

Chapter One: **Representation and Legislative Behavior**

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Introduction

How often have you heard the phrase, "No taxation without representation?" For many Americans those words stir up strong patriotic feelings of embattled colonists overthrowing oppressive British rule. When Parliament, the British legislature, levied taxes on American colonists, some opponents claimed the action was repugnant because Americans were not actually represented in Parliament, i.e. no Americans served in Parliament and none voted in parliamentary elections. Those who defended the taxes claimed that Americans were mainly English and therefore virtually represented by other Englishmen.

Although Dublin-born British parliamentarian and Whig-pamphleteer Edmund Burke supported American Independence, he rejected the idea of popular rule. In a famous speech to his Bristol constituents [Burke](#) argued that his behavior in Parliament should be informed by his knowledge and experience, allowing him to serve as a trustee of the public interest, not as a delegate for popular whim (1774).

This module offers you ways to learn more about the theory and practice of popular government. It focuses upon political representation and legislative behavior and allows you to compare representative policymaking in the California state legislature with the making of policy through the direct democratic device of the initiative process. It utilizes demographic data from the U.S. census, from election returns for the state legislature, from rollcall votes in the legislature, and from votes for and against popular initiatives.

Representation

Are Americans represented any better in their law-making bodies today than they were in the British Parliament? Only about half those

who are eligible to participate in elections for members of Congress and state legislatures actually vote. Further, we know that legislators are not representative in the sense they are like most of their constituents. Typically, they are older, whiter, richer, better educated, and more male than the average. Do those chosen to be representatives really reflect the views of the people who elect them?

In his famous work titled "Representative Government" 18th-Century British political philosopher and Utilitarian Party organizer [John Stuart Mill](#) (1861) wrote:

The meaning of representative government is, that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves the ultimate controlling power....

Contemporary political scientist [Hanna Pitkin](#) provides a modern examination of *The Concept of Representation* (1967). She considers several definitions of representation, all of which have something to do with the relationship between the people and their deputies, but none of which singly or in combination, adequately defines the concept. She argues that the complexity of representation is partly contained in the ideas of authorization, accountability, description, and symbolism. Some writers see a representative as one who has been *authorized* by another to act in the latter's stead. *Accountability* means representatives have to answer to the represented for their actions, usually through elections. *Description* is the idea that representatives resemble those they represent, in terms of gender, ethnicity, religion, age, income, education, etc. *Symbolism* is more emotional. It emphasizes the idea that the represented feel a representative stands for them.

For Pitkin, however, the real test is how representatives act. Representation, she says, is "acting in the interest of the represented, in a manner responsive to them" (209). This module asks you to examine the degree to which California state legislators act as representatives of the people.

Scholars have studied representation ever since they perceived a linkage between the governed and their government. Very early they pursued the study normatively (prescriptively), as [Plato](#) (c. 386 BC) did in using the Socratic method, and empirically (descriptively), as [Aristotle](#) (c. 329-325 BC) did in outlining the constitutions of Greek city-states. Normative theory asks what should be the connection

between the people and law-making. Empirical theory attempts to describe what that relationship is in practice.

For the contract theorists ([Hobbes](#) 1651; [Locke](#) 1689; [Hume](#) 1752; [Rousseau](#) 1762), the best method of representation varied, depending upon their views of the human condition and the so-called state of nature. For [Madison](#) (1788), a normativist, representation was a republican ideal. For [Dahl](#) (1956), who both describes and prescribes, representation contributes to pluralism where the public interest emerges from a struggle among special interests. For the normative critics of pluralism ([Lowi](#) 1971) interest group representation exerts a corrupting influence on good government. Since the early 20th Century students of government and politics continued to use qualitative methods to study representation but also began to use quantification in their research ([Rice](#) 1928). In 1961 [Key](#) used quantitative methods to conclude empirically that the opinions of constituents do influence legislators' votes. He claimed there is a relationship between the demographic characteristics of a legislative district and the votes cast by its representative. This module provides demographic data for you to use to replicate Key's research. Is his conclusion still valid?

From observing four state law-making bodies [Wahlke](#) and his colleagues (1962) discovered that legislators exhibited what the authors called different representational styles (delegate, trustee, and politico) and clientele roles (party, areal, pressure group, and administrative). Later they acknowledged that this taxonomy is not a device to predict legislative behavior ([Eulau and Wahlke](#) (1978). Do you find it useful to classify legislators in this manner? Which style of representation do you prefer? Should legislators be bound by the interests of their constituents? The most vocal ones? The one's that are most likely to contribute to their reelection? Should legislators study the issues, listen to all sides, and use their best judgment on how to cast their votes? Or should they act one way or the other, depending upon the issue or, perhaps, how close it is to the next election? What clientele roles can you identify in the California Legislature?

[Miller and Stokes](#) (1963) examined more than 150 congressional districts to develop their causal explanation of how opinions of voters may be transformed into rollcall votes of legislators. The key element seemed to be that most legislators are "for the people" because they are "of the people" as well as "by the people." Can you test this model with data from the module?

California's Legislature

Like the U.S. Congress and all other state legislatures except Nebraska, California's legislature is bicameral, two houses, a lower house, the assembly, and an upper house, the senate (California Constitution, [Article 4](#), section 1).

The state is divided by statute into 80 districts of approximately equal population (*Reynolds v. Sims*, 377 U.S. 533, 1964) from which one assembly member is elected every two years. No assembly member may be elected for more than three terms. The senate is composed of 40 members elected from districts that combine two assembly districts. Senators serve for four-year terms, with half elected every two years. No senator may be elected for more than two terms (Proposition 140, November 6, 1990; however, see *Jones v Bates*, 127 F.3D 839, 844 (9th Cir. 1997)).

In order to run for a seat in the assembly or the senate one must be a U.S. citizen, a California voter (California Constitution, [Article 2](#), section 2), a resident of California for at least three years immediately preceding the election, and a resident of the district from which one is elected for at least one year (California Constitution, [Article 4](#), section 2).

Before a bill becomes law both houses must pass it in identical form by a recorded, rollcall vote of a majority of the membership. Then the governor must approve the bill, or if the governor vetoes it, it may become law if at least two-thirds of the membership of each of the two houses re-pass it (California Constitution, [Article 4](#), sections 8 and 10).

In your opinion is the California legislature designed to represent the people? Do you believe this kind of organization and procedure has a positive or negative effect on the quality of laws that are passed?

The Initiative in California

Twenty-four states, including California, may make laws directly as well as indirectly ([Council of State Governments](#) 2005). In California the initiative, a means of direct, popular legislation, is considered to be a power reserved to the people when the people granted other powers to their government. The initiative involves a two-stage process, petition and election.

Today, California's initiative petition usually requires an expensive campaign funded by a large group (even public officials), who draft a proposal and circulate it to gather signatures of qualified voters. If at least five percent of those who voted for the office of governor in the most recent election sign the petition, the state secretary of state will certify the petition and place the measure on the ballot at least 131 days later (California Constitution, [Article 2](#), section 8). Groups or individuals may initiate law at the local level with similar procedures (California Constitution, [Article 2](#), section 11).

Then competing groups fund an even more expensive media campaign to persuade voters to vote yes or no on the proposed law (Broder 2000). If a majority of those voting on the measure at the election approves it, it becomes law. If more than one measure on the same issue pass at the same election, the one with the larger majority becomes law (California Constitution [Article 2](#), section 10).

Do you expect that laws passed by the initiative will be more representative of the people or less representative than those passed by the legislature? Should the initiative process be modified, abolished, or retained as it is?

In Federalist No. 10 [James Madison](#) (1787) argues against direct popular lawmaking. He supports the new U.S. Constitution, which uses representation. He attempts to refute those who oppose democracy by arguing that the negative effects of popular rule can be ameliorated by representative assemblies, that the intense interests of the people, which could lead to excesses and abuses by the majority, will be dampened by passing popular passions through a representative filter. In other words, he claims that when legislators have to reconcile the different views of a large, diverse constituency, they make better laws than the people do when allowed to legislate directly.

Similarly, a number of democratic theorists prefer representation over direct democracy, not because direct lawmaking may be unwieldy with a large population but because representation allows for face-to-face deliberation ([Elshtain](#) 1995; [Nino](#) 1996; [Sartori](#) 1987). They believe that discussing public policies rather than just voting for or against them is the essential element in making good laws. What do you think?