

## THE HISTORY AND USE OF DIRECT DEMOCRACY IN OKLAHOMA

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Oklahoma has a rich history of direct democracy. It was the first state to incorporate direct democracy into its constitution and it has been used frequently throughout the past century. This paper examines the origin of the initiative and referendum and how they were both used to implement major policy changes in the state.

**In describing the political character of Oklahoma**, some observers noted that one feature in particular deserves mentioning—populism (Morgan et al. 1991). They define populism as “a commitment to enlarging the economic and political power of ordinary people as opposed to the wealthy,” and claim that this idea runs deep in the political traditions of the Sooner State. This attitude permeated the Oklahoma and Indian territories near the end of the nineteenth century and was fueled in large part by a distrust of corporations, eastern banks, railroads, and other monopolies during tough economic times. Many settlers in Oklahoma

believed that ordinary people should have a voice and that government could play a positive role in looking out for the needs of the commoner. As Oklahomans celebrate the 100<sup>th</sup> anniversary of their state's constitution, it is interesting to look at the elements of populism embodied in the document. In addition to the restrictions it places on railroads and large corporations, Oklahoma's constitution provides a mechanism for average citizens to make their voices heard in the policy making process.

Oklahoma has a rich tradition of direct democracy. The ballot initiative and referendum have been tools used by citizens to pass laws in the state. Prior to Oklahoma's constitution, only four states allowed the initiative and referendum (Morgan et al. 1991). Today, twenty-seven states have some form of initiative or popular referendum (IRI 2006). Since 1908, Oklahomans have regularly gone to the polls to vote on various ballot measures. Morgan and others (1991) point out that Oklahomans can expect to face eight or ten of these measures every election year. Issues ranging from cockfighting to contracts for university presidents have appeared on the ballot over the years. This paper provides a brief history of the initiative and referendum process in Oklahoma and examines how these tools have been used.

### FOUNDATIONS OF DIRECT DEMOCRACY

As the populist movement began to gather momentum in the late 1800s, frustrated citizens throughout the United States sought ways to reform the political process. Inspired in large part by the Federal Constitution of Switzerland adopted in 1874, political observers in the United Kingdom and the United States began writing about the Swiss experiment that featured the referendum—a proposed law submitted by a governing body to citizens for approval, and the initiative—a proposed law submitted by citizens for a vote by the people. Perhaps the most influential writer was J.W. Sullivan. Sullivan was intrigued with the process in Switzerland and traveled there to observe it first hand. Upon his return he observed,

They have forestalled monopolies, improved and reduced taxation, avoided incurring heavy public debts, and made a better distribution of their land than any other European country. They

have practically given home rule in local affairs to every community (Piott 2003).

Sullivan made a case for direct democracy in the United States arguing that it could cure many of the nation's political ills. His underlying claim was that sovereignty and self government should rest with the people and direct democracy provided a mechanism for this to happen. Sullivan wrote extensively on the subject of direct democracy and the use of initiatives and referenda for newspapers and magazines such as the *New York Times*, *Twentieth Century*, and *Chautauquan Magazine*. He published *Direct Legislation by the Citizenship through the Initiative and Referendum* in 1892. This book was the first to make a case for direct democracy in the United States and sold nearly forty thousand copies within three years (Piott 2003). Direct legislation leagues began sprouting up in the states of New Jersey, South Dakota, Oregon, Kansas, Michigan, Nebraska, Washington, and Colorado. In 1896, direct Legislation had found a place in the Populist Party platform in a number of states. During their convention in St. Louis in July of that year, Populists organized a national Direct Legislation League.

Populism made its way into the Indian and Oklahoma Territories. Farmers and miners certainly felt the pinch of the depressed 1890s. As political demands seemed to fall on the deaf ears of the major political parties, many turned to the Populist Party to push for reforms. Oklahoman consumers associated inflated prices and a lack of concern for health or safety with corporate trusts and monopolies. For many Oklahomans, a number of reforms were needed to regain the confidence of an unresponsive government including new tax codes and strict corporate regulation. One particular reform that drew support from a number of factions was the initiative and referendum process. The idea that citizens could directly influence legislation was favored by many regardless of occupation. An early labor leader in the Twin Territories, Peter Hanraty, put it this way:

[W]hy should we vote for rulers when we ourselves can become the sovereign power through the initiative and referendum. It will simplify[sic] laws . . . simplify government[sic] . . . kill monopoly . . . purify the ballot . . . broaden manhood . . . make people think . . . abolish special privileges . . . wipe out plutocratic dictation

. . . reduce taxation . . . prevent the bribery of law makers . . .  
 establish home rule in all municipalities . . . [and] restore to the  
 people their natural rights (Hanraty 1905).

Nevertheless, the concept of the initiative and referendum was so new at the turn of the twentieth century that Oklahoma's territorial legislature did not quite know how to deal with it. At least one legislator had proposed the adoption of the initiative. State representative S.C. Whitman of Guthrie noted, however:

The country was new, and we had but a very few people who had ever heard of such a thing [initiative]. My bill never got out of committee and hence created little interest (Piott 2003, p. 66).

Changing tactics in order to make progress on his proposals, Whitman turned to the Ancient Order of Loyal Americans (AOLA) for help. The AOLA was organized in 1893 with its headquarters in Michigan. Those involved with the organization were seeking ways to expand membership and Oklahoma was an ideal territory. An "advisory referendum" was an important component of the organization's purpose. AOLA members would collect signatures for and against a particular measure and then be presented to the state or territorial legislative body for action. Whitman set out to organize branches all through Oklahoma, but his efforts never amounted to any notable action.

Theodore L. Sturgis of Perry, Oklahoma, founded the Direct Legislation League in 1899. The group promoted direct democracy by printing a statement of principles and distributing them throughout the territory. Advocates would have liked to see elements of direct legislation appear in any future Oklahoma state constitution, but the dominant Republican Party was not clamoring to adopt such a measure. Sturgis feeling that his efforts had fallen flat, noted:

The prospects in this Territory are that the Republican Party will force through a bill for Statehood and Constitution without any tincture of D.L. [direct legislation] in it – that being their particular abomination (Piott 2003, p. 67).

In 1895, one year before his first presidential campaign, William Jennings Bryan visited Oklahoma territory for the first time. Although he

had not reached the prominence and stature that he would in subsequent years, his appearances throughout the territory drew large audiences. Bryan's brand of Populism appealed to a number of the hearty settlers in the area. Increased participation in government along with tax reform, the expansion of currency, and regulation of utilities were all ideas that struck a chord with many. Despite political defeats in 1896 and 1900, Oklahomans enthusiastically supported Bryan. When it became clear that statehood was approaching, a movement began to induce Bryan to move to Oklahoma and become the state's first senator (Lewallen 1995).

Bryan was on his way to becoming one of the most influential politicians of his era. Kazin (2006) argues that only two presidents, Theodore Roosevelt and Woodrow Wilson, had a longer lasting impact in shaping the political climate during a period of reform that took place between the 1890s and the 1920s. He was elected to Congress in 1890 and his reputation soon spread across the country. Bryan was a gifted speaker who drew crowds wherever he traveled. He was deeply religious and many looked to him as one who could purify a government that had become corrupt as businesses gained greater influence in the halls of lawmaking institutions. He spoke out against banks and promoted free silver, a move that would have encouraged more of an inflationary condition making it easier for farmers to pay their debts. He attacked the railroads and other monopolizing interests and advocated trust-busting. His appeal ran deep with the commoner. Farmers and miners in Oklahoma who had been plagued with economic hardship found solace in Bryan's cause.

The enabling act outlining conditions for statehood was passed by Congress on June 16, 1906. Delegates to the Oklahoma's Constitutional Convention would be elected in November. Bryan showed a particular interest in Oklahoma's convention and visited the state several times leading up to it. Prior to the November 1906 elections, Bryan stumped throughout Oklahoma and Indian territories urging voters to select Democrats for the convention. Bryan's efforts paid off when voters elected Democrats to fill 99 of the 112 delegate seats.

The Oklahoma Constitutional Convention convened on November 20, 1906. Bryan and other populist and progressive leaders were invited to attend. While he declined the invitation, Bryan did send a thirty-page handwritten letter offering some guidance. Some of his proposals included an expanded bill of rights, election of lower court judges,

prohibitions on campaign contributions from corporations, regulation boards for municipal franchises, and regulations on work days, child labor, and industry. Perhaps the crown jewel of Bryan's proposals was the call for an initiative and referendum process where the people could have a direct impact on state statutes.

Oklahoma's new constitution included a number of Bryan's suggestions, but it did not sit well with President Theodore Roosevelt who thought that a number of items would be better written in a statute rather than in a constitution. He found the system of economic regulation to be more akin to socialism and he objected to the election of judges. Roosevelt's eventual successor and Secretary of War, William Howard Taft, was sent to Oklahoma to condemn the new constitution before its ratification. Speaking to a packed hall in Oklahoma City, Taft argued that it was a combination of "Bourbonism and despotism, flavored with socialism." He attacked Bryan's populist ideas and even labeled the provision for an initiative and referendum "a mockery" (Lewallen 1995).

For his part, Bryan defended the ideas embodied by Oklahoma's constitution. Using the somewhat derogatory term that the *New York Times* applied to convention delegates, Bryan gave his famous "Let the People Rule" speech to the People's Lobby in Newark, New Jersey on May 1, 1907:

I say to you that it is the best constitution in the United States today. I was interested to find how carefully those cornfield lawyers had puttied up the holes that the trust-fed lawyers had been making in other constitutions. It was really interesting to see how these cornfield lawyers, looking at the question from the standpoint of the common people, had corrected the things that had been found weak in the constitutions of other states, and the best thing in that constitution is the provision for the initiative and referendum. No matter what mistakes you make in your constitution, if you give the people the power to correct the mistakes they will correct them (Bryan 1907).

William H. Murray, president of the Oklahoma Constitutional Convention and future governor of the state of Oklahoma, signed the proposed constitution on July 16, 1907, using a pen that belonged to William Jennings Bryan. Despite concerns and appeals voiced by the Roosevelt administration, voters in Oklahoma sided with Bryan and the

majority of the delegates and ratified the new governing document by a vote of 180,333 to 73,059 on September 17, 1907. Bryan was invited to be an honored guest when the new legislature met in December 1907 and Oklahoma became the first state in the Union to include the initiative and popular referendum in its original constitution.

### INITIATIVES AND REFERENDA

The terms initiative and referendum are so frequently used together that they may seem synonymous. Initiatives involve the collection of signatures on a petition to place a certain state question or statute on a ballot for voters to accept or reject. The referendum involves the acceptance or rejection of laws or amendments that have been proposed by the legislature. There are two categories of referenda:

- 1) popular referenda where the people collect enough signatures to refer legislation enacted by the legislature to the people for a vote, and
- 2) legislative referenda where state legislatures or other elected officials submit a measure to the people for acceptance or rejection.<sup>1</sup>

Oklahoma law specifies that all petitions for the initiative and referendum need to be filed with the Secretary of State. The number of required signatures varies depending on the type of ballot measure - initiative, referendum, and change in the state's constitution. It is also based on a percentage of the total votes cast at the election of the state office receiving the highest number of votes. These elections are the presidential election and the midterm election two years later. Since voter turnout is consistently lower during the midterm election, some strategists have taken advantage of the lower signature requirement by circulating petitions following midterm elections rather than presidential elections. To submit a popular referendum to the legislature for approval, petitioners must collect enough signatures to equal five percent of the total votes cast. For an initiative, the requirement is eight percent unless it is an initiative for a constitutional change in which case it is fifteen

percent. Finally, to get an initiative or referendum that had been rejected on the ballot, petitioners are required to garner twenty five percent.

### USING THE INITIATIVE AND REFERENDUM IN OKLAHOMA

Oklahoma's first successful initiative was voted on in June 1910. The issue was the construction of a state capitol building and where it should be located. Along with that decision, voters had the opportunity to vote for Guthrie, Oklahoma City, and Shawnee as the locations for the state capital and its building. Oklahoma City won by a sizable margin, but some legal issues took the action to the Oklahoma Supreme Court. Despite legal challenges, the voice of the people won out.

A number of ballot measures in Oklahoma have dealt with the regulation of liquor. Oklahoma has the distinction of being the only state in the Union where prohibition was written into its constitution. Oklahomans did not waste a lot of time to try and change things. The state's first ballot initiative in 1908 was State Question 1 with subsequent questions numbered sequentially. This initiative proposed the creation of state agency that would be able to dispense liquors to those who had a prescription. This measure failed garnering 46 percent of the vote. Two years later, an initiative to license liquor sales in the cities was placed on the ballot. This vote failed by an even wider margin. Despite statewide prohibition, alcohol still presented problems throughout the state. In 1914 an initiative was launched that made drunkenness an impeachable offense for public officials serving in state government. It passed at the polls with 78 percent of the vote.

Initiatives tackling the prohibition problem came up several times between 1908 and 1959. National prohibition ended in 1933 with the ratification of the 21<sup>st</sup> Amendment. Despite national trends, Oklahoma held on to prohibition. In 1933 a measure passed that defined non-intoxicating drinks with an alcohol content of not more than 3.2 percent. Attempts to repeal statewide prohibition were introduced by initiative in 1936, 1940, and 1949 and an option for a county repeal was on the ballot in 1957. All of these measures failed at the polls. Finally, in 1959 the wet proponents got what they had been seeking for years. Fifty-six percent of the voters ended statewide prohibition passing State Question



386. Oklahoma was among the last states to do so, being surpassed only by Missouri who ended prohibition in 1966.

Despite prohibition's repeal in Oklahoma, the dispensation of liquor was still strictly controlled. Subsequent measures were introduced on the ballot that would loosen up some of the state's tightly regulated liquor laws. In the 1970s, measures calling for a "liquor by the drink" law were twice defeated at the polls. Making a case for economic improvement, proponents were able to muster enough votes to pass such a measure in 1984. The 1959 constitutional amendment that repealed prohibition, also made it illegal for liquor stores to be open on Sundays, certain holidays, and on election days when the polls were open. Package store owners and operators gained enough support to get a measure on a 1990 ballot that would allow them to sell liquor on election days. The measure was handily defeated with nearly 70 percent of the vote. The issue resurfaced again in 2006 with State Question 733. A preliminary poll (Krehbiel 2006) indicated that the general public opposed the measure by a margin of almost 3 to 1. However, on Election Day SQ 733 passed with 53 percent of the vote. Perhaps part of the reason for switch in opinion rests in how the issue was presented to voters – as an archaic piece of legislation that was out of step with the times and needed to be changed. Even an editorial in *The Oklahoman* (2006) noted, "The days of trading booze for votes have long since passed, and we see no need to continue this restriction. Oklahomans should vote yes on this question."

Some of the more interesting measures to appear on the ballot in Oklahoma over the years have dealt with so-called moral issues. Haider-Markel and Meier (1996:333) note that a moral issue or policy typically follows a pattern in which "at least one advocacy coalition . . . portray[s] the issue as one of morality or sin and use[s] moral arguments in its policy advocacy." Using this definition, there have been a number of cases where religious communities have been involved in supporting or opposing various initiatives or referenda, thus making them moral issues. Religious organizations have campaigned against liquor as well as various forms of gambling.

Slot machines were all the rage in Oklahoma during the 1930s. State law provided for their use under certain conditions. They could not be in operation in open public areas. As the industry flourished, rumors spread that racketeers from Kansas City were going to set up operations in Oklahoma. Some operators pushed the limits of the law plac-

ing machines in open and easily accessible areas. Growing complaints prompted Governor Marland to order all state officers including the Tax Commission, the State Bureau of Investigation, and the Highway Patrol to report the use of such machines to county attorneys and provide the governor with the same report. In issuing the dictate Marland said;

It has been brought to my attention that gambling devices are in open operation in many of our counties . . . . Parents complain that these machines are placed in stores and other public places in the vicinity of schools, and that children use part of their lunch money to gamble (*The Oklahoman*, 1937).

Clergy from several churches began a petition drive that ultimately led to placing State Question 216 on the ballot in 1938. Despite a dispute over signatures, the courts and Secretary of State Frank Carter certified the petition. Oklahoma voters voted overwhelmingly to not repeal restrictions on the slot, pin, and marble machines. The restrictions remained in place but were modified by the passage of State Question 712 in 2004, which allowed for the use of electronic gaming machines in tribally-owned casinos and certain licensed racetracks.

The gambling issue largely faded from the public eye. Oklahoma laws did not permit it in any form and citizens for the most part seemed satisfied with the laws on the books, except for one industry. Pari-mutuel betting had been off limits for decades. Proponents of horse racing had long argued that the industry could be very profitable, bringing jobs and money to Oklahoma. A state question allowing for the establishment of race tracks first found its way onto the ballot in 1974. The Oklahoma Horsemen's Association, a group made up of several horse associations in the state, was instrumental in promoting the measure, but in the end it failed due to opposition forces casting the measure as one that would increase crime and social woes. An editorial in *The Oklahoman* summed up the opposition's argument.

Oklahoma does not need any more stimulants for crime. Race track betting has long been associated with various sorts of undesirable citizens, which should be enough to cause voters to turn down Question 498. But even worse is the obvious opportunity it would provide for expanding graft and corruption at top levels

of state government. We've had enough of that already. Too much is at stake for Oklahomans to risk a bet on State Question 498 (Chamberlain, 1974)!

State Question 498 was indeed voted down by voters in 1974 but resurfaced again in 1982. This time around proponents argued more forcefully for its passage, drawing attention to the potential economic benefits. Voters approved the measure and horse racing became legal in Oklahoma. Morgan et al. (1991, p.3) note that even the conservative *Daily Oklahoman* pointed out the economic benefits in its coverage of the opening of the state-of-the-art race track Remington Park in 1988.

A state sponsored lottery was another issue that had more than one life on the ballot. When it was introduced in 1994, religious organizations formed a coalition to oppose the lottery question. In addition to religious groups, proponents of horse racing put up strong opposition. They were successful in getting pari-mutuel betting passed and they now saw a lottery as a potential competitor and contributed to the campaign against it. The proposition was defeated in 74 of Oklahoma's 77 counties. Following the election, an opinion piece in the *Daily Oklahoman* noted:

The state's growing horse industry demonstrated it remains a potent political force both in raising money and attracting voters to the polls. Horsemen were the major force in legalizing pari-mutuel gambling a few years ago. They were equally effective in opposition to government sponsored lottery gambling (*Daily Oklahoman* 1994).

Ten years later, however, with those supporting horse racing pushing for the passage of gaming machines at racetracks, the lottery experienced a rebirth and was approved by a margin of nearly 65 percent of the votes cast.

Other issues that have been prominent over the years include the ban on cockfighting, passed by voters in 2002, and a 2001 right-to-work law giving workers the right to opt out of union membership. Oklahomans have also used direct democracy to assert more control over their elected officials. Two-thirds of Oklahoma's electorate voted to place term limits on members of the state's legislature in 1990. The same percentage of voters placed term limits on Oklahoma's congress-

sional delegation in 1994. This action was invalidated by the Supreme Court two years later. Oklahomans also voted for the direct election of the state's Labor Commissioner in 1988. Prior to that time the position had been appointed by the governor.

### DIRECT DEMOCRACY TODAY

Direct democracy is a reflection of the populist traditions from which Oklahoma became a state. Over the years, citizens of Oklahoma have used the initiative and referendum to put laws into effect and influence their system of government. William Jennings Bryan would no doubt be pleased with many of the measures that passed at the polls through the initiative or referendum process. This is not to say that the process is not without its flaws.

David Rausch (1997) points out two trends in the United States and Oklahoma that raise questions concerning the populist nature of the initiative and referendum. The first trend is the professionalization of direct democracy. In this case, petition management firms are paid big bucks to collect signatures and get measures on the ballot. He notes that it also opens the door for fraud when circulators are paid by the signature. Indeed the Oklahoma Supreme Court threw out a petition in 2006 finding that the circulators engaged in fraud by using false Oklahoma addresses (Clay 2007). States like Colorado have sought restrictions on petitioners to limit out-of-state influence.

The second trend is the enormous costs that interest groups pay to finance a campaign in order to get a ballot measure passed or defeated. State questions on the ballot in 2004 alone brought in nearly \$4 million in ad sales to the Oklahoma media. The group Oklahomans for Education and Jobs spent \$1.9 million in support of the tribal and race track gaming measure. The tobacco industry contributed nearly \$2 million to defeat State Question 713, a measure that in effect raised the sales tax on cigarettes (Price 2004). Rausch (1997) argues that the role of money in direct democracy causes some concern among observers who see Oklahoma's current form of direct democracy as a process far removed from its original intent. Rather than empowering citizens, it has often been used as a tool for special interests. William Howard Taft referred

to Oklahoma's constitutional provision for an initiative and referendum as a mockery. Observers today may still side with Taft, while others still see the provision as one of empowerment.

#### NOTES

<sup>1</sup>For a more detailed explanation, see the Initiative and Referendum Institute at the University of Southern California's website at <http://www.iandrinstute.org>.

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