

BOOK NOTE

DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES

By David B. Magleby

Baltimore and London: The Johns Hopkins University Press, 1984. Pp. 199, appendices, notes, bibliography, index. \$27.50 hardcover.

Direct legislation is the process by which voters directly decide issues of public policy by voting on ballot propositions. This definition is adopted by Professor David B. Magleby of Brigham Young University in his discussion of various mechanisms of direct legislation including initiatives and propositions. Professor Magleby reviews surveys of voters in elections where initiatives and propositions were on the ballot. The author first attempts to establish a profile of American voters and then attempts to determine the impact of that voter profile on the chances of passage for differing types of direct legislation measures.

The author discusses in more detail a recent survey which shows that a majority of Americans would support a national referendum provision. He credits this rise in popularity of direct legislation to a massive distrust of government and a belief that more issues should be decided by the people. The author then notes that the Founding Fathers did not fully trust the decision-making powers of the people. Magleby points out that they created the House of Representatives as the only popularly elected body, while senators were to be chosen by the state legislatures and the President by electors.

The author describes the four types of direct legislation: (1) direct initiative, in which the people vote on proposed statutes or constitutional amendments without legislative consideration; (2) indirect initiative, in which the proposed statute or amendment must first be considered by the legislature, and if not approved, is then voted on by the people; (3) popular referendum, where the voters approve or reject specific measures after prior approval by the legislature; (4) propositions submitted by the legislature, such as constitutional amendments, statutory amendments, and bond issues. The author also describes the differences among states in the number of signatures required to place a proposition on the ballot and the various time limits within which the signatures must be collected.

Magleby then discusses what he terms the "initiative industry" which consists of firms which specialize in promoting placement of propositions on state ballots. He mentions his concern, however, that the high cost of using such firms, often up to \$1 million, generally excludes the poor from their use, which may deny the poor full participation in the direct legislation process.

One particularly interesting chapter of the book is entitled, "Who Votes On Ballot Propositions?" The author asserts that older and more educated voters are the most likely to vote on propositions. According to Magleby, minorities and low income groups tend to "dropoff" more often than other groups; that is, they may vote in the candidate races but fail to vote on the propositions on the same ballot. The author expresses concern that the wording on most propositions is at a reading level above that of most of the voting population. He notes particularly that the reading level of propositions in Massachusetts and Rhode Island was 3rd year of college, while in California and Oregon recent propositions required a masters degree or better reading level.

The central thesis of Professor Magleby's book is presented in the chapter entitled, "The People Rule?" He asserts, contrary to popular belief, that direct legislation is not the most democratic policy making device. He notes that due to high signature requirements for most direct legislation measures, only well-organized or well-funded groups can bring measures before the people. Thus, issues relevant to low income groups or minorities, such as housing reform, mass transit, welfare reform, and building access for the handicapped, are seldom, if ever, brought before the voters.

The author further criticizes direct legislation by contrasting it to a model of decisionmaking which he considers superior—representative democracy. Professor Magleby asserts that by the nature of the process, there is little deliberation in direct legislation elections. Moreover, the flow of information is entirely one way: from the supporters of the proposition to the voters. In a representative system, on the other hand, there can be substantially more deliberation of proposed measures in committees and upon the floor of the house of the elected body. Furthermore, the exchange of ideas can be, at least theoretically, two way, thus leading to enhanced responsiveness to voter preferences.

Direct legislation, moreover, lacks the benefits that accrue from compromise. The voters are presented with a measure only in the form presented by the sponsors. There is not the give and take needed to create a possibly superior measure. Discussion of direct legislation issues is, therefore, limited prior to a measure's appearance on the ballot. Thus, measures which may in principle be supported by a majority of the electorate could be defeated because of misinformed interpretations of the measure's provisions. This problem, the author suggests, could be avoided through the more substantial debate of issues which occurs in a representative democracy.

Professor Magleby concludes his book by suggesting reforms of the direct legislation system. He proposes that initiatives should only advise rather than bind legislatures. He also proposes that initiatives should be worded in easily understood language rather than technical or legal jargon. Further, he recommends shorter ballots to reduce dropoff. The author also encourages the practice of holding direct legislation elections only in conjunction with general elections because these elections have statistically larger voter turnouts than special elections for direct legislation measures alone. The author suggests permitting multiple responses to direct legislation measures, such as "strongly agree," or providing variations in phrasing of propositions, so that voters may indicate the intensity of their agreement or disagreement with the measure.

Professor Magleby presents a comprehensive view of the status of direct legislation in the United States today. The book contains numerous graphs in the text to illustrate the author's points, along with detailed appendices for those with a special interest in statistics. The book strongly challenges the popularly held belief that direct legislation is the most democratic form of government. It presents in a clear fashion the problems with direct legislation and demonstrates how this process can be used to promote the goals of a powerful minority. It also illustrates the need for better education in our country so that all people may play an informed part in the process of government. Finally, it promotes the notion that representative government does not exist simply as a cost-effective alternative to direct voting on every issue of government, but rather it is the most democratic form of government.

The author points to the Founding Father's distrust of the people's ability to make important decisions, demonstrated by the way the Fathers mandated how the Senate and President were to be elected. The author is apparently attempting

to say that the Fathers would not approve of the power given to the people in direct legislation. He fails to recognize, however, that the electoral process was also drafted in its original form because of the public's lack of ability to get to know candidates that were to represent vast geographical areas — the Senate and the President. Those candidates they could get to know — candidates for the House — were to be voted on in a popular election. With the advent of widespread access to the electronic media, this historical distinction no longer applies.

Some of the author's proposed reforms are also of dubious merit. His proposal for multiple responses to a direct legislation measure is, in principle, a positive measure but may prove too complicated in actual practice. He does not explain whether a "no" vote prevails over the positive choices in a situation where there is no majority for any one choice but only a plurality of "no" votes. He also does not say which variation prevails when the positive votes as a whole outweigh the "no" votes. It may be that some who voted for one of the positive responses that did not get the highest vote total would prefer a "no" vote to the one alternative positive response which did gain a plurality. Thus, while this seems to be a way to give voters more choices in certain areas, it may result in an end not desired by the electorate as a whole.

The author also suggests that each petition carry a warning to read the proposal, in order to encourage people to sincerely consider whether they wish that measure be placed on the ballot. This appears to be a rather naive attempt to reduce voter ambivalence. Those who will attach their names to a petition without considering its contents are probably no more likely to read it or adequately consider it simply because a warning to do so appears at the top of the page.

Professor Magleby envisions his book as only a starting point for further research of direct legislation. He has dispelled some of the popularly held myths regarding propositions and initiatives, in addition to making a significant addition to the existing political science literature.

Ways must be found to include minorities, persons with low incomes, and persons with fewer years of formal education in the direct legislation arena while maintaining the requirements that keep out spurious proposals. Groups that are statistically underrepresented in direct legislation voting must be targeted for measures to increase their motivation to participate in the political process. Still to be addressed as well is the problem of a wealthy minority which is able to influence policy with its money. We must insure that when the people speak, it is all of the people who speak. Only then will direct legislation become a tool of responsible and responsive government.

*Glenn R. Schmitt**

* B.S. Indiana State University, 1983; J.D. Candidate, Notre Dame Law School, 1986.