

Book Review

Initiatives: Slouching Toward Respectability?

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Center for Governmental Studies, *Democracy by Initiative: Shaping California's Fourth Branch of Government* (second edition). Los Angeles, CA: Center for Governmental Studies, 2008, 402 pp., available without charge at <http://www.cgs.org/images/publications/cgs_dbi_full_book_f.pdf>, or in paperback or hardbound by request directed to (310) 470-6590.

THE RELEASE OF the second edition of the Center for Governmental Studies' *Democracy by Initiative* (DBI), 16 years after the first edition, is a good occasion to reflect on the current status of direct democracy in American government, and to consider how thinking about the initiative and referendum has evolved over the last 16 years. The first edition, published in 1992, came 14 years after California's tax-cutting Proposition 13 ignited the modern initiative boom, and was in part a response to the recognition that citizen lawmaking was "transforming the electorate into a fourth and new branch of government" (2, 1st edition).

That transformation has, if anything, accelerated over time. With 15 initiatives on the ballot in 2008, the amount of initiative activity in California in the first decade of the twenty-first century has eclipsed the previous record for the 1990s, which itself eclipsed the record for the 1980s. National trends echo the pattern in Cal-

ifornia, with the total number of initiatives increasing decade-by-decade since the 1970s. Ballot propositions are driving the agenda on a variety of policy issues, including gay marriage, eminent domain, term limits, medical marijuana, gambling, civil rights, and smoking bans. The boom in citizen lawmaking that was set off by Proposition 13 shows no sign of slowing, and what once might have been seen as a passing fad now looks more like a permanent transformation of American democracy.

One interesting change between the two editions is that the somewhat begrudging acceptance of the initiative process in the first edition seems to have become a bit less begrudging in the second edition. Neither edition of DBI calls for elimination of the initiative process, but the first edition indicates that there was "lengthy and detailed" discussion of whether or not to recommend elimination of the initiative process (74, 1st edition). No such soul-searching appears to underlie the new edition, which continues to note the importance of the initiative as an "antidote" and "safeguard" against an unresponsive legislature (89, 2nd edition), as well as the broad popularity of the process among the general public (89-90, 2nd edition).

This evolution in DBI's tenor parallels a growing acceptance of the initiative among scholars, journalists, and practitioners over the last 16 years. It is now generally recognized that the initiative and referendum are not risky, political novelties but rather old and deep-rooted elements of American democracy. The concept of requiring popular approval for laws goes

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back to colonial town meetings. Massachusetts held a referendum to approve its new constitution in 1780. Rhode Island made referendums mandatory for constitutional amendments in 1842, and by the late nineteenth century, referendums were the norm for constitutional changes.¹ Around the same time, many states began requiring popular approval for public borrowing. The first state to adopt the initiative, a process that allows citizens to propose new laws, was South Dakota in 1898. By 1920, 20 states had adopted the process and today 24 states allow initiatives. Cities began adopting the initiative and referendum at the turn of the nineteenth century, and today over 80 percent of cities make the process available.² The fraction of Americans who live in either a city or state with the initiative is well over 70 percent, making it unusual for a citizen not to have access to some form of direct democracy. The initiative is thus a venerable institution—older than universal women's suffrage, direct election of U.S. Senators, social security, and the federal income tax—and far from an exotic practice in the United States. Initiative use is growing outside the United States as well. Switzerland has used initiatives at the national and subnational level since the middle of the nineteenth century, and initiatives are available in nine other European countries, six post-Soviet republics, Taiwan, Australia, and New Zealand.³

DBI contains a historical overview, a discussion of key issues, and 17 specific recommendations for reform of California's initiative process. Most of the recommendations carry over from the first edition. Two stand out as particularly valuable: one is to create a process for proponents to make changes in the text of a measure after it qualifies for the ballot (to correct technical and drafting errors) and the other is to require initiatives creating supermajority requirements to be approved by the proposed supermajority (so, for example, a measure proposing a two-thirds vote on future tax increases would itself have to be approved by two-thirds of the voters). Several proposals from the first edition that would have limited the initiative have been removed. DBI no longer recommends a 5,000-word-limit for initiatives or a 60 percent supermajority requirement for

approval of constitutional amendments. The new edition recommends an increase in the circulation period from 150 days to one year (the first edition recommended an increase to 180 days) and recommends allowing the legislature to amend successful measures with a two-thirds vote (the first edition would have required 60 percent approval). The changes are modest, but where they occur, the second edition envisions a more expansive role for the initiative than the first edition.

The slight softening toward the initiative that can be perceived in the new edition is consonant with a significant evolution in the scholarly literature since the first edition was published. Debate over the initiative and referendum, from the beginning to the present, has centered on two issues, voter competence and special interest influence. Early critics of direct democracy argued that voters lack the ability and information to make wise decisions at the voting booth, and that direct democracy enables narrow interest groups with deep pockets and other organizational resources to take control of the policy process.

For most of the last century, arguments involving these issues were largely rhetorical and based on anecdotes. Beginning in the 1990s, armed with powerful computers, large data sets, and sophisticated new theoretical tools, social scientists began rigorously investigating the underpinnings of these arguments.⁴ Schol-

¹ Modern writers tend to use *referendums* rather than *referenda* as the plural, following the *Oxford English Dictionary*.

² This information is from the Initiative and Referendum Institute's *Legal Landscape Database*, available at <<http://www.iandrinstitute.org>>. See Matsusaka (forthcoming) for an overview.

³ See Matsusaka (2005) for a survey and references.

⁴ Of the many books on direct democracy, most are either journalistic accounts (two recommended examples are Broder (2000) and Schrag (2004)), historical (Piott (2003) is good on adoption of the process), or essentially repackaging of standard arguments. Books in the modern social science tradition include Lupia and McCubbins (1998) [voter competence], Bowler and Donovan (1998) [voter competence], Gerber (1999) [role of money], Gerber et al. (2001) [implementation], Matsusaka (2004) [special interest influence], Smith and Tolbert (2004) [educative and civic benefits], Nicholson (2005) [spillovers]. See Lupia and Matsusaka (2004) for a summary of the recent evidence.

ars began to actually measure whether voters performed competently in the voting booth, and whether special interests were benefiting from the initiative. The picture of direct democracy that has emerged is largely positive. While voters are ignorant about the substance of ballot measures, they are surprisingly adept at voting their interests. And while money undoubtedly plays an important role in initiative campaigns, the importance seems no greater than in candidate elections and, overall, the evidence suggests that special interests are less likely to get their way in a state when the initiative is available as a counterbalance to the legislative process. The initiative is not a perfect device, but the evidence so far suggests that on balance it functions as the Progressives intended, as a check on special interests that are unduly influential in the legislature.

At 402 pages, DBI stands as the most comprehensive study of direct democracy in California that is currently available, and because of its breadth, will be an essential reference on the California initiative for some time. DBI also provides valuable links to the scholarly literature. To take one example, Chapter 8, on the influence of money on initiative campaigns, notes the now-conventional view, first observed by Lowenstein (1982), that spending against a measure is more effective than spending for a measure, but then also alerts the reader to a recent series of papers, some unpublished, that question the conventional view based on larger data sets and more sophisticated empirical techniques than were employed by the first generation of research. Overall, DBI provides a useful reference for identifying key issues, arguments, studies, and judicial decisions. On the downside, because it seems to contain more than a few errors of detail, it is not entirely reliable as a primary reference. For example, Delaware not New Jersey (32, 2nd edition) is the only state in the nation that does not require referendums on constitutional amendments, and San Francisco and Vallejo in 1898 were the first cities to adopt the initiative, not Los Angeles in 1903 (35, 2nd edition).

DBI covers the perennial issues in the area well—particularly voter competence and campaign spending—but skips over some issues that have emerged more recently. For example,

one recent strand of the literature has pointed out that enforcement of adopted initiatives is by no means guaranteed, and many initiatives are de facto nullified because of incomplete or nonexistent enforcement (Gerber et al., 2001). Another strand of the literature has focused on potential external benefits of initiatives—they may bring voters to the polls, produce more educated citizens, give citizens a feeling of empowerment, and so on (Smith and Tolbert, 2004). Another idea is that initiative campaigns can be used to draw voters to the polls in order to influence the outcome of candidate elections (Nicholson, 2005). For example, some pundits claimed that a 2004 Ohio amendment banning gay marriage drew conservative voters to the polls and tipped the presidential election to George Bush (although rigorous scholarly evidence does not support the claim in this case).⁵

It may be greedy to ask for more from a project as rich as DBI, but I did feel a bit dissatisfied by the absence of a connection between DBI's reform agenda and the serious problems facing the state. California is in the midst of its second serious budget crisis in the last decade. The root causes of both crises are the same: an inability of the legislature to control spending. State revenue increased by 40 percent over the period 2003–2007 due to soaring income taxes and property values, yet incredibly the state found itself with a \$15 billion cash shortfall in 2008 on a total budget of \$145 billion. Almost exactly the same thing happened during the tech boom of the late 1990s: state revenue rose 45 percent during 1997–2001, due largely to soaring income and capital gains, but the state spent all of the money and ended up with a massive cash shortfall. Ending the cycle of fiscal crises arguably is the most important policy challenge for the state today, yet it does not appear to be a factor in DBI's policy recommendations. In fact, the recommendations are not targeted toward any of the state's major challenges—the environment, immigration, education, energy, infrastructure, and so on. I would have welcomed a discussion of the initiative process in light of these challenges: has the initiative process contributed to the prob-

⁵ See Makin (2006) for a review of evidence.

lems we faced, has it mitigated the problems, and can the initiative play a role in finding a solution? While I am sympathetic to much of DBI's reform agenda, I sometimes wondered what was the goal of those reforms—what problem are we trying to solve and are those really the important problems we should be focusing on? Perhaps we can hope for a third edition of DBI (in 2024?) with some answers to these questions.

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