

Democratic Capacity for Sustainability

**Lessons from Germany
on Constitutional Amendability
and Direct Democracy in California**

Author

Joanna Gubman

Potsdam
August 2026

RIFS Discussion Paper

Zusammenfassung

Kalifornien hat sich einige der weltweit ehrgeizigsten Nachhaltigkeitsziele gesetzt, ist jedoch nicht auf dem Weg, viele davon zu erreichen. Neben technischen und finanziellen Hindernissen erschweren auch entscheidende institutionelle Barrieren die Umsetzung. Übermäßige Vetomöglichkeiten erschweren Reformen im Wohnungsbau und in der Flächennutzung; Anforderungen an qualifizierte Mehrheiten bei Volksabstimmungen haben zu einer Krise bei der Finanzierung des öffentlichen Nahverkehrs geführt; und eine große Zahl komplexer oder schlecht ausgestalteter Volksinitiativen lenkt sowohl öffentliche Aufmerksamkeit als auch Ressourcen für politische Arbeit von Bemühungen ab, zentrale Nachhaltigkeitsziele zu erreichen. Diese Probleme deuten auf ein schlecht ausbalanciertes Gesetzgebungssystem hin: Flexibilität und Sorgfalt sind falsch gewichtet, zugleich bleibt zu wenig Raum für die iterative, inklusive Deliberation, die notwendig ist, um wirksame Lösungen voranzubringen.

Dieses praxisorientierte Papier versteht Verfassungsmodernisierung nicht als abstrakte Demokratiereform, sondern als notwendige Voraussetzung für eine Nachhaltigkeits-transformation. Es zieht die deutschen Systeme für Verfassungsänderungen, direkte Demokratie und deliberative Demokratie auf Bundes- und Länderebene als Fallstudien heran und leitet daraus praktische Grundsätze für Kalifornien ab: die Balance zwischen Flexibilität und Sorgfalt im Gesetzgebungsprozess an die Sensibilität des Gegenstands anzupassen; direkte und repräsentative Demokratie als weitgehend gleichrangig zu behandeln; Entscheidungen in der Praxis revidierbar zu halten; und Deliberation im gesamten Gesetzgebungszyklus zu verankern. Abschließend ruft das Papier dazu auf, die Funktionsfähigkeit der Demokratie als wesentlich für die Verwirklichung der Ziele der Nachhaltigkeitsbewegung zu begreifen.

Summary

California has adopted some of the world's most ambitious sustainability targets, yet it is not on pace to meet many of them. While technical and financial barriers remain, critical institutional barriers also impede implementation. Excessive veto points constrain housing and land use reform; supermajority voter approval requirements have resulted in a public transportation funding crisis; and large numbers of complex or poorly designed ballot initiatives divert both public attention and advocacy resources away from efforts to achieve key sustainability goals. These problems point to a lawmaking system that is poorly balanced – misallocating flexibility and care while also failing to create space for the iterative, inclusive deliberation necessary to advance effective solutions.

This practitioner-oriented paper treats constitutional modernization not as abstract democratic reform, but as a necessity for sustainability transformation. Using German federal and state systems for constitutional amendment, direct democracy, and deliberative democracy as case studies, it identifies practical principles for California: calibrate the balance between flexibility and care in lawmaking to the sensitivity of the subject; place direct and representative democracy on roughly equal footing; keep decisions reversible in practice; and embed deliberation throughout the lawmaking cycle. It concludes with a call to treat democratic function as essential to achieving sustainability movement goals.

Supported by

This study was produced as part of a research fellowship funded by the Alexander von Humboldt Foundation. Responsibility for the content of the report lies exclusively with the author and does not necessarily reflect the views of the Research Institute for Sustainability (RIFS) or the Alexander von Humboldt Foundation.



UNTERSTÜTZT VON / SUPPORTED BY

Alexander von
HUMBOLDT
STIFTUNG

Contents

1 INTRODUCTION	6
2 THEORETICAL FRAMEWORKS FOR STATUTORY AND CONSTITUTIONAL CHANGE	7
2.1 More sensitive subjects require greater care across the lawmaking cycle	8
2.2 Entrenchment and reversibility	9
2.3 Amendability frameworks	10
2.4 Democratic models, actors, and phases	10
2.4.1 Democratic models	10
2.4.2 Democratic actors and phases	11
3 AMENDMENTS AND INITIATIVES IN CALIFORNIA	12
3.1 Direct democracy placed above representative democracy, constraining the Legislature	13
3.2 Low signature thresholds lead to voter overwhelm and niche capture	14
3.3 Near-identical initiative processes over-entrench statutory initiatives and under-protect the constitution	15
3.4 Asymmetric entrenchment in practice	16
3.5 Polarization instead of representative deliberation	17
4 EXPLORING ALTERNATIVES: LESSONS FROM GERMANY AND BERLIN	19
4.1 No federal-level direct democracy	19
4.2 Federalism with state-level variation	20
4.3 Direct and representative democracy balanced at the state level	21
4.3.1 Legislative tracks with lower constitutional amendment difficulty	21
4.3.2 Higher barriers for initiative statutes and constitutional amendments	22
4.3.3 Direct democracy as agenda-setting and limited ordinary lawmaking	23
4.4 Greater protection for core policies, processes, and values	25
4.5 Reversibility in practice	25
4.6 Some deliberative opportunities	26
4.6.1 Federal constitutional amendments often begin with commission deliberation	26
4.6.2 State-level initiatives create opportunities for iteration and deliberation	26
4.6.3 Deliberative events and experiments explore alternatives	27

4.6.4 Campaign speech rules and norms leave space for deliberation	28
5 CALL TO ACTION: DEMOCRATIC REFORM AS A SUSTAINABILITY MOVEMENT	29
Interview participants	31
Author	31

Figures

Figure 1 Democratic models, actors, and phases of lawmaking	12
Figure 2 Constitutional amendment in California – legislative track	12
Figure 3 Process to amend or repeal initiative statute in California – legislative track	13
Figure 4 Initiative process in California	14
Figure 5 Federal constitutional amendment process in Germany	19
Figure 6 Constitutional amendment in German states – legislative tracks in Berlin and selected other states	21
Figure 7 Initiative process in Berlin	23
Figure 8 Election posters	24
Figure 9 Park sculpture thanking initiative voters	24
Figure 10 Gathering initiative signatures in a Berlin park	28

Tables

Table 1 Levels of law, from least to most sensitive	8
Table 2 Comparison of constitutional amendment and citizen initiative processes in California and Berlin	20

1 Introduction

California has adopted some of the most ambitious sustainability targets in the world – on clean energy, transportation decarbonization, land use reform, and environmental justice. Yet as many of the less contentious technological pieces of the sustainability transition are moving forward, more distributional, behavioral, and institutionally complex measures are stalling. Despite strong political will for more infill housing, expanded public transportation, cleaner energy, more resilience in the face of fire and drought, and equitable environmental outcomes, the state is not on pace to meet many of its own environmental goals.

Many of the barriers are not technical – or even financial. They are institutional.

Housing and land use reform are constrained by excessive local veto points, as well as by campaign finance dynamics that leave elected officials vulnerable to narrow and well-resourced interests. Public transportation funding is in crisis due to ballot supermajority requirements. Many sustainability priorities are nearly impossible to fund – or can only be funded through highly regressive mechanisms – as a result of constitutionally embedded taxation limits passed a generation ago.

Meanwhile, workaround and niche policies are continually layered on top of existing statutory and constitutional provisions. This is the natural result of a system where it is much easier to adopt new laws by citizen initiative than it is to dismantle or recalibrate existing ones. Many policies cannot be sunset or amended without a statewide popular vote, in a process that is highly vulnerable to interference by narrow and well-resourced interests. As the public finds itself weighing often over a dozen initiatives in a single election – many of them overly technical, ideologically framed, narrow, or insufficiently thought through – democratic legitimacy erodes.

Yet California's system is not simply a case of too much direct democracy, nor of too much power held by organized interests. Rather, these elements are poorly balanced within a system that creates insufficient space for iterative, inclusive deliberation – while also misallocating the flexibility and certainty that are both necessary for good government. The unfortunate result is often multi-decadal entrenchment of measures that do not serve California's broader interests. Whether passed by only a limited and fleeting coalition, never subjected to an appropriate level of public deliberation and iteration, or simply no longer suited to today's needs and values, such measures remain extraordinarily difficult to revise or repeal.

This matters for sustainability. California's clean energy, clean transportation, climate resilience, and environmental justice commitments depend not only on technical solutions or policy ambition, but also on institutional capacity and adaptability. A state that cannot efficiently fund transit, manage droughts and wildfires, build abundant infill housing, or maintain enough in-house legislative capacity to govern will struggle to deliver on its environmental commitments. A system of governance that does not distinguish ordinary law from constitutional law, temporary political preference from durable societal commitment, or popular input from well-financed capture will likewise struggle to maintain the democratic legitimacy and trust necessary for transformation.

This paper therefore frames constitutional modernization not as abstract democratic reform, but as institutional infrastructure necessary for sustainability transformation. It is motivated by the following fundamental research questions:

- What is not working well in California's state-level lawmaking processes, and what are the sustainability implications?
- How could California's democracy better address different "levels" of lawmaking, from ordinary laws to fundamental values, in order to support an orderly and sufficient sustainability transition?

Throughout, the paper explores how California could better:

- Combine and balance representative, deliberative, direct, and pluralist democracy;
- Strike the right balance between flexibility and certainty;
- Incorporate iterative, inclusive deliberation, considering both "big D" deliberation – facilitated events with sortition – and "small d" deliberative discussion among existing actors; and

- Adjust these democratic and procedural levers to suit the different levels of law and phases of the lawmaking cycle.

Using German federal and state systems for constitutional amendment, direct democracy, and deliberative democracy as illustrative case studies, it asks what California can learn from systems that strike different balances between direct, representative, deliberative, and pluralist democracy; offer more opportunities for iteration; and attempt to more clearly distinguish ever-shifting political priorities from durable values and structural commitments.

The argument is not that California should copy Germany or Berlin, nor that it abandon its existing systems. Germany's systems have their own trade-offs, including higher barriers to direct democracy in the federal states (and, as in the United States, no direct democracy at the federal level). Yet Germany offers useful contrasts: a more amendable federal constitution with strong substantive guardrails; state-level direct democracy with higher signature thresholds, turnout requirements, and substantive involvement from elected and appointed leaders; and a growing practice of deliberative democracy to deepen public input beyond just voting.

Developed during a two-month research fellowship in Germany, this practitioner-oriented paper is necessarily exploratory – a jumping-off point for sustainability professionals and advocates, political leaders, and members of the general public interested in democratic reform. It does not attempt to provide definitive answers or a comprehensive legal comparison. Indeed, there is no single “best” constitutional design – all involve trade-offs. Instead, this paper synthesizes practical principles relevant to constitutional modernization, informed by a targeted review of German and Californian law and literature, expert interviews, and reflections from the author's prior work in housing, energy, transportation, and environmental governance. An initial discussion of theoretical frameworks clarifies the paper's underlying concepts; readers primarily interested in California's governance challenges or the German comparison may wish to skim this framing.

Taken together, the paper invites further public discussion grounded in real-life alternatives found in Germany, and in a vision of democratic systems capable of delivering the sustainability results California needs: environmental justice; clean air and water; low-carbon, affordable housing and transportation systems; and thriving human and natural ecosystems.

2 Theoretical frameworks for statutory and constitutional change

Dating at least to Thomas Jefferson's argument that society should not be governed by the “dead hand” of prior generations,¹ legal scholars have generally been in agreement that both laws and constitutions must change with time – at least to some degree. Whether due to changing circumstances, evolving values, or simple human fallibility, rules that seemed appropriate when adopted may eventually fail to meet societal needs. Yet to what degree change is necessary and how that change should occur is subject to significant debate.

The below frameworks, in addition to being helpful lenses for discussing democratic reform, also offer a systemic way to consider the societal values being operationalized by a constitution. Federalist ideals, distrust of politicians, distrust of the public, trust in future generations, fear of authoritarianism, commitment to specific human rights, and

¹ McGinnis, John O. and Rappaport, Michael B., *Symmetric Entrenchment: A Constitutional and Normative Theory*, at 18. Available at SSRN: <https://ssrn.com/abstract=417263> or <http://dx.doi.org/10.2139/ssrn.417263>

commitment to protecting nature – all can find voice in the rules for adopting and amending laws and constitutions.²

2.1 More sensitive subjects require greater care across the lawmaking cycle

While the following sections go into detail on the mechanics of lawmaking, it may be helpful to begin with the normative concept that **more sensitive topics should be subject to greater care in the lawmaking process**, in order to minimize the chances of highly negative outcomes.

Likewise, **less care and certainty should be required of less sensitive topics**, in order to preserve flexibility to govern efficiently and respond swiftly to changing circumstances.

Sensitive laws may include those where a mistake may have widespread, dramatic economic or public health consequences; those that relate to the underlying rules of governance; or those that constitute a fundamental aspect of the social contract and societal values.

TABLE 1 LEVELS OF LAW, FROM LEAST TO MOST SENSITIVE

Sensitivity	Type or Level of Law
1 – Lowest	Ordinary law
2	Sensitive law
3	Governing process
4	Fundamental structure
5 – Highest	Fundamental values

Source: Author's own compilation

Indeed, many governmental systems differentiate between regular laws, particularly sensitive laws such as those addressing fiscal policy or basic values, foundational rules that are placed in the Constitution, structural rules whose revision would constitute a major revision of the democratic system, and/or essential values statements.

Germany, for example, has an unchangeable *eternity clause* protecting its federal structure, fundamental rights, and other core principles. California has a more stringent process for major State Constitutional revisions than it does for standard State Constitutional amendments.

Process qualities that may increase lawmaking/implementation care and certainty

- Informed participants
- Representative participants
- Inclusive engagement
- Deliberative
- High-consensus
- Sentiment persists over time

Source: Authors own compilation, adapted from existing frameworks³

There are many ways to incorporate “increased care” into all phases of the lawmaking cycle – from law initiation through deliberation and authoring, adoption, and finally implementation. Forms of care include ensuring that participants are well-informed, incorporating inclusive deliberation, integrating a larger or more representative group of people into the process, and requiring a greater degree of consensus or sentiment persistence.

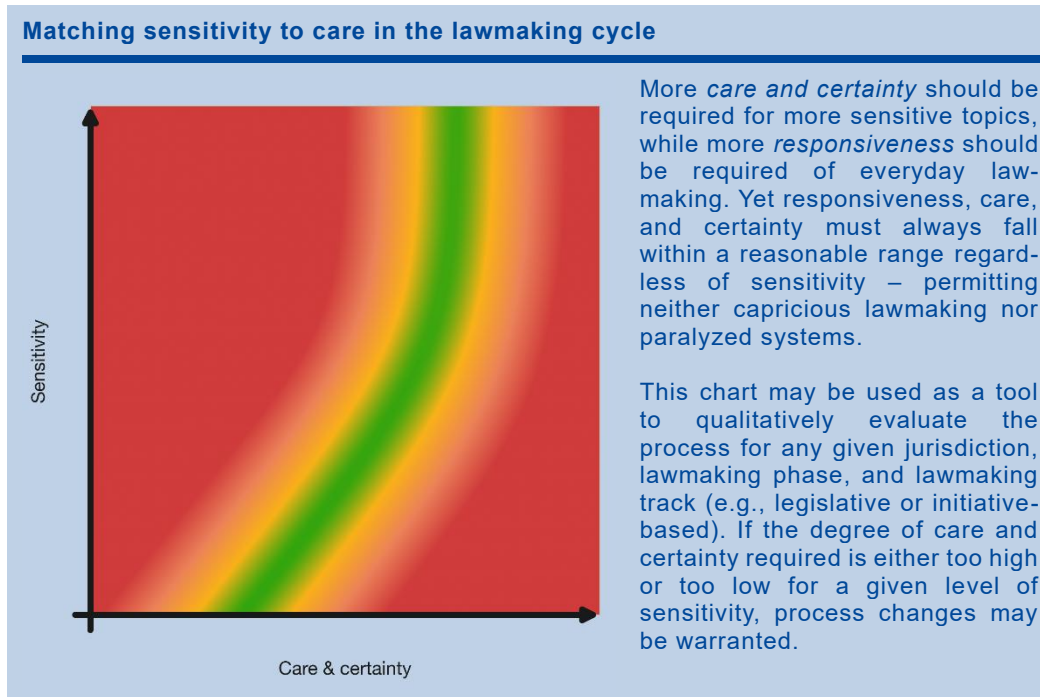
Each of these forms of care can support more thoughtful lawmaking and implementation, when they are designed to work together as part of a coherent system. Yet they can also

² Lutz, “Toward a Theory of Constitutional Amendment,” APSR 88(2): 355–370 (1994), at 356–357.

³ For a detailed treatment of democratic process qualities – in particular the informed, representative, inclusive, and deliberative criteria – see OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on Democratic Lawmaking for Better Laws* (Warsaw: OSCE/ODIHR, 2023), https://odihr.osce.org/sites/default/files/ff/documents/a/3/558321_3.pdf. See also the Amendment Difficulty Index and specifications discussed in Sections 2.2 and 2.3, respectively.

make the process harder and more time consuming – risking capture by better-resourced actors or status quo bias if implemented unevenly or to excess.

The information box that follows illustrates the associated concept that the degree of care, certainty, and responsiveness in lawmaking should therefore be appropriately matched to the degree of sensitivity of the topic being considered – from everyday lawmaking to foundational change. This concept reflects a synthesis of themes that arose in expert interviews, the author's personal experience and observations, and the amendability and reversibility frameworks described in Sections 2.2 and 2.3.



Source: Author's own compilation synthesized from interviews, experience, and the existing frameworks described in Sections 2.2 and 2.3

2.2 Entrenchment and reversibility

In the context of Constitutional change, one useful metric is the Amendment Difficulty Index (ADI).⁴ The United States Constitution, with an ADI of 5.1, is one of the most difficult in the world to amend. Indeed, it has been amended only 27 times in nearly 250 years – including the Bill of Rights. Yet the result is not that the United States remains in total stasis. Rather, scholars argue, the task of modernizing the constitution occurs to a greater degree via judicial interpretation – a form of modification that is much more removed from popular sovereignty.⁵

For comparison, Germany has an ADI of 1.6 and has adopted 69 amendments since 1949.⁶ Other countries' Constitutions, such as those of New Zealand and Austria, face even fewer hurdles to amendment. Consistent with the concept that level of care needs to be properly tuned to the sensitivity of the subject matter at hand, scholars generally argue that ADI should be “moderate” – with constitutions neither too hard nor too easy to change.

The idea of *entrenchment* can also be used to describe both statutes and Constitutional amendments that are in some way protected from future repeal.⁷ Entrenchment approaches include supermajority thresholds, requiring two votes separated by an election, referenda on legislative action, unalterable provisions that are not subject to amendment, and similar hurdles to change.

While there is debate on what level or types of entrenchment are appropriate under what circumstances, this paper presents the concept of *symmetric entrenchment*, in which the

⁴ Lutz, *supra* note 2.

⁵ Lutz, *supra* note 2.

⁶ Two amendments were adopted in 2025. Amendments through 2024 are viewable at <https://www.bundestag.de/resource/blob/995980/dc7cf6b9b7a0b10c71f0870582847ed4/75-Jahre-Grundgesetz-Aenderungen-des-Grundgesetzes-seit-1949.pdf>.

⁷ McGinnis & Rappaport, *supra* note 1.

threshold to repeal statutes and amendments is equivalent to the threshold originally required to adopt them.

Proponents of symmetric entrenchment admit that it may be wise to use entrenchment mechanisms to insulate and protect the most critical aspects of policy and government – such as fiscal policy or basic human rights. Yet proponents also acknowledge the inevitable need for change with time, and resolve this tension by demanding that with an equivalently high level of political will, past decisions should be reversible.⁸

2.3 Amendability frameworks

One framework for considering how governments operationalize entrenchment is the idea of *single-* or *multi-track* amendment methods and *restricted, comprehensive, or exceptional* scope for any given method.⁹ While scholar Richard Albert originally applied this concept to constitutional amendments, it could also be applied to statutory law and constitutional revisions.

Multi-track amendment describes systems with more than one path to adopt a given amendment – for example via citizen initiative or legislative action, as is the case for the California Constitution. Single track systems only offer one method for a given amendment type – for example, at the federal level in Germany, citizen initiative is not available as an alternative track to legislative action.

Restricted (and *exceptional*) systems, meanwhile, express societal emphasis on certain core elements (or single element) by instituting a more challenging process (or additional steps) to amend them. For example, the United States has a special, particularly challenging rule for amendment of state representation in the Senate – making its constitution exceptional. Comprehensive systems, in contrast, do not establish any special hurdles for specific types of amendments. For example, a two-thirds legislative majority is sufficient for all otherwise-legal amendments at the federal level in Germany.

Albert also describes *specifications* that further impact the ability of a constitution to be amended with time. These include supermajority requirements, subject matter restrictions (e.g., German state citizens' initiatives generally cannot address fiscal matters), signature thresholds to be placed on the ballot, quorum requirements (total turnout or votes in favor), requirements for delays or multiple votes, and public referenda. These specifications can be considered forms of *increased care* required of the lawmaking process.

Importantly, systems that may seem amendable in theory may not be in practice, if too many specifications are layered onto the basic structure. Albert further notes that there is a delicate balance between adaptability and rigidity. A constitution that is too adaptable risks poor decision-making and a collapse of constitutional protections. A constitution that is too rigid risks paralysis or eventual rupture.

This trade-off between adaptability and rigidity echoes the concept of *appropriate level of care and certainty* introduced above. Ultimately, the details of amendability design greatly shape how stable or adaptable a government's legal system is, how legitimate change seems, and how power is distributed in society.

2.4 Democratic models, actors, and phases

2.4.1 Democratic models

Most modern democracies are primarily *representative democracies* (lawmaking by elected representatives), yet many also include a role for *direct democracy* (lawmaking by voters).

The two options are not mutually exclusive, and their interplay may be complex: some lawmaking processes may use one route, some may use the other, some may use both at different stages, and some may incorporate the incentive or threat of one mode as a democratic input and nudge toward action via the other mode.¹⁰

⁸ McGinnis & Rappaport, *supra* note 1.

⁹ Albert, Richard, The Structure of Constitutional Amendment Rules (March 1, 2014). 49 Wake Forest Law Review 913 (2014), Boston College Law School Legal Studies Research Paper No. 326. Available at SSRN: <https://ssrn.com/abstract=2461507>.

¹⁰ Altman, David. (2011). Direct Democracy Worldwide. 10.1017/CBO9780511933950, https://www.researchgate.net/publication/288427223_Direct_Democracy_Worldwide.

Alongside these two democratic models, *pluralist democracy* emphasizes the substantial role of *organized interests* in political decision-making. Business, labor, media, advocacy, and other organizations are seen as competing and negotiating to shape policy and, ideally, produce broadly legitimate outcomes.¹¹

More recent theories of political agenda-setting and decision-making, such as *deliberative democracy*, can overlay or straddle the above paradigms – or can be viewed as distinct alternatives.

Unlike debate (participants persuading others to adopt their position) and discussion (exchange that need not have a defined conclusion or outcome), *deliberation* requires participants to consider relevant information, weigh the consequences of different potential choices, adopt and apply a shared basis for evaluating trade-offs, and work toward a decision – whether on priorities, recommendations, or a final determination – that reflects common ground.¹²

A deliberative democracy is thus one that incorporates deliberative events and processes throughout government, reflecting the theory that political decision-making should flow from fair and reasonable discussion among citizens. A deliberative democracy aims to create a solid information base, prioritize key values, identify a broad range of solutions and weigh their pros and cons, adequately distribute the opportunity to be heard and ensure mutual comprehension, consider diverse ideas and experiences, establish an atmosphere of mutual respect, and ultimately make better decisions.¹³

The modern theory of deliberative democracy first emerged in the 1980s, notably through the work of Jane Mansbridge and Jürgen Habermas, and has since been expanded upon by John Dryzek and others.¹⁴

One increasingly studied deliberative democratic innovation is a deliberative mini-public or citizens' assembly. In a citizens' assembly, a demographically representative group of residents or citizens is selected by lottery to be provided with expert information and facilitation, and is tasked with discussing and deciding on any given matter placed before them. This process is contrasted with typical community engagement or closed-door discussions in that participants are not chosen via organized interests or self-selection, and the deliberation is not a debate, negotiation, or solicitation of opinions. Other deliberative processes include civil grand juries and citizen ballot initiative reviews.¹⁵

2.4.2 Democratic actors and phases

Deliberative democracy advocates Leibfried, Berg, and Behrendt argue that the above *democratic models* (representative, direct, deliberative, and pluralist) can be expanded to consider *democratic actors*, as shown in Figure 1 below.¹⁶ One could also consider incorporating residents who do not vote (including non-citizens and children) as a further set of actors.

Any democratic actor can theoretically engage in any phase of the lawmaking cycle: (1) *initiation*, or what topic(s) should be considered in the process, (2) *deliberating and authoring*, or issue framing and recommendations to address the topic, (3) a *decision* on whether to adopt some or all recommendations, and (4) *implementation* of the decision.

Combining actor/phase steps for any given governmental decision-making process (e.g., A1 → A2 → A3 → A4 for a linear, government-driven process) allows for that system to be classified, enabling a more theoretically grounded discussion of what may be working well and where certain voices or processes may be either overly dominant or missing.

¹¹ Dahl, Robert A. *Pluralist Democracy in the United States: Conflict and Consent* (Chicago: Rand McNally, 1967).

¹² OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>, at p. 11.

¹³ John Gastil and Robert Richards, "Making Direct Democracy Deliberative through Random Assemblies," *Politics & Society* 41(2): 253–281 (2013) and OECD, *supra* note 12 at p. 12.

¹⁴ See for example Mansbridge, Jane J. *Beyond Adversary Democracy* (New York: Basic Books, 1980); Habermas, Jürgen. *Theorie des kommunikativen Handelns* [The Theory of Communicative Action], 2 vols. (Frankfurt am Main: Suhrkamp, 1981); and Dryzek, John S., *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford, 2002; online edn, Oxford Academic, 1 Nov. 2003), <https://doi.org/10.1093/019925043X.001.0001>.

¹⁵ OECD, *supra* note 12 at p. 33.

¹⁶ Leibfried, Marina, Carsten Berg, and Peter Behrendt, "Citizens' Assemblies PLUS: No Transformation Without Implementation," Berlin Institut für Partizipation (bipar), December 2023. English translation of *Der Bürgerrat PLUS: Ein Bürgerrat mit Umsetzungsbegleitung*. Available at <https://www.buergerrat-plus.eu/en> or https://irp.cdn-website.com/def3e8f8/files/uploaded/Leibfried_Berg_Behrendt_Citizens+Assemblies+PLUS_2023_english.pdf.

FIGURE 1 DEMOCRATIC MODELS, ACTORS, AND PHASES OF LAWMAKING

Democratic Models	Phases	Initiation (1)	Deliberating & Authoring (2)	Decision (3)	Implementation (4)
	Actors				
Representative Democracy (A)	 Government Officials (A)	A1	A2	A3	A4
Deliberative Democracy (B)	 Randomly Selected Citizens (B)	B1	B2	B3	B4
Direct Democracy (C)	 All Eligible Voters (C)	C1	C2	C3	C4
Pluralist Democracy (D)	 Organized Interests (D)	D1	D2	D3	D4

Source: Author’s illustration, adapted from Leibfried, Berg and Behrendt (2023). The icons and color coding in this figure are utilized to identify primary political actors throughout the flow charts in this paper, as in Figure 2 below.

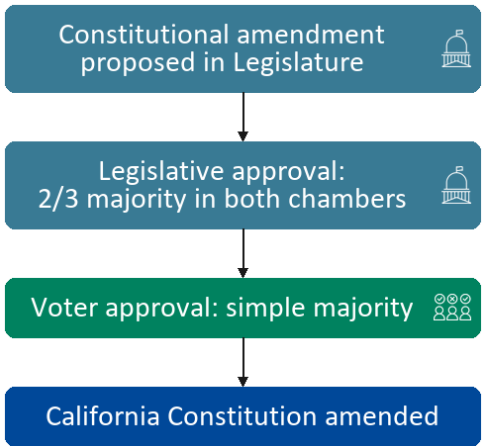
3 Amendments and initiatives in California

In California, both laws and constitutional amendments can be initiated by either the Legislature or citizen initiative, making for a multi-track system under Albert’s framework.¹⁷

The processes for constitutional amendments and statutory initiatives are shown in flow charts throughout this section, using the primary actor color coding and corresponding icons from Figure 1.¹⁸

They stand out for their emphasis on low-threshold direct democracy (green with voters icon) and constrained role for the Legislature (teal with capitol icon).

FIGURE 2 CONSTITUTIONAL AMENDMENT IN CALIFORNIA – LEGISLATIVE TRACK



Source: Author’s own illustration; colors and icons from Figure 1

¹⁷ Note that this paper does not address the process for major structural changes to the state Constitution, which are called revisions rather than amendments. Revisions have a distinct process featuring a Constitutional Convention – making California a “restricted” system under Albert’s classification.

¹⁸ Procedural steps often involve multiple actors. Examples include signature gathering (organized interests and eligible voters) or negotiation (organized interests and government officials). For simplicity, only one “primary” actor is selected to determine the icon and color for each step in the flow charts.

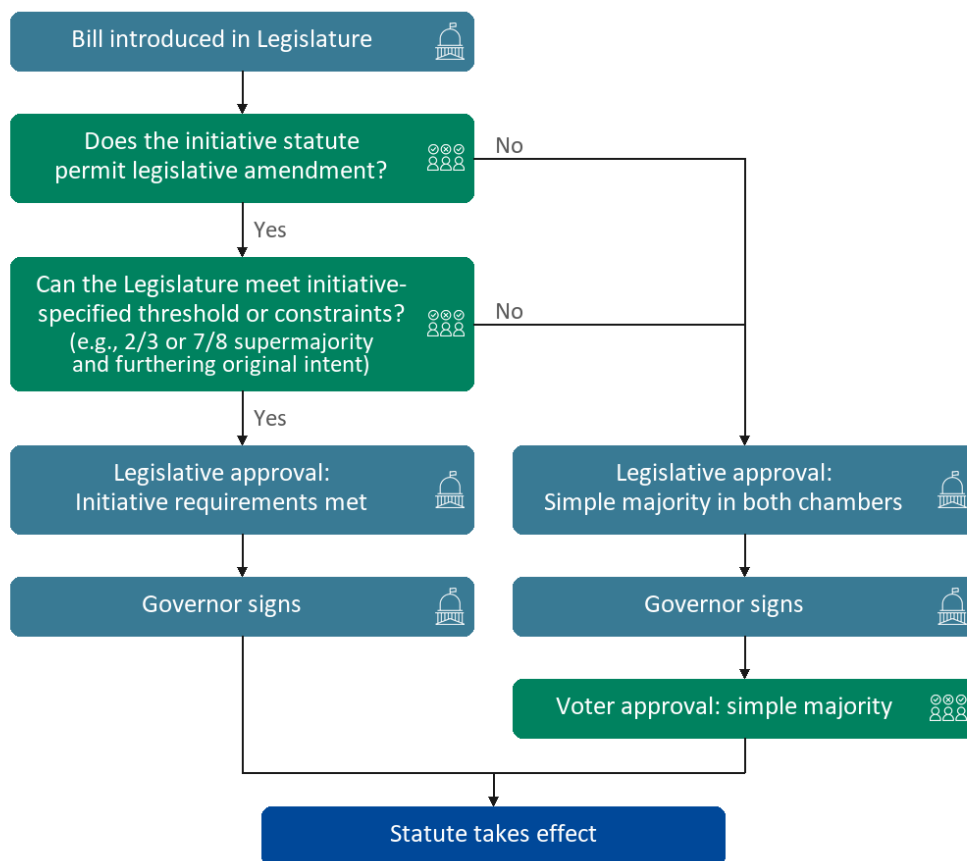
3.1 Direct democracy placed above representative democracy, constraining the Legislature

Unless a statutory initiative specifically permits it, the Legislature and Governor cannot amend or repeal that statutory initiative without sending their proposed modification back to the voters for simple majority approval.¹⁹ This process could be viewed as either A2 → A3 → C3 or A2 → C3 in Leibfried's actor-phase framework and is summarized in Figure 3.

Initiatives that permit the option of modification without a voter referendum may and generally do include stringent requirements for the legislative approval pathway, above and beyond the simple majority required for ordinary statute.

A two-thirds supermajority in the Legislature is a common requirement. Initiatives may also only permit use of this pathway for amendments that further the intent of the original initiative. One extreme example is Proposition 22 (2020), which requires a seven-eighths majority to amend in the Legislature and limits such amendments to those that further the original intent of the initiative.²⁰

FIGURE 3 PROCESS TO AMEND OR REPEAL INITIATIVE STATUTE IN CALIFORNIA – LEGISLATIVE TRACK



Source: Author's own illustration

Similarly, while direct democracy alone can be used to amend the State Constitution (see Figure 4 below), the Legislature cannot amend the Constitution without a voter referendum. As shown in Figure 2, no matter the topic or sensitivity of the amendment, direct democracy is the final decision-making step (C3).

In effect, the representative branches of state government are either formally or functionally largely prohibited from independently amending (or repealing) both constitutional provisions and statutory initiatives. Expressed in Leibfried's framework, the A3 → A4 pathway to change past C3 decisions is limited or non-existent. In stark contrast,

¹⁹ More information at California Department of Finance, "Initiatives and Ballot Propositions." <https://dof.ca.gov/budget/initiatives-and-ballot-propositions/>

²⁰ Codified at Cal. Bus. & Prof. Code § 7465. Proposition 22 is discussed in greater detail in Section 3.2, *Low signature thresholds lead to voter overwhelm and niche capture*, below.

voters can independently adopt both statutory and constitutional measures on any topic, with a simple majority.

The environmental consequences of this subordinate and constrained role for representative democracy can be significant. For example, during California's 2011-2017 drought many water agencies attempted to incentivize water conservation by charging "tiered rates," in which high marginal water usage would be charged at higher rates than low-level base usage. Yet in 2015, the courts prohibited this practice, finding that it violated an initiative constitutional amendment, Proposition 218, which had been sponsored by the Howard Jarvis Taxpayers Association in 1996.²¹

Unable to independently modify or repeal Proposition 218, the Legislature was left with limited room to maneuver. While the Legislature was able to pass a workaround law requiring penalties for excessive water use,²² the state lost valuable time in responding to the crisis and was forced to divert energy towards lawsuits and legal workarounds, instead of efficiently moving forward with common-sense water conservation policies during the state's worst drought on record.

3.2 Low signature thresholds lead to voter overwhelm and niche capture

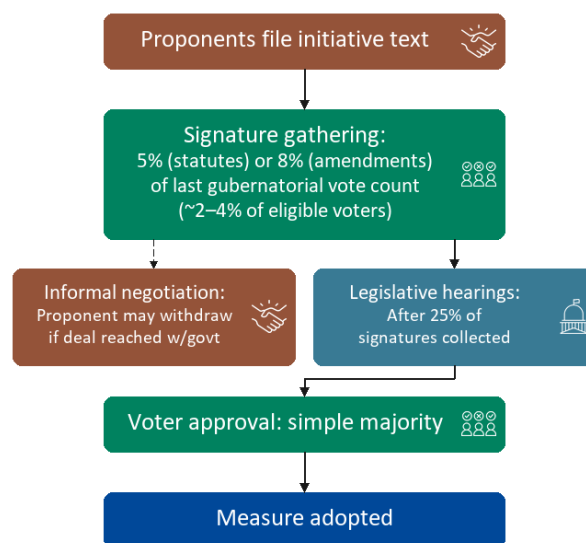
With only 2-4% of eligible voter signatures required to put a proposed initiative constitutional amendment or initiative statute on the ballot (see Figure 4), almost any question can be put to voters by sufficiently well-resourced or well-motivated interests (D1, D2).

Indeed, a large number of initiatives qualify for the ballot in almost every statewide election – in addition to any amendments, bonds, or other propositions referred by the legislature for voter approval.

From 1990 through 2025, an average of five constitutional amendment or statutory initiatives qualified for the ballot each year.²³

With initiative propositions now limited to statewide general election ballots (every other year) this corresponds to an average of ten qualifying initiatives per general election.

FIGURE 4 INITIATIVE PROCESS IN CALIFORNIA



Source: Author's own illustration

The large number of qualifying initiatives represents a significant burden on voters to educate themselves about issues that may be highly complex. Initiatives can cover almost any subject, from commercial property taxes to dialysis labor law. Many eligible voters respond by following the endorsements of trusted organizations or influencers, or by simply not voting on initiatives at all.

The combination of a low signature threshold with relatively low turnout on initiatives and unlimited campaign expenditures thus enables well-funded or well-mobilized special interests to successfully pass statutes or amendments on complex, nuanced subjects that a better-informed majority might well oppose.

²¹ *Capistrano Taxpayers Ass'n, Inc. v. City of San Juan Capistrano*, 235 Cal. App. 4th 1493 (2015), <https://law.justia.com/cases/california/court-of-appeal/2015/q048969.html>.

²² California SB 814 (2016), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB814.

²³ California Secretary of State. "Initiative Totals by Summary Year (1912 – July 1, 2025)." Elections Division, California Secretary of State, 2025. <https://elections.cdn.sos.ca.gov/ballot-measures/pdf/initiative-totals-summary-year.pdf>

For example, in 2020 ride-hailing and delivery companies spent over \$200 million to successfully pass Proposition 22.²⁴ The initiative, which secured favorable, arguably exploitative labor conditions for these companies, also has the negative environmental externality of increasing driving.

In Leibfried's actor-phase framework, this could be viewed as a weakened form of direct democracy decision-making (C3) that has become captured or dependent upon organized interests' decision-making (D3).

As described further in *Polarization instead of representative deliberation*, below, that dependency does not just reduce deliberative quality – including exposure to accurate and relevant information and a diversity of perspectives, as well as the ability to weigh trade-offs and find common ground. It also erodes democratic legitimacy as voters are both overwhelmed by the large number of propositions and aware that special interests may be attempting to take advantage of the openness of the process to exercise undue influence.

Even when the public is able to see through corporate efforts to secure favorable propositions and the measure fails, the low threshold for ballot qualification creates a threat to environmental action and consumes limited advocacy resources.²⁵

Sustainability sector examples include a 2010 effort to suspend California's landmark greenhouse gas reduction law, AB 32. The initiative received over \$10 million in funding, almost entirely from oil and gas companies, and was referred to by supporters as the California Jobs Initiative. The opposition campaign, meanwhile, received nearly \$32 million in donations that could otherwise have gone towards advancing sustainability, not defending it.²⁶

3.3 Near-identical initiative processes over-entrench statutory initiatives and under-protect the constitution

As the initiative flow chart above (Figure 4) shows, the processes for adopting an initiative statute and an initiative constitutional amendment in California are nearly identical. The only major difference is the number of signatures required to qualify for the ballot – either 5% or 8% of the votes cast in the last gubernatorial election.²⁷ Both thresholds represent a very small number of total eligible voters – roughly 2-4%.²⁸

Expressing the signature requirement as an absolute number – or as a percentage of eligible voters – further illustrates the near-identical requirements for initiative statutes and initiative constitutional amendments. For example, due to fluctuation in turnout, the 585,407 signature threshold – 2.41% of all eligible voters – for initiative constitutional amendments in 2015-2018 was *lower than the statutory initiative threshold* of 623,212 signatures – or 2.47% of all eligible voters – in 2019-2022.

As previously described, once an initiative statute is passed, it also cannot be simply repealed as in the case of ordinary legislative statute. Because most initiatives do not allow for easy repeal – there is no incentive for them to do so – the default pathway is via referral to a voter referendum for simple majority approval.

This threshold is the same as is required to pass an initiative constitutional amendment – representing a collapse of statutory and constitutional initiatives into nearly identical levels of entrenchment. This degree of rigidity in ordinary law is highly unusual and represents a departure from the common practice of having laws be easy to modify or repeal in response

²⁴ California Fair Political Practices Commission, "Top 10 Contributors List, November 2020 General Election." <https://www.fppc.ca.gov/search-filings/top-10-contributors-list/november-2020-general-election/>.

²⁵ For clearly unpopular initiatives, spending by private interests frequently fails to secure initiative success. See Gerber, Elisabeth R., *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation* (Princeton University Press, 1999).

²⁶ OpenSecrets, "California Proposition 23, Suspension of Greenhouse Gas Emissions Reduction Law Initiative," 2010. <https://www.opensecrets.org/ballot-measures/CA/2010/10246845/summary>.

²⁷ California Constitution, Art. II, §8(b). https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=SEC.+8.&nodeTreePath=3&lawCode=CONS&article=II

²⁸ Underlying data (voting-eligible population and gubernatorial vote count) available in the Statement of Vote publications linked from <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results>.

to changing circumstances, while additional protection is provided to the foundational governance elements found in constitutions.

Returning to Albert's framework for constitutional amendability, California's system could also be viewed as a multi-track restricted or exceptional framework for *statutory* laws, in which provisions originally established via initiative receive special protected status.

3.4 Asymmetric entrenchment in practice

The aforementioned protections for initiative statutes can also be viewed as a form of asymmetric entrenchment. If the Legislature wishes to amend or repeal any initiative statute, additional hurdles are placed relative to either the citizen-driven initiative track or the standard legislative process for amending or repealing non-initiative statute.

When amending or repealing initiative constitutional amendments, the Legislature-initiated track does not include more formal hurdles than a constitutional amendment otherwise would. However, amending the Constitution via legislative referral to a referendum inherently has more hurdles than the initiative constitutional amendment track. As a result, initiative constitutional amendments can also be viewed as easier for the public to pass than for the Legislature plus the public to remove – a muddy but nevertheless real form of asymmetry.

In theory, it could nevertheless be argued that initiative entrenchment is symmetric: a new initiative can always repeal an old one, whether statutory or constitutional. Yet in practice, this has not been the case. A new initiative may well reach the ballot, but the same well-funded or disproportionately high-turnout interests that passed the initiative in the first place can mobilize to protect it from repeal.

Recent examples include an attempt to amend initiatives from the 1970s and 1980s dramatically restricting local taxation and requiring two-thirds voter approval for raising property taxes to issue bonds.²⁹ The new constitutional initiative, which would have lowered the approval threshold to 55% for public infrastructure and affordable housing bonds, would have unlocked billions of dollars in funding for infill housing and public infrastructure that could support climate mitigation and adaptation.³⁰ Yet perhaps in part because homeowners concerned about property taxes are more likely to vote, this legislatively-referred proposition was unsuccessful.³¹

A key result of this asymmetric entrenchment has been billions of dollars in failed transit funding across the state – despite broadly popular measures receiving vote shares as high as 65%.³² Government and sustainability advocates' efforts have also been diverted to maintaining existing funding and service levels and pursuing inefficient workarounds in light of constitutional constraints, as opposed to focusing on expanding service to meet climate targets.³³

Given that passenger vehicles are California's largest source of greenhouse gas emissions, the inability to easily and efficiently fund energy-efficient transportation modes is a significant obstacle in the state's capacity for sustainability transformation.³⁴

²⁹ See Figure 5 in the Legislative Analyst's Office report *A Look at Voter-Approval Requirements for Local Taxes* for a summary of initiative-driven voter approval requirements for local taxes in California. Available at <https://lao.ca.gov/reports/2014/finance/local-taxes/voter-approval-032014.aspx>.

³⁰ Legislative Analyst's Office, "Proposition 5: Allows Local Bonds for Affordable Housing and Public Infrastructure With 55% Voter Approval. Legislative Constitutional Amendment," November 5, 2024, <https://lao.ca.gov/BallotAnalysis/Proposition?number=5&year=2024>.

³¹ See the arguments against Proposition 5 in the 2024 Official Voter Information Guide at <https://vig.cdn.sos.ca.gov/2024/general/pdf/complete-vig.pdf>, as well as a comparison of likely voter, infrequent voter, and unregistered adult demographics in California: Mark Baldassare, Dean Bonner, Lauren Mora, and Deja Thomas, "California's Likely Voters," Public Policy Institute of California, Fact Sheet, August 2025, https://www.ppic.org/wp-content/uploads/JTF_LikelyVoters/JTF.pdf. Election results available at <https://elections.cdn.sos.ca.gov/sov/2024-general/sov/complete-sov.pdf>.

³² Andrea Buffa, "What's Next After the Loss of Prop A?" San Francisco Municipal Transportation Agency (SFMTA), June 21, 2022, <https://www.sfmta.com/blog/whats-next-after-loss-prop>.

³³ See, for example: City and County of San Francisco, Office of the Controller, City Performance, Muni Funding Working Group: Solving for Muni's Funding Needs, July 2025, https://media.api.sfsf.gov/documents/Muni_Funding_Working_Group_Final_Report_9n2cEn7.pdf.

³⁴ California Air Resources Board, California Greenhouse Gas Emissions from 2000 to 2023: Trends of Emissions and Other Indicators (Sacramento: California Air Resources Board, 2025), fig. 5, "2023 GHG Emissions by Scoping Plan Sector and Sub-Sector," https://ww2.arb.ca.gov/sites/default/files/2025-11/nc-2000_2023_ghg_inventory_trends.pdf.

Case Study: Subsidized Affordable Housing (Article 34)

Over time, California has accumulated many entrenched measures. One example is Article 34, an initiative constitutional amendment that requires state or federally subsidized low-income housing developments to first be approved by voter referendum. Adopted as Proposition 10 in 1950, Article 34 barely passed with a 50.8% majority.³⁵ The campaign – which aimed to empower existing residents to block public housing – appealed heavily to white fear of racial integration as well as fear of socialism.³⁶

Though the Cold War has ended and California has committed itself to antiracism, Article 34 remains. Initiatives to repeal or significantly amend it failed in 1974, 1980, and 1993.³⁷ Additional legislative referral attempts have also failed, at least in part due to lack of initiative campaign funding.³⁸

The result of this functionally asymmetric entrenchment has been tens of thousands of infill homes blocked, as well as significant time and money spent on partial workarounds and failed repeal attempts.³⁹

The ensuing housing shortage and inefficient use of public resources directly impacts low-income people, who are more likely to be people of color. With less affordable housing in desirable areas, those without affordable housing must move to lower-cost areas with longer commutes and often more exposure to extreme weather. Meanwhile, local governments that wish to build more infill housing face yet another obstacle in implementing one of the highest-impact greenhouse gas mitigation policies available to them.⁴⁰

3.5 Polarization instead of representative deliberation

Beyond the above more quantitative aspects of the lawmaking and amendment processes, California's constitutional design also suffers from qualitative challenges.

For initiatives, organized interests filing the final text (D1, D2) is the very first step in the process. As a result, iteration and broad public deliberation around framing, authoring, and potential solutions (B2, C2) are largely precluded. Yet there *is* an opportunity for informal deal-making by the Legislature and the Governor's office (A2, A3, D3). This informal process is often pursued if it seems that an initiative is likely to succeed and elected representatives would prefer a different resolution to the issue than that presented in the initiative.

Recognizing this dynamic, California explicitly allows for withdrawal of initiatives that qualify for the ballot, if the proponents feel that their concerns have been sufficiently addressed through other routes. However, initiative proponents are free to decline any compromise offers, and there remains no direct or early path for public discourse to influence either issue framing or measure language.

Once an initiative is filed, the signature gathering and voting phases also do not support deliberation. Signature gatherer outreach is not highly regulated and does not offer a solid information base for signatories in considering whether to send measures to the ballot. An excessive number of biased, niche, highly complex, or poorly drafted measures present a challenge for voters attempting to understand the issues and weigh their choices. Lack of campaign expenditure and timing limits leads to overwhelming and often deceptive media

³⁵ PUBLIC HOUSING PROJECTS. REQUIRING ELECTION TO ESTABLISH California Proposition 10 (1950), https://repository.uclawsf.edu/ca_ballot_props/516.

³⁶ Liam Dillon, "Why It's Been So Hard to Kill Article 34, California's 'Racist' Barrier to Affordable Housing," Los Angeles Times, March 14, 2022, <https://www.latimes.com/california/story/2022-03-14/why-killing-article-34-on-affordable-housing-has-been-hard>.

³⁷ Barboza, David J., *Grappling with Article 34 of the California Constitution* (Los Angeles: Abundant Housing LA, December 2022), <https://abundanthousingla.org/wp-content/uploads/2023/01/Article-34-Workarounds-Research-Paper.pdf>.

³⁸ Zuloaga, Joseph, "California Shelves Repeal of 1950 Housing Law That Stoked Racial Tension," KQED, updated July 15, 2024, <https://www.kqed.org/news/11991827/california-shelves-repeal-of-1950-housing-law-that-stoked-racial-tension>.

³⁹ Dillon, *supra* note 36.

⁴⁰ California Air Resources Board, California Local Government Climate Policy Tool, CoolCalifornia, <https://coolcalifornia.arb.ca.gov/california-local-government-climate-policy-tool> (developed and © 2018 by the CoolClimate Network, UC Berkeley).

campaigns that may make it harder for voters to understand how the measures relate to their key values and can drown diverse ideas in a flood of one-sided campaign ads.⁴¹

In the example of Proposition 22, the ride-hailing and delivery initiative discussed above, over \$200 million in campaign funding – ten times the opposition funding – was available to overwhelm voters with the biased message that voting no would cost gig workers their jobs, while voting yes would offer them flexibility, higher wages, and healthcare. Beyond the airwaves, corporate backers reached both drivers and customers with mandatory in-app messages, as well as branded delivery bags and stickers placed in deliveries.

Lyft and Uber were also cited for failing to include ad disclosures on some campaign advertising. Yet the negligible fines – just a few thousand dollars – did nothing to prevent the initiative from appearing on the ballot or becoming law.⁴²

This initiative was not the only expensive campaign in that election year. Indeed, hundreds of millions of dollars in campaign funding also went to other initiatives, from property tax reform to dialysis regulation, further flooding voters with political advertisements.⁴³

Meanwhile, for legislative lawmaking, legislators' hands are often tied by past initiatives that constrain their capacity to govern. As previously described, many other items must be referred to a voter referendum – including taxes to fund public transit, affordable housing, or other aspects of the sustainability transition. Instead of deliberative compromise in the Legislature (A2 → A3), fiscal and other policymaking must therefore be framed in ways that poll well with voters, attract campaign donations, and can withstand attack ads.

Lawmakers are also chronically underfunded and under-resourced, further contributing to polarization and special interest capture. Due to a 1990 initiative constitutional amendment, operational budgets – including staff salaries – are tightly capped, limiting the ability of lawmakers to independently draft, evaluate, and amend bills.⁴⁴

Another initiative, passed in 1988, prohibited public financing of elections in an attempt to stem corruption.⁴⁵ However, the result has been an inability to counter unlimited private campaign funds and lawmakers' ever-increasing dependency on special interests in order to be re-elected – further contributing to polarization, lack of deliberation, and ultimately lack of balanced representation. In a rare sign of the magnitude of this challenge, there is currently a legislatively referred proposition for the 2026 election year to repeal the prohibition and permit public financing.⁴⁶

Whether in the legislative or initiative processes, lack of deliberation – such as via citizen assemblies, deliberative ballot measure drafting or analysis, collaboration between mini-publics and government representatives, or other deliberative practices – ultimately yields greater polarization, poor framing, and capture by special interests. And while there are increasing efforts to hold deliberative events in California, these have generally been individual local or regional events rather than systemic integration into existing state processes.⁴⁷ It is thus no wonder that while many Californians are deeply attached to direct democracy, they are simultaneously deeply frustrated by its implementation in practice.⁴⁸

⁴¹ Lack of campaign limits are in part due to the *Citizens United* U.S. Supreme Court case determining that independent corporate campaign expenditures are a form of free speech. This federal interpretation constrains any limits that California might attempt to adopt. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

⁴² Washington Post, "California Voters Say They Regret Passing Prop 22 After Uber and Lyft Misinformation," November 17, 2020, <https://www.washingtonpost.com/technology/2020/11/17/uber-lyft-prop22-misinformation/>; The Markup, "Gig-Worker-Based Tech Companies Are Throwing Everything at a California Election," October 30, 2020, <https://themarkup.org/election-2020/2020/10/30/prop-22-california-gig-workers-uber-lyft-doordash-instacart>; FPPC, "FPPC Enforcement Decisions: July 2021," <https://www.fppc.ca.gov/news-releases/2021/fppc-enforcement-decisions-july-2021/>; FPPC, "FPPC Enforcement Decisions: February 2021," <https://www.fppc.ca.gov/news-releases/2021/fppc-enforcement-decisions-february-2021>.

⁴³ CalMatters, "California 2020 Election Guide," <https://calmatters.org/election-2020-guide/> (links to individual pages for each 2020 ballot measure, including campaign funding totals for supporters and opponents).

⁴⁴ California Constitution, art. IV, § 7.5 (adopted Nov. 6, 1990, Prop. 140), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=SEC.+7.5.&lawCode=CONS&article=IV.

⁴⁵ Campaign Funding. Contribution Limits. Prohibition Of Public Funding. California Proposition 73 (1988), https://repository.uclawsf.edu/ca_ballot_props/990.

⁴⁶ California SB 42 (2025–26), California Fair Elections Act of 2026 (chaptered Oct. 2, 2025, ch. 245), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB42.

⁴⁷ One of the most significant examples of deliberative democracy in California to date has been the Los Angeles Charter Reform process (2025–26), which convened a series of mini-assemblies and a main civic assembly of randomly selected residents to deliberate on proposed city charter reforms. More information available at Rewrite LA, <https://www.rewritelat.org/>.

⁴⁸ See PPIC Statewide Survey: Californians and Their Government, September 2024, <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-september-2024/>. Key figures: 79% of voters support the existence of initiatives and 87% say they bring up important yet inadequately addressed issues. However, 87% say ballot wording is often too complicated and confusing and half think the process is controlled "a lot" by special interests. 70-79% support more opportunities for deliberation: town halls, televised debates, and independent review.

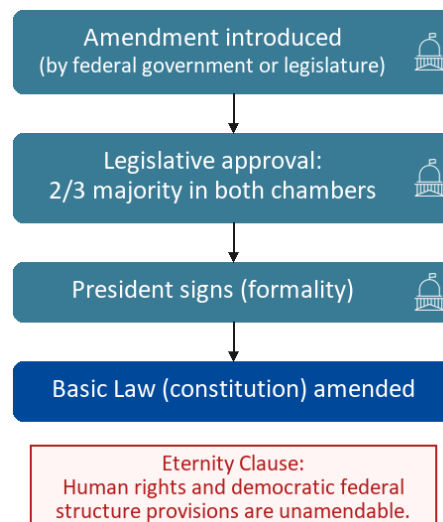
4 Exploring alternatives: Lessons from Germany and Berlin

While it is beyond the scope of this paper to propose a comprehensive reform agenda, it is nevertheless instructive to consider the processes for constitutional amendment and citizen initiatives in Germany and its federal states and to observe how they differ from California's processes.⁴⁹

In observing Germany's processes, it is important to keep in mind that no system is perfect and not all lawmaking in Germany is harmonious.

Some constitutional amendments are in fact highly controversial, such as recent changes to allow greater debt and investments in defense and infrastructure.⁵⁰ Others, such as amendments entrenching key structural features of the Federal Constitutional Court, have been more consensus-based.⁵¹

FIGURE 5 FEDERAL CONSTITUTIONAL AMENDMENT PROCESS IN GERMANY



Source: Author's own illustration

4.1 No federal-level direct democracy

Most notably, there is a much-reduced role for direct democracy in all phases of the political process. At the federal level, Germany's Basic Law (its constitution) does not provide for direct democracy. This is often viewed as a response to negative experiences with direct democracy during the Weimar and Nazi periods.⁵²

While the two-thirds bicameral approval for constitutional amendments matches California's two-thirds legislative approval requirement for legislatively initiated amendments, overall Germany has an inherently lower amendment difficulty than California's legislative pathway due to the absence of a voter referendum as a final hurdle. As previously noted, the German Constitution has been amended 69 times since its initial adoption.

⁴⁹ For the complete German constitution, see Basic Law for the Federal Republic of Germany (Grundgesetz) (Germany), May 23, 1949, as amended, https://www.gesetze-im-internet.de/englisch_gg/.

⁵⁰ David McHugh, "Germany to Ease Government Debt Limits in Major Step Aimed at Boosting Economy, Defense Spending," Associated Press, March 5, 2025, <https://apnews.com/article/germany-ukraine-debt-brake-economy-military-spending-74be8e96d8515ddddd53a99a69957651>; Deutscher Bundestag, "Mehrheit für Reform der Schuldenbremse: 512 Abgeordnete stimmen mit Ja," March 18, 2025, <https://www.bundestag.de/dokumente/textarchiv/2025/kw11-de-sondersitzung-1056228>. Passed during a lame duck session, with 69.8% of Bundestag members voting in favor - just over the two-thirds majority required.

⁵¹ Deutscher Bundestag, "Änderung im Grundgesetz zum Bundesverfassungsgericht beschlossen," December 19, 2024, <https://www.bundestag.de/dokumente/textarchiv/2024/kw51-de-bundesverfassungsgericht-1033220>.

⁵² Schiller, T. (2011). Local direct democracy in Germany – varieties in a federal state. In: Schiller, T. (eds) Local Direct Democracy in Europe. VS Verlag für Sozialwissenschaften. https://doi.org/10.1007/978-3-531-92898-2_3. Note: there is one narrow provision for direct democracy at the federal level, which is the redrawing of state borders.

4.2 Federalism with state-level variation

As in the United States, each German federal state has a distinct state constitution, with democratic processes varying slightly from state to state.

States also have differing democratic norms and culture. Bavaria is widely considered to have more cultural emphasis on direct democracy, while Baden-Württemberg is known for greater focus on deliberative democracy. Specific cities such as Aachen have also led on local-scale democratic innovations such as deliberative citizens' assemblies, while other jurisdictions have adopted "experimental clauses" that pilot deviations from federal law.

For simplicity this paper focuses primarily on Berlin, which operates as both a city and a state and has a population of 3.9 million people.⁵³ As described in further detail below and summarized in Table 2, Berlin provides avenues for direct democracy but has a much stronger emphasis on representative democracy than California does.⁵⁴

TABLE 2 COMPARISON OF CONSTITUTIONAL AMENDMENT AND CITIZEN INITIATIVE PROCESSES IN CALIFORNIA AND BERLIN

Design question	California	Berlin	Selected Trade-offs
Who can initiate state constitutional change?	Legislature or organized initiative proponents	Legislature or organized initiative proponents	Representative filtering vs pluralist access
Do legislative constitutional amendments and amendments to initiative statute require voter approval?	Yes, unless initiative statute specifically allows otherwise	No (except constitutional amendments to the initiative process)	Direct democratic accountability vs representative adaptability
Are initiative thresholds high?	No – roughly 2-4% of eligible voters must sign	Yes – especially for constitutional amendments (20% of eligible voters sign, 50% of all eligible voters vote yes, two-thirds majority of votes cast)	Ballot access vs protection from niche capture and voter fatigue
Are there subject-matter exclusions for initiatives?	Very few – no wholesale constitutional revision or appointment to office	Yes – fiscal/budget and personnel matters	Popular accountability vs deference to internal expertise and protection of core governing capacity
Are deliberation or incorporation of diverse perspectives built into the initiative process?	Limited – informal government negotiation only	Somewhat – multi-stage review with government recommendations and negotiation	Speed and unfiltered access vs policy quality and consensus framing
How regulated is the initiative campaign environment?	Limited regulation – long, media-heavy campaigns; unlimited independent expenditures	More regulated – shorter campaigns with less spending	Speech rights vs voter overwhelm and polarization
Can past decisions be undone?	Difficult in practice – hard to change the constitution or initiative statutes	More reversible – especially for ordinary statutes	Stability and status quo protection vs adaptability

Source: Author's own compilation

⁵³ Statistisches Amt für Berlin-Brandenburg, Einwohnerbestand. <https://www.statistik-berlin-brandenburg.de/meine-region/berlin-statistik/einwohnerbestand>

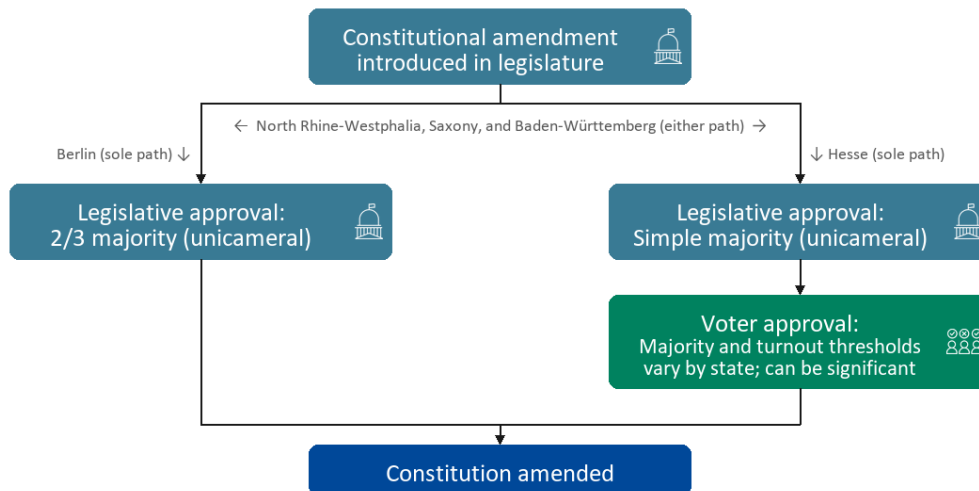
⁵⁴ For the complete Berlin constitution, see Der Regierende Bürgermeister - Senatskanzlei, Verfassung von Berlin / The Governing Mayor of Berlin – Senate Chancellery, The Constitution of Berlin, in German at <https://www.berlin.de/rbmskzl/politik/senat/verfassung/> or in English at <https://www.berlin.de/rbmskzl/en/the-governing-mayor/the-constitution-of-berlin/>.

4.3 Direct and representative democracy balanced at the state level

4.3.1 Legislative tracks with lower constitutional amendment difficulty

Berlin features a multi-track system for constitutional amendments. The legislatively initiated track shown on the left-hand side of Figure 6 below can be classified as exceptional: all amendable matters are admissible via this track, but amendments to the initiative process also require a referendum.

FIGURE 6 CONSTITUTIONAL AMENDMENT IN GERMAN STATES – LEGISLATIVE TRACKS IN BERLIN AND SELECTED OTHER STATES



Source: Author's own illustration based on each state's constitution. For simplicity, not all details are shown (e.g., amendments to the Berlin initiative process also require a referendum).⁵⁵

Unlike in California, only legislatively initiated amendments that change the initiative process require a voter referendum (A3 → C3 → A4). All other legislatively initiated amendments must simply demonstrate broad consensus among electoral representatives – reaching a two-thirds majority in the unicameral Berlin state parliament, or Abgeordnetenhaus – and require no voter ratification (A3 → A4).

In addition to reducing amendment difficulty relative to California's legislatively initiated track, an amendment track without voter referendum may also reduce the ability of special interests to spend heavily to influence public opinion and thereby block amendments they oppose (D3).

As shown in Figure 6 above, several other German states have adopted multiple tracks for legislatively initiated amendments. They pair the ease of legislative-only approval for high-consensus amendments with the checks and balances of voter approval for more controversial legislatively initiated amendments.

In Baden-Württemberg, North Rhine-Westphalia, and Saxony, the legislative-only track – also requiring a two-thirds majority – is supplemented by an alternative track with a mere simple legislative majority requirement. This lower threshold vote is then subject to a referendum requiring at least 50% eligible-voter turnout and a two-thirds majority of votes cast (in North Rhine-Westphalia) or a majority of all eligible voters voting in favor (in Saxony and Baden-Württemberg).⁵⁶ These high turnout and majority thresholds may also serve to check the influence of special interests relative to the general public (C3); niche issues with a small number of highly motivated voters may well fail to meet them, thus insulating the process from capture.

⁵⁵ Constitution of Berlin (Verfassung von Berlin, VvB), supra note 54, Art. 100; Constitution for the State of North Rhine-Westphalia (Verfassung für das Land Nordrhein-Westfalen), June 28, 1950, as amended, Art. 69, <https://recht.nrw.de/lrgv/gesetz/16012026-verfassung-fuer-das-land-nordrhein-westfalen/>; Constitution of the Free State of Saxony (Verfassung des Freistaates Sachsen), May 27, 1992, as amended, Art. 74, <https://www.revosax.sachsen.de/vorschrift/3975-Verfassung#a74>; Constitution of the State of Baden-Württemberg (Verfassung des Landes Baden-Württemberg, LV), Nov. 11, 1953, as amended, Art. 64, <https://www.landesrecht-bw.de/perma?d=ilr-NNLBW0000880ANN00000000124>; Constitution of the State of Hesse (Verfassung des Landes Hessen), Dec. 1, 1946, as amended, Art. 123, https://starweb.hessen.de/cache/hessen/Hessische_Verfassung2018.pdf.

⁵⁶ While these referendum thresholds are quite high, the state of Hesse has a lower threshold, reflecting the diversity of German state constitutions. In Hesse, which like California requires a referendum on all legislatively initiated amendments, the thresholds are a simple majority of both legislative and referendum votes cast.

4.3.2 Higher barriers for initiative statutes and constitutional amendments

As Figure 7 shows below, Berlin's process for initiative statutes and initiative constitutional amendments is much more complex and faces many more hurdles than California's. There are many stages to the process, and ultimately either 7% (or 20%) of all eligible voters must sign petitions in order for a statutory (or constitutional) initiative to be put to the voters. Compared with California's signature requirements, which are equivalent to ~2-4% of all eligible voters, the threshold is dramatically higher.

As in the case of legislatively initiated constitutional amendments that are referred to a referendum, there are also high turnout thresholds – a requirement type that does not exist in California. These thresholds effectively exclude all but the most widely prioritized topics.

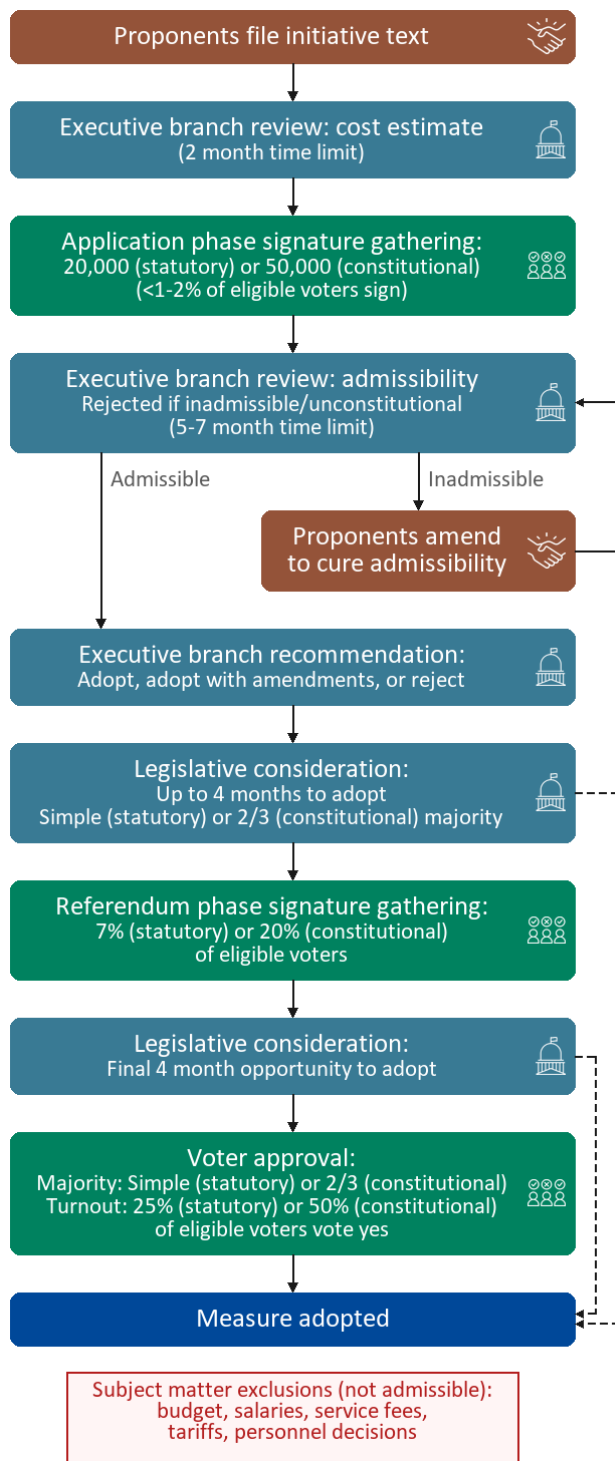
Due to these barriers, very few initiatives reach the stage of a referendum vote, and even fewer pass. In most years, there are no referendum votes at all. Yet major topics of public discourse do nevertheless find their way to the ballot, on topics ranging from housing affordability to climate action.

Of course, there are advantages and disadvantages to this degree of constraint on direct democracy. German states' high thresholds greatly limit the power of niche or special interests to push through initiatives that bypass the legislature and also limit voter fatigue from having excessive numbers of referenda.

At the same time, the high hurdles may prevent passage of important environmental measures. For example, a 2023 climate referendum in Berlin received a majority of votes cast but nevertheless did not pass, due to failure to meet the turnout requirement (*quorum*).⁵⁷

⁵⁷ Der Landeswahlleiter für Berlin, "Volksentscheid Berlin 2030 klimaneutral – Endgültiges Ergebnis ermittelt: Gesetzentwurf nicht angenommen," Pressemitteilung, 12. April 2023, https://www.berlin.de/wahlen/pressemitteilungen/2023/pressemitteilung_1312917.php.

FIGURE 7 INITIATIVE PROCESS IN BERLIN



Source: Author's own illustration, based on Articles 62 and 63 of the Constitution of Berlin⁵⁸

4.3.3 Direct democracy as agenda-setting and limited ordinary lawmaking

Unlike in California, German state legislatures can change initiative statute just like regular statute.⁵⁹ The only formal difference is safe harbor periods, which exist in some states but not all. For those states with safe harbor periods, initiatives cannot be repealed or amended by the legislature until a given amount of time has passed (typically one year).

There can also be political pressure not to repeal or amend a law too soon. However, as times change, state legislatures may revisit initiatives and partially or wholly reverse them. A current example is the successful 2014 Berlin initiative largely prohibiting development on Tempelhof Field, a former airport turned public park. As Berlin's housing crisis has intensified, some political parties now call for amendments to allow for new apartments.

⁵⁸ Constitution of Berlin (Verfassung von Berlin, VvB), supra note 54.

⁵⁹ BeckOK Verfassung Berlin/Waldhoff, 4. Ed. 1.2.2026, BlnVerf Art. 62 Rn. 50-55.

The bottom half of Figure 8 depicts a 2026 election poster advertising support for apartments on Tempelhof Field as a reason to vote for the FDP party. Both posters also advertise their parties' opposition to a since-failed initiative attempt that would have had Berliners vote on a plan to dramatically limit car use in the city center.

In practice, despite the formal equality between direct and electoral lawmaking, there is somewhat less power vested in direct democracy.

Some successful initiatives have simply not been implemented (C3 $\Rightarrow$ A4). One example, referenced in Figure 9, is an unimplemented 2021 initiative resolution calling on the Berlin government to determine how to socialize apartment buildings owned by large companies.⁶⁰ Statute to expand bicycle infrastructure across Berlin, which was adopted by the legislature in 2018 in response to a ballot-qualified initiative, has also seen only limited implementation.⁶¹

The state government can also weaponize timing to set further obstacles before initiatives that it does not support. Unlike in California, where initiative votes are scheduled to coincide with regular statewide elections, the state can schedule initiative votes as one-off elections that are much less likely to meet turnout thresholds. They can also schedule signature gathering to include fall and winter – a significant challenge in Berlin's climate.

FIGURE 8 ELECTION POSTERS



Source: Photo by the author

Finally, certain subjects are excluded from direct democracy in Berlin. These include not only matters that are pre-empted by federal law, but also fiscal policy, salaries and fees, and personnel decisions. While some direct democracy advocates might consider this an undue restriction, subject matter exclusions are quite common internationally.⁶² Recognizing the complex, technical, or foundational nature of certain policies, subject matter exclusions insulate them from public opinion – which can be viewed as vulnerable to capture by special interest campaigns or illiberal ideology. Instead, subject-matter exclusions aim for more nuanced, representative, or expert-driven policymaking via the legislature.

FIGURE 9 PARK SCULPTURE THANKING INITIATIVE VOTERS



Source: Photo by the author

⁶⁰ Daniel Böldt, "Ich bin immer noch skeptisch": Kai Wegner reagiert zurückhaltend auf Expertenbericht zur Vergesellschaftung in Berlin," *Der Tagesspiegel*, June 28, 2023, <https://www.tagesspiegel.de/berlin/regierender-burgermeister-weiter-skeptisch-kai-wegner-nimmt-expertenbericht-zur-vergesellschaftung-in-berlin-entgegen-10059358.html>. Deutsche Wohnen & Co. enteignen, "Campaign State," updated 2025, <https://dwenteignen.de/en/aktuelles/stand-der-kampagne>.

⁶¹ Changing Cities e.V. "Volksentscheid Fahrrad," <https://changing-cities.org/kampagnen/volksentscheid-fahrrad/>; Senatsverwaltung für Mobilität, Verkehr, Klimaschutz und Umwelt, Fahrrad Berlin – Fortschrittsbericht 2024 (Berlin, 2025), https://www.berlin.de/sen/uvk/_assets/verkehr/verkehrsplanung/radverkehr/radprojekte/radfortschrittsbericht/fortschrittsbericht-fahrrad-2024.pdf.

⁶² Daniel Moeckli, "Beyond the Reach of the People? Admissibility Requirements and Procedures for Citizens' Initiatives in Comparative Perspective," *European Constitutional Law Review* 21, no. 2 (2025): 230–273, <https://www.cambridge.org/core/journals/european-constitutional-law-review/article/beyond-the-reach-of-the-people-admissibility-requirements-and-procedures-for-citizens-initiatives-in-comparative-perspective/EF7C61B5CF7FFC81CFB631E1754AD569>.

4.4 Greater protection for core policies, processes, and values

As noted above, subject matter exclusions represent a greater level of entrenchment for core policies such as fiscal matters at the state level. However, Berlin also ensures greater entrenchment for state constitutional provisions via dramatically higher initiative thresholds.

Unlike in California, where statutory and constitutional initiatives only require signatures from ~2-4% of all eligible voters, in Berlin the thresholds are 7% (statutory) and 20% (constitutional). This represents a significantly higher burden to place constitutional measures on the ballot.

The initiative constitutional amendment approval thresholds are also significantly more challenging than those for statutory ballot measures. A two-thirds majority of votes is required, as opposed to 50% for statutory initiatives, as well as an extremely high turnout quorum hurdle of 50% of all eligible voters voting yes (as compared to 25% for statutory measures).

These hurdles mean that initiative constitutional amendments can pass if there is sufficient consensus and motivation, but in practice are almost unheard of – significantly insulating core processes and values from change via direct democracy.⁶³

Berlin state constitutional amendments thus demonstrate either widespread legislative support via a two-thirds majority, or overwhelming popular support (by meeting the extensive initiative requirements). As previously discussed and shown in Figure 6, several other states also allow a hybrid option of basic legislative support paired with varying degrees of popular support. The result is a substantial differentiation between statutory and constitutional lawmaking, with a large degree of entrenchment for constitutional measures.

At the federal level, due to the prohibition on direct democracy, broad legislative consensus is required for constitutional amendments, with a two-thirds majority that matches the legislative threshold found in California and many other jurisdictions.

However, Germany's Basic Law (constitution) also includes an eternity clause. This clause asserts basic elements of human dignity, rights, and values, as well as cementing the federal structure of the country. This clause cannot be amended, representing a complete entrenchment of certain core principles in the aftermath of World War II.

4.5 Reversibility in practice

Berlin's dual tracks for initiative and legislative lawmaking and subject matter exclusions result in a system in which, formally, symmetric reversibility is not guaranteed. If a matter is decided by the public, it can be reversed by the legislature using a completely different process, with many fewer steps and guardrails.

Yet in practice, Berlin's system as a whole is relatively symmetrically reversible, particularly in comparison to California. As a matter of democratic legitimacy, German state legislatures and courts are relatively reluctant to permit immediate reversal of initiatives. This safe harbor norm holds in the case of most initiatives, even where there is no constitutional clause or court interpretation technically prohibiting immediate repeal.

Meanwhile, for matters where public opinion has shifted significantly over time – such as the idea of building housing or other structures on the former Tempelhof airport site – the topic can eventually be revisited via electoral democracy (A1). With the idea of building housing on the Tempelhof airport site now the subject of major Berlin electoral campaigns, the issue may ultimately be addressed via the legislature as a majority concern. This system offers a route for symmetric repeal in practice (via simple majority) even if there is not an active enough constituency to run the gauntlet of a repeal initiative – the requirement for formal symmetry.

⁶³ Consistent with the thresholds previously discussed for referenda on legislatively initiated amendments, several other German states have similarly high approval thresholds for initiative constitutional amendments.

At the federal level, Germany's constitutional amendment process is also symmetrically reversible. With a two-thirds majority, all amendable clauses can be changed and use the same process, as shown in Figure 5 above. The German federal constitution can thus be classified as a single-track, comprehensive process – with a specification that certain aspects are unamendable.

A recent example of its reversibility in practice is the previously mentioned 2025 vote to modify Germany's constitutional “debt-brake” provisions. These provisions had themselves been adopted as constitutional amendments in 2009, during a period of greater fiscal austerity. The 2025 amendment package allowed for increased borrowing to fund rising defense costs and further authorized €500 billion in infrastructure spending – including €100 billion earmarked for climate change mitigation and adaptation.⁶⁴

4.6 Some deliberative opportunities

While Germany does not fully incorporate deliberation into its political processes, there are nevertheless opportunities for deliberation at various phases of lawmaking. Deliberative events have also been incorporated into individual political efforts, with varying degrees of success.

4.6.1 Federal constitutional amendments often begin with commission deliberation

While a special deliberative stage is not required, federal constitutional amendments are generally preceded by legislative creation of an Enquete Commission to deliberate on a given issue (A2, D2). The committee typically consists of lawyers and subject-matter experts, in addition to politicians, who consider the topic and then issue recommendations to the Bundestag (lower chamber).⁶⁵

4.6.2 State-level initiatives create opportunities for iteration and deliberation

In Berlin, the multi-stage initiative process has some opportunities for iteration, negotiation, and deliberation. For example, if the executive branch leadership (Senat) review finds that a given measure is illegal, unconstitutional, or otherwise inadmissible, proponents may amend the initiative language to ensure compliance (A2, D2). The executive branch public recommendations and legislative consideration steps create further space for deliberation – and potentially decision-making – on the proponents' draft language (D1 → A2 → A3).

The knowledge that government recommendations will be issued can also serve as an incentive to proponents to draft their measure (D2) in such a way that it is likely to be well-reviewed and recommended for adoption, as a negative review may substantially impact public opinion and ultimate chances of initiative success. This can serve as an incentive for more balanced and less polarizing measure framing.

The large threshold for referendum signature gathering also serves as an incentive for proponents to design measures that may be adopted in the initial legislative consideration phase, bypassing the need for a referendum (D2). As in California, there is also an incentive for both elected representatives and proponents to engage in informal deliberation and negotiation to avoid a referendum (A3, D3) – further reducing polarization.

While legislative adoption is uncommon, one recent environmental example is the BaumEntscheid, a 2025 initiative for more trees and parks in Berlin. After the application signature phase was completed, supporters worked closely with Berlin's political parties and legislature, and the draft measure was adopted with only minor changes.⁶⁶ Another example is the bicycling initiative mentioned previously. After referendum phase signatures were submitted, the key elements were folded into broader mobility legislation in 2018. The sponsors then withdrew the initiative.⁶⁷

⁶⁴ Deutsche Bundesbank, “The Debt Brake in Germany – Key Aspects and Implementation,” Monthly Report (October 2011), <https://www.bundesbank.de/resource/blob/707226/2210049b692ae21558a591e83f4efa24/mL/2011-10-debt-brake-germany-data.pdf>; and German Federal Ministry of Finance, “Special Fund for Infrastructure and Climate Neutrality,” <https://www.bundesfinanzministerium.de/Web/EN/Issues/Public-Finances/SVIK/special-fund-infrastructure-and-climate-neutrality.html>.

⁶⁵ See for example the interim report of the Enquete Commission on Constitutional Reform: Deutscher Bundestag, Zwischenbericht der Enquete-Kommission für Fragen der Verfassungsreform gemäß Beschluß des Deutschen Bundestages, BT-Drs. VI/3829 (1972), <https://dserv.bundestag.de/btd/06/038/0603829.pdf>.

⁶⁶ Benjamin Wehrmann, “City of Berlin Adopts Citizen Initiative to Plant Hundreds of Thousands of Trees,” Clean Energy Wire, Oct. 2, 2025, <https://www.cleanenergywire.org/news/city-berlin-adopts-citizen-initiative-plant-hundreds-thousands-trees>; and Klima und Demokratie e.V., “BaumEntscheid Berlin,” <https://klima-und-demokratie.de/news/baumentscheid-berlin/>.

⁶⁷ Changing Cities e.V., supra note 61.

In contrast, simultaneous initiatives to make Berlin's city center car-light and to prohibit certain types of public advertisements (such as electronic billboards) were unable to secure sufficient public support and ultimately failed to gather the requisite referendum phase signatures to be placed on the ballot.⁶⁸ Yet despite these measures' failures to advance (C3), both campaigns could be viewed as successful efforts to place topics on the public agenda (D1) and further public discussion (A2, C2) – if in a more polarized manner than through legislative adoption.

4.6.3 Deliberative events and experiments explore alternatives

Germany has experimented with various forms of deliberative democracy.⁶⁹ One particularly high-profile effort was a series of federal citizens' assemblies. This convening of randomly-selected, demographically representative citizens aimed to issue deliberatively-developed recommendations (B2) on matters of national importance – with topics set via the Bundestag, the lower legislative chamber (A1).⁷⁰

Results were mixed. A nutrition-focused assembly successfully issued recommendations, but almost none were adopted as-is by the government (A3).⁷¹ However, in interviews some experts argued that these recommendations were nevertheless taken up by federal agencies and are in fact finding their way into policy implementation (A4).

Other experts saw the lack of clear implementation as a cautionary tale, noting that some form of pre-commitment to implementation (A4) is essential to ensuring a process that will yield results – and be perceived as legitimate and worthwhile by the general public.

After the first such convening, Germany's center-left governing coalition collapsed. It was replaced with a center-right government, which canceled all future planned convenings and defunded the citizen's assembly department.⁷²

In interviews, experts noted that this example represents a challenge of deliberative democratic innovations – they generally require political champions to be integrated into formal political processes, but at the same time risk being overly identified with a single person or party, and thus subject to dissolution as soon as the champion is no longer in power.

Some experiments have attempted to sidestep the political hurdles of introducing new forms of deliberative democracy. For example, some deliberative events in Germany have been entirely privately run and funded, aiming to show a persuasive proof of concept without being tied to any particular political champion.

Other deliberative efforts attempt to begin at the interpersonal level. The Hallo Bundestag initiative, for example, arranges for meetings between elected leaders and randomly-selected, demographically representative groups of constituents.⁷³ This effort aims to build trust and understanding between the participants and their representatives, and to support deliberative dialogue (A2, B2) – without a specific topical agenda (A1, B1) or targeted political decision (B3, A3).

Still other practitioners have explored systemic constellations – role-playing experiences based in family therapy – that encourage participants such as professional politicians to view the complete system on a given political issue and to take the perspective of someone else in that system, if just for a moment.

Individual cities in Germany have also held deliberative events, with Aachen being a leading example of a city with standing deliberative initiatives that have become more

⁶⁸ Landeswahlleiter für Berlin, "Volksbegehren 'Berlin autofrei': 144.500 Unterschriften bis zum 8. Mai 2026 eingereicht," Pressemitteilung, May 11, 2026, <https://www.berlin.de/wahlen/pressemitteilungen/2026/pressemitteilung.1670049.php>; and Landeswahlleiter für Berlin, "Volksbegehren 'Berlin Werbefrei': Rund 48.000 Unterschriften bis zum 8. Mai 2026 eingereicht," Pressemitteilung, May 11, 2026, <https://www.berlin.de/wahlen/pressemitteilungen/2026/pressemitteilung.1670057.php>.

⁶⁹ Mehr Demokratie e.V. & Institut für Demokratie- und Partizipationsforschung (IDPF), *Bürgerräte in Deutschland: Entwicklung und Vielfalt losbasierter Beteiligung* (Oct. 2024), https://www.mehr-demokratie.de/fileadmin/pdf/2024/Publikationen/2024_10_22_Buergerratsbericht_web.pdf.

⁷⁰ Deutscher Bundestag, "Bürgerräte," https://www.bundestag.de/webarchiv/Ausschuesse/ausschuesse20/weitere_gremien/buergerraete.

⁷¹ Deutscher Bundestag, "Bürgerrat 'Ernährung im Wandel,'" https://www.bundestag.de/webarchiv/Ausschuesse/ausschuesse20/weitere_gremien/buergerraete/buergerrat_th1.

⁷² Hannes Koch, "Schwarz-Rot schafft Bürgerräte ab," taz, November 26, 2025, <https://taz.de/Mitbestimmung-geschwaecht/%216132688/>.

⁷³ Demokratie Innovation e.V. (Es geht LOS), "Hallo Bundestag," <https://hallobundestag.de/en>.

institutionally integrated and tied to implementation.⁷⁴ Other German-speaking regions nearby have also led on the integration of deliberation into the democratic process.

In East Belgium, for example, there is a standing deliberative body that issues recommendations on a given set of topics each year (B2). A subset of past participants engages the following year in a separate deliberative body, which sets the topics for the next year's deliberation (B1). That body is also empowered with aspects of implementation (B4) – it can follow up with government agencies to ensure that deliberative recommendations are in fact being acted upon (A3, A4).⁷⁵ In interviews, experts frequently stressed that this focus on accountability and implementation is essential to an effective and legitimate process.

4.6.4 Campaign speech rules and norms leave space for deliberation

Germany regulates campaign speech to a much greater degree than California and the United States as a whole. In addition to campaign finance limitations, there are also limitations on the duration of campaign advertising in public space and on broadcast media. Municipalities may also choose to limit the number or placement of campaign posters to avoid visual clutter and overwhelm. At the same time, broadcast media are required to provide a certain amount of free advertising time to all political parties, as a way of ensuring that all parties' messages can be heard and considered.⁷⁶

Though these campaign regulations do not guarantee greater deliberation or reduced polarization, they may leave more opportunity for deescalation and reduce the burden of politics and political engagement on voters.

German initiative campaigns are also distinguished by a tendency to be grassroots. Paid signature gathering is not prohibited, but it is generally not done. Instead, volunteers may set up signature stations in parks and public squares, where they solicit signatures and are available to engage in substantive discussion. Supportive small businesses such as cafes may also place a signature sheet by the cash register.

The community-based norm for signature gathering likely results in fewer initiatives qualifying for the ballot. For example, the 2026 Berlin initiative to make the city center car-light was only about 20% short of the signature threshold and might have succeeded with more campaign funding.

However, it also offers more opportunity for thoughtful discussion among neighbors – and between proponents and the public (C2, D2). And in the balance between direct and pluralist democracy, this societal norm limits the dominance of niche interests and reduces the burden on voters to ultimately vote yes or no on often highly complex ballot initiatives.

FIGURE 10 GATHERING INITIATIVE SIGNATURES IN A BERLIN PARK



Source: Photo by the author

⁷⁴ Mehr Demokratie e.V., "Permanent Citizens' Assembly in Aachen," Mar. 30, 2022, <https://www.mehr-demokratie.de/en/mehr-wissen/citizens-assemblies/news/details-view/permanent-citizens-assembly-in-aachen>.

⁷⁵ Bertelsmann Stiftung, *Shortcut #7: The Ostbelgien Model* (Gütersloh, March 2022), https://www.bertelsmann-stiftung.de/fileadmin/files/Projekte/Demokratie_und_Partizipation_in_Europa/Shortcut/Issue_7_The_Ostbelgien_Model/Shortcut_7_The_Ostbelgien_Model.pdf. Vorarlberg, Austria is another leader in deliberative democracy – see OECD, *supra* note 12.

⁷⁶ Deutschland.de, "Elections in Germany: Political Advertising on TV and Radio," Feb. 14, 2025, <https://www.deutschland.de/en/topic/politics/elections-in-germany-political-advertising>; Bezirksamt Spandau von Berlin, "Plakatwerbung an Lichtmasten," <https://www.berlin.de/ba-spandau/politik-und-verwaltung/aemter/strassen-und-gruenflaechenamt/allgemeine-verwaltung/artikel.597971.php>.

5 Call to action:

Democratic reform as a sustainability movement

Ultimately, there is no one best form of democracy. Indeed, there are infinite structural options, and each comes with its own trade-offs. Whatever may be reasonable for California – or Germany – this exploratory white paper does not pretend to have the answers. Yet in observing the multitude of possible democratic theories and processes – direct, representative, pluralist, deliberative, and more – it is clear that there is value in thoughtfully considering the systems currently in place and how they might be improved to better serve the evolving needs of today's society.

Instead of specific process recommendations, this paper offers several key principles that emerge from the review above:

- There is a practical difference between (1) ordinary laws; (2) sensitive laws that are central to basic functioning of the government, economy, or public health; (3) constitutional provisions that define the governing process; (4) foundational democratic structures; and (5) foundational values. The process for adopting and amending each type of provision should be designed with intention, with the more fundamental aspects requiring a greater level of care to change.
- Direct and representative democracy are both valid expressions of the will of the people, and each comes with opportunities and challenges. As such, they should be treated as roughly coequal branches of government, each with checks and balances.
- Societal values and needs change with time. Statutory and constitutional amendments or revisions should acknowledge this truth and be symmetrically reversible in practice, not just theory. Because of status quo entrenchment, there may be value in special systems or processes to support intentional and fair revisiting of past law.
- Deliberation is an essential stage in any political process – to achieve better outcomes, reduce polarization, and support democratic legitimacy. Impactful deliberation cannot be forced, but more opportunities for deliberation and more connection between deliberation and implementation should be incorporated across political processes.
- Capture by well-funded special interests is a grave challenge to representative and fair political processes – whether in agenda initiation, deliberation, decision-making, or implementation. While California has limited regulatory tools to limit private spending, it should use both process design and public campaign finance as tools to improve the quality and resilience of the democratic process.

Many design examples from Berlin and the German federal government illustrate alignment with several of these principles – including higher, two-stage initiative thresholds, subject matter exclusions, a legislative-only constitutional amendment track, and treatment of direct democracy as a source of agenda-setting and decision-making input rather than a superior trump card. These approaches, along with other design elements found in constitutions elsewhere, could serve as starting points for thinking about what might be appropriate in the California context.

Finally, this paper calls on the sustainability movement – whether private citizens, academics, activists, agency staff, or other members of civil society – to view democratic function not as an abstract legal issue but as key to achieving movement goals. The pace of change required to mitigate and adapt to climate change is unprecedented. It requires an efficient government that is responsive to societal needs – not just those of special interests. Government must be capable of making rapid, heart-wrenching decisions that meet the moment while also ensuring that the public feels heard and democracy remains legitimate. Trillions of dollars in public and private funds need to be redirected to address climate change and build sustainable homes and infrastructure. These challenges are not easy. But we may find them easier to navigate from within a supportive democratic structure.

Future research and public discourse are needed to explore approaches to achieve change at the pace and scale that is needed, without causing destabilization or irreversible mistakes. Opportunities for future research include time-bound pilots, sequenced changes,

and evaluation and feedback mechanisms to support iteration. Efforts to modernize the California State Constitution will also need to consider methods to support orderly change, such as mechanisms for limited constitutional conventions and amendment design to avoid triggering conventions in the first place.

Though it is impossible to know when there will be sufficient political will for constitutional modernization, it is imperative that the conversation continue to move forward in the meantime. It is also possible that there is currently a window of opportunity for more change. The trend towards authoritarianism worldwide, including in the United States, may yield more openness to improving democratic systems in places with strong democratic norms, such as in California. The increasing impacts of climate change, from wildfires to flooding to extreme heat – and government’s inability to sufficiently address them – may also pressure state leaders to implement more effective systems for change management and ultimately deliver relief to impacted residents. It is up to the sustainability movement – and other activists for a more just society – to be ready for this window of opportunity and to act not just in support of individual policy issues, but for a better democratic system. The housing, food, infrastructure, and natural ecosystems of California depend on it.

Interview participants

The author is grateful to individuals from the following institutions for participating in interviews:

Institution
Berggruen Institute
Bertelsmann Stiftung
California State Assembly (former Assemblymember)
Changing Cities
Demokratie Innovation
Democracy International
Democracy R&D
Humboldt Universität
Mehr Demokratie
Nexus Institute

Author

Joanna Gubman

Joanna Gubman (高宙瀾) is an urbanist and environmental advocate living in San Francisco and is the Vice President of the Board of Directors of California Walks. Mx. Gubman previously served as Environmental Director at YIMBY Action and as an Administrative Law Judge and Commissioner’s Advisor at the California Public Utilities Commission. She holds a master's degree in mechanical engineering from Stanford University. Views expressed in this paper are solely her own.

Mx. Gubman would like to express appreciation to the Alexander von Humboldt Foundation for supporting her research, and to the Research Institute for Sustainability - Potsdam for serving as her host institution. Special thanks go to Prof. Dr. Rainer Quitzow for serving as host liaison and for stewarding the publication of this paper, as well as to David Schecter and Nicolina Kirby for their thoughtful review.

The Research Institute for Sustainability (RIFS) conducts research with the goal of understanding, advancing, and guiding processes of societal change towards sustainable development in Germany and abroad. The Institute is embedded within the GFZ Helmholtz Centre for Geosciences and is thus part of the Helmholtz Association. Its research approach is transdisciplinary, transformative, and co-creative: RIFS cooperates with partners in science, political and administrative institutions, the business community, and civil society to understand the problems of sustainable development, identify appropriate solutions, and support their implementation in cooperation with relevant actors and affected communities. Its central research topics include the energy transition, climate change and socio-technical transformations, as well as sustainable governance and participation. A strong network of national and international partners and a Fellow Programme support the work of the Institute.

RIFS Discussion Paper

August 2026

Contact:

Joanna Gubman: gubman@alumni.stanford.edu

Dirk von Schneidemesser: dirk.vonschneidemesser@rifs-potsdam.de

Address:

Berliner Straße 130

14467 Potsdam

T: +49 (0) 331-28822-340

media@rifs-potsdam.de

www.rifs-potsdam.de

ViSdP:

Prof. Dr. Doris Fuchs,

Scientific Director, Speaker

