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Erratum

All instances of the organization "Reform California" should read "Repair California."

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California's Constitutional Decision**

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Abstract

Fourteen years after the demise of the last serious attempt to revise California's much maligned Constitution, the effort has been renewed again. California Forward, a foundation funded bipartisan coalition, has proposed a slate of structural reforms that could be adopted as either legislative (LCAs) or as initiative (ICAs) constitutional amendments. Reform California, sponsored by the Bay Area Council (a business sponsored public policy advocacy organization for the nine counties of the Bay Area) has proposed a radical new form of constitutional convention that would bypass the legislature and rely on delegates chosen by local government and lottery.

Keywords: California constitution, government reform, political reform

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Fourteen years after the demise of the last serious attempt to revise California's much maligned Constitution, the effort has been renewed again. California Forward, a foundation funded bipartisan coalition, has proposed a slate of structural reforms that could be adopted as either legislative (LCAs) or as initiative (ICAs) constitutional amendments. Reform California, sponsored by the Bay Area Council (a business sponsored public policy advocacy organization for the nine counties of the Bay Area) has proposed a radical new form of constitutional convention that would bypass the legislature and rely on delegates chosen by local government and lottery.

The previous California Constitutional Revision Commission (CCRC) began its work in 1993 during a recession and ended it abruptly three years later in the midst of economic recovery and a change in legislative leadership. With this in mind, the reform community has acted with more urgency this time, knowing that the window for change is finite and fueled by a sense of crisis. Prosperity has a way of papering over California's constitutional problems.

Academics throughout the state responded in 1993 under the direction of the Institute of Governmental Studies (IGS) and produced background academic research for the CCRC, work that was subsequently published as *Constitutional Reform in California*, edited by Bruce E. Cain and Roger Noll. Berkeley: IGS Press, 1995. As before, the academic community has again come forward to address questions surrounding constitutional reform. The CJPP will be publishing some of these efforts in a two part series. This first issue draws heavily (although not exclusively) from two efforts: a series of Constitution Week Lectures arranged by Professors Matt Jarvis and Raphael Sonenshein of California State University Fullerton. The papers from Professors Sonenshein and McCubbins originated from presentations in this series. The other source for this issue of CJPP is a conference in Sacramento that was held on October 15, 2009 entitled "Getting to Reform: Avenues to Constitutional Reform in California" and sponsored by the Bill Lane Center for the American West at Stanford, the IGS at Berkeley, and the Center for California Studies at California State University, Sacramento. One of the

conference's organizers, Professor Thad Kousser of UC San Diego, has contributed research that he and his collaborators initially presented at this event. To this, we have added commentary from knowledgeable participants including John Sweeten, Tom Campbell, Richard Gordon, Steven Hill, Tim Gage, Robert Naylor, Gloria Duffy and Gabriella Holt.

Because the last constitutional reform effort failed, many issues then are still problematic today: e.g. ballot box budgeting, mandated expenditures, specifically appropriated taxes, term limits and legislative capacity, diffusion of executive accountability, and the like. But some topics have become more salient this time. Polarization was on the increase throughout the eighties and nineties in California, and has become in California, as in the rest of the country, a critical subject at present. And as partisan lines have hardened, attention has focused more intensely on the prevalence of supermajority vote requirements at the state and local level.

Another important difference between constitutional reform now and then is that the impetus for '90s reform came from the Governor and legislature while today it comes from outside reform groups and public opinion. The CCRC was appointed by elected officials, and its recommendations had to be approved by the legislature. This time, it is quite likely that some measures will bypass the legislature and appear on the ballot as ICAs. Even more dramatically, Reform California's measure gives the convention over to citizens appointed by local government officials and by lottery, removing the legislature entirely.

Is the California public ready to try radical solutions--possibly, but there is evidence in the commentaries and academic studies that the obstacles to a convention being called are significant. While Tom Campbell, Richard Gordon and Gloria Duffy are all in favor of a convention, others are skeptical or opposed. Robert Naylor warns that the expectations are so "badly splintered" and the possibilities of "log-rolling" and a "runaway convention" so great that he favors the California Forward approach of separate measures introduced as amendments. Tim Gage and John Sweeten see a need for reform, but both are skeptical of the "risks" entailed in trying to address them through a citizens' commission. Gabriella Holt sees the problem as one of leadership and not legislative structure, and believes the answer is creating a part time legislature and an open primary nomination process, not a constitutional convention.

Most of the commentators favoring a constitutional convention focus on the state's fiscal crisis, albeit in different ways. Tom Campbell and Richard Gordon want to better align revenues and expenditures. Gloria Duffy suggests doing away with the 2/3s vote and Steven Hill recommends reconsidering Proposition 13. Even if the Convention could be focused on the budget, there are still very diverse viewpoints to be reconciled.

The academic studies also point to some problems for the Constitutional Convention idea. Vladimir Kogan reviews the historical pattern of state constitutional conventions across the country, and notes, as others have before him that the trend has been against successful conventions in recent years even in states that call for automatic consideration of the question. While no one has ever tried the radical suggestions of lottery and appointment by local officials envisioned by Reform California, Kogan claims that the method of selection has not made a difference to convention success or failure in the past. Experience also suggests that separate measures have a better likelihood of success than a combined one even if the system requires a major makeover. The paper by Mike Binder, Tammy Frisby and Thad Kousser warns that their polling finds significant opposition among Republicans, and to a lesser extent Asians and Latinos as well, to the idea of a constitutional convention or initiative reforms.

Professor Sonenshein is perhaps uniquely qualified to give advice about how to conduct any prospective convention, having run one of the two competing LA Charter Reform Commissions and consulted with numerous other cities on similar matters. He echoes Robert Naylor's concern that without strong leadership and staff support, citizen commissions can drift, take too long and handle public input poorly. All of these problems would be compounded, he warns, if membership in the convention is too large. He also does not think that restricting the agenda in advance, as recommended by Kogan, will work. Most importantly, he reminds us that the last stage of public approval cannot be ignored until the end of the convention deliberations, and for that reason a successful reform is predicated on having a well thought out political strategy for getting recommendations passed.

Just as the commentators are split on how to fix California's budget problems, there is a wide disagreement among our academics. Professor Kasden proposes a grand compromise, trading a serious spending cap (pleasing conservatives) for a change to majority vote on the budget and an end to ballot box budgeting. There would be legislative scoring that accurately captures all the fiscal impacts and across the board sequestration if outlays exceed caps. But what looks good on paper may not succeed in practice according to Mat and Colin McCubbins. They argue that the experience in California and elsewhere with expenditure limits (TEs) is that where there is no will, there is no way. Capping at one level gives rise to compensation at other levels. Looking at California's experience, they find that Prop 13's effect on combined state and local spending only lasted a few years, and then local governments found ways to replace missing property tax revenues with fees, sales taxes and special assessments. Institutional solutions will not work if voters cannot connect their appetite for public goods with their willingness to pay taxes, and if local officials find ingenious ways to (get?) around caps and other limits.

Thad Kousser similarly cautions against a purely institutional approach to solving partisan gridlock. While rising polarization contributes to stalemate with respect to non-budgetary matters, trying to lessen it through party primary or redistricting reform will only influence matters on the margin: divided government more than the trend to polarization is the culprit in his estimation.

So we are left with this. To solve the problems of governance, we must reform several parts of the system at once, because the system will swamp and compensate for isolated changes to the budget or governance process. However, the more comprehensive and inclusive the reform, the more likely the process will fail. To con con or not—that is the question.