 세금을 지향하는 투표자들의 성향과, 교육을 지원하는 증가된 국가적 책임들은 관리 지출의 의미들을 통제함으로써 주의 역할을 중앙집권화 했다. 교육에 소비되는 최소한의 (국가적) 책임들은 모든 자금에 대한 책임들에 대한 주 정부의 능력을 더 감소시켜왔다. 주 정부의 능력을 계속 제한시켜오고 그들의 기본적인 책임을 지방 정부에 대면하게 한 이러한 피드백 효과들은 정액 교부금과 직접적인 지역 자금에 의존하여 증가시켜왔다. 이 연구는 투표자들이 연방제에 대한 고려없이 투표를 하지만, 그럼에도 불구하고 그들의 행동들의 결과는 주, 지방 교육으로 중앙정부의 침해를 증가시킨다는 결론을 보여준다.