

Initiative and referendum: A Maine odyssey

Charles Scontras, Special to the Sun Journal

Maine is no stranger to the nation's battles involving the development of the tools of direct democracy and how to use them. Since the citizen initiative and referendum were passed in late 1908, Mainers have used "the power of the people" to vote directly on many laws, bypassing the Legislature.

Now, after more than 100 years in use, the initiative process may be facing a test: Gov. Paul LePage is preparing blueprints to use the initiative in an attempt to change the state's welfare system and reduce the income tax — victories denied to him in the Legislature. It's a top-down administration employing a grass roots tool to circumvent another branch of government.

All of this is to be played out in the general election of 2016.

The annals of the history of the initiative and referendum in Maine reveal no precedent for such action. While Republicans have utilized the veto referendum in the past, no administration has taken such a route for gaining its legislative ends. The use of the referendum process by a governor to bypass the Legislature appears to be at variance with the original intent of the reforms to empower citizens to protest the actions of their own government.

It was not conceived by the advocates of "grass-roots" democracy as an instrument to be used by one branch of government at odds with another branch of government. The governor is creating a new template for the initiative and referendum: skirting the legislative branch and reaching out directly to the citizens.

The movement toward the referendum and initiative began in the late 19th and early 20th centuries when reformers of every color and hue, many of whom styled themselves "progressives," were determined to address myriad problems generated by persistent and unbridled industrial and urban growth of the nation. Disparities in income and wealth and political corruption became the political issues of the day.

Prominently visible in these blueprints for the extension and purification of the democratic process was the call for the initiative and referendum. In 1906 the Maine Labor Journal (Millinocket), one of the earliest advocates for organized labor in the 20th century, stated that while "the referendum was launched, and has all along been largely promoted, by the organized labor interests of the state," a mosaic of like-minded reformers banded together under the State Referendum League of Maine, "pulling tooth and nail to a common end — legislation that will bring about the direct vote of the people when desired in all matters of public policy."

There was no mistaking the crusade to "return power to the people" as "so many different factions girded up their loins and buckled on the armor for the fray." No longer would citizens be subject to their own legislative body that fails to respond to their pleas or accept laws the "Legislature is disposed to force upon them." It was clear to reformers that "the rights and welfare of the people can be guarded and promoted only by the people themselves and not by a selected few."

The cry "return power to the people" and the "people's veto" echoed across the land as those of a progressive persuasion sought to extend and purify democracy and reclaim their government. An instant and peaceful political revolution would transform the nation from one of "plutocracy" to one of democracy at all levels of government; the conflict between the "people's will" and the "interests" would fade, citizen participation in the political process would be enhanced, the ends of justice served, and the authentic voice of the community restored. Indeed, some wondered what the future of the Legislature itself might be. Such was the perceived impact of the new political prescriptions and their curative powers. A powerful antidote for the nation's political ills and the restoration of the sovereignty of the people was at hand.

It would not have seemed likely that "direct democracy" made possible by the initiative and referendum enacted in 1908 would be used by conservative forces for securing their own ends. The radical notion of "citizen as lawmaker" evoked fears of "mobocracy" and the threat and danger posed by the "rabble" elements of society.

They warned that such political elixirs advocated by reformers would give rise to demagogues and visionary reformers, that the politics of passion would replace the deliberative process necessary for the formation of public policy and intelligent legislation, and that they would jeopardize security for individuals and their property.

It was charged that the idea of the "citizen lawmaker" was at variance with the idea of the nation's "republican form of government" guaranteed to each state through Article IV of the U.S Constitution. Historically, plebiscite politics has never appealed to conservatives who sought to hobble the voice of the "untutored multitude." A glimpse of the "danger" of the new political reforms was offered by the actions of Maine Sen. Eugene Hale who used the tax-supported U.S. mail system to reproduce a speech made by Sen. Henry Cabot Lodge of Massachusetts before the Central Labor Union of Boston in Faneuil Hall. Lodge declared that direct legislation was contrary to the republican form of government and subversive of the welfare of the nation. He referred to it as mob rule.

Originally, those eager to circumvent the established legislative and judicial bodies did so because the decisions of such bodies and the interest of private wealth often appeared to be one and the same. The use of the initiative and referendum were closely tied to class-based issues.

"The only people who oppose this legislation (initiative and referendum)," shouted Edward S. Clark, R-Hancock, March 12, 1905, as the movement for direct democracy visibly took root in Maine, "are the great corporations of this state." Corporations did publish pamphlets against the reforms and leading Republican newspapers lined up against them.

Economic themes were clearly reflected in the demands of advocates of direct democracy by such groups as the Populists, the Grange, the Knights of Labor, the State Federation of Labor, the Socialist Party of Maine, and others who called for a political reformation. Opponents were quick to link the reforms with organized labor and socialism and admonished that the "people of Maine may be carried off their feet and that revolution may follow," and that direct democracy had "something to do with Socialism."

The campaign against child labor to liberate “the tiny hostages to rapacious capitalism from the steel jaws of the modern industrial machine” and end “the bitter cry of the children,” offered a glimpse of the fears of some that direct democracy would challenge the existing distribution of wealth and power.

In 1906, Samuel Gompers, president of the American Federation of Labor, addressed audiences in Lewiston, the epicenter of the state’s textile industry, on the tortuous issue of child labor, and remarked, “If you had the referendum, how do you think (child labor) would go? Is there a man with a soul so dead that he would vote for it? No. Not one!” Little wonder that some expressed anxiety about the radical political reforms and the established order of wealth and power.

The first instance that revealed that the referendum could be a double-edged sword occurred in 1915, following legislation that reduced the hours of labor to 54 a week. Opponents of the law used the referendum provision of the constitution to defeat the new law. Organized labor, along with other reformers who had pioneered the struggle for “direct democracy” in an effort to circumvent the legislature and its “ought not to pass” reports, now witnessed conservative forces using the very “grass-roots” democracy to paralyze the reform movement.

An organization called the Maine Industrial Expansion Commission (the identity of its leaders carefully concealed) was alleged to have been assisted by manufacturers from other states in exploring the possibility of using the referendum to defeat other labor laws. It flooded the state with circulars in opposition to the 54-hour law. The Commission reportedly paid 5 cents for each signature gathered on petitions that sent the issue to the voters in the general election of 1916. While organized labor and progressive voices won the struggle, they learned that the political reforms they unleashed could be directed against them, and were baptized into the fact that corporations and money could be injected into the process in an effort to tilt it in a given direction.

In 1921, the Legislature failed to enact an eight-hour day for women and minors under the age of 16 in manufacturing, mechanical and mercantile establishments. The State Federation of Labor turned to the instruments of direct democracy to realize the goal of the eight-hour day. It distributed 17,000 copies of a two-page pamphlet entitled, “Profits vs. Humanity.” Nine-hundred letters were sent to the clergy, 500 to local chapters of the federation of Women’s Clubs, 4,000 to Grangers and farmers. The organization requested relevant materials from the U.S. Department of Labor — publications and posters which declared that “America Will Be as Strong as Her Women.”

Labor Day placards announced the labor reform. Reform messages filled the air. The Associated Industries of Maine was organized in 1920 in large measure to combat the eight-hour movement. Representing the leading manufacturers of the state, it called a conference to which over 200 representatives from the business community met to forge a campaign against the crusade for the shorter workday. Labor’s battle to prevent the unbridled use of “flesh and bone to feed the wheels of industry” was no match for the resources of the Associated Industries of Maine.

Reforms, which early on were associated with class-based issues, began to be applied to a cafeteria of issues cutting across class and political lines as the explosion of the use of the reforms in the 1970s and 1980s shows.

It was not surprising that the volcanic rise of direct democracy would again lead to calls for restraint of grass-roots democracy and citizen lawmakers. Criticism crested in Maine in 2001 when numerous anti-citizen-initiative bills were defeated, for example, measures that increased the number of signatures required to have a referendum, required that petitions originate from all counties, banned referendum petitioners from polling places and kept failed referendums from being resubmitted for six years.

The Coalition to Protect the Referendum, composed of more than 70 state groups and individuals — a mix of ideological interests such as environmentalists, labor, religious conservatives and others united in the common purpose of preserving direct democracy — held the fort. It was a historic moment for the struggle for participatory democracy, but it did not silence critics such as those who have called for amending the constitution to ban initiatives altogether on some issues.

Based on historic use, LePage's plan to use the initiative to bypass the Legislature appears to be a dramatic ideological somersault in conservative thinking relative to "direct democracy." Where is the conservative fear of the "untutored multitude," excessive democracy and the threat to representative government? Where are the conservative alarm bells that passion and visceral politics are "dangerous" and that statecraft requires a dispassionate, deliberative climate to fashion legislation and public policy in the public interest?

Throughout the years, any number of proposals have been advanced to hobble the initiative and referendum or to improve them. Perhaps those who have long argued that the reform mechanisms originally designed to protect the people's voice and the purity of their sovereignty can be overused and abused should consider new restraints that prohibit its use by one branch of government to circumvent another.

It appears that we will not soon experience any respite from generic arguments for and against direct democracy or the new arguments that are certain to be added to the political cauldron.

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