

## **The Initiative and Social Issues**

*By John G. Matsusaka*

The initiative and referendum were adopted amidst deep suspicion about the influence of powerful economic interests and party bosses over elected officials. Direct democracy was intended to allow the people to regain control of their governments, and in its early years, activists used the new tools to reform government processes and structures and make public officials more responsive to the public, e.g. direct election of U.S. senators, redistricting, and primary elections. In the postwar period, activists used the tools to restrain what they saw as runaway government by capping taxes and spending. In the last several decades, social issues have emerged as a central focus of direct democracy. Initiatives have been a driving force in putting social issues on the public agenda, including same-sex marriage, marijuana legalization, assisted suicide, death penalty, and racial preferences.

Based on this now substantial historical experience, an important question is: how has availability of the initiative altered the development of social policies in the states? This is not a simple question to answer. One cannot simply peruse the list of ballot propositions that have been approved to determine the effect of the initiative, because some states might have adopted the same policy even without the initiative. The early 21st century movement to ban same-sex marriage is a case in point: while 11 states adopted same-sex marriages by initiative (AR, CA, CO, FL, MI, MT, ND, NE, NV, OH, OR), 19 states adopted same-sex marriage by amendments that were placed on the ballot by the legislature (AK, AL, AZ, GA, ID, KS, KY, LA, MO, MS, NC, OK, SC, SD, TN, TX, VA, UT, WI).

In order to determine the effect of the initiative on social policy, researchers typically compare policy outcomes in otherwise similar states where the initiative is available and not available. If we see initiative states more inclined to adopt a particular policy than otherwise similar noninitiative states, there is some basis for concluding that

the initiative brought about the policy change. A scholarly literature has emerged designed to estimate the policy effects of the initiative in this way, using a well-established statistical procedure called regression analysis that allows for other determinants of policy outcomes to be controlled.

Table 1 lists and summarizes the findings of several studies that have been published assessing the policy effects of the initiative. The table provides a handy reference for the reader who is interested in a learning about a particular policy. Researchers so far has estimated the effect of the initiative on nine social policies: parental notification of abortion, overall abortion stringency, public funding of abortion, partial birth abortion, death penalty, English as the official language, job discrimination based on sexual orientation, same-sex marriage, and school prayer. Most studies have found that initiative states adopt more socially conservative policies than noninitiative states. No study has found a statistically significant pattern in the other direction. Almost all of these studies control for public opinion so it is not the case that initiative states adopt more conservative policies because they are more conservative to begin with (indeed, the evidence suggests that initiative and noninitiative states are ideologically similar on average).

In short, the evidence suggests that the initiative brings about more conservative social policies across the board. Why this should be so is not obvious; there is nothing inherent in allowing citizens to propose and vote on laws that biases toward a conservative outcome. Existing empirical research indicates that the initiative is primarily a tool that brings about majoritarian outcomes, so one way to understand the findings in Table 1 is to rephrase them instead as: noninitiative states adopt more socially liberal policies than initiative states. It may be that elected officials are more inclined toward socially liberal policies than the majority of their constituents, and when the initiative is available, voters are able to counteract the liberal bias (as they see it) in their representatives and bring policy back in the direction of their preferred position.

This interpretation of the evidence suggests that in states where representatives have a conservative bias (relative to the voters), the initiative will pull policy in a liberal direction. We may be seeing something like this happening in the last few years as voters in initiative states have adopted measures to legalize marijuana and increase the minimum wage, both of which are often opposed by elected officials.

The majoritarian tendency of the initiative, while desirable in some respects, raises concerns about the status of minority rights and interests. While the central idea of democracy is that the majority rules, every successful democracy provides protection to minority groups to prevent “tyranny of the majority.” The American Founders were particularly concerned with the possibility that a propertyless majority would use its power to expropriate the property of the land-owning minority, thus undermining property rights in general, which the Founders saw as essential for a free society. That fear has not come to pass; the more contemporary concern is with the rights of racial, ethnic, gender, and sexual orientation minorities. While there are examples of initiatives that have been unfriendly if not hostile to the rights of these minorities, there are also similar examples that emerged through the legislative process. Indeed, the most egregious violations of minority rights in U.S. history – slavery, Jim Crow laws in the South, and internment of the Japanese during World War II – came about through representative democracy not direct democracy. While some studies have claimed to find that minorities suffer from the initiative process, I am not aware of any convincing study showing that minorities fare worse under the initiative than the legislative process. That is, minority rights are always under some risk in a democracy, but there is no evidence that the initiative makes things worse. The most convincing study of minority interests and the initiatives (Hajnal, Gerber, and Louch, 2002) in fact finds that racial minorities are on the winning side of ballot propositions most of the time, suggesting that policies loading on racial interests are not the mainstay of initiative elections.

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**Table 1. Research on the Effect of the Initiative on Social Policies**

Policy	Effect of Initiative	Period	Study
Abortion, parental consent	More likely to require*	1990	Gerber (1996, 1999)
Abortion, parental consent	More likely to require	2005	Matsusaka (2017)
Abortion, index of restrictions	More restrictions*	2000	Arceneaux (2002)
Abortion, public funding	Less likely to provide	2005	Matsusaka (2017)
Abortion, partial birth	More likely to ban	2005	Matsusaka (2017)
Death penalty	More likely to permit*	1990	Gerber (1999)
Death penalty	More likely to permit*	1972-1982	Boehmke (2005)
Death penalty	Less likely to permit	2005	Matsusaka (2017)
English as official language	More likely to establish*	1981-1998	Schildkraut (2001)
English as official language	More likely to establish*	2005	Matsusaka (2017)
Job discrimination based on sexual orientation	More likely to permit*	2005	Matsusaka (2017)
Marriage, same-sex	More likely to ban*	1998-2009	Hume (2011)
Marriage, same-sex	More likely to ban*	1994-2006	Lewis (2011)
Marriage, same-sex	More likely to ban	2005	Matsusaka (2017)
School prayer	Less likely to permit	2005	Matsusaka (2017)
INDEX OF 8 SOCIAL ISSUES	Conservative policy more likely*	2005	Matsusaka (2017)

*Note.* The tables lists published research on the effect of the initiative on social policy choices. All studies examine data from the American states, and compares states that do and do not allow initiatives. “Period” is the years covered in the study. An asterisk means that the effect is statistically significant.