

Structuring Good Representation: Institutional Design and Elections in California

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The guiding question of this symposium asks: What does it mean to have “good” representation? Rather than specify conditions of “good” representation, our contribution focuses on the structural conditions and institutional design under which a normative position of good representation has the best chance to flourish. We argue that the concept of “good” representation is most fruitfully theorized and evaluated when the opportunities and constraints for political actors are explicitly taken into consideration. Agency among either representatives or the represented—to be responsive, to listen, to be inclusive for the former, and alternatively, to be informed, or to be active for the latter—is heavily constrained in US democracy by the party system, the structure of elections, institutions of representation, and rules governing the conduct of government. Even in the face of a strong desire and intentionality among actors to meet normative standards of “good” representation, the outcome can be stymied and, alternatively, nurtured by institutional design. The variation in the forms of representative structures within US democracy provides fertile empirical ground from which robust theoretical perspectives addressing “good” representation can find enhanced footing.

In this article, we examine elections and representation within the context of recently enacted institutional reforms in California, a state among the most racially and ethnically diverse in the nation. Within the last two decades, California enacted several reforms relevant to elections and representation, including the adoption of a top-two primary where the two candidates with the largest number of votes are placed on the general election ballot regardless of political party, as well as the creation of a non-partisan redistricting commission that is separate from the legislature and instead is run by ordinary citizens, and term limits for state legislators. Such changes in conjunction with rapid demographic shifts toward racial and ethnic diversity in the population and the electorate have propelled California’s composition of representatives in the US Congress and the California State Legislature closer toward parity of racial and ethnic representation. In this article we will examine changes in the racial and ethnic composition of the California legislature before and after these changes were implemented.

We do so from the explicit normative position that in a representative democracy with a diverse polity such as the United States, it is desirable to increase the inclusion of underrepresented minorities. This perspective is consistent with scholars who have asserted that the inclusion of underrepresented voices lies at the heart of quality considerations of democracy (Young 2000; Wolbrecht and Hero 2005; Dovi 2009). To that end, we should be skeptical when democratic institutions fall short of being descriptively and substantively representative of marginalized groups and instead consider what alternative structures might allow for broader incorporation. This position is supported by a wealth of scholarship that analyzes the importance of the racial and gender hierarchies that have prevented segments of society from experiencing full democratic inclusion (Omi and Winant 1986; Phillips 1995; Williams 1998; Young 2000; Masuoka and Junn 2013). These inequalities remain present today, and racial and ethnic minorities, women, and other intersectionally marginalized people continue to be underrepresented in elected office. Dovi (2007) has theorized the desirable behavior on the part of representatives should include fair-mindedness, trust, and wise gate-keeping. Stemming from Dovi’s foundational work, a growing body of literature suggests that women of color in US legislatures exhibit distinctive behaviors from other legislators (Fraga et al. 2006; Reingold and Smith 2012). Brown’s (2014) application of intersectionality to the study of black female state legislators in Maryland is particularly useful. Her theory of representation identity suggests that who a legislator is—the combination of her experiences and identity—impacts what she does. Our focus on inclusive institutional design features should be viewed as complementary to those bodies of work. While parity between the diversity of elected leaders and the diversity of the represented may not equate “good” representation, institutional structures must not constrain or inhibit the possibility of parity to be reached. In other words, for “good” representatives to ever reach elected office, the role of the institutional structures that constrain or bolster their electoral opportunities should be considered.

Taking these positions as theoretical priors, we argue that scholars concerned with descriptive and good representation should consider the role of institutional structure and design within an analytic framework that considers both the

opportunities and constraints within representative democracy. In the United States, equal representation for minority groups has been elusive since the nation's founding (Smith 1993). Discriminatory voting laws such as poll taxes and literacy requirements followed the exclusion of women and African Americans from the franchise. The Voting Rights Act of 1965 (VRA), and subsequent extensions of its protections by Congress helped to rectify some of these constraints and create institutional pathways to bolster and improve minority representation (Davidson and Grofman 1994; Jones-Correa 2005; Chen and Lee 2016). Yet, the Supreme Court's ruling in *Shelby County v. Holder* (2013) reduced the VRA's institutional clout when it eliminated preclearance protections. Following the *Shelby* ruling, some states have sought to enact voter identification laws that could again create systematic barriers for minority voters, while others have sought ways to broaden and enhance electoral institutions.

In this article we discuss the institutional changes that have occurred in California following both a period of rapid demographic change and significant alterations to the institutional design of districts and elections. In the first section we consider the constraints on representation that arise from the unique brand of federalism found in the United States. We next turn to the racially and ethnically diverse state of California. According to the American Community Survey of the US Census, California is a majority-minority state, with the proportion of whites in the population (38%) roughly equal to the number of Latinos (39%), and the remaining population comprised of Asian Americans (15%), African Americans (7%), and multiracial or other people. The dynamics of political representation in California are discussed in the final section.

As a result, constituents are limited in their ability to elect political leaders directly, constrained by power maintained by the states through a federal system with multiple levels of checks and balances, and therefore mediated by a host of institutional rules and practices that ensures change in representation will proceed slowly.

INSTITUTIONAL STRUCTURE CAN CONSTRAIN GOOD REPRESENTATION

The US has a specific and longstanding construction of representative democracy that has, for better or worse, persisted despite challenges and unintended consequences. The authors of the US Constitution and other founding documents articulated a vision of "good" representation and representative democracy by defining a system of constraints to popular sentiment and the direct will of the masses. As a result, constituents are limited in their ability to elect political leaders directly, constrained by power maintained by the states through a federal system with multiple levels of checks and balances, and therefore mediated by a host of institutional rules and practices that ensures change in representation will proceed slowly. These constraints at all levels of US government have developed over time and an accurate account of what a good representative can be in the case of the United

States is best pursued through the lens of these limitations. For minority groups from historically disadvantaged communities who face significant barriers to political incorporation due to prohibitions on voting participation and continued efforts at voter disqualification through politically motivated voter identification laws, constraint is further amplified by knowledge and information gaps as well as language barriers.

Strict two-party and single-member winner-take-all electoral systems are among the most important constraining forces to good representation in the United States. Political representation by geographic location is a longstanding construct of US democracy at the federal and state levels (Young 1990). The presence of at-large representatives, for example US Senators, is present, but atypical of political representation through American history. Developing an account for representation of historically disadvantaged groups in the United States should be devised in light of the fundamental constraint of representation based on geographic districts. In contrast, proportional representation systems with multi-member legislative districts provide a broader set of possibilities for good representation because they provide the basis for coalition politics and increase the likelihood that smaller group interests and minority parties can bargain and win occasionally. In contrast, single-member winner-take-all systems provide inhospitable conditions in many ways for good representation of historically disadvantaged groups.

While racial and ethnic minorities are dispersed throughout the United States, large numbers of minorities continue to live in relatively concentrated areas (Cho, Gimpel, and Dyck 2006; Alba and Foner 2017). Legislative districts can be drawn to pack all of these racial minorities into one legislative district,

creating a majority-minority district with the assumption that the district will be represented by a minority legislator. Alternatively, districts can be drawn by cracking the communities and creating multiple districts in which the minority group remains a minority within a larger, typically white majority district. This structure of electoral systems, thus, favors those with the power to draw district lines, most typically the majority party within a state legislature. Such a system may restrict representatives who meet normative quality standards from prospering.

INNOVATION IN CALIFORNIA

Among the most diverse states in the United States, California is a majority-minority state with people of Hispanic origin slightly outnumbering whites and the remaining population comprised of Asian Americans, African Americans, and other, or multiracial people. Additionally, California is a politically

liberal state with large majorities of Democrats and left-leaning independents clustered along the coastal and urban areas and Republicans and conservative leaners largely residing in the inland, farming, and ranching regions. This diversity makes California an excellent laboratory for innovation in institutional design and democratic representation. While California's US Congressional delegation, California State Senate, and the California State Assembly all remain disproportionately white, changes have begun appearing since reforms were instituted. In this section we discuss the contours of representation since several electoral reforms were undertaken in the state. A combination of the growth in racial and ethnic minority voters, term limits that open up seats for newcomers, the control of redistricting that has moved to less partisan entities,

mandate that an equal number of seats on the commission would be held by Republicans. Racial and ethnic advocacy groups like the Mexican American Legal Defense Fund, Asian Pacific American Legal Center and NAACP's Legal Defense Fund opposed the measures fearing that California's diversity would not be represented on the commission and would lose ground in the number of legislators of color (Donald 2012). Thus, this pair of redistricting measures sought to diminish the role of partisanship in an otherwise highly politicized process to increase the quality of representation in the state. Five years from the redistricting process may be too soon to know the long-term impact of citizen redistricting in California, however, the worst fears of underrepresented community advocates have not been realized.

While establishing a result of legislative diversification will depend on the passage of time and the outcomes of additional elections, we find that legislative bodies in California have seen diversification in some areas since the passage of these institutional reforms (table 1).

and top-two primary rules have created a context and political environment in California that both increases the possibility of descriptive representation as a proportional measure of the demographics of the electorate, as well as enhances the prospect for normatively "good" representation. Though the federal institutional context of single member districts and a two party system persists, California's move toward a more inclusive institutional design may offer the potential for better representation through less entrenched partisan interests in districting decisions creating and increasing opportunities for diverse candidates and legislators to arise.

Redistricting has always been a contentious area of partisan debate, from which California has never been immune. In 2005, voters rejected a ballot initiative that would have forced mid-decade redistricting by retired judges. The momentum on this initiative was rolled into later iterations that voters would approve: Proposition 11, the *Voters FIRST Act*, was passed on the November 2008 ballot and removed redistricting from the hands of the state legislature, establishing a citizens' redistricting commission. The aim of de-politicizing redistricting was a bold move and called for an independent commission of qualified citizens with limited partisan attachments to draw state legislative district lines in accordance with a pre-established set of values such as equal population, compliance with the *Voting Rights Act*, compactness, and respect for city and county boundaries (McGhee 2011). Proposition 20, approved by the voters of California in 2010, extended the scope of the citizen's commission to include the redistricting of Congressional boundaries. The aim of these two initiatives was to improve redistricting by removing the process from elected officials with goals of personal re-election and party dominance, and placing it with citizens who were further removed from partisan divides (Cain 2011). California Republicans were initially supportive of the measure with the

In June 2010, voters approved yet another ballot initiative, Proposition 14, the *Top Two Primaries Act*, that requires candidates to run in a single primary, open to all registered voters, in which the top two candidates compete in a general election. Advocates for the reform argued that the new system would produce more competitive elections and result in more ideologically moderate legislators. Studies examining the roll out of Prop 14 have largely found moderation not to have necessarily occurred due to the switch to the top two primary (McGhee et al. 2014; Masket 2013; Ahler, Citrin, and Lenz 2013), yet interestingly few studies have examined whether open primaries lead to increased diversity. This is an area ripe for additional research. While establishing a result of legislative diversification will depend on the passage of time and the outcomes of additional elections, we find that legislative bodies in California have seen diversification in some areas since the passage of these institutional reforms (table 1). Since 2010, both the State Assembly and California congressional delegation have experienced declines in the number of white legislators elected to office and increases in Latino and Asian American legislators. Women of color have fared particularly well during this time frame, with a 7.5% increase in the number of women of color serving in the California State Assembly combined with modest gains in Congressional elections. Disaggregation of gender data by race and ethnicity, however, shows an overall decline in female legislators from 2010 to 2016, with white women bearing the brunt of this decline (table 2). Despite this, the actual numbers of women in the California state legislature are very small and disproportionately low compared to their share in the state's population. Thus the loss of a single female assembly member can account for a large percentage change. The State Senate has seen an opposite shift, with the number of white and male legislators increasing since 2010 by 12.5%. A number of factors

Table 1

Percent Change in California Racial and Ethnic Representation 2010–2016

	% White	% Black	% Latinx	% API
State Assembly				
2010	65	7.5	17.5	10
2016	47.5	10	27.5	15
Percent Change	-17.5	+2.5	+10	+5
State Senate				
2010	65	5	22.5	7.5
2016	77.5	5	12.5	5
Percent Change	+12.5	0	-10	-2.5
US Congress Delegation				
2010	73.6	7.5	13.2	5.7
2016	58.5	5.7	24.5	11.3
Percent Change	-15.1	-1.8	+11.3	+5.6

Note: Racial and ethnic coding completed by examining ethnic caucus membership, legislator biographies, and news interviews or reports. Full data available from the authors.

Table 2

Representation in California by Gender and Race 2010–2016

	% Female	% Male	% Female of Color	% Male of Color
State Assembly				
2010	26.25	73.75	8.75	26.25
2016	21.25	78.75	16.25	36.25
State Senate				
2010	30	70	7.5	27.5
2016	25	75	5	17.5
US Congress Delegation				
2010	35.8	64.2	18.9	7.5
2016	32.1	67.9	20.7	22.6

may explain this result, including longer terms in office for senators (four years) compared to assembly members, staggered election cycles in which only half of the 40 senators stand for election every two years and an update to the term limits of legislators in 2012 (Proposition 28), which reduces the total number of years a politician can serve in either the Assembly or Senate, but which may increase the number of years a senator can serve from eight to twelve years.

In addition to increased racial and gender diversity among legislators, also notable is the number of ‘nontraditional’ races between candidates of the same party that have occurred since the passage of Proposition 14. In typical closed, single member district races, voters must select between one candidate from either of the major parties as well as any minor parties

that may have candidates running. With the adoption of the top two primaries, a number of competitions now square off between two democrats, two republicans, or one major party against a third party or independent candidate (Highton, Huckfeldt, and Hale 2016). In the 2016 election these non-traditional races accounted for 21% of State Assembly races, 15% of State Senate races and 13% of Congressional races and resulted most visibly in the race for the US Senate between two women of color, both from the Democratic Party, Kamala Harris and Loretta Sanchez. This increasing competitiveness, we contend, adds to the ability of California voters to select the best-qualified representative to meet the demands of their district and uniquely represent their interests.

CONCLUSION

We have argued that when the opportunities and constraints for political actors are explicitly taken into consideration, the concept of ‘good’ representation can be most fruitfully theorized and evaluated. Electoral institutions are, of course, not the only mechanisms that support the goal of enhanced inclusion. Various studies have shown the importance of the role of local community and other contextual factors (Smith, Reingold, and Owens 2012; Reingold and Smith 2012). Characteristics such as education and experience of the pool of candidates (Philpot and Walton 2007; Scola 2013; Brown 2014) and the level of professionalization of the legislature (Hero 1998) have also been found to play a role in constraining or opening pathways to elected office for women and minorities. We argue that the institutional design of a state’s electoral systems should be an additional dimension of analysis for scholars interested in good representation.

While the large and racially diverse state of California may be a singular case study, the demographic transformation occurring there is a trend expected to carry over to other states in the US. With a rise in underrepresented communities as well as an increase in individuals identifying themselves as multiracial or with multiple marginalized identities, the demands on our representative institutions remain works in progress. The Electoral College used to elect the US president has resulted in an outcome contrary to the popular vote twice in the last five elections. In the state of Texas, federal courts have struck down voter identification laws requiring voters to show photo identification, finding the laws to have been drafted and ‘passed with a discriminatory purpose’¹. The combination of mounting demographic diversity and weakened electoral protections creates a context ripe for additional research and theorizing. The innovations in institutional design and electoral reform in California have been in effect for only three election cycles, and thus their full effects await observation in the future. Nevertheless, this analysis highlights the notion that innovations in institutional rules and practices can have an effect on the constraints and the opportunities for political representatives to reach a normative goal of ‘good’ representation. ■

NOTE

1. *Veasey et al. v. Abbott* decided by the 5th US Circuit Court of Appeals on August 23, 2017.

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