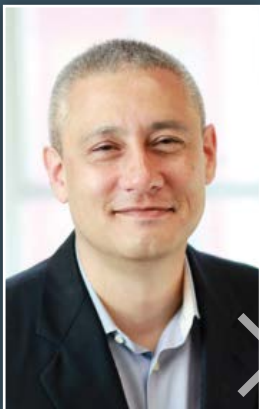




ELECTIONS 101

INITIATIVES, REFERENDUMS AND OTHER BALLOT PROPOSITIONS

BY JOHN G. MATSUSAKA



Ballot propositions are among the most visible features of American democracy. Since 2000, voters have decided 1,692 state-level ballot propositions covering a wide array of issues, including same-sex marriage, education, primary elections and marijuana legalization.

An even larger number of propositions have been decided at the local level, covering topics such as the minimum wage, tax rates and bonding authority. Participation on ballot propositions typically exceeds that of all but the highest profile candidate races. But a number of misunderstandings persist about citizen lawmaking.

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HISTORY & AVAILABILITY

Direct citizen participation in the lawmaking process is sometimes believed to be a modern invention that has only recently been grafted onto the “real”—representative—democracy of the country. The idea of citizen lawmaking, however, goes back to New England town meetings in the 18th century, and Massachusetts held a referendum to its constitution as early as 1780. Rhode Island made referendums mandatory for constitutional changes in 1842, and by the late 19th century, referendums on amendments were the norm across the country. The practice of permitting citizens to propose new laws by initiative began in 1893, when California granted initiative rights to all counties, and the California cities of San Francisco and Vallejo were the first to provide initiative rights in 1898. The first state to adopt the initiative process was South Dakota in 1898, and by 1918, 20 states had adopted the process. To put this in context, even the newest types of ballot proposition—the initiative and referendum—are older than universal woman’s suffrage, direct election of U.S. senators, the federal income tax and Social Security.

Ballot propositions sometimes are also considered to be exotic, for example, something that is peculiar to California. All states have used ballot propositions from time to time, and 49 states have held votes on at least one public issue since 2000. The initiative process is available in 24 of 50 states; most are in the West, but all regions are represented, e.g. the Northeast (Maine, Massachusetts), the South (Arkansas, Florida), and the central regions (Ohio, Nebraska). To be sure, the most active initiative states are in the West, with California (84 initiatives since 2000), Oregon (60) and Washington (43) leading the way. At the local level, the initiative process is available in 97 percent of Western cities, but also in 82 percent of Northeastern and Southern cities, and 59 percent of cities in the central states.

In short, direct democracy is neither new nor exotic; it is an old part of American democracy that has taken root in all regions of the country and at all levels of government, with the notable exception of the federal government, where it is not allowed. Some might wonder

EFFECTS

A longstanding controversy concerns who benefits from direct democracy, particularly from initiatives. One view that can be dismissed is that initiatives have an inherent ideological bias. Initiatives have been used to promote conservative issues—same-sex marriage bans, tax cuts—and liberal issues—minimum wage, marijuana legalization. Many initiatives—such as term limits, open primaries and nonpartisan redistricting—cut across ideological lines. Rather than favoring one side of the ideological spectrum, the initiative process is better seen as a process that empowers groups that lack influence in the legislature.

One of the central debates concerning the initiative is whether it benefits the many or the few. The Progressive groups that promoted the initiative and referendum in the early 20th century believed direct democracy would give ordinary citizens a tool to fight back against the special interests they believed controlled many state governments. Critics then and now argued the initiative has the opposite effect—it further empowers wealthy and organized interests that already exert disproportionate influence. Scholars have addressed this issue by estimating the effect of campaign spending on election outcomes. Most studies find that money matters, but only to a point; spending can deliver some votes, but it cannot convert an unpopular proposition into a winner, or bring about the defeat of an inherently popular proposition.

Even if the initiative playing field is tilted toward wealthy groups, so are candidate elections. The question is whether the initiative process tilts an already unbalanced playing field further in the wrong direction or allows a counterbalance in the direction of levelness. Most existing research finds the initiative, on net, counteracts the influence of special interests and tends to promote the policy preferences of the majority. Recent estimates suggest having the initiative available makes a state 18-19 percent more likely to adopt policies favored by the majority compared to states where the initiative is not available. It seems that no matter what form of democracy is practiced, wealthy and organized groups have an advantage, but special interests are less influential with the electorate at large than with the legislature.

Perhaps the most fundamental question is whether voters are sufficiently informed and competent to make policy decisions. Research shows clearly that voters do not have an encyclopedic grasp of the issues and often rely on information cues, such as endorsements from trusted media, groups and civic leaders, to make decisions. For example, an environmental voter might determine whether to support or oppose a forestry measure based on the position taken by the Sierra Club or the timber industry. While the use of cues may be troubling to some, this behavior is not unique to voters. Few legislators have encyclopedic knowledge of each bill they vote on; like voters, legislators rely on cues—expertise and advice from individuals and groups they trust. While the evidence is somewhat mixed, some research suggests voters can effectively register their preferences in the ballot box by using information cues. To be sure, the lack of information possessed by voters about policy and politics is disconcerting, but this seems to raise concerns about democracy in general, not specifically about direct democracy.

Ballot propositions have been a feature of American democracy for two centuries and are deeply embedded in state and local governments across the country. Opinion surveys consistently show that voters like the initiative process and are much more confident in decisions made by voters than by elected officials—typically by a three-to-one ratio. All indications are that direct democracy is here to stay, and will likely continue to grow in importance in the United States, as it is across the globe.

Confusion about ballot propositions begins with the terminology. A ballot “proposition” or “measure” is a proposal for a specific law or constitutional amendment that voters may approve or disapprove. In almost all cases, if voters approve, then the proposal becomes law; the legislature or governor have no further input. In most states, approval requires a simple majority of participating voters, although a handful of states require a supermajority (e.g. Florida requires 60 percent approval) or a quorum (e.g. Utah requires 50 percent in favor of all ballots cast, including blank ballots).

State legislatures put most ballot propositions—67 percent since 2000—on the ballot; these usually are called legislative propositions, legislative measures or legislative referendums. All but one state require voter approval for constitutional amendments and most states require voter approval for bond issues.

Other ballot propositions are placed on the ballot as a result of citizen petitions. In 24 states, citizens can place proposals for new laws—initiatives—on the ballot by collecting a specified number of signatures from fellow citizens, typically about 5 percent to 8 percent of the number of votes cast in the previous gubernatorial election. Citizen initiatives are the most visible and controversial propositions and have comprised 28 percent of ballot measures since 2000. Citizens also can propose to repeal an existing law via “popular referendums” or “veto referendums,” by collecting a specified number of signatures; these comprise only 3 percent of the total number of ballot propositions since 2000.



how direct democracy squares with the U.S. Constitution's guarantee to each state of a “republican form of government.” Although it is sometimes argued that “republican form of government” equals “representative government,” historical research casts doubt on such a formulation, and the fact that some forms of direct democracy were in use during the founding period suggests that citizen lawmaking was not viewed as inconsistent with a republican form of government at the time.

TAKING INITIATIVE

LOS ANGELES, CALIF.—Ryan Laviets, 2, center, helped her mother Harriet cast her ballot as her father Bryan looked on at Allesandro Elementary School in the Silver Lake area last March. California was the first state to grant initiative rights—the practice of permitting citizens to propose new laws by initiative—in 1893.

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