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# The Dangers of Government Gridlock and the Need for a Constitutional Convention

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by  
Barry Keene  
California Senate Majority Leader



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# The Dangers of Government Gridlock and the Need for a Constitutional Convention

By Barry Keene  
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There is near-universal belief that government is failing society.

Society is changing dynamically. Government responds slowly when it responds at all.

Society is diversifying ethnically, culturally and economically. Government is unable to reconcile predictable conflicts.

Our quality of life is declining precipitously. Government is too deadlocked to reverse the trend.

In facing society's problems, legislative bodies -- Congress and the state legislatures -- should be uniquely useful. Instead, they are particularly paralyzed.

The U.S. Constitution and most state constitutions provide for constitutional conventions to update the basic structures of government. In California, at least, the failure of existing structures requires one now.

Some people argue that the problems of government are personal rather than structural. They say our leaders do not lead, do not care, or are crooks. But those charges beg the question -- why do even the best people in government accomplish so little? The reasons are partly societal, as mentioned, partly attitudinal, as I will note, but mainly structural.

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The voters of California got angry in 1990 and enacted term limits; we can expect the voters of other states to do the same. But the voters can be expected to get even angrier when they see a lot of new faces in government who cannot solve the problems of society either.

Most causes of paralysis -- divided government, incumbent-oriented redistricting, expensive campaigns and special-interest contributions, weak parties, and a pattern of failure -- are common to the federal and many state governments, though they appear to have hit California hardest.

One other cause -- a long, complex, and very restrictive constitution -- is special to this state.

No one can prescribe a California constitutional convention's full agenda, much less the structural revisions it might recommend to the voters. However, I believe it should address all the major causes of government gridlock.

### **Major Causes of Government Paralysis**

1. Divided government. The U.S. and California constitutions invite voters to elect legislative majorities of one philosophy and chief executives of another philosophy. The voters accept the invitation regularly.

Enacting policy that moves in one direction, while implementing it in the opposite direction, virtually guarantees stalemate.

The problem is worsened by whatever political divisions exist between the two houses of the legislative branch of government.

Dispersion of power may make some sense for the federal government, which has great power. But the states copied it mindlessly, shackling themselves in their attempts to solve their problems and leaving them less able to stand up to the growth of federal power in this century.

In California, our government is not only divided but subdivided. We are virtually alone in requiring a two-thirds majority of each house of the Legislature to decide most controversial matters, including the budget. The consequences are devastating. A tiny minority can bring this state of 31 million people to a halt.

The Governor and each party in each house then blame each other for inaction.

The public thinks nobody is in control. The public is right.

The buck does not stop anywhere.

Ironically, the minority party suffers as much as the majority from the two-thirds requirement. Faced with some unavoidable decisions, the minority party must constantly fracture itself to provide the last few votes needed to achieve two-thirds majorities. The resulting bitterness destabilizes leadership and thereby robs the public of the benefits of a unified opposition party that can develop and present a coherent and useful alternative policy agenda.

No wonder many people think there is no difference between the parties.

Part of the solution, I believe, is a one-house Legislature like Nebraska. Local governments do not disperse authority between two city councils or two boards of supervisors, corporations do not disperse it between two boards of directors, and the state should not disperse it between a Senate and an Assembly.

But a one-house Legislature, even without the two-thirds vote requirement, still would leave government divided between the legislative and executive branches at a time when we can ill afford it.

In a parliamentary democracy, on the other hand, the voters elect a fully accountable group of representatives both to develop and carry out policy. Each party is free to develop a clear, principled policy agenda and put it forward for public debate. The voters know exactly whom to re-elect when they are pleased with the results, and whom to defeat when they are displeased. Each new majority has both the power and the mandate to make the changes the voters want -- and no excuse not to.

California should look at Britain, Canada, Japan, Germany and many other democracies and consider a parliamentary system.

The world offers a wide variety of parliamentary democratic forms we should study. In 200 years, no real democracy has copied the United States' divided-government form -- which has been very popular, however, among oligarchies and dictatorships using powerless parliaments to masquerade as democracies.

2. Incumbent-oriented-redistricting. Several rounds of sophisticated, computerized redistricting in the 1960s, '70s and '80s maximized the percentage of "safe" seats in Congress and the Legislature.

For all practical purposes, the seats' occupants became unaccountable for their failure to produce solutions, because they were re-elected almost automatically. They were free to hold policy decisions hostage to their ideological or personal wishes indefinitely. Extremists on each side became ever more extreme, and more stubborn, leaving the center too lean to act.

Incumbent-oriented redistricting is a political steroid. It produces incumbents who appear strong; no one can beat them at the polls. But the appearance of power is only that. The body of which they are part is afflicted with the insidious, fatal disease of perpetual deadlock. Its majority can accomplish nothing constructive because it has created an equally unbeatable and determined opposition.

Minority-party legislators, deprived by majority redistricting of any hope of ever achieving a majority, succumb to the temptation to attack the institution. When they succeed in weakening it, they further limit government's ability to solve society's problems.

An independent commission, aided by sophisticated computer technology, could redraw district lines after each census to equalize their population, unite communities of interest, assure legally required proportional representation for ethnic groups, avoid partisan bias, and maximize the number of competitive districts.

No redistricting commission that's politically astute enough to do the job could be perfectly neutral. But we do not need perfection. All we need is a substantially fairer outcome than the Legislature itself can produce.

3. Campaign costs and contributions. Technology and professionalization have made campaigns prohibitively expensive, particularly for challengers. Races for competitive legislative seats can cost more than \$1 million each.

The only sure source of the massive contributions needed to compete in elections is wealthy special interests -- who cheerfully make contributions, mainly to protect the status quo that made them prosperous.

Fresh ideas to cope with change do not just die; they're murdered.

And it is all perfectly legal.

However, even the most powerful beneficiaries of the status quo are beginning to recognize the risk of social explosion caused by escalating problems that gridlocked government cannot solve.

The answers have been discussed for years -- spending limits, contribution limits, and the partial public funding that the courts have determined is necessary to allow imposition of spending limits.

Damming the river of money that flows through the Capitol also could eliminate the subtle temptations that can lure otherwise clean, well-intentioned men and women into ethical compromises that damage both them and the public. And it should make it easier to catch the few outright predators.

4. Weak parties. In California, and increasingly throughout the United States, we have systematically reduced state political parties to social clubs. Yet it is parties, when they are strong enough to develop coherent philosophies, that demand that candidates stand for something other than self-preservation.

Without real parties, we often get mediagenic candidates who favor whatever is popular at the moment. Their vacillation is unrestrained even when it exposes them as blatant hypocrites. The media screen them thoroughly to assure that their personal lives are as bland as their public policy pronouncements. If elected, in their continuing effort to avoid standing for anything that might be unpopular, they never take the political risks necessary to enact major policy reforms.

Zero begets zero.

Legislative leaders then must spend great amounts of time securing resources to re-elect those incumbents who cannot run on a record of the Legislature's productivity. The leaders are left with little time or incentive to shape public policy.

The solution is to strengthen party organizations.

Grassroots party activists and elected party leaders -- not Joe Couchpotato who happens to be registered under a party label -- should have a principal say in selecting the party's candidates. One step in that direction would be to encourage parties to make pre-primary endorsements.

A more fundamental change -- in the tradition of strong, democratic parties throughout the world -- would be to abolish the primary system, and allow each party's decisionmaking apparatus, secured by democratic minimum guarantees, to select its candidates.

And parties should become key receivers and dispensers of campaign funds in general elections.

Empowering parties to select and sustain candidates would revitalize them and give substance to those seeking our trust. It would reduce markedly the attractiveness of sound bites, spoon-fed to an apathetic public. Even more importantly, it would eliminate the plague of negative campaigning, at least in primary elections. In general elections, each party's candidates would be linked to ideas and principles that could energize significant, real public debate.

5. A Complex constitution. In California, our long, rigidly detailed constitution, the product of a runaway initiative process, effectively prevents the Governor and Legislature from setting needed priorities.



The public sees that the state government is stalemated. People turn to initiatives that, with all their failings, have the one apparent virtue the Governor and Legislature often lack -- they at least accomplish something. But in doing so, they drive the regular policymakers from that decisionmaking field; the initiatives' special-interest sponsors lock them into the constitution, or into initiative statutes that the Governor and Legislature generally cannot change in response to new circumstances or new public demands. Government becomes even more stalemated.

The answer, in my opinion, is to return to the founders' wisdom -- that constitutions should be short, simple and difficult to amend. We need to scrap most of ours -- or move most of its details into statute, and empower future Governors and Legislatures, accountable to the voters more fully than any are now, to amend or repeal them.

6. The imprinted pattern of failure. Governmental failure feeds on itself. The public grows angry and punishes legislators, who try to protect themselves by playing it safe and parochial. The legislative culture is transformed from one of problem solving to one of "cover your rear". The problems fester, the public grows still angrier, the legislative bunker mentality grows more extreme, some legislators simply quit, and many potentially good candidates are reluctant to run to replace them. Paralysis grows worse - leading to still worse social ills, public anger, cynicism and hopelessness, an extreme expression of which erupted recently in South Central Los Angeles.

### Consequences of Legislation Gridlock

What James Madison knew, which we have yet to rediscover, is that a pluralistic society with democratic values cannot get along without well-functioning legislative bodies.

There is magic in the process of collective deliberation and decisionmaking -- when it functions well. The submission of multiple, diverse ideas -- and sometimes creative impulses -- to an arena of challenge, debate, compromise and reconciliation produces policy that is perceptive and attuned to plural, competing values, that increases the number of winners and reduces the number of losers, that unites rather than divides.

The process, as much as the product, commands respect.

Presidents and Governors cannot fill the void left by the paralysis of congresses and legislatures. Executive-branch decisionmaking is unitary, often shaped by sycophants, without adequate participation by those of different points of view or by representatives of diverse segments of society. It produces a few big winners and many big losers. And chief executives must delegate power to bureaucrats, who can be even less accountable to voters than the holder of the safest legislative seat.

If Madison was right about the need for well-functioning legislative bodies, and if society is losing them, then we would expect to see signs of the twin threats of which Madison warned -- chaos and tyranny.

Disturbingly, we do see those signs today.

Long before the Rodney King verdict, we saw signs of chaos. Our law enforcement, prison, health, housing, education, and social service systems are overwhelmed, with no real prospect for our neighborhoods or our natural environment except continued deterioration.

We see signs of potential tyranny in many voters' willingness literally to hand over our precious government process to those about whom they know nothing except that they are not incumbents. This is potential tyranny born of chaos -- a legal riot and a looting of democratic values by part of the electorate itself.

I have not entirely given up on the incremental approach to revitalizing government to avoid these consequences. My major effort in 1992 was a constitutional amendment to mandate campaign finance reform in California. It passed the Senate but failed in the Assembly.

### **The Need for a Constitutional Convention**

The structural roadblocks to legislative decisionmaking also prevent the Legislature from enacting most constitutional reform. This is why we need a constitutional convention in California, and perhaps other states.

The risk of a runaway state convention is minor, compared with the near-certainty of continued paralysis without one.

Only the voters may call a California constitutional convention. Its members would not be politically appointed, but selected by the people. The convention's proceedings would be open to full public view. It would have no power to touch the U.S. Constitution -- including the federal courts, the Bill of Rights, and the guarantee of a republican form of government in every state. Anything the convention produces would be submitted to the voters for ratification or rejection. And at the very worst, if the convention somehow wrote and the voters ratified a constitution that is even worse than the one we have now, the voters would be free to change it again when their error becomes clear.

There is no risk-free solution. We cannot both demand fundamental change, and guard against it. It is a logical inconsistency, and that is why the founders provided for future constitutional conventions.

Ultimately, we must trust the wisdom of an informed electorate. That educational process will occur if the question of true governmental reform is brought to center stage.

People do care -- when caring counts.

And what about a second Constitutional Convention for the United States?

The federal government is failing society just as surely as the state government is. But one strength of the federal system is that the states can act as laboratories of democracy. Constitutional conventions in several states could develop governmental forms to serve as federal models. At least as importantly, they could develop invaluable experience -- and measure the reality of fears of a runaway federal convention.

California is the largest state. California has the largest problems. California often leads the nation, for good or ill. California should be the first to call a constitutional convention -- before we spin further out of control.

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