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Subversion of the Many by the Few: Some Scientific Evidence on the Initiative Process

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Despite its widespread appeal and long history in American government, the initiative process remains controversial. One of the most recurrent criticisms is that the initiative allows well organized and well financed special interests to subvert the policy process. This Article reports some scientific evidence on the subversion hypothesis. For the period 1987–2000, the evidence shows that the initiative changed the course of state and local fiscal policy, but that the changes were consistent with the wishes of the majority. None of the evidence supports the subversion hypothesis.

I. INTRODUCTION

The initiative process is a firmly entrenched part of American democracy. It has been available at the state and local level for more than 100 years,¹ making it older than universal women's suffrage, direct election of U.S. senators, social security, and the federal income tax. More than 70% of the population has access to the process at either the state or local level, and opinion polls consistently show overwhelming

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1. ELLIS PAXSON OBERHOLTZER, *THE REFERENDUM IN AMERICA* (1911).

approval for the concept at all levels of government, and across all demographic groups.²

Yet the initiative process remains a source of concern to many serious students of government. Not a year goes by without the publication of a book or article critical of the process, calling for its “reform” (usually meaning restricting its use) or outright elimination. It is hard to think of any other American institution that has been so enduring and enjoys such widespread popularity but remains so controversial.

The failure of consensus to emerge among informed opinion is not because historical experience has given rise to new concerns or because a dialogue between critics and supporters has led to new perspectives. In fact, almost the reverse is true: sterility. The arguments made today are in many respects the same ones that have been made over the last 100 years. To illustrate:

[The initiative] provides a device through which unscrupulous “special interests” can secure their ends with far greater ease than they can under the representative system, when they have familiarized themselves with its tricks and when the general public have become wearied of the numerous petitions and elections peculiar to the system.³

[T]he experience with the initiative process at the state level in the last two decades is that wealthy individuals and special interests . . . have learned too well how to subvert the process to their own purposes.⁴

The quotes express what has been a central concern about the initiative process historically: it will become a tool of organized and wealthy special interests that will use it to subvert the will of the majority. What I find remarkable is that the two quotes are separated by eighty-eight years! The first was by James Boyle in 1912 and the second by David Broder in 2000. For this example, I chose an argument critical of the initiative process, but I could have made the point as easily with an argument in favor. The point is that the arguments for and against the initiative process display a surprising immobility over the last 100 years.

Now people often fail to agree on matters that are inherently subjective or involve personal values. But the arguments in the two quotes above are not of this nature; they hinge on more-or-less objective facts. Either special interests are empowered by the initiative process or they are not. Disputes that essentially hinge on positive statements

2. See FOR THE MANY, *supra* note *.

3. JAMES BOYLE, THE INITIATIVE AND REFERENDUM: ITS FOLLIES, FALLACIES, AND FAILURES 28–29 (1912).

4. DAVID S. BRODER, DEMOCRACY DERAILED: INITIATIVE CAMPAIGNS AND THE POWER OF MONEY 243 (2000).

about how the world works should be amenable to resolution with a careful look at the data. The fact that the arguments for and against the initiative process continue to be recycled suggests that not enough attention has been devoted to studying what the initiative actually does in practice. Indeed, a cursory glance at the literature reveals a preoccupation with normative or purely descriptive analyses.⁵ Little attempt has been made to treat contending arguments as empirical hypotheses and try to verify their accuracy with data.

An important obstacle to the pursuit of “scientific” studies of the initiative process has been the lack of theoretical tools to formulate the arguments, and the computational difficulty of working with large data sets. The situation changed in the last decade, however, with the maturation of game theory and information economics, and the advent of extremely low cost computing. In response, a group of scholars in economics and political science has started to address the contending arguments about the initiative process from a scientific perspective using modern theory and empirical methods.⁶ The purpose of this Article is to illustrate the new approach using some of my own work on the special interest subversion hypothesis. The evidence I will present is new, but the core ideas come from my book, *For the Many or the Few: The Initiative Process, Public Policy, and American Democracy*.⁷ In keeping with the spirit of much of the literature, I will maintain a positive focus throughout, except in the concluding section where I tentatively offer some normative implications.

II. FRAMING THE DISAGREEMENT AS AN EMPIRICAL QUESTION

The first step is to frame the contending arguments in a way that can be approached with data. I will be focusing on the special interest subversion argument: i.e. the initiative process is a tool of organized and wealthy special interests that allows them to achieve policy goals not in the interest of the majority. There is more than one way this could

5. The point applies essentially to any book published before the mid 1990s. For further discussion see FOR THE MANY, *supra* note *.

6. See ARTHUR LUPIA & MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998); see also ELISABETH R. GERBER, *POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION* (1999). I will say more about the modern positive literature in the conclusion.

7. See FOR THE MANY, *supra* note *.

happen. First, organized and well financed groups may find it easier to collect signatures and qualify measures for the ballot than broad-based "citizen" groups. Second, organized and well financed groups may be well positioned to get out their message during the campaign, swaying uninformed voters. Third, they may be able to mobilize their supporters to go to polls better than the opposition. Exactly how special interests are able to flex their muscle is not important for my purposes, however. The important point is that (according to the special interest subversion argument) the initiative process allows special interests to override the will of the majority.

The counterargument to the subversion hypothesis is this: special interests are *already* disproportionately influential in the legislature; the initiative process levels the playing field and allows the majority to regain some control over the policy process. Organized and wealthy special interests may end up with disproportionate influence in the initiative process just as in the legislature (according to this argument), but by opening up the lawmaking process to competition, the initiative will give broad-based citizen groups a better chance to check the lobbyists in the legislature. Here again the exact mechanics of how the organized and wealthy interest groups are counterbalanced in the initiative process is not important for my purposes. What is relevant is the conjecture that when the initiative process is available, policy outcomes will be more consonant with the will of the interests of the majority.

The contending arguments incorporate very different views of how the political process works, but in the end they rest on a disagreement about a factual matter. The critics assert that when the initiative is available, special interests more often subvert the will of the majority. Initiative defenders assert the reverse: when the initiative process is available, special interests less often subvert the majority. Put differently, if the critics are right, government policies are less consonant with the wishes of the majority when the initiative process is available; and if the defenders are right, policies are more consonant with the wishes of the majority when the initiative process is available. The question to be taken to data is then this:

Are government policies more or less consonant with the wishes of the majority when the initiative process is available or when it is unavailable?

It is worth noting what is not at issue: that special interests⁸ are more influential in the initiative process than the unorganized majority. It seems obvious that organized and wealthy interest groups are going to have an advantage in both the initiative process and in the legislature. The question is whether the initiative process *increases or decreases* their advantage. The next two sections consider the evidence.

III. THE EMPIRICAL APPROACH

The procedure for answering the question is straightforward in principle. First, we must determine what policies emerge when the initiative process is and is not available. And second, assuming there is a difference (and there is for the policies I study), we must assess whether the majority prefers the policies that arise under the initiative process or the policies that arise when initiatives are unavailable. The subversion hypothesis implies that a majority will prefer the policies chosen when the initiative process is not available.

There are many policies that could be considered, but to narrow the scope of the analysis, I will focus on spending and taxes. Fiscal policies make a good starting point because they are arguably the primary business of most governments, and they are demonstrably the single most popular topic for ballot propositions.⁹ The unit of analysis is state and local governments, and I will examine the period 1987–2000. Gerber reports comparable evidence on the death penalty and parental abortion notification.¹⁰

For the first step, measuring how policy outcomes differ when the initiative process is and is not available, I will use a statistical technique, multivariate regression, that essentially estimates the average level of

8. The term “special interest” is difficult to define. Throughout I am operationalizing the term “special interest” to mean a group with an interest different from the majority. There could be special interests that happen to agree with the interests of the majority, but I do not believe that is what the critics have in mind when they discuss special interest subversion.

9. John G. Matsusaka, *Economics of Direct Legislation*, 107 Q.J. ECON. 541, 553–59 (1992).

10. Elisabeth R. Gerber, *Legislative Response to the Threat of Popular Initiatives*, 40 AM. J. POL. SCI. 99, 112–25 (1996); GERBER, *supra* note 6, at 122–35.

spending (or taxes) separately for initiative and noninitiative states after controlling for a variety of secondary factors that determine fiscal policy. I will not be looking at the content of the actual initiatives that appear on the ballot or the measures that voters approve. It might seem strange at first to try to assess the effect of the initiative without looking at the actual measures, but this is the approach prescribed by theory. Theory (and intuition) tell us that the initiative can have an effect on policy even without a measure appearing on the ballot.¹¹ The fact that an interest group always has the option to take its issue directly to the voters can and does affect the behavior of the legislature. The legislature may end up choosing a different policy than it would have to stave off the threat of an initiative reaching the ballot.¹² The intuition here is the same as for the executive veto: the mere fact that the veto is available may affect the bargaining outcome between a governor and the legislature even if the veto is not exercised. In short, if we assessed the effect of the initiative by looking only at the actual measures on the ballot, we would miss part of the story. Fortunately, to answer the empirical question we do not need to disentangle the direct and indirect effects. We only need to know the net (direct and indirect combined) effect of the initiative, which can be found in the final policy outcome.

To restate, I will be estimating the effect of the initiative process by comparing policy outcomes in initiative and noninitiative states after controlling for secondary factors that influence policy outcomes. To the extent that we observe different fiscal policies in initiative and noninitiative states, I will attribute them to the availability of the initiative process. Since state policies differ for reasons other than whether the initiative process is available, it is crucial to have adequate controls for the secondary determinants of fiscal outcomes. The most important controls turn out to be state income and the year (because there are secular movements in fiscal policy shared by all states). In fact, controlling for state income and the year can explain about 98% of the variation in spending and taxes across states. The other controls are the state's urbanization, population, growth of population, the amount of aid received from the federal government, and region (south or west). I have also estimated the effects controlling for citizen ideology and the partisan makeup (Democrat versus Republican) of the government, and

11. Gerber, *supra* note 10, at 107–12; John G. Matsusaka & Nolan M. McCarty, *Political Resource Allocation: Benefits and Costs of Voter Initiatives*, 17 J.L. ECON. & ORG. 413, 415 (2001).

12. See Elisabeth R. Gerber, *Pressuring Legislatures Through Use of Initiatives: Two Forms of Indirect Influence*, in *CITIZENS AS LEGISLATORS* 191, 199–204 (Shaun Bowler et al. eds., 1998).

nothing of substance changes.¹³

IV. THREE POLICIES: WHAT THE INITIATIVE DOES AND WHAT THE MAJORITY WANTS

This section documents the changes brought about by the initiative process along three policy dimensions: total spending, the division of spending between state and local government, and the division of financing between taxes and fees. After documenting how the initiative changes policy, I review opinion data to see if those changes are opposed by the majority as the subversion hypothesis maintains.

A. First Policy: Total Spending

The effect of the initiative on the combined spending of state and local governments is shown in Figure 1. The figure shows the average difference in spending between initiative and noninitiative states by year from 1987 to 2001. The numbers here and throughout are expressed in 2000 dollars per capita. For example, the last bar in the figure means that spending was \$276 per capita lower in initiative than noninitiative states in 2000. Recall that the differences reported in the figure are residuals after controlling for income, population, population growth, urbanization, federal aid, and region of the country.

13. I will spare the reader a detailed discussion of the econometric procedures. However, a few things are worth noting: the results in Figures 1, 3, and 5 are from a multivariate regression in which the dependent variable is spending or taxes and the explanatory variables are a dummy equal to 1 if a state has the initiative process, income per capita, log of population, population growth rate over the last 5 years, percent of population living in a metropolitan area, federal aid per capita, and 15 year dummies. Figure 1 uses 15 initiative-year dummies. Alaska is omitted from all estimates. All of the data ultimately comes from the Census Bureau. The initiative effects for the whole period are significantly different from zero at conventional levels using standard errors adjusted for clustering, but the individual year effects typically are not significant. The basic patterns are robust to alternative functional forms, specifications, subperiods, and omission/inclusion of control variables (except income and the year dummies).

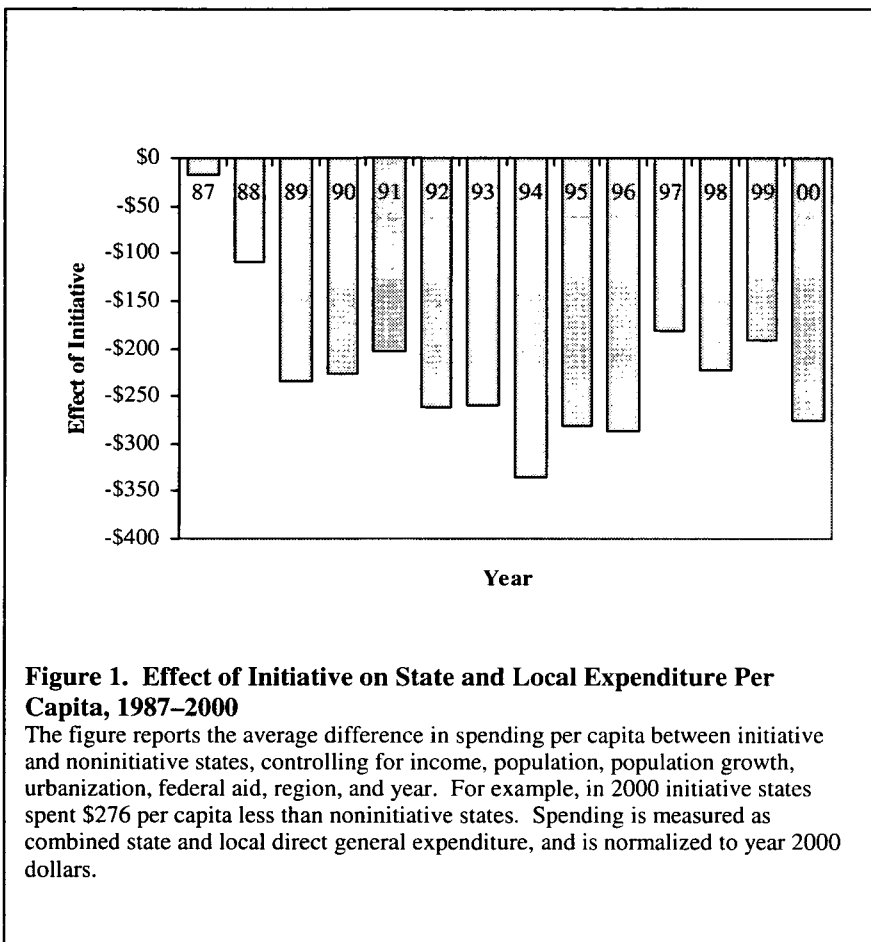


Figure 1. Effect of Initiative on State and Local Expenditure Per Capita, 1987–2000

The figure reports the average difference in spending per capita between initiative and noninitiative states, controlling for income, population, population growth, urbanization, federal aid, region, and year. For example, in 2000 initiative states spent \$276 per capita less than noninitiative states. Spending is measured as combined state and local direct general expenditure, and is normalized to year 2000 dollars.

Figure 1 shows that initiative and noninitiative states were spending approximately the same amount per capita all else equal in 1987, but from that point on a gap opened up between them. By the mid-1990s initiative states were spending nearly \$300 per capita less than noninitiative states every year. To put this number in perspective, average spending in all states in 1995 was \$4,661 per capita. Thus, at its peak in 1994, the initiative is associated with a spending reduction of about 7%.¹⁴

14. As the figure suggests, the effect of the initiative changes over time. There is also variation outside the 1987–2000 period: the initiative drove up spending in the early twentieth century. FOR THE MANY, *supra* note *. The initiative cut spending in the early 1970s (containing a possible explanation for the observed time patterns).

I will not dwell on the robustness of the results here.¹⁵ However, a few points are worth noting. First, the difference in spending between initiative and noninitiative states is statistically significant for the whole sample period.¹⁶ Second, nothing material in the pattern depends on inclusion or exclusion of any of the control variables except for income and the year dummies. Third, one might wonder if initiative states spent less because of the initiative or because the voters in those states just happened to be more conservative. I have checked several opinion surveys and none of them reveals a measurable difference in political orientation between residents of initiative and noninitiative states.¹⁷ Furthermore, if voters in initiative states were more conservative, it is hard to explain why spending was not different in 1987; there is no reason to believe that citizens in initiative states suddenly began drifting to the right in the 1990s while citizens in noninitiative states drifted to the left.

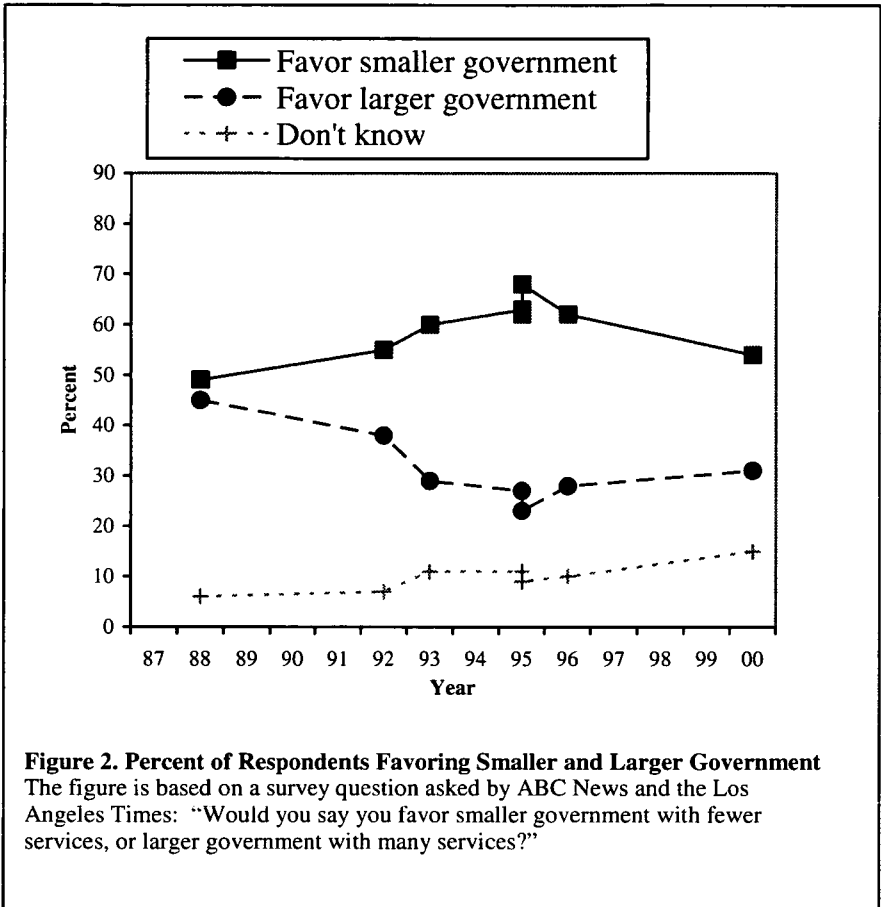
Figure 1 shows that the initiative reduced the overall size of state and local government. Were these cuts contrary to the wishes of the majority, as the subversion hypothesis maintains? Or were they in accord with the interests of the majority? To understand the views of the majority, Figure 2 reports the findings from national opinion surveys over the period in question. The question asked is:

Generally speaking, would you say you favor smaller government with fewer services, or larger government with many services?

15. The interested reader should see FOR THE MANY, *supra* note *.

16. The initiative effect for the full sample (measured as a single dummy variable) is -\$184, which is statistically different from zero at better than the 5% level using standard errors adjusted for within-state clustering of errors.

17. See FOR THE MANY, *supra* note *.



The polling data are national samples, and come from the *Los Angeles Times* (1995, 2001).¹⁸ As can be seen, throughout the period, a majority of respondents wanted reductions in the size of government. It appears that the initiative worked for the majority rather than for a narrow special interest.¹⁹ We should not make too much of the time trends given

18. *Los Angeles Times Poll Study # 366 National Issues*, L.A. TIMES, Sept. 1995 available at <http://images.latimes.com/media/acrobat/2003-07/8585078.pdf> (on file with author); *Los Angeles Times Poll Study # 463 Nation: Changes in the U.S. After 9/11*, L.A. TIMES, Nov. 2001 available at <http://images.latimes.com/media/acrobat/2003-07/8643226.pdf> (on file with author).

19. Figure 2 does not distinguish opinion in initiative and noninitiative states.

the irregularity of the surveys, but it does appear that public opinion shifted against government spending at around the same time as the gap appeared between initiative and noninitiative states.²⁰ This suggests that perhaps what happened is that legislatures failed to notice a change in public opinion against spending, but the voters were able to convey their opinions more clearly in initiative states.

B. Second Policy: Division of Spending Between State and Local Government

The second dimension of fiscal policy I want to investigate is the division of spending between state and local government. The division could matter for several reasons. Local governments are generally believed to have superior information to tailor expenditure to public purposes. On the other hand, state governments tend to have more expertise. Beyond this, it is easier to redistribute resources, for better or worse, when spending is done by the state government. Voters may also prefer the services provided by one level of government to the services provided by the other level of government. For example, local governments are the primary providers of fire and police protection, sanitation, and sewers, while state governments play a large role in corrections, highways, and welfare.

Figure 3 summarizes the difference between state spending in initiative and noninitiative states, and also the difference between local spending in initiative and noninitiative states. The time pattern holds no interesting lessons, so I have compressed everything into a single average for the entire 1987–2000 period. As can be seen, the initiative had a pronounced effect on the division of spending. Initiative states spent \$260 per capita less on average at the state level and \$75 per capita more at the local level, both in absolute and relative terms. As above, these effects are what remain after controlling for variation in spending patterns due to income, urbanization, region, and so on. We can say, for

However, additional reports evidence that opinion is basically the same in initiative and noninitiative states. See FOR THE MANY, *supra* note *.

20. The right turn in public opinion around 1994 is a general finding of opinion research. See JAMES A. STIMSON, PUBLIC OPINION IN AMERICA: MOODS, CYCLES AND SWINGS 116 (1999).

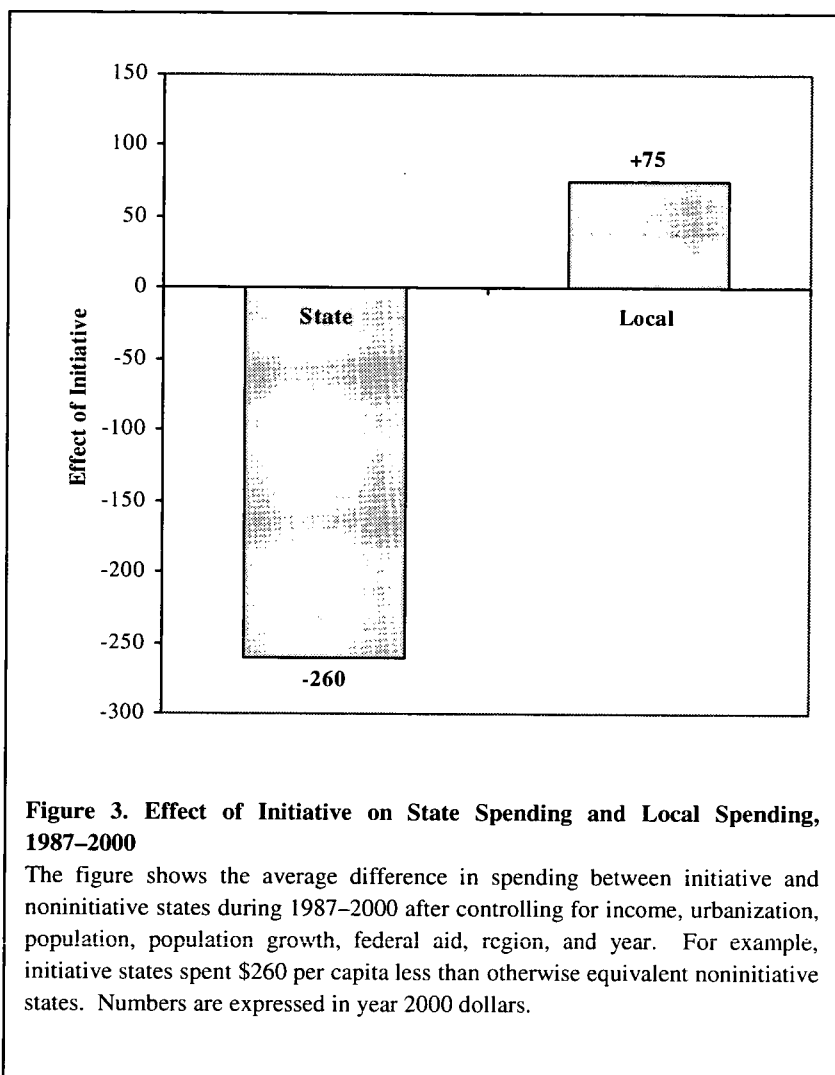


Figure 3. Effect of Initiative on State Spending and Local Spending, 1987–2000

The figure shows the average difference in spending between initiative and noninitiative states during 1987–2000 after controlling for income, urbanization, population, population growth, federal aid, region, and year. For example, initiative states spent \$260 per capita less than otherwise equivalent noninitiative states. Numbers are expressed in year 2000 dollars.

short, that the initiative had the effect of decentralizing expenditure.²¹

Was this decentralization of expenditure contrary to the wishes of the majority, as the subversion hypothesis maintains? It is more difficult to find opinion data on the breakdown between state and local spending than information about the overall size of government. We do know from poll after poll that voters regard local government as more efficient

21. The state effect is significant at the 5% level using clustered errors; the local effect is not. The initiative also has a negative effect on centralization measured directly as state spending divided by combined spending.

than state government²² but that is not exactly the same as saying that they would favor a shift in expenditure from state to local government.

To assess attitudes about state versus local spending, I included a question in the *April 2002 Internet Survey* conducted by the USC/Caltech Center for the Study of Law and Politics.²³ Because surveys were completed over the internet, the sample is unlikely to be representative of the general population. The nature and extent of the biases are not yet known, but the responses to a question about the overall size of government suggests the sample respondents are more conservative than the general population.²⁴ Since state spending offers greater scope for redistribution, sample respondents may be more inclined to decentralization than the population at large. Be that as it may, the survey does provide concrete information on the views of a subset of the population. The survey question was this:

In the U.S., tax dollars are spent by state and local governments. Considering only the share of spending at each level, which of the following comes closer to your view?

- 1) Increase the share spent by state government and decrease the share spent by local government.
- 2) Keep the share spent by state and local government about the same.
- 3) Decrease the share spent by state government and increase the share spent by local government.
- 4) No opinion/don't know.

22. FOR THE MANY, *supra* note *.

23. R. Michael Alvarez & Robert Sherman, *Internet Surveys of American Opinion*, available at <http://www.survey.caltech.edu/> (on file with author).

24. Asked whether state and local spending and taxes should be decreased, kept the same, or increased, 59% favored cuts, 18% favored the status quo, and 6% wanted more spending. This suggests about a 10% "bias" in the conservative direction compared to the 2001 *Los Angeles Times* poll reported in Figure 2.

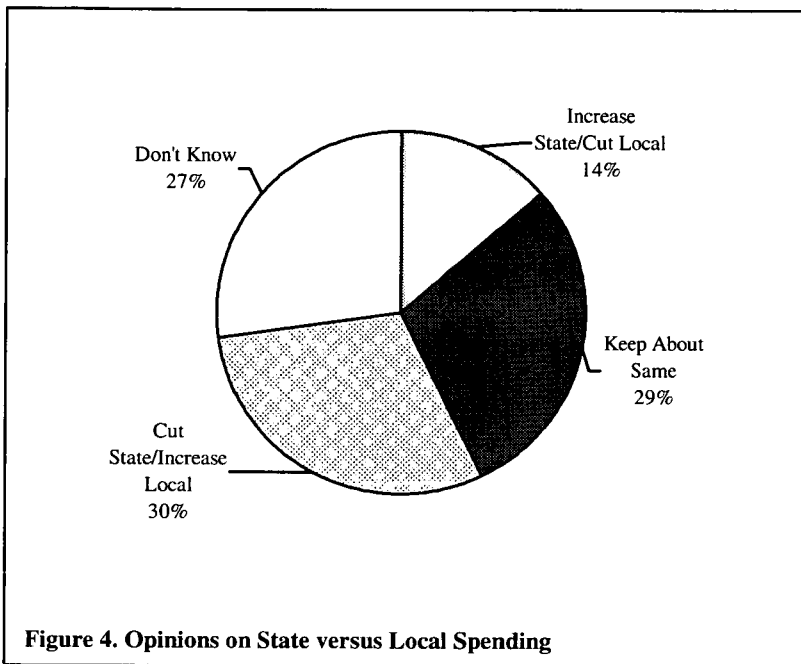


Figure 4 shows the percentage who gave each response. As can be seen, there is no evidence that a majority of people oppose the move toward local and away from state spending that was brought about by the initiative. This fits with responses from other polls that voters view local government as more efficient and more responsive than state government,²⁵ and the sources of evidence thus tend to reinforce each other. The main point is that again there is no evidence for the subversion hypothesis that the initiative allows special interests to drive policy away from what the majority wants it to be. If we assumed that the people who want to keep the shares “about the same” were evenly divided between those who wanted minor changes in either direction, then there would actually be a majority in favor of (modest) reductions in the state’s share of spending.

If anything, then, the evidence suggests that the initiative promotes the majority’s preferences, or put differently, that it is in the legislatures of noninitiative states where the will of the majority is being thwarted.

25. See FOR THE MANY, *supra* note *.

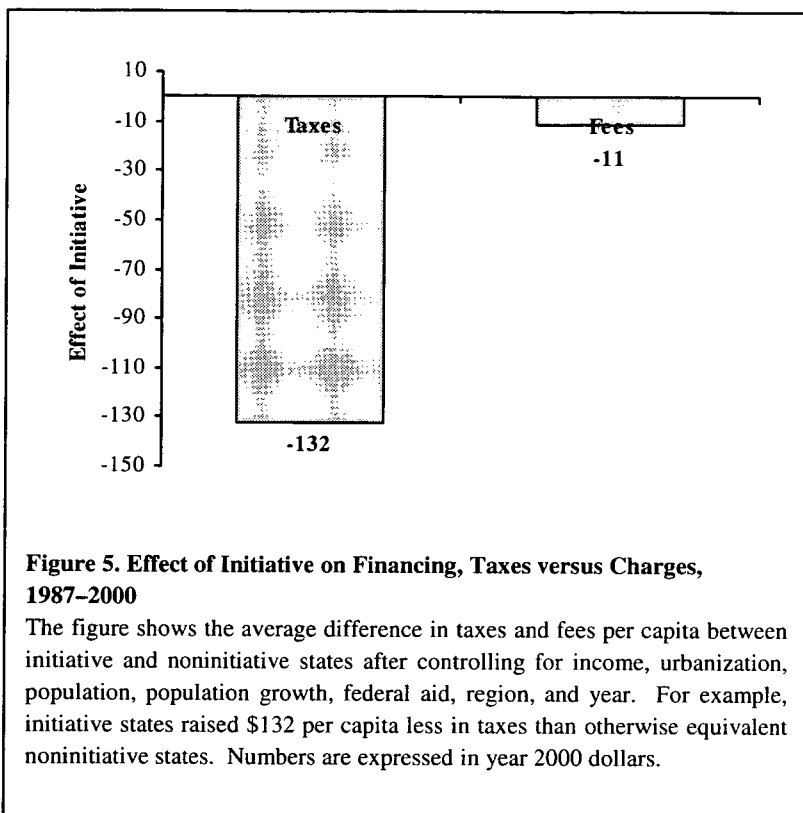
*C. Third Policy: Raising Money from Taxes or
Charges for Services*

The third policy to be studied is how a state raises its revenue. I will distinguish between two broad sources of funds: taxes and charges for services. Taxes primarily consist of income, property, and sales taxes. Charges for services (and user fees) include tuition revenue to attend state colleges, revenue from use of public hospitals, sewer and trash collection fees, and so on. A crucial distinction between taxes and fees is that taxes are broad-based and not linked to consumption of government services, while fees are paid only by the people who use government services.²⁶ One reason voters might care about the mix of financing is because taxes offer a greater scope for redistribution than fees.

Figure 5 summarizes the effect of the initiative on taxes and fees. The format is the same as Figure 3. The estimated differences are net of income, urbanization, region, and other factors that influence the revenue mix. We see that the initiative cut taxes by \$132 per capita on average, and cut charges by \$11 per capita on average. Taxes averaged \$2,136 per capita and charges averaged \$1,187 per capita during the period, so the initiative reduced taxes by approximately 6% and reduced charges by less than 1%. This is perhaps slightly misleading because the estimated effect on charges is not statistically significant, meaning that we cannot reject the possibility that the initiative has no effect at all on fees.²⁷ In any event, the net effect of the initiative was to reduce the proportion of revenue raised from taxes and increase the proportion raised from fees. This suggests that the initiative pushed states toward less redistributive revenue structures.

26. It might be worth noting that there is not an entirely clear line between taxes and charges. Some taxes can be avoided by ceasing certain activities, such as tobacco taxes.

27. The effect on taxes is statistically significant at the 5% level using standard errors adjusted for within-state clustering.



The question of interest is whether a majority opposed the shift in revenue from taxes to charges, as the subversion hypothesis maintains. Opinion data is limited on this question: some evidence from the 1980s indicates that a majority of voters actually favored such a change.²⁸ The evidence I present here comes from another question I included in the *April 2002 Internet Survey*. The caveats about representativeness of the sample will not bear repeating, but should be kept in mind. The question is:

State and local governments raise revenue by taxing and by charging for services. Supposing that total revenue is kept at its current level, which of the following comes closer to your view?

28. See FOR THE MANY, *supra* note *.

- 1) Rely less on taxes and more on charges for services.
- 2) Keep the mix between taxes and charges about the same.
- 3) Rely more on taxes and less on charges for services.
- 4) No opinion/don't know.

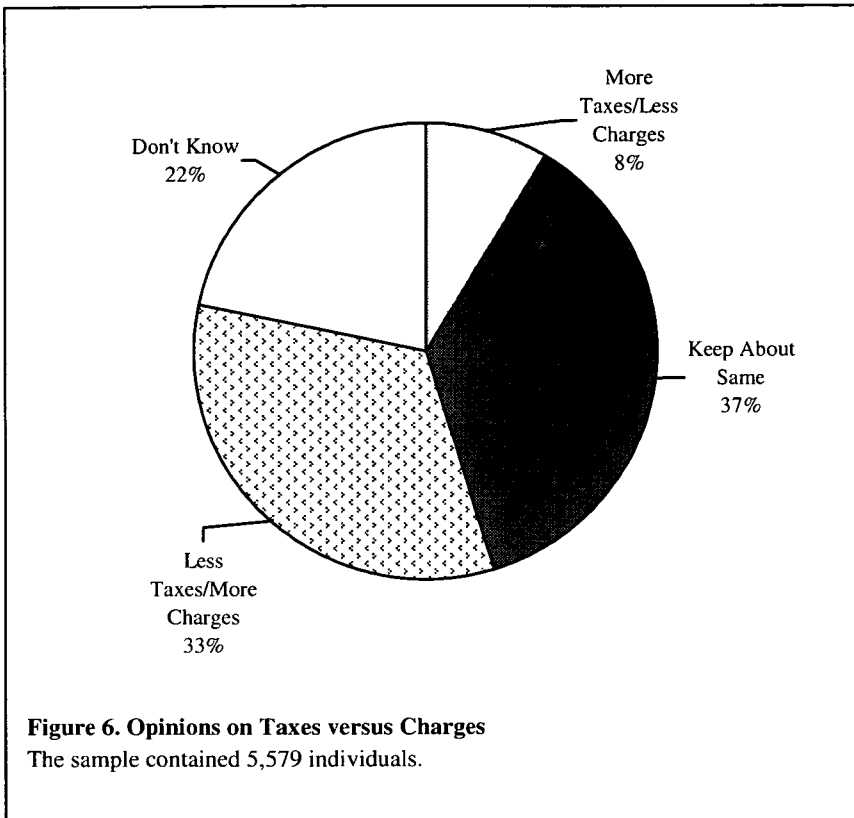


Figure 6 reports the fraction of people giving each response. The most popular response is to maintain the status quo. Of the remaining responses, a clear majority prefers increasing charges to increasing fees. There is no evidence here that a majority opposes the changes brought about by the initiative, contrary to the subversion hypothesis. If anything, there might be a modest majority in favor of the changes (for example, if the people who want to keep the mix “about” the same were evenly split between wanting modest shifts toward taxes and modest shifts toward fees).

V. DISCUSSION AND CAVEATS

The initiative process is firmly embedded in American government, and has been for more than a century. Yet the process continues to be the subject of ongoing debate about whether it is a good or a bad form of democracy. The failure of consensus to emerge among scholars and policymakers is not because new facts and ideas are continually being discovered that challenge basic assumptions and require people to rethink their views. In fact, the reverse is true. Little new information has been made available and the main arguments and counterarguments have not changed appreciably since the process was introduced a century ago.

A broad objective of this Article is to suggest that recent theoretical developments in economics and political science and the advent of low cost computing have opened up promising new avenues to settle some of the old debates and breathe new life into a discussion that threatens to become sterile. The “scientific” approach proceeds by formulating the contesting views in terms of empirical hypotheses, and then examining the historical data to weed out hypotheses that are inconsistent with the evidence.

This Article illustrates the new approach by providing scientific evidence on a particular argument, what I call the “special interest subversion” hypothesis: the initiative allows organized and wealthy interest groups to achieve policy outcomes that are contrary to the interests of the majority. I study three fiscal policies, the overall level of spending, the division of spending between state and local government, and the mix of financing between taxes and fees. Regression analysis is employed to document how the initiative process changed each of the three policies over the period 1987–2000: the initiative cut spending, decentralized expenditure from state to local government, and shifted revenue from taxes to fees. I then examine survey data to determine how the majority of citizens felt about each of the three policies. For none of the policies was there a majority opposed to the changes brought about by the initiative process. The evidence is entirely inconsistent with the subversion hypothesis. To the contrary, the evidence tends to suggest that the initiative pushed policy toward what the majority wanted.²⁹

29. I would say the evidence can also be read to support the conclusion that voters were satisfied with the status quo in both initiative and noninitiative states. I don't believe this is the most natural interpretation, but in any case it would not support the subversion hypothesis, which implies that the majority in initiative states should be unhappy with their policies.

One of my concerns with the previous literature is that claims and conclusions have tended to exceed the available evidence.³⁰ Lest the evidence here be taken too far, let me list some caveats.

First, my evidence at most shows that the initiative promoted majority rule when it comes to fiscal policy (here I study 1987–2000, but my forthcoming work *For the Many or the Few* shows that the pattern holds throughout the twentieth century). Gerber shows that the initiative process seems to promote majority rule on two social policies, death penalty and parental abortion notification.³¹ The evidence does not show that majority rule is promoted on other issues. In other words, it is entirely possible that the special interest subversion hypothesis holds for other issues, such as business or environmental regulation. Of course, saying that something is possible does not mean it is true. Since all of the evidence to date rejects the subversion hypothesis, the burden of proof would seem to be on those who subscribe to the hypothesis. At the least, the subversion hypothesis ought no longer to be peddled as embodying either knowledge or wisdom.³²

The other important caveat is that the evidence is positive not normative; it does not show that the initiative process is a desirable or good form of government. It simply shows that the initiative promotes majority rule. Majority rule is a core principle of democracy, of course, but it is not the only one. For example, protection of the rights of minorities is an important value as well. To make normative claims about the initiative process requires an understanding of whether it undermines minority rights (among other things). As far as fiscal policy goes, it is hard to see how the policy changes I have studied come close to threatening the rights of minorities, but a more systematic treatment of social issues might tell a different story. Unfortunately, we have no reliable statistical evidence on how the initiative affects minority rights. The existing evidence is either anecdotal (and it is easy to trade anecdotes about whether initiatives or legislatures are more hostile to minorities) or poorly suited to resolve the question.³³ The overwhelming support for the initiative process expressed by racial and ethnic

30. For further discussion see FOR THE MANY, *supra* note *.

31. Gerber, *supra* note 10, at 112–25; GERBER, *supra* note 6, at 122–35.

32. This phrase is a homage to Lapalombara and Hagan who half a century ago issued a call (largely unheeded) for initiative students to pay more attention to the facts. Joseph G. Lapalombara & Charles B. Hagen, *Direct Legislation: An Appraisal and Suggestion*, 45 AM. POL. SCI. REV. 400, 421 (1951).

33. For a critical review of the evidence, see FOR THE MANY, *supra* note *.

minorities hints that the initiative might not be a serious threat, however.³⁴

Another concern with the initiative process is whether voters are competent to make wise public policy decisions. Majority rule might not be a good thing if the majority is insufficiently informed to choose the right policies. Fortunately, some important scientific evidence has been produced on this question in the last few years.³⁵ All of this evidence points to a much greater degree of voter competence than was previously suspected. In particular, the evidence shows that voters are able to use information cues (such as endorsements by trusted sources) to make the right decisions in the voting booth.

This is only intended to be a sampling of the issues that are worth investigation. What I have tried to suggest is that we are now in a position to begin treating issues surrounding the initiative process as scientific propositions that can be addressed using modern theoretical and empirical tools.

34. *See id.*

35. Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63 (1994); ARTHUR LUPIA & MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (1998); SHAUN BOWLER & TODD DONOVAN, *DEMANDING CHOICES: OPINION, VOTING, AND DIRECT DEMOCRACY* (1998).