On Their Own Initiative: How Politicians Use Direct Democracy in the United States

Tom Lubbock, Brasenose College

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Abstract

The central purpose of this thesis is systematically to show why politicians use direct democracy in the US. By identifying multiple situations in which politicians make use of direct democracy, the argument that they use it for some gain is made irresistible and the reasons underlying this behaviour are brought out. Politicians are shown to use direct democracy in three arenas: before launching a candidacy for state-wide office, whilst running for state-wide office and whilst in government. Politicians are shown to do so to expand their public profile, to change campaign agendas, and at the level of the institutions of state government, to bypass another branch of government. These effects are shown using statistical tests of the occurrence of behaviour by state legislators and candidates in the first two instances. Multilevel models are used in the last two instances, to identify when state legislators and governors used direct democracy in battles over lawmaking between the branches of government. A test for the use of the legislative referral by state legislatures is particularly timely and has not been considered before. These uses together lay the groundwork for a new theory of the effects of direct democracy institutions on state government policy. The tests of policy responsiveness in later chapters reject existing theory that might provide an explanation of both why politicians use direct democracy and with what effects on state government and show on responsiveness increasing effect.

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Chapter 1

Introduction

1.1 Preliminaries and Research Question

Governor Arnold Schwarzenegger is familiar with the many uses of the plebiscite. Direct democracy helped to make him electable, it helped in his election, and he used direct democracy voraciously to attempt different aims whilst in government (although for the most part unsuccessfully). As such, Schwarzenegger's is an apposite case of the plurality of uses politicians make of direct democracy. The recall, the referendum, the citizen-initiative and the referral all played their part in Schwarzenegger's governorship. In 2003 the recall of Governor Gray Davis spared Schwarzenegger a testing Republican Primary against a conservative opponent.[1] He also benefited from another form of direct democracy – the citizen-initiative. In 2002 Schwarzenegger was a political outsider preparing a run for the California Statehouse. To increase his political profile he launched Proposition 49, an uncontroversial law extending access to childcare (and never funded). Schwarzenegger consulted widely, and the proposition passed easily, thereby gaining him some of the political credibility he thought was needed to run successfully for governor (Dempsey, 2007, p. 131).

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[1] The fact that the election was held immediately following the recall was also the result of direct democracy, Proposition 183, sponsored by Assemblyman Barry Keene, altering the law nine years earlier.

In 2003 Governor Schwarzenegger used the threat of a referendum to help in the repeal of a law, passed only a month earlier, providing driving licences to undocumented workers. In 2004, by petition, he qualified and campaigned successfully for a bond-issue and an initiative mandating the state's budget be balanced. In early 2005 the threat of further initiatives on the November ballot forced the legislature to pass legislation regarding worker's compensation. Later in that year Schwarzenegger took on his political opponents, including the legislature, qualifying four propositions for the ballot, all of which failed by over seven percentage points (Garrett, 2005). In 2008 Schwarzenegger was the major player in an initiative which changed the way that California carried out the 2011 redistricting process. In 2009 he once more took on the legislature at the ballot box, this time qualifying Propositions 1A through 1E, to try to balance the California budget (he claimed).

It might be thought strange to begin a thesis containing a chapter about the utility of direct democracy for its profile effects (Chapter 4), with this example of direct democracy use by one of the best known individuals in America (even back in 2002). Although the specifically *political* profile sought is covered under the term profile generally as used in this thesis, the Schwarzenegger cases illustrate the broader thesis – politicians seek myriad subtle and beneficial effects from direct democracy.

1.1.1 Research Question

The research question this thesis answers is:

> Why do politicians in the United States use direct democracy?

Eugene Lee was amongst the very first to *predict* that politicians would use direct democracy:

> [The] initiative will be employed by candidates for public office as a part of their personal campaign strategy. In fact, this will be the prime motivation behind the drafting and sponsorship of some measures.[2] (E. Lee, 1978)

---

[2] As if to prove the point Lee was himself listed as a proponent on California Proposition 198 in 1996 alongside Lucy Killea, a state senator, and the state controller, Houston Flournouy.

For example initiative logs, recording the sponsors of citizen-initiative campaigns (used to mean the sponsors of a measure), held by secretaries of state, contain littered across them the names of politicians, both in executive and legislative offices. There have been scholarly studies which recognise these uses and which accord with this thesis, (E. Lee, 1978; E. Lee, 1979; E. Lee, 1981b; Hasen, 2000; Smith and Tolbert, 2001; Staszewski, 2003; Smith and Tolbert, 2004; Nicholson, 2005; Kousser and McCubbins, 2005; Manweller, 2005a; Bowler and Donovan, 2006; Bowler, Nicholson, and Segura, 2006). For example Kousser and McCubbins (2005) say of politicians use of direct democracy that:

> Increasingly, the public welfare may be only an incidental consideration in the sponsorship, passage and implementation of initiatives.

Politicians were already one of the categories of proponent highlighted in Manweller (2005a). Manweller recognised that politicians often come to dominate initiative campaigns and his work is particularly important in giving a push from thinking that direct democracy is a tool for outsiders, as deductive theory construction would suggest, to a recognition on the basis of empirical observation, that direct democracy is used by the self same politicians who direct the representative legislative process. The recognition of this fact immediately prompts further investigation. There is a dissonance between the simple (but as will be seen, even the more complex) theory of the initiative which claims that it democratises agenda control, and the fact that politicians are choosing to make use of it.

The question is *why* are politicians exhibiting this behaviour? That so few authors have given consideration to the reasons behind politicians' involvement with direct democracy in large part justifies the research in this thesis. The fact that politicians *frequently* use direct democracy is one of the findings of this thesis, providing an example of unintended consequences – a formal institution designed to empower citizens which also empowers politicians.[3] In other words, as well as citizens acting as legislators, the direct democracy institutions in the United States enable legislators and executives to influence how those citizens act, and to act as citizen–legislators themselves. The cumulative effect of the examples of the initiative and referral in later chapters serve to show that direct democracy can be a tool in a politician's arsenal and can expand his or her options. Here are three further ways of thinking about the research question and justifying it.

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[3] For example in a recent contribution to the debate on the origins and spread of the initiative Bridges and Kousser (2011) show that progressive politicians advocated direct democracy only where it was to their advantage.

One: Testing Received Wisdom

The rise of the initiative since the late 1960s (Tallian, 1977; J. Miller, 1999) has been heralded as the reassertion of control over the lawmaking process by electors (Gerber, 1996; Matsusaka, 2004). At the same time, and at least in parallel, observation reveals that politicians in multiple arenas are intimately involved with different forms of direct democracy. The current literature on direct democracy has no explanation for politicians' level of involvement with lawmaking via the ballot box. The predictions of political science about politicians' role in direct democracy are at odds with what newspapers west of the Mississippi frequently report.[4] The same kind of press stories are generated at every election, primary, special or general, asserting manipulation and control by politicians both of and through the direct democracy process. One of the purposes of this thesis is to put this received wisdom to the test against prevailing political science theories, in the context of a rigorous research design.

Two: Dissimilar Outcomes in Dissimilar Systems

The second observation that prompts this work is of an occurrence of a certain behaviour in some systems and its absence in others – use of direct democracy by politicians. In Latin America the plebiscite has been used by presidents to re-legitimate their regimes (often authoritarian). In June 2006 President Abbas tried to use the threat of a referendum to force Hamas to recognise Israel's right to exist. In Switzerland on the other hand, the system that has the highest number of direct democracy proposals (per year, and in total), mainstream politicians do not initiate the process (Kobach, 1993).[5] Whilst the claim cannot be fully evidenced at this stage, the suspicion is that the formal institutions of direct democracy are secondary to other institutions which determine the ability of politicians to harness it to their advantage.

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[4] At the time of writing the following stories (a few of many) are in the press:

The Associated Press, April 5, 2011, 'Brown renews push for lawmakers to call tax vote' (California):

> The Democratic governor said he would prefer that approach to an independent ballot initiative. He ended talks with GOP lawmakers over his plan to hold a June special election on the taxes, saying time had run out to strike a deal.'

The Associated Press, March 26, 2011 'Across country, GOP pushes photo ID at the polls':

> The topic has been racially divisive in Mississippi for years and will now be on the ballot as an initiative after a petition authored by a Republican lawmaker got enough signatures. The new Republican majority in the Alabama Legislature is hoping to push a photo ID law through after years of discussing it.

Three: Dissimilar Outcomes in Similar Systems

The contrast observed above, between countries with politician use and those without, exists between groups of states in the US. In this case the institutions of direct democracy are *prima facie* similar and therefore the observation is more puzzling. In states where politicians initiate and cultivate direct democracy, they do not do so constantly (at all elections), or on all issues. In California in the 1970 gubernatorial election there was no visible politician involvement with direct democracy in either of the primary or general elections.[6] In the 1994 general election campaign Governor Pete Wilson spearheaded, and spent millions of dollars to promote, Propositions 187 and 184.[7] In this case there was as much politician involvement in direct democracy as is imaginable, with commentators ascribing Governor Wilson's win solely to his association with Proposition 187. North Dakota on the other hand appears to be an example of a state where the number of ballot measures is high, but the evidence of politician involvement is limited.[8] There is a pattern of politicians' use of direct democracy and the absence of that use which is in need of explanation. Why do some politicians use the initiative whilst others do not? This thesis goes some of the way to explaining this variance and these differences provide another angle on the problem that drives this research.

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[5] On the role politicians do play in Swiss direct democracy see Kriesi (2006).

[6] There was no reference in the literature or newspaper coverage, and no money donated by any of the candidate campaigns to the proposition campaigns.

[7] See section 2.8.7 for more details of this case.

[8] Appears, as a result of a search of newspaper archives for the tests in Chapter 7. Even before 1986 when the qualification requirements were made harder to meet.

1.1.2 Politicians' Use of Direct Democracy: Operationalisation

Direct democracy is not an institution, but rather a diverse set of institutions. Throughout this thesis any institution that allows for the vote of an electorate for or against a law is counted as a form of direct democracy.[9] The terminology used throughout to refer to the top level of direct democracy institutions is as follows: 'initiative' and 'citizen-initiative' are used interchangeably to mean citizen initiated and approved law.[10] 'Referendum' is used to mean citizen-initiated review of proposals drafted by government. 'Referral' is used to mean legislature-initiated vote of an electorate on a legislature's proposals.[11] Proposition and measure are used interchangeably throughout this thesis to provide variety when describing any of the above types of law on the ballot.

The overarching dependent variable in this thesis concerns whether or not a politician uses direct democracy (although in Chapters 4 & 9 it is used as an explanatory variable). A large portion of the resources involved in this project have been deployed to identify the status of the this politician use variable. For one, because specific state data is hard to come by, but also for the special reason that politicians' use of direct democracy is not a discrete act, and is not officially recorded when it occurs. The shortcut around these issues in the tests in this thesis is to use direct evidence of the *sponsorship* of initiatives by politicians.

This is not a concept that has been developed a great deal elsewhere. Kousser and McCubbins (2005) describe politician initiated initiatives as crypto-initiatives whereby 'politicians use direct democracy as an instrument to achieve non-policy related goals'. Garrett (2005) describes the same phenomenon as hybrid-democracy, a mixture of direct democracy, but used by representatives. Figure 1.1 provides a visual represen-

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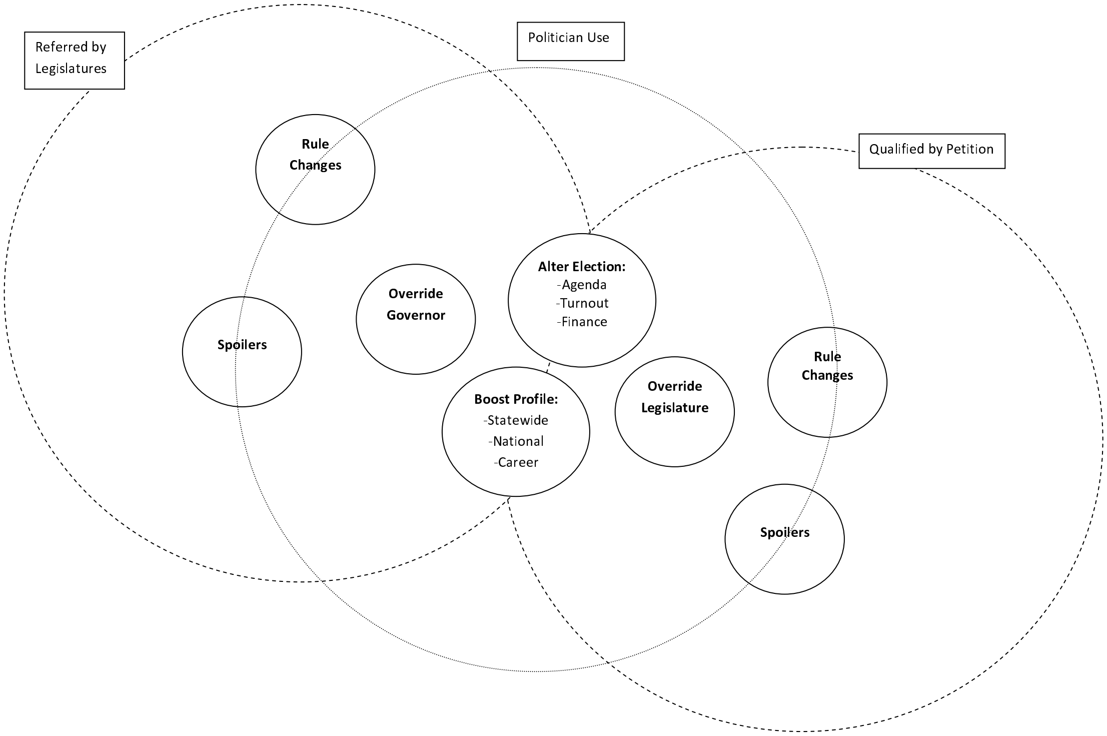
[9] Including direct advisory referendums, the results of which are non-binding (occurring in any of 24 initiative states), and indirect initiatives, which are subject to pre-approval by the legislature (used in two states for constitutional amendments and in nine states for statutory amendments).

[10] Although it is of course shown that politicians too can use the process in their capacity as citizens.

[11] There is no settled use for referendum and referral. For example, the Oregon Secretary of State calls a measure referred by the legislature a referral whilst the state legislature calls it a referral.

Figure 1.1: Different types of direct democracy


Referred by Legislatures
Politician Use
Qualified by Petition
Rule Changes
Alter Election:
-Agenda
-Turnout
-Finance
Override Governor
Spoilers
Boost Profile:
-Statewide
-National
-Career
Override Legislature
Rule Changes
Spoilers

tation of the scope of this phenomenon, showing how politician use cuts across the institutions of direct democracy. It is argued in this thesis that politicians use both the referral triggered by the legislature and the citizen initiative triggered by petition to achieve their aims and this is what Figure 1.1 illustrates. Some of the benefits that politicians seek have the potential to be derived from either route to the ballot. Hence the overlap in the central portion of the figure.

In looking for positive cases of use it is straightforward to identify politicians intimately involved with direct democracy, but this thesis is looking for more than this. 'Taking a position' on a measure is an extremely common occurrence (governors are *de facto* forced to take a position on almost every measure on the ballot by virtue of their prominence). However in many cases this position taking is likely by default. When a candidate's name is on the ballot in a race for elected office above a proposition the chances that he or she will have to comment upon that proposition are high, the more so the greater salience an issue has in a campaign. Politicians, and especially candidates on the ballot, will take positions on direct democracy measures. Gubernatorial archives in California and Oregon reveal that this is exactly the case. Staff commonly recommend a set of positions and abstentions for the measures on the ballot. Governors themselves have also identified a list of the positions they will be taking in public toward measures on the ballot.[12] These examples are not considered cases of politician use in the operationalisations used throughout the thesis. It may be that these are cases of gaining some benefit (taking the 'wrong' position for example would be costly), but the question of use is made too difficult by the fact that the politician is an outsider in the initiative campaign.

This thesis claims to show much more than mere involvement of politicians with direct democracy (and this is implied in identification of the dependent variable by more rigorous measures). The claim made in this thesis is that at times politicians initiate direct democracy for the sole reason of gaining a benefit beyond simply enacting the law which is embodied in the measure. This benefit might be a primary effect of the direct democracy (a policy that could not be otherwise enacted) a secondary effect (mobilizing voters, changing a campaign agenda), or a tertiary effect (increasing the politician's profile). Gaining an advantage is, however, only a necessary condition for use. In short for sufficiency the piece of direct democracy must not have happened, or at least progressed, without the politician. There are two advantages to this strict operationalisation of use. First, it heads off criticism of the identification strategy *per se*. It becomes improbable that a politician will be intimately involved to the level entailed by sponsorship, without acting purposively for some gain. In other words it removes the possibility of coincidental or *de facto* endorsement. Second, a strict operationalisation increases the likelihood that the cases identified will be those that have a consequential effect on state politics (or their sum), as they would not otherwise have occurred.[13]

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[12] For examples see Oregon State Archives, Governor Roberts Records, 95A-31 *Chief of Staff topical records 1990-4 T-Z* folder 'No on Nine' or Governor Straub Records, 90A-30 *Administrative correspondence 1975-8* Folder 'Measure #1/safety net'.

[13] A strict definition of politicians is taken, as anyone holding or seeking elected office.

Table 1.1: Types of direct democracy institutions in the US

	Statutory		**Constitutional**	**Other**
Active	Statutory Initiative	Abrogative Referendum	Constitutional Initiative	Recall
Passive	Referral		Constitutional Referral*	Bond–Issue**

*formally mandatory
**sometimes mandatory

The institutions that are available for politicians to sponsor in the manner described above are displayed in Table 1.1. Direct democracy has been described as *active* where registered voters initiate proceedings, and *passive* where the government, in this case the legislature, is the initiator and this is a central distinction all too often glossed over in analysis. However the explanatory force of the distinction, though ontologically accurate, is questioned in the course of this thesis. Politicians can use active or passive direct democracy (contra Suksi (1993, p. 29) who first used the passive–active distinction).[14]

The referendum and recall are rare in the US in the period under consideration (irrespective of the sponsor).[15] This leaves three types of direct democracy politicians use: citizen-initiative, bond–issue[16] and referral. It is these three that are used in the construction of the overarching dependent variable – politicians use (an independent variable in Chapter 4) – with the focus ending up on the initiative and the referral. This section has outlined the operationalisation of the concept of politicians' use. Further discussion of measurement for the analysis later in the thesis can be found in section 3.1.

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[14] This is a typology of institutions used for discussion throughout, but a typology of uses of those institutions is contained in section 2.8.

[15] There were 81 popular referendums in all states 1970-2010, and only one recall of an official elected by state-wide election (Gov. Gray Davis), although there have been numerous recall elections involving mayors and state legislators. The recall is a difficult institution to control for as it occurs alongside the other, law creating variants of direct democracy (according to *The Book of the States*) in 18 of the 24 initiative states.

[16] Twenty one states require a referral before the issuing of state bonds.

1.1.3 Research Strategy

In a topic as amorphous, and complex as politicians' use of direct democracy it is important to have an explicit strategy for research, but the novelty of the research question and dispersion of the topic leave a great deal of options for what this strategy might be. At the highest level of strategy, either process tracing in a single detailed case study or ecological analysis of politicians' use of direct democracy could establish conclusively the existence of the phenomenon.

Exploring many incarnations of politician use, covering different direct democracy institutions and different types of politician helps to establish that the phenomenon has a broad scope. In examining each incarnation, the strategy involves mid-level behavioral analysis and description with aggregate statistics, and doing so in the context of textured prototypes of those behaviours to explore what they might actually be. In sum the strategy is to cover a lot of ground using statistical analysis, and to leave it to other research to more conclusively explore the details of each incarnation of politician use of direct democracy. This strategy has one central advantage that was weighed against one drawback. The advantage is in terms of triangulation on the concept of politician use of direct democracy and an answer to the question of why politicians are users of the institutions. By looking at use by politicians in many settings the thesis can test theory better and build a fuller answer to the research question. Despite the fact that each chapter addresses different hypotheses, the answer to the overarching research question is strengthened by the diversity of the arenas in which an answer to the research question can be given and so each forms part of an answer to the same question. The drawback is the lack of a complete understanding gained about the mechanism through which a benefit accrues in each combination of politician (i.e. governors, state legislators or candidates for state-wide office) and institution (initiative or referral). This thesis takes the easily accessible motivations in each combination to show that politicians are using direct democracy, and the existence of one overriding reason in each combination of politician and venue. However this will leave, in each situation, some examples of use unexplained. The advantage does however outweigh the drawback for that very reason. There is enough understanding and explanation to allow the conclusion, beyond reasonable doubt in each case, and explain why politicians use direct democracy for their own advantage. In short further exploration in each context would add only a little marginal benefit to the answer to the overall research question.

1.1.4 Why this Research is Important

This thesis is the first explicit, or exclusive, examination of politicians motivations as sponsors in direct democracy. The findings of the thesis lead to assessments, about when politicians will use direct democracy, a calculation not before made. The novelty of this research project also lies in its consideration of the diverse secondary and tertiary effects of direct democracy for politicians. Previous research has almost exclusively focused on the effect of direct democracy on policy, turnout, information and other externalities rather than considering its effects on politicians' incentives and political campaigns. The thesis contains novelty in each of the substantive chapters, the components of which are emphasised in the chapter outline in section 1.2.

The importance of the research in the thesis comes also from empirical contribution to salient debates about democracy. In these debates the effect of institutions on public policy outcomes is key. If politicians' use of direct democracy has the potential to influence the policy impacts that direct democracy has been widely claimed to have,[17] then this is important for a normative evaluation of the institutions. In other words the thesis provides a novel contribution to the debate between those who believe direct democracy is a tool of the 'masses'[18] and those who think it has been 'hijacked by elites'[19] – one of the normative meta-questions surrounding direct democracy.[20] If politicians' involvement with direct democracy had no direct effect on policy outcomes, the question of why politicians *were* using direct democracy would remain both interesting and relevant. Direct policy outcomes from the initiative and referral, and lawmaking *per se*, are not the only important democratic outcomes of interest. Change in the character of elections and strictly constitutional change (both of which are very strong candidates for an effect from direct democracy (Magleby, 1988; Bowler and Donovan, 1994, p. 608)) are also relevant in these debates (indiscriminate spillover can operate up and down the ballot (Nicholson, 2005, p. 20-21)). The way in which elected officials seek and gain office is relevant to the quality of democracy (Dahl, 1971; Diamond and Morlino, 2004). If politicians' involvement with direct democracy brings about a further secondary effect on elections and electoral environments, which change the tone and content of campaigns, and ultimately who is elected, then again this information is important in assessing direct democracy institutions.

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[17] A full rundown of the literature to this end can be found in section 8.3.

[18] See the political economy literature in section 8.2 on page 186.

[19] For example Broder (2000) and Ellis (2002).

1.1.5 What this Thesis will *not* do

The reasons for being explicit about what is not contained in this thesis are that given the literature, theory or data examined in each chapter, a question would be expected to be considered, but for reasons of relevance to the overarching research question is not. Second, a line of research might fit with the research question but because of limitations on data, resources or space that line of research is not considered.

This thesis does not attempt to explain when (or even if) laws passed under the institutions of direct democracy are implemented. For example, it does not discuss the judicial and bureaucratic responses to the direct democracy measures that are passed and when these responses are effective. Gerber et al. (2000); K. P. Miller (2009); Schacter (1995) chronicle the many cases in which courts, bureaucrats and governors have either explicitly overturned the outcome of a direct democracy election, nuanced its implementation or ignored it altogether (a caveat to this account for moderate use states is found in Ferraiolo (2007)). Whilst it is reasonable to think that there will be instances of politicians sponsoring measures in the knowledge that either they or another party will not fund or enforce the resulting law, this thesis is concerned with the lexically prior question of attempts to pass laws and constitutional amendments.

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[20] For a summary of these arguments see Setala (1999).

Second, this thesis does not contain any tests of the information that voters have, and how they reach decisions when voting on direct democracy measures. There is a assessment of the competence of voters based on the research of others in section 8.2.3.3, but the normative judgments that this thesis does make are implications of taking voters as they are and only democratic institutions as they might be. Third, the question of whether direct democracy can lead to inconsistent policy would be very much in keeping with the theme of the thesis. Inconsistency can be both cross-sectional or longitudinal. Inconsistency may result from politicians being overruled by citizens and *vice versa* or citizens overruling citizens (at subsequent elections) by majority vote. Inconsistency may also be the result of a lack of consideration given by voters to policy A when voting on policy B. Lastly inconsistency might result from incompatible median voter preferences on two relevant issues (the simplest example being taxation and spending). The answer to this question as with the rest of the questions in this thesis has important normative implications.[21] However there is a limit to how many different areas can be covered at the same time and as it stands this thesis ranges from policy outcomes to state legislative-executive interactions. Fourth and finally, fascinating and vitally important as the question is, this thesis does not contribute to the literature describing which measures pass and which do not (beyond conclusions about the success of politicians' measures).[22]

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[21] If economic growth is a good, then consistent economic policy which will lead to the former may be jeopardized by the kind of tax and expenditure limitations that have proliferated through the initiative process (Peterson and Tideman, 1981).

[22] The profile, agenda-setting and turnout-altering uses of direct democracy give good reason to think that politicians do not by necessity care about the success of their initiatives. Benefits can accrue to them either way.

1.2 Forthcoming Chapters

Chapter 2: Theory

This chapter introduces a theory to explain why politicians' use direct democracy in the US. The chapter describes the fives benefits that can be garnered from politicians' use of direct democracy and how these interact with the institutions of state politics to create 10 specific types of use in the US. Examples of the 10 types of use are then described.

Chapter 3: Method

The third chapter describes and justifies methods used in the research which are common to the tests in more than one chapter. These include the place of newspapers as sources in research, and issues arising from the use of multilevel modelling. Finally, the procedure for generating state-level preferences from national surveys is detailed and a demonstration of its veracity provided.

Chapter 4: Profile Effects of the Initiative

Chapter 4 examines one type of politician use of direct democracy that has not been analysed elsewhere – use for a profile effect. It is shown that politicians with an intention to run for state-wide office behave in a manner which is consistent with, and suggestive of, a belief that they will receive a beneficial increase in their profile as a result of proposing a ballot measure. This conclusion is reached by testing the power of initiative sponsorship as a predictor of future office-seeking – a logistic regression model is fitted using a dataset of state legislators. The conclusion from these tests challenges those authors who ascribe initiative supply solely to demand from within the electorate. The results show that existing models of the action and effects of direct democracy are at least unable to account for a large portion of initiatives in Oregon and California, which are in fact supplied primarily in conjunction with the desire of politicians to run for higher office.

Chapter 5: Campaign Effects of the Initiative

Chapter 5 uses similar and similarly novel approaches to investigate candidates' use of direct democracy during election campaigns. It investigates the use of direct democracy for a campaign effect by assessing the significance of candidacy as a predictor of concurrent use of the initiative in a population of politicians. Whilst the existence and potential impact of a similar effect that direct democracy can have has been analysed elsewhere (Nicholson, 2003; Nicholson, 2005), the extent to which it is taken advantage of is delimited in California and Oregon by looking at the cases which might form part of the phenomenon (as well as providing confirmation of its existence). A second test is deployed to distinguish, firmly, the agenda from profile effects by identifying the kinds of issues used by politicians in each type. The same data then also provide leverage on the question of whether candidates are following an *issue ownership* or *riding the wave* strategy when seeking a campaign effect from direct democracy use.

Chapter 6: Legislators at the Bully Ballot Box

Chapter 6 contains evidence that shows use of the legislative referral by legislatures, to circumvent the governor, during times of partisan or ideological conflict. The impact of the institution and the amount of literature examining it are wildly out of kilter. The literature on referrals by state legislatures currently consists only of Gazey (1971), Danmore, Bowler, and Nicholson (2009), Matsusaka (1992) (which considers referrals as part of a piece on direct democracy more generally), Braunstein (2004), and the insightful but unsystematic Zimmerman (2001). Considering that there were 3666 referrals between 1970 and 2008, it is worth studying the topic *per se*. The referral is an institution which by definition involves politicians' involvement with direct democracy making it relevant for the research question. A multilevel model of legislative referrals is used to show that legislatures are often circumventing the governor when making referrals to the ballot.

Chapter 7: Governors at the Bully Ballot Box

Chapter 7 explains, for the first time, when governors are more likely to use the citizen initiative. Identifying the full set of examples of governors in the US launching and fronting their own citizen-initiative campaigns between 1972 and 2008 is novel and useful work in itself and it furthers understanding of *both* state politics and direct democracy. This information is then used to construct the dependent variable in a multilevel model explaining when a substantial proportion of those uses occur.

Chapter 8: Politicians, Direct Democracy and Policy Responsiveness

Chapter 8 gives a reason to care about what has come before and begins to explore the implications of the answer to the research question. The reason to care about the theory in Chapter 2 and the findings which support it in Chapters 4, 5, 6 & 7 is that, as Chapter 8 shows, there are serious concerns with the premises of the seminal model which links a form of direct democracy and its policy effects. This then leaves the way open for politicians use of direct democracy to have specific impacts on public policy. This would be enough in and of itself to justify the analysis, but Chapter 8 also shows at its outset ***how*** politicians use of direct democracy ought to have an impact on policy responsiveness, at least in one specific way. A link is drawn between politicians use of measures which have been shown to be used for a campaign effect and an increase in responsiveness.

Chapter 9: The Gun Behind the Door?

The purpose of Chapter 9 is to follow up with data to support the theoretical claims in the previous chapter. Therefore the first aim is to place the argument that politicians use direct democracy firmly in context by showing that the prevailing view of the initiative – increasing policy responsiveness and proving a threat to politicians – empirically does not hold. The second purpose of this chapter is to attach a further compelling significance to the phenomenon of politician use of direct democracy. To show that politicians use of direct democracy can have an aggregate impact on policy, and one that the initiative does not have in its normal course. Sentencing policy is shown to be more responsive to public opinion in initiative states where there is politician use of direct democracy than in other initiative states or non initiative states.

Chapter 10: Conclusion

This chapter draws together what has been learnt from the research, summing up the evidence and the overall argument in particular relating what has been garnered to the normative meta-questions that surround the adoption of direct democracy.

Chapter 2

A Theory of Politicians' Use of Direct Democracy

This chapter proceeds as follows: the role of theory in the thesis is discussed before a review of the small literature that has directly addressed elite use of direct democracy. Next, five secondary effects which direct democracy can produce are outlined, alongside a description of the goals that politicians have been shown to possess (in this instance legislators and executives). These goals that politicians hold and effects of direct democracy are then combined to derive a matrix of politicians' use of direct democracy. By applying this theory specifically to politics in the United States it is then possible to limit the cells of the matrix and generate ten types of use of direct democracy. These types are then illustrated with tokens detailing the ways in which direct democracy is used as a tool to achieve those diverse ends suggested by theory.

2.1 The Outlook of this Thesis

To borrow from the world of international relations the assumptions made in this thesis about politicians goals are realist: 'Its reliance on the rationality assumption allows realism to employ the so-called rational calculus to judge the preferences, or goals of states based on their observable behaviour' (Freyberg-Inan, 2004, p. 3). This statement sums up well the *modus operandi* employed throughout this thesis. To induce, based on behaviour, the aims of actors on the assumption that there is some rational benefit in their action.

This thesis is interested in explaining where possible, but without some interpretation and understanding there is much risk in making the move to explanation.[1] Shepsle and Bonchek (1997, p. 8) for example recommend analyzing empirical regularities, and preferably ones that recur under different conditions. They immediately give the example: 'Why have the countries of the Pacific rim developed their economies more successfully than those of Africa or Latin America'. However it is worth noting that a piece of research (or many) has to be conducted to find out that the regularity exists.[2] At least at the point at which theory enters into research, systematic observation and interpretation are necessary to exclude alternative explanations for any correlation used in theory construction. Leaving out important facts does not leave, as with a piece of a jigsaw puzzle, an appropriately shaped hole. Rather, in the way of proteins, a small change in the underlying facts about the structure can lead to dramatically different shapes and behaviours. That governors use the citizen-initiative, for example, cannot be derived deductively (i.e. from a constitution or the set of formal rules). It is not an easy fact to establish, but establishing it is a necessary step before constructing an explanation of why and when initiatives occur and what their effect is; moreover before an explanation of the dynamics of the relationship between governor and legislature, especially important as far as the impact of the research in this thesis is concerned.

The explanations offered in this thesis are themselves an example of a type of rational choice theory (RCT). That this is the case is largely determined by the object of study, politicians, who cannot be thought of as irrational in any meaningful sense

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[1] For a discussion of the relative importance of interpretation, observation and explanation see Little (1991). Deutsch (1966) on this point. 'As facts increase a shift from a yes-or-no question to a how much question becomes possible'.

[2] This thesis is in part inspired by a critique of syntactic theory *per se*. Grand theorising about US state politics and direct democracy would be the equivalent of theorists in international relations doing likewise in their own field but with no idea how the Seven Years War turned out, a vague idea how the Allies won the Second World War, and no inkling as to what happened to the USSR. Theories are constructed from well established facts and they are sorely missing in this area.

(Elster, 1989, p. 9). Politicians are means-ends rational and their various preference orderings are never very far out of alignment.

However the work in this thesis is an example of RCT only in some senses.[3] In a thick sense because there is no assumption of efficiency. Olson (1974, p. 65), for example, claims that actors are rational when goals are 'pursued by means that are efficient and effective for achieving these objectives'. This thesis does not claim that, under a given calculus, if it is ever rational for politicians to use direct democracy they will (hyperrationality (Elster, 1989)). In accordance with bounded rationality (Simon, 1982), some politicians don't happen to have their attention turned to the idea. Politicians do not always select the most efficient path (some may follow equally efficient alternative paths). On average a proportion of politicians will take advantage of this type of opportunity, and that is what this thesis shows.

The rational choice literature of another sort with which this thesis is in strongest disagreement, takes policy preference as its thick measure of legislators' utility and a simplistic idealization of the institutions that state government presents.[4] Political scientists have learned much from literature using this type of approach, but have already taken the easy targets for research of this sort, in straightforward situations (Riker, 1962; Stokes, 1963; Downs, 1965). Legislator utility for example might be generated by diverse forms of preference and might be garnered from a game within which the current game being played is only nested (Tsebelis, 1990). Future office seeking, for one, forms an alternative source of politician utility in this thesis, and the interaction of direct and representative democratic rules, the institutional complexity. Choice architectures for politicians are very complicated. The incentives politicians face are impossible to know (in the literal sense of that word) retrospectively, and at the level of an individual politician. This makes modelling them at that level impossible even if one could try and measure them in real time. Further contingency and exogenous events are key motives for politician's behaviour. The way that this thesis responds to these points is to contain no absolute nomological claims, but rather to respond with probabilistic claims. For example there is no law that governors when faced with the right conditions will use the initiative. They may be more likely to do so under certain conditions (very divided government) but there is no sufficient condition for them doing so.

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[3] For a discussion of thick versus thin theories of rational choice theory see Green and Shapiro (1996). The assumption that legislators are purposive actors, and are rational in the thin sense of means ends orientation. For a full discussion see Cook and Levi (1990).

[4] This is odd, in that it flies in the face of the most common view of politicians' thick preference for office seeking. i.e only one of Strom (1990)'s motivations, the others being to gain office and maximize votes. See also Mayhew (1974).

2.2 Literature Review

This thesis explains why politicians in the US use direct democracy. There is little other literature which mirrors (or even suggests) this form and content in its research question. The research which does have the same form and content is considered first and lessons are then drawn from other literatures which have different research agendas, but which do directly observe politician's use of direct democracy. Literature used in theory construction which concerns direct democracy and politicians' motivations, but does not consider the two together, is discussed in subsequent sections of this chapter. A detailed description of literature theorising and testing the effect of direct democracy on policy is to be found in section 8.3.

In the US, as in the European context, there has been a recognition that the same actors use both the representative and direct democracy processes. This recognition has come in the form of journalistic work, some qualitative academic work and some quantitative academic work.

2.2.1 Similar and rigorous research questions

The use of direct democracy by politicians has been recognised in quantitative work on the US. The motivation which lies behind direct democracy use has not been explored in the same way as in the European context and therefore it is not relevant at this stage of theory building (Smith and Tolbert (2001); Staszewski (2003); Kousser and McCubbins (2005) provide quantitative analyses finding that the same actors are involved in direct as in representative democracy).

The only studies which rigorously investigate when politicians use a form of direct democracy have come in the context of European integration, where there is a burgeoning literature and the referendum is the dominant form of direct democracy (referendum meant in the European sense of the term and equivalent to the term referral used throughout this thesis). From this literature there have been two relevant findings about politicians use of direct democracy. Finke and Konig (2009) find that:

> [governments] risk popular ratification when they either expect low gains [from a treaty] or are confronted with a Euro-sceptical opposition.

In other words there is a strategic choice as to when to introduce a referendum to best achieve the government's ends with regards the policy (treaty) at hand. This finding is matched in Tridimas (2007). This use of the referendum as part as the legislative process demonstrates a strategic calculation by politicians that the best heresthetic tool to achieve their aim is a referendum, and the end in question is that of fulfilling a policy preference (one of the two motivations outlined below). This use matches the overcoming a veto effect. The second relevant finding is contained in all of Schneider and Cederman (1994); Gonzalez (2006); Hug and Schulz (2007). Schneider and Cederman (1994) for example suggest that integrationist laggard states use the threat of a referendum to improve their position *vis* other states in treaty negotiations. Furthermore Hug and Schulz (2007) conclude that:

> Countries with a skeptical electorate and a referendum announced before the end of the IGC fare better in the last stages of the negotiations.

The lesson from these studies is that direct democracy is used by insider political actors to achieve ends domestically and internationally – a range of effects. A good summary of this kind of referendum use comes from Bogdanor (1994, p.31) who recognised that:

> Where the power to call a referendum lies in the hands of government, it is likely to prove a tactical weapon in strengthening its powers.

The work considered so far assesses the effects of the referendum. Although the referendum triggered by the executive (directly or indirectly) is not matched in the US context it is possible for governors in relevant states to launch their own citizen-initiative petitions, and that is what is observed in Chapter 7.

2.2.2 Similar questions answered using dissimilar approaches

There are two further pieces of work which are very similar to this thesis in their subject matter and conclusion. Walker (2003); Manweller (2005b) both recognise and explore in depth the utility of different, and crucially, varied direct democracy institutions, to individual insider politicians. In a most relevant piece of literature as regards this thesis Walker (2003, p. 1) states that politicians use referendums 'to achieve their goals and do so deliberately and sometimes manipulatively with respect to the members of the general public'. In a chapter on France and Chile, Walker shows the potential of the referendum for this type of use.[5] In chapters concerning the use of the referendum in nondemocratic regimes the democratic overtones are stripped away from the referendum and what is left grants a clear insight into the potential for the use of direct democracy in serving the ends of an elite (which is not to say that some other interest might not be served at the same time), a finding which is further explored in Altman (2010).

Another close analog to this research, in terms of its conclusion, is found in Hasen (2000) who deploys broad but circumstantial evidence of the role of politicians in California in changing constitutional rules to their benefit, seeking comparative advantage in election campaigns. In Manweller (2005a); Manweller (2005b) it has also been recognised that politicians often come to dominate initiative campaigns in the US along with one final author of relevance, because they recognise the variety of purposive actors who use initiative campaigns for secondary effects – Jack Citrin. In a textbook on California Politics (Citrin and Campbell, 1997), Citrin provides a typology of direct democracy according to the motivation of the proponent, including different actors with different types of goal. In doing so Citirin pre-empts the exercise undertaken in this thesis and recognises its key premise, that a plurality of purposive actors use the initiative process (although this thesis considers only the special role of politicians). The categories of motivation in Citrin's typology are: grass roots; partisan conflict; self-promotion; self-defence; pork barrel; poison pill. Comparing these to the ten types of use in this thesis, Citrin's categories would describe some politicians' use of direct democracy, but leave many of the motivations specific to politician use without an explanation (for example constitution changing and campaign effects).

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[5] Particularly striking is the evidence offered to show De Gaulle's strategic use of the referendum in France, to change the constitutional construction to allow future such uses.

2.2.3 Accounts of politicians' use of direct democracy

The qualitative work providing accounts of politicians' use of direct democracy is more methodologically sensitive than that of journalists writing monographs who recognise the use of direct democracy by politicians (Schrag, 2004; Broder, 2000). This literature has either presented examples outside of a theoretical framework or in the absence of rigorous demonstration that their interpretation of events is correct, but can teach us something in any case. At least when considered *en masse*, these studies draw attention to the existence of the phenomenon in question; politicians benefiting from direct democracy campaigns. Authors in neither journalistic nor qualitative literatures construct or rigorously test hypotheses. Whilst providing valuable insight and information, they do not come to *systematic* conclusions about direct democracy which this thesis can build upon or critique. With those provisos in mind, the earliest reference in political science literature to politicians using direct democracy in the American states can be found in V.O. Key's classic 1939 work on direct democracy. On page 447 he says:

> Neither of the parties has used the initiative... In a few instances even members of the legislature, after failing to secure the consent of their colleagues, have actively participated in the initiation of propositions, and their names are attached to the official arguments on the measures. (Key and Crouch, 1939)

On direct democracy in the US, the core of the qualitative literature consists of Munro (1912); Munro (1932); E. Lee (1966); E. Lee (1970); E. Lee (1979); E. Lee (1981a); Magleby (1984); Cronin (1989); E. Lee (1994); Ellis (2002). These authors all make explicit but passing reference to the positive opportunities presented to politicians by direct democracy, as well as politicians' defensive reaction to these institutions:

> Win or lose, the initiative campaign can give the sponsoring lawmaker status as a daring maverick standing up to a self-serving legislature, and affords access to a great deal of free publicity. (Cronin, 1989, p. 203)

From this methodologically and geographically dispersed and diverse literature emerges the *raison d'etre* of this research project and some basis for theory construction. The directly relevant literature in the EU context shows strategic calculation in the use of direct democracy. Finke and Konig (2009) demonstrate a policy-end strategy, and the rest of the literature cited above shows a bargaining-position strategy. Together with the observations about State Politics – that there have been cases of politicians leading citizen initiative campaigns – a picture of purposive actors using the initiative for primary (policy) and secondary (electoral) effects can be seen.

2.3 Effects of Direct Democracy

Direct democracy has been shown by a different set of literature (cited in the subsections below) to have a variety of effects; effects which come in addition to the enactment of a law which is encapsulated within a measure. This thesis rests on the idea that it is not only political scientists who have realised that these secondary effects exist alongside the primary effects, but that politicians have also done so and make use of them. The two secondary electoral and two policy effects of the initiative and referral are described below.[6]

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[6] Not all instances of initiative and referral will bring these effects. For example a referral may not alter the state-wide profile of a legislator who is the sponsor of the measure.

2.3.1 Effect 1: Altering Election Campaigns

Magleby (1984); Schmidt (1989); Magleby (1995); Ellis (2002) all state that direct democracy has an effect on candidate campaign agendas, and Nicholson (2005) shows, rigorously, that they do. On the efficacy of direct democracy for shaping agendas Nicholson states that:

> On other occasions the issues voters use in making candidate judgments will arrive from other sources such as campaigns for a different contest, or as documented here, ballot initiatives and referrals. (Nicholson, 2005, p.139)

In the first instance direct democracy measures can attain a high intensity and therefore alter the salience of their subject matter and/or alter voter perceptions of candidates positions, defining a candidate or their opponent in the minds of voters. Therefore it would be rational for some candidates to use this tool as part of their campaigns (Gerber, 1999, p. 5). It is helpful to keep this simple formulation of the campaign effect in mind.

Changing the agenda can mean changing who votes and the effect of direct democracy on turnout has been intensively researched and shown (Everson, 1981; Magleby, 1984; M. A. Smith, 2001; Tolbert, Grummel, and Smith, 2001; Garrett, 2004; Schrag, 2004; Garrett, 2005; Barreto and Woods, 2005; Cebula, 2008; Grummel, 2008; Tolbert, Bowler, and Donovan, 2009; Schecter, 2009) (and May (1972) on the referral).[7] For example Barreto and Woods (2005) give a thoroughgoing treatment to the disproportionate turnout amongst the Hispanic population in California as a result of Proposition 187. Further on the turnout of peripheral voters in response to direct democracy and their socio-economic differences see Tolbert, Bowler, and Donovan (2009); Grummel (2008); M. A. Smith (2001); Smith and Tolbert (2001); D. A. Smith (2005). For example:

> Independents were consistently less likely to report being aware of issues on their state-wide ballot and were less interested in ballot measures than partisans. Models 2 and 4 reveal that in the 2004 election, strong Republicans were particularly aware of and interested in the measures appearing

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[7] See also David Kirkpatrick, Gay Marriage Becomes a Swing Issue With Pull, *New York Times*, 14 August 2004.

> on their statewide ballots relative to independents. (Tolbert, Bowler, and Donovan, 2009, p. 112)

Based on press reports, a priming and mobilizing effect was asserted for Gay Marriage Ban propositions (GMBs) in the 2004 presidential election, and then, based on initial research, dismissed. With further and better research it has emerged that there was a mobilizing effect for Bush (Donovan and Tolbert, 2005; Lewis, 2005; Smith, DeSantis, and Kassel, 2006; Campbell and Monson, 2008; Fleischmann and Moyer, 2009). Campbell has additional evidence from the Campaign communication survey showing that Republicans in Ohio were heavily using the GMB issue in their communications.[8] The plausibility of GMBs as a strategy for Republicans in 2004 does not seem to be in question following the extensive literature above. What is in doubt is a direct link from Republican politicians to the ballot measures. Therefore the spate of minimum wage initiatives in 2006 is a better exemplar of this effect being exploited:

> Senator Charles E. Schumer of New York, head of the Democratic Senatorial Campaign Committee, said... "Democratic strategists systematically looked for issues on which they could start statewide ballot initiatives that would increase voter turn-out among groups that were likely to vote Democratic. "Minimum wage was at the top of the list," Mr. Schumer said.[9]

Following from this discussion there are clearly different potential campaign effects of the initiative. The important thing to establish at this stage is that there is a benefit to politicians from sponsoring an initiative at the time of a campaign, before beginning to disentangle the different mechanisms in Chapter 5.

2.3.2 Effect 2: Increasing the profile of sponsors

The exposure bought by money (discussed at length in section 4.1.1) is exposure that a direct democracy campaign can equally well deliver. Initiative campaigns have proponents and opponents who often become associated with the law that is being put to the electorate. These persons, whether they are politicians or not, can receive similar levels of publicity to the measure itself (Staszewski, 2003). At general elections ballot measures can receive as much attention and money as the race for governor or US Senate (Gerber, 1999, p. 16). As Tolbert, Bowler, and Donovan (2009) states:

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[8] Republican Governors Bob Taft and George Voinovich were opposed to the amendment.

[9] 'Democrats Link Fortunes To Rise in Minimum Wage', *New York Times*, July 13 2006.

> Although not well recognized by scholars, ballot measures and their associated campaigns often draw more media attention and spending than prominent candidate races.

Higher profile is valuable to candidates in elections, and the proponents of direct democracy can achieve a high profile within a state. Elite attention is focused by having a measure on the ballot, which is then followed by an enormous amount of free media coverage (Kriesi, 2011). Sponsors can benefit from the large amounts of money spent on television advertising (Ansolabehere and Iyengar, 1994).[10] Jacobson and Wolfinger (1989) go as far as to claim:

> State issues often monopolize electoral attention, in part because California elections invariably include ballot propositions.[11] (Jacobson and Wolfinger, 1989)

In short by sponsoring their own measure those looking to run for office in the US can give their state-wide profile a boost.

2.3.3 Effect 3: Harming other measures on the ballot

There is no legal limit on the number of policy proposals which can be on the ballot in the same election in any of the states with provisions in their constitution for the initiative and referral, so long as each one concerns only a single issue.[12] Therefore the way is open for politicians to qualify a measure for the ballot either to beat (replace) a particular measure sincerely, or to spoil its chances (Banducci, 1992; E. Stein, 1993; Bowler and Donovan, 1994; Lupia, 1994; Hugh-Jones, 2008; Gilbert and Levine, 2009).[13]

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[10] According to the California Secretary of State, $141,000,000 was contributed to all 27 propositions on the ballot in 1996 (Financing California's state-wide Ballot Measures: 1996 Primary and General Elections). In 1998 one quarter of a billion dollars was spent on direct democracy in the US (Broder, 2000, p. 17).

[11] Ballot measures have also been shown to affect the raw information voters have (Mendelsohn and Cutler, 2000; Bowler, Donovan, and Tolbert, 1998a, chapter 1).

[12] Several states also have statutes which specify what happens in the case that two measures regarding the same issue should both pass Walters (2003). Inevitably even in presence of such statutes the outcome is decided in litigation, which in itself might be a good for politicians.

[13] Also called counter-initiatives (not necessarily politician sponsored) (Broder, 2000). Broder gives the example of the California ballot in 1988 which had four competing insurance initiatives.

Counter proposals or 'spoilers' according to Bowler, Donovan, and Tolbert (1998a, p. 18) can confuse voters, complicate the ballot and split the vote. Specifically, work by Gilbert and Levine (2009) contains a thorough treatment of the issue and shows that when faced with two competing measures the median voter fares poorly in terms of satisfying their preferences given a particular decision rule.[14] In these cases the aim of politicians in using direct democracy is defensive, either responding to the unfavourable nature of the other initiatives on the ballot. This kind of use is also carried out by business and interest groups as well as politicians (E. Stein, 1993) adding weight to the argument about the efficacy of the counter-proposal effect.[15]

2.3.4 Effect 4: Overcoming a veto

Initiatives are immune from veto by both governor and legislature, and referrals are immune from veto by governors as well as bypassing the intricacies of state legislatures outside of plenary session. Therefore direct democracy can be used by politicians (at a cost) to overcome a veto or veto threat (Tsebelis, 2001, pp 131-132). The primary aim here is to achieve a policy goal that politicians hold, but which can only be achieved with direct democracy. For example legislators in the minority party in the legislature might be unable to enact a policy because of the majority party's control of the legislative process. Equally a legislator of any party may be frustrated by a committee which refuses to release legislation for a floor debate. The initiative represents a way to overcome this obstacle. For example state governors, as explored in section 7.1.2 on page 164, are on average extremely powerful chief executives, often able to block the plans of legislative majorities. Such legislative proposals are likely to emanate from across the party divide as seen in Chapter 6. This makes the referral in particular a useful tool for times of divided government. Similarly where governors face recalcitrant legislators their best option may well be to bypass them as (Matsusaka, 2005b, p. 174) suggests, and as shown in Chapter 7.

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[14] In 16 states those putting forward counterproposals also have the 'highest majority' rule working in their favour.

[15] See for example the battle between California's 'Big Green' and 'Big Brown' initiatives in 1990.

2.3.5 Effect 5: Amending the constitution

In addition to being immune from veto, both the initiative and the referral have another effect that differentiates them from the legislative process that takes place solely within the legislature – they can both change the constitution of a state (where permitted).[16] Constitutional changes are of value beyond the law which they enact. Looked at in another way politicians who want to amend the constitution must rely on *one* of these institutions to effect change at all (in 49 of the 50 states). If the change in law sought by a politician is specifically constitutional then the initiative and referral help to achieve their ends. Given that salient rules governing the operation of politics is the states are given in constitutions (redistricting for example) for a particular rule changing goal there is the need to amend the constitution and the initiative and referral offer the opportunity to do so.

2.4 Goals Politicians Seek

It has been found in different democracies that politicians have policy goals in addition to the desire to win elections (Wittman, 1983; Harrington, 1993; Canes-Wrone, Herron, and Shotts, 2001; Martin and Stevenson, 2001).[17] As Mayhew (1974, p.13) admits, this kind of simplification of motivation does 'some violence to the facts' (although his simplification was to one 'electoral' connection). But the reasoning is further supported by the weight of studies assessing the behaviour of congressmen (a substantial literature) which have concluded congressmen act largely either for an electoral motive or for a broader policy motive, with varying emphasis on their electoral and policy inclinations over the duration of a career (Fenno, 1978; Mayhew, 1974; Hibbing, 1991).

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[16] Some states simply have constitutional amendments by initiative and some states simply have statute amendment by initiative, but a majority of states that have the initiative have both statute and constitutional amendment although with differing petition requirements. See Walters (2003) for full details of the institutions in each state.

[17] In discussing these goals and constraints the theory will be stated in a form which can be generalised, and could apply to any system with direct democracy before being applied to generate 10 specific uses of direct democracy *in the US*.

Direct democracy is a means to achieve both these types of end, a fact that can be derived from the existence of the secondary effects above, combined with the truism that direct democracy measures can change the law. This thinking is backed up by the fact that both types of goal have been advanced in the review of existing literature above. Translated into the realm of direct democracy this simplification of politicians' preferences means that in some cases, outlined in section 2.8.5, politicians seek the direct effect of a piece of direct democracy – a rule change or a law they want to be passed but cannot achieve without direct democracy. In other cases they seek the secondary effects of direct democracy – the profile associated with the measure and the effect it can have on the agenda of a candidate's election campaign. In other words politicians could use direct democracy for the two types of reason – that politicians have been shown to act for more generally – to seek election (to higher office as well as reelection) and to achieve a policy end. This thesis presents concrete evidence in two examples for each motive; state legislators seeking electoral gain through profile and campaign effects (Chapters 4 & 5) and state legislators and state governors seeking to affect policy through the referral and citizen-initiative respectively (Chapters 6 & 7).[18]

2.5 Constraints US Politicians Face in Direct Democracy Use

When politicians seek each of the two goals using direct democracy, and which form of direct democracy they use, will be influenced by the constraints that the particular institutions place on them. This is not to say that there are whole classes of direct democracy which are never used for a particular benefit. Just that the odds of some types of use (the ten types outlined below) are dramatically shorter than others – these uses are more probable and as such will be carried out systematically and are detectable in aggregate data about politicians' behaviour.

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[18] It is assumed that these policy preferences can come from norms of leadership and service as well as ideology. For example when confronted with a problem, governors may choose to act where there is no thick-self-interest, but instead because of a norm of leadership, and because they view it as their role to solve problems on behalf of their state.

There are two central constraints which govern direct democracy use by politicians. First, a politician's constituency size relative to that of the electorate in direct democracy elections and office sought. The second constraint on direct democracy use involves the qualification route of the different direct democracy instruments (petition or referral) and the cost of those different routes compared to the different benefits they can each bring. In different contexts politicians will use different routes to the ballot. This section proceeds to outline the ways in which these two types of constraint apply to: policy motivated initiatives, policy motivated referrals, electoral motivated initiatives and finally electoral motivated referrals.

2.5.1 Constraints on policy seeking uses

Policy motivated initiative uses can be expected to be constrained by the costs of the different qualification procedures and the disbursement of benefits. At the outset the difference between policy and electoral benefit initiative use is that a measure has to win to achieve the former, further increasing the costs. The citizen-initiative involves a costly petition process to pass a piece of legislation (that a legislator could ceteris paribus pass through the legislature alone). The simple premise at work here is that it is on average too costly for legislators to achieve their policy preferences by a vote at a district of a much larger size than their own. This holds unless they are forced to by a veto from elsewhere in state government. Still, the cost of the activity will make such cases selected on further exogenous criteria of payoff. However the preference of the median voter ought to be well represented by politicians with the same district as direct democracy (e.g. governors in the US) and that relationship can be made reciprocal with the use of the initiative to beat vetoes and change the constitution where that is a good sought. Despite the cost of the process the resources and position of executives makes the use of the initiative to achieve policy ends especially attractive to them.

The use of the referral by legislators to achieve policy aims, overcoming vetoes from the governor, changing the constitution (changing the rules of the game) or countering proposals that disadvantage the median legislator, are all open given the ease of referring a measure compared to the difficulty of qualifying an initiative by petition. The determining factor in these cases will be whether there is sufficient need to use the referral given that legislators in significant numbers can act through the usual channels of representative democracy alone, and whether there is a significant majority given the requirements in each state for referral out of the legislature.

2.5.2 Constraints on office-seeking uses

Uses for electoral benefit are constrained again by a cost benefit relationship, in this case defined by the constituency of the direct democracy user and the office for which the politician is seeking to gain a benefit. The assumption is that there is a marginal cost to the use of the initiative for every extra voter in the direct democracy constituency, and that there is a marginal payoff only from those voters who overlap between the district a politician is seeking (or seeking to retain). The district size of the office currently held will to a great extent determine whether the payoff from direct democracy use for the current office justify the cost. The district size for offices sought will determine whether the payoff from direct democracy will be worth the cost for higher office (in this case thinking specifically about state-wide versus non state-wide offices). As an example state legislators' districts (even those of state senators) are small by comparison with a state. Therefore the benefits of initiative use are only worth the costs of qualification in the case of a run for an office with the same constituency as the citizen-initiative – the wasted resources in the case of state legislative districts is too great.[19]

In electoral benefit uses through the referral route politicians as a whole are constrained by the fact that the referrals normally lack salience amongst voters. This conclusion is supported by the fact that measures on California and Oregon ballots that achieved so-called 'hot button status' from 1990-4 were initiatives.[20] It is, however, not necessary to treat this only as a theoretical question and there is a test in Chapter 4 to confirm it. Referrals also require coordination between legislators to overcome common double or super-majority requirements and as such, electoral benefits can be expected to be dispersed with multiple sponsors (making them more useful to parties acting as coordinating institutions (Kousser and McCubbins, 2005)). The higher profile of initiative measures and the fact that in the case of a run for state-wide office a measure will have its impact over the whole constituency that a legislator is seeking makes initiatives a natural choice for politicians running for state-wide office and incumbent state-wide office holders alike. Petition-driven measures can also benefit their sponsors from the intrinsic fact that a measure came to the ballot by the most democratic means possible.[21] It is worth inserting a caveat at this point about incumbency. The way that a campaign effect works is not known. Several possibilities are explored in section 2.3. If it is through anti-incumbency profile effect of sponsorship then there is a logical conclusion that sitting state-wide officials will not gain in their reelection attempts by using the initiative.

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[19] Nicholson (2005, p. 92) describes how the costs of initiative campaigns impose a significant burden on the candidate's campaign.

[20] Ellis (2002, p. 4) links this lack of information voters have about legislative referrals to their much higher rates of success in every DCI state.

In summary the interaction of two types of constraint (constituency size and route to the ballot) creates three *relevant* categories of politician and direct democracy: state legislators (small constituencies) using the petition route (costly); governors (large constituencies) using the petition (costly) route; state legislators (small constituencies) using the referral (cheap but requiring coordination).

2.6 Combining Goals, Effects & Constraints

Using the goals, effects and constraints set out above a grid is constructed in Table 2.1 of uses of direct democracy for politicians in the US. With the two types of goal from section 2.3 represented on the x axis (election and policy) and two constraints (constituency size and route to the ballot) from section 2.5 along the y axis,[22] an exhaustive list is created of the types of politician use of direct democracy in the US.[23] These are the systematic uses that it would be possible to see in aggregate data. Those cells outlined in the table contain the types of use which are shown in this thesis conclusively to exist. Table 2.2 gives a description of each of the cells labeled A-J, along with the example that is used in section 2.8 to illustrate the particular use case. Section 2.8 gives form to the ten uses which are contained in cells marked A-J, and provides examples.

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[21] Signature gathering is usually paid for.

[22] Constituency size mirrors the category of executives and legislators and their respective opportunities for promotion.

To recap the core of what this theory predicts; in electoral benefit terms if an elected official's constituency size is significantly smaller than the direct democracy electorate then individual politicians can be expected only to use direct democracy to seek *higher* office (state-wide as opposed to reelection to the current office). This, alongside policy goals in overcoming a veto from colleagues in the majority in a state legislature.[24] On the other hand executives (governors) whose constituency is equivalent to that of the electorate in direct democracy elections should, in theory, use direct democracy to seek both policy and reelection goals.

It is necessary to explain the blank cells in Table 2.1, and in the course of doing so say more about where parties fit into the theory. The first blank cell involves legislators using the initiative to pass a specifically constitutional amendment, most often an amendment to the rules of the political process (redistricting or the initiative process itself, for example). From what was said above in the effects and constraints sections the benefits of such a change can be assumed to be too diffuse, and the cost too high (more signatures are needed for specifically constitutional amendments) in and of themselves to warrant an individual legislator using the initiative, especially when the referral is available. The possibility of coordination in the party, which we see in the case of the legislative referral, can be assumed to be more difficult outside of the coordination promoting institutions of the legislature. However there are cases where the state party committee gives large sums to a measure of type B or C, for example the 1996 anti af-

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[23] With the same caveat discussed in detail in section 2.5, that these are the types of use that can be expected to be systematic, and they do not rule out eccentric uses.

[24] 'Legislator' also covers attorneys general/non legislators etc who run for governor or for the US Senate.

Table 2.1: Politicians' uses of direct democracy in the US

		GOALS & EFFECTS				
		Policy			Electoral	
		Beat veto	Change const.	Counter	Profile	Campaign
CONSTRAINTS	Legislator & petition	A	–	–	B	C
	Executive & petition	D	E	–	F	G
	Legislators & referral	H	I	J	–	–

Table 2.2: Tokens of the 10 types of direct democracy use

A.	Legislator beats veto for policy gain	OR, Grattan Kerans, 1990
B.	Legislator boosting their profile for higher office run	OR, Denny Smith, 1988
C.	Candidate seeks comparative advantage in races for higher office	CA, John Van de Kamp, 1990
D.	Executives bypassing recalcitrant legislators	CO, Roy Romer, 1992
E.	Executives making changes to the rules of the game	CA, George Deukmejian, 1986
F.	Executives at sub-national level boosting their national profile	CA, Ronald Reagan, 1973
G.	Executives altering the agenda of their reelection campaigns	CA, Pete Wilson, 1994
H.	Legislators overcoming the governors veto	MO, State Legislature, 1999
I.	Legislators changing constitutional rules	CO, State Legislature 2005
J.	Legislators launching a spoiler referral against an initiative	AZ, State Legislature, 1998

firmative action initiative Proposition 209 in California (Hasen, 2000) or a attempts to change the redistricting process. If parties do come together to combine some of the costs of the initiative process that will produce initiatives in this constitution changing area. The way that the thesis deals with this possibility is to take account of specifically 'rule changing' initiatives which are themselves easily identifiable (section 4.3 for example or Table 7.7).

The second and third blank cells concern legislators and executives respectively using initiatives as spoiler measures. The theory above does not make a concrete prediction in these cases. However, the empirical evidence suggests that the category is null. In a comprehensive study of counter proposals in eight initiative states Gilbert and Levine (2009) show no evidence of this behaviour.

The fourth and fifth blank cells are a mirror image of the first two in that the theory of goals, effects and constraints above suggests direct democracy institution presents benefits which are too low to justify the use. As argued in the constraints section above the referral does not often achieve salience with credit being disbursed amongst sponsors and the identity of those sponsors being difficult for the public to discern (section 2.3.2 above). To make sure this claim holds it is tested in Chapter 4. To begin with, the initiative and referral are treated equally, but then after a test which shows that legislators who go on to run for state-wide office do not frequently use the referral as they do the citizen-initiative, the initiative is used as the independent variable. In giving form to the different uses suggested by Table 2.1 it should be noted that a hypothetical fourth row is excluded, a row of uses in which governors are involved in sponsoring referrals. They do not, on their own, have this route available to them, although section 7.3 shows that they do coordinate with legislatures and sometimes through party ties to bring measures to the ballot through the referral. What this thesis does show is the existence of B, C, D & H , whilst in addition controlling for each of with A, E, F (as far as possible), G, I and J. These 10 uses are set out in short order in section 2.8.

2.7 Predictions and hypotheses

Four of the predictions made by the theory above have been chosen for testing:

1.) That state legislators will use the initiative, but not the referral, to boost their profile before they run for higher office.

> **Hypothesis H1:** Initiative use is a significant predictor of future state-wide candidacy.
>
> **Hypothesis H2:** Initiative use is a significant predictor of future candidacy, whereas legislative referral use is not.

2.) That candidates for state-wide office will use the initiative for its campaign effect concurrent with their candidacy.

> **Hypothesis H3:** Concurrent candidacy is a statistically significant predictor of initiative use.
>
> **Hypothesis H4:** Politicians who are candidates for state-wide office and concurrently use initiatives will sponsor initiatives concerning *easy* issues disproportionately.
>
> **Hypothesis H5:** Politicians who are candidates for state-wide office and concurrently use initiatives will disproportionately use issues that their party *owns*.

3.) That state legislators will use the referral to overcome the governor when there is partisan conflict.

> **Hypothesis H6:** When all chambers in the legislature are held by one party, and the governorship by another, there will be a statistically significant increase in the number of measures referred to the ballot by the legislature.
>
> **Hypothesis H7:** As a governor vetoes more bills, there will be a statistically significant increase in the number of measures referred to the ballot by the legislature.
>
> **Hypothesis H8:** Where the requirements to refer a measure to the people by the legislature are less than those in that state to override a gubernatorial veto there will be a statistically significant increase in the measures referred, larger than that in the remaining states.

4.) That governors will use the initiative as a result of a policy motive to overcome the legislature when there is conflict.

> **Hypothesis H9**: In the presence of conflict between the legislature and the executive there will be a statistically significant increase in the likelihood that a governor will qualify an initiative for the ballot.

2.8 10 Ways to Use Direct Democracy in the US:

2.8.1 A. Legislator beats veto for policy gain: Oregon, Grattan Kerans, 1990

If a state legislator holds a policy goal, and a policy proposal to achieve that goal is stymied in the legislature they can use the initiative to do an end run around the legislature. State legislators in the minority party are most likely to use this tactic. However as this case shows it is not a necessary condition. Grattan Kerans, the sponsor of the initiative in this case is a Democrat, and by virtue of that fact not in the minority in either house and there was a Democratic Governor. It is more likely that policies held by members of the minority party will be held up in the legislature. The controls in Chapters 4 & 5 are for the systematic aspects of the effect that are competitors as a joint cause for electoral effects. The costs of using this route for this purpose (as outlined above) are going to be very high with the likelihood that the legislators is going to need an inbuilt fund-raising/signature gathering campaign already on the ground or a financial backer. Which means cases of this type of use are likely to be unpredictable but will often reflect ideology and partisanship – being in the minority party, controlled for in tests of profile and campaign agenda effects in Chapters 4 & 5.

Field burning has a history of attracting legislators attention to the citizen-initiative in Oregon. In 1969 State Senator Edward Fadely proposed a measure to control field burning.[25] The key feature of this case is the fact that in 1989 the state legislature failed to pass a field burning bill (SB 348, HB 2434) sponsored by Kerans. As a result in 1990 Kerans, State Senator for the same Eugene district as Fadely, qualified a measure for the ballot to restrict large scale burning. In 1990 Kerans was a senior Democrat, having been House Speaker during the 1983-4 legislative session. Neither Kerans nor his Democratic colleague Ron Cease (whose name was also attached to the measure) were candidates for higher office of any kind in 1990 or any subsequent year.[26] They were pursuing a policy aim through the initiative.

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[25] Eugene Register-Guard September 23 1969 'Initiative petition could boost agricultural unity'.

2.8.2 B. Legislator boosting his profile for higher office run: Oregon, Denny Smith, 1988

As suggested by the literature above one of the effects of an initiative that qualifies for the ballot and is salient, receiving considerable attention in the run up to an election, is that its proponent(s) (and often its opponents) will also receive considerable state-wide attention. Initiatives motivated by this benefit to politicians are hard to identify because, beyond the use itself, the only reliable public evidence is that shortly afterwards a candidate will run for state-wide office. In Chapter 4 it is shown that there is a relationship between initiative use and this run for higher office. For now two examples will demarcate the effect on the two main levels of operation – state-wide and national.

In early 1987 Denny Smith was the Congressman for Oregon's 5th district and lacked the state-wide profile, even amongst Republicans, necessary to run for the Republican nomination for governor. Six years later he won the Republican nomination (subsequently beaten by John Kitzhaber by 11 percentage points in the general election). Smith previously served as the Chief of Staff to Governor Atiyeh, and therefore had knowledge of the initiative process and its use by politicians.[27]

On 20 July 1987 Smith submitted an initiative to the Oregon secretary of state for titling. By 6 June 1988 the initiative had gained the 46,054 signatures needed to qualify for the ballot in November.[28] The substance of the initiative was to eliminate parole for certain crimes. During the campaign it received a great deal of attention as did Smith, its founder and leading proponent.[29] The *Oregonian* said during the campaign on May 15:[30]

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[26] Regulating field burning in Oregon has long been a Democratic cause and Governor Tom McCall was a strong advocate.

[27] In his election campaign Atiyeh had leant heavily on direct democracy. Details of the role of ballot measures in the Atiyeh–Straub contest can be found in 2.8.10.

[28] Oregon Secretary of State initiative and referendum log 1988. The number of signatures needed to qualify an initiative amending statute is equivalent to 6% of the last gubernatorial election turnout.

> Already, the shadow campaigns have started for [US Senator] Hatfield's seat. On the Republican side, Rep. Denny Smith has been running a high-profile campaign to put a 'get-tough-on-crime' initiative on the November ballot. Smith says he just wants to do something about Oregon's high crime rate, but he also acknowledges that he would be interested in running for the Senate if Hatfield quits.[31]

On June 26 the *Oregonian* reported:

> From the start, the initiative campaign has promoted the 5th District Republican as much as the initiative. Under the rubric of the campaign, Smith has traveled throughout the state giving folks from Medford to Portland to Ontario a chance to get a flavor of his oratory. Press releases from the campaign often contain quotes from Smith – along with his photo in the upper left-hand corner. Best of all for Smith, he's been able to get his name out before the public without having to be subject to the usual financial restrictions facing a member of Congress who is up for re-election.
>
> It may be, as Smith says, that he got involved in the issue only after state leaders failed to do something about Oregon's high crime rate. But there's no doubt that Smith's initiative campaign has given him the gift of statewide name recognition and a big boost toward a higher office. It hasn't hurt his fall re-election campaign against Democrat Mike Kopetski, either.[32]

The above quotes suggest also that one the purpose of the initiative was to avoid restrictions on corporate donations to political campaigns, but this is compatible with the argument put, that the measure is part of a bid for state-wide recognition. There are further arguments that support the latter explanation. The first depends on the closeness of the contest in Smith's seat. The fact that he was in a tough fight might be thought to support the proposition that Smith needed to use the initiative to defeat his challenger. However the logic of a Congressional race would imply that they are more likely to be won by staying and fighting within the district. The initiative itself is more likely the cause of the close result rather than Smith's solution to it. The evidence suggests that the initiative costs dramatically exceed the benefits Smith garnered at one election.

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[29] *The Oregonian* ran 43 stories from January to November 1988 containing the terms "Denny Smith" and "Measure 4". compared with 65 in total mentioning the measure (LexisNexis).

[30] The largest newspaper in the state of Oregon.

[31] *The Sunday Oregonian* 'Politicians look to 1990 main event', May 15, 1988.

[32] *The Sunday Oregonian*, 'Crime Initiative, Smith Gain Money, Visibility', June 26, 1988

On election day Measure 4 passed with 77% of the ballots cast. Smith, who spent a significant time out of his district promoting Measure 4, beat his challenger by 670 votes, but (according to the commentators surveyed above) gained at least some of the profile, and established the conservative credentials, that he needed to run for statewide office in the 1994 gubernatorial primary. A rigorous research design is brought to bear on the profile altering effects of direct democracy in Chapter 4.

2.8.3 C. Legislator gains a comparative advantage in races for higher office: California, John Van de Kamp, 1990

John Van de Kamp served as California Attorney General from 1983 to 1991. When Governor Deukmejian chose not to seek a third term in the governors mansion Van de Kamp ran for the office in 1990. In the primary election he was up against Diane Feinstein and lost the election. In January of that year the *Los Angeles Times* described his strategy:

> Democratic Atty. Gen. John Van de Kamp is diverting unexpectedly large sums of money from his gubernatorial war chest to qualify three initiatives that he hopes will catapult him into the governor's mansion. The initiatives–on crime and drugs, ethics and the environment–were launched last summer when he was trailing former San Francisco Mayor Dianne Feinstein in the polls.[33]

The sponsorship of these initiatives was also recognised by Butler and Ranney (1994, p. 234). The initiative logs held by the secretary of state confirm that Van de Kamp was the sponsor of the three measures and the campaign finance database confirms that he gave heavily to each of the measures. The first measure, on criminal justice, was overwhelmingly popular emphasising the position Van de Kamp held as Attorney General. The environmental initiative could well have been aimed at the Democratic base. Although in this case it did not do any good possibly compared to his opponent

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[33] Joe Scott, *Van de Kamp's Initiative Ploy Drains Coffers*, Los Angeles Times, January 07, 1990.

Diane Feinstein's own sponsorship of Proposition 128 another environmental initiative 'Big Green'.[34] Van de Kamp focused on the General, but at the same time alienated Democrats with a campaign finance reform measure (Hasen, 2000). He forgot about the primary essentially and Other Democrats opposed the initiative, and the term limits proposition was defeated (Price and Bacciocco, 1990).

2.8.4 D. Executives bypassing legislature: Colorado, Roy Romer, 1992

Governor Roy Romer is best known, in the field of direct democracy, for having his name attached to the US Supreme Court Case which struck down Colorado's Amendment 2 in 1992; A measure to prevent local government from taking any action to recognise same-sex marriage, and which had national implications.[35] In that same year Romer did launch a citizen-initiative of his own. In 1992 he ran a campaign to collect signatures to qualify an education measure for the November ballot. Measure 6, a Colorado state statute, known as the Colorado Children First Act of 1992, aimed to provide an increase in the state sales tax rate, from which revenues would be used to fund the state's public school system and provide for a number of education reforms.[36]

That Governor Romer *was* the initiator of Amendment 6 is displayed by the wide range of press sources (over several months) that attribute the initiative to him, and that report Romer's intention to initiate Amendment 6 even before it is certified for qualification.[37] [38] During the sessions of the Colorado State Legislature since 1988 Governor Romer had attempted to pass a very similar spending increase for K-12 education.[39] However he was faced with a Republican dominated legislature and both houses proved resistant to any increase in funding.[40]

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[34] Hastings Law Library ballot proposition database.

[35] Roy Romer, Governor of Colorado, *et al.* v. Richard G. Evans, *et al.*, 517 U.S. 620. Romer was actually in favour of Amendment 2.

[36] Requiring the following reforms: standards and assessments, curriculum frameworks, certified diploma, early childhood education, strategic plans for reform, district accountability, teacher education. The initiative went down to defeat with 45.6% of vote.

[37] *USA Today*, 'Gov. Romer says he'll seek thousands of volunteers to gather signatures for ballot initiative seeking 1-cent sales tax hike for education reform.' April 24, 1992. *New York Times*, 'A separate initiative on the November ballot, organized by Gov. Roy Romer, would raise $385 million by increasing the state sales tax by 1 cent.', September 16, 1992, *USA Today*, 'School-Choice Plan On Ballot in Colorado Puts State in Spotlight, The initiative, a brainchild of Gov. Romer, would increase the state sales tax to 4% from 3% to raise $ 320 million.', July 30, 1992.

[38] 'Then-governor Romer was strongly focused on passage of an amendment to provide a one-cent sales tax for K–12 education. While he campaigned all over the state for passage of that measure (which failed), TABOR went largely unopposed.' (James, 2004)

> In 1988, Republicans also blocked or greatly watered down two key initiatives proposed by Democratic Gov. Roy Romer. The majority opposed the governor's plan to stimulate the state's economy by spending more than $700 million on the construction of new highways because it called for tax increases. After much wrangling, they approved Romer-backed legislation to provide increased funding for the state's most disadvantaged schools, though not before stripping out tax 7 increases necessary to pay for most of the changes. Romer, who enjoyed record approval even among Republican voters, complained of the Republican's "crazy antics" and "excessively partisan" approach to governing (Dias 1989). (Binder, Kogan, and Kousser, 2011)[41]

The subsequent attempts to reform the funding of K-12 education in 1991 and 1992 were set against the backdrop of the Taxpayers Bill of Rights (TABOR) initiative passed (at the third attempt) in 1992, which further restricted funding for education.[42] In 2000 Colorado voters did finally approve an increase in K-12 spending (Amendment 23) as a direct result of the squeeze that TABOR had placed on spending.[43] There is good reason to think that there was a crisis in education funding in Colorado, and consequently that Romer was simply responding to the problem that he foresaw. Odden (1992) looks carefully at the issue of school finance and its contours in many states since 1970. Governors were, according to Odden, acting as (to use Cobb and Elder's term) circumstantial reactors.

There is further evidence that Romer had a genuine concern about education reform. As chair of the National Governors Association he pursued the issue of education,[44] and had previously been involved in personally resolving a teacher's strike, unprecedentedly for a governor.[45] The fact that Governor Romer is in the middle of his second term of three terms as governor makes this an unlikely case of use for electoral gain. However even had it been a gubernatorial election year one might look out for a valence or wedge issue being used to differentially maximise vote share (as suggested in Chapter 5). Given that it is not an election year the only possibility of an electoral benefit is one which assists in the 1994 re-election campaign or assists partisans in a different contemporaneous election. It is unlikely that Amendment 6, a sales tax rise to pay for K-12 education plays that role.[46]

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[39] 'Romer went the initiative route when the legislature refused to raise taxes for additional K-12 education funding during either the 1991 or 1992 sessions'. (Young, 2006, p. 63)

[40] *The Boston Globe*, 'Voters face wide array of ballot questions', 25 October 1992. In 1991 and 1992 the Republicans had a 38 to 27 advantage in the Colorado General Assembly and a 23 to 12 advantage in the Senate.

[41] During the 1990-1992 session Romer vetoed 26 bills (actually close to the mean of 19 for Colorado, but in a state with many years of divided and very divided government).

[42] In 1989 Colorado had also passed a measure forcing any change in sales tax to go before voters.

[43] *New York Times*, 'the Governor asserts that if the initiative fails, public education spending will have to be cut by 12 percent in the 1993-1994 school year', August 5, 1992.

[44] Chair of the NGA 1992-1993, and before that he was chair of the National Governors' Association's Education Goals Committee.

Competing with these two explanations, which might apply to *any* use of the citizen-initiative by a governor, is a third which applies only to a small subset. There is a suggestion that Romer's measure was designed as a spoiler to Amendment 7 – a voucher programme ballot initiative for K-12 education, and one which Romer opposed. Both Romer's Amendment 6, and Amendment 7 were defeated by voters. If defeating Amendment 7 was the governor's aim he was successful. However, Romer had shown prior commitment to the cause of Amendment 6 irrespective of competition and would have started the campaign with no knowledge of Amendment 7.

The best explanation remains that the initiative was part of a legislative game. That Romer, having been frustrated by the legislature decided to legislate over their heads, irrespective of his attitude towards Amendment 7. In using the citizen-initiative Romer had, as his primary intention, to reform the state of Colorado's K-12 education, a task made impossible, up to that point, by the legislature.

2.8.5 E. Executives making changes to the rules of the game: California, George Deukmejian, 1986

> Arkansas Republicans played an important part in the submission of an election reform to the voters in 1948 through the initiative procedure, a

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[45] *The Associated Press*, March 25, 1991, 'Governor's Intervention in Teacher Negotiations Unprecedented'.

[46] Niemi, Stanley, and Vogel (1995); Jewell and Morehouse (2001); Carsey (2000) all find that tax rises are a bad for gubernatorial re-election prospects.

> means by which several significant changes in election administration have been adopted over the years. (Key, 1949, p.453)

A majority of citizen-initiatives change the constitution of a state.[47] These constitutional amendments can, and have affected matters directly relating to elections (and their financing), redistricting and term limits for both state and federal offices.[48]

Butler and Ranney (1978, p. 82) classified all initiatives in the states and found that 25% (the modal category) concerned the operation of government, whilst Tolbert (1998) found more government limiting measures in states with the initiative (term limits, tax and expenditure limitations, super-majority requirements).[49] Scarrow (1999) found that in Germany, parties have used the initiative to change institutions and make turning out more appealing to their voters. In short a politician can use an initiative to change the electoral institutions and thereby improve his or her electoral fortunes or those of his or her party.

One preliminary example of the use of direct democracy by politicians for such benefits is so egregious that it deserves special mention – the case of governors submitting constitutional amendments concerning their own succession to the electorate. It is hard to imagine a rule change more sweeping in its immediate consequences. Sigelman (1989) details how in 1977 Governor James Hunt of North Carolina 'cajoled the legislature into putting the issue [of his serving a second consecutive term] on the ballot' and how Governor John Brown of Kentucky and Governor William Allain of Mississippi did exactly the same.[50] The outcome was a rule change, and the possibility of another term, for Governor's Hunt and Allain, but not for Governor Brown.

The example chosen to illustrate this category of initiative use is California Governor George Deukmejian's attempt to change the redistricting process for state and federal legislative districts, a direct forerunner of Proposition 11 which finally was passed in 2008, and under which the new districts are being drawn. Both Propositions 39 and 11 appear to demonstrate governors acting for the advantage of their parties, and with their assistance. After being involved in a battle over reapportionment with the Democratic-controlled legislature, the governor took the case for reapportionment to the people through Proposition 39. Proposition 39 would have established an independent commission to redraw the boundaries for congressional and state legislative districts. Deukmejian initiated Proposition 39, and he was the chair of the campaign finance committee 'Californians for Fair Reapportionment' which ran the campaign for its passage.

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[47] 82% of direct democracy in California and Oregon 1990-4 were constitutional amendments (Source: Initiative and Referendum Institute listing of all ballot measures).

[48] For example Jerry Brown's 1974 campaign finance reform initiative in California, or William U'Ren's change to include proportional representation in the Oregon constitution, 1908 (Art II sec. 16).

[49] At the time of writing redistricting exercises in California and Florida are being carried out under new rules because of ballot initiatives.

[50] Sigelman (1989) also analyses the effect that the profile of a governor in a proposition campaign has for that proposition's chances of passage.

> Of the more than $ 4.8 million spent to defeat the propositions, nearly $2 million came from Brown [Willie Brown, the Democrat Speaker].[51]

As well as this donation from Brown, the California Republican Party gave $624,630 to qualify the measure for the ballot.[52] The fact that the purpose was to change the rules of the game is in these cases self evident, and besides the effects (electoral benefits for the Republican party), other motivations are insubstantial (though the Republicans' argument was of course that the Democrats had gerrymandered the districts in 1980 and before).

2.8.6 F. Executives at sub-national level boosting their national profile: California, Ronald Reagan, 1973

A run to become a presidential nominee is the culmination of many political trials *(Schlesinger, 1966)*. Therefore the claim made below, that the motivation for the use of an initiative was a desire to be President, has a causal link that is less direct, than in the case of a desire for state-wide office and initiative use given in the previous example.[53]

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[51] 'The Biggest Winner was Willie Brown, Reapportionment lost, his candidates won', *The San Francisco Chronicle,* June 7 1990.

[52] California State Archive, campaign filings for *Californians for Fair Reapportionment,* 1/1/84-7/6/84, Schedule E, page 5.

[53] That this is the motivation is a view espoused by very many commentators, and for example Allswang (2000, p. 104)

Ronald Reagan was elected Governor of California in 1966. His first run for the Republican presidential nomination came in unusual fashion in 1968 when, whilst not having been a candidate in the primary race, Reagan secured 182 delegates at the Miami Beach convention as part of a 'Stop Nixon' campaign. Although he eventually urged that Nixon receive unanimous nomination, this suggests that Reagan was seriously testing the presidential waters as early as 1968. In 1973 Reagan, coming to the end of his final term as governor of California, placed Proposition 1 on the ballot through a signature gathering effort. The proposition was designed to constitutionally tie spending by the state government to the growth of the state economy, as well as to provide a tax rebate. Even though the initiative is the most costly route to the ballot an attempt to pass the measure through the legislature was purely token. State Senator James Mills was upset:

> Mills said that Reagan offended many legislators by seeking to place his measure on the ballot by initiative 'before the legislature had had a full chance to study it'.[54]

A preference for the initiative is further demonstrated by the effectiveness of the effort to qualify the measure for the ballot which gathered the required number of signatures a mere three months after the measure was before the legislature. For this to have happened the signature gathering effort must have already been well under way whilst the bill was being considered. These facts make it more likely that the motives for qualifying the measure were electoral as the effects and especially the attribution of the measure to Reagan nationally could be maximised this way.

The problem addressed by Proposition 1 was seen as a national one by Lewis Uhler, Special Assistant to the Governor and head of the Governor's Tax Reduction Task force. In a memo to senior staff he stated 'America is teetering on the brink of being consumed by the total tax take at all levels of government'.[55] Proposition 1 did precede a wave of tax limitation measures and two years before Reagan won the presidency,

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[54] *San Diego Union*, 'Tax Reform Agreement in Doubt', 12 December 1973.

[55] Ronald Reagan Presidential Library, gubernatorial papers 1966-75, governor's office legislation files, Proposition 1 (cont), Box R13.

Proposition 13, the Jarvis-Gann 'tax revolt', was passed in California. This is why the issue was seen at the time by commentators as a useful prelude to a run for the presidency in 1976.[56] Of particular note is the testimony of Peter Hannaford, the Governor's Communications Director in 1973:

> I think, and I've said this in my book, that in the genesis of that [*sic*] proposition 1 was the belief that this would crown Ronald Reagan's career as Governor and, very likely, be the prairie fire that would lead him naturally to the presidency. The thesis of my book is that the really serious thinking about a Ronald Reagan Presidency began in approximately early 1973. (Morris, 1984a)

The effect of the initiative is suggested by evidence from Gallup polls. In a survey carried out between late April and early May 1972 Reagan did not make a list of 8 presidential candidates polled amongst Republicans across the US. Reagan garnered 13% support, coming second, as a choice for vice president to Connolly, with the Agnew vote redistributed.[57] By October 1973, when the Proposition 1 campaign was at its height, Reagan was winning in polling at 29% for the Republican nomination for the presidency (with the Agnew vote again redistributed).[58]

No doubt the recalcitrance of the Democratic controlled legislature over previous tax cutting plans had frustrated Reagan, and tax reduction was part of his conservative political philosophy. Taken together the pieces of evidence make unlikely the other possible motivations for Proposition 1 and construct a case for the existence of this type of initiative use by governors.

2.8.7 G. Executives altering the agenda of an election campaign: California, Pete Wilson, 1994

Pete Wilson's campaign to retain the governorship of California in 1994 included two initiatives, one of which, although contributing to Wilson's success in 1994, tore apart the California Republican Party (Nicholson, 2005; Bowler, Nicholson, and Segura, 2006, p. 1).

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[56] 'Parade to the Potomac', *California Journal,* December, 1973, 'Reagan's ambition protested' *San Francisco Examiner,* September 25, 1973; 'Reagan makes emotional pitch for tax proposal', *Los Angeles Times,* October 2, 1973; 'Aide analyzes prop. 1 defeat', *San Diego Union,* November 13, 1973.

[57] Gallup survey 855-K, sample April 29 - May 4 1972.

[58] Gallup survey 880-K, sample October 15 - 19 1973.

The first, Proposition 187, removed benefits from illegal aliens Schrag (2004, pp 229-234). The second, Proposition 184, gave life sentences to felons convicted of a 'third strike'. Although having been the author of neither measure (Assemblyman Dick Mountjoy was the author of Proposition 187 the 'Save Our State Proposition'), Wilson put his own campaign funds and Republican Party money into both (Sabato, Larson, and Ernst, 2001, p. 177 claims that 187 would not have qualified without money from politicians and parties).[59] Evidence of why he did this comes from an interview with Republican Assemblyman Ross Johnson:[60]

> JOHNSON: [Wilson] was dragged kicking and screaming to support 187.
>
> DE GRAAF: Dragged by whom?
>
> JOHNSON: By Republican candidates who were quite successful in using the issue of illegal immigration in primary campaigns. He had candidates he was pushing. He was going to remake the image of the Republican party. He was supporting quote, moderate candidates in a number of races. In virtually every instance, the conservative candidates won, and many of them were using that issue. Then his political handlers, the George Gortons of the world, looking at surveys, said, "This is where the parade is going, we'd better get out in front of it."[61] It was not something that he on the natural [*sic*] supported or would have supported, but he had a re-election to think about. The irony of it is that, again, as I say, he is totally identified with 187, particularly in the Hispanic community.(Morris, 1984b)

Both illegal immigration and crime were salient issues in their own right coming into the 1994 campaign. As Schrag (2004, p. 226) describes, illegal immigration was a growing problem, and a young girl, Polly Klaas, had recently been murdered by a felon on parole, sparking many versions of the three strikes initiative. These issues were crystallized and given extra prominence by the propositions attached to Wilson who became associated with them in the minds of voters as a result of free media coverage of the proposition campaigns:

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[59] Pete Wilson spent $489,000 on Proposition 187 and $361,000 on 184. The Republican Party then contributed $273,000 to 187. Source: Wilson campaign finance returns, California State Archive.

[60] Johnson served as Republican leader in both chambers of the State Legislature before heading the California Fair Political Practices Committee, the independent watchdog that oversees elections in California.

[61] Gorton ran the Proposition 49 campaign for Schwarzenegger.

> We asked what's the governor's position on proposition 187. It's the only time we got over 90% of people knowing the answer to a question like that. (Lubenow, 1995, p. 122 quoted in Nicholson (2005))

Further evidence of Wilson having used direct democracy instrumentally comes from the fact that on almost every measure which he brought to the ballot he had once held the opposite view. Proposition 187 will again serve as a token of the type. Even out-of-state newspapers picked up on Wilson's "flip" on the policy underlying Proposition 187.

> As a Senator looking out for California's agriculture interests, he [Wilson] worked to loosen federal laws to let migrant farm workers enter the country.[62]

The issue agenda is only the backdrop to an election campaign whose character and outcome also hinge on where candidates are positioned in the minds of voters on issues which are salient. Wilson gained an additional electoral benefit with Proposition 184 by consistently arguing that Kathleen Brown was soft on crime (even though she favoured a similar initiative) (Schrag, 2004, p. 224). Wilson's role as chief proponent on the proposition provided the opportunity for this advantage (helped too by the fact that Brown was against the death penalty). Proposition 184 became, like Proposition 187, a hot button issue in the California gubernatorial contest.[63] The 70 percent of California voters who in August 1994 favoured the initiative constantly received negative cues about Kathleen Brown from both the Wilson campaign, and the free media coverage of the initiative campaign.[64] In sum, Wilson's propositions helped him to shape an agenda unfavourable to Brown and at the same time to control Brown's position on those issues he had chosen to promote.

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[62] Amongst many other similar stories: 'California Gov. Wilson enters presidential race Republican stresses opposition to illegal immigration' *The Dallas Morning News*, August 29 1995.

[63] From January 1 to election day *The Los Angeles Times* carried 618 stories on Proposition 187 and the *San Francisco Chronicle* 167.

[64] The case for a policy preference motivation for Wilson's involvement in Proposition 184 is even harder to make than in the case of 187, as he had already signed a bill identical to 184 into law in January 1994.

2.8.8 H. State Legislature overcoming governor's veto: Missouri, 1999

In 1999 the Missouri State Legislature voted to place Proposition B on the primary election ballot. The law, designed to allow concealed carrying of firearms, was certain to face veto from Governor Mel Carnaghan had it not been referred:

> The measure was sent to the ballot by the Missouri Legislature to bypass a promised veto from Gov. Mel Carnahan, a vocal opponent. The governor's daughter, Robin Carnahan, is chairing the opposition campaign.[65]
>
> Proposition B was an attempt by pro-gun lawmakers to pass a concealed weapons law without having to contend with a threatened veto by Gov. Mel Carnahan.[66]
>
> Missouri became the first state in the country to hold a referendum on concealed weapons. It went the referendum route to get around Gov. Mel Carnahan, who said he would veto a concealed weapons measure if it reached his desk.[67]

The referral was defeated 52 to 48% at the primary election.[68] When the issue came up again in 2003 Governor Bob Holden did veto the bill, but this time, the legislature voted to override the veto (Molloy, 2004).

2.8.9 I. State Legislature changing constitutional rules: Colorado, 2005

Some chronology is necessary to understand this case. The Taxpayers Bill of Rights (TABOR) passed in Colorado in 1992 and has been warmly received by anti-tax campaigners as the most effective TEL thus far implemented (New, Slivinski, and Institute, 2005). In 2000 following a crisis in K-12 funding the Colorado legislature placed Measure 23 on the ballot to allow eduction spending to rise faster than the average under TABOR. The combination of Measure 23 and the recession of 2001 meant that by 2005 there was a further funding crisis. This led the new democratic legislature along with the governor Bill Owens to place Referendum to the ballot C passed to relax the constitutional restrictions in place on the legislature's ability to spend money.

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[65] *The Associated Press*, 'Brady to greet pope - while urging defeat of Missouri gun measure', January 25, 1999,

[66] *Jet*, 'Missouri Voters Refuse To Toss Out Ban On Concealed Guns' April 26, 1999.

[67] *The Washington Times,* 'Rural gun backers outshot by cities' April 8, 1999.

[68] Governor Mel Carnahan sued the Secretary of State and Attorney General, and as a result the following spoiler was inserted into the ballot language 'local governments, as a whole, may incur costs from $500,000 to $1,000,000 annually, not covered by fees'.

2.8.10 J. The legislature launching a spoiler referral against an initiative: Arizona, State Legislature, 1998

A lot of the theory of this type of use is translated directly from the benefit that a measure can have for any group looking to counter a proposal and is discussed above. The case in hand involved a referral out of the Arizona state legislature (Proposition 105) in 2006 to counter Proposition 106. The story is summarised in the Arizona Capitol report:

> The dirt over competing state trust-land measures began flying in June. Late that month, the Nature Conservancy led supporters in filing petitions for Prop. 106. "Conserving Arizona's Future" proposes to amend the Arizona Constitution to conserve nearly 694,000 acres of state trust land. The measure also would establish a board of trustees to administer trust lands. The Legislature beat them to the punch by a week. In anticipation of Prop. 106, it referred Prop. 105 to the ballot.[69]

The legislature's proposal (106) on the other hand would set aside 42,511 acres only and importantly leave decisions on additional set-asides up to the state legislature. The outcome of this tactic in this case was that both 105 and 106 were rejected by voters, the initiative by 71.3 to 28.7 and the legislature's measure by 51.3 to 48.7 percent.

2.9 Summary

In this chapter a theory was constructed using the goals, effects and constraints. The outcome of the theory is 10 types of politicians use of direct democracy that were predicted to be systematic for individual politicians. Predictions were also made and examples of the phenomenon in question were given to ground the rest of the thesis. In Chapters 4-7 four of these types of use are explored in detail.

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[69] *Arizona Capitol Times*, October 6, 2006, 'Competing trust land measures in AZ began with an argument'

Chapter 3

Method

This chapter comes in three parts. The first discusses common features in the method for measuring politicians. The second describes the method by which a measure of public preferences is obtained for use in Chapter 9 (because it is complex and relatively new). The third discusses other methodological issues, common to more than one chapter. The rest of the method, which is specific to individual chapters, is set out as it is needed so as to ensure that it is introduced in proximity to its application.

3.1 Measurement of Politicians' Use of Direct Democracy

The conceptualisation for the overarching dependent variable (but not always the specific dependent variable), politicians' use of direct democracy, was developed in the introduction in section 1.1.2 on page 13. With a standard in mind – involvement for a gain, in a measure that would not have advanced without the politician – a way is needed to measure when a politician is using direct democracy. Use is measured in the following ways in the different environments listed in Table 3.1.

State legislators' use of the initiative is measured using the secretary of state's initiative log, and is coded as positive if their names are listed in the log as proponents of a measure. Concern about false negatives are allayed by the fact that state legislators have nothing to lose by being listed as proponents and much to gain. In addition they do not head organizations of the size (i.e. state parties) to have anyone else to put their

Table 3.1: Identifying politicians' use of direct democracy

Chpt	Politician	Institution	Context	Identification source	Status
5	State legislators	Initiative	In office	S.O.S. log	Formal sponsorship
5	State legislators	Referral	In office	Hastings Law Lib dbase	Formal sponsorship
6	Candidates	Initiative	In/out office	S.O.S. log	Formal sponsorship
7	State legislators	Referral	In office	NCSL	Ecological
8	Governors	Initiative	In office	Newspaper reports	Sponsorship

names forward as proponents.[1] False positives are more of a concern, but so long as no alternative explanation is preferred to the profile effect (suggested and others controlled for) this, the best measure available, can be relied upon. State legislators' use of the referral is recorded if their names are listed on a referral bill in the state legislature. This is recorded in California by the Hastings Law Library database and in Oregon the secretary of state's log, and after 1998, online database.[2]

In Chapters 4 & 5 initiative use by candidates for state-wide office is identified using the California and Oregon secretary of state's logs. In Chapter 6 legislative referral frequency is recorded in the NCSL Ballot Measures Database. This is a different standard for dependent variable measurement for there is no question about whether a measure would have occurred without the politicians in question and there is no individual proponent identified. The claim of use for some private advantage can only be made as a result of the analysis as there are constitutional reasons for legislative referrals. Whereas in Chapter 7 governors' use of the initiative is recorded by newspaper reports. These reports are parsed for claims that the governor is sponsoring an initiative. This tactic is explored in depth in section 7.2 on page 167.

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[1] A forthcoming database of these logs, listing all proponents, put together by Shauna Reilly at Northern Kentucky University, will be invaluable in this regard for enabling future research across more states.

[2] At `http://egov.sos.state.or.us/elec/web_irr_search.search_form`.

3.2 State-Level Preferences from National Surveys

Chapter 9 requires another dependent variable, a measure of a state's policy, discussed in that chapter. To go along with a measure of policy, a measure of public preferences is also necessary as an explanatory variable. Measuring public opinion is the perennial problem of policy responsiveness-research in the states. The review of the literature in section 8.3 showed two roadblocks which have held back research relating direct democracy to policy responsiveness. The first is the lack of good measures of state public opinion for a large number of states over a significant period of time (no survey question has been asked consistently of a representative sample in even a pair of states over any length of time). The second roadblock is the absence of a direct link between questions asked in public opinion surveys and the policy under consideration. An ideal scenario would involve representative samples of the population for each unit (state) measured at many points in time and on the same metric as the policy in question (to overcome the problems on this front highlighted by Achen (1978); Matsusaka (2001)).[3] There has been a spate of recent literature which has, for the first time taken serious account, of approximating this ideal scenario in analysis of policy in US states (Lax and Phillips, 2009b; Park and Bafumi, 2004; Park and Bafumi, 2006; Norrander and Wilcox, 1999; Norrander, 2007).

These studies all supply a solution to the problem that reliable survey data is hard to come by at the state level. Previously authors have used one of three techniques in the absence of any direct measure of specific preferences. First, by working from a general scale of ideology (self assessed) – for example an individual who self identified as very conservative would have been attributed an anti-abortion score on an abortion index. The second method involves pooling of either national data or state level data. This method has not allowed much longitudinal travel, but the pooled ANES has proved popular ground for cross sectional studies. The third approach uses demographic variables at the aggregate level to artificially generate the mean preference that would be expected to exist in a state (Pool, Abelson, and Popkin, 1965).[4] This thesis combines the techniques of demographic simulation, with actual measures of preferences from national survey questions asked specifically about the respondents' attitude towards the topic of interest – restrictions on a woman's access to an abortion.

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[3] This second is a point also made at length and with clarity in Lax and Phillips (2009b).

3.2.1 The Park, Gelman and Bafumi Method

Multilevel regression with post-stratification was first applied to the problem of disaggregating national opinion surveys to sub-national units by Gelman and Little (1997). The method is sometimes know as MRP, but is referred to here as PGB after its authors; Park, Gelman and Bafumi. The first step in the technique is to obtain survey data. There are two options for longitudinal analysis, the National Election Study (NES) and the General Social Survey (GSS).[5] NES and GSS are both surveys with nationally representative samples with some oversampling. With the exception of the California Field Poll, all surveys with deliberately representative samples at the state level are either hopelessly incomplete across states or hopelessly inconsistent in repetition of questions asked.[6] This section proceeds to set out the method used for the abortion questions. The same method was used for sentencing questions with the exception that the pooled periods were as follows 1975, 1978, 1981, 1984, 1987, 1990, 1996, 1999, 2002 (given the different levels of non-responders for each question).

Six of the questions in the GSS concerning restrictions on abortion have been asked in every year since 1972 (except 1986). The six concern different situations in which the respondent may or may not be in favour of a woman having access to an abortion.[7]

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[4] For example a state with a high proportion of Catholic adherents and African Americans would *ceteris paribus* be attributed similarly high levels of social conservatism.

[5] The restricted version of GSS with geolocation was used, and individual-level data allows for post-stratification (Davis et al., 2005).

[6] For example the Senatorial National Election Study used by Norrander (2007).

[7] The questions all follow the pattern 'Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion...'

ABPOOR: If the family has a very low income and cannot afford any more children?
ABRAPE: If she became pregnant as a result of rape?
ABSINGLE: If she is not married and does not want to marry the man?
ABDEFECT: If there is a strong chance of serious defect in the baby?
ABHLTH: If the woman's own health is seriously endangered by the pregnancy?
ABNORMORE: If she is married and does not want any more children?

Figure 3.1 shows the responses to the six questions to be highly correlated. In which case one question, ABPOOR, can be used to proxy for all the others:

> Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if the family has a very low income and cannot afford any more children?

Given that the important factor is the relative position of the states and their relative change over time it would not matter which of the similarly worded GSS questions was chosen, although the implication of this is that another question could provide different absolute values at any point in time.[8] Although the question does not refer specifically to a restriction law, it is a normative question about the permissibility of abortion in a given situation, and can be expected to mirror preferences for a law in that same situation.[9]

With a measure of abortion preferences in hand it is possible to turn to the method for applying this measure to generating an accurate measure of public opinion at the state level. There remain two problems to overcome before this public opinion data is of use – the representativeness of samples at the state level, and ensuring a large enough number of observations for each state at each point in time to produce an accurate measure of preferences, even given the imputation that is going to be performed. The issue of representativeness is made partly moot by the post-stratification and weighting in the PGB method, however Brace et al. (2002) found that the state-level representativeness of the GSS was acceptable in the 40 states assessed, although again the study involved heavy pooling.

The second issue, of sample size and diversity, has been solved in the past solely by pooling.[10] Here the solution is some pooling combined with the PGB method. In the GSS data it was found that pooling of three and four year periods was adequate to produce sample sizes sufficient for post-stratification.[11] The pooling results in mea-

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[8] All six questions have been asked with consistent wording since 1972.

[9] There remains the question of whether respondents are rational. T. Smith (1981) discusses the GSS abortion scale specifically.

[10] For example in Norrander and Wilcox (1999).

[11] Depending whether the GSS was asked every year or two years.

Figure 3.1: GSS questions related to abortion access

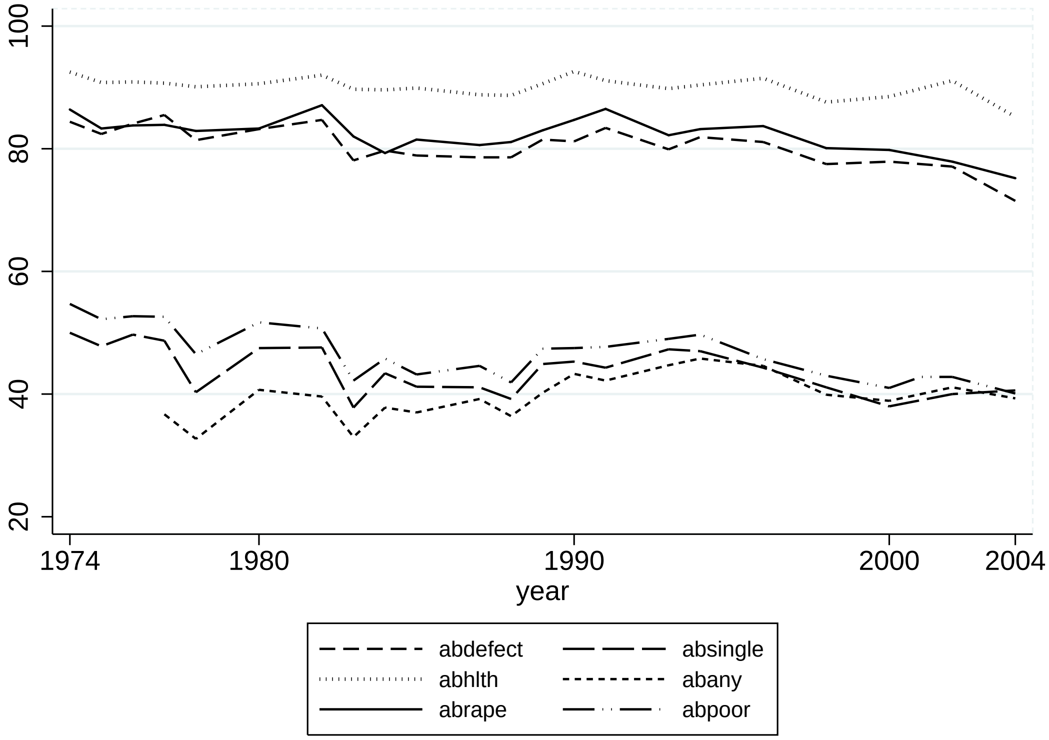


Figure 3.2: GSS question related to abortion access and PGB imputations

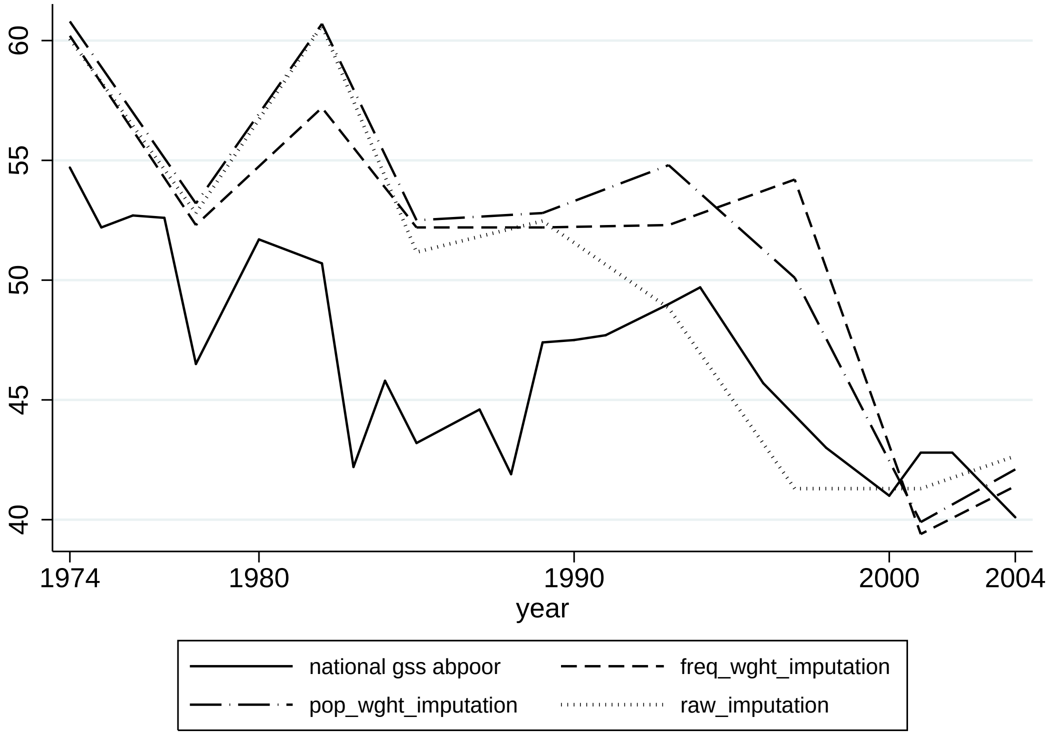
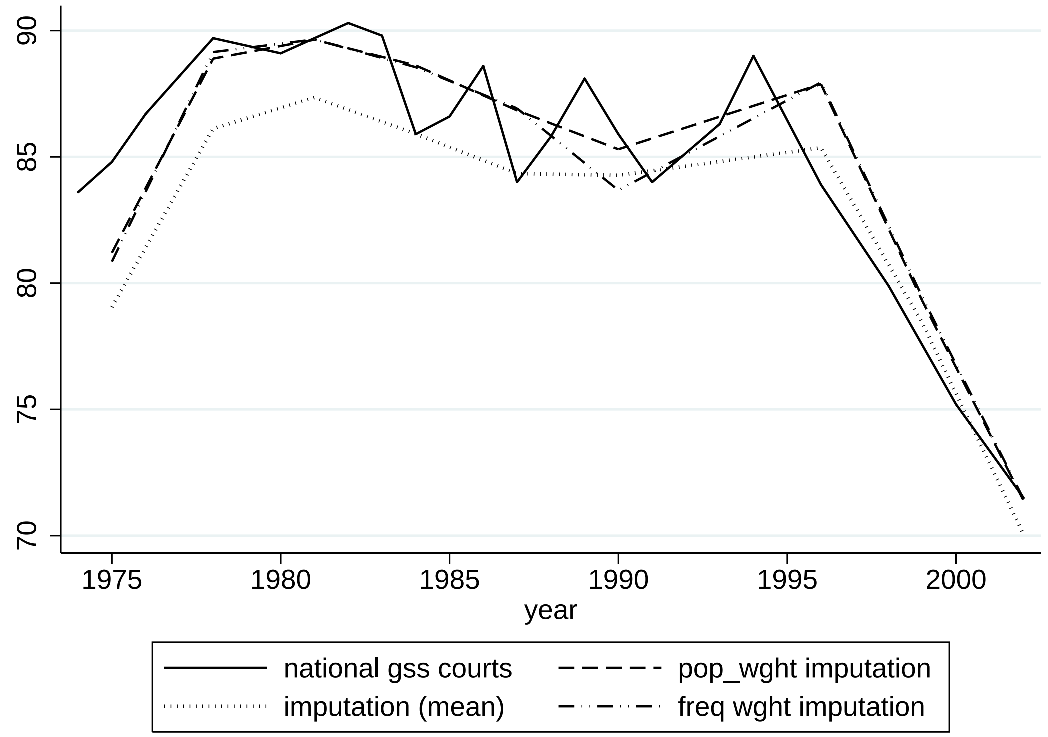


Figure 3.3: GSS question related to sentencing and PGB imputations



sures centered on the following years 1974, 1978, 1982, 1985, 1989, 1993, 1997, 2001 and 2004. Even after this pooling there is not a large enough sample size to produce good predictions for preferences in most states using the raw survey data alone. In populous states the situation is best, with sample sizes of approximately 500 in New York and approx 600 in California and Texas, for each pooled period. In the smaller states sample sizes go below 50 in the very smallest states. The solution PGB presents to this problem involves combining demographic effects with individual effects, and with partial pooling across states and time in a multilevel model predicting the average of public opinion in each state.

Imputation in its traditional form would involve inserting representative cases given demographic information for each state. For example Pool, Abelson, and Popkin (1965) and Berkman and O'Connor (1993) used national polls and voting and census data to construct 480 synthetic voter types based on a variety of socio-demographic factors. They determined the percent of each type in each state and estimated state-level re-

Figure 3.4: Estimated probability of a GSS respondent in favour of tougher sentencing, 1974 pooled period (y-jittered)

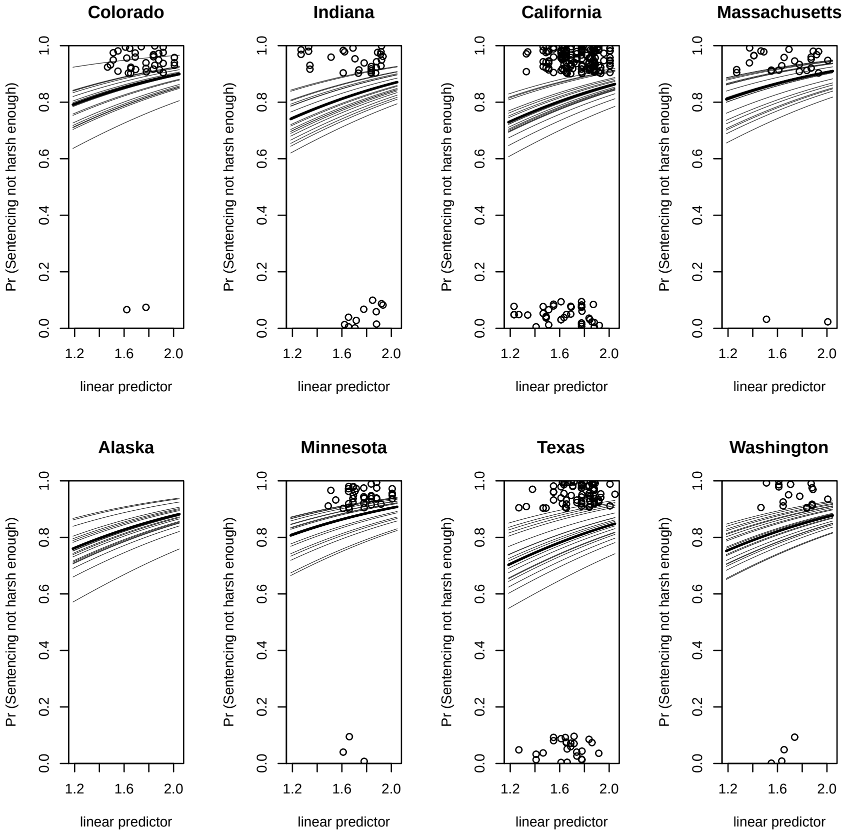
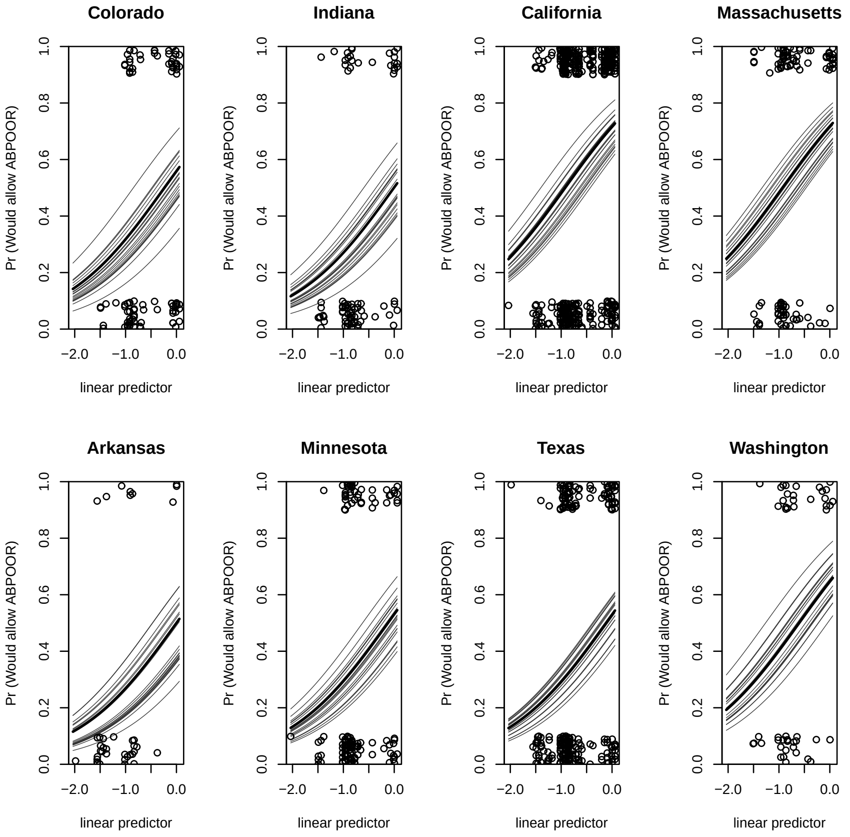


Figure 3.5: Estimated probability of a GSS respondent in favour of allowing abortion, 1985 pooled period (y-jittered)



sults accordingly. Presented here is a more complex, but also a more accurate way of imputing cases, that takes into account individual-level data ((Lax and Phillips, 2009a; Lax and Phillips, 2009b) discuss the advantages of PGB). The method used in this thesis was first outlined in the *Political Analysis* article ‘Bayesian Multilevel estimation with post-stratification: state level estimates from national polls’ and (Park and Bafumi, 2004), has come to be widely used and cited.[12] Recently Lax and Phillips (2009b) was published in *APSR*. Lax and Phillips (2009b) appeared in *AJPS* and Kastellec and Phillips (2010) in *Journal of Politics,* all using the PGB method. That all three of these leading journals and their reviewers have accepted these articles can be taken as a litmus test of the veracity of their method which is the method used here. Most recently Pacheco (2011) and Warshaw and Rodden (2012) actually have a split sample analysis of the exact method used here on an abortion question (along with four other issues) and a comparison of their opinion estimates to same sex marriage ban referrals and initiatives respectively.

The premise of PGB is that instead of creating new concrete observations, as would be the case for example in hot deck imputation, a Bayesian implementation of MLM is used to discover what the effect of being in any one of 3264 categories of respondent is.[13] The state mean is then constructed from these results and poststratification data generated. The key to being convinced by this method is to realise that for the calculation of the preference of any single state all the relevant data (for all states) in a pooled group is being taken into account in a regression, and not once but many times over in multiple simulations.[14]

3.2.1.1 A PGB method primer

There are five extremely thorough accounts of the method used here. In Park and Bafumi (2004),Park and Bafumi (2006), and Lax and Phillips (2009b) with an alternative cookbook style primer found in Kastellec, Lax, and Phillips (“Estimating State public opinion with multi-level regression and poststratification using R (working paper)") as well as in Andrew Gelman's textbook chapter Gelman (2007, chapter 14) and the use in Lewis (2011) which is very similar and hence reinforces that undertaken here.[15] The aim of the process is to end up with a regression model into which to feed the vital demographic statistics of a state. Using standard demographic indicators: race, gender, age, and education. These are known to be important predictors of social attitudes. This is done for each of the pooled groups of GSS years, in other words the process was run nine times. The method is then as follows:

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[12] Cited by 46 articles (google scholar).

[13] The regressions for the PGB method are performed in BUGS and called from R. Other analysis in this chapter is performed in Stata.

[14] For another example of the use of the procedure see Johnson, Brace, and Arceneaux (2005).

1. Load into R individual-level survey results from the GSS (or any survey) including the preference of each person (in this case their answer to ABPOOR) and their characteristics, in this case (in this case state, age, sex, race, education).

2. In WinBUGS[16] Perform Bayesian (Markov chain Monte Carlo methods) MLM predicting ABPOOR response in each of the 3264 categories. This is done for all categories including those, such as black, male, college graduate, 18-29 from Wyoming, that are not represented in the GSS sample (in any of the pooled periods).

3. Load in census data in the form of frequencies for each of the 3264 stratification cells. The categories range from *"Alabama, male, not black, 18-29, not high school graduate"* to *"Wyoming, female, black, 65 and over, college graduate"*.[17] [18]

4. Post-stratify: Create predicted values for each of the strata with mixed effects allowing for partial pooling for cells with no respondents in. Compute inferences

---

[15] The code printed in appendix B.2 on page 274 is simply a modified version of pieces taken from Park and Bafumi (2004) and Gelman (2007, chapter 14). The BUGS model is identical to the one used in Park and Bafumi (2004). Pisati and Valeria Glorioso have developed a Stata program called *mrp* to run PGB in Stata, but it is an early beta version.

[16] WinBUGS (Spiegelhalter et al., 2001).

[17] For the census data some calculation is required to obtain figures for non-census years. Data for 2000 is simple, but for 1984 it is necessary to draw a straight line between the figures for 1980 and 1990, producing an average for 1984. This then works for all other periods except 2004. For 2004 the results of the American Community Survey are used.

[18] For the census data the 5% Public Use Micro Samples are used.

Table 3.2: Comparison of measures of preferences on abortion restrictions

	Gss1989	State	Norrander	Arcenaux	GSS 1993
GSS 1989	1.0000				
State	0.1019	1.0000			
Norrander	-0.6193	0.1589	1.0000		
Arcenaux	0.8185	-0.0726	-0.8321	1.0000	
GSS1993	0.8075	-0.0143	-0.7091	0.8246	1.0000

for the population quantities by summing cells for each state in proportion to its population characteristics.

3.2.2 Testing the Outcome of Imputation

Park and Bafumi (2004) test the outcome of the PGB method by dropping half their dataset of national opinion polls predicting the result of the 1988 presidential election.[19] The predicted Bush result in each state is then simulated with and without the missing half and compared to the actual Bush vote share. The results are negligibly different. Checking can be done either longitudinally for a single state or cross-sectionally for the set of states at a single point in time. For a cross-sectional test it is possible to compare the results of PGB with Norrander and Wilcox (1999)'s widely used pooled NES Senate data on abortion preferences grouped around 1992 (using the 1993 imputation).[20] It is also possible to test the imputed measure against the heavily pooled but representative (at the state level) GSS measure in Arceneaux (2002) with the pooling centered on 1989.

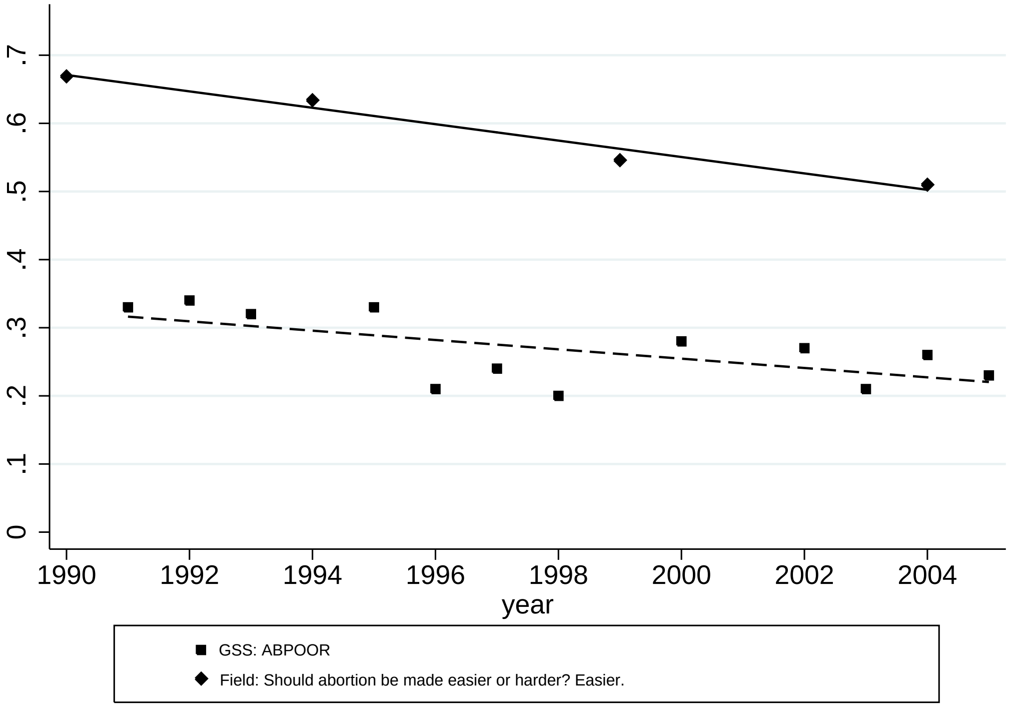
The relevant correlations are significant on a spearman's rank test, which reveals a little about the accuracy of the measure. From Table 3.2 the correlation coefficient for *Norrander* and the imputation is 0.75, and for the Arceneaux (2002) measure with the relevant imputation the correlation is 0.82. These are sufficient to show that the results

---

[19] Justified by Park and Bafumi (2006) in a test of their own method on 1992 election results compared to opinion polls. Chen and Astebro (2003) finds the same in a comparison of imputation methods.

[20] Spearman's rho = -0.7491, Test of Ho: gss and NES are independent Prob > |t| = 0.0000

Figure 3.6: Comparison of imputed GSS for California and California Field Poll



of the imputation do not vary wildly with the expected values. It is hard to make absolute comparisons as the measure is by its nature different and, with justification, a better representation of the state mean.

If there existed policy measures for all states longitudinally then these would have been the measures used rather than using the PGB method. In California the Field poll has been taken over long periods of time. There is in this instance a consistent question asked almost every year from 1991 to 2005.[21] Figure 3.6 reveals that the trend of the field poll compared to the imputed GSS measure is reassuringly similar.[22] Concerns about smaller states are mirrored in the fact that there is no data with which to compare the imputed measure. In summary the fact that PGB has been shown to be effective elsewhere and the method followed is identical is enough on its own.

---

[21] 'Should access to an abortion be made easier or harder?' `http://field.com/fieldpollonline/subscribers/RLS2172.pdf`.

[22] The difference in levels is to be expected given that differently worded questions can access different elements of judgments about moral issues in respondents.

3.3 Methods Common Between Other Chapters

3.3.1 Newspapers as Sources

In different sections of different chapters of this thesis use is made of both national, regional and local newspaper sources. The use is of two distinct types. First to illustrate cases which serve as archetypes. Second to provide information for the measurement of a dependent variable. A general comment here covers both these uses. Without newspapers very little would be known about state politics. Not least because political science qua science largely ignored state politics for the 40 years after the Second World War, failing even to collect the most rudimentary facts (Jewell, 1982). In this respect one might turn to *The Book of the States* and the various state Blue Books. However these sources cover very specific public and objective aspects of government and elections. The period before the FECA is particularly worrying. Virtually every reference and case in this thesis occurred after 1970. Any researcher who tries, either through archives or newspaper sources to carry out comparative research on state politics and direct democracy before this date is not to be envied. There are reasonable concerns about the accuracy and objectivity of newspapers as sources. Therefore wherever possible more than one source is cited and if newspapers are used to measure a variable, multiple sources are always present.[23]

In sum after 1970 there are excellent newspaper sources. These are used, with caution, to suggest and as measures only where there is excellent reason to think that reporters have got it right.

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[23] To this it might be added that the subjects under consideration in this thesis are not especially likely candidates for biased reporting.

3.3.2 Time-Series Cross-Sectional Data Analysis with Multilevel Models

As with the use of PGB (which itself involved MLM), MLM has advantages over techniques which have been used in the past to study the effects of direct democracy.[24] Following Beck and Katz (1995) and Beck (2007) the multilevel structure of the model is provided by nesting observations, separated into years, within states.[25] This difference between states is not in itself a statistical parameter but a *latent variable* that is not directly observed.

The central purpose of using multilevel models is to get unbiased estimates in the presence of omitted variables. The TSCS modelling used in this thesis describes individual unit (in this case state) trajectories, using a combination of uniform (across state) fixed effects to account for the common effects in the trajectories and state specific so-called random effects to represent the variability between states.[26] These random effects models (also referred to as latent variable models) are hence able to explain the conditional covariance structure – for example the different policy responses in different states with different direct democracy institutions.

TSCS allows the researcher to consider dynamics, that is, not only how are states different but how did they become different. This tactic allows for increased leverage on comparative questions such as the ones in Chapter 9, and increased ability to control for omitted (state) effects in the models of state government in Chapters 6 and 7. MLM also has the advantage that models can be estimated for (slightly) unbalanced data of the sort which occur in Chapters 6 & 7. TSCS have been widely used in political economy, and widely recommended:

> Time-series cross-sectional analysis helps specify the concept of comparability in comparative research. (Western, 1998)
>
> This specification [pooled cross-sectional time-series models] has a strong substantive justification. Hierarchical models usefully capture Przeworski

---

[24] The type of data to which multilevel models are applied in this chapter is often referred to as time-series cross-sectional (TSCS). The data is time series in that units are measured at repeated intervals and cross sectional in that 50 different units are measured in this way.

[25] For details of why the RCM is justified, and its performance for TSCS data see Beck and Katz (2007).

[26] The modus operandi comes from four books which are the source for technical matters relating to MLM: Gelman (2007); Rabe-Hesketh (2004); Hox (2002); Snijders and Bosker (1999).

> and Teune's (1970) classic account of contextual explanation for comparing political processes in different societies. By allowing greater causal complexity the approach is similar in spirit to Ragin's (1987) emphasis on conjunctural causal explanation in comparative research. (Shor, 2003)

The data in this TSCS analysis is indexed over the state *i* and time *t*. This data is said to be in the *long form.*

Standard regression modelling assumes that the errors have conditionals with a zero mean and are mutually independent. In panel data errors for the same state are often correlated. If a state with a higher policy at a given occasion than expected knowing its co-variates is also likely to have a higher than expected policy in future. Therefore this dependence is modelled with a state specific intercept. Cross-sectional data that includes a time-series component is often heteroskedastic and sometimes presents the added challenge of contemporaneous correlation of the error terms. Beck and Katz (1995) is the most often cited work on the correct specification of TSCS models (although other authors' Bayesian approaches have challenged their findings).[27] It is the Beck and Katz (1995) recommendations rather than the Parks (1967) solution that guide the implementation of TSCS in this research design. An initial choice has to be made between a Bayesian or a frequentist implementation of the TSCS model.

Stata cannot be used alone to perform this analysis, although it is possible to perform with an implementation of BUGS with STATA (Thompson, 2006; Shor, 2003; Shor et al., 2007). It is not however clear what value is added by use of the more complex Bayesian implementation and in addition there is some debate in the literature about the neutrality of such tests given that priors have to be set by the researcher (Plumper and Troeger, 2007). Therefore this research will use a frequentist implementation of TSCS models.

3.3.2.1 Sample size in multilevel models

Multilevel models usually have many more level-one units and at least many more level-two units than analysis of states allow. The use of multilevel models in the context of state politics implies that the maximum number of level 2 units is 50. Data availability (and need for some pooling in some cases) in this thesis then limits the number of level 1 units to approx 30 as in the tests in Chapters 6 & 7 making the datasets cross-sectionally dominant. The question then is whether this sample size, in both levels, is adequate to draw conclusions. In Chapter 8 there are 50 level 2 units, observed for 9 periods. Maas and Hox (2005); Hox (2002, p. 175) point out that it is not known how many level 2 units are necessary in multilevel models.[28] There are different rules of thumb depending on the analytical fulcrum in a multilevel model. If the statistic of interest is within unit variation then DeLeeuw and Kreft (1986) advise a 30/30 rule (30 level 1 observations per level 2 unit), but Hox (2002) advises using a 50/20 rule or 100/10 if there is interest in random coefficients, and their variance and covariance. As with simpler statistical models, keeping the number of explanatory variables parsimonious is the safest strategy. In the case of multilevel models with low numbers of level 1 observations (such as this one) it is crucial not to put in too many level 2 variables.[29]

---

[27] Beck and Katz (1995) are cited 2242 times (google scholar).

Whereas the models in Chapters 6 and 7 do not include cross-level interaction, Chapter 8 is centrally focused on one cross-level interaction. Therefore when it comes to checking whether it is a significant contributor to a model (Table 9.10 on page 241) careful attention is paid to ensure that the confidence level is conservative.

In sum the number of level 1 and 2 units is lower than ideal. However there is no way to conjure up more states, and therefore this shortcoming will have to be borne in mind when interpreting variables with values which may only hold for a small number of states. The number of units is, after all, high enough, and the number of observations per unit is marginally, rather than hopelessly, imperfect. The models should still provide better answers than the cross-sectional models that the evidence for GBD has rested on.

---

[28] See also Snijders and Bosker (1999, p. 140).

[29] The concern with lots of varying intercepts and slopes with cross–level interactions are that the models will not run – they fail to converge.

3.3.2.2 Computer programs used

A full list of the commands used to run the models can be found in appendix B. There is a split between the programs used within Stata. On the one hand gllamm is used to run some models (a Stata program for running Generalized Linear Latent and Mixed Models (Rabe-Hesketh, 2004)), and on the other there are the xt commands provided with Stata which are used to run others. Although gllamm takes longer to run, it allows for a more flexible specification of 'family' and 'link' as well as better post-estimation options using gllapred and gllasim.[30] Coefficients, standard deviations and variances are checked to ensure the results cited in no way depend on the choice of program used to run the model.[31]

---

[30] On 'family' and 'link' see Rabe-Hesketh (2004). The `gllapred` command makes producing both level 1 and level-2 residuals possible where the predict commands for xtreg or xtmixed currently does not (Rabe-Hesketh, 2008, p. 126).

[31] See Rabe-Hesketh (2008, p. 100 compared to p. 101). The strategy of running two specifications is extremely helpful for identifying specification anomalies.

Chapter 4

Profile Effects of the Initiative

4.1 Introduction

This chapter investigates the use of direct democracy by politicians to expand their state-wide profile. It is shown that state legislators in Oregon and California with an intention to run for state-wide office behave in a manner which is consistent with, and strongly suggestive of, a belief that they will receive a beneficial increase in their profiles as a result of proposing a ballot measure.[1] This conclusion is reached by assessing whether those legislators who sponsored a citizen initiative were more likely to go on and run for higher office. A logistic regression model is tested on a dataset of state legislators from Oregon and California some of whom went on to run for higher office. The conclusion from these tests challenges those authors who ascribe the supply of initiatives solely to demand from within the electorate or even interest groups. The results show that existing models of direct democracy are at least unable to account for a large portion of initiatives in Oregon and California, which are in fact supplied primarily in conjunction with the desire of politicians to advance their careers.

---

[1] This group is referred to throughout the rest of the chapter as prospective or future candidates for state-wide office.

4.1.1 Profile and Candidates for State-wide office

The theory set out in 2.3.2 predicted that politicians who have a desire to run for higher office in initiative states will recognise that there is a profile boost associated with direct democracy involvement. They will use direct democracy and therefore this use will predict future candidacy for state-wide office, bringing a return for their investment in direct democracy. Sub-section 2.8.2 illustrated an example of this type of use with the case of Denny Smith.

One author and one group of authors write directly on the impact of the effects of candidate profile on election results, and both write about state-wide elections. The first is Beck et al. (1992), who have assessed the effects of candidate visibility on ticket splitting. Following Jacobson and Kernell (1981) and Jacobson (1990)'s finding that incumbency is in large part explained by the failure of high profile candidates to run against incumbents, Beck et al. (1992, p. 923) found that in state-wide contests in Ohio the explanation for much split ticket voting and incumbency advantage was the visibility of candidates. Beck *et al*'s study measured visibility by polling voter's comprehension of candidate positions. The result was a statistically significant 10 percentage point difference in the probability of voters splitting their tickets for a candidate who was highly visible. The second author who writes about candidate profile is Peverill Squire (Squire, 1991; Squire, 1992b; Squire, 1992a). Squire and Smith (1996, p. 242) for example find that challenger profile is far more useful in an election than candidate skill. In an analysis of general elections Squire finds that as candidate profile increases by 100 points (scored out of 600) the chances of victory increase by 23% in open seats.

The fact that the literature on state-wide nominating campaigns is sparse means that it is necessary to draw lessons from literature that exists to explain presidential and congressional elections. The importance of money for a campaign is examined in the context of presidential (Sabato, 1989; Jewell and Olson, 1982), and congressional (Jacobson and Kernell, 1981; Krasno and Green, 1988; Mann and Wolfinger, 1980) nominations. The consensus amongst these authors is that so far as money is important in nominating campaigns, it is important for increasing profile. Its utility lies in purchasing exposure. Work on gubernatorial primaries has also emphasised the importance of money for victory. If the presidential campaign is a proxy for gubernatorial races then profile and money go hand in hand (Morehouse, 1973; Partin, 2002; Bardwell, 2002). On spending in US Senate campaigns Abramowitz states that:

> There is a strong likelihood that campaign spending does not have a simple linear effect on the outcome of Senate elections. Spending is probably subject to diminishing marginal returns: as a candidate spends more money and *becomes better known* the impact of further spending diminishes. [my emphasis] (Abramowitz, 1988)

Unfortunately these findings are not followed up in the literature on gubernatorial elections (most relevant here) which, whilst emphasising the importance of money, does not examine the mechanism through which it operates.

Oregon and California have primary elections for the parties' nominations to state-wide office. Therefore two games are being played by politicians seeking state-wide office – the primary and the general elections. There are broadly two non-exclusive types of mechanism which might be at work. One operates on the electorate and the media and the other amongst a party's donors and registered voters. In the first the aim of the direct democracy would be to increase name recognition. The aim in the second would be to do the same, but primarily in party circles and to solicit funding to position a candidate for the primary race. Although the tests of the profile effect *per se* remain neutral between the two mechanisms, the test of the success of initiative users in future primary and general elections allow a tentative conclusion about which of these mechanisms is operating (section 4.3.1 on page 98).

In sum the above theory shows that a higher profile is of benefit to a candidate whilst section 2.3.2 had already shown that it is plausible direct democracy can supply this profile. Therefore if a politician has an ambition for state-wide office then he or she will be more likely to seek the profile effect benefit of the initiative. Given the theory of the costs and benefits of direct democracy set out above, the initiative is expected to be more strongly predicted by future state-wide candidacy as its higher costs will deter those politicians who do not seriously desire its profile rewards, and the mandatory nature of some bond issues and constitutional amendments will mean that they do not represent politician use.

> **Hypothesis H1:** Initiative use is a significant predictor of future state-wide candidacy.
>
> **Hypothesis H2:** Initiative use is a significant predictor of future candidacy, whereas legislative referral use is not.

4.1.2 State Legislators and State-wide Office

Of the two key variables in this chapter, the dependent variable, running for higher office, is far simpler to measure. In every election cycle state legislators or former state legislators put themselves forward for state-wide office. Ideally the desire to seek future state-wide office is the operationalisation of the concept that would be measured, but it is impossible to see this internal, unofficial state of mind directly. The coding of the benefit *believed* by politicians to be brought to them through direct democracy use is therefore proxied by an actual run for higher office. In California there are eight state-wide offices: governor; lieutenant governor; secretary of state; attorney general; controller; treasurer; insurance commissioner; US Senator (Classes I and III). Elections for all these offices are held in even non-presidential years.[2] In Oregon there are just five state-wide offices: governor; secretary of state; attorney general; treasurer; US Senator (Classes II and III). Elections to all these offices except governor are held in even non-presidential years. The fact that there are more offices in California is not problematic as the number of legislators is also proportionately higher.

4.1.3 State Legislators' Sponsorship of Direct Democracy

There is an essential theoretical question about how to understand and interpret politicians' sponsorship of direct democracy, essential to avoid type I and type II errors in the analysis, that is false positive assessments of use and false negative assessments of use. Therefore it is necessary to be very clear about the conceptualisation of use.

---

[2] Judicial positions and Board of Equalization positions are not included due to their lower profile and the resource limits of the research project.

It has already been stated that use of direct democracy occurs when a politician gains some benefit, but it is important that the conceptualisation of the independent variable does not presuppose the *benefit* that this chapter claims politicians gain from direct democracy. Therefore the dependent variable consists in a politician's sponsorship, in other words initiation, of a direct democracy campaign, measured without assuming the reason for such involvement. With that having been said it is of note that *a* profile effect could result not only from sponsorship, but also from some cases of mere involvement with a measure (endorsement/opposition). One way that a state legislator can be involved in a proposition is by initiating it (or being on the committee that does so). Second, the politician can endorse a proposition or oppose it to a greater or lesser extent (this also includes running adverts concerning the proposition). Third, a politician can give money to a proposition campaign either from his or her own pocket or from his or her re-election fund. Fourth, a politician can be publicly associated with a proposition either wittingly or unwittingly. These are the components of involvement and they produce a wide variety of incarnations of the concept. It may be that there are different combinations of these activities which are useful for gaining a profile effect, but this chapter only measures the first - initiating a measure. This choice is made on the assumption that most of the time the other factors necessary for a profile effect would follow on, and more importantly to ensure that the test of the profile effect is conservative and therefore as persuasive as possible. There may be deliberate profile effect-use cases in which a politician is able to free-ride on a ballot measure which has been qualified by others. These are just too difficult to identify without introducing systematic false positives and so all are considered together. Being a high profile opponent or non-sponsoring proponent of a measure is much harder to measure systematically, and so with a robust measure already in hand it is left to future research to investigate. The measurement by sponsorship of a piece of direct democracy is based on the reasonable assumption that the *sponsor* of the measure gains profile and therefore the reduced chance of false positives, i.e. politicians who were involved in direct democracy and ran for higher office, but without any causal connection between the two.

There inevitably exist candidates who have a genuine desire for future office and who use direct democracy (for a profile effect), but for one reason or another do not make the primary ballot. The extent of this problem is explored in a discussion of outlying cases in the findings section below. Suffice it to say here that as the barriers between desire for and runs for office increase, the coding of candidate cause this test to underestimate rather than overestimate the link between future state-wide candidates and direct democracy, and therefore to underestimate the profile effect. In addition since the thesis is, as a secondary question, concerned with the effect that politicians' involvement might have on aggregate policy, initiation of a measure is particularly relevant given that in the counterfactual situation, the set of measures presented to the public would have been different.

4.1.4 Alternative Explanations

The theory in section 2.6 presents potential alternative explanations, beyond the profile effect, which might lie behind state legislators' use of direct democracy. In the case of state legislators the problem that these generate in controlling for the other types of use are less than those for state-wide office holders. There are simply less types of use beyond the profile effect which would be plausible – a campaign effect and seeking to overcome partisan or ideological resistance in the legislature. The campaign effect is ruled out by excluding such uses explicitly, whilst the use of the referral doesn't enter into the equation as is shown. Attempts to overturn the opposition in the legislature are controlled with a minority party variable.

Added to these alternative explanations for direct democracy use are the plausible joint causes of direct democracy use ***and*** future state-wide candidacy which could act to bias the tests: being a member of either party's leadership, being a long serving legislator and being a state senator. If a legislator is a member of the leadership in his or her respective chamber then he or she may, by virtue of that role, be involved in more direct democracy. This leadership position may also bring with it both the resources needed to use direct democracy and also a self selected group of ambitious politicians providing just the link that this chapter suggests the initiative provides. Similarly those who have served longer may also have a privileged position with regard to access to the resources needed to use direct democracy *and* become a candidate for state-wide office. This would produce a correlation between the two, but one that did not correspond to a profile effect resulting from a causal relationship. By including controls it can be shown that the causal connection between direct democracy and future candidacy is independent of other common causal factors. Party and point of the electoral cycle are included as standard controls. An interaction of party and length of service is included to control for the long periods of one party government in California.

A challenge to the theory set out in Chapter 2 and a riposte to the argument that the cases of use in the dataset above are cases of profile seeking comes from the fact that all the politicians in this study do hold elected office (in one or other house of the state legislature) and therefore could be seeking *immediate* rather than *prospective* electoral rewards in using direct democracy at times which coincide with election to their own sub-statewide offices. However in line with the theory proposed in this thesis, re-election to the office that the politician does hold will not represent a return which could justify the cost of a state-wide direct democracy campaign. The effort of the initiative campaign is dissipated throughout the state where the same resources would be far better concentrated in the candidate's district. Therefore the benefit accorded by this outlay is most likely prospective.

Two other alternative explanations require consideration: candidate skill and the endogenous effect of the initiative itself. It might be argued that those who use the initiative are more likely as a result to run for higher office in the future rather than the other way round. Candidate skills could not be controlled for specifically as there was no data available coding for these attributes.[3] However an argument can be made which covers both candidate skill and an endogenous effect of the initiative (this argument is addressed again in the findings section.) If, for instance, candidate skill is a more basic cause of both direct democracy use and running for state-wide office (rather than the intention to run) then a further question is raised – why would more skilled candidates use direct democracy? If a campaigning attribute is a joint causal factor then nothing is subtracted from the results presented below. The fact that the more skilled candidate uses direct democracy is corroboration of H1. If this is not found to be the case then the link between direct democracy and office seeking still stands on its own without any more basic cause. A similar rejection of the initiative as the *direct* cause of candidacy is given in a consideration of alternative explanations toward the end of this chapter.

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[3] Candidate skills as used by Squire (1992b) and discussed above.

4.2 Data and Method

The dataset and coding of key variables are simple to understand, and the detail set out below only becomes salient at the highest magnification. In short, the dataset consists of those who served in the state legislature, in California and Oregon, during the 1991-2 or 1993-4 sessions. The unit of analysis is state legislators. State legislators are adopted as the unit of analysis because they are a set of politicians that can be delimited and about whom it is possible to collect detailed data to allow for multivariate analysis. The research question has politicians behaviour as its subject and therefore a legitimate way to study this is to study a set of politicians and their behaviour. Furthermore it is necessary to have a set of individuals who can be researched before they run for higher office. This allows the tests of the relationship between their behaviour with regards to running for higher office and direct democracy sponsorship, rather than the selection bias that would result from only considering those who had sponsored an initiative or referral, or only those who had run for higher office.

To test the profile effect, legislators in California and Oregon were selected for study together. The governmental institutions, and institutions of direct democracy are similar and both states have high numbers of measures on the ballot every year.[4] The large number of direct democracy measures also makes the two states ideal for this initial stage of the study of politicians' use of direct democracy. The presence of numerous (but not overwhelming) cases of the positive value of the independent variable enables a clearer exposure of the reasons behind politicians' use of direct democracy in this context. This research design decision, to look at states with a large number of instruments of direct democracy, reduces how widely the conclusions produced can be applied in states with lower usage.

The aim of the dataset is to capture a snapshot of politicians in the given period and thus a strategy of disallowing duplicates is followed. The period was selected at random from a 15 year range (1980-1994) which is limited at the closest point by the need to observe three subsequent election cycles to code for future state-wide candidacy, and at the furthest point by data availability. Separate regressions for California and Oregon datasets allow for state specific conclusions, and a preliminary test is undertaken in California to establish whether the different types of direct democracy – the initiative and referral – are differentiated by the significance with which they predict candidacy.

The dataset used in each state to test the existence and extent of the profile effect is composed of cases of politicians represented by 121 Californian, and 153 Oregonian state legislators. For both state legislatures the sample is taken from the 1991-2 and 1993-4 sessions. The Oregon legislature, unlike the California legislature, sits part-time and in odd years.[5] A two session period was chosen both because it is small enough to allow coding of multiple variables for the large number of state legislators, and to ensure that all the cases were directly comparable, serving, as they do, within a short span of time. As well as this a full election cycle is covered for all the state-wide offices in Oregon and California so that cycle effects can be controlled for.[6] The dependent variable is coded according to whether a legislator went on to run for state-wide office in the next three election cycles, and the key explanatory variable is coded according to whether legislators were listed as a sponsor of a direct democracy measure. A long period of search for candidacy is used because the exact mechanism at work of the profile effect is not known. This relationship between future state-wide candidacy and direct democracy use can be tested using the logit model:

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[4] Oregon and California are ranked 1 and 2 for frequency on every measure of direct democracy use in the US. For a summary of the figures see Initiative and Referendum Institute report, November 2006. http://www.iandrinstitute.org/IRI%20Initiative%20Use%20(2006-11).pdf (retrieved December 2011).

[5] In Oregon there was a 1992 special session, but the set of legislators was identical to the 1991 session.

$$Futurecandidacy_i = \beta_0+\beta_1 Initiative_i+\beta_2 L_i+\beta_3 S_i+\beta_4 P_i+\beta_5 C_i+\beta_6 T_i+\beta_7 L_i P_i$$

Where the dependent variable for the test of H1, $Futurecandidacy_i$, is a future run for state-wide office by a politician within three election cycles. $Initiative_i$ is citizen-initiative use by a politician (although referral is an alternative independent variable in the test reported in Table 4.4). The exogenous variables included to rule out alternative explanations are: *L* as a measure of legislator's length of service; *S* is a dummy variable to indicate membership of the state senate; *P* is a dummy for Minority party membership; *C* is the point in the electoral cycle at which direct democracy was used; *T* is a measure of whether a legislator was a member of the party leadership. The interaction of length of service and party is included in the California model to account for a long period of one party government. *U* is an error term.

Table 4.1: State legislators' use of initiatives in Oregon and California (1990-1994).

	All initiatives	%
Legislator sponsor	36	37.5%
No legislator sponsor	60	62.5%
Total	96	100%

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[6] The gubernatorial cycles are aligned, occurring in non-presidential election even years. In Oregon the offices of state treasurer, secretary of state and attorney general are elected in presidential election years.

Tabulations 4.1 and 4.2 illuminate further the positive cases of the explanatory variable (direct democracy use) for the following tests. There are 36 of 86 total initiatives in Table 4.1 in which state legislators are sponsors. This shows the extent of the phenomenon of politician use. These measures generate 43 cases of politicians who use the initiative.

Table 4.2: State legislators' initiative use and candidacy in Oregon and California (1990-94)

	Not future candidate		Future candidate		Total	
Nor initiative sponsor	215	93%	16	7%	231	100%
Initiative sponsor	22	51%	21	49%	43	100%
Total	237		37		274	

Note: A special election was held in California in 1993

The explanatory variable which was discussed extensively above, is coded 1 if a state legislator used the initiative during the period 1990-1994 but was not involved in a run for higher office at exactly the same time. The central data used to identify the type and presence of the dependent variable in California is the Hastings Law Library Initiative and Proposition Databases which include details of all initiative and referral proponents.[7] In Oregon the initiative log was obtained from the secretary of state's office detailing the proponents of citizen-initiatives, whilst there is not accessible data available for legislative referrals.

The central test to attempt disconfirmation of hypothesis H1 is a logistic regression which assesses the significance of predictors of a candidacy for state-wide office. Hypothetically any use of direct democracy by a politician in the dataset before his or her candidacy for state-wide office counts as a positive case of the independent variable.

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[7] Accessible at `http://holmes.uchastings.edu/`.

However a limited window of direct democracy identification was used because the other part of the dependent variable (being a legislator), and the explanatory variable (candidacy) could only be coded for within a two legislative session window. Without measuring these other two elements for every case it is inappropriate to include direct democracy involvement before 1990 after the 1994 elections, because involvement could be linked to a previous candidacy (the coding used here counts the first instance of candidacy), or alternatively constitute a case of direct democracy preceding and even causing a legislative career.[8]

The proportion of candidacies that are explained by direct democracy use is therefore likely underrepresented in this sample, exactly because this coding strategy underestimates the number of politicians in the dataset who run for state-wide office, after having used direct democracy at times *outside* of 1990-1994.[9] The sample and coding strategy does, however not under ***or*** overestimate the number of politicians who use direct democracy 1990-1994 and then run for higher office. Therefore the test of the power of future state-wide candidacy to explain direct democracy use is robust. What is also not covered, for reasons of causal homogeneity, are the attorneys general, lieutenant governors, insurance commissioners and other state-wide office holders who whilst in these offices use direct democracy in advance of a run for a higher office (most often for governor).

Finally, all candidates who stand for state-wide office at the same time as using direct democracy are coded as non-users of direct democracy so as to remove agenda-setting motivations for use, and maintain causal homogeneity in the sample. If there is a case of use in session one but no candidacy, and then a candidacy in the next session, the politician is counted as a user of direct democracy as well as being coded as a future candidate.[10] This does not exclude the possibility that the politician may

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[8] Having said this, if career building type uses met the criteria here then their operation would be indistinguishable from that of the profile effect type.

[9] For example a legislator who is present in the 1992-4 session in the California legislature, who used an initiative in 1996 and runs for state-wide office in 1998.

[10] E.g. California Assemblyman Tom McClintock used direct democracy in 1990 and ran for state controller in 1994 and 2002.

Table 4.3: Rules for coding cases of direct democracy use

	Candidate 1990	Candidate 1992	No candidacy 1990-4
Legislator 1990 Only	NOT USE	USE	USE
Legislator 1992 Only	USE [no 1990 use]	NOT USE	USE
Legislator 1990, 1992	USE [no 1990 use]	USE [no 1992 use]	USE

also be a user in the year of running for office. It is just that such concurrent use is not directly relevant to the test of the profile effect. Therefore no cases of concurrent use are counted in the tests in this chapter.

Service length is coded for the number of years a member has served in either chamber at the start of the 1993 session, with the source being *Who's Who in the California Legislature* (Fourkas, 1994). Leadership was coded 1 if a legislator was a whip, leader or speaker (from the same source). The cycle effect is coded 1 if direct democracy was used during the first cycle 1991-1992 and 0 if used in the second cycle, 1993-1994. Minority party is coded 1 if a legislator is in the minority party. Any legislator who served in the state senate in either term is coded 1 for the senate variable.

4.3 Findings: State Legislators Use the Initiative for its Profile Effect

To recap: the dependent variable *future state-wide candidacy* is coded 1 if any politician is a candidate for state-wide office (which includes seeking a party's nomination) in the next three gubernatorial election cycles, including 1994, coded with data from official

Table 4.4: Logistic regression of future candidacy in Oregon & California

	Oregon	California
Initiative	3.103*** (0.667)	2.377*** (0.586)
Referral		-0.216 (0.563)
Constant	-2.986*** (0.458)	-2.531*** (0.393)
n	121	153
PseudoR^2	0.266	0.151

*p $\leq$ 0.10 **p $\leq$ 0.05 ***p $\leq$ 0.01

election returns published by the offices of the secretaries of state. The coding of these two key variables makes the test conservative but robust.

The results of the regression in Table 4.4 show that initiative use is a statistically significant predictor of future candidacy in California, but that referral use is not. This finding holds when adding the controls, including the minority party variable which will be key given the Democrats' dominance in 1990. The difference in the significance of initiative and referral use as predictors of future candidacy, displayed in Table 4.4, leads to the rejection of the null of H2 – the referral is not used for a profile effect.

The theory behind H1 – that the initiative is used for a profile effect – is supported in two ways by the differences in the relationship between use of the initiative and referral in California. First, as predicted, the initiative is the route to the ballot that politicians with concrete ambition for higher office use in the majority of cases to achieve their goal. The preference amongst prospective candidates for the initiative is confirmed by the figures in Table 4.7 on page 95.

Table 4.5: Logistic regression of future candidacy in Oregon & California

	Oregon		California	
	Coeff	SE	Coeff	SE
Initiative sponsorship	2.981***	0.864	2.596	0.583***
Length of service	-0.169	0.187	-0.031	0.065
Minority Party	0.252	0.997	-0.339	0.791
Leadership	-0.844	0.798	-1.628	1.881
Senator	1.700	0.830	-0.453	0.674
Long serving Democrat	0.234	0.181	0.031	0.069
Cycle effect	1.364	0.840	0.430	0.558
constant	-6.382**	2.134	-2.575	1.153**
PseudoR^2	0.430		0.362	
n	121		153	

*$p \leq 0.10$ **$p \leq 0.05$ ***$p \leq 0.01$

Table 4.6: Probability of future state-wide candidacy for initiative users in Oregon and California

Initiative use		Probability of future candidacy
California	User	52%
	Non User	8%
Oregon	User	65%
	Non User	7%

All values set to mean
Probabilities obtained using *clarify, simqi* commands

Second the fact that the costs of the referral depend on the legislative environment a legislator faces is supported by the rejection of the null of H2. The different units and distribution of costs of qualification for initiative and referral mean that users of the former are likely to be more optimistic about their chances of achieving state-wide office. In other words the resources needed to qualify a referral do not select the truly committed potential candidate whereas those for the initiative do.

Having established the distinction between the initiative and the referral in terms of use for a profile effect, the analysis proceeds using the initiative only as its key explanatory variable. In both California and Oregon a politician's initiative use is a significant and sizeable predictor of future candidacy, leading to the rejection of the null of hypothesis H1. The model displayed in Table 4.6 shows that the probability of a Californian legislator who is an initiative user running for state-wide office in the future is 52% (setting the value of non-significant variables to mean). This is a 44 percentage point probability change from the baseline of 8% for a legislator who does not run for state-wide office in the future. The differences in the figures are even larger in Oregon, where the statistic is significant at the same 99% level. The chances of an initiative user running for state-wide office in the next three electoral cycles in Oregon are 65%, compared to a similar baseline for the non-candidate of 7% probability for non candidates. This is a 58 percentage point change. On this evidence in both states hypothesis H1 is preferred to its null, which is rejected – initiative users are much more likely to run for state-wide office than their counterparts.

Of the control variables which represent the most credible alternative explanations, and those which might act as a joint cause for both the use of the initiative and running for office, only leadership is a statistically significant predictor of future state-wide candidacy and only in California. Senate membership, minority party and length of service are not significant in either state. The implication of this fact is that state legislators in both parties use the initiative. An interaction of length of service and party in California also proved not to be significant, showing that long serving Democrats do not provide a explanation of variation in initiative use. Divided government is mirrored in the California Oregon divide – it is present in California and not in Oregon for the whole period covered by the dataset. However even when the cases from both the states are run in a model together which includes a divided government variable then its effects are not significantly different from zero. However in regards controlling for a policy type use of the initiative the inclusion of the minority party is the salient piece of information, as it refers directly to congruence between the legislator and the majority, most likely to oppose him/her. The coefficient for the minority party variable does not approach statistical significance at even the 90% confidence level.

The non-significance of the senate membership variable deserves attention because it tracks two groups of politicians who might be expected to have very different ambition and profile attributes. The senate variable might have been expected to explain a lot of the same variation in future candidacy as initiative use, the key explanatory variable in this chapter. If the effect of state senate membership is tested without the candidacy variable in the regression then the statistic approaches significance.[11] It might be that senate membership is only a significant predictor of initiative use if the senator is also a future candidate. The inclusion of an interaction term for candidate and senate

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[11] With a p value of 0.067.

Table 4.7: California state legislators' direct democracy use by type

	Future candidate		Not a future candidate		Total	
Initiative sponsorship	12	46%	14	54%	26	100%
Referral sponsorship	4	12%	28	88%	32	100%
Neither	7	7%	88	93%	95	100%
Total	23	15%	130	85%	153	100%

Table 4.8: Oregon state legislators' initiative use

	Future candidate		Not a future candidate		Total	
Initiative sponsorship	9	53%	8	47%	17	100%
No initiative sponsorship	5	5%	99	95%	104	100%
Total	14	12%	107	88%	121	100%

variables however did not prove to have an effect that was significantly different from zero. This lack of explanation power from the senate variable may result from the fact that future candidacy is measured over a long period in this test. It is reasonable to think, given the profile expanding theory which generated hypothesis H1, that more runs for state-wide office are from the state senate than the lower chamber. This is masked in a regression of candidacy and senate membership because politicians may move to the state senate before running despite being in the house in the 1990-4 dataset. It does not however present any new problems for the rejection of the null of H1.

The question of how much of the variation in initiative use is explained by the future candidacy variable is important here. The hypothesis calls theoretically for a high level of explanation of the variation as there is no alternative category of use that is being offered to explain the initiatives put forward by state legislators, and the control variables added little to the explanation. The pseudo R^2 value of the California and

Oregon models are 0.436 and 0.362 respectively. But caution is needed in interpreting these figures too heavily outside of a comparison of models as they are not a direct measure of the amount of variance explained.[12]

The above tests have shown that there is a link between direct democracy sponsorship and running for higher office. There is a further question that is of interest – how useful are the profile effects of a direct democracy campaign for an average future candidate? To assess this the number of candidates who used direct democracy in the sample of state legislators is analysed. Table 4.2 on page 88 details how, of the 37 politicians in the California and Oregon samples who subsequently ran for state-wide office, 21 of them used direct democracy beforehand (in the window of time observed). This shows the profile effect to be a widely used tactic for candidates. Table 4.8 on the previous page details that in Oregon, of the 14 legislators who ran for state-wide office in the next 3 election cycles, 9 had used the initiative in the sample period. This leaves only 5 of those legislators who went on to become candidates, as non-users of direct democracy.

California exhibits similarly high levels of initiative use amongst future candidates. Table 4.7 illustrates that of 23 future candidates, 12 legislators used the initiative prior to running for office, leaving 11 others who did not use the initiative. The results are even more striking considering that there are other ways for rational politicians with an intent to seek state-wide office to gain the political profile to become a candidate. Combined with the necessarily conservative measurement produced by the coding of direct democracy sponsors, this makes the implications very significant for an understanding of state legislators' career paths. Not only do the results mean that most (and in discussion of outliers it is suggested, almost all) initiative sponsorship by state legislators is due to profile seeking, but the initiative has also been found to be useful for a large percentage of these office seekers.

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[12] Unfortunately as Greene notes the values between 1 and 0 have no natural interpretation, though it has been suggested that the pseudo R^2 value increases as the fit of the model improves (Borooah, 2002, p. 57).

As introduced in the alternative explanations section, a competing explanation for the profile effect is that there is an attribute of politicians who go on to be candidates (*qua* character) that systematically makes them more likely to be users of the citizen-initiative (other than their desire to benefit from the profile effect). The example given in the profile literature is that of skill in fund raising. However, if this is the case then the return for those politicians who use direct democracy must be shown. The relationship identified between future candidacy and initiative use above shows the opposite – that the return is toward state-wide office seeking.

As a further answer to both the last two objections, the fact remains that the tests in this chapter have shown that there is *a* mechanism linking direct democracy use and a run for state-wide office. The profile effect hypothesised remains the most plausible candidate for its explanation. It is parsimonious and explains much. This last point about parsimony and explanatory power raises, and then answers the final, and most forceful, alternative explanation for the results. It remains entirely consistent with the findings in Table 4.5 on page 92 that it is the initiative which causes the run for higher office rather than an intent to run for higher office which causes both initiative and future candidacy. For *prima facie* parsimony this theory is to be preferred. Its explanation however is dramatically weaker than H1 and is, all things considered, less parsimonious. For the initiative to be the cause of the run for higher office the profile mechanism must operate to generate the relationship seen, in the same way predicted in H1. However no explanation is provided for why the initiative is used in the first place – why significant resources are expended – and moreover the best candidates for this joint cause have been taken into account already (i.e. seniority). Therefore the new (supposedly more parsimonious) explanation has to provide a wholly new motive for the initial initiative use.[13] With the addition of this new motive, unrelated to office seeking, the new explanation fails to be more parsimonious than H1. The fact that the incurred cost *is explained by* the benefit lies at the heart of the theory behind H1 and is

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[13] Bearing in mind that this chapter has given good reason for ruling out other motives for politician use of direct democracy.

Table 4.9: Electoral performance of state legislators (1990-1994) who went on to run for state-wide office in Oregon and California

	All				Qualified				DNQ				Total	
	Primary win		Primary Loss		Primary win		Primary Loss		Primary win		Primary Loss			
No initiative use	5	31%	11	69%	–		–		–		–		16	100%
Initiative use	13	31%	8	19%	9	21%	4	10%	4	10%	4	10%	42	100%

	General win		General Loss		General win		General Loss		General win		General Loss			
No initiative use	2	40%	3	60%	–		–		–		–		5	100%
Initiative use	4	15%	9	35%	2	8%	7	28%	2	8%	2	8%	26	100%

its strength. H1 provides a significantly superior explanation in both parsimony and explanatory power.

4.3.1 Did They Win?

The aim of this chapter in the first instance is to assess whether state legislators *think* they will benefit from a profile effect when engaging in direct democracy. The corollary to that question is do they? Without a full model of success for state legislators in state-wide elections (a project in itself requiring many more cases and a lot more contextual data for each), inferences can only be tentative. If the cross tabulation in Table 4.9 of those state legislators who use the initiative and those who do not (of those who run for state-wide office) is a guide, the profile gained from initiative use helps in primary elections but is no help in the general election. A state legislator who uses an initiative and then goes on to lose the primary election is in a minority of 8 out of 21 whereas a state legislator who does not use an initiative but then goes on to win a primary election is in a minority of 5 out of 16 according to Table 4.9. The distribution of the offices the two groups run for are broadly similar with 5 US Senate, 3 governor, 13 other state-wide office races amongst initiative users, as opposed to 4 US Senate, 2 governor and 10 state-wide for non users. The breakdown by qualification status of the 14 whose measure qualified 9 won and 4 lost, whereas of those that failed to qualify the balance is 4 to 4. Table 4.9 also displays figures for general election contests, but the number of cases is extremely small. A tentative conclusion would be that the initiative is of use in primary election contests but not in general elections. Of note, only one state legislator in the sample went on to win the office of governor or US Senator (John Kitzhaber) and he did not use the initiative.

4.3.2 Further Discussion

Tables 4.7 on page 95 and 4.8 on page 95 provided an illustration of the amount of explanation contributes by the initiative sponsorship variable. Of those 43 candidates who used the citizen-initiative, 21 were recorded as running for state-wide office in the future. This means that there are 22 cases of initiative use by state legislators, across the two states, that remain unexplained by the model (i.e. they did not run for state-wide office), and it is to these cases that the analysis now turns. The method used in the above tests may be responsible for the unexplained variation in initiative use. First because of the way that the actual run for office in a primary race is used as a proxy for the desire for state-wide office, perhaps many years earlier and second because there may be other offices for which state-wide profile is beneficial.

The next section involves an exploration of any unfortunate barriers that might have arisen to prevent the initiative users from seeking higher office. Many factors mediate a desire for, and an actual candidacy. Politicians who intend to run for office may use the citizen-initiative for its profile effect and then, for many possible reasons (not least of which, illness/death), fail to run in a primary race and do not register as future candidates. The cases of initiative use by state legislators who *do not* subsequently run for the state-wide offices coded under the explanatory variable may fit a pattern which either supports hypothesis H1, or suggests which of the other types of effects are relevant.[14]

In Oregon of the 8 politicians who are outliers, the first, Bob Tiernan, ran for State Supreme Court Justice in 1998 but pulled out unexpectedly. The fact that he ran in the first place fits well with H1 because the initiative identified with him in 1994 concerned crime. The second, Liz Van Leeuwen, ran for a seat in the United States Congress in 2002 after she was term limited out of the state legislature. The third, Mike Burton, became a metro executive.[15] The fourth, Bob Shiprack, whose initiative concerned fishing, is the exception in not having held elected office after leaving the legislature in 1994.

Four out of the eight outliers did not seek the state-wide offices coded for in the dataset, but sought other offices instead. It is not known whether this is because there was an original intention to run for state-wide office and that this was subsequently thwarted – there was no evidence of this in newspaper archives but, for example, illness or personal problems concerning state legislators may stay out of sight – or whether the intention in any of these cases was always to run for the non state-wide office that they sought. If this latter explanation applies then these politicians might in fact have used the initiative to help them do so. The theory set out at the start of this chapter argued for the former explanation and that the profile effect does not operate for non-state-wide offices, but these cases may be exceptions, as the link demonstrated between direct democracy and office seeking is strong with these cases of sub-state office seeking. It remains hard to discriminate these cases from the population of all state legislators, to see whether the initiative predicts runs for other state-wide offices, without a large amount of coding work.

If the Oregon outliers for the most part elude the coding of the explanatory variable by seeking sub-state and uncoded state-wide office, the California outliers mostly elude the coding by having their ambition for state-wide office thwarted. There are

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[14] Those measures which qualified.

[15] The regional government for the Portland metropolitan area

12 legislators in California who are outliers with respect to H1, in that they use the initiative but do not run for state-wide office. The first, State Senator Frank Hill, is representative of the group. He was an initiative proponent in 1992 and was in the process of running another initiative campaign in 1994 when he was jailed for four years on political corruption charges.[16] This means that he was by law unable to seek higher office. The second, Dick Floyd ran into controversy in 1991 when pushing through bike helmet legislation:

> Former Assemblyman Dick Floyd, D-Gardena, was caught distorting critical data to win passage of his legislation. When asked to comment to a *Mercury News* reporter just before the bill signing, Floyd used an obscenity typically associated with Quigley. “Who gives a . . .," he said. “I don’t care what the figures are."[17]

Floyd served in the state assembly till 2004 and was term limited out of office losing a subsequent primary for State Senate in 2000. Failure to make this additional step to the Senate left him stranded by term limits without a seat presumably damaging any hopes he had of state-wide office holding. The third, State Assemblyman Patrick Nolan received a 33-month gaol sentence for racketeering.[18]

The fourth outlying case, Don Rogers, was term limited out of the Senate in 1996. He circumvented the operationalisation of the explanatory variable by pursuing an office that is not included in the coding of future candidacy. In 2000 he ran unsuccessfully for the presidency of the United States representing the American Independent Party. The fifth, Robert Presley ran for the State Board of Equalization in 1998 and lost, serving next as head of Youth and Adult Corrections under Governor Gray Davis until 2003.

The four cases which exhibit a barrier to a run for state-wide office provide good support for H1, and reflect the inevitable complexity of deriving theory in such a complex environment over a relatively long period of time.

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[16] *The San Francisco Chronicle,* ‘Cleaning Up The State Capitol’, September 14, 1994.

[17] *San Jose Mercury News,* ‘Biker Holds Own Wake: Helmet Gadfly Bids Friends Farewell’, November 13 2005.

[18] *The San Francisco Chronicle*, ‘Assemblyman Pleads Guilty To Racketeering Nolan gets 33-month prison term’, February 19 1994.

One of the premises set out at the beginning of this chapter was that there were no plausible uses of direct democracy motivated by electoral or institutional gain available to state legislators other than the profile effect and electorally advantageous rule changes. In the sample of politician use of direct democracy there are four cases of direct democracy use with constitutional rule changing implications of which one was an initiative.[19] This one case that remains a candidate for state legislators changing the constitution for non-electoral reasons, is that of Ross Johnson who, as a proponent of a campaign finance measure, was a member of the Republican leadership and ran for the Republican nomination for attorney general in 2006. That there is only one case of a rule changing initiative having been used by a state legislator means that the possibility of confusion between *profile* and *rule* changing initiative is not a serious problem for the soundness of the support for H1. Furthermore one can imagine a situation in which campaign finance happened to be the subject on which Johnson decided to boost his profile and differentiate himself from other candidates, in the same way that Jerry Brown successfully distinguished himself from the establishment in the 1974 primary election with Proposition 9 (Schmidt, 1989; Smith and Tolbert, 2004, p. 118). The measure labeled Johnson as a campaign finance reformer, as in early 2007 Governor Schwarzenegger appointed him as chair of the Fair Political Practices Committee.

4.4 Summary

In answer to the research question, ‘Why do politicians use direct democracy?’, it has been shown that state legislators use initiatives, in a substantial number of cases, in advance of a run for state-wide office. The probability of future candidacy for an initiative user in California and Oregon was dramatically higher. Further it has been shown that of the initiative and referral the initiative is the important predictor of a future run for state-wide office. All this evidence strongly supports the existence of a profile effect of direct democracy.

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[19] The four were: the two proponents of Proposition 109 (to extend the period of time for governors to review bills), one proponent of Proposition 183 (the clairvoyant referral which established special elections for the recall of state officials) and Ross Johnson’s initiation of a campaign finance initiative.

Chapter 5

Campaign Effects of the Initiative

The citizen-initiative can have a powerful effect on election campaigns (Nicholson, 2005). It has the potential to boost the profile of a candidate, alter turnout, change and frame the salient issues (and the candidates' positions) and an initiative campaign committee can raise and spend money in a unrestricted manner (relative to most candidates). This chapter argues that politicians, being purposive and rational actors, often take advantage of these effects to gain a comparative advantage over their competitors.

5.1 Introduction

> Despite the agenda-setting power of direct legislation, most candidates choose not to invest in the process given its high costs. (Nicholson, 2005, p.92)

Some candidates do use direct democracy in their campaigns and these candidates make up the positive cases of the dependent variable in this chapter's tests. The first test examines the frequency with which candidates become initiative proponents, demonstrating that candidates believe there is at least one advantage to running their own initiative – a campaign effect (or what could be called a candidate effect, describing the attributes of the initiative users).[1] A second test suggests the existence of one overriding motive for these uses of the citizen-initiative by politicians, an agenda-setting effect, with candidates riding a wave of public support for an issue.

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[1] Dempsey (2007) lists the following examples: 'the death penalty measures in 1972 and 1978 that aided George Deukmejian in his 1978 run for Attorney General and 1982 campaign for Governor, and the "Big Green" environmental initiative in 1990, which was led in part by gubernatorial candidate John Van de Kamp'.

There has been little written on the effects of initiative campaigns on candidate campaigns, but more importantly there has been even less systematic and sustained analysis.[2] Therefore to illustrate the theory which is set out in Chapter 2, and expanded on below, it is useful to present introductory cases to prototype the type of use searched for systematically later, and to ground the hypotheses that follow. The identification of these introductory cases results from evidence spilled over from the research for Chapter 7, which focuses on gubernatorial use of the initiative.[3] In fact, as this chapter shows, there are so many cases that crop up involving candidates who are running for state-wide office it is very difficult to think of a plausible explanation which might inspire these uses beyond a connection with election campaigns.

The first prototype case, involving Jim Gibbons, was selected because there exists compelling evidence both in terms of the explanation for his use and the evidence that Gibbons is involved in launching the initiative campaign. The second prototype case, involving Tom Bradley in California, was deliberately chosen because it contains some ambiguity on the same two counts (and for this reason would not have qualified as a positive case under the coding of the dependent variable used in this chapter). That is, it was chosen to show cases of use of the citizen-initiative that are *prima facie* epistemologically difficult, but are genuine. The example shows, in such cases, how close it is possible to come to establishing a benefit from use. This is important, in case the reader thinks that the difficulty presented in identifying the dependent variable means the scope of this phenomenon is less than claimed. In fact positive cases similar to Proposition 65 in 1986, impossible to code systematically, suggest that the scope is probably larger than the tests in this chapter demonstrate.

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[2] The literature being Hasen (2000); Garret and Gerber (2001); Smith and Tolbert (2001); Garrett (2005); Staszewski (2006); Bowler, Nicholson, and Segura (2006); Dempsey (2007), with Nicholson (2005) the only systematic test. It is interesting to note that even although the political science literature was out in front of direct democracy questions *per se*, it is legal scholars who have provided compelling (if not systematic) accounts of candidates' uses of direct democracy. Also worthy of a mention is Salvano (1998), which although unpublished, looks at the amount of candidate centered initiative voting on the basis of a sample of actual ballots from the 1994 general election in California (this is better described as initiative-centered candidate voting). It contains fascinating work isolating the link between voters' choices on each ballot measure with their choice of gubernatorial candidate.

[3] When identifying cases of gubernatorial use of the initiative there were a number discovered in which governors ran for re-election, or where gubernatorial candidates, running for the first time, were using an initiative.

5.1.1 Jim Gibbons, Nevada, 1994, Question 11

Jim Gibbons was governor of Nevada from 2007 to 2011. In 1994 he was a pilot for Delta Airlines, a member of the Nevada Assembly and the Republican nominee for governor. This is what the *Washington Times* said of Gibbons in June of that year:

> In Nevada, while their U.S. Sens. Harry Reid and Richard Bryan are busy pushing legislation on the Hill to increase taxes and spending, gubernatorial candidate Jim Gibbons is circulating a measure that would require "a two-thirds vote of the legislature prior to increasing taxes." Mr. Gibbons' initiative is one of three tax initiatives in the state and is very likely to appear on the November ballot.[4]

Gibbons beat the Secretary of State Sheryl Lau in the Republican gubernatorial primary of that year.[5] On September 8 the *Washington Post* reported:

> A poll leading up to the primary showed Gibbons in a close race with Lau...But Gibbons picked up steam by focusing on his November ballot proposal to restrict tax increases state-wide.[6]

The *New York Times* also reported that Gibbons's sponsorship of Question 11 helped him win the Republican primary:

> Analysts say the Republican primary is too close to call; a recent poll in *The Las Vegas Review-Journal* shows Mr. Gibbons edging ahead of Ms. Lau after lagging previously. Mr. Gibbons's prospects and name recognition have been enhanced by his proposal for a constitutional amendment that would require a two-thirds vote in the Legislature before any tax could be raised.[7]

The comment that during the primary the profile of the candidate had been raised is particularly relevant as an alternative to an agenda-setting effect. During the general election campaign the *Los Angeles Times* ran with the headline 'Nevada Governor to

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[4] *The Washington Times*, 'The future of direct democracy', June 1, 1994.

[5] Lau was the first Asian American to win state-wide office.

[6] Associated Press, *Washington Post*, September 8, 1994.

[7] *New York Times*, 'Nevada Girds for Primary Vote', September 06, 1994.

Face Anti-Tax Crusader'[8] and *The Hotline* described Question 11 on October 13 in the following way:

> NV Question 11 The Gibbons Tax Restraint Initiative — taxes to be approved by 2/3 of legislature. Assemblyman Jim Gibbons (R), who is running for gov., has made this the centerpiece of his campaign.[9]

However the general election went poorly for Gibbons as he lost to the incumbent, Governor Bob Miller, 53 to 41 percent.[10]

5.1.2 Tom Bradley, California, 1986, Proposition 65

Tom Bradley's second bid to become governor of California, in 1986, and its relation to Proposition 65, provide a much more complicated case – not least because Bradley denied that he had any role in the early stages of the initiative.[11] Proposition 65 was an initiative statute designed to control toxic discharges into drinking water, and it came to dominate the 1986 election in California.[12] The initiation of the measure is attributed to Jane Fonda, the wife of Assembly speaker Tom Hayden. In a characteristic bizarre twist for initiative campaigns:

> Fonda and other stars – among them Morgan Fairchild, Chevy Chase and Whoopi Goldberg – staged the "Hollywood Clean Water Caravan" through the state last month to stump for the initiative.[13]

It is first shown that Bradley used the initiative to aid a campaign against incumbent governor George Deukmejian, before showing how he was tangibly linked to it.[14] Bradley demanded that Deukmejian take a position on the three initiatives on the ballot and once he did, Bradley repeatedly lambasted Deukmejian for supporting toxic polluters:

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[8] *Los Angeles Times*, September 8, 1994.

[9] *Hotline*, October 13, 1994. (*Hotline* is a political briefing for congressional staffers and pundits published by Atlantic Media).

[10] In the Democratic primary Governor Bob Miller, facing Las Vegas Mayor Jan Laverty Jones, came under attack for his position on the legality of abortion.

> Jones's campaign concentrated on attacking the governor's position on abortion. As a Catholic, Miller was personally opposed to abortion, but he countered that he had favored a popular referendum on the abortion question in 1990. (Driggs and Goodall, 1996)

This was Question 7 in 1990 and it is a very good example of deferring responsibility for a choice, a use set out in the introduction to this thesis.

[11] The 1986 election was a rematch between George Deukmejian and Tom Bradley. Irrespective of any racial bias, Bradley suffered from high turnout in Deukmejian supporting rural areas in opposition to a gun control measure, Proposition 15, which was heavily defeated.

[12] The headline of the *San Diego Union Tribune* on November 2 was 'Toxics issue draws much heat; Proposition 65 is central topic in California campaigns'.

[13] *The San Diego Union-Tribune*, 'Toxics issue draws much heat; Proposition 65 is central topic in California campaigns', November 2, 1986.

> With less than two weeks remaining in the gubernatorial campaign, Democratic candidate Tom Bradley is focusing on how he and his opponent Gov. Deukmejian differ on Proposition 65, the so-called toxics initiative. "The powerful toxic-waste pollution industry has given over a half million dollars to George Deukmejian," Bradley said yesterday in San Diego.[15]
>
> Bradley, posing for the cameras so that San Francisco Bay could be seen in the background, thanked the group [of prop 65 supporters] for its support and criticized Deukmejian, saying he "has put a 'for sale' sign up and down the coast of California." "He single-handedly tried to torpedo the moratorium which protected the coast from drilling" by oil interests in search of new petroleum fields, Bradley said. Bradley also said Proposition 65 has been "put together by some of the most careful lawyers in the state" and said Deukmejian is criticizing the measure as poorly drafted because "he has nothing else on which to base his opposition."[16]

It is much harder to establish a direct causal link between Bradley's campaign and Proposition 65. However the starting point for such an argument is the last, and incredibly close, gubernatorial race between the two candidates, and the hit that Bradley took both in terms of turnout and the issue agenda from his opposition to Proposition 15, a handgun restriction measure:

> Early this year, when the measure was still in the petition stage, one Bradley adviser voiced hope that the toxics initiative would become "our Prop. 15" – a reference to the 1982 gun-control initiative that many believed caused Deukmejian's razor-thin victory over Bradley by attracting large numbers of rural conservatives to the polls to vote against it.[17]
>
> Liberal Democrats and environmentalists wrote the measure along with aides to Los Angeles Mayor Tom Bradley, the Democratic candidate for governor. Democratic Senator Alan Cranston, Zschau's rival, loaned them $25,000 in campaign funds to get the initiative drive started. Other big fi-

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[14] Deukmejian himself was as far away from being a stranger to the initiative process as it is possible to get. Deukmejian launched a 1970 Tax exemption for pensioners and blind veterans, and a 1972 death penalty measure, which set up his profile on crime and tax cuts. Then whilst governor he used the citizen initiative repeatedly. In fact 1986 is the only year he abstains.

[15] *The San Diego Union-Tribune*, 'Bradley knocking Deukmejian on toxics initiative', October 22, 1986.

[16] *The San Francisco Chronicle*, 'Sierra Club Endorses Bradley' 4 September 1986.

[17] *The San Diego Union-Tribune*, 'Toxics issue draws much heat; Proposition 65 is central topic in California campaigns', November 2, 1986

> nancial backers were Assemblyman Tom Hayden, D-Santa Monica, and his wife, actress Jane Fonda, through Hayden's group Campaign California.[18]

It is tantalisingly straightforward to imagine that the Bradley campaign tried to turn the tables four years later:

> Democrats have attempted to counter with a new, potent issue of their own - toxic waste. Republican candidates have been accused of being soft on polluters who give them campaign contributions and for opposing Proposition 65, the toxic waste initiative. The initiative, whose chief sponsors include Democratic legislators and aides to Bradley, would make it illegal to knowingly discharge carcinogens into drinking water supplies.[19]

The quote below shows that opponents of Bradley and the initiative think it is a tool for Bradley, and that the two campaigns were running joint commercials:

> Democratic gubernatorial nominee Tom Bradley and proponents of a toxic-control initiative have decided to give their cash-starved campaigns a boost by jointly producing television commercials. The unusual television buy on Los Angeles stations immediately sparked charges that the link-up was proof that the anti-toxics measure, Proposition 65, was authored as a tool to help Bradley oust incumbent Republican Gov. Deukmejian. "It irretrievably ties the Bradley campaign to the Proposition 65 campaign," declared Michael Gagan, spokesman for the committee opposing the measure. "I think it confirms our allegations that we've made for some time that the two are inseparable, that Proposition 65 was deliberately placed on the ballot as a device that Tom Bradley could use to run for governor." But spokesmen for both Bradley and the Yes-on-65 campaign insisted the proposition is a non-partisan, meritorious measure and that the sole purpose of the joint effort is to save money on increasingly expensive broadcast time. "It allows us to get double the frequency," said Tom Epstein, manager of the pro-65 committee. "We figure we couldn't outspend the other side so we'd better outsmart them."...The collaboration is possible because Bradley and the pro-65 group share the same media-buying company and because the Los Angeles mayor has come out in support of the measure...The connection came to light in a financial disclosure statement filed with the secretary of state's office showing a $125,000 contribution from the Yes-on-65 committee to Bradley.[20]

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[18] *The San Francisco Chronicle*, 'Angry Crowd at UC Santa Cruz / Zschau Dives Into Protesters', August 28, 1986.

[19] *The San Francisco Chronicle*, 'AIDS, Pay Limits, Water / Governor's Stands on Ballot Issues', 3 September, 1986.

[20] *The San Diego Union-Tribune*, 'Bradley links with Prop. 65 for TV ; Backers deny measure a tool', 23 October 1986.

There are three bits of circumstantial evidence that support the hypothesis that Bradley is using proposition 65 as part of his campaign. The first concerns the relationship between Bradley and Tom Hayden. The two are extremely close friends and colleagues, and so it is entirely plausible that Hayden was either a conduit for Bradley on 65 or that they simply conspired. Second, LA county district attorney Ira Reiner is one of the principal spokesmen for 65.[21] There is a straightforward link between Reiner, the Democratic DA of LA and Bradley the Democratic Mayor of LA. The third piece of circumstantial evidence is that:

> One of the principal drafters of Proposition 65 was Tom Houston, Bradley's chief of staff.[22]

Another way to approach the question of whether the use was part of the Bradley campaign, is to ask what else the initiative could have been for besides the Bradley campaign. If the fingerprints of the Democratic Party are unmistakably on Proposition 65 could it not have been a tool to be used in the equally high profile senatorial race mentioned above. The LA Times offers evidence to the contrary in an article titled *Senate candidates forced to take position on Prop 65*. The issue ends up dominating the Cranston–Zschau senate race, splitting down the same party lines. So the party tie motive is also plausible and is the one favoured by Schmidt (1989, p. 28) and Dempsey (2007). The link between Bradley and Proposition 65 is summed up by Steve Peace:

> Side effects from initiatives are nothing new, but some politicians are critical of what they see as a growing trend."Basically they are becoming political tools for people to promote themselves, their party and partisan agendas," said Assemblyman Steve Peace, D-Chula Vista. Peace said the political machine of Assemblyman Tom Hayden, D-Santa Monica, did not have environmental concerns at the top of its list when fashioning the toxics initiative. The prime beneficiary, he said, was supposed to be Los Angeles Mayor Tom Bradley's gubernatorial campaign.[23]

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[21] *The San Diego Union-Tribune*, 'Toxics issue draws much heat; Proposition 65 is central topic in California campaigns', November 2, 1986.

[22] *The San Diego Union-Tribune*, 'Politicians seek good in pollution; Bradley, Deukmejian both use other's toxic-waste record as campaign issue', September 7, 1986.

[23] Michael Smolens, *The San Diego Union-Tribune*, December 8, 1986, 'Special interests make inroads into initiative process'.

This coming from the Democratic majority whip. Peace is quoted further in the *San Jose Mercury News*:

> "Proposition 65 was cooked up as a political ploy to use against the governor and other Republican candidates. As such, it was purposely drafted in an irresponsible manner in order to ensure that neither the Legislature nor the governor could embrace it. "While I support Mayor Bradley's effort to be elected governor," continued the Democratic assemblyman, "I do not intend to subvert sound policy judgment in the interest of political gain. Proposition 65 would embroil this state in a permanent state of litigation with little or no prospect of improving water quality.[24]

What has been shown is the presence of a link between the Proposition 65 campaign and the Bradley campaign. The best explanation is that there was a purposive use of the initiative by the Bradley campaign. If there was any doubt on the basis of the circumstantial evidence, the $125,000 transfer from the Proposition 65 campaign to Bradley serves to show otherwise. Describing the Field exit poll:

> The vote to clean up toxic wastes, which was thought to be the secret weapon of Democratic gubernatorial hopeful Tom Bradley, turned out to be harmless against Governor George Deukmejian. Bradley's position favoring a strong program to clean up toxics was far down the list of reasons people gave for their Bradley vote. Proposition 65, the clean-water initiative, drew support from Republicans as well as Democrats, conservatives as well as liberals, young voters as well as old. It also drew support from voters in all ethnic and income groups.[25]

5.1.3 Campaign Effects of Direct Democracy

This section sets out the possible ways in which politicians could use direct democracy in the light of existing literature and theory in Chapter 2: to affect campaigns by changing the issue agenda and by framing issues and candidates' positions on those issues. It was argued in section 2.8 on page 46, from diverse evidence, and with corroboration from other authors, that Governor Pete Wilson carried out an example of the agenda-setting use of direct democracy in his 1994 re-election bid. In this chapter the cases of Jim Gibbons and Tom Bradley were added. Bradley's use of the initiative was, on paper, skillful. By finding a popular issue that Deukmejian would have to oppose, Bradley was able to drive a wedge between the two candidates (although as the Field Poll suggested the issue was not salient) associating himself with the more popular side of the issue. What appears to be an example of the tactic described below as issue ownership.

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[24] *San Jose Mercury News*, 'Cutting through Hype on Toxics - Proposition 65 does not Affect Cleanup or Push Recycling', September 21, 1986

[25] *The San Francisco Chronicle*, 'EXCLUSIVE POLL / Voters Unimpressed By Negative Campaigns', 5 November, 1986.

Many authors have sought to determine whether elite endorsements of ballot propositions act as cues for voters' decisions (Branton, 2003; Sigelman, 1989; Raymond E. Wolfinger, 1968; Lupia, 1994; Hobolt, 2006). Only a small literature has asked whether ballot propositions might act as beneficial cues in candidate elections for one candidate or the other, that is whether the causation can run in both directions from proposition to candidate/party as well as from candidate/party to proposition (especially Nicholson, 2005; Bucy and Ensley, 2009).[26]

Having demonstrated how this tactic might work, a systematic test is needed to show how much candidates use direct democracy (in this case the citizen-initiative), and essentially, that this use is significantly different from the background involvement found amongst politicians who are not candidates for higher office. It is suggested in this section that direct democracy could alter the salience of an issue, frame an issue, and prime voters' reception of candidates' positions on an issue in the minds of voters to the advantage of the user of direct democracy.[27]

5.1.4 What is a Campaign Agenda, and do Agendas Matter?

An agenda is taken here to mean the set of issues that are salient (that matter for vote choice) during an election campaign. Therefore for the agenda to matter voters must, to some extent, vote based on these issues and direct democracy must impact them. This chapter restricts its focus to causal links between candidate campaigns and the initiatives used by *those* candidates in *their* campaigns. The existing literature does not. Instead where the effect of the initiative has been shown (and where it has been argued against), analysis of the agenda effects of direct democracy has been on the basis of prior priming and spillover from direct democracy to candidate campaigns, *regardless of the link between the two*. The criticism of Nicholson (2005) by Abramowitz (2005) is particularly telling on this point. Abramowitz cites figures showing that George W. Bush won in a consistent manner in states with and without same-sex marriage ban initiatives on the 2004 ballot. This critique is fair given what Nicholson claims to have shown about agenda priming from one (initiative) campaign to another (candidate) campaign at the same election. However in doing so Nicholson claims more for agenda altering than does this thesis. In this chapter it is claimed only that politicians who actually use direct democracy believe that their own race for office will be altered by its effects. In other words the examples of the strongest agenda effects, where politicians are directly linked to an initiative, are yet to be tested in isolation. That is what is done here.

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[26] Others include Hasen (2000); Tolbert, Grummel, and Smith (2001); Smith and Tolbert (2001); McCuan and Stambough (2005).

[27] This effect ought to apply to a proposition, originating in the state legislature, which state legislators have their names attached to in a campaign. For example John Seymour was a state senator who Pete Wilson appointed to the US Senate in 1991. Facing a special election in 1992 he wrote a legislative referral (Property tax postponement prop 192), before leaving the State Senate, that ended up on the 1992 ballot along with his own candidacy for US Senate.

Recent revisionist research on presidential elections supports the finding of earlier work, of the *Columbia Studies*, specifically in Berelson, Lazarsfeld, and McPhee (1954, chapter 7), which claim that issues are central to candidate evaluation.[28] Those studies that have looked at salient issues in low information elections bear this out. Carsey (2000) and Abbe et al. (2003) show that when issues do *become* salient their effect on voting behaviour is marked.[29] This research focusing on saliency runs contrary to work which considers issue voting tout court. Campbell et al. (1976); E. Smith (1989) dismiss the idea that voters can or do make issue-based voting decisions. At the state and substate level Ferejohn (1993); Stokes and Miller (1962); Mayhew (1974) have focused on the sparsity of information which voters have, compared to the amount available to them in presidential elections, and have therefore been sceptical about the importance of issues in voting behaviour.

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[28] For corroboration see Alvarez (1997); Bartels (1988); Popkin (1991).

[29] See also Hutchings (2003).

Studies of gubernatorial elections in Chubb (1988); Howell and Vanderleeuw (1990); Leyden and Borrelli (1995); R. M. Stein (1990) also play down issue voting. In the case of gubernatorial elections the variables under consideration cover almost wholly the question of whether national or state economic factors are primary in voting behaviour for the office of governor but also fail to consider salience. More recent research looking specifically at ballot measures shows otherwise. Nicholson (2005, pp 15-31) has put forward a persuasive explanation of the way agendas affect voters' views of a candidate, changing the criteria voters use when choosing between them. This chapter is concerned, not as Nicholson (2005), with showing the micro-effects of agenda priming on voters (whilst relying on it), but rather with the macro-manipulation of campaign agendas by politicians who think that this will prove a successful strategy.[30] This is a crucial distinction. Agenda manipulation has the potential to impact candidate elections more significantly than spillover effects, but also will generate stronger links between candidates who are integrally associated with a ballot measure.

As well as suggesting the importance of salient issues in voting behaviour the theory presented in Chapter 2 and expanded here, and the outcome of later tests, fits in with work in the literature that emphasises elite control over agendas. Carmines and Stimson (1989) for example show that those issues that survive, albeit over the long term, are selected by politicians. Direct democracy campaigns would be one more way to achieve this end. The common game for politicians relevant to this thesis involves the use of direct democracy to make issues favourable to them salient, to frame those issues in ways that are beneficial and where relevant to do both these in such a way as to frame their opponents disadvantageously.

The above evidence about the information voters have has shown that in many elections what is being transmitted to voters about candidates is that they are proponents or opponents of propositions which are also on the ballot. It is further suggested here, that direct democracy, which produces binary yes/no positions on any issue,

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[30] There is also the question of long term effects on political parties that the initiative engenders (Bowler, Nicholson, and Segura, 2006).

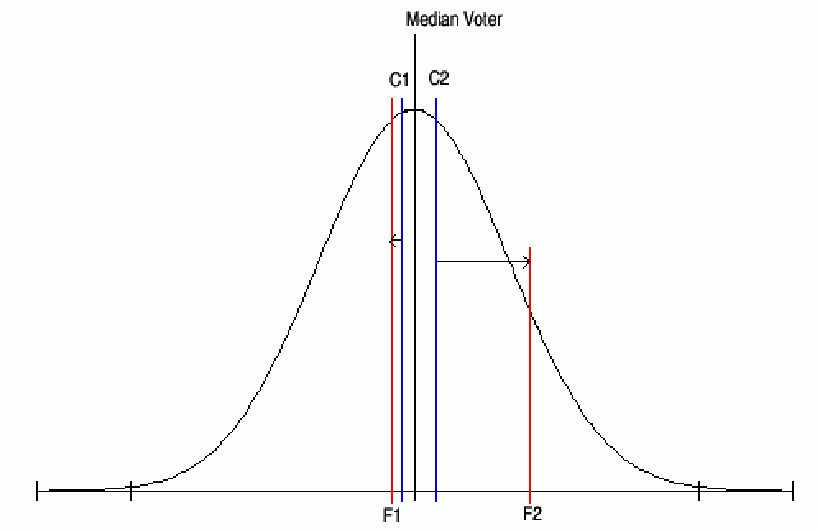

Figure 5.1: Direct democracy measure forces candidate away from median voter

can change the absolute position of candidates by deploying a wedge issue (Kousser and McCubbins, 2005).[31] The concept of a wedge issue is found in Nicholson (2005); Kousser and McCubbins (2005), and more recently Hillygus and Shields (2009).

For example the yes and the no answer to a ballot measure may be on opposite sides of the median voter, but with one preferable option closer to the median. This can be seen in Figure 5.1. If C1 and C2 are the status quo positions of the candidates, but an initiative is introduced by the candidate holding position C1 with yes and no answers situated at F1 and F2. It is straightforward, as the first mover and with a status quo position very close to F1, for the candidate C1 to adopt position F1. The dichotomous nature of the initiative now forces C2 to make a hard choice. There may also be ideological or partisan inertia which makes it difficult for a candidate to move to adopt the position on a measure which is closest to the median voter. This would imply the utility of an issue ownership strategy.

There are two possible agenda effects which despite not being constructed to exactly track the mechanisms which might be at work, will help to disentangle the outline of the mechanism. Sides (2006), following Ansolabehere and Iyengar (1994), sets up a distinction between *issue ownership* and *riding the wave*.[32] The two mechanisms are both examples of associative learning whereby voters react in a different way to a candidate because of an event, or another piece of information which they have encountered in the past. Under the issue ownership theory, voters react to candidates in the prior context of their view of the candidate party's strengths and weaknesses. Voters have been primed, and a ballot measure can influence the weighting of considerations when voters make a decision. This is the theory which underlies Nicholson (2005)'s explanation of priming.[33] In the case of riding the wave the aim of a campaign is simply to become associated with an issue which is universally popular.[34]

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[31] Kousser and McCubbins (2005) provide an example in the form of the Democratic Party in Colorado sponsoring the FasTracks transit initiative in 2004: 'One of the critical aspects of this strategy was getting Republicans, such as Governor Bill Owens, to oppose the measures, which would provide a cue to the targeted voters that their interests were more similar to Democrats than Republicans'.

5.1.5 Issue Ownership: Priming then Salience

Green and Hobolt (2008) set out the essence of issue ownership. Following Riker's dominance principle this alternative to Downsian electoral competition (over a unitary issue dimension) implies that a party can win an election if the issues on which it is viewed favourably by most voters form the campaign agenda:

> A party will benefit if an issue on which it has such an advantage is also salient to voters. (Green and Hobolt, 2008)

Gilens and Mendelberg (2001) identify two mechanisms for salience to operate – *Inherent interest* and *publicity*. Direct Democracy can play a part in the latter. Questions about whether issues used by politicians in this way have to have latent salience for voters or whether putting an issue on a ballot can generate salience from scratch are interesting but do not need to be answered here. It is sufficient to show theoretically how direct democracy can be used to bring an issue to the fore of voter's minds, in the same way that a controversial television advertisement or stump speech might. If this is the case then the mechanism for direct democracy to operate to change the outcome of elections is straightforward. It simply highlights an issue on which voters prefer one party or another. Any priming has already been carried out when this association was formed. Ensley and Bucy (2010) show that:

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[32] Sides (2006) sums up two different ways that this might be true:

> In sum, the theory of issue ownership predicts that opposing candidates will emphasize very different issues based on the historical record of their party, while the idea of 'riding the wave' predicts that opposing candidates will emphasize a similar set of highly salient issues. Sides (2006, p. 411)

[33] When Nicholson (2005, p.15) says for example that 'Partisan stereotypes do the heavy lifting of linking agenda issues to candidate evaluations'.

[34] Politicians however may think about them in more colloquial communication theory terms. For example the idea that a candidate must define his or her opponent before that opponent can define themselves would fit with the latter view. Alternatively, as in the case of Jim Gibbons above, it may be that a candidate obtains a reputation as a campaigner for an issue.

> The analysis reveals that Republican candidates benefited if candidate positions diverged, with the Democratic candidates expressing opposition to the gay marriage ban.

5.1.6 Riding the Wave: Generating a Pavlovian Response

As well as competing by emphasising an issue on which voters already consider *them* or *their party* favourably, candidates might try to compete by 'riding' an issue that almost all voters favour – a valence issue. Ansolabehere and Iyengar (1994) apply this framework to campaign advertising and it is simply used here in a different context, direct democracy. If candidates using a ballot measure can associate themselves either with that measure or with the issue represented by the measure they could cause voters to mimic their response to the measure when evaluating the candidate. Riding the wave in the original context happens when 'candidates are better off when they synchronize their advertising with news coverage' (Ansolabehere and Iyengar, 1994). In the present context the equivalent effect would involve candidates synchronizing their initiative use with the salient issues of the day or with a valence issue. Nicholson (2005, p. 92) says that it is critical for candidates to 'choose an initiative issue that voters support by a large margin' and 'If a substantial amount of legwork is already done... candidates and parties can free ride'.

In sum direct democracy could have two agenda effects, issue ownership or riding the wave. The initiative is expected to be used by politicians for one or both of these effects. Hypotheses H4 and H5 on 131 are assessed to distinguish between these two mechanisms.

5.1.7 Alternative Explanations for Candidate Use of Initiatives: Money, Mobilization and Profile

Candidates may be using the initiative for purposes other than agenda altering at the same time. Of the three alternative explanations, the two which do not form the subject of the last chapter, money and mobilization are discussed here, whilst further consideration of the profile effect is saved for the analysis. First, there is the possibility that candidates may use an initiative as a vehicle for their own campaign fund-raising and spending, as the initiative campaign is not subject to the same spending and donation restrictions. For example adverts featuring *both* the initiative campaign and the candidate can be paid for by the initiative campaign. Finally, if there is profile effect use of the initiative before an election campaign (there is a beneficial effect) there is reason to think that a shortcut-version of this tactic will work during the campaign.

As far as campaign finance effects of direct democracy are concerned, there is only a small literature which discusses the effect of Candidate Controlled Ballot Measure Committees (CCBMCs) (Dempsey, 2007; Perl and Demarchi, 2008). In California before the ruling from the US Supreme Court in *Citizens United*, corporations could only contribute a small amount directly to candidate campaigns. They could however contribute an unlimited sum to an initiative campaign.[35] The argument is that candidates used CCBMCs to fund-raise and spend on their behalf.[36] Bowler and Donovan (2006) acknowledge that parties have heavily financed initiative campaigns in Oregon and California however they failed to look at the flows the other way.[37] However the question is whether the financial links are a symptom of some other effect or an effect or a benefit for politicians in their own right.[38] Donovan, Bowler, and McCuan (2001) do make the point that:

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[35] For a thorough review of the jurisprudence regulating the interaction of state and federal candidates with ballot measures see Perl and Demarchi (2008, particularly 600-601) and in California see Dempsey (2007). Dempsey says that BMCs are a comparative advantage to candidates who control them.

[36] Dempsey (2007, p. 147) shows the number of CCBMCs active in the years 1990-2004 (this is data from Hasen (2000)).

[37] There is also evidence of candidate campaigns' financial links with ballot measures in the FEC rulings cited in the introduction to this chapter.

> In many American initiative campaigns, initiative proponents spend the majority of their funds simply working to qualify their measure, and total spending and campaign activity can be quite low

If the sunk costs are such a large portion of an initiative campaign (as opposed to seed costs which then return a profit to a politician) this does point to a benefit beyond money for a candidate who initiates one, depending of course on where the sunk costs come from.[39]

As far as mobilization is concerned, studies that have examined the effect of the initiative have shown that turnout varies in response to it: Schrag (2004); Everson (1981); Cebula (2008); Grummel (2008); Garrett (2004); Garrett (2005) Kirkpatrick 2004, Magleby (1984, chapter 5). On the turnout of peripheral voters in response to direct democracy and their socio-economic differences see Tolbert, Bowler, and Donovan (2009); Grummel (2008); M. A. Smith (2001); Smith and Tolbert (2001); D. A. Smith (2005). For example:

> Independents were consistently less likely to report being aware of issues on their statewide ballot and were less interested in ballot measures than partisans. Models 2 and 4 reveal that in the 2004 election, strong Republicans were particularly aware of and interested in the measures appearing on their statewide ballots relative to independents (the reference category). (Tolbert, Bowler, and Donovan, 2009, p. 112)

There are studies that show that turnout can vary in favour of a candidate or party. However the issue selected has to vary by party to achieve the turnout of that party's marginal voters.[40] Attempts to produce differential turnout effects will map directly to the Riding the Wave versus Issue Ownership dimension.

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[38] Governor Schwarzenegger for example controlled the 'Total Recall' BMC during the Gray Davis recall, using the surplus funds to finance his own campaign in the election that followed.

[39] BCRA will have changed the landscape as Perl and Demarchi (2008) point out.

[40] Kousser and McCubbins (2005, p26-27) discuss the effect of the same sex marriage ban on the ballot in 2004 in Kentucky, as an aid to Senator Jim Bunning's campaign, as well as ACORN's use of a minimum wage initiative in Florida in that same year to boost Democratic turnout.

Campaign finance and mobilization effects can only be discounted as an alternative explanation of candidate use of the initiative after a test of the subject matter of that use, and then it remains a plausible explanation for a portion of cases.

5.2 Running for State-wide Office and Concurrent Initiative Use

The test in this section is designed to show 'a' campaign effect which is different from the profile effect. In fact the expectation is actually for lower use of the initiative amongst candidates for election than the population of politicians and to find any use, although not surprising, would be very strange without the context of agenda and other campaign benefits. Campaigns are multi-faceted events and politicians have multiple resources which they need to succeed in an election. As the theory above suggests, one or more of these resources can be supplied by an initiative campaign. What test one above establishes is that there is a campaign effect.

> **Hypothesis H3:** Concurrent candidacy is a statistically significant predictor of initiative use.

The test of the existence of a campaign effect consists of a logistic regression with initiative use as the dependent variable and the candidacy status of a politician as the key explanatory variable. In the last chapter it was shown that in California and Oregon similar amounts of initiative use are explained by the profile effect brought to a prospective candidate for state-wide office. The cross tabulation in Tables 5.1 on the following page and 5.2 on the next page, describing the dependent variable (use of direct democracy), and concurrent candidacy show that California and Oregon also display similar frequencies for politicians who are candidates for state-wide office and concurrently use a citizen-initiative.

5.2.1 Data and Method

The unit of analysis for this chapter is individual politicians. The reason for this choice (just as with the tests of the profile effect) is that it is necessary to have a back-

Table 5.1: Initiative use by candidates for state-wide office and state legislators in California

	No candidacy		Prospective candidate		Concurrent candidate		Total	
Initiative sponsorship	8	22.2%	13	36%	15	41.6%	36	100%
No initiative sponsorship	125	71%	10	6%%	41	23%	176	100%
Total	133	63%	23	11%	56	26%	212	100%

Table 5.2: Initiative use by candidates for state-wide office and state legislators in Oregon

	No candidacy		Prospective candidate		Concurrent candidate		Total	
Initiative sponsorship	6	24%	8	32%	11	44%	25	100%
No initiative sponsorship	101	66%	5	3%	48	31%	154	100%
Total	107	60%	13	7%	59	33%	179	100%

drop against which to measure the prevalence of the behaviour in question – in this case running for state-wide office and using the initiative at the same time. If one imagines that there were a joint predictor of initiative use and running for state-wide office, for example being a member of the party leadership in either chamber of the state legislature or even being in the minority party. This can only be controlled for in a population of politicians rather than a population of initiative sponsors or a population of initiatives.

The dependent variable, initiative use, is coded in the same way as it has been throughout this thesis, as initiation of a ballot measure, but with the addition of the following two rules.[41] First, concurrent candidates are only coded as users of any type of direct democracy if that use is synchronous with the election for which they are a candidate (including a general/primary election distinction). This means for example that primary election candidates who lose but are proponents of initiatives on the general election ballot are coded as non-users. There could be complex interactions between primary and general elections but for simplicity in interpretation, and also to make the test as rigorous a disconfirmation of H4 as possible, synchrony of use with the general and primary elections is demanded for the coding to be positive. Providing support for this move is the fact that in both Oregon and California, initiatives do not formally qualify for the general election ballot until July. Before signatures have been gathered for qualification, the laws contained in a proposition receive only limited attention (Cronin, 1989, p. 112). This will, to some extent, isolate the primary election from general election ballot measure uses. The general election is isolated from the effects of the propositions in the primary election by the more mundane fact that the electorate has voted on those issues as soon as the primary returns are counted, and a majority of the voters have prevailed.[42]

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[41] A description of the operationalisation of the dependent variable was given in section 3.1.

[42] There is a further issue here with the coding of the dependent variable for candidates for state-wide office who use the initiative prior to running for state-wide office. To produce an unbiased dataset it is necessary to also assess whether candidates for state-wide election used an initiative before their election but within the period under examination, so that their coding matched that of state legislators. For example a case in point is how Tom Hayden is coded. He was a proponent of the *Big Green* initiative

The second rule applied for the coding of initiative use concerns the problem of cooperation and competition. In the previous chapter it did not matter, for the conclusions drawn, if two or more state legislators cooperated in initiating direct democracy, as the purely profile effects hypothesised operated irrespective of the behaviour of other politicians. Agenda benefits however are achieved by moves calculated relative to a candidate's competitors, whether that is a member of the same party in a primary or the other party in a general election. There may therefore be a problem with the operationalisation of the concept of agenda effects use if two competitors could be coded as users of the same proposition. Consider a case of this kind – Proposition 179 in the 1994 primary, a measure increasing the mandatory sentence for drive-by shootings from 15 to 20 years imprisonment. Both Dan Lungren and Tom Umberg, the leaders in their respective party primary races for nomination to attorney general, are listed as proponents of the proposition. Although this is a primary race they are both firm favourites, and on this basis are already competing with one another.

That both use this measure is natural because it is so emphatically a valence issue (more jail time for felons convicted of drive-by shootings is preferred by a very large proportion of voters), that were one candidate not to move defensively onto the issue then the other would use the issue against him. In most cases it is difficult, practically, for one politician to move second on an initiative, but where this does happen, where competition does lead to *prima facie* cooperation, involvement by both candidates is coded as use.

There are two difficulties in coding the independent variables. The two groups of politicians, candidates and state legislators share little common data. Second there is a measurement problem – there are not many independent variables because little is known of the characteristics of state legislators or candidates for office, or their campaigns, even from the early 1990s. The party of the politician is included in the regression to see if Republicans or Democrats use the initiative disproportionately, but

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in 1990, then ran for governor in 1994. He is not coded as a current candidate, but is included twice in the database once as a legislator, once as a candidate for governor.

the simplicity of test one reduces the concern about omitted variable bias. Elections are so strongly the best explanation for candidates' actions. The only damage this does is to an estimate of the direction of causation but even here the concurrent nature of initiative use and candidacy is hard to explain in terms of those who are more likely to be candidates are more likely initiative users because of the concentration at a given point in time – namely the election. If they are more likely to be users by virtue of another factor they ought to be more likely at all times, whereas the test is specifically designed to show that this is not the case. More independent variables are added in test two, comparing all cases of candidacy with those that involve initiative use.

The idea of this test is to run a regression on a dataset containing the set of state legislators from the sample used in Chapter 4, but with three modifications. First those politicians seeking state-wide office, in the original dataset (who were state legislators but whose use of direct democracy was not previously counted in the years in which they were candidates)[43] are now coded as initiative users where this use is concurrent with their candidacy. Second, in addition to the set of all state legislators, all of the candidates for state-wide office between the 1990 and 1994 elections inclusive are added as cases in the dataset.[44] Finally, all cases are coded in three categories as either future or current candidates for state-wide office, or as non-candidates. In the case of future candidates and non candidates their candidacy status is a proxy for their intention at the time of using an initiative. The key explanatory variable therefore consists of being (or not being) a candidate in an election, in the same way that initiative use was a predictor of future candidacy in the previous chapter's tests. However a politician cannot be both a current and future candidate and so the coding is exclusive. This move is justified by the fact that these politicians are running for state-wide office, and have garnered a large share of the primary vote, so they should be using their profile rather than garnering it for future elections. Which is not to rule out, *a priori*, a profile effect from the initiative in the current election.

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[43] 13 members of the California Legislature and 10 members of the Oregon Legislature.

[44] There happen to be two US Senate seats up for election in 1992 and Barbara Roberts was selected for the Democratic nomination in an uncontested primary. This alone could not account for the difference between California and Oregon, and any other effect it may have simply generates more legitimate positive cases of the dependent variable.

Oregonian executive offices are problematic for this coding scheme because gubernatorial contests were held in even non-presidential election years, whilst elections for all other constitutional offices were held at the same time as presidential elections. To ensure that there are an equal number of cases in Oregon and California, and to cover a full election cycle for each position to mirror the California dataset, the 1996 election had to be taken into the dataset to provide for both two gubernatorial races and two sets of races for the other state-wide offices in each state. Though the pattern of use by candidates in these elections will be compared with the population of politicians 1990-4, this will not distort the results as there is no anticipated effect of the small period of time and any effect is controlled with variable coding for candidacy in 1996.

Table 5.3: Calendar of elections in Oregon and California

	1990	1992	1994	1996
California	Gov + state-wide		Gov + state-wide	
Oregon	state-wide	Governor	state-wide	Governor

The key explanatory variable, a new variable coding for running in a state-wide election, is introduced for this test and is measured for every case. It is coded 1 if the politician is a candidate for state-wide office during the period 1990-4 in the case of California politicians and 1988-1996 in Oregon.

5.2.2 Findings: Candidates Seek an Agenda Altering Effect

Even just looking at the cross-tabs in Tables 5.1 and 5.2 on page 120, the proliferation of initiative use by candidates during their own campaigns is clear. Tables 5.5

Table 5.4: Concurrent candidacy as a predictor of initiative use in California (1990-4)

	Odds ratios	
n = 212	Model 1 (no prospective)	Model 2 (with prospective)
Concurrent candidate	2.34**	5.68***
(standard error)	(0.90)	(2.69)
Future candidacy	-	18.67***
		(13.67)
Democrat	0.62**	0.64
	(0.23)	(0.26)
pseudoR^2	0.029	0.182

*$p \leq 0.10$ **$p \leq 0.05$ ***$p \leq 0.01$

and 5.4 show that being a candidate in a state-wide election is a statistically significant predictor of initiative use (which, for these politicians, occurs at the same time) in California and Oregon. This is compared to the population of politicians as a whole, hence the need in model 2 to control for those politicians who are prospective candidates, and the associated use of the initiative. The magnitude of the effect is not the same in both states. In California the odds of a politician being an initiative proponent are multiplied by 5.7 if that politician is running for office at the same time (model 2 Table 5.4). In Oregon the odds are increased by 3.9 times (model 2 Table 5.5).

The magnitude of these effects is shown in context in Table 5.6. In California the probability of a politician who is neither a prospective nor a current candidate using an initiative is 0.05. This increases to 0.22 for current candidates, holding other things equal, and jumps again to 0.48 for prospective candidates to be an initiative proponent at any time during the period under consideration. In Oregon the probability of a non-candidate using the initiative 0.07 is similar to that in California. Current candidates have a probability of initiative use of 0.22 (half that of California), and prospective

Table 5.5: Concurrent candidacy as a predictor of initiative use in Oregon (1988-1996)

	Odds ratios	
n = 179	Model 1 (no prospective)	Model 2 (with prospective)
Concurrent candidate	2.11* (0.93)	3.89** (0.012)
Future candidacy	–	22.13*** (16.40)
Democrat	2.24** (0.84)	1.42 (0.60)
pseudoR^2	0.046	0.174

*p $\leq$ 0.10 **p $\leq$ 0.05 ***p $\leq$ 0.01

candidates have a probability of 0.59 of launching an initiative (similar to that in California).

Table 5.6: Predicted probability of being an initiative proponent (model 2)

	California		Oregon	
	Probability	ΔProbability[†]	Probability	ΔProbability[†]
No candidacy	0.05 (0.02)	–	0.07 (0.02)	–
Concurrent candidate	0.22 (0.06)	0.16 (0.06)	0.23 (0.05)	0.16 (0.05)
Prospective candidate	0.48 (0.11)	0.43 (0.11)	0.59 (0.13)	0.52 (0.13)

[†] Percentage point change from probability with the constant value of all other variables

The difference between the two models raises a deeper question of method and warrants a discussion. Model 2 is a weaker test of hypothesis H3 than model 1 (5.4), in that much of the background initiative use, present in model 1, is controlled for in model 2 by taking account of state legislators seeking to boost their profile. Therefore the cases of initiative use by current candidates have less to stand out from. However without this control, the test of H3 is far too tough. For one it needs to be remembered that where current candidates are initiative proponents they are doing so at the same election.

Comparing future and concurrent candidacy is a tough test of H3, as future candidates only have to use an initiative in the period in which they are state legislators. The fact that the concurrent candidacy variable is still significant in California in model 1 (i.e. even when prospective candidacy is not controlled for) is far stronger rejection of the null of hypothesis H3 (although as explained even controlling for prospective candidacy the test is stern). The probability of a politician using an initiative is 28% if he or she is a concurrent candidate as opposed to 5% if not. The value of R^2 reported for the two models in Table 5.4 shows a sizeable improvement in model 1 with concurrent candidacy included.

There is a further argument to be deployed here to emphasise the magnitude of these results, compared to those of a similar size obtained for the initiative as a predictor of future candidacy. It is an argument from the scarcity of candidates' resources and attention. Candidates are rational actors focused on winning election, so that their other activities may be assumed to relate to that task in some way. Thinking about the issue another way, speeches given by any candidate for election are almost always considered to be related to that election, even if there are multiple constituencies which might be appealed to. If a significant proportion of candidates began to attend a particular event this would be of interest and would be considered part of the campaign circuit.[45] The same logic applies to the use of the initiative. In short, as stated at the beginning of this section, it should be *less* not more likely that candidates running for office will use direct democracy unless there is some benefit to their campaign. This argument is supported by the fact that of those races where a candidate was unopposed there was no initiative use.[46] Finally, the dataset shows no statistically significant link between third party candidacy and involvement in direct democracy at the time of elections, and allays some of the fears about any bias of the sample in Chapter 4 (in which there were no third party legislators).

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[45] There are many such events, official and unofficial, in the presidential election calendar. One that stands out is Jefferson–Jackson day in Iowa.

5.2.3 Alternative Explanations

Unlike the sample of politicians in the previous chapter the population of those running for state-wide office who are included in this test might potentially be involved in five of the ten types direct democracy outlined in section 2.6 on page 41. The agenda and profile effects are covered by the tests in this chapter. The policy seeking uses of the initiative discussed in Chapters 6 & 7 are covered by fact of an election. As in the tests in the last chapter, rule changing direct democracy is a possible explanation for some cases of use, but not for the strong relationship between use and concurrent candidacy observed in the results reported for this test. Of the 26 cases of concurrent candidacy and use, two concern changing the rules of an institution in the constitution.[47] The analysis in the next section, of the distribution of the types of issues used, will provide further evidence for the importance of an agenda altering effect that politicians at least believe the initiative to have. The small number of controls means threat omitted variables might lurk in the background but the election is a more compelling explanation of a politician's behaviour, and an omitted variable a joint cause. A further discussion of alternative explanations follows on page 136.

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[46] All incumbents, running for another term, in primary elections.

[47] See Table on page 130. Of course all constitutional amendments could be thought of as rule changes however these are explicit changes to the democratic institutions of a state.

5.3 Candidacy as a Predictor of Initiative Use Subject

In a very well thought out test in *Voting the Agenda*, Nicholson looks at the exploitation of race as a wedge issue by politicians using direct democracy (Nicholson, 2005, chapter 6).[48] With data for candidates who use the initiative concurrently with their own candidacy this test can be followed up to see if the issues used by concurrent candidates are significantly different from those used by prospective candidates for state-wide office.

As a result of the discussion in section 5.2 there are two competing mechanisms through which the profile effect, set out in the theory section above, might be operating – *issue ownership* and *riding the wave*. By examining the issues that candidates use concurrently with their campaigns it is possible to choose between these theories. Two issue dichotomies (dependent variables) provide an answer as to which is a better explanation. The easy–hard distinction can help capture the riding the wave mechanism, whilst Democratic-owned Republican-owned distinction helps assess the validity of the issue ownership mechanism, although in this case congruence between candidate partisanship and an issue is the link that is of interest.[49] The following diagnostics therefore begin to provide support for the one agenda effect, riding the wave, over issue ownership and over plausible alternative explanations. The conclusions of this test will only be tentative, as a different set of data, considering far more cases of concurrent use of the initiative, and method (or many) are needed to come to firm conclusions. Here it is shown that the distribution of the subject matter of initiatives used by a set of politicians suggests that issue choice does matter to candidates using an initiative.

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[48] See also McCuan and Stambough (2005, p. 107).

[49] Democrat issues from Petrocik, Benoit, and Hansen (2003): Education, Health Care, Poverty, Elderly, Jobs/Labor, Environment. Republican Issues: Defense, Spending/deficit, Taxes, Religion/morality, Crime, drug abuse.

Three independent variables supply leverage on the problem: first the status of a politician (whether they are a candidate or not, and if so of what type), second a politician's party affiliation; finally the issue distributions can be compared to the background population of initiatives with which politicians have no involvement. To start with it is informative to break the issues used down into the six categories in Table 5.7.

Table 5.7: Initiative subject use in California & Oregon

			Type of candidate					
Issue	Non		Future	%	Current	%	All initiatives 1970-2000	%
Crime	1	7.1%	7	33.3%	15	55.6%	22	15.8%
Race/minority	2	7.3%	3	14.3%	3	11.1%	17	12.2%
Tax	1	7.1%	3	14.3%	4	14.8%	41	29.5%
Environment	3	21.5%	1	4.8%	1	3.7%	16	11.5%
Rule changing	1	7.1%	1	4.8%	2	7.4%	16	11.5%
Other	6	42.9%	6	28.6%	1	7.4%	30	21.6%
No. of cases	14	100%	21	100%	26	100%	139	100%
Population	243		37		121		–	

All categories, except race, are those used by Magleby (1984) and the California Secretary of State
*Figures from National Conference of State Legislatures Ballot Issues Database. **Researcher coded

The hypotheses below (H4 & H5) are derived from the literature on issue ownership and riding the wave at the beginning of the chapter, but in addition, to provide clarity, Stimson and Carmines' easy–hard distinction is used to classify issues (Carmines and Stimson, 1980) for the test of riding the wave. The purpose of the distinction, in its original context, was to describe the two faces of issue voting: one in which level of education is a significant predictor of vote choice and one in which it is not.

> The second type of issue voting which we shall denote occurs when a particular issue becomes so ingrained over a long period that it structures voters' responses, to candidates and political parties. Because gut responses

> require no conceptual sophistication, they should be distributed reasonably evenly in the voting population. (Carmines and Stimson, 1980)

It is this even distribution (lots of voters behaviour is explained) and 'gut response' described by Stimson and Carmines, that make *easy* issues most appropriate for agenda altering democracy use. *Hard* issues, which elicit the decision calculus necessary to become salient from only a small portion of the electorate, are not. They do not appeal to the mass electorate in the right way to warrant the outlay of resources by a candidate to qualify an initiative.

> **Hypothesis H4:** Politicians who are candidates for state-wide office and concurrently use initiatives will sponsor initiatives concerning *easy* issues disproportionately.
>
> **Hypothesis H5:** Politicians who are candidates for state-wide office and concurrently use initiatives will disproportionately use issues that their party *owns*.

In summary, the dataset for both tests is made up of all cases of Californian and Oregonian politicians who have used the initiative in the datasets used in the tests of hypothesis H3 throughout Section 5.2 above. The dependent variable is issue type of the direct democracy law, coded according to Carmines and Stimson (1980)'s easy–hard issue distinction and the Democratic-owned Republican-owned distinction. The explanatory variable in this test is politicians' type of candidacy – prospective, concurrent or none at all.

5.3.1 Findings

The differences between current candidates and the three remaining groups on the analysis of issues in Table 5.7 are plain. Table 5.7 shows that those issues used concurrently by candidates are concentrated on a subset of all issues used *and* a small subset of those issues that make up the population of all initiatives. Simply put the high use of crime, a valence issue, is synonymous with the riding the wave explanation. This is borne out in the fact that concurrent candidacy is a statistically significant predictor of easy-issue initiative use. Prospective candidacy and non candidacy are not. This is a rejection of the null of hypothesis H4 and is supportive of the impression gained from the tabulation of initiative issue subject in Table 5.7. If a politician using direct democracy is a concurrent candidate then the probability of the measure he or she uses being an easy issue is 82%, compared to a 52% chance for politicians who are prospective candidates, and 40% for non candidates. This establishes that there is an issue component to the candidate effect, suggesting that *easy* issues are much more important for agenda effects than profile effects, although clearly the residual easy issues in the cases of profile effect show that they are of some use.

Table 5.8: Regression of citizen-initiatives concerning easy issues by Californian & Oregonian politicians 1990-1996

Predictors of *easy* issue use	Odds ratio	Predicted probability	Probability	P-value
Concurrent candidate	3.33*	0.82	0.45	0.005
Future candidate	1.10	0.52	0.24	0.169
Non-candidate	0.40	0.40	-0.22	0.121

*Significant at the 95% confidence level

To illustrate the importance of easy issues for candidate initiative uses, crime and race are the subject matter for two thirds of all initiatives used by current candidates. Both are archetypal easy issues. The proportion of crime and race initiatives on the other hand of those used concurrently by candidates is even starker if one considers that crime and race are often used as synonyms in rhetoric.[50]

Being a Democrat is not a significant predictor of issue type – it does not alter the chances that a candidate will use an easy issue, but it is perfectly possible that the

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[50] Issues with racial connotations are the quintessential easy issues. Stimson's and Carmines use desegregation as their prototype of an easy issue (Carmines and Stimson, 1980, p. 80).

Table 5.9: Party membership and easy issue initiative use, Oregon & California (1990-1996)

	Easy		Hard		Total	
Concurrent Republican	8	73%	3	27%	11	100%
Concurrent Democrat	12	80%	3	20%	15	100%
Future Republican	7	58%	5	42%	12	100%
Future Democrat	4	44%	5	56%	9	100%
Non cand. Republican	2	25%	6	75%	8	100%
Non cand. Democrat	2	33%	4	67%	6	100%
Total	35	57%	26	43%	61	100%

easy issues which Democrats use are dissimilar to the easy issues used by Republicans. A further assessment needs to be made, taking into account more categories of issue. The only practical way to do this with the small number of cases is by assessing the cross tabulation in Table 5.9 on the preceding page, and the later specific test of issue ownership in Table 5.10. There is no *prima facie* evidence of a party bias in any of the categories. Democrats in the sample use the same easy issues types with similar frequency to Republicans. This makes issue ownership as an explanation for the agenda effect much less plausible. Put simply Democrats would be expected to ride a generic wave as much as their Republican counterparts, as Sides (2006) explains (especially considering that of the 27 candidates who used the initiative, 15 used one in conjunction with a primary contest). The fact that there is a strong preference for easy issues amongst candidates and that there is no party division to this pattern would on the face of it suggest that issue ownership is to be rejected as an explanation for the campaign effect, in favour of riding the wave.[51] As Green and Hobolt (2008) note:

> The issue ownership theory has recently come under attack by scholars finding little empirical support in US party competition (see Damore 2005; Kaplan et al. 2006; Sigelman and Buell 2004) and importantly it has been criticized for lacking an explicit model of voting behavior.

The cases under consideration here support the suggestion that a riding wave strategy is pursued by campaigns using initiatives.

Table 5.10 displays evidence which allows for an immediate rejection of the null of hypothesis H5 concerning issue ownership. The data are stark. Issues which Petrocik, Benoit, and Hansen (2003) expects to be owned by Democrats are very rarely used by Democrats whilst running for state-wide office (7% of the time). Instead candidates of both parties favour issues which are owned by Republicans (69% against 8%), and Democrats use initiatives on subjects which are neither Democrat nor Republican owned on Petrocik's typology over issues that are Democratic owned (13% against 7%). This is a very strong basis on which to reject the null of H5.

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[51] Whilst being the proponent of an initiative gives a candidate a first mover advantage.

Table 5.10: Issue ownership by candidacy status, California and Oregon, 1990-1996

	Republican owned issue		Democratic owned issue		Neither		Total	
Concurrent Republican	10	91%	0	0%	1	9%	11	100%
Concurrent Democrat	12	80%	1	7%	2	13%	15	100%
Future Republican	9	75%	0	0%	3	25%	12	100%
Future Democrat	7	78%	1	11%	1	11%	9	100%
Non cand Republican	3	38%	1	13%	4	50%	8	100%
Non cand Democrat	1	17%	2	33%	3	50%	6	100%
Total	42	69%	5	8%	14	23%	61	100%

*Primary data for this categorisation can be found in Appendix A.3 where there is a full list of initiatives sponsored by politicians.

Considering alternative explanations of the effect for concurrent candidates (discussed in section 5.2.3); mobilization, money, and profile. It is very difficult to rule out, entirely, a profile effect of the sort described in the preceding chapter. For one thing, any initiative which is of use to a politician will raise his or her profile. Second, for many of the politicians who are unsuccessful in their first bid for state-wide office there will be other attempts or other offices (even for those successful candidates for state-wide office, for example governors looking in the mirror and seeing a president). The only point of comparison in this data is with the prospective candidates who use the initiative for its profile effect before they run for higher office. These candidates (the subject of the last chapter) are shown in regression 5.6 to be significantly less likely to use easy issues are different. It does appear as if there is some cross over from either profile or agenda effect to the other,[52] as both future and concurrent candidate use is different from non-candidates.[53] On mobilization Kousser and McCubbins (2005) state that:

> A good jack issue [their term for a mobilization issue] will only cause a targeted group of potential supporters to turn out to the polls, likely because a proposal has concentrated benefits and diffuse costs.

This is not what is seen in the data above (although Wilson's involvement with Proposition 187 does take this form). The issues that are used in California and Oregon in the years under study by current candidates overwhelmingly concern the general, over the specific, in terms of benefits. This suggests that in these cases there can be no more than a few mobilization initiatives. The lack of any division in the types of issues used between the two parties would make mobilization unlikely as a cause for many of the above cases.

Financial benefit accruing from CCBMCs is also difficult to rule out as an explanation at the distance the tests in this chapter necessitate. A point of context is useful, because even if there is a financial benefit the large issue effect and this financial benefit become blurred. Issue ownership must under this assumption be useful for a financial effect. Perl and Demarchi (2008); Dempsey (2007); Garret and Gerber (2001); Garrett (2005) think that candidates are using BMCs to circumvent contribution limits and display great evidence for their existence, but the problem is that they never consider alternative explanations and do not conduct political science research, writing, as they do, as legal scholars. There may well be a plurality of uses but the overriding one is a *riding the wave* agenda effect.

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[52] The agenda effect might have some profile boosting properties or easy issues might be more popular, and therefore thought to be more effective.

[53] Given the lack of significance in the effect for future candidates in the regression described in Table 5.6 the figures in Table 5.7 are a guide.

If the profile effect shown in Chapter 4 operates years before election there is some benefit in having this kind of profile (before primary races for example). There is a strong argument from this fact to the use of the initiative for profile effects during a campaign. It may be a slightly different profile effect but is nonetheless a profile effect. A regression is run to show that agenda effect uses differ from other uses and that profile uses differ from non-candidates' uses, with the analysis of the results heavily contextualised by the issue types described in Table 5.7. If the profile agenda difference is difficult to accept, the cross-tabulations provide evidence that it does exist. From the data represented in Tables 5.7, 5.8 and 5.9 future candidates form an intermediate group, in terms of issues used, between non candidates and current candidates. Future candidates are not more likely than average to use an easy issue (not statistically significant) but there is an increase in the number of easy issues used, and the breakdown of issues is not only different from non candidates and current candidates but lies between the two.

5.4 Summary

In this chapter it has been shown that the initiative has a campaign effect and it has been demonstrated that a group of politicians use the initiative concurrently with their candidacies to affect the agenda of their campaigns. Furthermore these politicians use an issue-set that is different from those prospective candidates who were found to be seeking a profile effect in the last chapter, and from the overall initiative environment.

In short a riding the wave strategy is adopted by candidates using the initiative as a tool. The theory of a campaign effect use set out in Chapter 2, by a long way, the best explanation of the results presented above, as other explanations have been ruled out or shown to be improbable.

Although neither policy nor median voter preference was measured directly in this chapter, the fact that of 19 cases of agenda altering use, there were 7 initiatives that passed (in just two states in a short period of time), justifies the claim that, although politicians' motivations are not policy based, the potential for policy consequences is high.

Chapter 6

Legislators at the Bully Ballot Box

> Legislators and governors themselves may use the threat of an initiative to gain passage of a bill and, failing to do so, take the lead in sponsoring a ballot measure. (E. Lee, 1979, p. 69)

The next two chapters constitute the first research to explain when governors bypass state legislatures using the citizen-initiative in the lawmaking process, and when state legislatures bypass the governor using the legislative referral. The lagged pace of party change in state politics has left littered examples of deeply-divided government and legislative gridlock. Unlike the Federal Government (where such situations have been studied frequently), in state governments there is an alternative arena in which the resultant legislative battles can be fought – at the ballot box, with a ballot measure. The next two chapters argue that governors in initiative states propose citizen-initiatives as tools to overcome recalcitrant legislatures, and that state legislatures appeal to the electorate through legislative referrals to overcome the governor's veto power. This chapter uses a panel of 49 states observed over four decades to test these claims using multilevel models. To this end novel use is made of data describing gubernatorial vetoes, state legislative institutions and legislative referrals. Table 6.1 outlines the distinction more clearly.

Table 6.1: Typology of ballot measures included and excluded in Chapters 6 & 7

Proponent	Qualification route	Chapter 6 or 7
Legislator sponsored citizen-initiative	Signature gathering	Not considered. See earlier chapters on profile and agenda effects (4 & 5)
Legislatively referred measure	Vote of legislature	The dependent variable in Chapter 6
Governor sponsored citizen-initiative	Signature gathering	The dependent variable in Chapter 7
Governor backed legislatively referred measure	Vote of legislature	Not considered, but cases do exist (see Chapter 7 findings section), and when they occur is an interesting question for further study

6.1 Introduction

In Oklahoma in 1924 the state legislature placed a constitutional amendment on the ballot to enable a special session to convene on the signature of a majority of its members. The legislature used this power to impeach Governor Jack Walton who had refused to call it into session, knowing that his impeachment was likely.[1] A contemporary report describes:

> The tensity of the situation in Oklahoma at that time, which threatened to end in bloodshed and virtual civil war, attracted national attention. Oklahoma City was an armed camp. It is generally conceded that the use of the "Initiative"...forestalled bloody conflict.[2]

The clash in Oklahoma is a pertinent example of inter-branch competition carried out through direct democracy. It illustrates, in particular, the unorthodox modes of competition that direct democracy enables.

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[1] The initiative and referendum elections of 1924. Washington, D.C., 1925. *The Making of Modern Law*. Gale. 2010 `http://galenet.galegroup.com/servlet/MOML?af=RN&ae=F152535560&srchtp=a&ste=14`.

[2] Following a riot in Tulsa the Ku Klux Klan had grown in power. Walton declared martial law in some counties and suspended *habeas corpus* in others. This was unconstitutional.

Governors are participating in this type of game when they author citizen-initiatives, for a variety of reasons, but for one, to circumvent state legislatures with whom they do not share partisan or ideological beliefs. Legislatures are doing likewise in some cases when they refer measures to the ballot. Investigating both routes to legislative success is challenging because a governor's use of the citizen-initiative to overcome the legislature, being high profile and infrequent, is often straightforward to observe qualitatively, but very hard to measure systematically and analyse quantitatively. Whereas the legislature's use of the legislative-referral is straightforward to measure systematically (alongside the presence of inter-branch conflict), being an official and public recorded act. But the use of the referral for rounding the governor is swamped by the great number of legislative-referrals which are placed on the ballot for reasons other than conflict with a governor.

Governors and legislators have a tendency to qualify measures for the ballot *per se*. In 26 non-initiative-states, excepting Delaware, only the state legislature can place questions on the ballot and even in the other 24 initiative-states the majority of the questions on the ballot are placed there by politicians. Looking at figures for the period up till 1984, referendums outnumbered initiatives in initiative states 1775 to 699, with an approval rate of 60% for those referendums, double that of initiatives (Magleby, 1984, p. 73). In some states the approval rate for legislative referrals is very high indeed. Maine for example has an approval rate of 90% for the combination of referrals and bond-issues, as opposed to 44% for citizen-initiatives (Walters, 2003). The preponderance of measures sponsored by these politicians is further illustrated in two sets of examples – titled initiatives in Oregon in 2000, and California's 1988 ballot paper, listed respectively in Tables 6.2 and 6.3.

These sets of ballot questions illustrate both the law-making paths with which the next two chapters are concerned – the citizen-initiative as used by the governor, ex-

Table 6.2: Titled initiatives in Oregon, 2000

Sponsor	**Politician**	**Subject of Measure**
Former U.S. Sen. Mark Hatfield, R-Ore.	Y	Abolishes Oregon's death penalty
Democratic Gov John Kitzhaber	Y	a) General school finance b) Creates a rainy day trust fund for school funding
Former Gov. Vic Atiyeh	Y	Video poker
State Rep Jo Ann Bowman, D-Portland	Y	Criminal sentencing
Former U.S. Rep. John Dellenback, R-Or	Y	Campaign finance
Don McIntire, tax activist	N	a) Property taxes b) Labor agreements
JoAnn Wiser, Portland teacher	N	Video poker
State Sen. Ginny Burdick, D-Portland	Y	Gun sales
Lon Mabon, Oregon Citizens Alliance	N	Gay rights
Former U.S. Rep. Elizabeth Furse	Y	Animal trapping
Bill Sizemore of Oregon Taxpayers United	Y	a) Income taxes b) Metro government c) Restrict union dues collection

Source: Oregon Secretary of State, Elections Division, Initiative Log.

empt from legislative override,[3] and the referred measure exempt from gubernatorial veto. Tables 6.2 and 6.3 show that the Governor in both states attempted to qualify an initiative for the ballot. In Oregon, Governor Kitzhaber, having failed to make headway with the legislature in restructuring the tax system to protect education spending, attempted to qualify two titled initiatives for the ballot. He failed to gather enough signatures for either. In California, Governor Deukmejian did successfully qualify a citizen-initiative for the ballot which, if passed, would have raised money for transport infrastructure projects through a bond-issue. Deukmejian's initiative is of special interest because members of the California legislature responded (to Proposition 74) by qualifying two spoiler measures of their own.[4] Tables 6.2 and 6.3 show also that state legislators sponsor citizen-initiatives. However, as stated in Table 6.1 on page 140, these ballot measures are not within the purview of this chapter, although these motivations were covered in Chapters 4 and 5.

6.1.1 Legislators overcoming the Governor

No author has explained exactly why state legislatures make such extensive appeals to the ballot box in the form of the legislative referral. Combining the typology in Table 2.1 with the specific circumstance of legislative referral, the motives which could make up the set of the legislative referrals are: constitutional necessity, amendment specific benefits, policy conflicts with a governor, changing the rules of the game, electoral and profile effects. These possibilities are explored before the gubernatorial policy conflict motivation is tested, controlling for as much of the other variance caused by these other motivations as possible.

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[3] Although in Washington, Nevada, Utah, Michigan and Ohio the legislature has to choose to either adopt the amendment petitioned for or refer it to the people for a vote (Magleby, 1984, p.37).

[4] *The San Diego Union-Tribune*, June 28, 1988, 'Measures to raise gas tax pushed by state lawmakers; Bipartisan action for transport projects seeks voters endorsement in November'.

Table 6.3: Qualified propositions in California, 1988

Sponsor	Politician	Name	I or R	Subject of Measure
Legislature	Y	Proposition 66	R	Elected County Assessor
Legislature	Y	Proposition 67	R	Minimum Sentences
Taxpayers to Limit Campaign Spending	N	Proposition 68	I	Spending, Contribution Limits. Public Funding.
Paul Gann	N	Proposition 69	I	A.I.D.S.
Californians for Parks and Wildlife	N	Proposition 70	I	Land Conservation Bond
Rep. Bill Honig	Y	Proposition 71	I	Tax and spending limit
Committee for California's future	N	Proposition 72	I	Dedication of Certain Taxes To Transportation.
Rep. Ross Johnson	Y	Proposition 73	I	Campaign Contribution Limits
Gov George Deukmejian	Y	Proposition 74	I	Transport infrastructure Bond-Issue
Legislature	Y	Proposition 75	R	School Facilities Bond Act Of 1988
Legislature	Y	Proposition 76	R	Veterans Bond Act Of 1988
Legislature	Y	Proposition 77	R	Earthquake Safety Bond
Legislature	Y	Proposition 78	R	Higher Education Facilities Bond
Legislature	Y	Proposition 79	R	1988 School Facilities Bond Act
Legislature	Y	Proposition 80	R	New Prison Construction Bond
Legislature	Y	Proposition 81	R	California Safe Drinking Water Bond
Legislature	Y	Proposition 82	R	Water Conservation Bond
Legislature	Y	Proposition 83	R	Clean Water And Water Reclamation Bond
Legislature	Y	Proposition 84	R	Housing And Homeless Bond Act Of 1988
Legislature	Y	Proposition 85	R	Library Construction And Renovation Bond
Legislature	Y	Proposition 86	R	Correctional Facility, Youth Facility Bond
Legislature	Y	Proposition 87	R	Property Tax Revenues
Legislature	Y	Proposition 88	R	Deposit Of Public Moneys
Legislature	Y	Proposition 89	R	Governor's Parole Review
Legislature	Y	Proposition 90	R	Dwellings Assessed Valuation
Legislature	Y	Proposition 91	R	Justice Courts. Eligibility.
Legislature	Y	Proposition 92	R	Commission On Judicial Performance.
Legislature	Y	Proposition 93	R	Veteran's Property Tax Exemption.
Legislature	Y	Proposition 94	R	Judges
Conway Colliso	Y	Proposition 95	I	Homeless Funding
Sherman Block	N	Proposition 96	I	Communicable Disease Tests.
John F Henning (CLF)	N	Proposition 97	I	State Occupational Safety And Health
California Teachers Association	N	Proposition 98	I	School Funding.
Rep. Lloyd Connely	Y	Proposition 99	I	Tobacco Tax
John Van de Kamp	Y	Proposition 100	I	Insurance Regulation
Rep Richard Polanco	Y	Proposition 101	I	Insurance Regulation
Congressman Bill Dannemeyer	Y	Proposition 102	I	A.I.D.S. reporting
Harvey Rosenfield	N	Proposition 103	I	Insurance Rates, Regulation, Commissioner.
Stanley Zax	N	Proposition 104	I	Automobile And Other Insurance.
Jim Rogers	N	Proposition 105	I	Disclosures to Consumers, Voters, Investors.
Edwin E Smith	N	Proposition 106	I	Attorney Fees Limit For Tort Claims.

Source: California Commission on Campaign Financing.

6.1.1.1 Conflict with a Governor Increases Legislative Referrals

In a second scenario which legislative leaders may face, a governor is committed to veto. To prevail (if that is possible) legislators must either override a veto, pass a law with a majority large enough that it deters a governor from vetoing, or they can refer a constitutional amendment or legislative act to the ballot.

Assuming that the set of legislators supporting legislation remains the same in both the case of override and referral, and in a state where veto override and referral thresholds were the same, it would prove just as easy to refer a measure to the people as it would to overcome a veto. Also plausible are a set of cases in which a super-majority was able to be garnered for a vote to refer a measure, but that a similar or equivalent super-majority could *not* be put together for the override of a gubernatorial veto (removing an issue, see section 2.8 on page 46, type 2).[5] The process of referring a measure to the ballot has the potential benefit, for the legislature, *qua* institution, of appearing maximally democratic and of deferring responsibility for a final decision (the 'buck passing' quality of some measures can be of worth). Furthermore another institution-facing benefit accruing from a legislative referral involves showing a governor to be weak and embarrassing him or her in anticipation of repeated rounds of the same game.

The *constitutionality* of a constitutional amendment is a good for those favouring a given policy. A constitutional amendment is more likely to result in a policy surviving over a sustained period (an amendment to the state constitution has greater entrenchment than a statute, as a popular vote is needed to amend its provisions).[6] Further, once passed an amendment is not subject to the same judicial reversal at the state level as statute. There are policy implementation benefits, as a constitutional amendment is harder to defy than a statute.[7]

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[5] The other kind of divided government, where only one house of the legislature is held by the same party as the governor, is also interesting for this test. A division between the houses of the legislature might be expected to trump the division between the branches of government and that the legislature would fail to act as a unitary actor in referring measures to overcome a governor. In fact the tests below show that during this type of fragmented government (and this could suggest that they do so outside of these periods) upper houses drive the referral process, so that if the majority in the senate and the governorship are held by different parties there is an increase in the number of measures referred to the ballot, but that this is not true of the lower chamber.

[6] See Boudreaux and Pritchard (1993, P. 112 footnote 3) for scholars who suggest that constitutional amendments are, in his words 'more durable'.

Even if a bill is signed by a governor there remains the possibility of an amendatory or line item veto, powers which 43 governors have at their disposal.[8] For example on the line item veto Dearden and Husted (1993) conclude:

> It is most effective in states where the legislature is dominated by the governor's opposition political party, but is short of the votes required to override the governor's item veto.

A successful, legislatively referred ballot measure does overcome gubernatorial recalcitrance.[9] In either the case of a referred statute or constitutional amendment the governor has no formal power to stop the legislature.[10] However there is no work which might directly support or disconfirm the starting intuition of this chapter, that in periods of conflict between the legislature and the executive, the legislature will resort to the ballot box to improve its legislative prospects. That is the role of this study.

6.1.1.2 Changing the Rules of the Game in Maryland

Rosenthal (2004) contains a section titled *Struggle in Maryland* describing exactly this type of conflict between the governor and legislature. In 2001 the legislature wanted to place a constitutional amendment on the ballot to give it more authority in the budget process following the finding that the status quo 'ignored the state's basic needs' (Rosenthal, 2004, p.203). Having failed to pass the Senate first time round, legislators then tried to do the same thing again in 2002, when the constitutional amendment passed the Senate but was defeated at third reading in the house.

The struggle in Maryland is an example of the legislature changing its position with respect to the governor, by changing the rules under which legislating is conducted

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[7] This is a theme raised by the literature in section1.1.5.

[8] The gubernatorial veto exhibits even more diversity than the requirements placed upon legislatures to qualify a measure for the ballot. In 43 states governors have the line item veto, some just for appropriations bills, some for all bills, seven states have an amendatory veto and further there are six differing levels of support needed in legislatures to override a gubernatorial veto.

[9] At least in lawmaking. There is plenty of literature showing that governors still have the opportunity to obstruct when it comes to implementation e.g. Gerber et al. (2000).

[10] Although governors often campaign vigorously either for or against legislative referrals come the election.

Braunstein (2004, Chapter 4). As with overcoming vetoes it is possible to know only the environment that would prompt a legislature to resort to the ballot box to defeat a governor. Why, for example, legislators would try to overturn a rule rather than a policy. The environment that would be likely to prompt this behaviour is the same as that which would prompt an attempt to circumvent the governor's veto pen – conflict, with divided government and vetoes as proxies.

The tests in this section of the chapter are designed to detect an increase in ballot measures in the presence of these conditions, the conditions which would encourage legislators to use the legislative-referral specifically to overcome a governor.

> **Hypothesis H6:** When all chambers in the legislature are held by one party, and the governorship by another, there will be a statistically significant increase in the number of measures referred to the ballot by the legislature.
>
> **Hypothesis H7:** As a governor vetoes more bills, there will be a statistically significant increase in the number of measures referred to the ballot by the legislature.

The diverse universe of veto override and referral requirements for legislatures, provides a further test:

> **Hypothesis H8:** Where the requirements to refer a measure to the people by the legislature are less than those in that state to override a gubernatorial veto there will be a statistically significant increase in the measures referred, larger than that in the remaining states.

The highly specific nature of change in the independent variable used to test H3 (veto override vote requirement compared to legislative referral vote requirement), makes the possibility that there is some other omitted variable, which equally explains variance in the dependent variable, improbable.

6.1.2 Alternative Motivations

Conflict with governors is unlikely to be the motivation behind a majority of legislative referrals. The multiplicity of alternative motivations presents problems for a systematic test of the policy motive, especially when considering the contingent nature of these alternative explanations. There is no easy solution other than to control for those that can be controlled for and to expect that only a portion of the variance in legislative referrals can be explained by this or any model.

6.1.2.1 Constitutional Necessity

One explanation for legislators proposing ballot measures makes the question of motivation moot. State legislatures *must* submit any constitutional amendments which they propose, to voters for approval. It is however hard to accept that state legislatures, often placing on the ballot tens of measures per electoral cycle, are simply providing the flexibility and housekeeping functions that constitutionalism requires.[11] The US Constitution, although short, has been amended just 27 times in 222 years. The constitution of Oregon has been amended 224 times by the legislature alone since 1970. The Arizona state legislature in 1994 placed three constitutional amendments on the general election ballot.[12] That the first, to create the office of Lieutenant Governor, necessitated constitutional amendment can be justified as it concerns the structure of government. The second, to allow the state to exchange estate trust land for public or private land, and the third, an amendment to provide a personal property tax exemption for livestock, poultry and aquatic animals, do not naturally fall within standard justifications of constitutionality. There must be more going on beneath the surface of these latter non-structural constitutional amendments (unnecessary qua constitution), whether proposed by governor or legislature.[13]

6.1.2.2 Electoral and Profile Effects

There are two competing categories of explanation for extra-constitutional legislative referrals, electoral or individual gain. For example, in the spirit of the finding contained in Chapter 5, during an election campaign a state legislator or political party might try to highlight the position of an opponent by sponsoring an referral on the requisite topic. It would be surprising if legislators did not sometimes use the referral to gain electorally, although the findings of Chapter 4 showed that these cases were not systematic and that the initiative was preferred.

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[11] California's constitution is eight times the length of its federal equivalent.

[12] Arizona, 1994, Proposition 100, Proposition 101 and Proposition 102. Year and state selected with no particular significance in mind.

[13] Bypassing the judiciary is a feasible motive for either branch, but this chapter does not contain data which would confirm whether this was in fact occurring.

Individual-facing benefits following from a ballot measure mostly accrue to those closely associated with a measure whilst damage to opponents of a measure who are partisan opponents (other than the governor) is also a plausible motivation. Adding these to the structural constitutional amendments referred to above gives the sum of the suspected motivations for legislative referrals. As can be seen a lot of legislative referrals have no relation to competition with the governor. This chapter proceeds to draw out from the background noise systematic changes in the frequency of legislatively-referred ballot measures which *do* result from changes in the relationship between the executive and legislature.

6.2 Data and Method

The unit of analysis in the next two chapters consists of years (nested within states). This is to allow for explanations of the actions of parts of state government in response to hypotheses about state government which result from the theory in Chapter 2. Specifically in this chapter the need to measure the frequency of referral use means that a unit of analysis at a high level is needed. Periods of divided and very divided government which, provide explanatory variables in both chapters, need to be represented fairly in the date. Recording the value of these variables for a particular year is a sensible way to achieve this outcome. The dependent variable in this chapter consists of the number of legislative referrals in every year in which a state legislature sat (to avoid artificial zeros on the dependent variable).[14] The data for this variable comes from the NCSL ballot measure database and includes a measure of the frequency of all the measures that they label as a 'legislative referral'. This total includes all three types of referral: statutory, constitutional and bond-issue.[15] [16] The dataset stretches from 1970 to 2009 with observations consisting of years nested within states. All the variables in the dataset are listed in Table 6.4 on the next page.

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[14] The dependent variable follows a Poisson distribution in any case.

The concept of legislature-executive conflict has been unpacked in studies measuring different outcomes. Klarner and Karch (2008) suggest that when one party controls both chambers of the legislature but not the governor's office, conflict increases in the form of gubernatorial vetoes.[17] This study takes both the independent variable (vetoes) and the dependent variables (divided and very divided government) from Klarner and Karch (2008) and uses them to ensure that conflict is measured.[18] To account for the fact that legislatures do not sit in every year in which a governor can use an initiative, the transformation performed on the veto data is to sum it by biennium and then divide by 2 and apportion each half to a year.

Explanatory variables are split into government conflict (to test the hypotheses directly), electoral (to check for the leading alternative explanation) and controls. The government conflict variables consist of: the number of gubernatorial vetoes per legislative session,[19] divided control of government (a division of one house of the state legislature and the governorship), very divided government (both houses), super divided government (very divided government plus a 2/3 super-majority in at least one house). None of these is a direct measure of either a legislature refusing to cooperate with a governor or vice versa, but they are the best proxies available at this level of

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[15] *National Conference of State Legislatures* Ballot Measures Database. `http://www.ncsl.org/default.aspx?tabid=16580`. The database contains all initiatives, referrals and referendums for the period under consideration. The data is not in an open format on the NCSL website, but is available from the author.

[16] Given the information provided in the ballot measure database it is not possible, at this time, to distinguish between the three types of referral in more than half of the 4,000 referrals.

[17] Also Clarke (1998); J. Lee (1975); Copeland (1983) mostly work at the federal level.

[18] The fact that divided government contributes to conflict is also shown in Clarke (1998). Mayhew (1991) finds that, in the Federal government, the number of acts passed and the number of investigations into the executive are unaltered by divided government. Clarke (1998) however argues for the need to consider the number of bills presented and the use of agency-level data to provide for a baseline for these two measures.

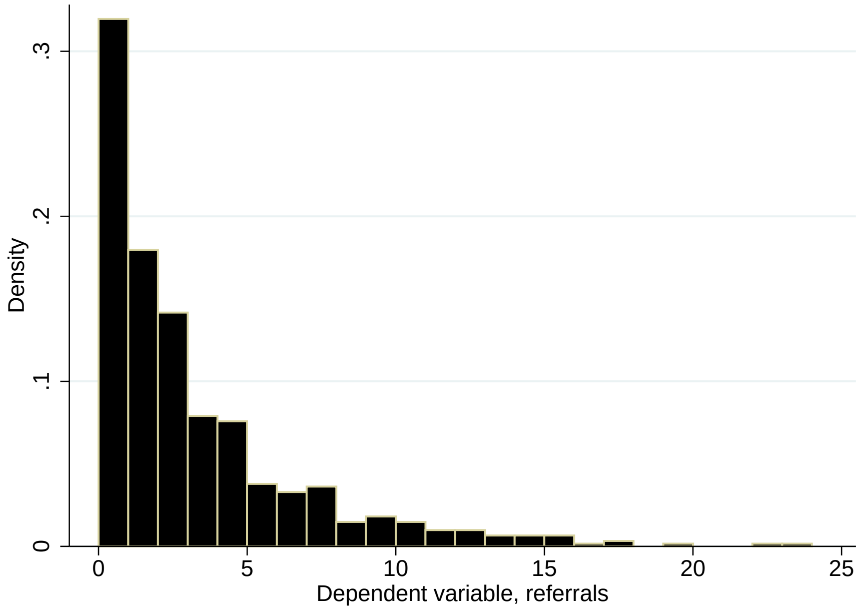
[19] Data is from the book of the states via Carl Klarner's dataset. Missing values are filled with data from the book of the states where this exists. There is an important question about the purpose of vetoes in absentia veto messages, which help divine their meaning. Vetoes are used here as a proxy for conflict and tested against other measures.

Table 6.4: Variables for both Chapters 6 & 7

Variable	Description	Source
Dependent variables		
referrals	Legislatively referred ballot measures	NCSL database
initiative use	Governor′s use of initiative	Author coded
Explanatory Variables		
vetoes	Gubernatorial veto frequency	Data from Carl Klarner
very divided government	Governor & both houses divided	Data from Carl Klarner
divided government	Governor & one house divided	Data from Carl Klarner
divided senate	Governor & Senate (only) divided	Data from Carl Klarner
divided house	Governor & House (only) divided	Data from Carl Klarner
super divided	Very divided government & supermajority	Data from Carl Klarner
easy referral	Referral easier than veto override	Book of the States
Electoral Variables		
even year	State general election year	SPPQ dataset
election year	Gubernatorial election year	Book of the States
tenure	Time remaining in office	Book of the States
Control Variables		
ideological difference	Citizen-government ideology difference	SPPQ dataset
initiative rate	State initiative frequency	SPPQ dataset
professionalism	Legislative professionalism	Squire measure in SPPQ data

*For more detailed information on each variable see appendix A.2.

Figure 6.1: Histogram of referrals by legislatures



generalisation, and should at least delimit the periods in which such conflict will occur. If a state has a method of referral that is less demanding than a veto override then this is coded for in the easy referral variable. The electoral variables, time to gubernatorial election and legislative election year are straightforward. Beyond the hypothesis-specific independent variables and control variables are a set of topic specific controls. First a measure of the difference between citizen and government ideology to control for the possibility that the legislature is acting to reflect sentiment in the population.[20] The full model also includes standard state-level control variables which could impact on the number of referrals or the use of the initiative by a governor. Full details of all variables are listed in Table 6.4 on the previous page, and further details of coding and transformations can be found in the appendix at A.2 on page 267.

The nested nature of the data suggests use of multilevel models for analysis. The effect of vetoes and very divided government warrants measurement using a random coefficient model (RCM).[21] In each state the effect of the explanatory variable is allowed to vary in a bivariate model to determine whether this is appropriate to explain different veto or divided governing environments. The event count nature of the dependent variable (Figure 6.1) means that a multilevel Poisson model is used.[22]

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[20] This measure is constructed from the relevant variables for citizen and government ideology in the SPPQ practical researcher dataset. See appendix A.2 on page 267 for more details.

[21] See section 3.3.2 on page 74.

6.2.1 Further Modelling Issues

Tests for serial correlation fail to reject the null hypothesis of no first order correlation in the panels.[23] Unit roots are not present when including a time trend. Time is also controlled for in the model with a decade level variable which accounts for the non-linear nature of the frequency of referral use over time. Considering the use of the Poisson model, there is bound to be overdispersion in the data. The variance of legislative referrals is 6 times as large as the mean. Despite the flexibility of software for running multilevel models the case of count data with overdispersion is still a thicket without good tools to clear it. Without a nested structure a researcher might use a negative binomial model. However following the advice of Rabe-Hesketh (2008, p.394) the best option to account for the overdispersion issue in nested data is to specify robust standard errors (also following a similar application in Primo, Jacobsmeier, and Milyo (2007)).

6.3 Findings: Playing Legislative Games with the Referral

Looking at an empty multilevel model of legislative referrals in Table 6.5 shows that 33% of the total variance in frequency of legislative referrals is explained by the grouping structure (the state level), and this dependence justifies the use of multilevel modelling.[24]

A likelihood ratio test of a random intercept model (with very divided government allowed to vary) nested in a random coefficient model produces a likelihood

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[22] The Poisson family and log link in gllamm, and as an alternative the xtmepoisson Stata command.

[23] The null hypothesis of no first order correlation cannot be rejected with a Prob > F = 0.1949.

[24] $\rho = \frac{\sigma^2 u0}{\sigma^2 u0 + \sigma^2 e}$ $\rho = {}^{6.08}/{(6.08{+}12.38)} = 0.329$

Table 6.5: Model 0: empty, variance components model

n=1034	Coeff	SE
Intercept	0.618	0.031***
Variance at level 1(years)	12.381	0.527
Variances and covariances of random effects		
level 2 (state)	6.076	0.027

ratio statistic of 68.9, allowing the rejection of the null hypothesis of no significant difference, and supporting the use of a random coefficient model.

Table 6.6 shows that the variable very divided government, in the full model (model 4) brings about a statistically significant increase in the incidence of measures referred to the ballot by the legislature of 46%. The predicted population mean rate of referral outside of very divided government holding all else constant is 3.1. Therefore the effect of very divided government is equivalent to 1.5 extra measures in every year of very divided government. This is reason to reject the null of hypothesis H6, that very divided government does not cause any change in the frequency at which legislatures refer measures to the ballot. It is still necessary to account for the fact that both intercept and coefficients vary by state (the random effects). 95% of the IRRs lie between 0.75–2.00 (i.e. the predictions for some states were negative). The variance of the random slope is not significant. The predictions for all states are shown in Figure 6.2. The correlation between intercept and slope is 0.56 showing that states with larger mean referrals for average very divided government have a greater effect (equivalent to steeper slope).

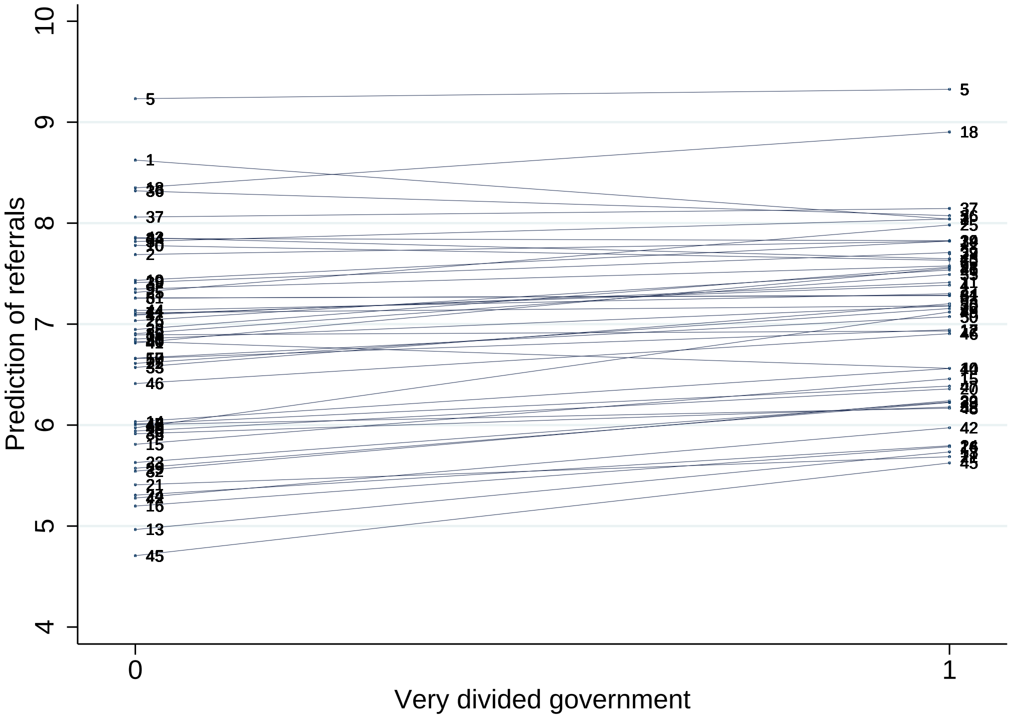
Vetoes is not a statistically significant predictor of referrals and so the null of hypothesis H7 cannot be rejected at this stage. A problem with the vetoes variable may

Table 6.6: Random coefficient Poisson regression of referral frequency

	Incident Rate Ratios (robust SEs)							
	Model 1		Model 2		Model 3		Model 4	
	(bivariate vetoes)		(biv. v div govt)		(multivariate)		(multiv. divided senate)	
Conflict variables								
vetoes	1.000	(0.005)			1.000	(0.002)	1.000	(0.002)
very divided government			2.471**	(0.774)	1.465***	(0.124)	1.461**	(0.122)
divided government					1.260*	(0.161)		
super divided government					0.476**	(0.113)	0.468***	(0.099)
easy referral					0.625	(0.144)	0.704***	(0.069)
easy referral*very divided					1.300*	(0.182)	1.413***	(0.152)
divided senate							1.2415	(0.177)
Electoral variables								
legislature election year					-1.155	(0.222)	1.154759	(0.222)
tenure					0.984	(0.016)	0.995	(0.015)
Control variables								
professionalism					1.296*	(0.1611)	0.552	(0.241)
ideological difference					1.009***	(0.004)	1.010***	(0.003)
1970s					0.972	(0.192)	1.090	(0.181)
1980s					0.884	(0.101)	0.944	(0.096)
1990s					1.132*	(1.650)	1.182**	(0.103)
Random effects								
$\sigma^2 u0$(constant)	0.0004	(0.0001)	0.412	(0.039)	0.549	(0.067)	0.377	(0.046)
$\sigma^2 u1$(very divided govt)			0.467	(0.078)	0.173	(0.062)	0.070	(0.022)
$\sigma^2 u01$(co. var.)			-0.074	(0.022)	-0.089	(0.469)	-0.070	(0.036)
Deviance	6134		6094		5382		5208	
n	1034		1034		1034		1034	

*significant at the 90% confidence level, **significant at the 95% confidence level, ***significant at the 99% confidence level

Figure 6.2: Predictions of referrals brought by very divided government



be reflected in these results. An increase in referrals at the same time as an increase in vetoes is predicted, but this effect must have a limit. An increase in the number of referrals will start to have a dampening effect on the number of vetoes, as less bills are available to be vetoed, and those most likely to be vetoed are also likely to be referred for the very reason of avoiding a veto. In the subset of cases of very divided government where super-majorities exist in both legislative chambers there is a significant reduction in the rate of referral of 45%, mirroring the increase during very divided government. With one party dominating the legislature it is no longer necessary to work around a governor using the referral, as the threat of veto is unsustainable.

The key to assessing hypothesis H8 is the interaction between the easy referral variable and very divided government. This interaction is significant at the 95% confidence level in both models 3 and 4.[25] In periods of potential conflict, in those states where it is easier to refer than to override a veto, legislatures refer to an increased extent, beyond the increase seen in other states. The significance of the easy referral variable is as expected given that it is part of the interaction with very divided government and so the effect in non very divided government years. The important control variable, legislative election, does not approach the 90% confidence level. Therefore the use of the referral by legislators does not follow the theory of electoral benefits. Referrals are not being placed on the ballot contemporaneously with the candidates they could benefit any more so than at any other time.

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[25] There are 171 years in which there is very divided government in states where it is easier to refer than to override a veto.

The one further surprise in these findings it that the divided government variable, which was expected to reduce the ability of the legislature to refer measures to the ballot, led to an increase in the number of measures referred. A statistically significant increase of some 18%, just over half that for very divided government. There are three explanations for this which might be supportive of hypothesis H6. First, that the inter-branch conflict subsumes inter-house conflict, in other words the legislators in the atypical house favour their institutional identity to their party identity so they hang together for fear of hanging apart. Second, it is possible that the ballot box becomes a way to solve inter-house conflict, similar to the way in which a referral can be used for simple buck passing. If both sides have a legitimate expectation of a win then a referral can become the accepted ground on which a controversial battle is fought. Third, that the inter-house division is not qualitatively different to the very divided government situation, where both houses are in the hands of the party which does not hold the governor's mansion. In effect the governor's party would be unable to resist the demands of the opposition for ballot measure referral. Although this remains an open question the latter is the least likely option given the super-majority requirements for referral in most states.

Some further exploration of this finding is possible. There are 188 years in which only the senate and governor are divided, and 155 years in which only the lower house is 'divided'. The variable divided house is not significant, but the variable divided senate in model 4 is (controlling for very divided government and super divided government), and has an effect on the number of legislative referrals equivalent to a 13 percent increase in the incidence of referred measures. This suggests that the divided government result is driven by lower chambers. It is also a clue that upper houses may be driving the process in the very divided government situation as well. The reason for this is going to have to be for others to investigate as this exploration has moved beyond what the dataset was designed for.

Chapter 7

Governors at the Bully Ballot Box

> Indeed, governors not infrequently make use of the initiative when their policy goals are stymied by the legislature. The median voter model suggests that governors on average will be more closely aligned with the median voter than the legislature (especially when legislative seats are gerrymandered). The governor should therefore be able to threaten initiatives with some credibility, further tipping the scales in his favor. However, initiatives also provide an avenue around the executive's veto, which could weaken his bargaining position. Exactly what the implications are for the strengthening of the executive vis-a-vis the legislative merits serious investigation. (Matsusaka, 2005b, p. 174)

7.1 Introduction

In the last decade observers of state politics have recognised and written sporadically about governors who lead citizen-initiative campaigns. Very many have written about the travails of Arnold Schwarzenegger's use of the initiative, but some authors have cast the net further afield (Rosenthal, 2004; Rosenthal, 2009; Broder, 2000; Benson, 2004). That a wider trend of governors using the initiative has not been recognised sooner is puzzling (they have done so 43 times over the years as listed in Table 7.1), especially given that the godfather of gubernatorial initiative use (some four decades ago), served two terms in the White House. After all Ronald Reagan, as governor of California, spearheaded Proposition 1 in 1973.

There is no prima-facie reason which explains why governors qualify citizen-initiatives for the ballot, to be found in state constitutions, or other formal rules. No state constitution explicitly grants its governor the authority to do so.[1] This informal use of a formal institution must therefore have an alternative explanation, there must be another reason governors launch their own initiative campaigns, some gain to them (even if in a broad sense). The motivation for this hitherto unexplored phenomenon is the problem which drives this chapter. This research, in showing that governors make use of the citizen-initiative, aims to do just two things beyond recognizing the widespread existence of these events. First to estimate *how* widespread, and second to attempt a systematic explanation of the motivation of governors who resort to citizen-initiative campaigns.

There are two central motives that may be driving governors to use the initiative – an electoral motive and a policy motive (the two broad motivations for politicians that are to be found in the congressional literature). Cobb and Elder (1983) provide a framework for classifying the motivation of agenda setters along very similar lines. It is used here to assess the motives in this very particular case of agenda setting under consideration. The field of explanations is then further narrowed with reference to the literature describing presidential attempts to 'go public'. This chapter begins with a detailed examination of the two most likely explanations for gubernatorial initiative use, by Governor Roy Romer for a policy motive, and in the case of Governor Pete Wilson for an electoral motive. When examining potential cases of gubernatorial initiative use the following questions help to bring focus:

1. What is the evidence that the governor is responsible for the citizen-initiative? – a precursor for an initiative being identified as a positive case of the dependent variable.
2. Why did the governor initiate the citizen-initiative? The purpose of the analysis in this chapter is to show systematically the existence of at least one motivation.

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[1] The governor of Rhode Island, up until 2004, did have the power to place an advisory measure on the ballot.

(a) Was there previously an unsuccessful attempt to pass similar legislation through the legislature?

(b) What is the balance of power in state government, and is there conflict between the governor and the legislature?

(c) Is this a gubernatorial election year?

(d) Is the issue involved conducive to electoral advantage for the governor or his or her party?

A detailed examination of a token of this type was outlined in section 2.8.4 detailing initiative use by Governor Roy Romer. A further study of an alternative type of use by governors was seen in section 2.8.7, in the case of Governor Pete Wilson.

7.1.1 Explaining Governors' Use of the Initiative

This being the first systematic study of governors' use of the initiative, and because there are no direct equivalents (US presidents for example have no recourse to the citizen-initiative), a theory for gubernatorial action in this context must be somewhat tentative.

The hypotheses tested in this chapter are derived from the theory in Chapter 2. Two pieces of further theory contribute to the tests of those hypotheses used in the chapter to describe governors' motivations. First, a consideration of theoretical frameworks which can help inform the research. Second, a discussion of governors' powers, before third, drawing some initial clues from the dataset.

Finke and Konig (2009) do consider a similar situation in which governments can unilaterally initiate a referendum on European Integration (although in most of the 25 cases considered in that paper the legislature is also required to initiate a referendum). He finds that the position of the opposition is key. In other words divided government is a driver of the referendum. There is, he says, no reason to 'risk' ratification failure where there is not euro-sceptic opposition.

Table 7.1: Governors' uses of the initiative, 1972-2008

Governor	**Year**	**State**	**Name**	**Pass**	**% Yes**
Babbitt	1980	Arizona	Proposition 106	FAIL	30.2
Babbitt	1984	Arizona	Proposition 110	FAIL	40.5
Babbitt	1986	Arizona	Proposition 101	PASS	53.3
Symington	1996	Arizona	Proposition 102	PASS	62.9
Napolitano	2006	Arizona	Proposition 203	PASS	53.2
Napolitano	2008	Arizona	TIME Initiative	FAIL	0*
Clinton	1988	Arkansas	Proposed Initiated Act 1	PASS	62.3
Huckabee	1994	Arkansas	Proposed Amendment 4	FAIL	38.9
Huckabee	1996	Arkansas	Proposed Amendment 1	PASS	51.9
Beebe	2000	Arkansas	Proposed Initiated Act 1	PASS	64.3
Reagan	1973	California	Proposition 1	FAIL	46
Deukmejian	1984	California	Proposition 39	FAIL	44.8
Deukmejian	1986	California	Proposition 51	PASS	55
Deukmejian	1988	California	Proposition 72	FAIL	38.5
Deukmejian	1990	California	Proposition 139	PASS	54.9
Wilson	1992	California	Proposition 165	FAIL	46.6
Wilson	1994	California	Proposition 174	FAIL	30.4
Wilson	1998	California	Proposition187	PASS	58.8
Schwarzenegger	2004	California	Proposition 58	PASS	69.4
Schwarzenegger	2005	California	Proposition 73-7	FAIL	47.4
Schwarzenegger	2008	California	Proposition 11	PASS	50.9
Schwarzenegger	2009	California	Proposition A-E	FAIL	45.0
Romer	1992	Colorado	Amendment 6	FAIL	45.6
Owens	2000	Colorado	Amendment 22	PASS	70
Ritter	2008	Colorado	Amendment 58	FAIL	42.1
Askew	1976	Florida	Amendment 1	PASS	60
Martinez	1987	Florida	Not titled	FAIL	-
Bush	2004	Florida	Amendment 7	PASS	63.7
Thompson	1978	Illinois	Amendment 1	PASS	68.7
Weld	1992	Massachusetts	Question 3	FAIL	40.8
Weld	1995	Massachusetts	Not titled	FAIL	-
Carlucci/Swift	2000	Massachusetts	Question 4	PASS	59
Engler	1992	Michigan	Proposal C	FAIL	40.5
Fordice	1998	Mississippi	PRIME Act	FAIL	0
Ashcroft	1990	Missouri	Amendment 5	FAIL	0
Ashcroft	1991	Missouri	Not titled	FAIL	-
Schweizer	2006	Montana	I-153	PASS	75.5
Voinovich	1995	Ohio	Not titled	FAIL	-
Walters	1994	Oklahoma	State Question 658	FAIL	40.2
Keating	2002	Oklahoma	State Question 687	PASS	56
Kitzhaber	2000	Oregon	Measure 1	PASS	66.3
Locke	2000	Washington	Initiative Measure 732	PASS	62.7
Locke	2004	Washington	Initiative Measure 884	FAIL	40.0

*0 denotes either an initiative struck off the ballot or withdrawn following legislative acquiescence.

> In general, we find evidence that treaty-friendly governments seek to circumvent a potentially treaty-sceptic opposition by initiating a referendum.
> Finke and Konig (2009)

Studies assessing the behaviour of congressmen (a substantial literature) have concluded that they act largely either for an electoral motive or for a broader policy motive, with varying emphasis on their electoral and policy inclinations over the duration of a career, favouring the second later on (Fenno, 1978; Mayhew, 1974; Hibbing, 1991). Cobb and Elder (1983) set up a similar dichotomy to that found to be describing congressmens' motivation, with their categorisation of agenda-setters. Governors who launch citizen-initiatives are agenda setters and following Cobb and Elder, they are either virtuous or Machiavellian actors. Governors cannot be *readjusters* on the Cobb-Elder framework, leaving open either the categories of *exploiter, circumstantial reactor* or *do gooder.* Distinguishing between do gooders, those with no vested interest, and circumstantial reactors, governors forced into action by events is not possible on the evidence in this chapter. By contrast Kingdon (1984), contributing to the same literature, takes only one side of this argument seriously – policy entrepreneurs always advance issues for a return on investment, however what this benefit is, he says, can be open ended. The question answered in this chapter is whether governors are acting out of electoral self interest or as problem solvers (with electoral benefit as a plausible side effect). The two cases already represent the two archetypes. Circumstantial reactor is an apt description of Roy Romer in 1992,[2] contrasted with the case of Pete Wilson's 1994 re-election campaign which looks very much like exploitation.

There does exist a more specific analog, which is also a help in constructing a theory to explain why governors use direct democracy – the presidential tactic of 'going public', and the literature alluded to in the title of this chapter.[3] The similarity between the two situations resides in the fact that, in both cases, chief executives are taking an action outside of formal legislative procedure (appealing to their wider constituency) over the heads of legislators. Presidents try to win legislative battles in Congress by going public (Neustadt, 1989; Canes-Wrone, 2001), whereas governors are attempting to persuade voters when using the initiative. However the mechanism is the same – appeal to electorates – only the aim of this appeal is different.

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[2] Further evidence to this effect is given in a full account by Odden (1992).

[3] Theodore Roosevelt coined the term and intended a 'bully pulpit' to mean a terrific pulpit (OED 2nd ed 1989).

It is possible to point to many costs and benefits which determine when a president will go public (and if the analogy holds when governors will use the initiative). Edwards (2003) shows that presidents need a majority of the public behind their position for the strategy to be worthwhile, as public persuasion is prohibitively difficult. Rapidly however the amount of information needed to model these situations becomes overly demanding for this first work on gubernatorial cases. Therefore this chapter focuses on the observation in Kernell (1997), the initial going public work, that emphasises the role of executive-legislative conflict, and further work, that has shown that the partisan composition, relative to the president, in each house of congress is key to going public (Bond and Fleisher, 1990; Edwards, 1990; Jones, 1994). Further evidence of governors acting as reactors is shown in the findings later in the chapter, but further work would be necessary to distinguish conclusively between the categories. What can be said here is that if governors use the initiative to a greater extent at times of conflict with the legislature, but not before elections then this is indicative of a policy motive, and that they are circumstantial reactors like Roy Romer.

7.1.2 Governors' Powers

Literature describing the role of state governors emphasises the significant power they have over state legislatures (Crew, 1998; Beyle, 1996; Hedge, 1983; Sharkansky, 1968), and in particular their ability, unlike the federal executive, to rely on party ties to ensure success in roll call votes (Morehouse, 1998; Kirkpatrick and McLemore, 1977).[4] As a result of this power, governors will be likely to prevail in the circumstance of divided government, where they share a party tie with the majority one chamber of the legislature, relying on party line voting and persuasion up to the median member in the other chamber.

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[4] Alt and Lowry (1994); Alt and Lowry (2003); Rosenthal (1990) emphasise the importance of party ties (especially in less professional legislatures) for securing deference to the governor. There is a further literature on governors' dominance of the appropriations process. For example Abney and Lauth (1987), or Lee Jr (1991).

However in situations where a majority in both houses of the legislature on a given issue are unsympathetic to the governor's preferred policy there is very little the governor can do to achieve his or her aims. In the tests explaining the legislature's use of the referral, it was theorised that the legislature has a welter of choices if faced with a belligerent governor. Whereas in situations of conflict this lack of options (other than doing nothing, which is a perfectly common strategy) makes the citizen-initiative, as an end around, even more attractive for governors, determined to act, than the ballot measure was found to be for the legislature.

7.1.3 Alternative Explanations

A strong alternative explanation for the use of the initiative by governors, in the case of those measures bringing about systematic institutional change, governors are seeking to gain a partisan or individual advantage by changing the rules of the game. The scope of this explanation is limited to the 9 cases out of 43 listed in Table 7.1 which actually concern changes to the institutions of government. In these cases of rule change the possibility remains that the reform is a result of disinterested circumstantial reaction to a crisis in state governance, but they do muddy the water. The cases of Deukmejian in 1986 and Schwarzenegger in 2008 involve circumventing the legislature for what appears on the face of it to be an attempt to make a gain in the redistricting process for the Republican party. Such cases parallel the archetype circumstantial reaction in the tests below because they are attempts to overcome a hostile legislature.

The final alternative is based on the fact that candidates for state-wide office of all kinds use the initiative to aid their election campaigns. In the case of governors the elections in question would be re-election, and the prototype of Pete Wilson was given above. To assess the impact of this alternative explanation it is necessary to include

Table 7.2: Summary of vetoes variable

	Mean	Std. Dev.	n
Initiative use	51.8	71.7	43
No initiative use in initiative states	16.5	34.1	871
Non-initiative states (all years)	24.1	37.5	950

a variable for gubernatorial re-election years which will show if there is significantly more use in those years or those immediately preceding re-election.

7.1.4 Preliminary tests

Table 7.3 on the following page summarizes the new dataset of gubernatorial initiative use with which this chapter works. Table 7.3 on the next page shows how marked the correlation of very divided government is with initiative use by governors. Of the 43 initiatives sponsored by governors, 70% occur during periods of very divided government, as opposed to 41% of the total observed years during which government is very divided.

Although not evidence for any causal relationship, the large discrepancy in means (Table 7.2) suggests that vetoes may also be driving governors' initiative use. The large standard deviation on the category of interest further suggests that if some of the cases of initiative use are veto-driven there are some that are not. However this tabulation does not take account of the different rates of use of the initiative by governors in each state which might equally be producing these correlations, hence there is a need for multilevel modelling.

The above has all led to a test of the theory that governors will use initiatives to overcome state legislatures when the governor cannot make progress through the legislature, and on an issue that the governor believes to be important. The causation is not deterministic and there are likely to be personal and institutional resource factors favouring use, but the two conditions given can be thought of, as far as anything could

Table 7.3: Summary of very divided government variable

Years in which governors use an initiative

	freq	%	n
Not very divided government	12	30	43
Very divided government	31	70	43

All years in initiative states

	freq	%	n
Not very divided government	531	58	915
Very divided government	384	42	915

in this case, as necessary conditions. Rather than trying to identify issues governors deem important this test concerns the other necessary condition only:

> **Hypothesis H9**: In the presence of conflict between the legislature and the executive there will be a statistically significant increase in the likelihood that a governor will qualify an initiative for the ballot.

7.2 Data and Method

Measuring the dependent variable for this study involved identifying cases where governors had launched initiative campaigns. The identification of governors qualifying initiatives for the ballot was carried out by systematic search of electronic newspaper archives.[5] A search was carried out for each governor in office from 1972-2002.[6] To the governor keywords were added, in different combinations and with proximity limits, 'ballot', 'initiative', 'sponsor', 'proponent'. The resulting cases are displayed in Table 7.1, and the evidence for each case, consisting of multiple press reports in each case, are held on file with the author. The main concern this process raises are with false positives and equality of coverage across states. Therefore in the smallest eight initiative states each initiative on the ballot was separately keyword searched.[7] In these under-reported states, a description was still found, just not the 500 articles found in highly reported states. In any search there will be a concern about false positives, but it is possible to address this. Positive judgments were checked specifically against other reports to insure against false positives resulting from sloppy/mis-reporting.[8] This resulted in multiple sources for each positive case.

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[5] The two databases searched were factiva and LexisNexis.

[6] Each state and governor combination were keywords.

A plurality of actors is involved in the process of qualifying a measure for the ballot; from signature gatherers, friendly interest groups to fundraisers, as well as donors and campaign consultants all of whom may play a role in qualifying a measure for the ballot. Given the number of observations (24 states over 40 years) it has to be taken as a proxy for the fact that governors have used the citizen-initiative that state media identifies the governor as a user. Returning to the question of errors in judging the cases where a governor has truly used an initiative, what was excluded during this search were simple cases of endorsement of citizen-initiatives by governors.

As mentioned above the language used to describe the qualification route of an initiative is often very sloppy. For example, in 1998 George Voinovich is reported as sponsoring a ballot initiative, Issue 2. In fact Voinovich had no formal role in the process as the measure was referred by the legislature. A check of the NCSL ballot measure database is enough to account for this error, but crucially the plan is Voinovich's and he is foursquare behind the measure – that is accurately reported. As long as multiple reports do not misidentify a governor as a sponsor of a measure which, when checked, turns out to be a citizen-initiative, then the coding can be relied upon to the extent necessary for these tests.

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[7] Alaska, Idaho, North Dakota, South Dakota, Utah, Wyoming, Washington, Maine.

[8] A report which describes a ballot initiative might in fact be describing a legislative referral, and this is a common occurrence. The language used to describe the qualification of and constitutional status of items on the ballot by journalists is extremely sloppy, even in states which make frequent use of multiple forms of direct democracy.

All the variables used in the tests below are listed in the Table in the appendix. The proxies used for conflict between the branches of state government are very divided government and vetoes.[9] The controls for gubernatorial election years, the tenure of a governor (a straightforward proxy for tenure potential), and the rate of initiative use at the state level. Only those 24 states with constitutional provision for the citizen-initiative are considered.[10] This time-series cross-section of data is analysed using multilevel modelling, to control for state specific latent variables (e.g. California governors consistently use more vetoes than Ohio governors). When a random intercept model is compared to a random coefficient model there is not found to be any significant difference in the coefficients for the key explanatory variables and so the former is preferred.[11] The binary dependent variable necessitates logistic regression and the small number of positive cases the binomial family option. Robust standard errors are used because of the small number of positive cases of the dependent variable. The Wooldridge test does not reject the null and therefore there is no first order autocorrelation.

7.3 Findings: Playing Legislative Games with the Citizen-Initiative

Model 2 in Table 7.4 shows the statistically significant effect that vetoes and very divided government have on the chances of a governor using a citizen-initiative in the average year. Table 7.5 provides the magnitude of those effects. Governors who face very divided government were more likely to use an initiative; an increase of 3.7 times over those who did not face divided government.[12] An increase of 10 vetoes in the average initiative state is associated with a 1.07 times increase in the chances that a governor will attempt to bring an initiative to the ballot, holding other variables constant.[13] If the year is 1990 and if a governor vetoes three bills, facing very divided government, with other variables set to their mean, the mean predicted probability of initiative use is 5.2%. Both the findings about very divided government and vetoes support rejecting the null of hypothesis H9.

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[9] Lagged versions of the key variables were tested, but not found to be significant.

[10] Two of those 24 states did not have the initiative for the whole of the period under consideration, Florida in 1974 and Mississippi in 1992, and so the data is not balanced. In 1980 Illinois moved from the advisory to mandatory initiative.

[11] There are not enough positive cases per state even with partial pooling, to predict different coefficients for each state.

[12] On the appropriate interpretation of odds ratios as relative risk see Davies, Crombie, and Tavakoli (1998).

Although the effect for vetoes, and the predicted effect of very divided government are the same in each state, as this is a random intercept model, the magnitude of this effect will be quite different. In Ohio for example the number of vetoes is no greater than 3 and in California the number of vetoes peaks above 400. Furthermore there are initiative states where governors have not made use of the citizen initiative. However the coefficient that results from the tests here is not designed to make specific predictions about gubernatorial use of the initiative (even given the non-deterministic nature of these phenomena the rarity of this one in particular would make that dangerous) but it does provide evidence about the hypothesis H9. The divided government variable is not a statistically significant predictor of initiative use by governors.

The picture is similar in the model which excludes California. The effect of very divided government is still significant but with a smaller, 2.3 times increase in odds in the presence of very divided government. The size of the effect of vetoes is doubled when excluding California to a 1.015 times probability increase per extra veto. There is a small and marginally significant effect for higher initiative use states, although this is a state level control rather than a year level measure of initiative use which could, were one available and included in the analysis, produce different results.

Gubernatorial election years are not a statistically significant predictor of governors' initiative use in either model (not approaching the 90% confidence level) and hence provide reason to reject the null of H9. The variable describing even years (congressional, and many state elections) is significant, and it is a control necessary

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[13] The standard deviation for the vetoes variable is 37, but this is driven by high use states. In fact 10 is the median standard deviation for initiative states.

Table 7.4: Multilevel binary response model of governors' initiative use 1972-2008

	Odds Ratios (robust SEs)			
	Model 1	(All)	Model 2	(without Ca)
Government conflict				
*v*ery divided government	3.67***	(1.430)	2.320**	(0.816)
vetoes	1.007**	(0.003)	1.015**	(0.007)
divided government	0.808	(0.740)	0.653	(0.593)
referrals	1.030	0.024	1.009	0.037
Electoral				
election year-1	1.376	1.036	2.832	2.03
election year	3.764	2.835	0.815	0.582
even year	7.430***	4.774	5.322**	2.929
Control				
Used before	0.497	0.213	0.583	0.295
Professionalism	25.815	27.691	60.30**	116.199
Tenure	0.969	0.075	0.950	0.089
Initiative rate	1.088	0.065	1.176**	0.097
year	1.060***	0.0152	1.070***	0.017
Random intercept				
var(state)	0.515	(0.416)	0.581	(0.469)
Deviance	-127.560		-112.73	
n	861		821	

*significant at the 90% confidence level, **significant at the 95% confidence level, ***significant at the 99% confidence level

Table 7.5: Odds ratio calculations for model 2, significant variables

	Odds ratio for 1 std dev change		
	Std Dev	With Ca	Without Ca
vetoes	10	1.07	1.15
very divided govt	–	3.24	2.34
year	11.8	1.07	1.07

to gauge the effect of gubernatorial elections separate from the fact that most measures appear on the ballot in even years. It is much less likely that initiatives of any kind will appear in off years.[14] Explanations that link this effect to electoral outcomes, either future or contemporaneous, could be tortuous and near impossible to disconfirm (for example the use of initiatives to coincide with presidential elections (for a party turnout effect) or in state legislative elections (to boost party fortunes). Every biennium involves federal or state elections of one sort or another making the effect impossible to disentangle in this study. The other significant temporal effect involves an increase in the probability of initiative use for governors closer to 2009. The distribution is summarized in Figure 7.1 and the odds of initiative use are one and a half times higher for every decade of time elapsed.

To check further the conclusions reached it is informative to look at those initiative states in which governors never use the initiative to see if there is an omitted state-level barrier to governors' initiative use. They are displayed in Table 7.6. Only one governor

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[14] The split between the four years of a hypothetical gubernatorial term are even: 1) 27% 2) 25% 3) 24% 4) 24%. The slight bias towards years 1 and 2 may be caused by both the fact that not all governors serve out their terms and that five states have or had two year terms.

Table 7.6: States with no use of the initiative by the governor

State	Mean vetoes	Const amnd	Initiative rate	% Very divided
All states	21.21	–	–	0.39
Initiative states w/use	30.68	14/15	2.4	0.58
Initiative state no use	6.04	6/11	1.5	0.47
Alaska	8.43	No	2.3	0.49
Idaho	8.35	No	0.9	0.63
Maine	6.84	No	1.5	0.58
Nebraska	3.33	Yes	1.2	0.27
Nevada	3.14	Yes	2	0.19
North Dakota	5.26	Yes	2.4	0.49
South Dakota	9.96	Yes	2.3	0.15
Utah	5.47	No	0.8	0.27
Wyoming	3.58	No	0.4	0.69

uses an initiative in the six states which only allow statutory amendment (Governor Locke in Washington).

The lower mean rate of vetoes in those states where there is no use of the initiative by the governor, but where the citizen-initiative exists, is consistent with, and supports the finding that veto activity increases the likelihood of initiative use by a governor. In some of these initiative states in which the governor did not take advantage of the institution there is also a qualitative difference in the direct democracy institutions, as in Maine for example the constitution cannot be amended by initiative, and therefore only initiatives altering statute can be brought to the ballot by petition. Oregon would be an exception to the rule, with only one case of gubernatorial use of the citizen-initiative despite the ability of citizens in that state to bring constitutional amendments to the ballot by petition. As Table 7.6 shows, in 6 of the 11 states in which there is no use of the initiative by the governor it is not possible to use the procedure to amend the

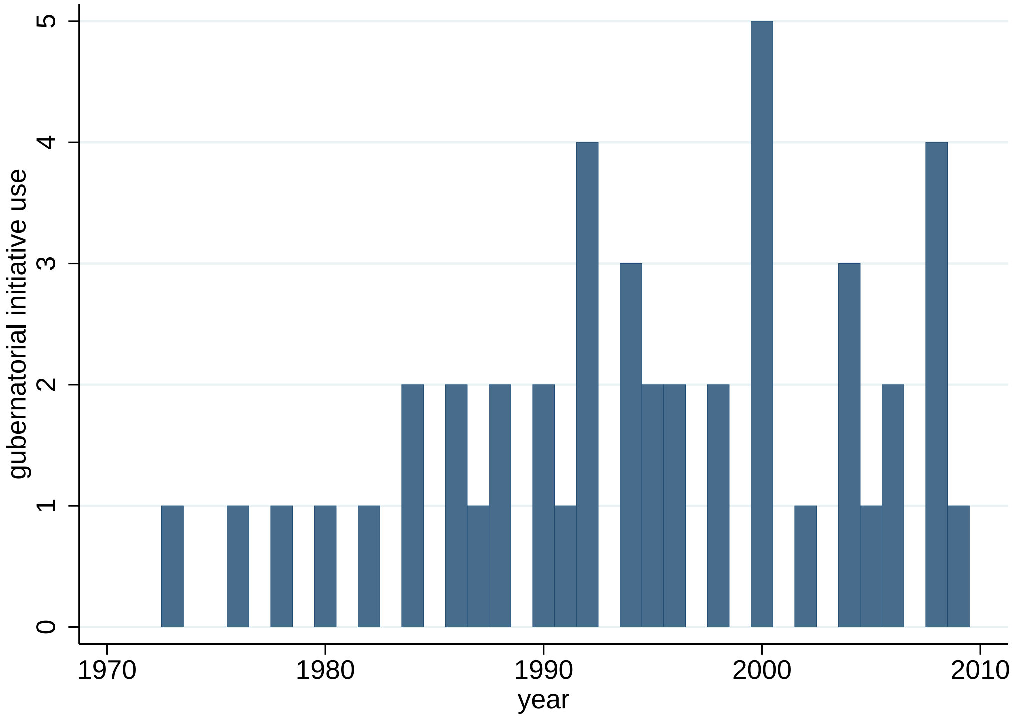

Figure 7.1: Graph of governors' initiative use by year

constitution. In 14 of the 15 states where there was use of the initiative by the governor there was provision to alter the constitution by initiative.

In some of the states where there was no use of the citizen-initiative by the governor there is also clearly the absence of partisan conflict between branches of government that the test was designed to model. In Idaho for example there is consistently a Republican governor alongside a Republican legislature which takes away the need for the former to resort to a petition drive.

As a further corollary to the non-significance of gubernatorial elections. Table 7.7 shows no sign of the predominance of crime and race issues that candidates standing for office would find beneficial to their campaigns. The distribution of issues is not far from the population averages with the top issue being education, not well suited to election campaigning as argued in Chapter 6.[15] The success rate of the initiatives that governors launch is a further possible test of whether the tactic is for legislative

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[15] Carsey (2000, p.54) places education 4th of ten issues stressed in gubernatorial campaigns 1982-1992.

Table 7.7: Subject matter of governors' initiatives 1972-2008

	Governors' use (43)	%	All initiatives (1182)	%
Education	10	23%	114	10%
Tax and T.E.Ls	8	19%	278	24%
Government and electoral reform	9	21%	327	28%
Environment	4	9%	80	7%
Crime	3	7%	83	7%
Transport	3	7%	42	4%
Welfare	2	5%	35	3%
Health	2	5%	129	11%
Gaming	2	5%	79	7%
	43	100%	1182	100%

Source: NCSL ballot measures database

or electoral reasons. The figures given in Table 7.1 on page 162 (for those initiatives that made it to the ballot on election day) provide a pass rate of 61.3% and an average yes vote of 56.8% for governors' measures. That compared to a 44% rate of passage for citizen-initiatives in general and an average vote of 41%.

It was suggested above that there are two components to the motivation for a governor's use of the initiative to overcome the legislature. First that the governor had to consider an issue important and second that there had to be conflict with the legislature. The latter was tested but the former was too difficult to assess on this or any currently available data. A review of the subjects that have prompted governors from different states to respond using the ballot box can provide further support of Cobb and Elder's governors-as-responders type of initiative use.

Of particular interest are cases of governors 'responding' at the same time as each other using the initiative. On education reform in the early 1990s, Roy Romer's Amendment 6 which has already been discussed in detail was accompanied by an initiative from Michigan governor John Engler. From 1999 to 2000, when the states received the Tobacco Companies Master Settlement there was a pool of money up for grabs, and this prompted governors in Arkansas and Oregon to use initiatives to decide its fate. In the early 2000s the issue of gun control, on the agenda after the Columbine shootings, prompted two initiatives in the same year, used this time by governors in Colorado and Michigan.[16] [17] In these cases the coincidental nature of the response to an issue that had gained nationwide prominence certainly suggests that governors are acting as responders.

There remains one final alternative hypothesis that has not been considered thus far. In other work on the use of direct democracy by state legislators it has been shown that politicians believe that they can gain an advantage in advance of a run for *higher* office by being associated with an initiative campaign. In the case of state legislators the political economy of such a move is clear. The set of voters who vote in elections for state executive positions is equivalent to that of a state-wide initiative. In the case of governors it is possible that they are using the initiative to promote their senatorial or presidential (or cabinet) ambitions. The list of characters in Table 7.1 have almost all been talked of in the context of a presidential bid, some have held cabinet positions, and whilst some have actually run for president in a serious manner, two of the governors listed have gone on to be president. This suggestion has to be left open as a possible explanation for some cases for the time being, not least because almost all governors who survive in politics long enough and have the resources to launch an initiative campaign will be in the frame for higher office.

7.4 Discussion

The new data used in this chapter shows that politicians, in this case governors, are proponents in the citizen-initiative process in diverse states over a thirty year timespan. The rest of the chapter has gone on to show that governors were actively using direct democracy institutions to achieve a gain over the legislature in their state – the chances of governors using the initiative were shown to be increased by periods of conflict with the legislature. The subject matter and timing of these measures go together to support the implication of this fact, that the use of the initiative by governors involves achieving policy objectives rather than electoral advantage. In sum direct democracy in the cases considered is used as part of a game, played between the executive and legislature, for primarily lawmaking ends. There is evidence that members of state executives, other than the governor deserve some consideration in future in as much as they use direct democracy in what appears to be a similar manner. Attorneys General alter the criminal code (John Van de Kamp, California in 1990), State insurance commissioners amend insurance regulations (Bryon Knudsen, North Dakota in 1978, Chuck Quackenbush, California in 1996), and secretaries of state amend electoral rules (Norma Paulus, Oregon in 1992, Ken Blackwell, Ohio in 2005). Lt Governors have also been known to be listed as initiative proponents (Leo McCarthy, California in 1992, Proposition 133)

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[16] In all three issues there are also responses in other states from governors and legislatures together through the legislative referral. In Oregon the legislature circumvented Governor Kitzhaber by putting its own measure on the ballot.

[17] The Republican governors' class of 1994 appears to be a good predictor of initiative use on its own. Out of Weld, Wilson, Whitman, Thompson, Engler and Symington, all but Whitman and Thompson are represented in the list of ballot initiatives in Table 7.1.

This conclusion leads to the realisation that governors in initiative states have a further string to their bow over their colleagues in non-initiative states. These initiative-state governors have a very potent form of the 'going public' technique at their disposal. This use of the initiative by a very particular group of proponents raises questions about the aggregate effect of the initiative institution. Where governors are initiative proponents there is no reason why those initiatives, being proposed for instrumental reasons, will track the preference of the median voter in a state. From a democratic point of view one might also worry especially about those measures which change electoral rules over the heads of the legislators. Also it was shown that the constitution nature of these measures is a good for the governors that use them. The theory does not however claim to explain all cases of initiative use by governors. That they are playing games with the legislature a lot of the time but that there are cases (Wilson) where they are looking to make electoral hay. The further lesson that this chapter can provide for future research is a focus on other politicians' role in direct democracy. The way is open to examine the legislatures' weapon in the form of the referral, and the possibility that legislators can themselves use the initiative.

7.5 Summary: Conclusions Concerning State Government

Chapters 6 & 7 demonstrate that in periods of very divided government state legislatures refer more measures to the ballot. Suggesting that (controlling for other factors), they are circumventing the governor in those instances. This finding is supported by the fact that the effect is more marked in those states where referral to the ballot was easier than a veto override. There is an important question about how much of the variance in referrals is explained by this effect.[18] The number of years of very divided government was 440 (of the years legislatures sat). Controlling for all other factors the population mean increase was 1.5 referrals per year of very divided government, hence 660 referrals are explained in this way. Out of a total 3666 referrals in the period 1970-2004 this is 18%, substantial in its own right.

The chances of governors using the citizen-initiative are increased by periods of conflict with the legislature. In both Chapters 6 & 7 therefore direct democracy is used as part of a game, played between the executive and legislature, for primarily lawmaking ends. In neither case does the theory claim to explain all cases of either legislative referral use or initiative use by governors. The two branches of state government, when very divided, compete using the ballot box, but appear to do so at distinct times because the legislative referral was not a significant predictor of governors' use of the initiative and legislative referrals were not predicted by an increase in gubernatorial vetoes.

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[18] There is a long discussion of the unsuitability of measures of explained variance in Hox (2002, p.71).

Chapter 8

Politicians, Direct Democracy and Policy Responsiveness

The purpose of the next two chapters is to give significance to what has come earlier in the thesis, to provide an overwhelming reason to be concerned with politicians' use of direct democracy. One reason to be interested in an institution in a democratic polity is if it has a direct effect on policy outcomes – mediating between public and policy (Hug, 2001; Wlezien, 2004). The next two chapters argue on the one hand that direct democracy can have such an effect, in the right conditions, creating differences in responsiveness between initiative and non initiative states, but on the other hand that the effect on policy is not omnipresent. That is, not resulting merely from the existence of the institutions of direct democracy as current prevailing theory suggests. This extra step involves disconfirmation of the existing theory linking policy responsiveness and the initiative.[1] In short it is argued that what is subsequently referred to as GBD theory does not hold *irrespective* of politicians use of direct democracy).

The last four chapters showed politicians launching direct democracy measures for political gain. However, it remains possible for a sceptic to claim that these politicians' measures have no distinctive impact on policy and can simply be subsumed within an existing theory of the action of direct democracy institutions. Along with other direct democracy sponsors, politicians would, on this explanation, be constrained by the *gun behind the door* in the form of a threat from an interest group at the point of the median voter. Imagine for a moment that this GBD theory were true. Being rational, and in the absence of any additional theory, politicians facing a threat from an interest group would sponsor initiatives only where their proposals were preferred to the status quo by the median voter. To sponsor any other measure would be irrational as they would be overruled by another measure (that of the interest group) closer to the median voter's preference. Therefore the uses in the previous chapters would be contingent on the subject of the use being preferred by the median voter. If however it can be shown that existing theory linking the initiative and policy responsiveness is inadequate, then the question becomes do politicians measures pass or is the underlying premise of GBD accurate – that there is a platonic (abstract, preexisting) median member of the electorate (PMV).

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[1] GBD is the prevailing theory, but despite many citations empirical studies continue to find anomalies as section 8.3 shows.

If GBD does not describe the way the initiative operates to change policy responsiveness then there is a possibility that politicians' use of direct democracy can take its place in promoting responsiveness. If the underlying premise is wrong then there are a welter of possible effects politicians use of direct democracy could have. Even in the absence of a systematic policy effect from politicians' use of the initiative, if GBD does not work, it becomes prescient to take politicians' uses into account in constructing new theory relating the presence of a particular configuration of direct democracy institutions and policy outcomes. Chapter 9 shows the existing theory to be inadequate and tests one piece of that new more nuanced theory which this chapter sets up. In this chapter it is argued both that the existing theory is inadequate and that there is a systematic policy effect that can be attributed to politicians' use of direct democracy in some circumstances. The discussion begins in the next section with the latter.

8.1 How Politicians' Sponsorship of Direct Democracy Affects Responsiveness

Section 2.3 outlined five effects that direct democracy could have, irrespective of who was the sponsor. From these effects were generated ten mechanisms through which politicians might make use of them. The impact of direct democracy use will depend on which category of politician use is in question. The five effects being taken advantage of will produce different theoretical links with public policy.[2] Some of the incentives for politicians to qualify initiatives have the potential to be responsiveness promoting whilst others could have a counter-responsive impact. Which effect impacts responsiveness in what way (and what the mechanism is) are the topic for discussion in the two sections below. The argument is that there is the possibility of responsive and counter-responsive processes. if the arguments in 8.2.3 are accurate then GBD does not hold *irrespective* of how politicians use direct democracy, because of the flaws in the theory outlined in section 8.2.3 and tested for in Chapter 9. Therefore the responsiveness effects it predicts are not there to be countered. In any case it is useful to begin with the responsive-promoting aspects of initiative use because they are the ones that are tested and because the theory below, the review of existing empirical studies below and the new empirical work in Chapter 9 *all* suggest that *ceteris paribus* there is no responsiveness increase in the presence of the initiative without politicians' involvement.

8.1.1 Responsiveness-Promoting Effects

Chapters 5, 6 & 7 suggest three responsiveness-enhancing processes: 1.) supply of a valence issue by candidates concurrently using initiatives; 2.) the use of the referral by legislators to overcome a recalcitrant veto player in the form of the governor and 3.)

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[2] To recap they are: to alter election campaigns (explored in Chapter 5), to increase the profile of sponsors (explored in Chapter 4), to harm other measures on the ballot and finally to change the constitution and statute without veto (explored in Chapters 6 & 7). However of those motives, shown in the thesis to exist, this chapter and the next show there is no single direction to their effect on policy.

the use of the initiative by the governor to overcome a recalcitrant veto player in the form of the legislature.

Theoretically, on the basis of what the tests in Chapter 6 showed, the existence of the referral can be expected to enhance responsiveness when there is very divided government – a policy which would otherwise have been held back in legislative gridlock can be placed on the ballot by a legislature (super-majority requirements notwithstanding) and if it has majority support amongst the electorate it will pass. To test for the effect of such use in the US is difficult as the referral is available in 49 of the 50 states. However, what can be said is that a finding of equal responsiveness between initiative and non-initiative states would be consistent with the referral working in this way as the referral crosses that initiative-non initiative divide. And the detection of the effect is not impossible, as there are empirical and institutional variations to leverage for the construction of quasi-experiments. For example the tests in Chapter 6 were able to detect a change in the quantity of referrals as a result of intergovernmental conflict, but detecting the second order change at the aggregate level (the policy which resulted from those referrals) would be difficult. The same analysis of aggregate policy variation *is* undertaken in the next chapter, but specifically for the initiative where the researcher has the advantage of an institutional dichotomy to aid explanation (the presence or absence of the initiative). In terms of the governor the case for a responsiveness increasing process is stronger still because of the similarity between the gubernatorial constituencies median and the state median voter.

There exists another responsiveness-promoting aspect of the initiative and this one *will* be measured in the next chapter. The model set out in Chapter 2 which explains why politicians use the initiative does not claim that they will always do so with the primary intention of responding to a state's median voter. But there is a straightforward set of circumstances in which increased responsiveness will be the outcome of politicians' use. A set of circumstances whereby the only way to achieve the primary goal of a politician coincides with the satisfaction of median constituent preferences.

Table 8.1: Potential responsiveness effects of politicians' use of direct democracy

	INITIATIVE	REFERRAL
COUNTER-RESPONSIVE	MVP Endogeneity	Spoilers
RESPONSIVENESS-PROMOTING	Valence wave-riding	Overcoming veto

This will be the case in type (C) initiatives in Table 2.1 which were shown to be riding the wave use of the initiative tested for in Chapter 5. In section 5.3 it was observed that overwhelmingly criminal justice was the preferred subject matter of campaign shaping initiative uses. To achieve their primary electoral ends these candidates sponsored initiatives taking the popular side on valence issues, thus increasing the supply of policy in those areas and satisfying the preferences of the median voter, which can be modelled as non-satiable. The aggregate effect of politicians use of the initiative will therefore be to increase the responsiveness of policy to the preference of voters where politicians use the initiative involving riding the wave to achieve a campaign effect. It is this mechanism that is chosen for examination in the next chapter, to show categorically that the subject matter of the thesis, politicians use of direct democracy, *can* change policy responsiveness.

8.1.2 Counter-Responsive?

There are two versions of a possible counter-responsiveness story. Either the positive effects predicted by GBD of the initiative are counteracted by politicians (a heading-off effect). Or in the stronger version of counter responsiveness initiative states could be made *less* responsive than they would have been *ceteris paribus,* by an aspect of politicians initiative use – less responsive even than the counterfactual non-initiative state.

The first kind of counter-responsive process involves politicians heading off an initiative with a spoiler in the form of a referral. This form of direct democracy use was described in section 2.3.3 and illustrated with an example in subsection 2.8.10, but not considered in depth in Chapters 4-7. Several authors have recognised its operation (Banducci, 1992; E. Stein, 1993; Bowler and Donovan, 1994; Lupia, 1994; Hugh-Jones, 2008; Gilbert and Levine, 2009), but none has explored its effect on policy before Gilbert and Levine (2009) who show this process in action, and claim to show directly, a counter-responsive effect. The so called spoiler measure could operate by confusing voters or convincing voters that the two measures are exclusive. (Gilbert and Levine, 2009) show that having two measures on the same subject on the ballot is bad for both. Of course being a direct effect in the first instance (the presence of initiatives and the referrals to counter them is visible) this effect is only as wide as politicians use of it. The trouble is that the referral has been so far understudied. In fact the kind of process described has the potential to counter any policy responsiveness effect of the initiative when used.

To construct a second, stronger, counter-responsive process resulting from (some) politicians' use of direct democracy, the problem is that the naive GBD style model (criticised extensively in section 8.2.3) makes it very hard to hold a counter responsive conclusion. If there exists a PMV and they have the final say measures then it is impossible to imagine that the result of a policy placed before them for vote could be worse than the status quo (less responsiveness than non-initiative states) as they would prefer any other policy. Even if, as suggested earlier in the thesis, politician measures appear on the ballot, frequently it is to satisfy a secondary preference and with no reference to the median voter. Even if presented with this random distribution of policies the median voter will simply approve those better than the status quo and reject the rest. But this chapter contains a criticism of such simple deductive model building. If one is looking for a genuinely counter-responsive process then it is necessary to rely on some form of endogeneity in preferences for voters *vis* some hypothetical median voter preference (MVP). This is difficult and depends in the first instance on what research shows about the objectivity of median voter preferences (see section 8.2.3.3 for a full discussion).

There are many candidate theories for an endogenous preference setting effect. The effects of cues, already discussed as running from measure to politician, are more often thought to run the other way as well. This effect could allow politicians to preference shape. Agenda control – the provision take it or leave it propositions – could have a similar effect. Question framing is also a plausible candidate for MVP endogeneity. Further it could be that in a set of cases a crowding-out effect from large numbers of politician measures is found. There has also always been a concern that money can buy success in direct democracy campaigns, allayed somewhat by research. Whilst Donovan et al. (1998); McCuan and Stambough (2005) show that spending in campaigns cannot in and of itself buy success (although the marginal effects are greater for opposition campaigns), De Figueiredo, Ji, and Kousser (2011) shows that this finding may be a result of treating spending as exogenous to success. Finally turnout can be very low for many initiative elections (Dyck and Seabrook, 2010) raising the question of whether there is a single MVP.

In other words all the above are examples where citizen preferences would not be exogenous to the initiative process and politicians preferences, it is another part of the reason to care about politicians' use of direct democracy if GBD does not hold and is clearly an area for more research.

8.1.3 Summary

Neither of these counter-responsive effects can be universal and wide ranging, and they are not tested in this thesis. They are offered, as part of a complete discussion, only as plausible scenarios that might, with future research, be shown generate counter-responsiveness. Having provided a new theory of why politicians use direct democracy it is not incumbent given the research question of this thesis to provide a complete theory relating those uses to policy responsiveness.[3]

Of the responsiveness promoting processes the referral is difficult to measure due to a lack of variation on the independent variable, and therefore, in looking for a responsiveness affecting process to justify the study of politicians use of direct democracy, initiatives used on a valence issue are the best place to look. That is exactly how Chapter 9 proceeds.

8.2 Literature Describing Policy Effects of Direct Democracy

The literature which systematically describes the effects of direct democracy is self-identified into two parts. First the literature theorising the policy effects of direct democracy, both direct but largely indirect. Second the literature measuring the externalities, both positive and negative, that direct democracy brings, and often labeled secondary effects.[4] To date research in these literatures have been pursued in parallel but with little interaction in terms of findings.

In this section is contained the bulk of the review, of the first of these literatures, that assesses the policy effects of the initiative. This discussion might seem out of place given that the central tenet of the thesis is that politicians can use direct democracy for its secondary and tertiary (collateral) effects. This thesis therefore falls naturally in the second category of literature documenting effects which sit alongside those discovered by, Bowler, Donovan, and Tolbert (1998b) (government reform), M. A. Smith (2001) (turnout),[5] Smith and Tolbert (2004) (education), Frederick J Boehmke (2005) (interest group density). The simple answer is that relevant secondary effects are discussed in each chapter (for example turnout in Chapters 6 and 8). There is a big challenge, which throws wide open, of linking the two halves of the literature on direct democracy, to determine what the policy consequences of secondary effects and politicians' use of direct democracy are.

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[3] However that conclusion is on the assumption that the direct route is the only means to supply policy. In non-initiative states a similar set of policies can well be provided by statute.

[4] For example increases in information, turnout, trust, happiness and an increase in the number of interest groups as a result of the initiative. There may be endogenous effects of these secondary effects which would question the distinction with primary effects.

[5] See section 2.3.1.

The positive political theory literature provides the prevailing scheme linking direct democracy and state policy output. Romer and Rosenthal (1978) and Romer and Rosenthal (1979)'s groundbreaking work, was developed by Gerber (1996); Gerber (1999); Gerber and Phillips (2005); Gilens and Mendelberg (2001); Tsebelis (2001); Steunenberg (1992); Gerber and Lupia (1995); Moser (2000); Kessler (2005); Gerber (1996b); Frederick J Boehmke (2005); Hug (2001); Hug (2004) to build a theory of how the initiative affects state policy.[6] It was in criticising this literature that Lascher, Hagen, and Rochlin (1996), coined the phrase *gun behind the door* to characterise the threat direct democracy poses to legislators.[7] The GBD literature forms a cohesive whole, in advancing and testing a theory of direct democracy with very similar assumptions. For the sake of clarity Gerber (1996) contains the central assumptions and arguments of GBD theory (it is an extremely thorough paper) and, unless otherwise stated, is the work which is discussed here.

The reason for an extended analysis of the GBD model here is that it is the prevailing model of the action of direct democracy, but it does not predict politicians will be involved in direct democracy. Therefore there is a disjunction which needs to be assessed. This thesis shows another process that is operating alongside GBD – politicians using direct democracy for primary, secondary and tertiary effects. It is necessary to first show that there is not a gun behind the door (at least not in the all encompassing fashion in which GBD theorists conceive it). This is achieved in this chapter with a criticism of the premises of the model, and in Chapter 9, with a test of state policy responsiveness. There is a critical (in both senses) task that has not been undertaken elsewhere in explicating the reasons for inaccuracy in GBD models found by others (section 8.3) and found in Chapter 9.

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[6] The political economy literature could hardly be further apart in method from the descriptive literature. The political economy literature is formal and builds theory deductively, modelling the effect of direct democracy as the outcome of formal analysis.

[7] Schildkraut (2001) could be seen as a GBD theorist, if it is assumed that the percentage of a state's population who are immigrants is a proxy for a state's preference for English as the state language. There is also a small literature focusing on shareholder initiatives in corporations, for example, Karpoff, Malatesta, and Walkling (1996).

8.2.1 A Simple GBD Model

GBD theorists construct a formal model of policy making in the presence of the initiative, characterising it as a game between legislators and the electorate. One side (the electorate, in the form of interest groups) can resort to the initiative. For example the relationship between a bicameral legislature and voters is described in Moser (2000, p. 70):

> To introduce the referendum into the bicameral game, voters are regarded as a third player which can veto any changes.

The simple GBD model describes the fate of legislatures who are out of synch with the median voter in their state. Knowing the preference of the median voter and facing the threat of an initiative from an interest group, these legislators give in and pass a policy which is at the position of the median voter's preference (the indirect effect of the initiative). Simple GBD theory provides an explanation for why in most initiative states the rate of initiatives is low – legislatures head them off.

The simple GBD model however, is open to the persuasive argument that politicians, when faced with the threat of an initiative, have little to lose, and much to gain, by calling an interest group's bluff. In other words there is no cost in letting the electorate have their say if the policy outcome will be identical to their acting, and there will be a cost to legislators of that action.[8] To circumvene the lack of incentive for legislators to act, GBD theory is made more complex than a simple dichotomous model of legislator choice.[9] Increasing complexity allows the GBD model to overcome simple objections, but raises further questions about its relationship with important aspects of reality.

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[8] Two pieces of evidence in particular point to this position. Garrett (1999) finds that WV House of Delegates members who voted against their constituencies vis an upcoming lottery measure did not face being unseated. Second Bali and Davis (2007) found that the raw number of initiatives a legislature faced did not affect the incumbency rates of its members.

[9] Frederick J. Boehmke (2005) sticks with a binary model of policy choice.

8.2.2 The Complex GBD Model

Under this more complex GBD model, rather than facing a dichotomy between legislating or not legislating for a policy at the median voter's preference, legislators are faced with a range of options in response to the MVP. There is a Pareto optimal improvement available.

As illustrated in figure 8.1, in the face of a change in median voter preference (from MVP to MVP')[10] legislators can select to move from GSQ to a position G2 between GSQ and G1, which they prefer, to G1, but against which an initiative will not be used, because the cost of doing so (for an interest group) is greater than the utility gained. Therefore, in theory, legislators will choose to gain G1 minus G2 and the electorate will gain G2 minus GSQ.[11] In the counterfactual case, or in a state where the initiative is not available to voters, policy would remain at the status quo (GSQ). The central tenet of the complex GBD model is that the driving force behind new legislation, closer to the median voter's position, is a benefit on offer to legislators. By not ignoring (or calling the bluff of) an interest group which is offering a proposal at the median member of the electorate's preference, the legislature can gain a utility benefit compared with waiting to be overruled. To say the least this has proved to be a persuasive model (and it is elegant and intuitive) and what from hereon is referred to as the complex GBD model.[12]

The implication of the complex GBD model under perfect information, is that there will never be a successful initiative. To overcome the fact that there *are* successful initiatives, GBD theory is further nuanced in Matsusaka and McCarty (2001), Moser (2000, chapter 7) and Kessler (2005), introducing uncertainty and adding caveats about informational asymmetry to these formal models relating direct democracy to policy

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[10] The presence of a *change* in the arrangement of preferences is necessary to explain why there was no move at time t-1.

[11] This is explained further in Gerber (1996) and similar diagrams appear in many GBD articles.

[12] 312 citations for Gerber (1996) (google scholar, retrieved February 2012).

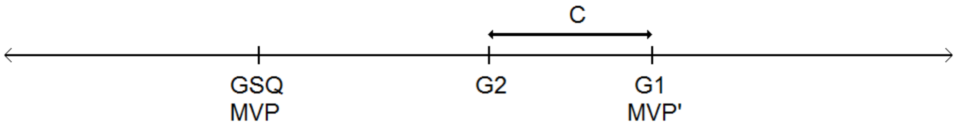

Figure 8.1: Example operation of the initiative according to complex *GBD* theory

output. A successful citizen-initiative will come to the ballot, according to Moser's model, when legislators are sufficiently uncertain about the preference of the median voter so as to make a policy decision difficult. Moser's chapter on the referendum game is entitled *Uncertainty and Interest Groups*:

> By introducing uncertainty it becomes possible to take into account the fact that referenda occur (against about 7% of all statutes). Moser (2000, chapter 7) [discussing the Swiss system but the point stands]

An interest or citizen group will initiate direct democracy, according to this account, if the utility loss from the legislature's proposal (misjudged in the face of uncertainty about the preference of the median voter) is greater than the cost of running an initiative campaign.

There are different types of uncertainty (about costs and about preferences), and for different actors, each of which has been explored by at least one author showing the effect on the formal model of varying these parameters. Matsusaka and McCarty (2001)'s version of the GBD model is quoted below, and the unexpected outcome it produces under some types of uncertainty, but for now it is enough to say that uncertainty about voter preferences means legislators sometimes fail to act on the median voter's preference. All the above authors agree that information supplied by interest groups (when aggregated) has a key role in signaling information to legislators regarding median voter preferences and offsetting some uncertainty.

A good deal has been learnt from the GBD model, and it has sparked a lot of imaginative work both in support and opposition. This point is spelled out here alongside the large areas of convergence between GBD theory and the findings in this thesis.

Researchers who have proposed GBD do set out to test clearly defined hypotheses about state politics using rigorous methods and rich datasets. A task in common with this thesis. A version of GBD theory, with reduced scope and frequency for successful threat events, sits harmoniously alongside politicians' use of direct democracy. It is empirically difficult to deny that the initiative is used as a threat against legislators (Chapter 7 actually shows it is used by governors in just this manner). There is then, a threat, and it is often effective.

GBD engages in the task of emphasizing the complexity of state politics and the interactions of its actors – the interaction between interest groups and state legislatures. That is a theme that this thesis takes up by looking at the interaction of governors, legislators and the median voter as well as politicians and their competitors in election campaigns.

8.2.3 Critique of the GBD Model

It is now clear where agreement exists between this thesis and GBD theorists. Having set out very clearly the model being scrutinised in section 8.2.2, the next sections proceed to critique, first the GBD model itself and the thinking behind it, before assessing the empirical support that it has received. The former exercise is particularly worthwhile as there has not (since the brief attempts in Setala (1999, p. 82-83) and Lascher, Hagen, and Rochlin (1996)) been a critique of GBD theory, this despite the large number, and contradictory findings, of empirical tests.

To establish the indirect policy effect for an initiative the GBD model links a threat posed by voters, through the mechanism of the threat of an initiative, to actions by legislatures. In sum this critique generates three criticisms of the process. Firstly, that state legislatures do not react in the way GBD suggests. Second, that GBD has not shown its mechanism to be at work, and third, that the view of voters it assumes ought to be rejected in favour of one in which they do not pose the kind of threat described.

If legislatures do not respond in the right way GBD theory predicts that many citizen-initiatives will make it to the ballot, and therefore a direct effect for the institution on a state’s policy. If there is a lack of initiatives, then it remains possible that the legislature is just responsive *per se* and no threats are necessary. This last and vital point is addressed in Chapter 9.

8.2.3.1 Most Important Criticism, Assumptions about State Government

It is tempting, in the context of the research question, to address GBD theory only in as far as it suggests that politicians will not use the initiative process themselves. The omission results from a focus on formal institutions (which suggest how direct democracy ’ought’ to be used), to the exclusion of informal institutions (how direct democracy is actually used). If there is only one criticism of GBD theory (that it ignores political leadership), the link between the empirical findings of Chapter 9 and politician use of direct democracy would be much more straightforward. However there is a more fundamental misunderstanding of politicians and how they cooperate and conflict contained in GBD which generates three fundamental criticisms.

The central concern with GBD theory can be stated succinctly; it provides an oversimplification of the lawmaking process in the US states. The move from simple to complex GBD theory is wholly necessary to overcome the problem of finding some cost incurred by politicians for ignoring the threat of an initiative and moving closer to the median voter than the status quo. However legislatures will not be able to coordinate to achieve this outcome which is Pareto optimal to holding the initiative election.

The idea that legislators will re-legislate at their new optimum point given the threat of an initiative has less credence if the US Congress is taken as a model of a legislature. This is what GBD does in part by sidelining governors, but exactly what GBD does not do when overestimating the possibility for cooperation within the institution.[13] It is the oft committed fallacy of legislative scholarship to take the exceptionally powerful US congress as a model for other legislative bodies. Having made that move it is even more puzzling that there is such a strong efficiency assumption about the operation of state legislatures, for one thing that the US congress is not is an institution that maximises the policy preference of the median member in either chamber (Krehbiel, 1998). Gerber puts the recalcitrance of a state legislature, when faced with a median voter preference which differs from the *status quo*, down to collective legislative action (Gerber, 1999, p. 26). Whereas it may be that recalcitrance is due to partisan conflicts and nested games whose payoffs are not simply provided in terms of policy.[14]

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[13] See Green and Shapiro (1996, Chapter 6) for a detailed account.

There is a false equivalency in GBD between the preference of a legislator for the position of a state's policy, and the value attached to a recorded roll call vote. Imagine the situation in which 60 members of a 100 member chamber are opposed to a new restriction on a woman's access to abortion, but the median member of the electorate is in favour of that restriction. GBD suggests that 10 members will come to a compromise on a middle way rather than face the prospect of an initiative imposing the new restriction as is. There is doubt in this, and equivalent situations, about whether the cost of a roll call vote away from a member's preference is equivalent to the MVP minus campaign cost gain.

To demonstrate this, it is revealing to ask why legislators are out of line with the median voter in a state. Legislators in these situations are not picking their preferences with the median voter in mind, but instead are led by other forces. The median legislator (rather than the 60+1th member, to be generous to GBD) might be out of line with the median voter because legislators are following constituency preferences which have a non-state-wide-median.[15] Matsusaka has said as much in Gilligan and Matsusaka (1995); Gilligan and Matsusaka (2001) with additional evidence to this effect in Bradbury and Crain (2001); D. A. Smith (2001); D. A. Smith (2007). Even where this is not the case (in a homogenous state), legislators may be out of synch because logrolling produces non-median voter outcomes in state legislatures (Kau and Rubin,

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[14] Huder, Ragusa, and Smith (2011) show that the initiative can alter roll call votes in the US Congress. This is entirely consistent with the argument made here. An initiative which has passed is playing the role of a constituency-level signal for congressmen. At the state level it does not play that role and quite possibly would not do so before passage. In fact on one explanation offered by Huder, Ragusa, and Smith (2011) for their results the reason for the original shirking was a lack of information. Information that is required for GBD to have an indirect effect.

[15] Or donors who also do not have the interests of the state-wide median voter at heart. Gerber has unpublished work showing the preponderance of out of state donors (Bednar and Gerber, forthcoming).

1979). Which is not to paint a picture of legislators as unresponsive and rent-seeking *per se*. It is just that in those situations where GBD claims the initiative will have a special draw on legislators it will not do so.

GBD theory ignores the fact that, as a result of a market in proposals, groups will lobby and contribute to campaigns to maintain the status quo.[16] There is a cost in moving to MVP for legislators above and beyond the policy change, and it may even be that they prefer to be forced by an actual initiative, to placate their supporters and donors. What happens when a citizen group looking for change is faced with a 'silent/behind the scenes' economic group (Gerber's terms).[17] There are *two* threats to state legislators. One is public, the initiative petition by a citizen group, but the other is private and works in favour of the status quo – from an economic group. The majority of legislators who prefer the status quo can be assured of at least funding for the *No* campaign, and possibly their own campaigns, when they are threatened with some initiatives. In this case legislators are still acting consistently in opposing a move to a policy at MVP minus campaign costs. For example, in the face of a threatened initiative to tax soft drinks, producers will prefer to fight the initiative than to concede to any non trivial percentage tax. A median legislator who received donations from a soft drinks company would be able to win either way by maintaining the status quo and awaiting the initiative campaign.

The presence of the governor introduces further super-majority requirements for the passage of legislation which a governor is willing to veto. [18] In fact the best option for the maintenance of GBD theory would be to posit that the legislature refers a given measure over which it is being threatened to the ballot itself (see Chapter 6). This takes the governor out of the equation, but in some states will introduce new super-majority requirements.

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[16] And the special advantages of opposition campaigns is shown in Donovan et al. (1998) and Broder (2000).

[17] Gerber (1999) finds that citizen interest groups are more effective in using the initiative to alter the status quo, and that economic groups are more effective at preserving it.

[18] Burke (1973) makes the point explicitly:

> The legislative process in Washington, as in almost all other states, is not exclusively a function of the Legislature, but rather it is a function which the Legislature shares with the Governor who is vested with the power to veto bills.

There is a straightforward response – that these cases are illustrative only of the minority of failures of the indirect effect and that they account for those initiatives which *do* appear on the ballot. However the principles outlined, super-majority requirements, embedded interests and position taking, are too numerous and widespread to be dismissed in this way.

There is a further element to this central criticism of GBD – a failure to appreciate the importance of constitutional amendments qua constitution. Take for example Proposition 8, passed in 2008 in California. For the state legislature to have satisfied the proponents of that proposition the legislature would have needed to table a constitutional amendment of its own as the constitutionality of the measure was intrinsic. That amendment would have required a 2/3 majority in the legislature. If there is value to the constitutionality of a law for a group then the legislature faces an even harder task to appease the group with a measure at MVP-cost. In the case of Proposition 8 1/3+1 legislators would see value in fighting an amendment.

Another way to think about the central problem with complex GBD theory is in terms of the size of the benefit gain on offer for legislators (small by admission of the proponents of the theory), versus the amount of uncertainty all round (very large).[19] Matsusaka and McCarty (2001)'s model for example disagrees with that of Gerber:

> However, when voter preferences are uncertain, even an extreme interest group's initiative could turn out to match the voter's preferences and end up defeating the representative's policy in an election. To avoid this risk, the representative may find it optimal to choose a policy closer to the interest group's ideal point. This accommodation can deter the interest group from proposing an initiative if the cost of initiating is high enough. Consequently the threat of an initiative can cause the representative to adopt a more extreme policy than he would have otherwise. We therefore show

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[19] There is yet another cause for an increase in uncertainty in the outcome of the initiative process, allowing politicians to ignore the threat of an initiative – uncertainty that follows the passage of an initiative when courts act and bureaucracies implement. Gerber has written in Gerber et al. (2000) about just such cases. In all 8 cases she gives, politicians simply resist the policy in the implementation stage even if the initiative wins. These 8 cases are selected in California alone over ten years, where politicians are shown in some detail to have 'ignored the threat' of, what were actually successful initiatives.

> how availability of the initiative can lead to policy choices that are farther from the voter's ideal point than if there were no initiative.
>
> This provides a logical foundation for the objection that initiatives increase the power of special interest groups at the expense of the "common good". Matsusaka and McCarty (2001, p. 415)
>
> As for the broad question–does availability of the initiative make the voter better or worse off–we find that the answer depends on the amount of preference uncertainty. Matsusaka and McCarty (2001, p. 444)

Small effects can have important outcomes. Osmosis for example relies on the small increase in the probability amongst billions of water molecules crossing a barrier to a higher concentration solution. Over time the effects are summative. This is not the kind of process that GBD suggests. Legislators have a take it or leave it, one shot offer in each policy area. Every offer will be made at the point at which the median voter's position is added to the cost of an initiative. If legislators refuse to act in the way that GBD suggests both that they should, and that they do act, then there will in fact be an even larger shift in policy toward the median voter as legislators are overridden at the ballot box. The problem is that in most initiative states there are not enough initiatives to support this suggestion.

In sum, even though the move to complex GBD theory involves imaginative, rigorous, formal theoretical work, it is fanciful in practice.[20] Nothing as subtle as re-legislating at MVP minus the cost of an initiative could on average, survive super-majorities, logrolling, position taking and party politics. The move to complex GBD theory is therefore a slight of hand which, when exposed, leaves the flawed simplicity of simple GBD theory.

8.2.3.2 Second Criticism – Deductive Modelling and Aggregate Testing

In terms of method, GBD theorists are to be commended for putting themselves far beyond the criticism that used to be leveled at some RCT theories – that models constructed deductively were never tested (Green and Shapiro, 1996).

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[20] Although models are demonstrations, tools and out of them come implications and lessons under different configurations of inputs, rather than just raw predictions, those implications, if they are to guide, have to be accurate.

The second criticism presented of GBD theory, is that an attachment to deductive modelling has unhelpful implications when combined with ecological level aggregate testing (as opposed to process tracing or mechanism analysis) – both are unsympathetic to complexity and empirical nuance (of the type described in the previous section). Despite deploying some of the most sophisticated quantitative methods (though Chapter 9 presents an improvement) tests of GBD do suffer from a methodological shortcoming when taken together. The effects observed are far too far from the proposed cause, leaving open multiple alternative explanations for the findings. Which is not a problem as long as further work is conducted, but GBD is too quick to take the outcome from formal models and launch a very broad test of its effect on aggregate state policy without taking intermediate steps (either before or after) to show the process operates in the real world.[21]

There is no empirical work between the deductively constructed model and the testing of its most general implications (beyond it being informed by the most rudimentary of facts, such as that initiatives do occur). What examples there are (Gerber (1996b) does include a look at a single case study (tobacco tax) do not add to the theory. The attachment to positive theory and efficiency is demonstrated in Matsusaka's repeated puzzlement at why more states have not adopted the initiative:

> But third, the initiative has no downside; voters can utilize the process when it is beneficial and ignore it otherwise. This last implication runs up against the stubborn fact that half of the states and cities in the United States have not adopted the initiative process. (Matsusaka, 2004, p. 134)

To say that the initiative has no downside is contested. Only slightly behind is the idea that simply because there was, for the sake of argument, no downside for voters, the institution would have found its way into the constitutions of more states.[22]

GBD theorists recognise the indirect effect of direct democracy, but do not systematically test, what is a visible mechanism (even if it is indirect).[23] The threat is a very public act (as Gerber (1999) emphasises) and the response by the legislature is even more public. Remember that what GBD literally posits is that state legislatures re-legislate somewhere less than half way between the legislature's preferred point and the MVP (although this would take more than one form). For GBD theory to be convincing it is necessary, at least to see evidence of these pieces of legislation. A failure to convince of the existence of the actual process leaves GBD theorists open to a very important challenge which this thesis takes up; the search for the effect of GBD in mean policy outcomes assumes that the indirect GBD effect is the *only* effect that the initiative (let alone direct democracy *per se*) can have on policy.[24] Even ignoring the non-Newtonian probabilistic nature of politics there are very possibly other games being played alongside the one GBD models. There are no universal forces to allow researchers to make the assumption that the symptom they observe is related, at the kind of distances involved, to the hypothetical cause.

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[21] D. A. Smith (2001) gets as close as any study.

[22] Legislatures control the constitutional revision process in the absence of the initiative and without a constitutional convention.

[23] (Gerber, 1999, p.26) does describe two cases.

Matsusaka's recent work ("Institutions and Popular Control of Public Policy"; Matsusaka, 2007) has found a strong connection between policy responsiveness and an elected judiciary which might also be the elephant in the room. Again an alternative explanation (or it might be all the above alternatives together) might take the form of governors and legislators, having been consciously or sub-consciously affected by term limits which are ubiquitous as a result of the initiative.[25] Finally, it might be the case that in using the initiative for their own ends politicians affect the aggregate policy, a possibility explored further in the next section. That is part of what this thesis argues, but such a move could not be shown by any aggregate test of policy responsiveness alone.

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[24] Morton (1999, p. 140) in a discussion on how to test 'Gerber's theory' illustrates the failure to fully comprehend the indirect mechanism: 'individual behaviour tells us very little about the empirical success of the theory'. The other options she offers to test the theory are straw men, including none of the sensible suggestions made here. Ironically the very next section heading in Morton is *The value of Multiple Evaluations*.

[25] Suggested by Matsusaka (2006, p. 159) and shown by Bowler, Donovan, and Tolbert (1998b, chapter 2). Lascher, Hagen, and Rochlin (1996):

> Legislators generally oppose term limits, and measures to establish them tend not to progress very far in state capitols (Benjamin and Malbin 1992). The initiative process therefore serves as a virtual necessity for enactment of term limits. Thus after the 1994 general election, 20 states had enacted term limits for state legislators, and 22 had enacted term limits for Members of Congress. All such term limits were established by initiative, with a single exception (Utah's state legislature passed term limits legislation in early 1994).

In sum, despite the elapse of a decade and a half there has been no innovative testing of the predictions of the GBD model, of the sort that would convince researchers that the GBD model has identified the exact effect of the initiative predicted. For example a test of the necessary condition laid down in Gerber (1999, p. 25), that state legislators are responsive to initiative threats 'when they are electorally vulnerable'. GBD scholars (as this thesis does) emphasise that state politics and direct democracy is an area of study is in its infancy. That is why there is a focus in this thesis on establishing that the cause exists before moving on to look at its effects as evidence for its existence at the same time.

8.2.3.3 Third Criticism – Voter's Preference Formation and Politicians' Agenda-Setting

This third criticism originates with Lascher, Hagen, and Rochlin (1996)'s second, and only really transparent criticism of the theory behind GBD at the end of their paper:

> Second, initiative results are themselves imperfect reflections of the public's desires.

GBD models conflate a winning initiative with an initiative which qualifies for the ballot, ignoring the process which takes place in between, and working backwards to produce a threat posed to the legislature. The only preferences that GBD models consider are what might be called 'platonic' preferences, in that they exist abstracted from, and before, an actual initiative campaign. The reason that GBD makes these simplifying assumptions about preferences and campaigns is that without them it is too difficult to generate warranted threats to the legislature, and most importantly threats that would in aggregate move policy toward the median.[26] The counterfactual case demonstrates this point. If measures which do not garner support from a majority of the electorate at the point at which they qualify for the ballot, can go on to receive majority support come election time then the threat to legislatures from measures at the Platonic median is uncertain.

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[26] The claim that campaigns do not matter comes in two forms. That they do not matter at all and that they do not matter in a consistent manner. GBD models assume the former, but if the latter were true modelling the policy effect of the initiative might still be possible.

There are two lines of criticism of these simplifying assumptions about voter preferences. One can argue that before a measure is qualified there is no median voter because citizens do not have well formed preferences about an as yet unworded unexplained measure.[27] Second, even if there existed well formed preferences (an identifiable median voter) their position could be altered during the subsequent campaign depending on how an issue was framed, or how the electorate were differentially mobilized.[28] Either of these objections is problematic for GBD, but both have substantial grounding in research and Leduc (2002) has found very compelling evidence in initiative and referendum campaigns specifically.

On the question of well formed preferences, following Converse (1964) the prognosis for the existence and stability of concrete preferences has, for the most part, been downbeat. A heavily cited work of this type is Zaller (1992), with an excellent summary of the whole body in Kuklinski and Peyton (2009).[29] On the other hand there has also been some work which puts an optimistic light on voters' competencies. For example Gerber and Green (1998) and Green, Palmquist, and Schickler (2004), and again summarised in more depth in Kuklinski and Peyton (2009). GBD needs to rest on these optimistic foundations.

However, the best that is on offer given the current state of research (and taken as a whole there is no shortage of research) is that voters are Bayesian updaters. For example Lupia (1994) shows just this in the course of justifying direct democracy *per se*. Using shortcuts to approximate a true preference may well be enough to preserve voter competence in the context of a final vote (in either candidate or direct democracy elections), but it is not enough to save GBD, which needs preferences to be formed or predictable before a measure is framed, cued and even introduced and voters primed.[30] More than this the optimistic literature is problematic because of the sources from which voters are receiving the cues which allow them to vote 'accurately'. Lupia (1992); Lupia (1994); Karp (1998); Leduc (2002); Hobolt (2007); Hobolt (2006); Berman and Yawn (2001) tell of the importance of partisan and elite cues, however it is just these partisan cues which the research in this thesis claims politicians are exploiting.

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[27] On the importance of question wording see Ellis (2002, pp 77-78).

[28] The point does not need to be pushed home any further, but if it did one might ask how state legislators would have reliable knowledge about the preference of the electorate, so as not to be bluffed by interest groups pushing unpopular laws, given the absence of widespread reliable state public opinion data described in Chapter 3.

[29] Zaller (1992) is cited 4168 times (google scholar).

The corollary which adds weight to this view is that campaigns matter for the final outcome of initiative elections. Hobolt (2009, p.106) shows that complex campaign dynamics (for example the amount of exposure a voter has to an issue) will alter the cues that voters take, and change the outcome of an election.[31] The colloquial version of the argument can be found in the fact that the meaning of an initiative (or any other campaign for that matter) is ambiguous until defined. An initiative concerning toxic waste discharge may produce a campaign pivoted about the money that a candidate has taken from industry, or on the other hand the same law may produce a campaign focused on the increased cost the initiative would impose on consumers. Campaigns matter, and there is a gigantic industry (for initiatives alone) which thrives on that fact (Broder, 2000; Donovan, Bowler, and McCuan, 2001).

In other words the optimistic political behaviour literature which GBD needs has the implication that campaigns matter, the very thing that GBD models simplify out of their calculations. Campaigns make a difference by generating outcomes that do not track what GBD would claim was the median voter's preference at the time a threat was made, or at the time a measure qualified. In this regard question framing is also important. Information voters receive through both paid and free media can have a differential effect (Druckman et al., 2010; Hobolt, 2009, chapter 5).

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[30] Well formed preferences in low information environments; a double headed problem in public opinion research.

[31] Hobolt (2009, p.86-87) also contains a summary of the literature suggesting that campaigns have a mobilizing as well as an informative role.

All these campaign effects can therefore be affected by politicians' involvement with direct democracy (Smith and Herrington, 2000; Staszewski, 2003; Hobolt, 2006; Magleby, 1984, p. 168). Added to this is the fact that (as this thesis shows) politicians have an incentive to qualify measures for the ballot often with no regard for the median voter. If there is some benefit which accrues to politicians regardless of the success of a direct democracy campaign then the supply of initiatives will have moved farther from the median voter (predicted by GBD). If the supply of initiatives matters for outcomes as this section shows then GBD has twice as many problems. Moreover if spillover, or priming by measures on the ballot, play a part in determining who gets elected, and this then determines policy, GBD faces three problems.

In the case of perfect competition in the market for agenda setters all veto players are overridden by the electorate and the median voter's preference is a Condorcet winner. Yet there is no appreciation in the GBD literature, that in the presence of direct democracy institutions the agenda setter can be an individual politician or government, contributing to a far from perfect market in agenda setters. As Nicholson states:

> In states with initiatives, actors may define the important issues by placing an issue on the ballot. Since voters are confronted with a take it or leave it choice, they must accept the agenda setter's proposal, reject it or abstain. (Nicholson, 2005, p. 17)

Politicians can therefore control what questions are considered as well as how those questions are considered.

8.3 Current Empirical Disagreement about the Policy Effects of Direct Democracy

Empirical testing of GBD theory has produced mixed results.[32] Dyck and Lascher (2008, p. 402) offer an understatement when they say that:

> Much of the recent empirical work has examined topics directly related to the types of public policy choices encouraged by direct democracy. Consistent conclusions are not the norm.[33]

The aim of this review is to highlight the contradictory nature of those conclusions. To show that the picture reported by, for example, Tolbert and Smith (2006) – that the initiative moves policy closer to the median voter's preference – is in fact far from clear. Unclear, both because of mixed empirical findings, but also because as methodological progress has been made, the work which might have been taken to form the basis for a clear judgment has been both outmoded and found to be flawed. In fact no stable position has been reached in either method or findings.

There are two essential dimensions of variation in the studies of the initiative discussed (beyond method and findings) – the measure of preference used, and the type of policy studied.[34] The major split in the type of policy is between fiscal policy and policies with an overriding moral dimension (with little in between). There has been a consistent finding (with a review of the literature in Matsusaka (2004, appendix 4)) that the initiative cuts state spending and taxes. However this does not accord directly to responsiveness. Therefore this review focuses on the other policies examined in the literature.

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[32] Although this section concerns purely the responsiveness of policy there have been sporadic investigations into other interesting direct effects: For example the argument that direct democracy makes policy less representative comes from those authors who claim that policy is made conservative in both senses of the word. Gastil (2000) also finds that *tout court* policy is made more conservative in the presence of direct democracy. Pommerehne (1978) and Fisher (2004), both writing on education in Switzerland find the same effect. Sass (2001) finds that the initiative has a conservative effect on the size of government. Feld and Kirchgassner (2001); Feld and Kirchgassne (2000) find that taxation at the local level in Switzerland is lower as the result of the initiative although they posit a political culture explanation and the endogenous increase in information in the hands of citizens that the initiative prompts. Feld and Savioz (1997) estimated aggregate production functions for Swiss cantons and found greater total factor productivity in cantons with more direct democracy.

[33] They say direct democracy when they mean initiative.

[34] It is always the initiative, a bias in researchers' attention discussed at several points in this thesis.

In the measure of public preferences used there is a trend towards better measurement. Pre-1996 studies lack any measure or proxy for preferences. After 1996 and before 2001 studies generally used ideology to proxy for preferences. After Matsusaka (2001) studies have used public opinion as a measure of preferences, and finally after 2009 measures of public opinion recorded over time are used.[35]

Before 1996, whilst a flurry of literature, mostly from economists, looked at fiscal effects of the initiative, these studies did not follow Erikson, Wright, and McIver (1993)'s advice to use citizen ideology as a control variable in state politics research. The representative parts of this pre-1996 research are summed up in Lascher, Hagen, and Rochlin (1996):

> Some find that the initiative process leads to expenditures that are greater than they otherwise would be (Zax 1989), others find expenditures that are smaller than they would be without direct democracy (Matsusaka 1994), and still others conclude that the presence of the initiative makes little difference (Farnham 1990).

One much cited addition to this summary of pre-1996 literature is Matsusaka (1995) which finds that between 1970 and 1990 fiscal policy is lower in terms of tax and spending in initiative states (Matsusaka (2000) shows the opposite occurred during the first half of the twentieth century).[36] Given the absence of a measure of public opinion these pre-1996 findings cannot provide an adequate answer to the question of responsiveness in initiative states, especially by comparison with more recent work.

By providing theoretical and empirical clarity Gerber (1996) and Gerber (1996b) inspired a multitude of empirical tests of GBD, tests which *have* tried to account for voter preferences. Gerber (1996) found that, consistent with the GBD model, states with the initiative systematically legislate closer to their median voter than other states. However in a serious shortcoming the paper failed to include the base term for the models which rely for their explanation on an interaction term which includes the initiative. The first responses to this finding came from Lascher, Hagen, and Rochlin (1996) and Camobreco (1998) using similar methods. Examining a range of policies they concluded:

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[35] Sceptics about progress in political science would be disappointed by this narrative.

[36] Noam (1980) looked at the Pareto optimality of policy in Swiss municipalities and finds the same outcome.

> The results of our analysis, presented in Table 3, fail to support the claim that the presence of the initiative process is associated with more responsive policies. (Lascher, Hagen, and Rochlin, 1996, p. 769)

Gerber responded (Gerber, 1998; Gerber, 1999), reconfirming the original finding of greater responsiveness in initiative states.

Following the criticism of the methods used by Lascher, Hagen, and Rochlin (1996); Gerber (1996); Camobreco (1998); Gerber (1999) in Hug (2001) and Matsusaka (2001) (at roughly the same time), a new phase of research involving direct measures of public preferences began.[37] [38] In the same vein (Hug, 2001) admits that up to 2001:

> even among the more systematic studies it has often proved elusive to find demonstrable effects of direct legislation on policy outcomes.

Hug does take a measure of preferences into account in analyzing the same datasets used in Pommerehne (1978); Pommerehne (1990); Geer (1996) and Lascher, Hagen, and Rochlin (1996). This pre-1996, once parsed with new opinion data, produces a more positive, if still mixed, relationship between the initiative and the representativeness of policy.

Following on the heels of Matsusaka (2001) comes Matsusaka and McCarty (2001) with heavily qualified findings:

> Our evidence shows that initiatives are more common in states with heterogeneous populations, and initiatives reduce state spending when democrats control government and when citizens have diverse preferences.

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[37] Hagen, Lascher, and Camobreco (2001) does provide a reply but Matsusaka (2004, appendix 4) is correct that it is a non sequitur.

[38] Despite several attempts Matsusaka never makes the criticism easy to understand. It is two pronged, on the one hand involving the fact that the slopes of separate coefficients for initiative and non-initiative states do not actually capture responsiveness because subsumed within each slope could be a jumble of preferences. (Strictly speaking responsiveness is a process and so these tests could never literally show responsiveness; the best they could do would be static representativeness.) The second prong of Matsusaka's criticism is that in Lascher, Hagen, and Rochlin (1996) preferences are not measured directly. Of course in the kind of longitudinal analysis in Chapter 9 of this thesis it is possible to see how policy changes with preferences but within states, offsetting Matsusaka's concern with both a measure of ideal points and longitudinal analysis.

Brace et al. (2002) continued to apply new public opinion measures to the problem using pooled General Social Survey data. The findings are much less sceptical than the immediate predecessor studies, and find that policy in initiative states is more representative of the median voter. In a very similar study Arceneaux (2002) comes to the same conclusion. Further support is provided by Matsusaka (2004). With the grand title *For the Many Or the Few: The Initiative, Public Policy, and American Democracy* has become a cornerstone of the responsiveness camp's empirical claims. The book is is really just an extension of Matsusaka (1995) with some measures of public opinion tacked on (pooled ANES and ACIR polling data). The answer to the question in the title pivots around Chapter 4 in the book:

> To summarize, the initiative shifted the disbursement of funds from state to local governments over the last 30 years. Every piece of opinion data we have seen suggests that the majority of voters approved of a shift in that direction. Again, it seems the initiative brought about a policy change that was supported by the majority. (Matsusaka, 2004, chapter 4)

However this conclusion is rested on some of the thinnest evidence in the book, evidence from national polls used to make inferences about state level preferences but without taking any account of the divergence in the units under consideration.

Rather than questioning the measures of public preferences used to date Bowler and Donovan (2004) instead find a problem with the conceptualisation of the initiative used for testing GBD theory:

> Most studies of the impact of direct democracy to date have simply assumed that all initiatives are the same.

In other words, studies which have used dichotomous measures suffer from causal heterogeneity, leading to an increased risk of type II errors (no effect). When more accurately modelled, the costs of using an initiative in states with easier qualification procedures (on the Bowler and Donovan index) were more responsive (on a measure of abortion restrictions) *ceteris paribus.* A question unanswered is how previous studies *with* such causal homogeneity problems found an effect for the initiative?

In a further twist Marschall and Ruhil (2005) find that the fiscal effects of the initiative were the opposite of those found in Matsusaka (1995); Matsusaka (2004) once the endogeneity of the initiative as an institution is controlled for. Marschall and Ruhil (2005) reasserts the warnings in Lascher, Hagen, and Rochlin (1996); Camobreco (1998); Smith and Fridkin (2008); Bridges and Kousser (2011) that there may be something enduringly different about states that adopted the initiative.

Testing GBD has continued to be fertile ground for publication. Hug (2005) revisits his earlier work on the topic with a new dataset from Eastern Europe finding a mixed picture for the representativeness theory:

> While ideally these implications should be tested on the basis of direct measurements both of the preferences of the voters and of the policy outcome, I proposed alternative tests. Relying on survey-based evidence on the level of confidence in various institutions and the level of satisfaction with democracy, I found some support for the theoretical models.

Burden (2005) contains straightforward support for Gerber (1996)'s conclusion when it comes to death penalty and parental involvement laws, whilst Bruce (2007) analysed the responsiveness of 40 states' abortion policy, again finding an increase in representativeness in initiative states. Matsusaka (2007)'s latest piece also explores the connection between the initiative process and seven, what he calls, social issues. Initiative states are 18 percent more likely than non-initiative states to choose a conservative rather than a liberal policy on the median issue after controlling for public opinion, demographic, and regional variables. He does, however, find that this effect is in favour of the median voter.

The latest direction of research which tests GBD, and one of the most forceful contributions to the debate, has been set out in an exchange between Lax and Phillips (2009a) and their critics. In their *APSR* article Lax and Phillips (2009a) find that the only thing to affect state policy is the preference of voters. Institutions do not matter in the aggregate. Lupia and Hagen-Jamara (2010) respond to the claim in Lax and Phillips (2009a) that the initiative has no effect on policy concerning same sex marriages. Following in the footsteps of Gerber (1996) they find that policy preferences are not a predictor of policy in non-initiative states, and that including the direct constitutional initiative provided a much better explanation in the variance in the constitutional status of same sex marriage.

The increasing sophistication of public preference measures is a good on the one hand, but as the cost of obtaining the measures has gone up since 2009, the range of issues considered has become narrower (Chapter 9 of this thesis is an example, but the range was never that wide to begin with). After the widest, Lascher, Hagen, and Rochlin (1996), authors have only considered a few morality policies death penalty, abortion and same sex marriage and these taken together would have very little impact on an average citizen's day to day interaction with government. Whilst GBD theorists would argue that fiscal policies have been repeatedly considered, the breadth of these is also a reason for concern in disaggregating any particular preference on which to threaten the legislature.

8.4 New Hypotheses About the Effect of the Initiative

At the outset this chapter promised to demonstrate the theory behind two reasons for caring about politicians use of direct democracy. On the one hand the current theory of the action of the initiative looks very suspect in the light of the above discussion. This suspicion about policy effects of GBD suggests the following hypothesis for an empirical test in the next chapter:

> **Hypothesis H10:** The effect that public preferences have on policy is similar in initiative and non-initiative states.

On the other hand we should care about politicians use of direct democracy because it can have a direct impact on policy. The first section of this chapter (8.1.1) set out a mechanism through which policy responsiveness was increased by politicians actions using the initiative. To test this mechanism it is necessary to attempt disconfirmation of the following hypothesis:

> **Hypothesis H11:** Where politicians use the initiative on a valence issue there can be an increase in policy responsiveness.

The genuine disagreement about a predicted finding within a methodologically very serious literature tallies with the critique of the theory behind GBD presented extensively above. Chapter 9 contributes to the debate with new data and better method.

Chapter 9

The Gun Behind the Door?

The purpose of this chapter is to follow up with data to support the theoretical claims in the previous chapter. Therefore the first aim is to place the argument that politicians use direct democracy in context by showing that the prevailing view of the initiative – increasing policy responsiveness and proving a consistent threat to elected politicians – does not hold. In other words it is important to discover what the effect of the initiative is *per se* before trying to calculate politicians' impact. The second purpose of this chapter is to attach a compelling significance specifically to the phenomenon of politician use of direct democracy. To show that politicians use of direct democracy can have an aggregate impact on policy, and one that the initiative does not have in its normal course.

To achieve the two aims above, this chapter shows two things empirically. First, using two policies, it shows that *ceteris paribus* policy is not more responsive in initiative states where politicians are *not* sponsoring initiatives – that there is not a 'gun behind the door'. Second using a deliberately selected policy (sentencing law where there is widespread politician use of the initiative), the research undertaken demonstrates that even though the initiative does not automatically make policy more responsive, when politicians use the initiative on an issue suitable for election campaigning this *can* have the effect of making a valence policy more responsive to public opinion.

9.1 Introduction

Chapter 8 introduced GBD theory, a theory which predicts more responsive policy in the presence of the initiative, without politicians' involvement, and across all initiative states. If GBD is accurate, and the presence of the initiative *ceteris paribus* moved policy closer to the median elector's preference this would alloy the significance of politician's role as initiative sponsors.

A policy area where there is much politician use of the initiative, and one where there is not, offer an opportunity to test GBD both in the presence and absence of politicians involvement. To be clear however both policies contribute to the finding that when there is not politicians use of the initiative there is not more responsiveness to public opinion in initiative states (this is spelled out particularly in section 9.5 reporting sentencing models). If, as is shown, there is no gun *behind* the door (at least in the indirect systematic way intended by GBD and outlined in subsection 8.2.2) and policy is not, *ceteris paribus*, more responsive in initiative states then there is nothing in the noise politicians produce in the process that could make policy less responsive – to head off a responsiveness increase. On this finding politicians cannot be the key reason GBD does not produce the results predicted by its advocates, even though they do themselves provide a plausible counter-responsiveness processes outlined in section 8.1.2. Therefore when looking for a measurable policy effect for politicians use it is necessary to consider the situation in which this use *could* be detected to have an effect on responsiveness. The best case is for a positive effect on policy provision from some politician uses, as outlined in the theory in section 8.1. And that is exactly what this chapter looks for. There are two further sources of variation that provide leverage to explain the causal relationship between responsiveness and politicians sponsorship of initiatives: between high and low politician use states, and between high and low use issues. This variation is explored for state sentencing policy and abortion restrictions in the sections below.

9.1.1 Policy Responsiveness

A disconfirmation of GBD and a test of the effect of politicians' initiative use involves a test of policy responsiveness *per se*. For GBD to be supported, state government has to be responsive in the first place (at least in some states). Gerber (1996) finds that initiative states are responsive and non initiative states are not.[1] This finding is that it is at odds with the policy responsive literature (cited in the paragraph below) which finds good responsiveness allover. A summary can be found in Camobreco and Barnello (2008), but direct evidence of the responsiveness of state government policy to public preferences is found in Page and Shapiro (1983); Geer (1996); Stokes and Miller (1962); Erikson, Wright, and McIver (1993); Wright, Erikson, and McIver (1987); Cohen and Barrilleaux (1993); Jackson (1992); Weber and Shafer (1972); Norrander and Wilcox (1999). Wlezien (1995); Wlezien (1996); Wlezien (2004); Claassen and Highton (2006); Lax and Phillips (2009a); Lax and Phillips (2011) all nuance responsiveness theory and constructing models in which the public changes the strength of its preference symbiotically with changes in policy. Whereas Wlezien (2004) finds that the thermostat applies better to some policies than others. Beliefs about abortion do not suffer from a significant thermostatic change although Norrander and Wilcox (2006) show some endogenous effects of abortion restrictions on opinion about those restrictions. Even in the presence of thermostats, however public policy is still fundamentally responsive to preferences, but the mechanism is dynamic and iterative. For the purposes of this thesis, responsiveness (the thermostat) should still, according to GBD, be different in states with and without the initiative. In the case of a valence policy the mere provision of more policy can be considered a case of increased responsiveness to public opinion.

Norrander and Wilcox (1999) conclude that the effect of public opinion is especially strong on morality policies. Research suggests that the issue of access to abortion is highly salient in the American states and also that legislators respond to public preferences on sentencing and abortion access (Wetstein and Albritton, 1995; Brace et al., 2002; Bruce, 2007). This makes abortion as likely an issue as any to produce results consistent with GBD theory. This is a point that needs to be emphasised. GBD theory is being tested on the ground that Gerber (1996) chose and which it has been found to hold in the past. This really is a sympathetic test of GBD.

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[1] The same theory could rest on the finding that both types of state are responsive but initiative states more so.

For a valence policy responsiveness to the state median voter consists in supplying more of the policy demanded. In this way the notion is different to pure responsiveness to *changes* in public opinion. However it is equally identifiable.

9.2 Dependent Variables: Sentencing & Abortion Policy

To test GBD further and test the hypothesis that politician use of the initiative can bring about a policy effect, it is necessary to measure at least one policy that has actually been the subject of politicians use of the initiative. Sentencing is a salient policy and, as we see in a moment, it has been used by politicians. Restrictions on access to an abortion are also salient but the issue has only been the subject of politicians use of the once (see Table 9.5). This provides the opportunity to examine the predictions of GBD as they intended without the complication of politicians initiatives.

9.2.1 Sentencing Laws

There are five sentencing policies that have been widely deployed in the states over the last thirty years; determinate sentences, sentencing guidelines, truth in sentencing, three strikes laws and a variety of specific mandatory minimum sentence triggers (Sorensen and Stemen, 2002; Stemen, 2007). Mandatory minimum sentences require that judges give a minimum sentence for a particular category of offense. Three strikes laws require life in prison to be awarded upon conviction for a third felony. Truth in sentencing requirements affect the point at which felons can receive parole. If a fifteen year sentence is handed down then under truth in sentencing the offender must serve this period. Presumptive sentencing guidelines take power away from judges in sentencing as do determinate sentences.[2]

Sentencing laws for convicted criminals are set by the states (when the crime is not federal). There exist data for 48 states over a long time period compiled by Don Stemen for the Vera Institute of Justice to answer an entirely different question to the one posed here (Sorensen and Stemen, 2002; Stemen, 2007).[3] The widely cited Sorensen and Stemen (2002), for which this extensive database was constructed, investigated the impact of the trend to tougher sentencing policies on prison populations as well as the finding that sentencing policy responds to the crime rate.[4] There has also been a good deal of variation between states and over time in sentencing policy which makes a robust test of policy predictors possible (see Table 9.3). Furthermore, as is the case with abortion restrictions that variation has come about both through initiatives and referrals as well as through statutes passed by state legislatures in the normal way, but with the key proviso that in the case of sentencing many of those initiatives have politicians as their sponsors.

9.2.1.1 Sentencing is a Valence Issue

When US voters are asked abstract questions concerning sentencing (of which the sentencing initiatives are an example) researchers regularly find over eighty percent support for tougher penalties (Hindelang, 1974). This fact is reflected in the time series of the GSS the national average over 30 years from 1972-2002 during which there was above 80% support when respondents were asked the question 'In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?' (Maguire, 1996, pp. 171-2). This gives the issue the characteristics of a valence issue, issues on which most voters, regardless of demographics characteristics, agree and

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[2] The variables taken from Stemen (2007) are TISS, PRE_PAR, HOL_3STR, PRESUM and a transformation of MAND_SUM to dichotomise between observations of less than or equal to 3 mandatory sentences and observations with greater than three mandatory sentences.

[3] Stemen, Don, Impact of State Sentencing Policies on Incarceration Rates in the United States, 1975-2002 [Computer file]. ICPSR04456-v1. Vera Institute of Justice [producer], 2000. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2007-09-27. doi:10.3886/ICPSR04456.v1.

[4] Cited 46 times, google scholar, retrieved February 2012.

Table 9.1: Sentencing Initiatives 1972-2002

State	Year	Name	Yes	Policy	Sponsor	Pol	Description
Arizona	1990	Proposition 104	57.1	Guidelines	Rep John Shadegg & AG Bob Corbin	Y	Provides victims of crimes with additional rights regarding the prosecution of criminals
Arizona	1996	Proposition 102	62.9	None	Gov Symington	Y	Constitutional Amendment to Allow Enactment of Laws Governing Jurisdiction Over Juveniles
California	1978	Proposition 7	71.1	Mandatory	State Ass. John Briggs	Y	Murder mandatory minimum penalty
California	1982	Proposition 8	56.4	TIS, Guidelines	Victims rights groups	Y	Criminal Justice.
California	1990	Proposition 115	57.0	Three Strikes, Mandatory	US Sen Pete Wilson	Y	Criminal Law. Initiative Constitutional Amendment And Statute
California	1990	Proposition 129	27.6	None	AG John Van De Kamp	Y	Revenue for Drug Enforcement, Prevention, Treatment, Prisons
California	1990	Proposition 133	37.9	Mandatory	Lt Gov Leo McCarthy	Y	Revenue for Drug Enforcement and Prevention. Taxes. Prison Terms
California	1990	Proposition 139	54.1	None	Gov Deukmejian	Y	Prison Inmate Labor. Tax Credit. Initiative Constitutional Amendment and Statute.
California	1994	Proposition 184	71.8	Mandatory, TIS	Rep Mike Huffington	Y	Increased Sentences. Repeat Offenders. Initiative Statute.
California	1996	Proposition 213	76.9	None	Ins Comm Chuck Quackenbush	Y	Limitations on Recovery to Felons, Uninsured Motorists, Drunk Drivers. Initiative Statute.
California	2000	Proposition 21	62.1		DAs, Peace Officers	Y	Juvenile Crime. Initiative Statute.
California	2000	Proposition 36	61.0	TIS, Mandatory, Guidelines	State Sen Richard Polanco & Rep Maxine Waters	Y	Drugs. Probation and Treatment Program. Initiative Statute.
Mass	2000	Question 8	47.0	Guidelines	Coalition for Fair Treatment	N	Drug-Dependency Treatment and the Use of Drug-Crime Fines and Forfeitures
Michigan	1978	Proposal B	74.5	TIS	Committee	N	Revise Standards for Grant of Parole and to Prohibit Grant of Parole for Certain Defined Crimes
Ohio	2002	Issue 1	32.9	None	Soros/Sperling Camp. for new drugs policies	N	Treatment in Lieu of Incarceration for Drug Offenders
Oregon	1978	Measure 8	64.3	Mandatory	State Rep Cecil Johnson	Y	Requires Death Penalty for Murder under Specified Conditions
Oregon	1984	Measure 6	55.6	None	Gov Atiyeh	Y	Exempts Death Sentences from Constitutional Guarantees Against Cruel, Vindictive Punishments
Oregon	1984	Measure 7	75.1	Mandatory	Gov Atiyeh	Y	Requires by Statute Death or Mandatory Imprisonment for Aggravated Murder
Oregon	1986	Measure 10	75.5	TIS, Determinate	Robert Kouns	N	Revises Many Criminal Laws Concerning Victims' Rights, Evidence, Sentencing, Parole
Oregon	1988	Measure 4	78.9	TIS	Rep Denny Smith	Y	Requires Full Sentences Without Parole, Probation for Certain Repeat Felonies
Oregon	1994	Measure 10	75.5	None	State Rep Kevin Mannix	Y	Amends Constitution: Legislature Cannot Reduce Voter-Approved Sentence without 2/3 Vote
Oregon	1994	Measure 11	65.5	Mandatory	State Rep Kevin Mannix	Y	Mandatory Sentences for Listed Felonies, Covers Persons 15 and Up
Oregon	1994	Measure 17	71.0	None	State Rep Kevin Mannix	Y	Requires State Prison Inmates to Work Full Time
Oregon	1996	Measure 40	58.9	None	State Rep Kevin Mannix	Y	Gives Crime Victims Rights, Expands Admissible Evidence, Limits Pretrial Release
Oregon	2000	Measure 94	26.5	Mandatory	ACLU (reverse)	N	REPEALS Mandatory Minimum Sentences For Certain Felonies, Requires Resentencing
S. Dakota	2002	Const Amendt A	23.0	None	Bob Newland	N	A criminal defendant may argue the merits of the law, including sentencing laws.
Washington	1975	Initiative 316	69.0	Mandatory, Guidelines	State Rep Earl Tilly	Y	Death Penalty for First-Degree Murder
Washington	1993	Initiative 593	75.7	Three strikes, Mandatory	State Rep Ida Ballasiotes	Y	Shall criminals who are convicted of 'most serious offenses' on three occasions be sentenced to life in prison without parole?

*There are three popular referendums (not listed) which all concern criminalization of drugs.

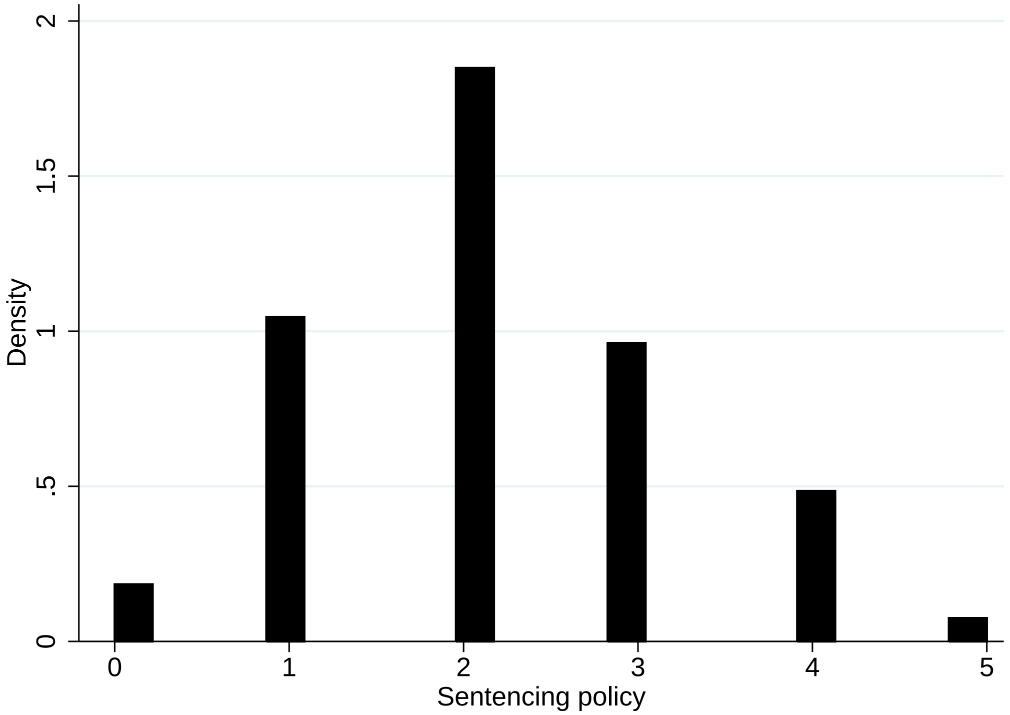
Table 9.2: Summary of sentencing initiatives 1972-2002

State	Initiatives	% Politician use	Sentencing (mean)
Arizona	2	100%	4.5
California	14	100%	3.9
Massachusetts	1	100%	2.6
Michigan	1	0%	2.9
Ohio	1	0%	1.2
Oregon	11	70%	2.4
South Dakota	1	0%	3.8
Washington	2	100%	4.5

Table 9.3: Components of the sentencing dependent variable

Policy	Frequency	%
Level of determinacy:		
Indeterminate	436	79%
Determinate	114	21%
Sentencing guidelines:		
None/voluntary	467	85%
Presumptive	83	15%
Truth in Sentencing:		
No	148	27%
Yes	402	73%
Three strikes:		
No	166	30%
Yes	384	70%
No. of mandatory triggers:		
3 or fewer	277	50%
4 or more	273	50%

Figure 9.1: Histogram of state sentencing policies 1972-2002



on which politicians compete on grounds of competence (Stokes, 1963; Goldthorpe et al., 1968; Stokes, 1992; Ansolabehere and Snyder, 2000).[5] Crime, especially when characterized in terms of sentencing for those already convicted, has specifically been identified as a valence issue by (Reinarman and Levine, 1989; Gordon, 1990; Beckett, 1994; Green, 2007). This characterization fits with the empirical findings in the seminal study of the California penal code by Berk, Brackman, and Lesser (1977, p. 259), who find that policy does not respond to changes in the number of survey respondents who said that crime was a 'major problem facing the country today'. From Table 9.1 on page 215 it is evident that in all eight states where an initiative has been on the ballot, no pro-sentencing measure which included any of the sentencing policies above has failed or come close to failing (all sentencing reversals *have* failed). This is another sign that the issue of crime is a valence issue. If one observes the mean of the sentencing

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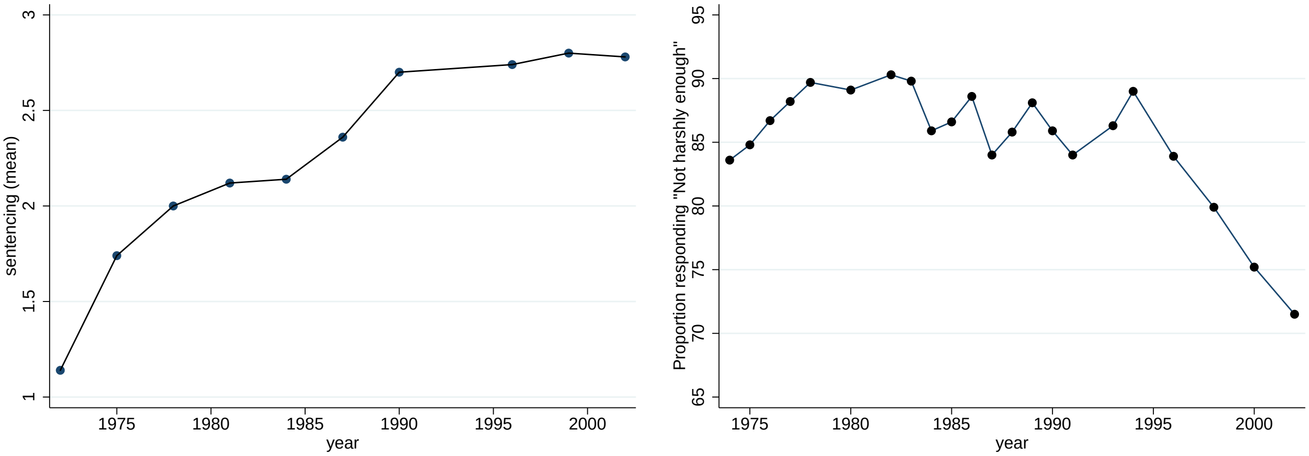
[5] Knowledge of offender characteristics can change attitudes (Rossi, Simpson, and Miller, 1985). The light in which the initiatives are put is the least appealing, acontextual. The measures run with advertisements often playing up the worst case scenario.

Figure 9.2: Aggregate mean values for sentencing and public opinion on sentencing



*Proportion of GSS respondents answering that courts are not treating convicted criminal harshly enough

question asked in the GSS we see that it has always been over 70% in the period under consideration (Figure 9.2).

The significance of the fact that sentencing is a valence issue is that concerns about state specific public opinion common to policy responsiveness arguments can be assuaged. Put simply in all states there is a demand amongst a majority of voters for more sentencing when questions are put in the abstract absent offender or victim characteristics (as they are in the initiatives considered). Therefore the provision of sentencing policy more policy can be considered more responsive to the median voter. There is a reasonable concern that despite the model of public opinion on sentencing laws as a valence issue there will be some states in which public opinion will be overwhelming whilst some in which only a large majority of respondents are in favour of increased sentencing (in the abstract). It is conceivable that this difference might explain some of the variation in outcome. To head off this concern – that Vermont is different to Alabama – and to account for the trend which can be observed in models S1-6 include the PGB imputed measure of state public opinion on sentencing resulting from responses to the COURTS question asked in every the GSS since 1972. Models 7-10 are then run without state specific opinion estimates. This strategy allays all the fears discussed above. The key thing to note is that the findings concerning sentencing do not rely on the presence of the opinion measure but their veracity is bolstered by having considered it.

9.2.1.2 Politicians and Sentencing Measures

Given the need to compete for a warrant of competence on sentencing, politicians have used the issue mercilessly in recent decades (Simon, 1982, chapter 3). There is a considerable literature which this chapter follows in suggesting that politicians use sentencing legislation to enhance their standing in the eyes of the public (Roberts, 1992; Beckett, 1994; Beckett, 1999; Williams, 2003; Jones and Newburn, 2006; Newburn and Jones, 2007; Cook and Lane, 2009). It has been suggested in the past by this research, that politicians use crime in their campaigns for elected office. As Cook and Lane (2009) state 'politicians may reference and appeal to emotions such as fear of crime and use punitive stances as an effective platform for election'. In investigating adoption of criminal justice policies in the states Williams (2003) concludes that: 'political entrepreneurs, rather than state characteristics, were responsible for adoption'. There is evidence from Chapters 4 & 5, exploring the profile and agenda effects, that politicians using the initiative prefer initiatives concerning criminal justice. In the case of those candidates for office an overwhelming portion of the initiatives used concerned criminal justice. The conclusion of the agenda setting chapter was that politicians were behaving in this manner in order to ride a wave of support for just such a issue. This section goes only one step further than the previous work when it suggests that politicians sponsor citizen-initiatives for the very reason of siding with a majority of voters on criminal justice. In doing so they increase the responsiveness of some initiative states to public demand for a set of criminal justice policies.[6]

The five sentencing policies that make up the dependent variable have been the subject of 32 initiatives since 1974 and 169 referrals.[7] In total there were 22 victims

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[6] There is also a politician sponsor in one of the failed reversal measures on sentencing policy.

[7] A very great many of these referrals concern bail conditions and bond issues for prison construction. On the other hand only one citizen-initiative (Proposition 8 in California in 1982) even mentions bail. NCSL ballot measures database.

Table 9.4: Sentencing, referrals 1972-2002

State	Year	Name	Yes	Policy	Description
Arizona	2002	Proposition 302	69.3	TIS	Probation Drug crimes
California	1988	Proposition 67	82.1	Mandatory	Second Degree Murder Of Peace Officer. Minimum Term.
California	1990	Proposition 114	71.1	Mandatory	Murder Of A Peace Officer. Criminal Penalties.
California	1994	Proposition 179	73.0	Mandatory	Murder: Punishment. Legislative Initiative Amendment.
California	1996	Proposition 196	85.8	Mandatory	Murder: Punishment.
California	1998	Proposition 222	77.1	Mandatory	Murder. Peace Officer Victim. Sentence.
California	2000	Proposition 18	72.6	Mandatory	Murder: Special Circumstances.
California	2000	Proposition 19	73.6	Mandatory	Murder. BART and CSU Peace Officers. Legislative Initiative Amendment.
Colorado	1974	Amendment 2	61.1	Mandatory	Mandatory Death penalty for class 1 felonies
Florida	2002	Const Amndt 1	69.8	Mandatory	Death penalty
Illinois	1994	Const Amndt 1	62.7	TIS	Rights of criminal defendants
Indiana	2000	Public Quest 1	64.0	Guidelines	Sentencing appeals
Louisiana	1999	Const Amndt 8	54.0	TIS	Limits automatic pardons for non-violent
Massachusetts	1982	Question 2	54.0	Mandatory	Death Penalty
Michigan	1994	Proposal B	73.6	TIS	Limit criminal appeals
New Jersey	1992	Pub Question 3	73.4	Mandatory	Death Penalty for certain offenses
North Carolina	1996	Amendment 2	75.0	Mandatory	Mandatory probation
Oklahoma	1986	Question 593	74.3	TIS	Parole and Pardon Prohibition for life imprisonment
Oklahoma	1994	Question 664	81.3	Mandatory	Allows the legislature to set minimum sentences
Oregon	1999	Measure 74	71.9	TIS	Amends Constitution: Requires Terms of Imprisonment Announced in Court Be Fully Served
Wyoming	1994	Const Amendt 1	81.1	Mandatory, TIS	Life imprisonment without Parole

bills of rights initiatives which do not count in the data.[8] The sentencing initiatives are listed in Table 9.1 on page 215.[9] The concern that politicians only used initiatives in high initiative frequency states is offset by Colorado and South Dakota which are high initiative rate states in which politicians don't use direct citizen-initiatives in relation to sentencing. In addition all the models of sentencing policy include a variable for the frequency with which initiatives are on the ballot.

9.2.2 Restrictions on Access to an Abortion

The fact that the analysis in this chapter is longitudinal (as well as cross sectional) means that the temporary leveling out of state wrought by the US Supreme Court's 1973 *Roe* decision, in terms of both policy and public preferences, far from being problematic, is quite beneficial. The courts decision imposed a basic minimum across states, a blank slate on which to observe how different states respond. Although in the year immediately following *Roe*, policy in the states was determined by the federal judiciary, the stronger the state opinion the faster policy is expected to return to represent public preferences as Supreme Court cases loosen the constraints on state policy (given external constraints). The many changes in the law and their relation to public opinion in each state produces lots of cases of response and non-response by legislators.[10] All the post-*Roe* churn in legislation restricting access to an abortion benefits this research project. The artificial disjunction between preferences and policy created by *Roe* will produce different responses in different states.

The trajectory of abortion restriction policy in the three decades after *Roe* is a complex topic in itself and, as with responsiveness *per se*, thorough summaries of the literature exist elsewhere, in Adams (1997); Camobreco and Barnello (2008); Pridemore and Freilich (2007). Notably states during this period are acting within boundaries of federal judicial and congressional policy so it is necessary to understand and then control for it. The time period under consideration, from 1974 to 2004 follows a policy shock. As Mooney and Lee (1995) document, the pre-*Roe* situation was characterized by many laws originating from the second half of the 19th century.[11] The exogenous shock *(Roe)* made state law moot, and for a period all abortion in the first trimester was legal, and states provided Medicaid and other public funding for abortions (Camobreco and Barnello, 2008). However subsequently there was more state government regulation concerning abortion than at any point since the 1800s (Wetstein and Albritton, 1995). In the five years that followed *Roe:*

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[8] There were no sentencing policies attached to any of the victims bills of rights, which largely concern the process leading up to sentencing. Furthermore all the following measures were removed from consideration: measures that pertain to criminalization of drugs and guns (and a 1986 anti-pornography measure in Maine); animal cruelty and property forfeiture measures; bonds. Bonds were removed because they introduce complex fiscal calculations for voters potentially taking away the valence nature of the issue.

[9] Although these sentencing issues are put to the voters in the abstract most initiative states do have a fiscal impact assessment which is presented to voter in the voter information booklet.

[10] Response could be lagged, but tests for lagged public opinion measures in the models below are not statistically significant. The nature of the pooling and the time between observations could also explain this finding, as legislators have had sufficient opportunity to respond to constituent preferences.

> Aside from the two abortion referenda, 31 legislative measures to preserve womens' right to abortion and ensure access to services were introduced in 17 states; another 24 bills to prohibit most abortions were submitted in 10 states.[12] (Sollom, 1993)

Some states began to apply restrictions in two main areas – by removing Medicaid funding for abortions and second by including parental consent requirements. The health exemptions in *Doe vs Bolton* mean that even though *Webster* lifts pressure on the states slightly, before *Casey* it was difficult for states to place constitutional restrictions on a woman's right to seek an abortion (Merz, Jackson, and Klerman, 1995).[13]

Congressional action came in the form of the 1976 Hyde amendment which removed Medicaid funding and required states to fund abortions themselves if at all.[14] There was a temporary reversal in 1980 when the McRae injunction forced funding (just Medicaid) for just under one year.[15] At the same time the *Danforth* decision annulled Missouri parental consent law, before the court called for a more specific remedy in the 1979 *Belotti II* decision which annulled any parental consent law that did not contain another route for teens at risk from their parents (in practice judicial bypass), but at the same time affirmed that any laws which did contain such a procedure were constitutional.[16]

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[11] *Roe v. Wade*, 410 U.S. 113 (1973)

[12] There have been 36 state ballot initiatives dealing directly with abortion access since 1974 (Initiative and Referendum Institute 2006).

[13] *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), *Doe v. Bolton*, 410 U.S. 179 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

[14] The implementation of the Hyde amendment is undulating, but suffice it to say that it went into force in August 1977.

[15] *Harris v. McRae*, 448 U.S. 297 (1980).

According to Goggin (1993) *Webster* then reignited the abortion debate by passing the torch firmly to state government to regulate. Similarly after *Casey,* which involved a panoply of restrictions imposed by the state of Pennsylvania, was upheld the variety of subsequent restrictions increased. There are many restrictions but of particular note are mandatory delays and informed consent (compulsory counseling) as these are most widespread. Finally, in the time period under consideration, the first *Carhart* decision extended the leeway even further from the federal judiciary although it concerns partial birth abortion.[17]

What this account shows is that in the light of the federal policy environment, states have been encouraged and prohibited at different points, to craft constitutional and therefore enforceable limits on access to abortion. This exogenous effect needs to be controlled for in any longitudinal model of abortion restrictions.

9.2.2.1 Direct Democracy and Abortion Restrictions

As shown in Table 9.5 abortion restrictions have been on the ballot a lot in the states. Those initiatives which are successful are included in the dependent variable. The dependent variable in sentencing and abortion restrictions is the sum of policy passed by direct and indirect means, through the ballot or through statute.

The dependent variable consists of data for the number of restrictions a state has placed on access to abortion. The data could be thought of as ordinal, with each restriction representing a different category. To increase the sensitivity of the measure to changes in public opinion, here the multiple restrictions on access to abortion are measured. However on the assumption that states' preference orderings are transitive

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[16] *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976), *Bellotti v. Baird*, 443 U.S. 622 (1979).

[17] *Stenberg v. Carhart*, 530 U.S. 914 (2000).

Table 9.5: All abortion citizen-initiatives, 1974-2008

State	Year	Name	Yes	Sponsor	Pol	Restrictions	Description
Alaska	1982	Proposition 6	40.8	Issue 80 (Group) David Buchanan, president Anchorage Daily News	N	N	Limiting State Funding of Abortions
Arizona	1992	Proposition 110	31.5	Trent Franks chair of AZ for common sense	N	Y	Prohibiting Abortion Except to Save the Mother's Life or in Cases of Rape
Arkansas	1986	Proposed Amendment 65	49.96	Frank White (fmr gov up against Clinton)	Y	Y	Limit Public Funding of Abortions
Arkansas	1988	Proposed Amendment 3	52.0	Jerry Cox (Family Council), Unborn Child Amendment Committee	N	Y	Amendment to Prevent Abortion Funding and to Restrict Abortion
California	2005	Proposition 73	47.4	William P. Clark; California Supreme Court Justice, 1973-1981	N	Y	Waiting Period and Parental Notification
California	2006	Proposition 85	45.7	William P. Clark; California Supreme Court Justice, 1973-1981	N	Y	Waiting Period and Parental Notification
California	2008	Proposition 4	48.0	DA's of OC and Riverside but no pols	N	Y	Waiting Period and Parental Notification
Colorado	1984	Amendment 3	50.4	Charles Onofrio, Committee	N	N	Prohibiting the Use of Public Funds for Abortion
Colorado	1988	Amendment 7	39.8	Liberal Groups	N	N	Repeal the Prohibition of Public Funding for Abortion
Colorado	1998	Amendment 11	48.5	Gary Rogers, Pro-life alliance	N	Y	Late-term Abortion ban
Colorado	1998	Amendment 12	54.9	Gary Rogers, Pro-life alliance	N	Y	Parental Notification for Abortion
Colorado	2000	Amendment 25	39.0	Gary Rogers, Pro-life alliance	N	Y	Requirements for Consent to Abortion
Colorado	2008	Amendment 48	26.7	Kristi Burton	N	Y	Definition of Person
Maine	1999	Question 1	44.4	Paul Volle, director of the Christian Coalition of Maine	N	Y	Do you want to ban a specific abortion procedure to be defined in law?
Oregon	1978	Measure 7	48.3	Chris Kowitz, Oregonians Opposed to State Funded Abortions	N	N	Prohibits State Expenditures, Programs or Services for Abortion
Oregon	1986	Measure 6	45.2	Mike White, Taxpayers for Responsible Government	N	N	Constitutional Amendment Prohibits State Funding Abortions
Oregon	1990	Measure 10	47.9	Cindy Rahm is the chief spokesperson for the United Families of OR,	N	Y	Doctor Must Give Parent Notice Before Minor's Abortion
Oregon	1990	Measure 8	32.3	OR Citizens Alliance, which ran ballot measure 8	N	Y	Amends Oregon Constitution to Prohibit Abortion with Three Exceptions
Oregon	2006	Measure 43	45.2	Felicia Bautista, Brenda Cochran, Keep our Daughters safe	N	Y	Requires 48-Hour Notice to Unemancipated Minor's Parent
South Dakota	2008	Measure 11	44.8	Vote Yes for life, Leah Anderson of Sioux Falls; Rep. Mary Glenski, D-Sioux Falls	Y	Y	Reinstate Prohibition Against Abortion
Washington	1984	Initiative 471	46.9	State Sen. Ellen Craswell	Y	N	Ban public funding of abortions
Washington	1991	Initiative 120	50.1	Lee Minto, Planned Parenthood	N	Y	Abortion - Restriction reversal
Washington	1998	Initiative 694	42.9	Mr. Robert V. Bethel	N	Y	Late-term Abortion ban
Wyoming	1994	Initiative 3	60.0	Richard Grout of Bar Nunn, Wyoming	N	Y	Abortion Restrictions

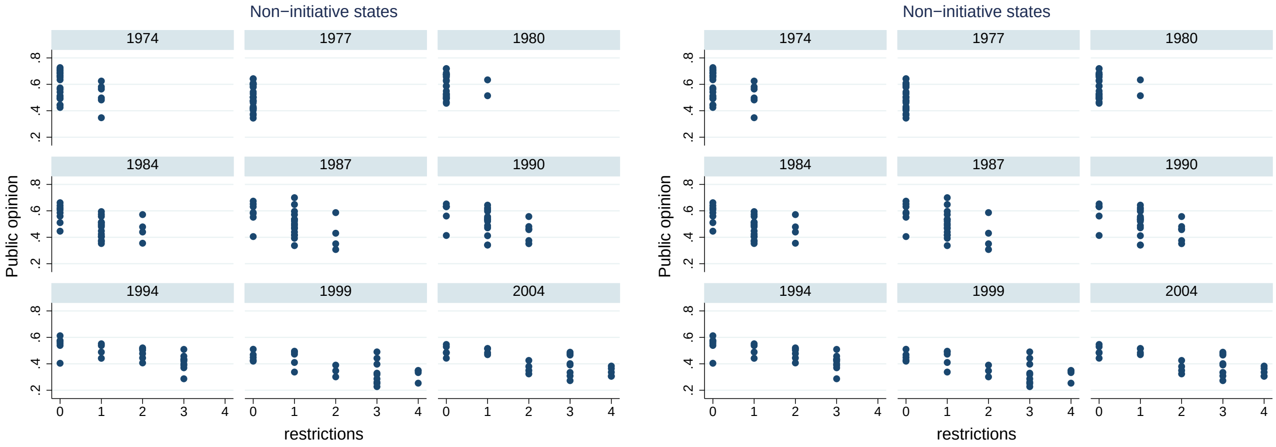

Figure 9.3: Values for restrictions for initiative and non-initiative states.

(that any three restrictions are more than any two) the data are treated as interval-level for ease of interpretation.[18]

Abortion access restrictions come in many forms (Patton, 2007; Pridemore and Freilich, 2007). The morass of laws spread over 50 states means that a primary coding to construct a variable representing all restrictions on abortion for each state is prohibitively costly. The National Abortion and Reproductive Action League (NARAL) produces a yearly publication titled *A State-by-State Review of Reproductive Rights*, which monitors developments in abortion legislation in each American state. Most scholars who study abortion restrictions, and consider more than a single law, use a metric such as the one in this publication.[19] The NARAL grade of each state would make a good dependent variable, but it is not available before 1989.[20]

For the central tests below, the measure used is coded 0 to 4, with higher numbers representing additional legal restrictions on access to abortion. The four restrictions measured are, mandatory delay (waiting period), parental involvement for minors (either consent or notification), informed consent (counseling), a restriction on disbursement of Medicaid funds. States have gone much further in restricting access to abortion than these four types of laws but these are the four policies that together dominated the debate in the late 1970s, 1980s and 1990s, and have been consistently upheld as constitutional by the US Supreme Court. The presence or absence of these laws is identified using Merz, Jackson, and Klerman (1995) and the NARAL review after 1989.[21] To confirm accuracy a double check was made, over a short period, by consulting Sollom (1993) and Sollom (1994).

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[18] In fact the central findings stand whether tests are run on the assumption of count data (Poisson model), categorical data (ordered logit model) or an interval-level dependent variable (Gaussian model).

[19] Gerber (1996) makes a dichotomous variable out of parental involvement (although it is not clear how this is done given the different kinds of involvement law and time frames).

[20] With thanks to Dr Kevin Arceneaux for sharing the digitised version of the data used in Arceneaux (2002). The *Guttmacher State Reproductive Health Monitor*, and reports from the same interest group have also been produced since 1990 (Sollom, 1993). These do not stretch back as far as the NARAL measure and are rarely cited.

Both enforced and unenforced restrictions are counted. For example when Georgia's parental consent requirement was reviewed by the federal judiciary between 1986 and 1990 it was unenforced but still counted as a restriction statute, having been passed by the state legislature and signed by the governor.[22] In other words the federal judicial environment is exogenous in a specific case of abortion restriction, whilst as pointed out above, having an endogenous effect overall in either encouraging or discouraging restrictions with its rulings. The move to count temporarily unenforced statutes is further justified by the difficulty of measuring enforcement, and the fact that the result of legislative action is the outcome that GBD attempts to predict.

Finally, a dichotomous parental notification requirement, exactly mimicking that used in Gerber (1996), is used as the dependent variable in later cross sectional tests (models a and c). Other longitudinal tests using the Gerber (1996) original dependent variable (parental involvement) as a measure over time were not included, in part because as stated above it is not a good dependent variable in this situation, being dichotomous. There is almost certainly a good event history analysis to be done using just this variable.[23]

The dependent variable used differs from Gerber (1996). Gerber used a dichotomous dependent variable, but it is better to use an interval level measure to capture more of the variation in state policies. The independent variable is also different. A measure of public opinion imputed from GSS data is used, as set out in detail in section 3.2. This is an improvement on the cross sectional data which could not have been used for longitudinal analysis. For the variable NARAL membership used in Gerber (1996), there is not time series data in the periods under consideration so this variable was not included, and there are no viable alternatives (the variable was not a significant predictor of responsiveness in Gerber (1996)).

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[21] This combination of data sources is widely used. The Merz, Jackson, and Klerman (1995) data describes only parental notification and Medicaid funding.

[22] Merz, Jackson, and Klerman (1996) (as opposed to Merz, Jackson, and Klerman (1995)) contains information on enforced vs unenforced statutes for the earlier part of the period under consideration.

[23] For an example of such a study involving restrictions on access to abortion see Medoff, Dennis, and Stephens (2009).

9.2.2.2 Politicians and Abortion Restriction Measures

The aim of studying abortion restrictions was to find a policy on which there had not been politician use of direct democracy. Table 9.5 lists the proponents in the abortion restrictions and liberalisation that have taken place up to 2008 although the test below cover the 30 years from 1974 – 2004.

According to Table 9.5 there are two cases in which politicians have used initiatives which involve state funding of abortion, but not restrictions which are the policy used in this chapter. A further case alone involves a politician use and restrictions, and although it is outside of the window of measurement for the data in this chapter, it is worth considering to see what if any insight it provides. In South Dakota in 2006 the Legislature passed a ban (HB1215) that was challenged by a petition initiated referendum. The referendum overturned the ban, defeating it by 55.6 to 44.4%. A less outright abortion ban bill was introduced into the legislature in 2007 but never made it to a floor vote. A citizen-initiative was qualified for the ballot as Measure 11 in April 2008. It mirrored the original HB1215 in its content and the committee which sponsored it included a state representative, Mary Glenski, D-Sioux Falls, as one of 12 co-sponsors. The original HB1215 however had 36 house members and 18 Senators who supported it in the legislature. Measure 11 was defeated by a very similar margin to the 2006 referendum – 55.3 to 44.7%.[24] It is not productive to make generalisations from one case (hence the need for comprehensive tests in Chapters 4-7), and GBD would have predicted no initiative at all. However this case appears to be a policy seeking use of the initiative by Glenski. She was 78 years old at the time and although she was term limited out of the legislature in that very year she did not seek higher office and there is no evidence of intervening factors.

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[24] Measure 11 committee: Leslee Unruh is the CEO, and Patti Giebink the Treasurer.

In summary the data on abortion restrictions from 1974-2004 does not include examples of politicians' use of direct democracy and the South Dakota case does not show anything on its own. This thesis does not claim that there are never initiatives, just that responsiveness in initiative states is on average no greater than in non-initiative states. Hence the South Dakota case (if it is a case of responsiveness) will be matched by responsiveness in another non-initiative state and produce the null finding for the initiative variable when interacted with public opinion. The report does not mention the level of public opinion in South Dakota.

9.3 Further Data and Method

In both policy areas the test is of whether policy is more responsive in initiative states. In the case of sentencing it is also possible to take account of when and where politicians use the initiative. Because the data are clustered within states both policies demand multilevel models. In one set of models care is taken to reproduce the findings of the original and most cited test of GBD theory, Gerber (1996), as well as attempting to recreate the significant breakthrough in Bowler and Donovan (2004). In other words, every attempt is made to give GBD theory the best chance of prevailing in a multilevel context and with better measures of both policy and public opinion. Testing is carried out on the strongest ground for the GBD theorists, where there are not strong material interests in question, and where Gerber chose to test the original GBD model.

It is found that the presence of the initiative is not a predictor of state policy responsiveness, all else being equal, but that crucially states (be they initiative or non initiative) *are* responsive to key predictors of policy, public opinion on restrictions on abortion access and crime rate in sentencing policy. The referral is available to legislators in 49 of the 50 states, making a comparative study of the aggregate effects unfeasible.

9.3.1 Unit of analysis

To test whether policy is more representative of the median voter's preferences in the presence of the initiative (and since GBD is a theory generalized to any such polity) it is requisite to find a unit of analysis which allows a model of policy to be constructed, and where some significant proportion of the members of the group of units have initiative institutions. The options are to look either at national governments (e.g. a comparison of European democracies), federal and quasi-federal units or sub national (e.g. county or city) governments. In this study the sub-national units in the US (the state-level of government) is chosen. Both national and local levels would have advantages for this research. At a national level there is better raw survey data about public opinion of a representative sample of the electorate, whilst at the local level research can use statistical models with more power in the presence of large numbers of cases. However both the two extremes suffer a deficiency where the other is strong – too few (and difficult to compare) cases at the top and a lack of accessible data at the bottom. For this reason the mid-level (states), with its limitations, provides the unit to be compared.

As stated above, this chapter aims to replicate the findings in Gerber (1996) whilst expanding the number of policies considered and making use of multilevel modelling (MLM). There are inevitably other points of divergence between the former cross-sectional study and this longitudinal study. Although trends over time could potentially be captured by hazard modelling (but is not), the MLM should allow the overarching explanatory variable (presence of the initiative) to have its effect (if it has one), above and beyond simply waiting for public opinion to change and watching state policy respond. That is why this is such a good test of GBD theory.[25] The external control of the federal judiciary, the MLM and time variable together will prevent any omitted variable bias in the results.

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[25] For an example of a hazard model of restrictions on access to an abortion see Langer and Brace (2005).

9.3.2 First Key Explanatory Variable: The Threat of an Initiative

There are two types of omitted variable bias risked by lumping initiative states together. The bias that has been commonly recognised is that initiative states may be significantly different as a group from non-initiative states. However there also exists within group variation between initiative states, i.e. interest groups presenting proposals at the median voter's preference in low initiative use states, such as Illinois or Mississippi, would not pose a threat to politicians of the same kind as in Oregon. The initiative institution could be said to be dormant in the former state and very active in the latter. This causal homogeneity issue found in Gerber (1996) is discussed in Bowler and Donovan (2004). For example Bowler and Donovan (2004) say that the threat to state government of an initiative in Illinois is not equivalent to that in Arizona.[26] Bowler, Donovan, and Tolbert (1998b, Chapter 8) shows that the more a state uses the initiative the more likely it is to have term limits and other governance reforms creating the potential for further endogeneity. The way that this is dealt with in the test below is to include the Bowler and Donovan (2004) qualification difficulty index as well as mirroring the use of a binary initiative state variable by (Gerber, 1996).

9.3.3 Second Key Explanatory Variable: Politicians' Initiative Use

The way to test the effect that politicians initiatives have on policy is to include a variable coded for occasions when they have sponsored an initiative. The link between the (successful) initiatives that politicians have used, and the policy change is direct and so straightforward to observe, with few potential joint causes. The variable is coded 1 from the time at which a single politician initiative is use. In a state if a politician first sponsors an initiative in 1988 then from that year on then the variable politicians use is coded 1. If there is no politician use of the initiative on sentencing then the politician use variable is coded 0.

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[26] It is possible to go further and claim that very low use initiative states are ontologically different, and that there is no threat in the cases of Illinois or Wyoming for example. This claim would however have to rest on the premise that the low use was exogenous rather than as a result of responsiveness.

The strongest alternative explanation for a link between the politicians use variable and responsive policy is that politicians use and policy increase has a joint cause in the form of public opinion. For example in California there is a demand for more sentencing and so politicians respond, whereas elsewhere there is not. This fear is allayed if sentencing is a true valence issue, and this was shown above. A further reason not to worry about a potential joint cause in public opinion is that there is a set of initiative states which have high levels of public support for sentencing referrals that are on the ballot, but in which politicians still do not use initiatives on the subject. For example Colorado where there is no reason initiatives would not do as well as a sentencing referral which passed by 61%. In other words the referrals which do take place are another test of public opinion – referral results are a control to help rule out omitted variable bias. One might also be concerned about independent state specific changes in salience and opinion on sentencing in response to events. For example the death of a young girl in California in 1990, Polly Klaas, which was followed by a wave of strong sentiment in the state. However these events are very difficult to measure and, for example, would not be captured by PGB method imputation in any case. Public opinion is included as a control (and interacted with the initiative) in models S1-S6.

9.3.4 Further Explanatory and Control Variables

Table 9.7 gives a list of all variables. Having discussed the dependent variable and one key explanatory variable, public opinion, in Chapter 3, other variables are discussed here. It is worth stating up front that the choice of initial control variables is designed to mirror that of Gerber (1996). First on the list in Gerber (1996) are signature requirements, which pose multiple uncertainties as an independent variable. How they are used is not made clear and (for a start) there are different requirements for statutory and constitutional initiatives. In the appendix of Gerber (1996) signature re-

Table 9.6: Variables for sentencing models S1-10

Variable	Source and details of any transformation	Variation
Dependent Variable		
Sentencing policy	From the sentencing and prison population database compiled by Don Stemen for the Vera Institute of Justice Stemen (2007). Coded 0-5 for the presence of each of the policies in Table 9.3.	Between & within states
Independent variables		
Crime rate	Violent crime rate (Uniform Crime Report) lagged one year. From the sentencing and prison population database compiled by Don Stemen for the Vera Institute of Justice Stemen (2007).	Between & within states
Public opinion	Measure of response to COURTS question in GSS. Imputed for each state at 9 intervals using PGB method (see section 3.2.1).	Between & within states
Initiative state	Coded 1 for 24 initiative states.	Between states
Bowler	From Bowler and Donovan (2004) see Table 6.4.	Between and within states
Divided Government	Governor and at least one house divided by party (data from Carl Klarner).	Between and within states
Initiative rate	State initiative frequency.	SPPQ dataset
Politician uses	Identified in Table 6.4. Coded 1 from the time of a politician sponsored sentencing initiative. Otherwise 0.	Between & within states
Interest groups	Strong criminal justice interest groups. From Nownes, Thomas, and Hrebenar (2008) via Lax and Phillips (2011).	Between states
Citizen ideology	From Berry et al. (2007) via Stemen (2007). The ideology scale is inverted from the original dataset because it ran from 0 (conservative) to 100 (liberal) and for ease of interpretation of the interaction we needed large numbers to be more conservative.	Between & within states

quirements is called a proxy for proposer costs, but the measure only includes the raw percentage of signatures rather than geographic requirements, which election the percentage is applied to and time constraints which seem important. Gerber (1996) does not say if it is for constitutional or statutory initiatives and neither would provide a complete list. Here the constitutional initiative requirement is used where present and the statutory requirement where not, and just the raw proportion of the electorate at the last gubernatorial election. The data comes from Walters (2003). Legislative professionalism is measured using the widely used Squire index (Squire, 2007; Squire and Smith, 1996). Turnover, the number of members of each house per 100 who change per election cycle, is coded as it appears in Moncrief, Niemi, and Powell (2004) with a new calculation necessary for 2004 data. Data for the number of seats in the lower house comes from data used in Klarner and Karch (2008). Divided government is coded 1 when control of of either legislative chambers is not in the hands of the same party as the governor. It is never 1 in Nebraska.

Citizen ideology is measured with the preeminent scores first used in Erikson, Wright, and McIver (1993) and sourced from Stephanie Lindquist's state politics and the judiciary database.[27] Catholic adherents is measured in the surveys listed in Table 9.7 on the following page sourced from the Association of Religion Data Archives. The number of catholic adherents per thousand is the final figure used. It is important to note that in this data there are states which gain the initiative institution at some point in the period under study. These states are coded as initiative states only when they adopt the initiative.

In both sentencing and abortion one could add the referrals variable into all of the models. However this would bias the results of the test of H10 against GBD for the simple reason that the referral is one aspect of the non-initiative legislative process and so is a symptom rather than a cause of the change in sentencing policy through the representative process. It is a means to an end. The fact that the institution is also

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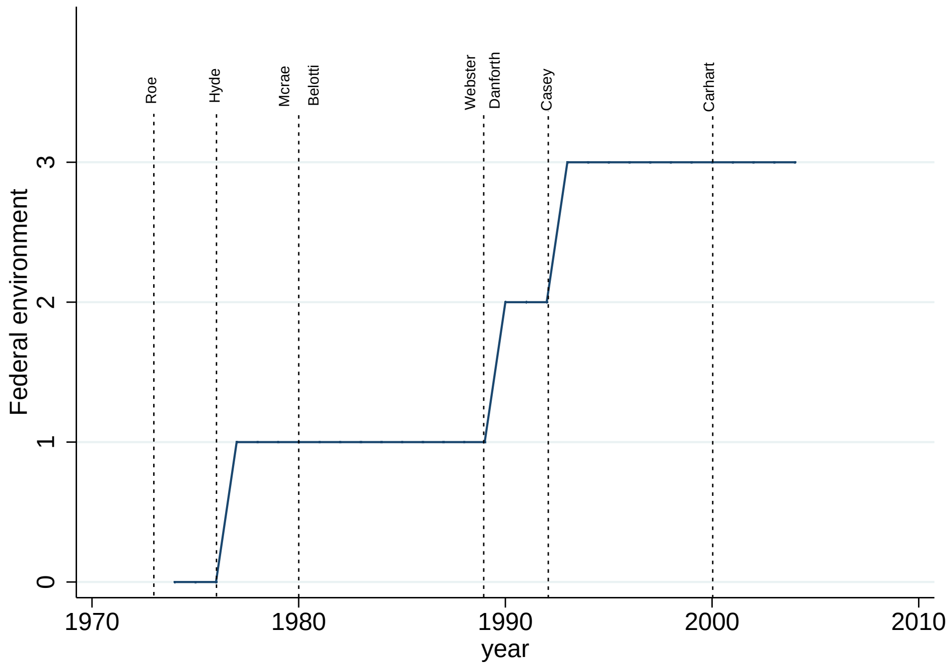
[27] Which can be found via State Politics and Policy Quarterly at `http://academic.udayton.edu/SPPQ-TPR/index.htm`.

Table 9.7: Variables for abortion restriction models

Variable	W	B	Source and details of any transformation
Dependent Variable			
Restrictions on access to abortion	Y	Y	Data for 1974-1990: Merz, Jackson, and Klerman (1995) Data for 1991-2004 NARAL Who Decides? (1991 - 2000) Researcher coded metric coded 0-4. One point increase in the presence of any of: Mandatory delay (waiting period), Parental involvement, Informed consent, Medicaid restriction.
Independent variables			
Public opinion on abortion restrictions	Y	Y	Imputed GSS ABPOOR proportion. See section 3.2. 0-1 1= 100% support for proposition
Catholic population	Y	Y	Association of Religion Data Archives, Churches and Church Membership in the United States, published by the Glenmary Research Center. 1971, 1980, 1990 editions, for 2000 Religious Congregations and Membership Study, 2000 (State File). http://www.thearda.com/Archive/ChState.asp Proportion of state population, adjusted using the method set out in Stark (1987). Averaged over the years in between studies
Signature requirement	N	Y	Raw signature requirement for constitutional amendment if available otherwise statutory amendment
Divided government	Y	Y	Original source: statistical Abstract of the United States, Congressional Quarterly Weekly Report, and Congressional Quarterly Politics in America. Data from Carl Klarner Langer and Brace (2005) highlight how several studies of policy adoption point to the potential importance of party control on policy outcomes. The basic expectation is that divided governments are less able to act than if they are unified under a single party. Coded 1 for unified partisan control of executive and legislative branches, otherwise coded 0.
Initiative rate	Y	Y	State initiative frequency. SPPQ dataset
Legislative Professionalism	Y	Y	Squire index measure. See Squire (2007) for latest version.
Lower house size	Y	Y	Carl Klarner data from Klarner and Karch (2008). Available from the author of that paper.
Citizen ideology	Y	Y	From Erickson Wright Mciver measure in Stefanie A. Linquist, *State politics and the judiciary database. Variable 76 wtd_id3 Conservative Percent Weighted 1976-2003.* Data for 1974 1975 and 2004 were extended from the previous year's measure.
Turnover	Y	Y	Turnover of state legislators. As reported by Moncrief, Niemi, and Powell (2004).
Federal policy environment	N	Y	Coded 0 for *Roe,* 1 for Hyde, 2 for *Webster,* 3 for *Casey.*
Bowler Qualification Difficulty Index	N	Y	Sum of the number of formal provisions increasing qualification difficulty from Bowler and Donovan (2004): Oregon 0, California 1, Colorado 1, North Dakota 1, Arkansas 2, Ohio 2, Michigan 2, South Dakota 2, Idaho 2, Arizona 3, Washington 3, Oklahoma 3 Montana 3 Missouri 3 Massachusetts 3 Utah 3 Nebraska 4 Maine 4 Nevada 4 Florida 4 Illinois 4 Alaska 5 Mississippi 5, Wyoming 6.

Figure 9.4: Coding of federal abortion policy environment



available in all of the states considered as part of the sentencing policy models and all but one of those considered as part of the abortion policy tests there is not institutional variation to leverage.

Finally, it is essential to add, to these variables used in Gerber (1996) to explain abortion policy, a variable to capture the dynamics of the federal policy environment in which states are operating and described in section 9.2.2. Figure 9.4 shows the score for this variable plotted against the year, with the major post-*Roe* decisions from the US Supreme Court and US Congress superimposed. Finally, for model 5, the Bowler and Donovan qualification difficulty index, was coded as per Table 9.7.

9.3.5 Modelling Issues

The extended discussion on multilevel modelling in section 3.3.2 outlined the advantages of time series cross sectional analysis (TSCS), but with these come the associated pitfalls of dynamic processes. Beck (2007); Beck and Katz (2009) have urged those dealing with TSCS data to think carefully about dynamics. Having recognised that fact, it is also incumbent on researchers to recognise that there are only a small number of time points in this dataset, and so specifically designed time-series models (ARMA) may not be necessary and may stretch the data beyond breaking point.

It is necessary to test these two sets of variables (for sentencing and abortion models) for dependence in the time dimension. One would anticipate serial dependence, with the laws adopted in previous periods correlating with the laws adopted in future periods. To test for serial correlation a Lagram multiplier test (Wooldridge's 2003 test), designed for use with multiple panels, was used.[28] For the combinations of abortion restriction variables used in model 4 the test shows first order autocorrelation, rejecting a null hypothesis of no first order autocorrelation at the 99% confidence level.[29] One way to solve this problem would be to use an explicitly dynamic model, differencing the dependent variable. Because of the already high degree of complexity of the model an alternative approach is taken. Instead, a one period lag of the dependent variable is included as an independent variable in the models (Bond, 2002). The lagged dependent variable soaks up the autocorrelation and a new xtserial test fails to reject the null hypothesis that there is no first order serial correlation at the 90% confidence level.[30] For sentencing variables xtserial test rejects a null hypothesis of no first order autocorrelation with the full set of variables including a time trend. The solution is, as with abortion restrictions, to include a one period lag of the dependent variable There is no theory that would suggest that there are cyclostationary or further autocorrelatory processes at work in either set of data and this is supported by observing Figure 9.5 and Figure 9.2.

Beyond the fact that the dependent variables might be is trending (and this has likely caused the autocorrelation) there is a concern about unit roots – for example if after the *Casey* decision abortion restrictions went on another path. [31] A test for unit roots is negative for both sentencing and abortion data after including a time trend (the

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[28] xtserial – the program used – is a Stata program (Drukker, 2003).

[29] The code for which can be found in appendix B.

[30] Also see Baltagi (2005, p. 141) for a full discussion of testing for serial correlation in fixed and random effects models.

[31] On stationarity in TSCS models see Beck and Katz (2009).

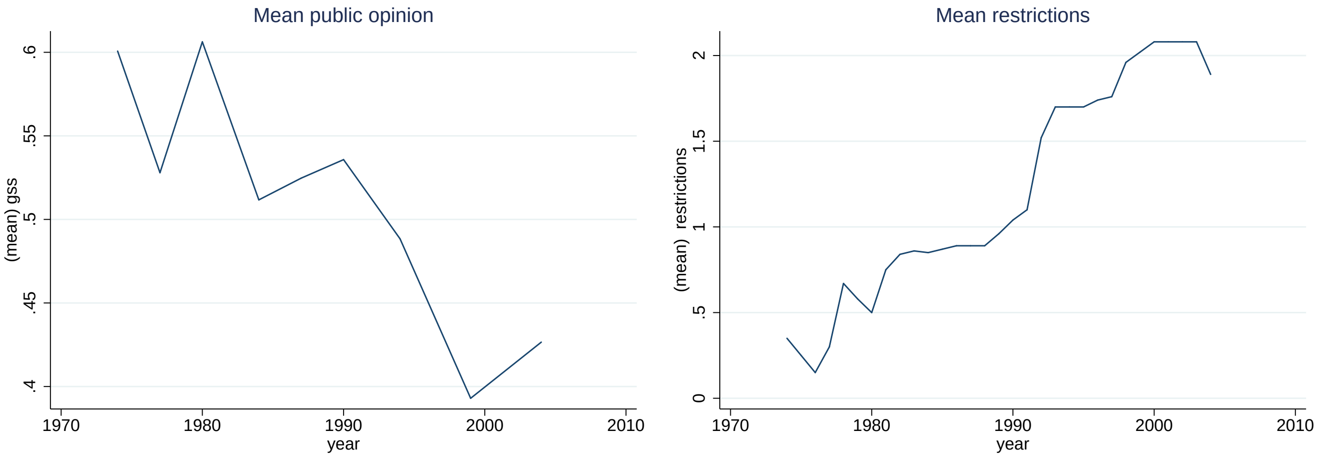

Figure 9.5: Aggregate mean values for abortion restrictions and public opinion

null hypothesis that there is a unit root is rejected).[32] For this reason the year variable is included in models A1-A5 and S1-S10. In both cases the panels are strongly balanced with no missing data for any state in any year.

The test of the GBD theory on abortion restrictions data requires analysis of covariates (secondary variables) that vary only between states (possibly according to whether the state has the initiative or not) and therefore a random coefficient model (RCM) is used. It is shown to fit the data better than its fixed effects equivalent in the next section. In the case of the sentencing data, as on can surmise having the essential characteristics of a valence issue there is not variation in the effects of the public opinion variable. The FEM when nested in the RCM with public opinion allowed to vary at level 2 does not produce coefficients that are significantly different as revealed by a Hausman test.

9.4 Findings: Abortion Restrictions

The following results section contains interpretation of the models listed in Table 9.8. The first, model A1, is a sparse RCM containing only the key variables, lag of restric-

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[32] Data was ported to Stata 11 to run the xtunitroot command for simplicity. All other analysis was carried out in Stata 10.

Harris-Tzavalis unit-root test for restrictions, Ho: Panels contain unit roots Number of panels = 50, Ha: Panels are stationary, Number of periods = 9, Fixed Time trend: Included , Statistic p-value 0.0000

Table 9.8: List of models of abortion restrictions

Model	Type	Variables	Purpose
Model A0	RCM empty	None	Disaggregate variance across levels
Model A1	RCM + interaction	Public opinion	Assess impact of public opinion on policy
Model A2	RCM + interact + controls	Gerber's	Try and replicate the Gerber findings
Model A3	Subsample initiative	Gerber's	Check the difference between subsamples
Model A4	Subsample noninitiative	Gerber's	Check the difference between subsamples
Model A5	Full model + Bowler index	Gerber+Bowler	Control for real threat of initiative use

tions, public opinion and initiative times public opinion. Model A2, adds to model A1 all controls – it is the full model. Models A3 and A4 are essentially the same model as model A2 but are run on the subset of non-initiative and then initiative states. Model A5 includes a new interaction to capture the effect of the initiative using the qualification difficulty index.

As a starting point for multilevel analysis an empty model (represented by the equation below) is presented in Table 9.9 on the following page.

$$Y_{ij} = \gamma_{00} + u_{0j} + r_{ij} \tag{9.1}$$

The intercept only model shows how much of the variance in the dependent variable, restrictions, is explained by the grouping structure (observations (years) grouped within states).[33] 31% of the variance in restrictions is explained at the state level. This is a justification for the use of multilevel modelling as opposed to the pooling of observations. If there was not a large amount of variation in the way that states responded

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[33] Given by:
$\rho = \frac{\sigma^2 u0}{\sigma^2 u0 + \sigma^2 e}$ $\rho = {}^{0.352}/_{1.139} = 0.309$

Table 9.9: Model A0, intercept only model of restrictions in the states

restrictions	Coeff	Std Err
Constant	1.11527	(0.0859)
Random part variance and covariance		
level 1 (years)	0.787	(0.027)
level 2 (state)	0.35182	(0.074)

to public opinion on abortion restrictiveness then this would in itself be grounds to reject the null of H10 – if there is no variation between states then there is no need for a variable (the initiative) to explain it.

To analyse this state level variance it is necessary to introduce either fixed or random effects. The test that this chapter carries out necessitates the use of random effects. If the coefficients for one or more variables are not allowed to vary by state there is no possibility of modelling differences in responsiveness in initiative and non initiative states (although of course they could have different intercepts). The random effects model can be expressed as follows:

$$Y_{ij} = \gamma_{00} + \gamma_{10}X_{ij} + \gamma_{01}Z_j + u_{1j}X_{ij} + r_{ij} \tag{9.2}$$

Where γ_{00} is the intercept for the average group (mean) and γ_{10} is an unstandardized regression coefficient for the explanatory variable x. A one unit increase in x produces an average increase of γ_{10} of y in state i at time j (Snijders and Bosker, 1999, p. 47-8). It is important to bear in mind that for the model to make reliable predictions it is necessary to test that all residuals U_{0j} and R_{ij} are independent and have a zero mean (Snijders and Bosker, 1999, chapter 9). These assumptions are tested below in section C.1.2.

Before examining the output of models with random coefficients, a check can be performed to see that they fit the data better than a fixed effects model (FEM) once all independent variables have been introduced. The results of a Hausman test with the FEM nested in an RCM, fails to reject the null hypothesis that the coefficients produced by the two models are similar, justifying the use of the RCM. The Hausman test of a random intercept model nested in the random coefficient model rejects the null at the 99% confidence level. The RCM model is an improvement on the random intercept model as a result of the fact that the variance in the random slopes is not 0.

With these checks in hand it is possible to use the models in Table 9.10 to assess hypothesis H10, that there is a difference in responsiveness to public opinion between states with and without the initiative.[34] Model A1 shows a statistically significant increase in restrictions as public opinion for each state decreases.[35] This is contra the empirical model in Gerber (1996) which found public opinion to be a predictor of restrictions only in initiative states. Although this is not a direct test of the null of H10 (the direct test is explained below) this is an important finding as it contradicts one of the standout findings of the models in Gerber (1996).

The effect of public opinion on restrictions is of a moderate size with a coefficient of -1.9 amounting to 0.3 of a restriction increase on average for a standard deviation public opinion increase (see Table 9.11 on page 242 for summaries of the dependent and explanatory variables). In fact this is an underestimate of the magnitude of the effect as the data is longitudinal and so the pooled standard deviation is less relevant that the variation within each state. Looking at the travel in each state from its high to its low the average is approximately 0.2 points (or one could think of it as 20 percentage

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[34] Allowing public opinion times initiative to vary across states (RC) did not have any impact on the significance of the coefficients in either models A1 and A2.

A constant is also included in the level 2 variables which means that, in the linear predictor, the random effect of ***public opinion*** is multiplied by the constant 1, so that the random effects represent a random intercept and a random slope, respectively. This is followed throughout whenever a random effect is included in a model.

[35] To recap, an increase in public opinion represents an increase in the imputed proportion of respondents answering yes to ABPOOR. Restrictions on the other hand is a measure which increases with the barriers to a woman or minor seeking an abortion. Hence the negative relationship between the two.

Table 9.10: RCM models A1-A4

	M. A1		M. A2		M. A3		M. A4		M. A5	
	RCM pub.op+int		M1+ctrl+interact		Subsmp 26 noninit		Subsample 24 init		M4 w/Bowler	
Fixed part:	Coeff	SE	Coeff	SE	Coeff	SE	Coeff	SE	Coeff	SE
l.restrictions	0.828***	0.036	0.743***	0.072	0.694***	0.095	0.694***	0.088	0.685***	0.041
Public opinion	-1.613***	0.365	-1.974***	0.443	-1.904***	0.632	-1.471*	0.787	-1.916***	0.500
*Opinion*Initiative*	0.016	0.117	0.243	0.238					0.150	0.190
Signatures			-0.002	0.014			0.022	0.024	-0.044	0.107
Professionalism			-0.631**	0.343	-1.120*	0.620	-0.524	0.408	-0.707**	0.335
Turnover/100			-0.012***	0.005	-0.0153**	0.007	-0.012	0.008	-0.012**	0.005
Size of house			0.0003	0.001	0.0002	0.0007	0.001	0.002	0.0004	0.0006
Divided			0.017	0.071	-0.025	0.105	0.091	0.098	0.020	0.072
Ideology			-0.0001	0.003	-0.001	0.004	-0.0006	0.005	0.0005	0.003
Catholic			0.002	0.003	0.002	0.005	0.008	0.008	0.002	0.004
Fed environment			0.381***	0.058	0.456***	0.079	0.273***	0.087	0.374***	0.0569
year			-0.037***	0.009	-0.043***	0.014	-0.022	0.014	-0.032***	0.008
Constant	1.225***	0.208	75.093***	17.782	86.247***	27.544	44.541	28.743	64.535***	15.842
Random part:										
$\sigma^2 e$(year level var)	0.328	0.003	0.277	0.025	0.271	0.033	0.257	0.040	0.274	0.047
$\sigma^2 u0$(state level var)	0.006	0.073	0.129	0.216	0.151	0.321	0.609	0.811	0.168	0.231
$\sigma^2 u1$(***public opinion***)	0.005	0.108	0.205	0.459	0.229	0.664	1.438	2.331	0.275	0.492
$\sigma^2 u01$(co. var.)	-0.005	0.092	-0.162	0.316	-0.186	0.465	-0.155	0.331	-0.215	0.338
Deviance*	690.6		643.5		339.6		294.7		643.42	

$^*p \leq 0.10$ $^{**}p \leq 0.05$ $^{***}p \leq 0.01$

Variable	Obs	Mean	Std. Dev.	Min	Max
public opinion	441	0.512	0.110	0.227	0.737
abortion	441	0.903	0.962	0	4

Table 9.11: Summary of public opinion and restrictions

points) of public opinion which would double the magnitude of the effect of public opinion. There are states with much larger deviations over time and some with smaller.

Opinion times initiative is not a significant predictor of restrictions at the 90% confidence level and this (if confirmed by model A2 with controls) is enough to suggest an initial rejection of the null of hypothesis H10. On this finding, in initiative states there is no more responsiveness than in non-initiative states. The lag of restrictions is of course a significant predictor of current restrictions with every extra past restriction predicting 0.8 extra current restrictions on average.

When control variables were added in the models in Gerber (1996) the magnitude of the effect of opinion times initiative on parental involvement requirements increased. However that is not the case in model A2, and in fact the interaction is not significant (as was the case in model A1). Adding in the controls does increase the magnitude of the effect of public opinion, which is still a significant predictor of restrictions. Using the 0.2 point public opinion change yardstick in the full model (model A2), public opinion brings about just over half a restriction change on average.[36] The central finding from model A2 is that the interaction of initiative and public opinion is not significant (and does not approach significance). This is good reason to reject the null of H10, that there is a difference in responsiveness between the two types of state. Another way to test the null of H10 is with a likelihood ratio test of the model with and without the interaction (Snijders and Bosker, 1999, p.99). The result confirms the finding that the interaction term does not produce a significantly different model.[37]

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[36] The confidence interval for a level two variable is obtained by multiplying the std deviation by 1.39 (rather than 1.96) to get a 95% confidence level.

Having rejected the null of H10, that there is a difference between initiative and non initiative states, it is interesting to note that there is a difference between states in the latent variable explaining responsiveness to public opinion. In other words there *is* a difference to be explained but it is not the presence of the initiative which is the explanator. To understand further what the model shows it is necessary to look at the state-level variance in the public opinion coefficient, because it may be that, as H10 suggests, there is a category of states for which this public opinion is a large predictor and some for which its effects are smaller. To do this it is possible to construct an interval within which 95% of the slopes for public opinion fall.

For the full model, model A2, the population mean slope -1.974 plus or minus 1.96 times the standard deviation of random variable 2 (which is public opinion) 0.82, meaning that 95% of the slopes lie between -0.008 and -3.04. There is a large variation and none of the slopes are positive. A visual representation of this variance can be seen in the slopes of the regression lines in figure 9.6, divided into initiative and non-initiative states. The graph again suggests that the differences in slopes are not accounted for by the dichotomous initiative/non-initiative distinction.

Other variables in Gerber (1996)'s empirical analysis *are* found here to be similarly significant with the same signs. Legislative professionalism has a significant, but small magnitude, negative effect on restrictions. As Gerber (1996) states, more professional legislatures are less likely to pass a restriction controlling for public opinion, and is a very interesting finding on its own, supporting the finding in Berry, Berkman, and Schneiderman (2000) that professionalism insulates legislators. Turnover is similarly significant, but with an even smaller magnitude effect.

Naturally the federal policy environment variable is a statistically significant predictor of restrictions. For each additional step out of 3 that the federal institutions take which loosens control on the states an extra 0.4 of a restriction is predicted. Catholic adherents is not significant just as in Gerber (1996). Signature requirements are not significant where they were in the purely cross-sectional context in Gerber (1996), although this is not surprising given the findings on the same subject in Matsusaka (2007) and the fact that Bowler and Donovan (2004) found threat to be more sophisticated than simple signatures.[38]

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[37] H0: no significant difference. P-value 0.962.

From figure 9.6 on the following page and the covariance structure for model A2 in Table 9.10, as public opinion increases (mean members of electorates prefer more restrictions) there is less variance between states. This stands to reason as there is only one responsive policy to adopt below a certain level of public opinion and that is to have no restrictions at all. Legislative professionalism continues to be significant, with slightly different magnitudes, in every model in which it is included. The variable Catholic adherents has only a small effect in the full model (model A2) whilst the distance in years from *Roe* i.e. the year variable is also significant in all cases, even controlling for the threat of an initiative, and federal policy environment might be thought to offset some of that effect.

To give the GBD theory every chance of success given what has been learnt in the empirical policy debate in section 8.3, model 5 uses interaction between public opinion and the qualification difficulty index which Bowler and Donovan (2004) found to be a significant predictor of restrictions, giving weight to their conditional version of the support for GBD theory. The deviance shows a difference of less than 1 from model A2 and the findings from model A5 are largely the same as those from model A2 in which the initiative was treated as dichotomous. Public opinion has a slightly larger effect on restrictions, but the interaction between public opinion and the initiative (now represented by the Bowler index) is still not statistically significant.

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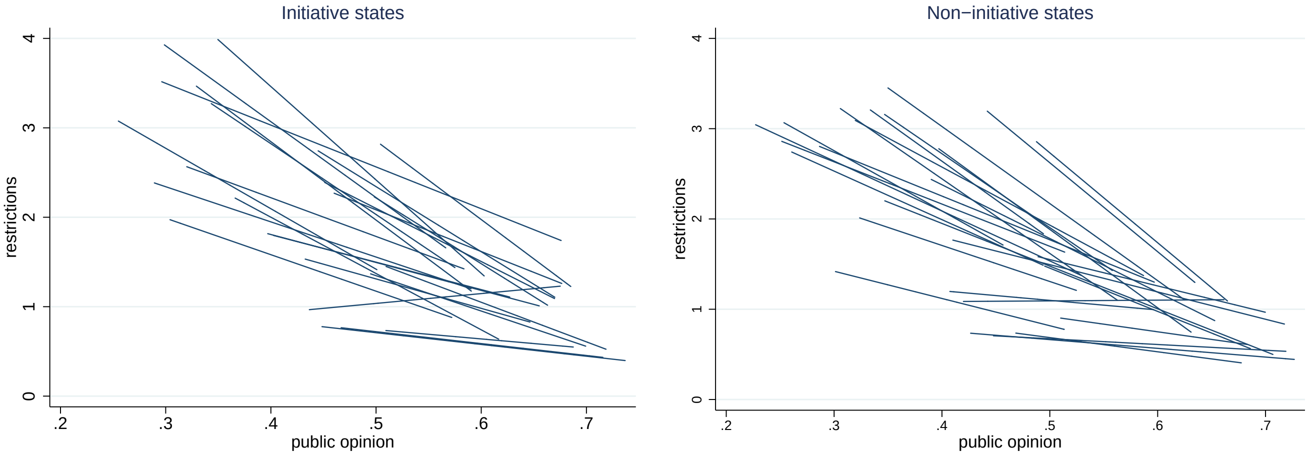
[38] There are not enough cases with enough variation on this variable. The range is largely between 3 and 10%, with only a few states at higher levels. In Table 6 of Gerber (1996) there are 9 predictions for the various levels of signature requirements and public opinion. By the time there is a prediction for a 15% signature requirement with high, medium and low public opinion it is impossible that there is even a single case in each category as there are only two states with 15% requirements.

Figure 9.6: Linear prediction for the effect of public opinion on abortion restrictions, generated using BLUPs

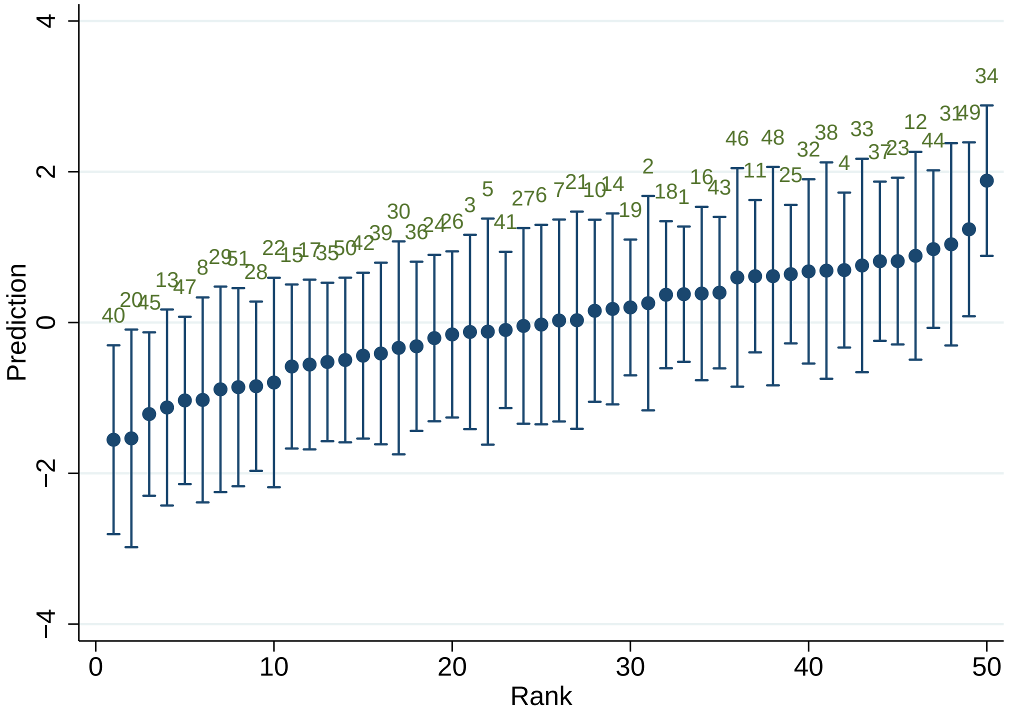


Another way of tackling the disconfirmation of H10, with subsamples, is presented in models A3 and A4. They show that in initiative states, public opinion has a larger significant effect on the number of restrictions – a coefficient of -1.90 versus -1.47 a difference which washes out with the difference in the std deviation of opinion in the two sets of states, 1.1 in initiative states and 1.2 in non-initiative states. More to the point this reveals that in both subsamples public opinion (and in non initiative states it is significant at the 99% level and in initiative states at 90%) has an effect on restrictions – evidence against the null of Hypothesis H10. This can be seen graphically in figure 9.6. Both graphs are strikingly similar with the exception being more variance in the intercepts for states without the initiative.

The covariance in model A3 for non-initiative states is much lower, indicating that there is a greater convergence of all the predicted regression lines for each state. There is a positive covariance between intercepts and slopes estimated as 0.036 (standard error 0.40), therefore states with higher intercepts tend to have slightly steeper slopes and this corresponds to a correlation between the intercept and slope (across states) of 0.015.

A further test of the difference in the responsiveness mechanisms for abortion access policy between initiative and non initiative states is a check using an OLS regres-

Figure 9.7: Graph of random coefficients for state's public opinion, ranked



*The numbers labeling the states can be found in appendix A.1.

sion of the random coefficients. The random group effects U_{0j} (in equation 9.1 and displayed graphically in figure 9.6 on the previous page) can be regressed against the threat of an initiative occurring, the qualification difficulty index.

The result in Table 9.12 is further confirmation of the earlier findings which suggested that the initiative is not a statistically significant predictor of the size of the effect that public opinion has on abortion restrictiveness laws in the states.

Table 9.12: OLS regression of random effect of public opinion on abortion restrictions

	Coeff	SE	P>t	[95% Confidence Interval]		
Initiative	0.004	0.009	0.614	-0.014	–	0.024
Intercept	0.215	10.431	0.984	-20.285	–	20.715

Adj R^2=0.305

9.5 Findings: Sentencing

A full list of the models which were used to assess Hypotheses H10 and H11 is displayed in Table 9.13. To recap Models S1-6 include sentencing specific state-level public opinion as a control (varying between states and within states over time), whilst S7-10 proceed on the assumption that sentencing is a true and uniform valence issue and therefore do not include public opinion as a control. Interpreting the sentencing models in terms of H10 and H11 is much more straightforward than the abortion models. As stated in the section on modelling issues (9.3.5), including random terms for public opinion in models S1-6 does not produce a significant improvement in model fit (or crime rate (which also varies within and between states)). Thus the analysis proceeds using the random intercept models. This finding is not surprising given the evidence that sentencing is a valence issue for voters. Even GBD does not predict differential effects for public opinion between initiative and non-initiative states in such a case. What GBD does however predict is an effect for the initiative variable on its own (an increase in sentencing) on the assumption that more policy is better for the median voter (models S7-10). The description of the different models can be found in Table 9.13.

The findings from models of sentencing policy are displayed in Tables 9.14 on page 249 and 9.15 on page 250.[39] The lag of the sentencing policy variable is as expected a statistically significant predictor of current sentencing policy. For every extra sentencing policy at t_{-1} there is an average increase of 0.75 in the sentencing policy at time t. This holds across all of models S1-10. The violent crime rate is not a statistically significant predictor of sentencing laws except in model S10 and then only at the 90% confidence level. The effect of public opinion is not statistically different from zero in any of the models other than S3 where it has small positive effect on sentencing policy significant at the 90% confidence level.[40]

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[39] The continuous nature of the dependent variable sentences allows for directly interpreting coefficients.

[40] Residuals can be found in appendix C.1.2.

Table 9.13: List of sentencing models

Model	Key explanatory Variables
Model S1	Opinion + Initiative + controls
Model S2	Opinion + Bowler + controls
Model S3	Opinion*Initiative + controls
Model S4	Opinion*Bowler + controls
Model S5	Politicians + Opinion*Initiative + controls
Model S6	Politicians + Opinion*Bowler + controls
Model S7	Initiative + controls
Model S8	Bowler + controls
Model S9	Politicians + Initiative + controls
Model S10	Politicians + Bowler + controls

Turning first to the test of GBD *per se*: the tests of hypothesis H10 can be found in the variables under the heading direct democracy in Table 9.15. The most straightforward test of H10 can be found in model S7 where the initiative is considered as a predictor without controlling for politicians' initiatives and without public opinion or the interaction with public opinion. The effect of being an initiative state according to S7 is to reduce the sentencing policy on average by 0.15 policies. This is the opposite effect to that expected under GBD theory, which predicts a move towards the preference of the median voter – in this case an increase in the value of the sentencing variable. Although this statistic is only significant at the 90% confidence level. The effect of the initiative is very similar in S9 where politicians use of the initiative is controlled for. In none of the other models is the initiative on its own a significant predictor of sentencing policy. On the other more sophisticated measure of the initiative, the Bowler qualification difficulty index is also not a significant predictor of sentencing in any model whether with or without public opinion included, and whether interacted with public opinion or not.

Strictly speaking the interaction between direct democracy and public opinion is not necessary to assess a valence issue as the direct democracy variable on its own

Table 9.14: Multilevel models S1-S6 of state sentencing laws 1972-2002

	Model S1		Model S2		Model S3		Model S4		Model S5		Model S6	
									I & op & pols		Bowler & op & pols	
Predictors												
l.Sentencing	0.751***	0.048	0.757***	0.049	0.748**	0.048	0.755***	0.049	0.739***	0.048	0.748***	0.049
Crime rate	0.0002	0.0002	0.0002	0.0001	0.0002	0.0001	0.0002	0.0002	0.0002	0.0001	0.0002	0.0001
Opinion	0.613	0.4710	0.604	0.472	1.005*	0.607	0.824	0.575	0.874	0.607	0.672	0.575
Direct democracy												
Initiative	-0.131	0.080			0.523	0.647			0.402	0.647		
Initiative*Opinion					-0.796	0.780			-0.659	0.781		
Bowler			-0.016	0.014			0.056	0.109			0.021	0.109
Bowler*Opinion							-0.088	0.132			-0.053	0.132
Politician initiatives									0.337**	0.141	0.371**	0.143
Initiative rate	-0.005	0.009	-0.005	0.009	-0.006	0.009	-0.005	0.009	-0.004	0.009	-0.002	0.009
State controls												
Divided government	0.060	0.066	0.063	0.066	0.060	0.066	0.061	0.066	0.061	0.065	0.063	0.065
Legislative profess	-0.311	0.333	-0.358	0.331	-0.293	0.335	-0.354	0.333	-0.392	0.329	-0.469	0.323
Republican governor	-0.073	0.051	-0.070	0.051	-0.077	0.051	-0.072	0.051	-0.073	0.051	-0.067	0.051
Interest groups	-0.163	0.094	-0.1694*	0.097	-0.165*	0.095	-0.169*	0.098	-0.117	0.093	-0.128	0.093
Year	0.007	0.004	0.007	0.004	0.007*	0.004	0.007	0.004	0.006	0.004	0.005	0.004
West	0.297**	0.123	0.280**	0.126	0.296**	0.124	0.281**	0.127	0.234**	0.121	0.234*	0.121
South	0.116	0.108	0.122	0.109	0.120	0.109	0.125	0.109	0.112	0.105	0.122	0.104
Midwest	0.377***	0.117	0.360***	0.117	0.384***	0.118	0.366***	0.118	0.380***	0.114	0.372**	0.112
Constant	-14.416	8.969	-13.524	9.037	-15.428*	9.045	-14.141	9.098	-13.09361	8.991	-11.296	9.008
var(year)	0.343	(0.024)	0.332	(0.023)	0.340	(0.024)	0.340	(0.024)	0.331	(0.024)	0.332	(0.024)
var(state)	0.456	(0.101)	0.413	(0.092)	0.435	(0.096)	0.457	(0.100)	0.398	(0.090)	0.413	(0.092)
Deviance	-458.99		-450.3		-456.06		-457.33		-449.07		-450.23	
n level-1	432		432		432		432		432		432	
n level-2	48		48		48		48		48		48	

$^*p \leq 0.10$ $^{**}p \leq 0.05$ $^{***}p \leq 0.01$

Table 9.15: Multilevel models S7-S10 of state sentencing laws 1972-2002

	Model S7		Model S8		Model S9		Model S10	
Predictors								
l.sentencing	0.727***	0.045	0.730***	0.045	0.717***	0.046	0.721***	0.046
Crime rate	0.0002	0.0001	0.0002	0.0001	0.0003*	0.0002	0.0002	0.0001
Opinion								
Direct democracy								
Initiative	-0.148*	0.0846			-0.159*	0.081		
Initiative*Opinion								
Bowler			0.023	0.0196			0.030	0.019
Bowler*Opinion								
Politician initiatives					0.382***	0.135	0.397***	0.137
Initiative rate	-0.006	0.010	-0.006	0.010	-0.004	0.009	-0.003	0.010
State controls								
Divided government	0.024	0.060	0.025	0.061	0.028	0.060	0.029	0.060
Legislative profess	-0.355	0.330	-0.404	0.331	-0.450	0.322	-0.510	0.322
Republican governor	-0.076	0.047	-0.076	0.047	-0.074	0.047	-0.074	0.047
Interest groups	-0.177*	0.100	-0.194*	0.107	-0.121	0.098	-0.147	0.103
Year	0.006*	0.003	0.006	0.004	0.005	0.003	0.005	0.004
West	0.268**	0.126	0.234*	0.125	0.200	0.122	0.174	0.121
South	0.082	0.112	0.077	0.112	0.078	0.107	0.072	0.108
Midwest	0.382***	0.122	0.361***	0.122	0.380***	0.118	0.366***	0.118
Constant	-11.724	7.285	-11.501	7.352	-9.926	7.288	-9.595	7.360
var(year)	0.372	0.024	0.372	0.024	0.366	0.023	0.366	0.023
var(state)	0.388	0.086	0.413	0.091	0.364	0.082	0.389	0.087
Deviance	442.84		442.84		431.90		434.92	
n level-1	432		432		432		432	
n level-2	48		48		48		48	

$^{*}p \leq 0.10$ $^{**}p \leq 0.05$ $^{***}p \leq 0.01$

will reveal the effect of the initiative. However to give GBD theory every chance the interaction has been included in models S3-S6. For example it might be argued that some states have more overwhelming public support for sentencing policy meeting a threshold effect. Figure 9.2 does also show a more recent trend to slightly more lenient attitudes on sentencing. The interaction of public opinion whether with the binary measure of the initiative or the Bowler index is not significantly different from zero in any of these models. GBD predicts a positive relationship if opinion is a significant predictor of policy. Because opinion on its own (S1 & S2) is not a significant predictor of sentencing this finding is to be expected, but it was worth considering to head off a sceptic and considering the direct equivalence with the test of abortion restrictions. If a legislature is less insulated from direct democracy then agenda control should be more fragmented resulting in a policy closer to the median voter (in this case more sentencing) and so again this is a move in the opposite direction to the one predicted by GBD theory. In short there is no support for H10 in these models of sentencing policy and that result holds both with and without a reliance on the PGB imputation of state-level opinion.

Models S5 and S6 test the null of the politician use hypothesis, H11, and show the effect of politicians use of the initiative on sentencing. In short in every model in a state where politicians have used an initiative on sentencing there is a consistent statistically significant 0.3-0.4 policy increase. The politicians use variable is binary, so in every state in which there has been politicians use there is a 0.3-0.4 policy increase depending on the model used (and one can make a case for all of them). In models S9-10 where public opinion is not included the coefficient of the politician use variable is closer to 0.4 – 0.38 and 0.39 – than in models S5 and S6 – 0.34 and 0.37. In models S5-S6 which control for public opinion the politicians variable has a p-value approaching the 99% confidence level. In models S7-10 the politician use variable is significant at the 99% confidence level. To put that finding in context, it is half that of the actual lag of sentencing. In short this is a large and consistent effect in the direction of more of the preferred policy (whether or not one controls for public opinion). This evidence serves to reject the null of hypothesis H11 and to support the argument that politicians use of the initiative is able to bring about a policy change. As with the test of the referral in Chapter 6 there is a concern about the extent to which California alone may be driving the data. In this case the exclusion of California in model S6 changes the coefficient from 0.371 to 0.366 and the p value from 0.017 to 0.021.

Of the controls the significant variables are the competitive interest groups variable, and two geographic controls, west and midwest. The interest group variable is significant in 7 of the models at the 90% confidence level for every extra 0.16-0.17 (in those models where it is significant) of interest group there is a 0.16 average decrease in sentencing policy. Being in a state categorised as west there is a 0.2 increase in policy at the 95% confidence level. Being a midwest state has an even greater effect on policy, 0.37 policies more responsive at the 95% confidence level. These geographic variables are statistically significant even controlling for differences in state public opinion in models S1-S6.

9.6 Summary: Responsiveness but No Gun *Behind* the Door

The tests conducted above to model the impact of the initiative *per se* and politicians use of the institution, lead to the conclusion that state governments *per se* are responsive to public preferences regarding sentencing policy and access to abortion, but that the presence of the initiative does not alter this relationship in the manner that GBD theorists suggest. State governments, according to the tests conducted, are not more responsive to the *gun behind the door* wielded by interest groups (*pace* (Gerber, 1996)) than to their constituents. Second, not only are the institutions of direct democracy not responsible for variation in policy responsiveness, but there is significant variation in responsiveness to be explained. The finding is strengthened by the fact that it holds over two very different policies with different relationships to public opinion. In the context of the overall thesis the results in this chapter show that politicians' use of direct democracy can affect policy responsiveness. GBD theorists might claim that these politicians are playing the role of interest groups in their theory, but it is outstanding that responsiveness increases do not follow in the states where other groups presumably would play that same role in all initiative states on abortion and in initiative states where there is no politician use on sentencing.

The question is whether the finding with regards politicians use of sentencing initiatives which made policy more responsive a rescue of GBD theory in certain areas? The answer to this question depends on whether the increase in sentencing is greater than the actual initiatives. This finding is not a *bona fide* rescue of the gun behind the door thesis because the effect observed is direct rather than the largely indirect effect predicted by GBD. It has been shown that there is not an indirect threat and so when a direct one arises it is a overreach for a sceptic to say that it supports the indirect effect theory – GBD.

Chapter 10

Conclusion

This conclusion contains the answer to the research question, and the implications of the arguments that have been pressed home throughout the thesis. The conclusion explains what the thesis has shown to convince the reader of the reasons why politicians use the initiative and referral and in one particular circumstance what the systematic effect on public policy can be.

Let me begin by summing up the overall argument in a couple of sentences: Politicians use direct democracy in a diverse set of ways to achieve ends beyond simply enacting the law that is contained within a measure. Governors and State legislators make use of two different direct democracy institutions to enact laws without the possibility of the others vetoing their proposal. State legislators also make use of the initiative, alongside other candidates for state-wide office, to provide for two different elements of their office seeking needs – profile and campaign effects. This latter type of use can change states' responsiveness to policy demands from the public. Researchers should be concerned about the effect of the rest because the preeminent theory dictating the supply of and policy effect of direct democracy does not hold. The conclusion from these tests challenges those authors who ascribe the supply of initiatives solely to demand from within the electorate or even interest groups. The results show that existing models of direct democracy are at least unable to account for a large portion of initiatives, which are in fact supplied primarily in conjunction with the desire of politicians to advance their careers and their own policy goals.

10.1 Politicians *Use* Direct Democracy

Although it had been realised that politicians could effect the outcome of direct democracy elections (for example by providing cues to voters), this thesis has presented evidence that politicians have a widespread and more substantive impact on direct democracy. Substantive because not only are politicians involved with direct democracy but that they frequently initiate it. Further they do not just initiate it, they do so with the aim to garner some instrumental benefit. Politicians involvement with and even sponsorship of direct democracy had been recognised in academic literature. In addition in the context of EU integration it had also begun to incorporate the phenomenon. On these grounds it might be claimed that the extent of politicians' involvement with direct democracy was already known, but instead the political motivation behind it was simply widely suspected. Almost no literature showed it to be the case that a politician used direct democracy for a particular benefit.

Politician motivation however is a slippery thing to get hold of and measure. It could always be suggested (not least by those politicians involved) that their action in sponsoring an initiative was a belief in the issue which was being placed on the ballot (which in some cases it was). The *modus operandi* of this thesis has been to prove some motivations for use existed by looking at this behaviour at the aggregate level. In answering the research question why do politicians use direct democracy the thesis has shown conclusively that they do and how widely. In other words it is the first place in which it was explored in multiple venues and the concept of politician use given a full explication. The conclusion – that there is some benefit to using direct democracy – is bolstered by the number of circumstances under which politicians are willing to invest in direct democracy (before elections during campaigns and in government), the number of benefits that they appear to value, and the number of direct democracy institutions that they are able to exploit. This finding suggests a new focus on the proponents of direct democracy more widely.

The correlations in context found in Chapters 4, 5, 6 and 7 were strong enough not only to establish causation, but also to provide figures for the amount of direct democracy use by politicians. In Chapters 4 and 5, in California and Oregon in a four year identification window 37 initiatives were found to be used by state legislators with a further 30 by candidates for state-wide election who were not state legislators. In Chapter 6, 660 referrals out of a total of 1865 were predicted to fall under the definition of use. In Chapter 7, 43 initiatives were used by governors in the 50 states. Altogether that is 86 initiatives and 660 out of 3666 referrals that can be seen in a new light. This result was achieved with tests which explicitly looked for *only* four of the ten types of potential politician use of direct democracy suggested to exist in Chapter 2.

10.2 Why Politicians Use Direct Democracy

Across the four political arenas examined in the thesis no single motivation led politicians to use direct democracy in all cases. Rather two motivations underpinned four types of direct democracy use. The aim of politicians in question in Chapters 4 and 5 was office-seeking, through very different mechanisms, whilst the aims in Chapters 6 and 7 were primarily policy seeking. In both of the areas where literature has asserted preferences for politicians it was found that they were employing direct democracy to fulfill them. The introduction to the thesis and Chapter 2 included many examples of politicians sponsoring direct democracy, and literature to the same effect. Even with the most detailed description, however, that claim to know the motivation behind use, was circumstantial. Now it has been established that four motivations for use do exist beyond doubt. The argument of the thesis and the model in Chapter 2 pegged politicians as interested in policy and holding office and so would seek to use direct democracy to achieve these goals, it argued however that they were constrained in how direct democracy institutions could help them do so. It was predicted that there would be a profile effect use of the initiative by state legislators, and campaign effect use of the initiative by candidates for state-wide office. It was predicted that there would not be a systematic policy effect use of the initiative for state legislators, but that there would be for governors.

The theory in Chapter 2 predicted that the initiative rather than the referral would be of use to state legislators looking to run for higher office. The evidence supported that claim in that the referral was not a statistically significant predictor of a run for state-wide office. In Chapter 4 the institutions available to politicians in the US also led to the prediction that state legislators who ran for higher office disproportionately would be initiative sponsors. That was shown to be the case even controlling for the numerous potential joint causes of office seeking and initiative use. The effect of the measurement strategy was to bypass the exact mechanism through which the effects operate. Two possibilities for the profile mechanism, borrowed from literature on presidential nominations, were suggested: recognition effects amongst party supporters (including financiers); recognition effects amongst the electorate *tout court*. It was possible, using the same dataset used through Chapter 4, to investigate the success of the initiative using state legislators. The politicians in the data were more successful than the average candidate in primary elections, but equally unsuccessful at general elections. From the evidence it appeared that the primary election was the target of these initiatives, but we did also see an example of a more ambitious general election strategy to win the race to be governor at the general election by John Van de Kamp. There is no reason why a profile boost cannot sometimes work mostly amongst party members whilst a different mechanism could be aimed at a general election campaign. In future work politicians' use of direct democracy for the profile effect needs to be combined with thoroughgoing models of future and current candidate success in state elections, and larger datasets to say conclusively whether direct democracy does make candidates more successful. The role of parties and the part played by money in the process also deserve further attention.

In Chapter 5 the campaign effect was explored with the emphasis on a test of the use of the initiative concurrent with candidates' campaigns for state-wide office in California and Oregon. This behaviour was found to be another manifestation of initiative use for office-seeking benefits. Compared to the background of all politicians, candidates were shown to be dramatically more likely to use the initiative at the same time as their election campaign, even when compared to state legislators who went on to run for state-wide office in future. The subject matter of these initiative uses concurrent with candidacy pointed very strongly to the fact that a riding the wave strategy was being pursued by most candidates, over the strongest alternative, issue ownership. Republican and Democratic candidates alike used Republican-owned issues with a strong bias in favour of those involving criminal justice. This bipartisan riding of a wave of public opinion implies that the effect is aimed at general election campaigns and not at party supporters or bases. This finding provided the trigger for a test in Chapter 9 of what the effect of such riding the wave uses might be on supply of a valence policy. In the context of the campaign effect the research question posed at the outset has been answered – a reason why politicians are using the initiative has been provided. However future research is now needed on the voluminous campaign disclosure databases to tease out the role of money transfers in the campaign effects. Is there always or ever a net gain in terms of dollars for candidates who run a ballot measure? Or is the campaign solely a cost which is borne for the benefit it brings? There was certainly the initial suggestion of a financial benefit in the evidence of CCBMCs. These effects will not be continuous over time, being more useful as legislation controls candidate committees to a greater extent. Analysis of campaign finance data would allow a researcher to trace any financial rewards which might form part of the campaign or profile effects.

In Chapter 6 a multilevel model of legislative referrals was used to show that legislatures are often explicitly circumventing the governor when making referrals to the ballot. The key to assessing the hypothesis about legislative conflict was the interaction between the easy referral variable and very divided government. In periods of potential conflict, in those states where it is easier to refer than to override a veto, legislatures refer to an increased extent, beyond the increase seen in other states. The effect of the different difficulties in referral procedure was also apparent on its own, and the easier the referral out of the legislature, the more likely the legislators were to use it in periods of very divided (and as it happened divided) government. In retrospect the tests in Chapter 6 are the most novel and important part of the research project, relating to the most ballot measures, the most successful category of ballot measures, and applying to 49 of the 50 states. Along with the findings of Chapter 7 these findings suggest a further focus on periods of conflict between the legislature and the governor and in particular some very detailed work tracking the relationship between this conflict and these ballot measures. A portion of the referral frequency data used in this chapter has already been coded according to whether these measures are constitutional or statutory measures by Danmore, Bowler, and Nicholson (2009).

Governors use direct democracy too, as predicted by the theory in Chapter 2. As predicted, governors (in initiative states) ought to be relatively unconstrained in theory use of the initiative sharing as they do a median constituent with the measures. According to the theory in Chapter 2 governors have an inbuilt advantage over the legislature when it comes to initiative use as they share a constituency with the initiative and are a unitary actor. In Chapter 7 they were shown to be using that advantage to deal with legislatures that opposed them. A test in Chapter 7 found, as (Matsusaka, 2005b) had suggested, that governors across a wide range of initiative states sponsored measures to ensure their policy prevailed in the face of a veto from the legislature. If anything it is surprising that there is not more use of the initiative by governors to make a difference but it is not known what kind of threats shadow/underlie these uses (the indirect effect). This would be a good avenue for future research in gubernatorial archives. There was not a systematic primarily reelection dimension to these uses. That however does not mean that there were not electoral uses in the data, although in fact there was no evidence anywhere in any of the tests that politicians widely use direct democracy to increase their incumbency advantage, in other words to aid them in *staying* in office. In the case of state legislators there was no election time increase in the number of initiatives or referrals used, and likewise with governors no correlation between elections and initiatives. The incumbency advantage that politicians at all levels analysed here enjoy (Ansolabehere and Snyder Jr, 2002) may very well be enough to maintain them in office rendering the cost of direct democracy beyond the payoff. What the results show is that where the initiative (and it was just the initiative) becomes useful is in either overcoming another candidate's incumbency advantage or gaining a comparative advantage in open races.

In summary politicians have been shown to use direct democracy to maximise goals they hold. The thesis demonstrated the implication of the theory in Chapter 2 – that direct democracy is a versatile tool for politicians allowing them to achieve many ends – tested in four central ways. Anyone who claimed that direct democracy was not of use to politicians would be convinced otherwise by this thesis. That each example was established with its own motivation shows that the phenomenon is wide-ranging. Where politicians can use direct democracy they have been shown to take advantage of that opportunity. As such the thesis is a restatement of rational choice theory, but one that emphasises the complexity of the interaction between politicians aims and direct and representative democratic institutions. Politicians are rational in that the institutions present opportunities. Some take advantage of them but politicians act constrained by the opportunities that institutions offer them. This is an example of new institutionalist rational choice theory which emphasises the importance of institutions for shaping outcomes whilst at the same time emphasising the complexity of the interaction of those institutions which constrain as well as allow goals to be achieved.

10.3 The Impact of Politicians' Use of Direct Democracy

It is clear from what has just been said in the preceding section that there are implications for state government from politicians' use of direct democracy. For example the analysis in Chapter 7 suggests that legislatures use the referral to achieve greater responsiveness in line with public opinion, but not in the manner that the GBD theory suggests. This is in fact an entirely new observation about the impact of the referral when used by politicians. The finding goes against Matsusaka (2008) who says that 'direct democracy... weakens the legislature by cutting it out of the lawmaking process'. The 'weaker legislature' hypothesis would tend also to be confronted by the very high number of referrals predicted in response to conflict with the governor compared with the relatively low number of gubernatorial initiatives in response to the same conflict. This discussion of the referral suggests that state legislatures have a very potent tool at their disposal when dealing with the governor.

The predictions of the best alternative explanation linking the initiative to responsiveness – *the gun behind the door theory* – were shown in Chapter 9 not to hold for two very different policies. In one sense politicians' use of the initiative where it occurred rescued GBD theory. The initiative was finally demonstrated, on the sophisticated techniques used here, to bring about an increase in responsiveness. However apt, the symmetry of a salvage operation of GBD in a thesis which has been so critical of it only holds to a very limited extent. Critically the effect that direct democracy was shown to have on policy is direct (Chapter 9). The initiatives on the ballot brought about the change in policy, and there is no place for, or evidence of, the more complex threat of initiative use predicted by GBD. As argued in Chapter 8, if GBD is not accurate then researchers have to pay attention to the type of measures that politicians are sponsoring. This is especially so if one thinks that there is the potential for an endogenous campaign effect (discussed in section 8.1.2). The arguments made in the secondary effects literature about direct democracy and mobilization, interest groups or education of voters could be taken to apply across all, or a random set of initiatives. There is no overwhelming need to jump to assume a policy effect. The effects of politicians' use shown in this thesis do however come with biases. Some have been shown to be non-neutral in the issues they advance, and some ought not to be expected to be non-neutral. Where candidates are using direct democracy before and during elections the ballot will be occupied with those measures that benefit them, mostly easy, mostly Republican-owned issues. Whether or not these pass remains in the hands of the median voter in an election, but even the presence of these measures can be expected to have an effect on elections.

It has been argued that because there is no empirically valid theory for the impact of the initiative *tout court* this leaves the way open for new research to explain responsiveness changes do exist. A theory which takes into account politicians use of direct democracy. This thesis makes a strong case against GBD, and others have used different methods to come to the same conclusion (see the end of section 8.3). Research emphasising the secondary effects of direct democracy (see section 1.1.4), and particularly the initiative has to date sought to distinguish itself from the heavily policy oriented literature about direct democracy (section 8.3). This was perhaps necessary to provide the intellectual space to establish those secondary effects. However the interaction of primary with secondary, and even tertiary effects, has been found in this thesis that the use of direct democracy by politicians under certain conditions can systematically effect the responsiveness of public policy to voter preferences.

The use of sentencing initiatives by politicians was shown to be correlated with an increase in the supply of those policies satisfying the demands of voters on this valence issue. There is the potential for a good deal more complex and nuanced effects yet to be uncovered and this provides grounds for future research. For example where there are a large number of politician sponsored measures on a ballot do they affect the possibility of other measures making it to the ballot and the success of those measures? This calls for either a pluralistic, *ad hoc* approach to theorising about the initiative–responsiveness link, or for a new theory similar to that in Chapter 8, that includes proponent motivations (and especially politicians) in its assessment of the impact of the initiative. With the failure of GBD and the presence of politicians' use affecting responsiveness, to know the effect of the citizen-initiative institution on responsiveness, as a result of this thesis, it is now necessary to ask which policy is in question – what type of policy is it?

This thesis suggests, in Chapters 4 and 5, that those politicians with a desire to hold state-wide office who are able to place initiatives on the ballot will be especially successful in their primary and general election campaigns respectively. This findings suggests that scholars working on candidate campaigns must consider the effects of direct democracy instruments on the character of the campaign and voting behaviour. Those measures placed on the ballot by politicians for their agenda effects should be taken into account as variables in an analysis of candidate campaigns. There is the potential for the character and outcomes of the representative democratic process to change in those states with different direct democracy institutions, in terms of the process (especially in states with easier referral out of the legislature) and in terms of the candidates elected to hold office as a result of initiative use by those candidates both before and during their election campaigns.

Methodologically speaking, as stated in the introduction as well as in the critique of GBD, the attention to politicians' uses of direct democracy does emphasise the role of empirical information in theory building because of complexity. The thesis weighs on the question of whether institutions matter for outcomes – the answer from this thesis is that they do, but not in the type of way GBD thought. Knowing that a polity has the initiative in and of itself is not enough to predict how politicians will use the process or what the impact of the institution will be.

10.4 Generalisation of Findings

Only three out of the thirty countries that have drawn up a democratic constitution since the end of the USSR did not include some form of direct democracy institution.

The theory in Chapter 2 which predicted politicians' use of direct democracy, began with politicians' motivations which can be assumed to be generalisable across democracies. Next, the effects that direct democracy can have were introduced, which depended on the particular laws governing the direct democratic process in the US and the environment. For example it may be that in another polity initiative sponsors cannot achieve a high profile or alternatively that profile might not be so crucial to election outcomes (if incumbency is not pervasive or there are no primary elections) e.g. where political advertising on television is banned. Finally, in the theory section, the 10 types of direct democracy use by politicians were derived from the costs and benefits of direct democracy in the US – from the empirical circumstances of state government. This creates immediate contrasts with a large majority of democracies. In parliamentary systems very divided government, strictly speaking, cannot occur. In some polities the requirements for placing a referral on the ballot were so odious as to rule it out as a tactic in disputes with the executive. Having said all that, there is no reason why, in another polity an empirically sensitive model couldn't be constructed for the specific set of institutions. A few words on the Swiss case make this clear. The initiative appears to be used in an abrogative manner in Switzerland, and Kobach (1993) claims that there is no politician initiation of campaigns. Kriesi and Wisler (1996); Kriesi (2006) seems to have changed his mind on the role in Swiss elites in direct democracy, but even so there are not many examples. Low qualification requirements for initiatives in Switzerland might not help politicians, but instead aid citizen interests by more fully fracturing agenda control. Husbands (2000) points to the use of the citizen-initiative by the right wing in Switzerland since at least 1990 in what appears to be an archetypal riding the wave use. In light of the low level of sponsorship that these authors find there does not appear to be the same level of use as in some US states amongst the mainstream in Switzerland. To explain why this is the case however the same type of theory, offered in this thesis for the US, needs to be generated and then supplied in the Swiss case; fascinating future work.

10.5 Implications for Normative Debates

A majority of the arguments which malign or praise the outcomes of direct democracy blame voters and either their capacity for making good decisions, or their preferences. Following this study it is much easier to allow politicians to take their share of the responsibility for the success or failings of direct democracy, much as in the representative aspects of the democratic process.

Despite the fact that this thesis has, as far as possible, been purely empirical in its conclusions, those conclusions do contribute to a larger normative debate about direct democracy. The central normative questions surrounding direct democracy involve whether or not to adopt or maintain the institutions (Broder, 2000; Boyle, 1912) and when it is appropriate to deploy them (Matsusaka, 2005a).

If the initiative is not responsiveness-promoting *per se* that takes away one of the strongest arguments that Matsusaka (2004), amongst others, uses in its favour. But the finding that politicians use of direct democracy can overcome roadblocks in the representative democratic process – the legislature to be able to appeal over the head of the governor as the thesis has shown they do, and vice versa reinstates that particular argument in favour of direct democracy (with all the same assumptions about the value of majoritarian democracy). Which is not to say that the adoption of the initiative should be encouraged or discouraged on the evidence shown here, but just that the nexus of arguments for and against has shifted. The broader normative question is likely to find its answer in the impact on minorities, a hotly debated topic (Lewis, 2011).

Appendix A

Data and Variables

A.1 State numbering (Chapter 9)

Alabama	1	Hawaii	12	Massachusetts	22	NewMexico	32	SouthDakota	42
Alaska	2	Idaho	13	Michigan	23	NewYork	33	Tennessee	43
Arizona	3	Illinois	14	Minnesota	24	NorthCarolina	34	Texas	44
Arkansas	4	Indiana	15	Mississippi	25	NorthDakota	35	Utah	45
California	5	Iowa	16	Missouri	26	Ohio	36	Vermont	46
Colorado	6	Kansas	17	Montana	27	Oklahoma	37	Virginia	47
Connecticut	7	Kentucky	18	Nebraska	28	Oregon	38	Washington	48
Delaware	8	Louisiana	19	Nevada	29	Pennsylvania	39	WestVirginia	49
Florida	10	Maine	20	NewHampshire	30	RhodeIsland	40	Wisconsin	50
Georgia	11	Maryland	21	NewJersey	31	SouthCarolina	41	Wyoming	51

A.2 Further details of variables (Chapters 6 & 7)

Name	Further details	Further details
Dependent variables		
referrals	NCSL database	NCSL database was downloaded as html and, in stata, transformed from wide to long format before being contracted.
initiative use	Author coded	See chapter 7 data and method section
Explanatory Variables		
vetoes	Data from Carl Klarner	The number of vetoes that a governor handed down in a year averaged over the two years of a cycle in each state to account for legislatures that do not sit every year.
very divided government	Data from Carl Klarner	Partisan balance data maintained by Carl Klarner updated for 2011 and posted at: http://www.indstate.edu/polisci/klarnerpolitics.htm.
divided government	Data from Carl Klarner	
divided senate	Data from Carl Klarner	
divided house	Data from Carl Klarner	
super divided	Data from Carl Klarner	
easy referral	Book of the states	The requirement for referring a constitutional amendement to the ballot is less than that to overcome a veto. Two session majorities are considered easier than any supermajority requirement
tenure	Researcher coded	Working back from their exit date, the number of years a governor has left in office
Electoral Variables		
even year	SPPQ dataset	An election year for state legislatures (mostly even)
election year	Book of the states	Gubernatorial election year
Control Variables		
ideological difference	SPPQ dataset	The difference between the measures of citizen and elite ideology in the SPPQ dataset currently found at: http://academic.udayton.edu/SPPQ-TPR/index.htm
initiative rate	SPPQ	The average number of initiaites used per election cycle for each state
professionalism	Squire measure in SPPQ	Supplemented with Berry data available ICPSR

*For more detailed information on each variable see appendix A.2.

A.3 Candidates and initiative users (Chapter 4)

State	Name	Democrat	Proponent	Initiative	Candidate	Year ran
Oregon	McTeague, Dave	1	1	SOS 36 Lottery Revenue for Education 1990	0	
Oregon	Shiprack, Bob	1	1	SOS 34 Fishing Measure 8 1992	0	
Oregon	VanLeeuwen, Liz	1	1	SOS 79 Family Planning 1996	0	
Oregon	Tiernan, Bob	0	1	SOS 10 Initiative Process Measure 10 1994	0	
Oregon	Hannon, Lenn Lamar	0	1	SOS 39 Criminal Justice 1990	0	
Oregon	Cease, Ron	1	1	SOS 20 Field Burning 1990	0	
Oregon	Burton, Mike	1	1	SOS 22 Campaign Finance 1990	0	
Oregon	Lim, John	0	0		1	1998
Oregon	Kitzhaber, John	1	0		1	1994
Oregon	Clarno, Beverley	1	0		1	1996
Oregon	Stein, Beverley	1	0		1	2002
Oregon	Defazio, Peter	1	0		1	1995
Oregon	Mabon, Lon	0	1	SOS 19 Abortion Measure 8 1990	1	1996
Oregon	Marbet, Lloyd	3	1	SOS 4 Trojan Plant Measure 4 1990	1	2000
Oregon	Hill, Jim	1	1	SOS 39 Drug Sentencing 1990	1	1996
Oregon	Oerther, Fred	3	1	SOS 1 Privacy 1992	1	2000
Oregon	Smith, Gordon	0	1	SOS 19 Obscenity Measure 19 1994	1	1996
Oregon	Bradbury, Bill	1	1	SOS 12 Radioactive Waste 1988	1	1998
Oregon	Mannix, Kevin	1	1	SOS 34 Abortion Measure 10 1990	1	2000
Oregon	McCoy, Bill	1	1	SOS 29 Bans Triple Trailers Measure 4 1992	1	1996
Oregon	Dwyer, Bill	1	1	SOS 43 Wildlife Management 1988	1	1996
Californ	Polanco, Richard G.	1	1	SOS 430 Motor Vehicle Insurance 1988	0	
Californ	Kopp, Quentin	0	1	SOS 401 Campaign Finance 1988	0	
Californ	Connelly, Lloyd	1	1	SOS 467 Wildlife Protection 1990	0	
Californ	Nolan, Patrick J.	0	1	Proposition 104 Automobile Insurance 1988	0	
Californ	Alquist, Alfred E.	1	1	SOS 176 Nuclear Power 1990	0	
Californ	Allen, Doris	0	1	SOS 485 Marine Resources 1990	0	
Californ	Presley, Robert B.	1	1	Proposition 114 Crime 1990	0	
Californ	Roos, Mike	1	1	SOS 517 Presidential Primary Date 1990	0	
Californ	Rogers, Don	0	1	SOS 546 Firearms Ownership 1991	0	
Californ	Leonard, Bill	0	1	SOS 474 Reapportionment 1990	0	
Californ	Floyd, Richard E.	1	1	SOS 535 Lottery Games 1991	0	
Californ	Davis, Ed	0	1	SOS 457 Criminal Law 1988	0	
Californ	Hill, Frank	0	1	SOS 571 Automobile Insurance 1992	0	
Californ	Frizelle, Nolan	0	1	SOS 572 Education Initiative 1992	0	
Californ	Areias, Rusty	1	0		1	1994
Californ	Moore, Gwen	1	0		1	1994
Californ	Bustamante, Cruz	1	0		1	1998
Californ	Pringle, Curt	0	0		1	1998
Californ	Speier, Jackie	1	0		1	2008
Californ	Goldsmith, Jan	0	0		1	1998

Oregon	Kerans, Grattan	1	1	SOS 20 Field Burning 1990	0	
Californ	Statham, Stan	0	0		1	1994
Californ	Lockyer, Bill	1	0		1	1998
Californ	Calderon, Charles	1	0		1	2002
Californ	Campbell, Tom	0	0		1	2000
Californ	Quackenbush, Charles W.	0	0		1	1994
Californ	Royce, Ed	0	1	SOS 462 Criminal Law 1990	1	2002
Californ	Johnson, Ross	0	1	SOS 541 Campaign Finance 1991	1	1998
Californ	Mountjoy, Richard	0	1	SOS 404 Income Tax Rebate 1988	1	2006
Californ	Klehs, Johan	1	1	SOS 481 Crimes Tax Bonds 1990	1	2002
Californ	Murray, Willard H.	1	1	Proposition 114 Murder Penalties 1990	1	1996
Californ	Andal, Dean	0	1	SOS 676 School Vouchers 1994	1	2002
Californ	McClintock, Tom	0	1	SOS 404 Income Tax Rebate 1988	1	2002
Californ	Roberti, David A.	1	1	SOS 107 Housing & Homelessness 1990	1	1994
Californ	Haynes, Ray	0	1	SOS 829 Vehicle License Fees 1999	1	2000
Californ	Hayden, Tom	1	1	SOS 480 Natural Environment 1990	1	1994
Californ	Leslie, Tim	0	1	SOS 481 Crimes Tax Bonds 1990	1	1998
Californ	Torres, Art	1	1	SOS 560 Sales Tax 1992	1	1994

A.4 Current Candidates (Chapter 5)

state	name	year	Office	Initiative	state	name	year	Office	Initiative
Californ	Bergeson, Marian	1990	Lt Gov	0	Oregon	Brumfield, Kirby	1996	Senate	0
Californ	Bono, Sonny	1992	Senate	0	Oregon	Chen, David	1992	Treasurer	0
Californ	Boxer, Barbara	1992	Senate	0	Oregon	Christian, Valentine	1992	Senate	0
Californ	Brown, Kathleen	1994	Treasurer	0	Oregon	Clarno, Bev	1996	Treasurer	0
Californ	Brown, Kathleen	1990	Governor	0	Oregon	Clough, Frank	1990	Senate	0
Californ	Collis, Conway	1990	Insurance Com	0	Oregon	DeZell, John	1992	Senate	0
Californ	Connell, Kathleen	1994	Controller	0	Oregon	Dwyer, Bill	1996	Senate	0
Californ	Dannemeyer, Bill	1994	Senate	1	Oregon	Eymann, Richard	1992	Treasurer	0
Californ	Dannemeyer, Bill	1994	Senate	0	Oregon	Fenton, Robert	1996	Senate	0
Californ	Davis, Gray	1992	US Senate	0	Oregon	Frohnmayer, Dave	1990	Governor	0
Californ	Davis, Gray	1994	Lt Gov	0	Oregon	Fuson, Sandi Jean	1992	AG	0
Californ	Feinstein, Dianne	1992	US Senate	0	Oregon	Gold, Shirley	1996	AG	1
Californ	Feinstein, Dianne	1994	US Senaate	0	Oregon	Hatfield, Mark	1990	Senate	0
Californ	Feinstein, Dianne	1990	Governor	0	Oregon	Hickman, Ed	1994	Governor	0
Californ	Flores, Joan Milke	1990	SOS	0	Oregon	Hill, Jim	1992	Treasurer	1
Californ	Fong Eu, March	1990	SOS	0	Oregon	Hill, Jim	1996	Treasurer	0
Californ	Fong, Matt	1994	Treasurer	0	Oregon	Hoffer, Victor	1996	AG	0
Californ	Garamendi, John	1994	Governor	0	Oregon	Hyatt, Neale	1990	Senate	0
Californ	Garamendi, John	1990	Insurance Com	1	Oregon	Jones Salvey, Steph	1992	Senate	0

Californ	Buchanan, Angela	1990	Treasurer	0
Californ	Andromidas, Ted	1994	Senate	0
Californ	Angelides, Phil	1994	Treasurer	0
Californ	Areias, Rusty	1994	Controller	0
Californ	Ashamallah, Philip	1994	Lt Governor	0
Californ	Bannister, Wes	1990	Insurance Com	0
Californ	Hayden, Tom	1994	Governor	0
Californ	Hayes, Thomas	1990	Treasurer	0
Californ	Herschensohn, Bruce	1992	Senate	0
Californ	Huffington, Michael	1994	Senate	1
Californ	Jones, Bill	1994	SOS	1
Californ	Levine, Mel	1992	Senate	0
Californ	Levy, Gordon	1990	SOS	0
Californ	Lungren, Dan	1994	AG	1
Californ	Lungren, Dan	1990	AG	1
Californ	McCarthy, Leo	1992	US Senate	0
Californ	McCarthy, Leo	1990	Lt Governor	1
Californ	McClintock, Tom	1994	State Controller	0
Californ	Miller, Tony	1994	SOS	1
Californ	Moore, Gwen	1994	SOS	0
Californ	Morris, John	1994	Controller	0
Californ	O'Dowd Daniel	1994	Senate	0
Californ	Perata, Don	1990	Controller	0
Californ	Reiner, Ira	1990	AG	0
Californ	Robbines, Dorothy	1994		0
Californ	Roberti, David	1994	Treasurer	1
Californ	Roberti, David	1990	Treasurer	1
Californ	Seymour, John	1990	Lt Gov	1
Californ	Smith, Arlo	1990	AG	0
Californ	Squires, Kate	1994	Senate	0
Californ	Statham, Stan	1994	Lt Governor	0
Californ	Umberg, Tom	1994	AG	1
Californ	Van de Kamp, John	1990	Governor	1
Californ	Wilson, Pete	1990	Governor	1
Californ	Wilson, Pete	1994	Governor	1
Californ	Woo, Michael	1994	SOS	0
Californ	Wright, Cathie	1994	Lt Gov	0
Oregon	Anderson, Steve	1992	Senate	0
Oregon	Ash, Stan	1996	SOS	0
Oregon	Aucoin, Les	1992	Senate	0
Oregon	Bell, Bob	1992	Senate	0
Oregon	Berkman, Craig	1994	Governor	0
Oregon	Bruggere, Tom	1996	Senate	0
Oregon	Keisling, Phil	1992	SOS	0
Oregon	Kennemer, Bill	1992	SOS	0
Oregon	Kholos, Bob	1992	SOS	0
Oregon	Kitzhaber, John	1994	Governor	0
Oregon	Kulongoski, Ted	1992	AG	0
Oregon	Lewis, Jeff	1996	Senate	0
Oregon	Lim, John	1990	Governor	0
Oregon	Lonsdale, Harry	1990	US Senate	1
Oregon	Lonsdale, Harry	1992	US Senate	0
Oregon	Lonsdale, Harry	1996	US Senate	1
Oregon	Mabon, Lon	1996	US Senate	1
Oregon	Mannix, Kevin	1996	AG	1
Oregon	Meek, John	1996	Treasurer	1
Oregon	Miller, Randy	1992	SOS	0
Oregon	Mobley, Al	1992	Senate	1
Oregon	Mobley, Al	1990	Governor	1
Oregon	Myers, Hardy	1996	AG	0
Oregon	Nevenich, Anna	1996	Senate	0
Oregon	Oerther, Fred	1992	AG	1
Oregon	Packwood, Bob	1992	Senate	0
Oregon	Prince, Randy	1992	Senate	0
Oregon	Reuschlein, Bob	1990	Senate	0
Oregon	Roberts, Barbara	1990	Governor	0
Oregon	Roberts, Mary	1992	SOS	0
Oregon	Rodeman, Rich	1992	AG	0
Oregon	Rust, Jerry	1996	Senate	0
Oregon	Smith, Denny	1994	Governor	0
Oregon	Smith, Gordon	1994	Senate	1
Oregon	Vander Ploeg, Dan	1994	Governor	0
Oregon	Washburne, Brooks	1990	Senate	0
Oregon	Wells, Paul Damian	1996	SOS	0
Oregon	Wetzel, Joseph	1992	Senate	0
Oregon	Wingard, George	1992	Treasurer	0
Oregon	Wyers, Jan	1992	AG	0

Appendix B

Computer Code

B.1 Stata Code

B.1.1 Chapter 4

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*****CHAPTER 4*******
//Oregon
estsimp logit candidate itype1 servlength minority leadership assemblysenate longserv yr19921994 if state == 1
//California
estsimp logit candidate itype1 servlength minority leadership assemblysenate longserv yr19921994 if state == 2
```

B.1.2 Chapter 5

```
*****CHAPTER 5*******
\\Test one
\Oregon
estsimp logit itype1 synchcand futurecandidate democrat if state == 1, nolog or
setx mean
simqi fd(pr) changex(synchcand 1 0)

\California
estsimp logit itype1 synchcand futurecandidate democrat if state == 2, nolog or
setx mean
simqi fd(pr) changex(synchcand 1 0)

\\Test two
estsimp logit easy synchcand futurecandidate, or
```

B.1.3 Chapter 6

```
*****CHAPTER 6*******
//Model 3: Gllamm robust SEs very divided govt
xi: gllamm legref_freq vetoes i.very_divided_government*i.easier_referral super_divided divided_government tenure legprof_squire_final ideol_diff dec1970s dec1980s dec1990s
even, i(state) family(poisson) link(log) robust nrf(2) eq(one very_divided_government) eform

//Model 4: Gllamm robust SEs, divided senate
```

```
xi: gllamm legref_freq vetoes i.very_divided_government*i.easier_referral super_divided
    divided_senate tenure legprof_squire_final ideol_diff  dec1970s dec1980s dec1990s year
    even, i(state) family(poisson) link(log) robust nrf(2) eq(one very_divided_government)
    eform
```

B.1.4 Chapter 7

```
*****CHAPTER 7*******
//all states
*gllamm use_initiative used_before tenure very_divided_government vetoes divided_government
    legref_freq electionyear electionyearminus  second legprof_squire_final initiative_rate
    year, i(state) link(logit) family(binomial) nip(5) adapt eform robust

//Without Ca
*gllamm use_initiative very_divided_government vetoes divided_government legref_freq
    electionyear electionyearminus  second legprof_squire_final initiative_rate year if state
    !=5, i(state) link(logit) family(binomial) nip(5) adapt eform robust
```

B.1.5 Chapter 9

```
*****CHAPTER 9*******
///ABORTION
eq one:one
eq public_opinion: public_opinion
eq restrictionslag: restrictionslag

// MODEL A1: just gss & gxd
*gllamm restrictions restrictionslag public_opinion opinion_initiative, i(state) nrf(3) eqs(
    one public_opinion restrictionslag) adapt nip(5)

// MODEL A2: Full model, cross level interaction & lagged DV//
/Interval level/
*gllamm restrictions restrictionslag public_opinion opinion_initiative signature legprof_
    squire turnover lowtot divided_government citi608 catholic fed_envir year, i(state) nrf(3)
     eqs(one public_opinion
restrictionslag) adapt nip(5)

/to run in xtmixed/
xtmixed restrictions restrictionslag public_opinion opinion_initiative signature legprof_
    squire turnover lowtot divided_government citi608 catholic fed_envir year|| state: one
    public_opinion restrictionslag, cov
(unstructured)

//MODEL A3: subsample 26//
*gllamm restrictions public_opinion signature legprof_squire turnover lowtot divided_
    government citi608 catholic fed_envir if dd==0, i(state) nrf(2) eqs(one public_opinion)
    adapt nip(4)

//MODEL A4: subsample 24//
*gllamm restrictions restrictionslag public_opinion signature legprof_squire turnover lowtot
    divided_government citi608 catholic fed_envir year if dd == 1, i(state) nrf(3) eqs(one
    public_opinion
restrictionslag) adapt nip(5)

//MODEL A5 Bowler * gss
xtmixed restrictions restrictionslag public_opinion gssxbowl bowler  legprof_squire turnover
    lowtot divided_government citi608 catholicdennis fedjud4 year|| state: one gss, cov(
    unstructured)

//Graphing predicted lines
xtmixed restrictions public_opinion || state: one public_opinion, cov(unstructured)
predict r1 r2, reffects
gen linp = 4.1+gss*-5+r2+r1*gss
```

```
sort state public_opinion
twoway (line linp public_opinion if dd==1, connect(ascending) xlabel( 0.2 0.3 0.4 0.5 0.6 0.7) )
twoway (line linp public_opinion if dd==0, connect(ascending) xlabel( 0.2 0.3 0.4 0.5 0.6 0.7) )

//Model a: Gerber 1992 abortion3 and gss
logit involvem2 restitions gxd1992 signature legprof_squire turnover lowtot divided_government citi608 catholic pcinc if year == 1992

// MODEL b: Reproduce Gerber 1990
logit restrictions public_opinion gxd signature legprof_squire turnover lowtot divided_government citi608 catholic if year==1990

//Model c: 1992 Gerber Norrander parental
logit involvem ablegal axd signature legprof_squire turnover lowtot  divided_government citi608 catholic pcincdennis if year == 1992

//Model d: 1992 regress restrictions norrander
regress restrictions ablegal axd signature legprof_squire turnover lowtot divided_government citi608 catholic pcinc if year == 1992

///SENTENCING

//Generate the DV
gen man_plus_three = 1 if MAND_SUM > 3
gen sentencing = gen sentencing  = TISS + PRE_PAR + HOL_3STR + PRESUM + man_plus_three

//MODEL S1
gllamm sentencing sentencing_lag VIO_L gss dd initiative_rate divided_government  legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S2
gllamm sentencing sentencing_lag VIO_L gss bowler initiative_rate divided_government  legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S3
gllamm sentencing3 sentencing_lag VIO_L gss dd gss_dd initiative_rate divided_government legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S4
gllamm sentencing3 sentencing_lag VIO_L gss bowler gss_bowler initiative_rate divided_government  legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S5
gllamm sentencing sentencing_lag VIO_L gss dd gss_dd pols initiative_rate divided_government legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S6
gllamm sentencing sentencing_lag VIO_L gss bowler gss_bowler pols initiative_rate divided_government  legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S7
gllamm sentencing sentencing_lag VIO_L dd initiative_rate divided_government  legprof_squire_final  GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S8
```

```
gllamm sentencing sentencing_lag VIO_L gss bowler initiative_rate divided_government legprof_squire_final GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S9
gllamm sentencing sentencing_lag VIO_L gss dd pols initiative_rate divided_government legprof_squire_final GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)

//MODEL S10
gllamm sentencing sentencing3_lag VIO_L bowler pols initiative_rate divided_government legprof_squire_final GOVERN powerful_full_strong_balance year WEST SOUTH MIDWEST, i (state) adapt nip(5)
```

B.2 Computer Code for PGB method

B.2.1 R code

```
#Amended Gelman Code

library("arm")

# Load in data for region indicators

data (state)                  # "state" is an R data file
state.abbr <- c (state.abb[1:8], "DC", state.abb[9:50])
dc <- 9
not.dc <- c(1:8,10:51)
region <- c(3,4,4,3,4,4,1,1,5,3,3,4,4,2,2,2,2,3,3,1,1,1,2,2,3,2,4,2,4,1,1,4,1,3,2,2,3,4,1,1,3,2,3,3,4,1,3,4,1,2,4)

# Load in individual level data from the General Social Survey (or other survey data)

library (foreign)
polls <- read.dta ("gss84.dta")
attach.all (polls)

# Select just the data from the last survey (#9158)

table (year)                # look at the survey id's TL which is NOW a variable in the gss84.dta file
ok <- year==1984            # define the condition
polls.subset <- polls[ok,]    # select the subset of interest
attach.all (polls.subset)     # attach the subset
write.table (polls.subset, "polls.subset.dat")

print (polls.subset[1:5,])

# define other data summaries

y <- abpoor                 # 1 if support abortion for poverty, 0 if not
n <- length(y)                # of survey respondents
n.age <- max(age)             # of age categories
n.edu <- max(edu)             # of education categories
n.state <- max(state)         # of states
n.region <- max(region)       # of regions

# compute unweighted and weighted averages for the U.S.

ok <- !is.na(y)                                     # remove the undecideds
cat ("national␣mean␣of␣raw␣data:", round (mean(y[ok]==1), 3), "\n")
cat ("national␣weighted␣mean␣of␣raw␣data:",
     round (sum((weight*y)[ok])/sum(weight[ok]), 3), "\n")

# compute weighted averages for the states

raw.weighted <- rep (NA, n.state)
names (raw.weighted) <- state.abbr
for (i in 1:n.state){
  ok <- !is.na(y) & state==i
  raw.weighted[i] <- sum ((weight*y)[ok])/sum(weight[ok])
}

# load in census data

census <- read.dta ("census84.dta")

# also include a measure of Religion as a state-level predictor

library (foreign)
presvote <- read.dta ("religion84.dta")
```

```
attach (presvote)
v.prev <- presvote$adjrate
not.dc <- c(1:8,10:51)
candidate.effects <- read.table ("state_effects.dat", header=T)
v.prev[not.dc] <- v.prev[not.dc] +
 (candidate.effects$X76 + candidate.effects$X80 + candidate.effects$X84)/3

# Fitting models

attach.all (polls.subset)

# Fit the model in Bugs

data <- list ("n", "n.age", "n.edu", "n.state", "n.region",
 "y", "female", "black", "age", "edu", "state", "region", "v.prev")
inits <- function () {list(
  b.0=rnorm(1), b.female=rnorm(1), b.black=rnorm(1), b.female.black=rnorm(1),
  a.age=rnorm(n.age), a.edu=rnorm(n.edu),
  a.age.edu=array (rnorm(n.age*n.edu), c(n.age,n.edu)),
  a.state=rnorm(n.state), a.region=rnorm(n.region),
  sigma.age=runif(1), sigma.edu=runif(1), sigma.age.edu=runif(1),
  sigma.state=runif(1), sigma.region=runif(1))
}
params <- c ("b.0", "b.female", "b.black", "b.female.black",
   "a.age", "a.edu", "a.age.edu", "a.state", "a.region",
   "sigma.age", "sigma.edu", "sigma.age.edu", "sigma.state", "sigma.region")
M2.bugs <- bugs (data, inits, params, "gss00.M2.bug", bugs.directory = "d:/WinBUGS14/", n.chains=3, n.iter=1000)

# 3. Postprocessing to get state averages

# create linear predictors

attach.bugs (M2.bugs)
linpred <- rep (NA, n)
for (i in 1:n){
  linpred[i] <- mean (b.0 + b.female*female[i] + b.black*black[i] +
    b.female.black*female[i]*black[i] + a.age[,age[i]] + a.edu[,edu[i]] +
    a.age.edu[,age[i],edu[i]])
}

# plot the 8 states

par (mfrow=c(2,4))
y.jitter <- y + ifelse (y==0, runif (n, 0, .1), runif (n, -.1, 0))
state.name.all <- c(state.name[1:8], "District␣of␣Columbia", state.name[9:50])
for (j in c(2,3,4,8,6,7,5,9)) {
  plot (0, 0, xlim=range(linpred), ylim=c(0,1), yaxs="i",
        xlab="linear␣predictor", ylab="Pr␣(support␣Bush)",
        main=state.name.all[j], type="n")
  for (s in 1:20){
    curve (invlogit (a.state[s,j] + x), lwd=.5, add=TRUE, col="gray20")}
  curve (invlogit (median (a.state[,j]) + x), lwd=2, add=TRUE)
  if (sum(state==j)>0) points (linpred[state==j], y.jitter[state==j])
}

# create predicted values for each of 3264 strata

L <- nrow (census)
y.pred <- array (NA, c(n.sims, L))
for (l in 1:L){
  y.pred[,l] <- invlogit(b.0 + b.female*census$female[l] +
    b.black*census$black[l] + b.female.black*census$female[l]*census$black[l] +
    a.age[,census$age[l]] + a.edu[,census$edu[l]] +
    a.age.edu[,census$age[l],census$edu[l]] + a.state[,census$state[l]])
}

# average over strata within each state

y.pred.state <- array (NA, c(n.sims, n.state))
for (s in 1:n.sims){
  for (j in 1:n.state){
    ok <- census$state==j
    y.pred.state[s,j] <- sum(census$N[ok]*y.pred[s,ok])/sum(census$N[ok])
  }
}

state.pred <- array (NA, c(n.state,3))
for (j in 1:n.state){
  state.pred[j,] <- quantile (y.pred.state[,j], c(.25,.5,.75))
}

# Check the final outcome (three chains)

 print(state.pred)

# Output to a stata file

```

```
x <- data.frame(state.pred)
write.dta(x, file = "foo.dta")
```

B.2.2 WinBUGS model

```
model
{
for( n in 1 : N) {
y[i] ~ dbin(p[i],1)
logit(p[i]) <- beta[1] + beta[2]*female[i] + beta[3]*black[i] + beta[4]*black[i]*female[i] +
beta.age[age[i]] + beta.edu[edu[i]] + beta.ageedu[age[i],edu[i]] + beta.state[stnum[i]]
+ beta.region[region[stnum[i]]] + beta.pres*pres[stnum[i]]
}
for (i in 1 : 4) { beta[i] ~ dnorm(0, 0.0001) } # 1/(100**2)
for (i in 1 : n.age) { beta.age[i] ~ dnorm(0, tau.age ) }
for (i in 1 : n.edu) { beta.edu[i] ~ dnorm(0, tau.edu ) }
for (i in 1 : n.age) {for (j in 1:n.edu) {beta.ageedu[i,j] ~ dnorm(0, tau.ageedu ) }}
for (i in 1 : n.state) { beta.state[i] ~ dnorm(0, tau.state ) }
for (i in 1 : n.region) { beta.region[i] ~ dnorm(0, tau.region ) }
beta.pres ~ dnorm(0, tau.pres)
tau.age ~ dgamma(0.001, 0.001)
tau.edu ~ dgamma(0.001, 0.001)
tau.ageedu ~ dgamma(0.001, 0.001)
tau.state ~ dgamma(0.001, 0.001)
tau.region ~ dgamma(0.001, 0.001)
tau.pres ~ dgamma(0.001, 0.001)
sigma.age <- 1/sqrt(tau.age)
sigma.edu <- 1/sqrt(tau.edu)
sigma.ageedu <- 1/sqrt(tau.ageedu)
sigma.state <- 1/sqrt(tau.state)
sigma.region <- 1/sqrt(tau.region)
sigma.pres <- 1/sqrt(tau.pres)

# typical: tau ~ dgamma(0.001, 0.001)
```

Appendix C

Extra Tests (Chapter 9)

C.1 APPENDIX

C.1.1 Cross-Sectional Models

Before moving on to inspect residuals, models a to d, described in figure C.1, are presented. These cross-sectional models for the year in this study closest to that represented by the data in Gerber (1996) are an attempt to use another dependent variable for abortion restrictions and explanatory variable for public opinion to try and reproduce the findings in Gerber (1996). The finding is that public opinion is a significant predictor of restrictions but the interaction with the initiative is not (the standard error is larger than the coefficient). The magnitude of the effect of public opinion in these cross sectional models is universally small. In model a for example a 4.623e-12 change in restrictions per unit of public opinion, and up to this point changes of 0.2 have been considered.

As per the analysis in Gerber (1996), and model 2 above, the state legislature variables, professionalism and turnover are significant but this time in the opposite direction. Ideology is a very small magnitude barely significant predictor of restrictions.

The cross sectional models do not shed a lot of light on either explanations for the responsiveness of states to public opinion, or what caused the findings in Gerber (1996) to differ from those found above in models 1 to 5. I remain confident of the finding from the TSCS models given their many improvements over the simple cross sectional model.

C.1.2 Inspecting Residuals[abortion]

It is necessary to check the assumptions of normality, linearity and heteroskedasticity are conformed to by the model. Unlike ordinary regression analysis there is a residual for each of the random effects and the intercept (Rabe-Hesketh, 2008, p. 126).

The level 1 residuals are displayed in figure C.2 and the level 2 residuals for both the constant/intercept and ***public opinion*** in figure 279. Neither figure presents cause for alarm.

Figure C.1: Plot of level 1 standardized residuals (sentencing)

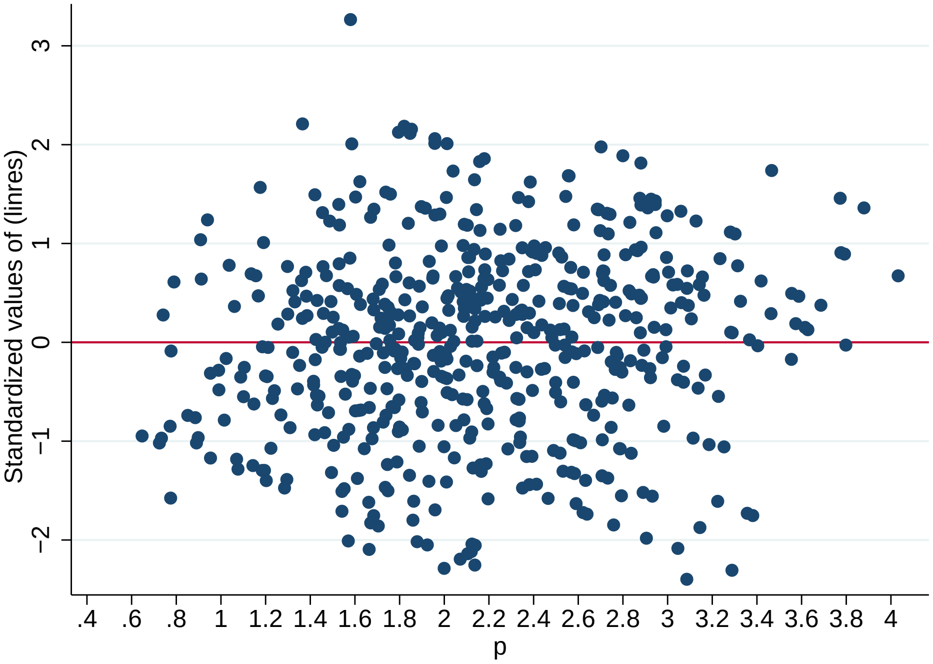
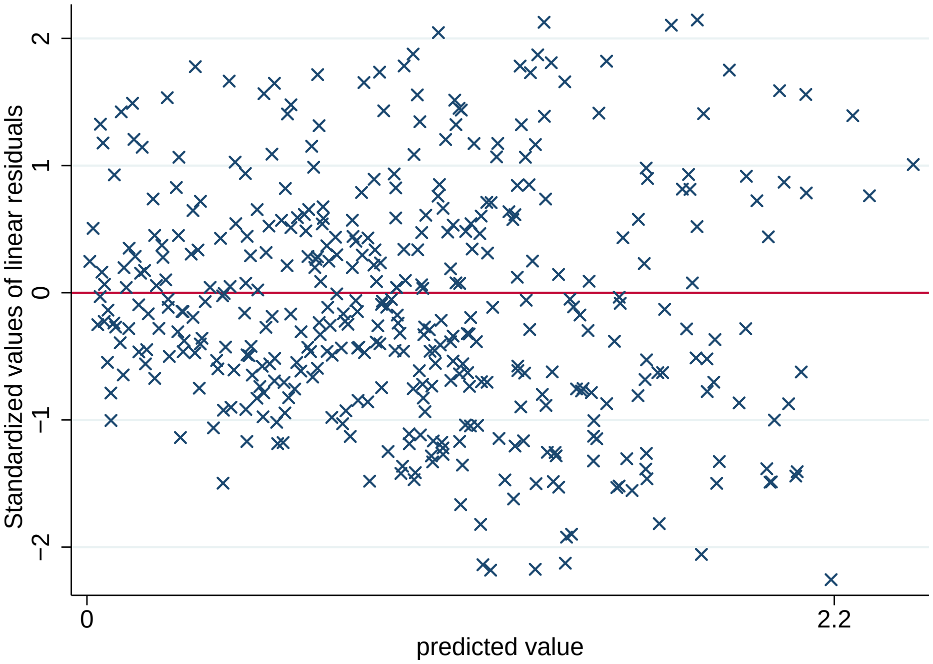


Figure C.2: Plot of level 1 standardized residuals (abortion)



Model	Type	DV	EV
Model a	Logit	Parental involvement	GSS
Model b	OLS	Four laws	GSS
Model c	Logit	Parental involvement	Norrander
Model d	OLS	Four laws	Norrander

Table C.1: List of models

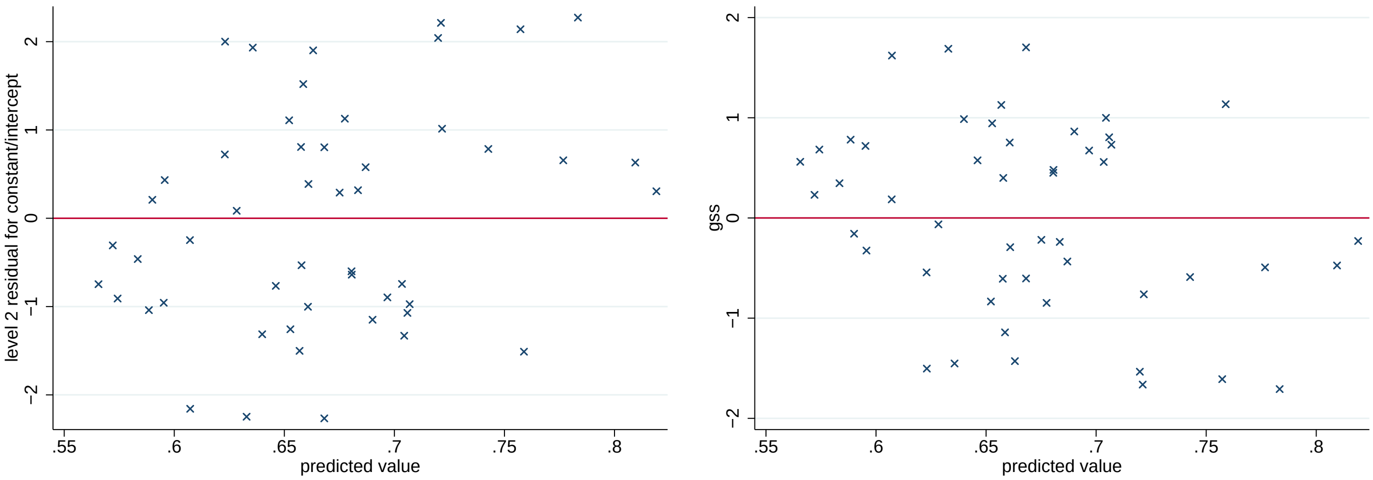


Figure C.3: Level 2 residuals plotted against predicted values (abortion)

Table C.2: Models a-d

	Model a		Model b		Model c		Model d	
	logit involvm gss1992 logit		regress abort3 gss1992		logit involm norrander1992		regress abort3 norrander	
	Coeff	SE	Coeff	SE	Coeff	SE	Coeff	SE
Public opinion	-26.170***	8.539	-6.561***	1.743	5.744**	2.349	1.609**	0.695
*Opinion*Initiative*	-1.612	3.100	1.070	0.904	-0.674	0.518	0.134	0.178
Signatures	0.191	0.154	-0.005	0.046	0.210	0.138	0.0003	0.049
Professionalism	-4.213**	1.784	-1.583	0.929	0.142	3.083	-1.087	1.022
Turnover/100	0.036	0.063	-0.012	0.019	0.0514	0.056	-0.010	0.019
Size of house	0.003	0.007	-0.0004	0.002	0.002	0.007	-0.0005	0.002
Divided	0.333	0.899	0.013	0.279	0.328	0.803	-0.047	0.286
Ideology	0.107**	0.046	-0.015	0.013	0.049	0.042	-0.025*	0.013
Catholic	0.010	0.037	0.027**	0.011	0.044	0.035	0.035**	0.012
Pcinc	0.0002	0.001	-0.00002	0.00006	-0.0001	0.0001	-0.00002	0.00006
Constant	2.105	3.345	5.624***	0.881	-18.216**	9.492	-1.020	3.056
Adj/pseudo R^2	0.278		0.148		0.200		0.276	

**Significant at the 99% confidence level. *Significant at the 95% confidence level.

Opinion*initiative changes according to which public opinion variable is being multiplied.

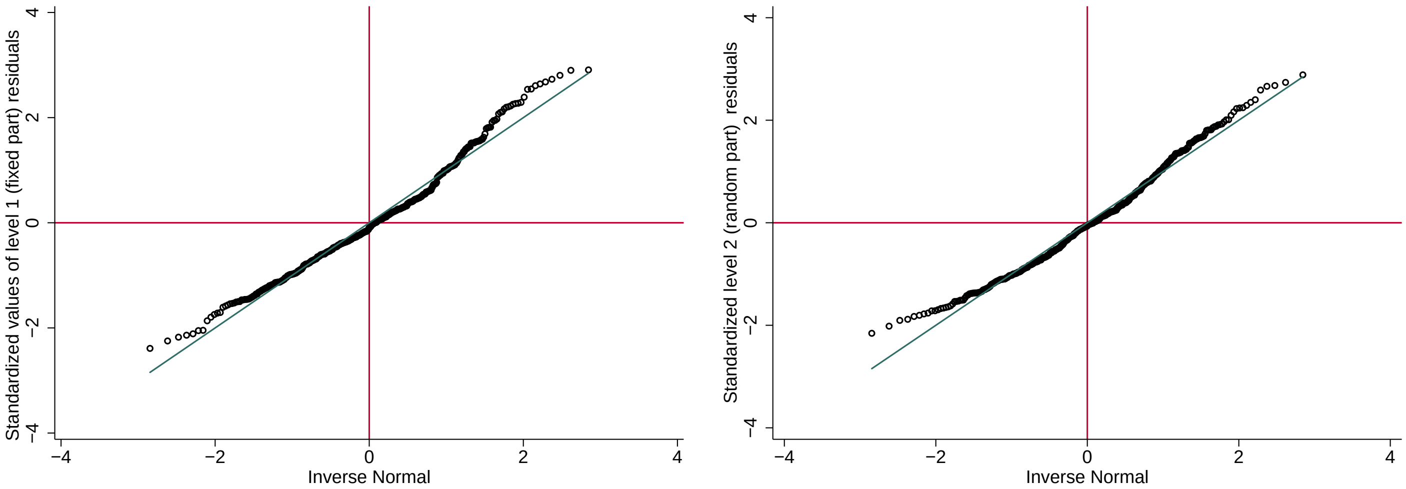


Figure C.4: Plots of standardised level 1 and level 2 residuals against an inverse normal

To test the normality assumption level 1 and level 2 standardized residuals are plotted against their normal scores (figure C.4). The lines depicted are close to straight (except at the extremes) and so the assumptions of normality and linearity have been met to satisfaction. There are no extreme outliers.

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