

SOCIAL POLICY

Summer 1998 \$5.00/Can \$6.50



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Juries, not referenda
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The Magazine About Movements

A Blueprint for Democratic Law-Making: Give Citizen Juries the Final Say

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In jurisdictions from California to Switzerland, citizens have the right to initiate binding referendum votes by getting enough petition signatures. Unfortunately, referenda are a drastically flawed way to give citizens a final say in law-making. Referenda are ill-suited for the informed decision-making necessary for meaningful democracy and are heavily skewed in favor of wealth and power. A different approach is needed.

“Juries” or “jury assemblies” are the most effective and optimal way to give citizens a final say about laws. By a “jury” or “jury assembly,” I mean a group of citizens randomly chosen from the citizenry and convened to make an informed decision.

Juries are chosen by random selection because that is the best way to get a representative cross-section of the citizenry. Each citizen has the same chance and right to be chosen as any other.

A jury is well suited for making an informed decision because the jurors can meet face to face and work full time for the days, weeks, or months needed to become fully informed about the matter at hand. Jurors are paid so they can afford to serve full time.

By combining a capacity to make an informed decision with being a representative cross-section of the citizens, a jury gives expression to the informed will of the citizenry—the highest democratic mandate that a law can have.

Citizen groups can be allowed to bring proposed laws before a jury for a short preliminary hearing of the arguments for and against the law. After the preliminary hearing, the jury decides by majority vote whether to reject the proposed law or to refer

it for full in-depth jury hearings. If a jury approves the law by majority vote after such full hearings, then the law goes into effect.

In this way, laws supported by the informed will of the citizenry can be brought into effect even if opposed or ignored by elected government. This is a giant step forward for citizen sovereignty.

Supporters and opponents of the proposed law can be given a full and equal opportunity to present their views to the jury in face-to-face meetings. Jurors can ask questions of the presenters and meet with fellow jurors for deliberation.

A special jury commission can fully work out the best possible arrangements and procedures for juries on an ongoing basis. Each

member of this commission, ~~of approximately 15 citizens,~~ can be democratically chosen by a jury for a set term.

The Greek democracies of the fifth and fourth centuries B.C. were largely run by groups of citizens chosen by lottery. In England, the United States, and other common-law countries, trial juries have for centuries been made up of citizens chosen by random selection. This basic idea from Classical Greece and the Anglo-American legal tradition can be adapted to give citizens an effective say in law-making today.

Jury Selection

Juries deciding laws can number, say, 100 to 1,000 citizens so that they will be a highly rep-



Photo by Dan Habib/Impact Visuals

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representative cross-section of the citizenry. The larger a random sample, the more accurate a cross-section it tends to be.

A jury made up of a random sample of 1,000 citizens has the same portion of citizens with a given characteristic as the citizenry does, within 3%, 19 times out of 20, and within 4%, 99 times out of 100. This is an extremely accurate cross-section of the citizens. Random samples of 200 and 100 are respectively accurate within 7% and 10%, 19 times out of 20, and within 9% and 13%, 99 times out of 100.

The exact size of juries can itself be decided by juries so that the choice will be based on the informed will of the citizens. Larger juries are more accurate cross-sections, but smaller juries cost less.

As more and more juries serve over time, the overall number of jurors who serve becomes a more and more accurate cross-section of the citizens. For example, if over the course of a year, each of 50 proposed laws is decided by a jury of 100 citizens, then overall the fate of these proposed laws will be decided by 5,000 citizens. A random sample of 5,000 is accurate within 1.5%, 19 times out of 20, and within 2%, 99 times out of 100.

Stratification can be used to further increase the representativeness of juries. If, for example, 51% of the citizens are women, then 51% of jurors can be randomly chosen from women and 49% from men. Age, race, and type of residence are among the other characteristics that are easily stratified.

If a jury is larger than a size conducive to group discussion, then the jurors can break into smaller subgroups from time to time to discuss

the proposal with other jurors. Presentations to the jury and questions to presenters can be made in plenary.

Sometimes several different citizen groups may propose several conflicting laws on the same topic. Such alternative options can all be considered by the same jury.

There can be fixed deadlines for citizens to submit proposed laws, say two each year, one in the spring and the other in the fall. Proposed laws can be made available at a web site, "www.laws.com," and can be downloaded in hard copy upon request at, say, public libraries. Proponents can be required to provide a brief statement of the case in favor of the law that can appear with the proposed law on the web site. Opponents can be given a set time to file their opposition to the law, including a brief statement of their reasons, all of which can appear at the web site.

The cases for and against the proposed law need to be presented to the jury in the most effective and thorough manner possible so as to facilitate a fully informed decision. To this end, it will be best if the respective cases are each under capable and unified direction.

The opponents of the proposed law can be asked to meet together to decide who will direct the case against the law. If they cannot agree, then the various people or groups who wish to be in charge can appear before a small

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jury, of 15 or so citizens, for a short hearing. This small jury will decide who will direct the case based on who can do the most thorough and effective job.

If several citizen groups propose the same law, then who will direct the case in favor can be decided in the same way as who directs the case against. If only one citizen group proposes the law, then it will be in charge. Any cases in favor of a law that are still under incompetent direction by the preliminary hearing stage will probably be screened out by the jurors.

The jury commission's decisions on arrangements and procedures for juries can themselves be subject to jury approval. This will help ensure that the arrangements and procedures are in accord with the informed will of the citizens.

Elected governments should not decide any of the procedures and arrangements for jury hearings, as they have a serious conflict of interest. Nor should elected governments choose members of the jury commission because that is undemocratic and opens the door to patronage and political manipulation.

Juries vs. Referenda

Juries are suitable for deciding all types of laws at all levels of government, from municipal by-laws about smoking to national laws on the environment and taxes.

Referenda, including the initiative, are unsuitable for the informed decision-making needed for real democracy. Citizens only learn about proposed laws in their spare time as the

*run by groups of citizens
chosen by lottery.*

30-second TV ads.

In-depth jury hearings are an infinitely better basis for an informed decision than a referendum vote. Jurors work full time to become well informed, hold face-to-face hearings with the supporters and opponents of the law, and hash out the evidence and arguments with each other.

Further, each jury focuses on one proposed law or on several alternative proposals on the same topic, unlike referenda where many different matters may appear on the ballot.

An effective referendum campaign requires a lot of money to get the message out to the voters. The need for deep pockets can be especially intense when the proposed law is opposed by wealthy interests that can pour millions of dollars into the opposition campaign. Few public interest groups can raise the needed funds.

Appearing before a jury requires only a tiny fraction of the money and people needed for an effective referendum campaign. Citizen groups with little in the bank are on a far more level playing field with the rich and powerful.

Those who vote in referenda may be unrepresentative of the citizenry. A mobilized minority can defeat the interests and preferences of the majority, especially where voter turnout is low. Or, men may tend to vote more than women or the upper middle class more

spirit moves them, and often rely on such summary coverage as may be provided by TV news or by even more superficial

than the poor, and so on. But with juries, random selection and stratification ensure that those who decide are a highly representative cross-section of the citizenry.

In referenda, the media must be relied on to reach the citizens. What the media emphasize, play down, ignore, and distort can be important to the outcome. With juries, by contrast, jurors meet directly face to face with the supporters and opponents of the proposed law.

In the initiative and referendum, the number of issues being decided by citizens must be kept small because the more numerous the issues on the ballot, the less the prospect of the citizens becoming well informed about them. Access to the ballot is restricted by means of an onerous requirement to gather a large number of petition signatures within a set time. Those with enough money can buy their way onto the ballot by paying for an army of petition gatherers. Those who cannot afford to buy access can only get an issue onto the ballot if they can mobilize a sufficiently large and effective force of volunteer petition gatherers. This effectively excludes the vast majority of public interest groups from access to the ballot, no matter how good their ideas might be.

With juries, the preliminary stage is not a petition drive, but rather a preliminary hearing. As no great resources are needed to appear at such a hearing, a capable public interest group with no substantial funding is on a par with large and wealthy interests. Whether a proposed law gets further consideration is decided by jurors on the merits, not by who can purchase or mobilize the vast

amount of donkey work needed to meet the signature requirement.

Juries are much better than referenda for expressing the informed will of the citizens and are far freer from the distortions of wealth and power. Referenda may be a step in the right direction, but they pale by comparison to the vastly more democratic and equalitarian possibilities of jury hearings.

In electoral democracy, elected governments are free to impose laws that are contrary to the informed will of the citizens. The democratic way is for the citizens, not the politicians, to have the final say about which laws go into effect.

When the government passes a law, it can go before a jury for a preliminary hearing, where the jury decides whether to allow the law or to refer it for full in-depth jury hearings. If rejected by a jury after such full hearings, the law does not go into effect. In this way, laws opposed by the informed will of the citizens can be prevented. This is a major advance for popular sovereignty. The informed will of the citizens is, from a democratic point of view, the best authority and mandate a law can have.

Jury hearings are the most effective way to express and measure the citizenry's informed will. The sooner ~~the domination of~~ law-making is reformed by the introduction of jury hearings, the better.