
COMMENTARY

CRYPTO-INITIATIVES IN HYBRID DEMOCRACY

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Most Americans live in a hybrid democracy: a democratic system that is neither wholly representative nor wholly direct, but a complex combination of both at the local and state levels, which in turn influences national politics.¹ One characteristic of a hybrid system is that politicians, interest groups, and political parties strategically use initiatives to affect voter turnout in candidate elections, to increase their membership rolls and the funds in their political war chests, and to evade campaign finance restrictions that apply in many candidate races. The use of the initiative process by politicians and parties is not new,² but it seems to be increasing in recent years, or at least it is more salient. Savvy political actors are using what Thad Kousser and Mathew McCubbins call “crypto-initiatives,” which are “initiatives . . . designed by agenda setters . . . who have other goals in mind [than changing public policy]; for them, affecting policy is

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1. For a description and discussion of hybrid democracy, see Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. (forthcoming 2005); an early version is available as ELIZABETH GARRETT, CALIFORNIA’S HYBRID DEMOCRACY (USC-Caltech Ctr. for the Study of Law and Politics, Working Paper No. 39, 2005), available at <http://lawweb.usc.edu/cslp/papers/cslp-wp-039.pdf>.

2. See Daniel A. Smith & Caroline J. Tolbert, EDUCATED BY INITIATIVE: THE EFFECTS OF DIRECT DEMOCRACY ON CITIZENS AND POLITICAL ORGANIZATIONS IN THE AMERICAN STATES 115–16 (2004) (revealing that some early proponents of initiatives feared they would become the tool of political parties, rather than effectively control them, and expected party involvement in ballot measures). For discussions of political parties and initiatives, see Richard L. Hasen, *Parties Take the Initiative (and Vice Versa)*, 100 COLUM. L. REV. 731 (2000); Daniel A. Smith & Caroline J. Tolbert, *The Initiative to Party: Partisanship and Ballot Initiatives in California*, 7 PARTY POL. 739 (2001).

often at most a secondary concern.”³ Most of the initiatives that Kousser and McCubbins go on to describe are generated or manipulated by candidates, political parties, or other political actors seeking to aid the campaigns of particular candidates or parties.

The notion of crypto-initiatives underscores the heavy involvement of elected officials and political parties in the initiative process, a theme also emphasized in Richard Hasen’s contribution to this Symposium, which reveals the number of California issue committees controlled by politicians.⁴ In the past, much of the scholarship in law and social sciences has been preoccupied with the influence of organized and well-funded interest groups on the initiative process, or the role of wealthy individuals who back petition drives and ballot measure campaigns.⁵ Kousser and McCubbins’s article raises the question of how the involvement of political actors—who are accountable to the voters—differs from the involvement of these other groups and people. Kousser and McCubbins spend most of their time on the malignant effects of crypto-initiatives on policy and governance; I want to sketch out three effects that might be positive.

3. Thad Kousser & Mathew D. McCubbins, *Social Choice, Crypto-Initiatives, and Policymaking by Direct Democracy*, 78 S. CAL. L. REV. 949, 969 (2005). See also *id.* at 974 (defining the term to include “cases where the proponent’s primary goal is to affect political outcomes rather than policy”). I am not sure that “crypto-initiative” is the best term for these measures because very little is hidden about them. Political candidates and parties are usually quite open about their involvement with a crypto-initiative because they seek to use it to bolster support and turnout. *But see* Elizabeth Garret & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. (forthcoming 2005) (manuscript at 33–35); an early version is available as ELIZABETH GARRETT & DANIEL A. SMITH, VEILED POLITICAL ACTORS: THE REAL THREAT TO CAMPAIGN DISCLOSURE STATUTES (USC-Caltech Ctr. for the Study of Law and Politics, Working Paper No. 13, 2004) (discussing how the Republican National Committee worked to disguise its involvement in funding Americans for Tax Reform, a group active in many issue campaigns), at <http://lawweb.usc.edu/csllp/papers/csllp-wp-013.pdf>. Perhaps proponents of crypto-initiatives seek to hide that their primary agenda is to influence candidate elections rather than to change policy, both to reduce the chance of a backlash by opposing groups and to decrease the risk that voters will become more alienated from traditional politics because they feel manipulated.

4. Richard L. Hasen, *Rethinking the Unconstitutionality of Contribution and Expenditure Limits in Ballot Measure Campaigns*, 78 S. CAL. L. REV. 885, 898 (2005) (finding at least thirty-seven candidate-controlled issue committees in California from 1990 to 2004, and detailing other involvement in issue campaigns by politicians).

5. See, e.g., ELISABETH R. GERBER, THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION (1999); JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY (2004); Elizabeth Garrett, *Money, Agenda Setting, and Direct Democracy*, 77 TEX. L. REV. 1845 (1999); Daniel H. Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment*, 29 UCLA L. REV. 505 (1982).

First, initiative campaigns can allow candidates to make more credible policy commitments to voters. Candidate campaigns consist of a series of promises by people running for elected office. It is very difficult for voters to know which promises are credible, particularly when a candidate does not have a record of public service that can be analyzed to determine ideological commitments and consistency. Voters know that much campaign discourse is “cheap talk” because politicians face no real discipline for lying, and they may even be able to take different positions before different audiences, depending on the amount of likely publicity.⁶ As Saul Levmore has examined in more detail, there are very few ways for politicians to credibly commit to a particular course of action,⁷ and thus voters have learned to heavily discount campaign promises, relying instead on past performance as a guide to future decisionmaking. This reality makes it more difficult for challengers who must rely solely on campaign promises and endorsements to communicate their ideology and policy goals.⁸

Hybrid democracy and crypto-initiatives can allow candidates, both incumbents and challengers, to use the initiative process to credibly communicate with voters about their policy agendas. If a candidate spends time raising funds for an initiative or diverts campaign money to an issue campaign, the signal of support for the policy embodied by the initiative is costly, and therefore more credible. If voters pass the initiative, they have reduced the ability of the candidate to defect from campaign promises. Jerry Brown’s decision in 1974 to sponsor the California Political Reform Act was driven by his desire for voters to perceive him as the reform candidate who would usher in a new kind of politics.⁹ He benefited from the initiative during his campaign whether it passed or not. But by simultaneously enacting campaign and lobbying reform and electing Brown, voters were able to increase the chance that real change would occur and that it would shape the political environment in which Brown would be working.

6. See David Austen-Smith, *Strategic Models of Talk in Political Decision Making*, 13 INT’L POL. SCI. REV. 45 (1992); McNollgast, *Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation*, 57 LAW & CONTEMP. PROBS. 3 (1994) (discussing “cheap talk” in politics).

7. See Saul Levmore, *Precommitment Politics*, 82 VA. L. REV. 567 (1996).

8. See Elizabeth Garrett, *The Law and Economics of “Informed Voter” Ballot Notations*, 85 VA. L. REV. 1533, 1546–47 (1999) (discussing ballot notations as a method of policy precommitment that could be used credibly by both challengers and incumbents).

9. See PETER SCHRAG, *PARADISE LOST: CALIFORNIA’S EXPERIENCE, AMERICA’S FUTURE* 226 (2004).

Initiatives constrain political actors with respect to certain policies, perhaps allowing voters to better monitor representatives when they do exercise discretion in the unconstrained realms.¹⁰ If that occurs, then voters may be able to better enforce campaign promises that are unrelated to the particular ballot initiative that a candidate sponsors. John Matsusaka presents a model of the effects of initiatives on executive behavior, leading him to the conclusion that “by taking some issues out of the hands of elected officials and deciding them directly, the initiative seems to enable voters to more effectively sanction their representatives for poor performance on issues that remain under their control.”¹¹ Politicians sophisticated enough to use crypto-initiatives will also understand this effect of hybrid elections, so their decision to affiliate their campaigns with an initiative is costly to them, providing voters a more trustworthy signal of the policies that they will pursue.

Second, the voting cues available to citizens when a politician or political party is associated with an initiative are different, and perhaps better, than the cues available in ballot measure campaigns without these political players. Initiative campaigns are often characterized as low-information environments in which voters lack the most effective heuristic in candidate elections, party affiliation.¹² Accordingly, social scientists have worked to understand what shortcuts are available to voters deciding on ballot measures and whether those cues lead to accurate decisions. One important contribution of Kousser and McCubbins’s article is that they assess the state of the empirical evidence on this key determinant of voter competence in direct democracy and set out an agenda for further research to test whether the conditions for learning are present in most issue campaigns.¹³ They argue that some of the characteristics of crypto-initiatives increase the concern that the available cues may not lead to voting decisions that are aligned with voter preferences. For example, strategists who use jack initiatives to boost turnout favorable to particular candidates work to pick issues that will not also generate vigorous opposition, which would increase turnout for competitors as well. Without a campaign with groups and people taking visible positions on both sides of

10. See John G. Matsusaka, *Direct Democracy and the Executive Branch* (Jan. 2005) (unpublished manuscript presented at the Symposium on the Impact of Direct Democracy, University of California, Irvine, Jan. 14–15, 2005), at http://lawweb.usc.edu/cslp/conferences/direct_democracy_05/documents/Matsusaka.pdf.

11. *Id.* at 24–25.

12. See Elizabeth Garrett, *Voting with Cues*, 37 U. RICH. L. REV. 1011, 1022–24 (2003) (discussing voting cue literature).

13. Kousser & McCubbins, *supra* note 3, at 958–62.

a policy, some of the necessary conditions for learning are not present in such an issue campaign.¹⁴

It may also be the case, however, that an initiative campaign with active politicians and political parties may improve voting cues in some respects. Close association between a ballot measure and an elected official allows voters to use the familiar cue of political party in both parts of hybrid democracy. Political parties know that they and their candidates provide strong cues to voters that can be used when casting votes on ballot measures. For example, the California Republican Party spent approximately \$2 million to send out five million slate mailers informing recipients of Governor Arnold Schwarzenegger's position on ten of the sixteen measures on the November 2004 general election ballot.¹⁵ The Republican Party also sent out a separate voter guide with its positions on all the ballot measures, providing the party cue notwithstanding the absence of a notation on the ballot as appears next to candidate names.¹⁶ Voters could take the slate mailer with them to the polls or use it at home when filling out absentee ballots.

If candidate elections are competitive, then the association of a candidate with a ballot measure is likely to increase the chance that there will be vocal opposition to the initiative. In these cases, the relationship between politicians and initiatives would increase the adversarial nature of ballot measure campaigns and produce conditions more conducive to learning. The opponent of the candidate sponsoring a measure has an incentive to ensure that the initiative comes under attack in order to call into question the sponsor's judgment and to communicate the challenger's own policy commitments. Of course, few races for a state legislative position or House of Representatives seat are competitive because of incumbent-protecting gerrymanders,¹⁷ but gubernatorial races can be real

14. See *id.* at 957–58 (relying on tests in ARTHUR LUPA & MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998)).

15. See GOVERNOR ARNOLD SCHWARZENEGGER'S BALLOT PROPOSITION VOTER GUIDE (2004) (on file with author). See also Margaret Talev, *Governor's Picks Coming Your Way: He's Sending Voter Guides on a Host of Ballot Measures*, SACRAMENTO BEE, Sept. 18, 2004, at A1.

16. See CAL. REPUBLICAN PARTY, 2004 INITIATIVE VOTER GUIDE (2004) (on file with author).

17. The 2004 elections also forcefully demonstrated the nearly total lack of competition throughout the country. Only a handful of House seats were competitive, and many states had no real competition in the vast majority of state legislative races. See David S. Broder, *No Vote Necessary: Redistricting Is Creating a U.S. House of Lords*, WASH. POST, Nov. 10, 2004, at A37 (discussing various races for the House, including some where there were no challengers and one in Florida where the law automatically elected the unopposed incumbent without his appearing on the general election ballot); Nicholas D. Kristof, *No More Sham Elections*, N.Y. TIMES, Nov. 20, 2004, at A19. See also *Serving the Pols, Not the People*, L.A. TIMES, Nov. 10, 2004, at B10 (noting that although there are

contests, and thus it might be the case that some crypto-initiatives will face significant opposition from the other political party or its members.

In the end, these are all suppositions about the effects of the involvement of candidates and political parties on voter competence and voting cues in ballot measure campaigns. We need more empirical data to reach more certain conclusions, as Kousser and McCubbins point out, and the research should distinguish between the various campaign environments, focusing in part on the ability of political parties to provide effective heuristics in issue campaigns, as well as in candidate races.

Third, the involvement of elected officials in an issue campaign has ramifications for the implementation of the initiative once it passes. Many initiatives that succeed on election day and survive judicial challenge are not fully implemented and may be actively undermined by elected officials and administrators. Even when they do not repeal initiatives because of fear of voter reprisals, the officials charged with implementing and enforcing initiatives are not likely to do so enthusiastically or faithfully. The irony of the initiative process is that the very officials it seeks to bypass are the people who are responsible for the policy after the election. As Elisabeth Gerber, Arthur Lupia, Mathew McCubbins, and Roderick Kiewiet observe in *Stealing the Initiative*, “[w]inning initiatives neither implement nor enforce themselves. If an initiative is to affect policy, government actors must take an active role in converting winning initiatives into policy changes.”¹⁸ Typically, the conditions necessary to ensure that recalcitrant

some new faces in Sacramento, the partisan line-up remained the same and not one seat of 153 changed parties). For a discussion of the absence of competition in legislative races in the last decade or so, see Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 594, 623–26 (2002). Richard Pildes contrasts the stunning lack of competition in state legislative and House races with the more robust competition for governorships and Senate seats in 2004, races that cannot be gerrymandered. Richard H. Pildes, *Foreword: The Constitutionalization of Democratic Politics*, 118 HARV. L. REV. 28, 63–64 (2004). Although the contrast in 2004 was noteworthy, partisan redistricting alone cannot explain the absence of competition in elections because incumbents typically have a substantial advantage in gubernatorial races that are unaffected by redistricting. See Stephen Ansolabehere & James M. Snyder, Jr., *The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942–2000*, 1 ELECTION L.J. 315, 328–29 (2002). See also GARY W. COX & JONATHAN N. KATZ, *ELBRIDGE GERRY’S SALAMANDER: THE ELECTORAL CONSEQUENCES OF THE REAPPORTIONMENT REVOLUTION 127–205* (2002) (identifying gerrymandering as a significant cause of incumbency advantage and lack of competition in political races).

18. ELISABETH R. GERBER, ARTHUR LUPIA, MATHEW D. MCCUBBINS & D. RODERICK KIEWIET, *STEALING THE INITIATIVE: HOW STATE GOVERNMENT RESPONDS TO DIRECT DEMOCRACY* 5 (2001). In some instances, lawmakers will actually repeal a popularly enacted statute. See WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, *2004 SUPPLEMENT TO CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* 24–25 (3d ed. 2004) (describing the repeal of clean elections law in Massachusetts); Daniel A. Smith, *Overturning Term Limits: The*

lawmakers and administrators will implement and enforce initiatives are very unlikely to be present because it is difficult for voters to monitor compliance and sanction noncompliance.

The involvement of political actors in initiative campaigns—and the intertwining in some ways of their careers with the fate of initiatives—increases the likelihood that enacted initiatives will be implemented and enforced. Because the candidate is accountable to the people, she may have an incentive to ensure that the initiative has a real effect on policy. Of course, the failure to implement any initiative may result in punishment at the polls; this is one of the sanctions that political actors weigh when they decide how energetically to implement an initiative. But the sanction may be more likely when the initiative was a key element of the candidate's campaign and when the policy it embodies was used to define her ideology and platform.

Moreover, opponents of the candidate who supported the initiative have an incentive to monitor implementation and enforcement and to publicize any failure of the elected official to follow through on her pledge. Challengers always work to publicize the failure of officials to make good on campaign promises. Just as an initiative allows a candidate to make her policy commitments more concrete, the failure of an initiative to cause any substantive change in policy provides salience to the official's failure to deliver on her promises. Even when the official does not face real competition for reelection, the opposing political party may have an incentive to monitor and sound a fire alarm about noncompliance to make gains in other races.

Implementation and enforcement may also be more likely when a candidate is closely associated with an initiative because the candidate may sincerely support the policy embodied in the initiative. Jerry Brown's commitment to political reform was more than a strategic campaign move; he sought public office in part to change the political environment so that government was more open and less corrupt. Even though the political reform package still faced opposition and obstructionism from many political players, it also had a vital supporter in the Governor's office. Once elected, an official who championed an initiative for a combination of sincere and strategic motivations may discover that implementation has

Legislature's Own Private Idaho?, 36 PS: POL. SCI. & POL. 215 (2003) (describing the repeal of term limits in Idaho). In California, lawmakers cannot repeal or amend a popular initiative unless the initiative explicitly allows subsequent legislative involvement, but Gerber et al., *supra*, document ways in which initiatives in California are undermined through incomplete implementation and enforcement.

political and other costs that she did not anticipate and thus she might back away from full compliance. But her electoral incentives and ideological commitments make it more likely that these crypto-initiatives will be implemented and enforced, to some degree, compared to initiatives without any support by politicians or political parties.¹⁹

The foregoing discussion of the potential positive consequences of crypto-initiatives—or, to use less normatively loaded terminology, initiatives closely associated with candidates or political parties—depends in large part on the fact that voters can hold elected officials and parties accountable for their decisions, including those relevant to the initiatives. Thus, the picture would be even brighter if elections were more competitive so that voters had real choices when they went to the polls. Perhaps redistricting reform, which may depend on the existence of hybrid democracy for adoption,²⁰ will inject more competition into legislative elections on the state and federal level. My analysis also suggests that the concerns sounded by Kousser and McCubbins are more disturbing when a nonaccountable political actor uses crypto-initiatives for strategic purposes. One of the most intriguing suggestions in the article is that the newly-powerful 527 organizations,²¹ which Kousser and McCubbins term “crypto-PACs,”²² will use crypto-initiatives to alter voter turnout and outcomes in candidate elections. It is clear that many of the 527 nonprofit organizations formed during the 2004 election to influence the presidential race are not going to close up shop but are looking for ways to flex their political muscles.²³ The initiative process is quite likely to attract them, along with other nonprofit groups that do not have to comply with the disclosure laws that force 527s to reveal the source of their funding.²⁴ This

19. Moreover, advocates of an initiative who hope to be elected to offices with the responsibility of implementing the policy may consider dead weight losses that voters are not competent to evaluate. See Kousser & McCubbins, *supra* note 3, at 954–55 (arguing that initiatives are likely to lead to lower social welfare than traditional legislation because voters cannot consider dead weight losses).

20. For a discussion of the importance of the initiative process in states’ adoption of redistricting commissions, see Nathaniel Persily & Melissa Cully Anderson, *Regulating Democracy Through Democracy: The Use of Direct Legislation in Election Law Reform*, 78 S. CAL. L. REV. 997, 1008–11 (2005). See also Garrett, *supra* note 1 (manuscript at 18–22) (discussing the interaction of hybrid democracy with redistricting reform).

21. See I.R.C. § 527 (2000).

22. Kousser & McCubbins, *supra* note 3, at 983.

23. See Katharine Q. Seelye, *Money-Rich Advocacy Groups, Formed for Bush-Kerry Race, Look Far Beyond Election Day*, N.Y. TIMES, Oct. 17, 2004, at 1-31 (stating that some 527s will not disband after the 2004 election but will seek out other ways to continue to influence politics and policy).

24. For a discussion of the activities of nonprofit groups in direct democracy and their use as veiled political actors, see Garrett & Smith, *supra* note 3.

interaction between unaccountable and sometimes veiled political actors and the initiative process in our hybrid democracy strikes me as significantly more problematic than the interaction between elected officials and parties and ballot measures.

Although my view of crypto-initiatives is rosier than Kousser and McCubbins's, I share the view that the initiative process is not a perfect institution and could be improved by changes in institutional design. Indeed, both parts of hybrid democracy are subject to decisionmaking pathologies that could be ameliorated through thoughtful reform that takes account of the complex interactions possible in a hybrid system. I also agree that the initiative process is here to stay in California and other states, but that representative institutions will continue to play the dominant role in legislative change even though technology has reduced the transaction costs of deliberating, deciding, and voting.

Kousser and McCubbins offer several reform proposals to improve the initiative process, many of which are worthy of serious consideration. I am dubious that their "pay-as-you-go" proposal will force voters to make tradeoffs and think carefully about the costs of policies that they support.²⁵ Instead, we are likely to see initiative proponents use popular sources of revenue, such as the one percent tax on millionaires that now funds mental health programs in California,²⁶ and further reduce the flexibility of lawmakers when they are searching for revenue to keep government running. Kousser and McCubbins's recommendation that the legislature be allowed a subsequent role in the modification and amendment of statutory initiatives should be adopted in California, the only state with a constitutional default rule that denies the legislature a role unless the initiative proponents explicitly authorize it.²⁷ Although the lessons of *Stealing the Initiative*²⁸ counsel that the legislature may use its power to gut the initiative, that is not the inevitable result of legislative involvement. For example, California's Political Reform Act, enacted by voters in 1974 to impose limitations on campaigns and lobbying and to adopt ethics

25. Kousser & McCubbins, *supra* note 3, at 984.

26. Interestingly, Proposition 63 was in some ways a crypto-initiative. Its primary advocate was Democratic Assemblyman Darrell Steinberg, who had not been able to convince his fellow lawmakers to appropriate a substantial level of funding for mental health services through the traditional budget process. See Putsata Reang, *Voters Taxed the Rich to Help Mentally Ill*, SAN JOSE MERCURY NEWS, Nov. 5, 2004, at 1C; *Prop. 63: Vote No—It's Not the Best Answer*, Oct. 10, 2004, at http://www.mercurynews.com/mld/mercurynews/news/special_packages/election20-04/972.

27. CAL. CONST. art. II, § 10(c).

28. See GERBER ET AL., *supra* note 18.

provisions for officeholders, allowed the legislature to modify the Act's provisions as long as the amendments "further[ed] its purposes" and were passed by a two-thirds vote of each house.²⁹ The California legislature has amended the Act more than 150 times, and in virtually all these cases, reformers have been satisfied with the changes.³⁰ All the other initiative states allow some role for the legislature after enactment of a statutory initiative, although some require a supermajority vote or a waiting period of several years during which the initiative receives special protection from legislative tinkering.³¹

Legislative involvement is possible only with respect to statutory initiatives; many ballot measures are constitutional changes which require a popular vote to amend or repeal. With the rise of paid signature gatherers and professional consulting firms, ballot measure proponents who want to insulate their proposal from legislative interference can meet the higher hurdles required of constitutional initiatives. Accordingly, Kousser and McCubbins's suggestion that initiatives sunset after a period of time deserves serious consideration.³² All initiatives could sunset after a period of time long enough to determine their effects, say, five or seven years, and would remain in effect only if reenacted by the legislature or by the people. With respect to enactments that require a popular vote, the signature threshold for ballot access could be set lower than the threshold for new initiatives. It is not clear that the advantages of sunseting outweigh the disadvantages of instability, especially in the constitutional context, but the effect of instability could be limited if only popularly generated constitutional initiatives were temporary, while constitutional changes placed on the ballot by legislatures would remain in effect until they were changed by the constitutional amendment process. Another advantage to limiting the durability of initiatives is that the number of initiatives would presumably decline because of the reduction in their value to proponents. The net effect of this sunset proposal on the number of initiatives is uncertain: the need to reenact every few years might drive up the number of initiatives. However, it could be harder to get signatures after some experience with the initiative, particularly given the likelihood that people

29. CAL. GOV'T CODE § 81012 (West 2004).

30. See REPORT AND RECOMMENDATIONS OF THE CALIFORNIA COMMISSION ON CAMPAIGN FINANCING, DEMOCRACY BY INITIATIVE: SHAPING CALIFORNIA'S FOURTH BRANCH OF GOVERNMENT 119 (1992).

31. See M. DANE WATERS, THE INITIATIVE AND REFERENDUM ALMANAC 27 (2003) (listing legislative and executive power to change or repeal statutory initiatives).

32. See Kousser & McCubbins, *supra* note 3, at 984. See also Elizabeth Garrett, *Who Chooses the Rules?*, 4 ELECTION L.J. 139, 144-45 (2005) (considering this and other reforms).

who were bearing the costs of the new program would oppose its extension. On the other hand, the beneficiaries of the program would work hard for its continuation, although they would understand that any popularly-enacted extension would be temporary and therefore less valuable than a legislative solution.

Kousser and McCubbins's important assessment of initiatives, including their emphasis on the role of strategic political actors, allows a more complete and sophisticated understanding of both parts of hybrid democracy. It is, in my view, too bleak a vision of the initiative process; the increasing role of political actors in ballot measure campaigns is a development with both positive and negative consequences for voters and policy. Realistic appraisals of hybrid democracy can lead to reform of both the direct and representative institutions; *Social Choice, Crypto-Initiatives, and Policymaking by Direct Democracy* suggests some ways to think about initiative reform. Interestingly, it is the initiative process itself, harnessed by political actors like Arnold Schwarzenegger to enact new methods of redistricting, that may provide the most effective mechanism to reform representative institutions. Fortunately, such cross-fertilization between both sides of hybrid democracy will continue to sustain interdisciplinary research like the excellent articles in this Symposium.

