

BUILDING JUSTICE PODCAST



CRISJ Building Justice Podcast

Season 2, Episode 12: Direct Democracy and Social Justice

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Please note: This transcript may be imperfect. Please contact Mark Brown directly should you have questions.

Music lyrics:

Company under construction, the function, justice for the human family we demand it. Justice, true freedom, equality is a must. Thus, decolonization of the planet. So bust this. People be the power now we're Building Justice. Pulling out divinations, now we're Building Justice. Welcome the planet to the Podcast, "Building Justice," "Building Justice," "Building Justice." Building is to add on, or to do away with.

Welcome to Building Justice, a podcast by Sacramento State's Center on Race, Immigration and Social Justice. We explore critical issues affecting our communities with the hope of creating a healthier and more just world. My name is Mark Brown. I'm a political science professor at Sacramento State, and I'm here today with Ted Lasher, who's a professor in Sacramento State's Department of Public Policy and Administration. Ted is a political scientist by training, and he teaches about the politics of policymaking and other topics. Recently, his work has focused on direct democracy and the initiative process, especially in California. His many publications include a recent book, coauthored with Joshua Dick, with the title *Initiatives Without Engagement: A Realistic Appraisal of Direct Democracy's Secondary Effects*. It was published by University of Michigan Press in 2019. Today, we're going to talk about the initiative process and its relation to social justice. The initiative process is what creates all those ballot propositions you hear about every election, with names like Prop 13 or Prop 22. The process allows citizens to bypass the government and create laws and constitutional amendments themselves, without

approval of the governor or the legislature. It's based on the idea of democratic self-government, but its effects are often not very good for democracy. Thank you so much, Ted, for joining me today. I'm really looking forward to our conversation.

Thanks, Mark. I'm glad to be here, and this is one of my favorite topics.

So maybe we could start by discussing the popular image of the initiative process. When you talk to people on campus, or in the state legislature, around town, what do they tend to say? What are some kind of background assumptions that people have about the initiative process in California?

I think that however critical people may be of certain initiatives and some of the aspects of the initiative process, most people I talk to think that the initiative process tends to promote social justice, in the sense that it acts as a check on entrenched interests, it acts as a way to get around the legislature when the legislature is not doing things that ordinary people want, it provides opportunities for less powerful groups to get what they want. The problem is that I think most of these arguments are based in mythology, and that they've been based in mythology for a long time, and that in many ways the process actually acts to lessen social justice in California and in the rest of the country, unfortunately.

Wow. That's a lot. I think I'm probably someone who embraced those myths for a long time. I remember when I was in college, I wrote a paper advocating for the expansion of the initiative process. I was a big fan of direct democracy, and I certainly was someone who thought that in general it would be a way to promote social justice and challenge entrenched interests. But it sounds like that's not right.

By the way, you're not the only one. I was probably there, too, in college, and I used to have these arguments with my father, who was much more skeptical. As I've grown older, I decided that my father was mostly right and I was mostly wrong.

All right. Well, let's look at the history a little bit. How did this whole thing get started in California?

So the initiative process is one of several legacies of the Progressive Era in the early part of the 20th century. And the progressive advocates and theorists promoted the initiative process and the referendum and the recall and various other mechanisms as tools that would help to get around, what they saw, and probably was definitely more true at that time, corrupt legislatures who were basically in the bag for powerful groups like railroads and monopolies and sort of the burgeoning corporate sector at that time.

And were there particular causes that the proponents of the initiative process wanted to promote?

Well, that's interesting. Again, what they thought that this would be a way to check monopoly power and check the power of groups like the like the railroads. But interestingly, if you go back and look at the first few years of initiatives that actually made it on the ballot, they basically didn't have to do with those things.

Oh really, what did they have to do with?

There were a lot of initiatives that had to do with things like alcohol sales, with for and against prohibition, with boxing on Sundays, and various other activities that were prohibited at that time, with other really special interests causes. Probably the best book about this was a book by Richard Ellis called *Democratic Delusions*. And Richard looked very carefully at that time, which was often known as the golden era of the initiative process, and basically concluded it was the golden era that never was.

And what sort of background ideas about democracy did the people have who promoted the initiative process?

I think the idea was that ordinary citizens, if given the opportunity, would embrace the possibility of deciding on issues directly that would get them more engaged in politics, that would get them more interested in politics. They would band together and put on the ballot and support measures that had been bottled up in the representative government institutions, which were thought to be imperfect reflections of popular will.

Okay. So the idea was not only to challenge big interests like the railroads, it was also to improve democracy by getting more people involved, by giving more of a voice to ordinary citizens. Is that right?

That's exactly right, Mark. And in fact, one of the early articles I did about this, I found a quote that I honestly I can't remember where I found it at this point, where people referred to the ballot initiative process as the "gun behind the door" with the idea that if the legislature wasn't doing what people wanted, the people would take up the initiative and put things on the right track.

Okay. And to what extent did it work, back then in the early years? Did a lot of people get involved in promoting initiatives and taking politics into their own hands?

Well, almost from the beginning -- there were certainly some measures that made it on the ballot that had strong popular support that could be seen as motivated towards broad interest. But almost from the start, powerful special interest groups were able to use the process to get at least get a shot at getting things passed that say they couldn't get through the legislature or for whatever reason.

Okay. All right, that's really interesting. So it sounds like some of the problems that that we have today were really there from the beginning.

Exactly.

Okay. Let's talk for a minute, just for people who might not know about how the process actually works today. What does it take to get an initiative on the ballot? How hard is it? And just tell us a little bit of some of the nuts and bolts.

Well, initiative advocates have to put together a proposal and get a title and a summary. And then they have to circulate the petitions to get actual signatures, handwritten signatures to get measures on the ballot. And the only real criterion for determining what gets on the ballot isn't -- there are no substantive criteria to speak of. There are rules like an initiative is opposed to deal with only one subject, but even that is somewhat squishy. The main thing is you've got to get enough signatures. And under the Constitution, the requirement is that you need 88% of the signatures in the prior gubernatorial election to get a constitutional amendment on the ballot and 5% of the signatures in the prior gubernatorial election to get a statutory change, ordinary law on the ballot. If you can do that, if you get the title of the summary, get the sufficient number of signatures, you can put most anything on the ballot, including major changes to the Constitution.

Okay. Can you just maybe mention a few examples of some of the most influential initiatives in recent years?

Well, if you, actually in my lifetime, probably the most and most important initiative was Proposition 13 in 1978, which vastly restricted the use of property taxes. The percent that could be charged, how much property taxes could increase and things of that sort, and then effectively force the state to step in and finance major activities that weren't previously financed by the state, especially notably K-12 and other education, and really completely change the system of finance in California. But we've seen a whole bunch of other initiatives, and I could go back to these some of the ones that are particularly worrisome, but initiatives to restrict rights for immigrants in terms of education, initiatives to limit affirmative action initiatives, most recently, say a major initiative to prevent certain employees for companies like Uber and Lyft from being considered regular employees instead of contractors that had big financial implications for drivers and for the companies themselves.

You know, sometimes when I go to the supermarket, I see people standing out front collecting signatures for some ballot proposition. And sometimes I stop and ask them about the proposition and I try to get some more information about it. And usually they don't seem to know that much about it. I'm sort of surprised they're standing there, sometimes in the rain, gathering signatures. And I think, you know, this might be some idealistic young person who has really immerse themselves in the issue and they can tell me all about it. But that is usually not the case. What's going on?

Well, that is another of the great myths about the initiative process, that it's regular people gathering. The fact is that most signatures are gathered by paid signature gatherers who are hired by companies, some in California, some elsewhere, and that people are compensated based on the number of signatures they get. So signature gatherers have a huge incentive to gather the signatures as quickly as possible with as little discussion. And they commonly use lines like, Oh, we don't need to talk about it now, just give it a chance. Put it on the ballot.

Okay. So that makes it sound like it's not really a grassroots process. What, how much do they charge? How much money is involved here in gathering signatures?

It's a lot of money. We, for our book, we had estimates of how much it cost per signature in California to put an initiative on the ballot. And at that time, on this date, this is old data and it would be more, we estimated, the estimates we saw were over \$6 per signature.

Wow.

Now, if you think about that and you need a million signatures for a constitutional amendment, 600,000 approximately for a statutory measure, do the math. You are into that several million dollars just to get the initiative on the ballot.

Wow. And they usually have to collect more signatures than is required because many are declared invalid. Is that right?

That's exactly right. To be safe that they're going to reach the threshold and that they won't have too many thrown out, they have to collect more than is absolutely required.

Okay. So if collecting the signatures costs so much money, that makes me think that not everyone can really get something on the ballot. Is it really only major wealthy interest groups that are able to put initiatives on the ballot?

It is. It is very helpful to have a lot of money. And yes, powerful interest groups with lots of money typically are able to get what they want on the ballot. It doesn't mean it will pass necessarily, but they're able at least, to use gambling terms, to roll the dice and give it a shot. And that's why you sometimes see things like, I mean, some of you may remember we just voted on a dialysis measure.

Right.

This is like the fourth time that such a measure has appeared on the ballot. And that's because wealthy interests were able to put it on the ballot and wealthy interests also opposed the measure. So it was very much a these are very much special interest measures.

Right. And then there's also all the television advertising, right? Ad after ad after an ad for months, ads and counter ads for each of these different propositions.

That's exactly right. So what I was talking about this millions of dollars just to put the measure on the ballot. That's before you even get to that campaign, which is, as you indicated, mostly carried out over advertisements, particularly on television.

Okay. So that's the really the process and the campaigning, which sounds not very grassroots democracy to me. What about the impact? I think you mentioned earlier that there's real questions about the extent to which initiatives historically have promoted social justice and have promoted equal rights. Can you give a few examples in that area?

Yes. This is one area where Josh and I look very carefully in California, and other people have also done similar research, and what you find is that there are almost never initiatives appear on

the ballot that expand minority rights, any way you define minority of one kind or the other. What initiatives are often used is to restrict the rights of less powerful, less advantaged groups. So if you look over the years, there have been initiatives in California back to the sixties to get rid of fair housing laws that protected minorities, that was passed easily but then subsequently thrown out by the courts. There is a famous initiative going back to the mid-nineties that aimed to restrict services, education, other benefits to undocumented people. That was thrown out by the courts, too, for the most part. There were successful initiatives to restrict affirmative action, to restrict bussing for purposes of desegregation. And then, notably, liberal California twice passed measures that aimed to prohibit gay marriage in the state.

Right. Also eventually found unconstitutional by the courts.

Right.

The three-strikes law, if I remember right, that was also the result of a proposition, leading to, or one of the causes of, mass incarceration in California.

That's right.

Yeah. Well, that really does throw a different light on the whole initiative process.

And the other thing we found, we looked very carefully, and there was virtually no measures that moved in the other direction. You know, you could imagine that the process could be used to or in the early days to legitimize gay marriage, that it could be used in the in the fifties and sixties to prohibit certain types of discrimination, that it could have been used to protect the rights of political minorities. But that's not what has happened.

Right. One example people sometimes mentioned is the legalization of marijuana was, I think in 2016 was the result of a ballot initiative.

I think that's an interesting example, Mark, because I think that was a measure that was broadly supported, but it was broadly supported by lots of different groups, including white voters in this state.

Right. So why would you say is the initiative process so often used to restrict people's rights?

Well, one thing to note about the initiative process is that somebody who has very little interest in politics and, say, doesn't even vote regularly, but is motivated to vote by some sort of very populist anti-minority campaign, that person's vote counts exactly the same as somebody whose basic rights are also affected by the measure. And so what you have, and so sometimes there have been moments, as we all know, in our history, when there have been waves of anti-minority sentiment and the initiative process can play on that. By contrast, for whatever other flaws it has the led the legislature is often more sensitive to the intense and very strong views of people whose rights are affected. They will go in and lobby for them and they'll get more involved. And that in many ways the legislature is actually more reactive to and sensitive to minority interests, in part because it's in their political interests to do so.

Right. Because if they're not, in theory, at least they won't be reelected.

Yes. Right.

And they're also potentially receptive to advocacy groups of various kinds.

And I would say that one of the areas that has been particularly well studied in this regard is the protection of gay rights. And there's some good, rigorous political science research that essentially suggests that LGBT rights are better protected in legislatures than they are at the ballot box.

Okay. And I guess legislatures can also take a more comprehensive view of complex problems if you think of water policy or energy policy, incredibly complex issues. And my understanding is that ballot initiatives often put real restrictions on the ability of the legislature to do its work.

Well, even take Prop 13, Mark, there's no question that that measure had huge support and won in a landslide and people really did want restrictions on property taxes. But there were certain aspects of Prop 13, such as the provision that essentially says that your homes only get reassessed when they're sold, which tends to favor people who are older and have lived in communities longer. It's not clear that that particular aspect of Prop 13 would have passed in the legislature, even if the rest of the measure was popular. And then, again, initiatives tend to be crude policy instruments that don't allow much meaningful discussion.

Okay. Let's add that all makes a lot of sense. Let's talk about what to do. Is the problem with the particular way the initiative process has been implemented? Are there reforms that could make it work? Or do you think the problem is more fundamental with the whole idea of direct democracy?

Well, I'm probably in somewhat of a minority here. I think the problems are quite fundamental. But the reality is that poll after poll has shown that people, that Californians as a whole approve of the process, even if they have concerns about specific aspects of it. And there is limited constituency for massive changes in direct democracy or the initiative process. So I think where what is more possible is some reforms.

Okay. So direct democracy has democratic support.

It has democratic support, although interestingly, it mainly has that support in the abstract. So people, and people in general are reluctant to ever give up the right to vote on things. But people at the same time have lots of concerns about money in the initiative process and their own ability to understand initiatives.

Okay, what are some reforms that might make the process work a little better?

Well, the two big types of reforms that I'd like to see, are any reform that gets the legislature more involved in the process. I would like to see us move towards, situations have occurred,

some other places and other countries where, say, if an initiative was proposed, the legislature would have a chance to address -- or excuse me, if the initiative got on the ballot -- the legislature would have a chance to try to address the problem before action was actually taken on the ballot measure. That's done in some other states, that's more like the process that occurs in Switzerland. So I'd say major reform type one is get the legislature more involved.

Right. That sounds like, that sounds promising.

And then the second thing is, I think it doesn't make sense to allow initiative constitutional amendments to be passed with a simple majority. Right now, to get an amendment through the legislature, you need a two-thirds vote in both houses. But all you need to change the Constitution, the fundamental document of this state, all you need is 50% plus one of people who vote in the last election. I think that to pass a constitutional amendment, you should need a two thirds vote to pass that. And by the way, that's one of the reasons, I should say this is a topic for another day, Mark, one of the reasons our Constitution is so messy, so much longer than the United States Constitution, with so many different sorts of provisions, is because we passed so many things through the initiative process.

Right. Okay. Well, that's a big agenda to make those sorts of reforms. But that does that does make a lot of sense to me. Thank you so much, Ted, for this conversation. It's been really fascinating. Thank you for joining me on the building just as podcast.

Thanks, Mark.

And to our audience, thank you for listening. We hope our ongoing conversations spark understanding, empathy and motivation to join the struggle for a better future for all.

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Outro Music Lyrics

No more penalties and no more wars. Based on the actions. Now, time for "Building Justice," "Building Justice." Time for building justice, justice.