

1-1-2011

From Crisis to Solution—California's Problems in Two Books: A Review of *Remaking California* and *California Crackup*

John S. Caragozian

Loyola Law School Los Angeles

Recommended Citation

John S. Caragozian, *From Crisis to Solution—California's Problems in Two Books: A Review of Remaking California and California Crackup*, 44 Loy. L.A. L. Rev. 687 (2011).

Available at: <http://digitalcommons.lmu.edu/llr/vol44/iss2/12>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

**FROM CRISIS TO SOLUTION—
CALIFORNIA’S PROBLEMS IN TWO BOOKS:
A REVIEW OF *REMAKING CALIFORNIA* AND
*CALIFORNIA CRACKUP***

*John S. Caragozian**

At least California’s deep failures have created opportunities for deep long-term thinking. Two new books, *Remaking California* and *California Crackup*, are worth reading and pondering for their analyses of California’s problems and a look into potential solutions.

The first, *Remaking California*, is edited by R. Jeffrey Lustig, a professor at California State University, Sacramento, and a former director of the university’s Center for California Studies.¹ It contains chapters from several contributors. Professor Lustig introduces *Remaking California* with a familiar list of some of the events that have led to the decline of California’s public sector: Proposition 13, which centralized power in Sacramento; three strikes, which—without the necessary accompanying revenues—skyrocketed prison costs; and Proposition 140, which imposed strict term limits and gutted the legislature.²

He categorizes the results of these and other events into three structural problems, all of which need to be addressed. The first problem is a crisis of governance, best exemplified by the state’s chronic inability to fashion timely or honest budgets.³ The second is a crisis of representation, which includes voter apathy, citizens’ disconnection from government, and legislators’ unwillingness to act

* Adjunct Professor, Loyola Law School Los Angeles. The author thanks Loyola Law School Los Angeles Professor Karl Manheim and Adjunct Professor Donald Warner for their substantial contributions to this book review.

1. REMAKING CALIFORNIA (R. Jeffrey Lustig ed., 2010).
2. See R. Jeffrey Lustig, *California at the Edge*, in REMAKING CALIFORNIA, *supra* note 1, at 3, 4.
3. *Id.* at 7.

for the long-term public good.⁴ The third is a crisis of social order, by which Professor Lustig means the state's balkanization in geography, culture, and class.⁵

While Professor Lustig is correct about the need to address these three crises, none of them, especially the crises of representation and social order, are unique to California. Perhaps, then—and Professor Lustig likely would concur—we cannot look just inside California for all of the causes of and solutions to these crises.

Veteran newspaper reporter, editor, and columnist Dan Walters (the political columnist for the *Sacramento Bee*) acknowledges in his *Remaking California* chapter that other states face similar problems but opines that they are more severe in California:⁶ “California is a canary in the civic mine, telling the rest of the nation what can happen when its governmental structure loses relevance to its socioeconomic reality, and when single-purpose decisions made in the political climate of the moment interact with each other and create unintended consequences.”⁷

Walters cites Proposition 13 as an example of such a single-purpose decision.⁸ Passed by voters in 1978 in response to escalating property taxes on homes, Proposition 13 has centralized power in Sacramento.⁹ Local governments—counties, cities, and school districts—have lost their abilities to control their own revenues, which, before Proposition 13, consisted mostly of local property taxes.¹⁰ Now, they increasingly depend on allocations of state revenues.¹¹ As a result, local governments have become less accountable to, and less connected with, their constituents. Although Republicans have long championed small local government and continue to support Proposition 13, they have seen Proposition 13 weaken local government.¹² Walters quotes longtime state senator,

4. *See id.*

5. *See id.* at 7–8.

6. Dan Walters, *Decline and Fall*, in *REMAKING CALIFORNIA*, *supra* note 1, at 23, 24–25.

7. *Id.* at 25.

8. *See id.* at 30.

9. *Id.*

10. *Id.*

11. Lenny Goldberg, *Proposition 13: Tarnish on the Golden Dream*, in *REMAKING CALIFORNIA*, *supra* note 1, at 41, 45.

12. *Id.* at 47.

Republican Marian Bergeson, as saying, “The loss of local autonomy is one of the most bitter results of Proposition 13.”¹³

Proposition 13 is further explored by tax expert Lenny Goldberg in his chapter.¹⁴ Goldberg emphasizes one of the proposition’s positive aspects: it accomplished its goal of slashing residential property taxes, thereby saving many people from having to sell their homes.¹⁵ However, it disproportionately benefited commercial property, in that business property is sold less often—and, therefore, under Proposition 13 lags more in being reassessed up to the current market value—than residential property.¹⁶

Goldberg also correctly notes that Proposition 13 amended the California Constitution to require a two-thirds majority vote in the legislature to raise state taxes, but only a simple majority is needed to lower them.¹⁷ He acutely observes that this requirement ratchets taxes downward.¹⁸ During good economic times, the legislature, by a simple majority, can (and perhaps should) lower a tax rate. However, when a tax rate must be increased to supply needed additional revenues, then a two-thirds vote is required for the increase. This asymmetry is worsened with Proposition 140’s term limits: short-time legislators have “no time to build up enough credibility with their constituents to be able to support anything as unpopular as new taxes.”¹⁹

Worst of all, Proposition 13 signaled the decline of California’s post–World War II bipartisanship. As exemplified by moderate Republican governors Earl Warren and Goodwin Knight and moderate Democratic governor Pat Brown, state and local spending on schools, roads, parks, and the like was seen as “investing” in

13. *Id.*

14. *Id.* at 41.

15. *See id.* at 42.

16. *Id.* at 44. The California Supreme Court upheld Proposition 13 against an equal protection claim. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1293–94 (Cal. 1978).

17. CAL. CONST. art. XIII A, § 3.

18. Goldberg, *supra* note 11, at 50–55 (discussing the history of the two-thirds requirement and difficulty it creates for raising taxes).

19. *Id.* at 52; *see also* Mike Zapler, *Many Backers of Strict Term Limits Now Regret It, Saying They Only Made Things Worse*, SAN JOSE MERCURY NEWS (July 31, 2010, 6:31 PM), http://www.mercurynews.com/ci_15649835?IADID (discussing the effects of term limits on passing bills).

California's long-term future.²⁰ Those investments paid off: California attracted people from across the country eager to enroll their children in top-notch schools and universities, to drive on well-maintained roads, and to enjoy beautiful parks, all public and all free (or almost free).²¹ Businesses were similarly attracted, and California boomed.²² Now, the lexicon has changed: "invest" has been replaced by "spend." Many Californians may still want those services, but not at the price of breaking partisan orthodoxy to spend for the services.²³

In his chapter, St. Louis University professor Christopher Witko broadens Goldberg's analysis. Witko indicts constitutional initiatives generally, both those mainly supported by Republicans, such as Proposition 13, and those mainly supported by Democrats, such as Proposition 98 (which, to over-simplify, mandates that the legislature allocate 40 percent of the state's general fund for K-14 education).²⁴ Using Propositions 13 and 98 as illustrations, Witko points out that both initiatives deprive the legislature of the traditional fundamental role of crafting a budget.²⁵ Such initiatives may have reflected once-popular causes but remained in force long after their popularity waned or circumstances changed.²⁶

Initiatives may also be anti-majoritarian. In the traditional republican form of government, the legislature's majority exercises control and, therefore, is responsible to the state as a whole.²⁷ However, over the years, California voters have passed various constitutional initiatives that require super-majorities.²⁸ California is in a small minority of states that require a two-thirds vote to raise

20. Goldberg, *supra* note 11, at 43.

21. *See id.*

22. *See id.*

23. *Id.* at 47 ("The problem, as former Republican Finance Director Cliff Allenby put it succinctly, is that 'Californians want high levels of services for their middle level of taxes.'"); Cathleen Decker, *Poll: Californians Want It Both Ways on Budget*, L.A. TIMES, Nov. 18, 2010, at A1.

24. Christopher Witko, *The California Legislature and the Decline of Majority Rule*, in REMAKING CALIFORNIA, *supra* note 1, at 60, 66-67.

25. *Id.*

26. *See id.* at 68-69 (discussing the previously passed Proposition 140 and its failure to deliver on what was promised, a notion supporters now acknowledge).

27. *See id.* at 71-72.

28. Joe Mathews, *California Ruined by Supermajority*, S.F. SENTINEL, May 30, 2010, <http://www.sanfranciscosentinel.com/?p=75206>.

taxes, and until 2010, it was the only state that required two-thirds votes both to raise taxes and to pass a budget.²⁹ Who is accountable when no two-thirds vote is obtained? California's history—in particular, the legislature's failure in sixteen of the past twenty years to enact a timely budget—suggests that neither side believes it will be held accountable. This lack of accountability destroys an essential element of republican government, namely that voters have reasonable bases for deciding whom to elect—or to reelect—to represent them.

Some Californians hope that two recent initiatives will allay the ill effects of the two-thirds requirements. The first, Proposition 11, which passed in 2008, took redistricting of state assembly and senate districts away from the legislature and gave it to a nonpartisan citizens' commission.³⁰ The theory was that, by eliminating the old gerrymandered districts (which were drawn to protect incumbents and which thereby perpetuated past party divisions), the new districts would be more competitive. Competitive districts, in turn, would require legislators to appeal to a broader range of voters and would result in more moderate legislators being elected. The second, Proposition 14, which passed in 2010, created a top-two primary in which the two candidates—regardless of party—receiving the highest number of primary votes face off in the general election.³¹ Again, the theory was that more moderate legislators would be elected.

Witko is skeptical that either proposition will cure California's problems. He points out that Proposition 11's nonpartisan redistricting is unlikely to result in many competitive districts, because partisan voters "are increasingly clumping themselves in

29. Witko, *supra* note 24, at 66. Voters' approval of Proposition 25 in November 2010, ended California's requirement of a two-thirds vote in each house to pass a state budget. Thad Kousser, Editorial, *Let the Majority Rule*, L.A. TIMES, Nov. 11, 2010, at A31.

30. Witko, *supra* note 24, at 75. In November 2010, California voters rejected an effort to repeal Proposition 11. Editorial, *A New Map for California*, L.A. TIMES, Nov. 8, 2010, at A12. Indeed, voters expanded the role of the nonpartisan citizens' commission by adding congressional redistricting to the commission's duties. *Id.*

31. Anthony York, *Proposition 14 Passes, Bringing Open Primaries to California*, POLITICAL (June 8, 2010, 9:41 PM), <http://latimesblogs.latimes.com/california-politics/2010/06/do-not-publish--propositon-14-passes.html>.

specific geographic areas of the state.”³² This “clumping” may also mute Proposition 14’s effects.

However, Witko’s analysis here might miss two possibilities. First, even if the redrawn districts or top-two primaries result in the election of only a handful of new moderates, that handful may be enough to alter the balance in the legislature, at least on close partisan votes. Second, Proposition 11 may affect California politics, even apart from who is actually elected. In particular, Proposition 11 may increase Californians’ faith in their government by eliminating the legislature’s self-dealing (namely, legislators drawing district lines to protect their own jobs, at the expense of the public interest in coherent districts).³³

Finally, it is difficult to judge the effects of Propositions 11 and 14 before either proposition has been implemented. It may take at least two or three election cycles to begin to gauge these propositions’ effects.

Lustig then goes beyond election procedure and explains that low voter turnout widens the disconnect between Californians and their government, in that elected officials tend to respond to the relatively few voters and tend not to respond to the greater number of non-voters.³⁴ Much of this problem, though, is national.³⁵ Indeed, California’s 2000 and 2008 voter turnouts (both of which Professor Lustig highlights) may have been higher than the national averages in those years.³⁶

32. Witko, *supra* note 24, at 75. In addition, a cosponsor of the Rebooting California Symposium, the Center For Governmental Studies, pointed out another possible drawback of Proposition 11: if California ends up with more competitive legislative districts, then more money may be required to fund legislative campaigns, which, in turn, may increase the importance of campaign contributors. See Patrick McGreevy, *State Begins New Era in Redistricting*, L.A. TIMES, Nov. 19, 2010, at A1 (“Experts at the Center for Government Studies in L.A. have pointed out that one unintended effect of the changes is that winning in an election is about to become a lot more costly for candidates, because more competitive races take more money. That means, of course, candidates will probably have to hit up special interests for more cash.”).

33. Jim Sanders, *First Members Selected for California Redistricting Panel*, SACRAMENTO BEE, Nov. 19, 2010, at A3 (“It’s one step toward making Californians believe in their government more than they do now,” Trudy Schafer, of the League of Women Voters of California, said of having residents rather than lawmakers draw boundary lines.”).

34. See R. Jeffrey Lustig, *Voting, Elections, and the Failure of Representation in California*, in REMAKING CALIFORNIA, *supra* note 1, at 99, 103–06.

35. Italy has a 90 percent voting rate; New Zealand has an 88 percent rate. *Id.* at 103.

36. In 2008, “only 60 percent of eligible Californians voted,” *id.*, while the national turnout of eligible voters was 61.6 percent (56.9 percent of the voting-age population). 2008 *General Election Turnout Rates*, U.S. ELECTIONS PROJECT, http://elections.gmu.edu/Turnout_2008G.html

California State University, Long Beach, professor Ronald Schmidt points out in his *Remaking California* chapter that California's low turnout of registered voters is actually worse than raw numbers suggest.³⁷ Specifically, California, with its many non-citizens and its low voter registration, has relatively few voters. The result is that a small number of Californians, disproportionately affluent and white, choose the state's leaders. How can those leaders, Schmidt asks, who—like the voters who elected them—are “disproportionately old, white, and economically well-off, possibly know how to craft policies that meet the needs of the state's people as a whole?”³⁸ However, this question's implication—that California's leaders are wealthy whites out of touch with other demographic groups—may be incorrect. For example, the assembly speaker is second only to the governor in influence in California government, and a white person has served as assembly speaker for only four of the past thirty years.³⁹ A foreign-born man (albeit, white) served as governor from 2003 to 2010,⁴⁰ and a Filipina American, Tani Cantil-Sakauye, was nominated and confirmed as the

(last updated Oct. 6, 2010); *Historical Voter Registration and Participation in State-Wide General Elections 1910–2009*, CAL. SEC'Y OF STATE, <http://www.sos.ca.gov/elections/sov/historical-voter-reg/hist-voter-reg-and-part-general-elections-1910-2009.pdf> (last visited Nov. 20, 2010) (showing 59.2 percent of eligible California voters voted in 2008). In 2000, the national turnout of eligible voters was 54.2 percent (50.0 percent of the voting-age population). *2000 General Election Turnout Rates*, U.S. ELECTIONS PROJECT, http://elections.gmu.edu/Turnout_2000G.html (last updated Oct. 6, 2010); CAL. SEC'Y OF STATE, *HISTORICAL VOTER REGISTRATION AND PARTICIPATION IN STATE-WIDE GENERAL ELECTIONS 1910–2009*, available at <http://www.sos.ca.gov/elections/sov/historical-voter-reg/hist-voter-reg-and-part-general-elections-1910-2009.pdf> (showing 51.9 percent of eligible voters voted in 2000). Of course, Lustig's fundamental concern is low—and decreasing—voter participation, and this concern may be valid regardless of whether California's turnout is higher or lower than the U.S. average.

37. See Ronald Schmidt, Sr., *Immigration, Diversity, and the Challenge of Democratic Inclusion*, in *REMAKING CALIFORNIA*, *supra* note 1, at 121, 125–26 (explaining the exclusion of major segments of the California population from voting).

38. *Id.* at 125.

39. BILL BOYARSKY, *BIG DADDY: JESSE UNRUH AND THE ART OF POWER POLITICS* 59–60 (2008); WINSTON CROUCH & DEAN E. MCHENRY, *CALIFORNIA GOVERNMENT, POLITICS AND ADMINISTRATION* 85 (rev. ed. 1949); see *Doris Allen Candidate Biography*, JOINCALIFORNIA, <http://www.joincalifornia.com/candidate/2368> (last visited Nov. 7, 2010); *Bob Hertzberg Candidate Biography*, JOINCALIFORNIA, <http://www.joincalifornia.com/candidate/6033> (last visited Nov. 7, 2010); *Curt Pringle Candidate Biography*, JOINCALIFORNIA, <http://www.joincalifornia.com/candidate/3561> (last visited Nov. 7, 2010); *Brian Setencich Candidate Biography*, JOINCALIFORNIA, <http://www.joincalifornia.com/candidate/4258> (last visited Nov. 7, 2010).

40. *Schwarzenegger's Inauguration Speech*, CNN.COM (Nov. 17, 2003, 5:29 PM), <http://www.cnn.com/2003/ALLPOLITICS/11/17/arnold.speech/>.

new Chief Justice of the California Supreme Court.⁴¹ Finally, racial and ethnic groups are not monolithic. Schmidt gives 1998's Proposition 227, which eliminated bilingual education in California,⁴² as an example of white voters' anti-immigrant views. Nevertheless pre-election opinion polls showed a majority of Latino voters supporting Proposition 227 as well.⁴³

Remaking California does venture some solutions, and the major ones are well considered. New America Foundation scholars Mark Paul and Micah Weinberg propose a 360-seat unicameral legislature, with half the seats elected by district (where the elections would be traditional winner-take-all) and the other half by region (where the elections would be proportional, so as to give some representation to minority parties).⁴⁴ Paul and Weinberg persuasively argue that smaller districts would improve the connection between the people and the legislature and that partially eliminating winner-take-all elections would elect more moderates. Smaller districts could allow third parties, such as Libertarians and Greens, to gain seats in the legislature. Paul and Weinberg also posit that a legislature so elected would be less susceptible to moneyed and other special interests and otherwise would function better than the current legislature does.⁴⁵

What *Remaking California* does not address is whether such a proposal has a chance of being seriously considered, much less implemented. The proposal would require a change to the state constitution.⁴⁶ Would the change be a "revision" or an

41. CAL. SEC'Y OF STATE, STATEMENT OF VOTE: NOVEMBER 2, 2010, GENERAL ELECTION 16 (2010), available at <http://www.sos.ca.gov/elections/sov/2010-general/complete-sov.pdf>; Schwarzenegger Introduces Chief Justice Nominee Tani Cantil-Sakauye, NEWS10 (July 22, 2010), <http://www.news10.net/news/local/story.aspx?storyid=87567>.

42. Schmidt, *supra* note 37, at 129.

43. *E.g.*, Cathleen Decker, *Bilingual Education Ban Widely Supported*, L.A. TIMES, Apr. 13, 1998, at A1. However, post-election polls indicate that Latinos actually voted against Proposition 227, by a 63-to-37 margin. L.A. TIMES, STUDY #413/EXIT POLL: CALIFORNIA PRIMARY ELECTION 5 (1998), available at <http://www.usc.edu/dept/education/CMMR/227/227exitpoll.pdf>. Even if the post-election poll is correct, that 37 percent of Latino voters favored Proposition 227 suggests that Latinos are not a monolithic bloc.

44. Mark Paul & Micah Weinberg, *Remapping the California Electorate*, in REMAKING CALIFORNIA, *supra* note 1, at 175, 177-78.

45. *Id.* at 187-88; Allen Ides, *Approximating Democracy: A Proposal for Proportional Representation in the California Legislature*, 44 LOY. L.A. L. REV. 437, 451-53 (2011) (reaching a similar conclusion about the need for proportional representation).

46. Paul & Weinberg, *supra* note 44, at 190.

“amendment”)?⁴⁷ This revision-versus-amendment question would have to be litigated in the courts. If the courts held the proposal to be a revision, then the proposal would require a two-thirds vote both from the state assembly and from the state senate before it could appear on the ballot for voter approval. Since two-thirds votes do not appear to be forthcoming from the legislature, especially for a radical overhaul of the legislature itself, no such revision could be approved.

If the proposed remaking of the legislature were held to be an amendment, uncertain as that holding is, then the proposal could appear on the ballot for voters’ approval without a legislative vote. However, even as an amendment, the proposal would face enormous obstacles. First, the proposal’s supporters would have to draft and submit the amendment to the attorney general.⁴⁸ After the attorney general gave the proposal a caption and summary, the supporters would have to gather valid signatures (in 2011, such a petition would require approximately 807,615);⁴⁹ with professional signature gatherers charging \$3 to \$5 per signature⁵⁰ and the need for extra signatures (to provide a margin against invalid signatures), \$2.5 million would likely be the minimum that supporters would need to qualify the amendment for the ballot.⁵¹ The election campaign would require additional millions of dollars, as would the revision-versus-amendment litigation. Even if such sums were raised, the unicameral-legislature–proportional-voting proposal may not pass because voters may find it unfamiliar and more complex than the current system.

47. See *id.*; Steven Miller, *Getting to a Citizens’ Constitutional Convention: Legal Questions (Without Answers) Concerning the People’s Ability to Reform California’s Government Through a Constitutional Convention*, 44 LOY. L.A. L. REV. 547, 562–65 (2011) (comparing a constitutional revision and a constitutional amendment).

48. CAL. CONST. art. II, § 10(d).

49. CAL. SEC’Y OF STATE, STATEWIDE BALLOT INITIATIVE GUIDE (2010), available at <http://www.sos.ca.gov/elections/ballot-measures/pdf/initiative-guide-010611.pdf>; see CAL. CONST. art. II, § 8(b).

50. See Richard Winton & Jessica Garrison, *Caruso Offers to Finance Drive for Sales-Tax Hike*, L.A. TIMES, Dec. 1, 2004, at B1 (discussing the typical cost of a signature as ranging from \$1.50 to \$3); Ben van der Meer, *’Tis the Season for Signature-Gatherers*, MODESTO BEE (Dec. 17, 2007), <http://www.modbee.com/2007/12/17/154626/tis-the-season-for-signature-gatherers.html> (discussing the range of prices per signature varying from as low as 50 cents “to \$9 or \$10 if organizers are running into a deadline to qualify the initiative”).

51. See Joe Mathews, Editorial, *No Ink—But a Big Deal*, L.A. TIMES, Feb. 14, 2010, at A35.

Lustig's own chapter focuses on the process of constitutional reform and suggests a constitutional convention.⁵² It is difficult to speculate what good or bad might emanate from a convention, though, in that the most basic parameters of a convention (e.g., when a convention would occur, how delegates would be selected, what subjects would be mandated for or prohibited from the convention's consideration, and so forth) are entirely unknown. Indeed, no convention of any type is in the offing. Lustig mentions that the influential Bay Area Council (BAC) supported a convention in 2009,⁵³ but, as Steven Miller chronicles in his article "Getting to a Citizens' Constitutional Convention" in this symposium, the BAC eventually withdrew financial support for the proposed initiatives that would have provided for a convention.⁵⁴ No other major supporters or calls for a convention appear on the horizon.

While the formation of a convention may be speculative, *Remaking California* provides helpful analysis of the BAC-sponsored convention proposal. One element of the BAC's proposal was that approximately half of the convention delegates would be randomly selected.⁵⁵ The BAC proposed random selection to avoid replicating Sacramento's gridlock and to foster outside-the-box thinking, but Lustig correctly observes that a republican government's foundation is that people elect their own representatives.⁵⁶ Simply put, voters should be trusted, and random selection of delegates betrays a distrust of voters. In addition, as Witko opines in his *Remaking California* chapter, term limits have been a disaster for California government by depriving it of experienced leadership.⁵⁷ Random selection of convention delegates would seem to be term limits taken to the *n*th degree: legislators elected after Proposition 140 are allowed only limited experience, but randomly selected convention delegates would have no experience. Do we want such delegates to create California's long-term governmental structure?

52. R. Jeffrey Lustig, *A People's Convention for California*, in REMAKING CALIFORNIA, *supra* note 1, at 192, 201.

53. *Id.* at 197.

54. *See* Miller, *supra* note 47, at 569.

55. *See* Lustig, *supra* note 52, at 202.

56. *Id.* at 203.

57. Witko, *supra* note 24, at 68–69.

Finally, the details of these proposed reforms—along with some of the additional, brief ideas in *Remaking California*'s epilogue—are less important than the need to begin building a consensus about basic big-picture objectives. As the book correctly indicates, California's problems have been decades in the making, and the remaking process must begin promptly because it, too, will take decades.⁵⁸

The second book, *California Crackup*, is written by Joe Mathews and Mark Paul, both with the New America Foundation.⁵⁹

Mathews and Paul provide a persuasive—and depressing—list of California's problems, and then add, "The worst thing about California's fix is that, under the state's current system of government, these problems can't be fixed."⁶⁰ Other states have faced problems similar to California's—from budget shortfalls to electoral polarization—but have not suffered California's paralysis.

Like *Remaking California*, *California Crackup* focuses much of its attention on Proposition 13, using it as a centerpiece of how California government has failed. Proposition 13's history includes years of missteps. In the 1960s and 1970s, county assessors, who are elected in California,⁶¹ had tried to respond to their constituents by keeping assessments—and, therefore, property taxes—low on residential property.⁶² However, legislators and local officials pushed assessors in the opposite direction, encouraging them to raise assessments—thereby raising property taxes—in order to pay for high-quality public schools and other services that Californians wanted.⁶³ By the 1970s, Californians were feeling a substantial tax bite.⁶⁴ In connection with income taxes, inflation had pushed middle-class families into higher tax brackets (often termed "bracket creep"), with the result that income taxes increased, even while real incomes stayed flat.⁶⁵ In connection with property taxes, the appreciation of

58. See Lustig, *supra* note 2, at 4–5, 21–22.

59. JOE MATHEWS & MARK PAUL, CALIFORNIA CRACKUP (2010). Paul also coauthored a chapter in *Remaking California*. Paul & Weinberg, *supra* note 44.

60. MATHEWS & PAUL, *supra* note 59, at 7.

61. *Id.* at 37.

62. *Id.* at 37–38.

63. *Id.* at 37.

64. *Id.* at 38.

65. *Id.* at 41.

residential housing values had resulted in higher tax bills on people's homes; however, because homes are illiquid the higher value of the homes typically created no cash flow from which to pay the increased taxes.⁶⁶

The legislature—and some local governments—failed to appreciate the depth of homeowners' concerns and failed to offer meaningful relief.⁶⁷ This failure became critical when the state government amassed a \$7.1 billion surplus and failed to rebate any of it.⁶⁸ Voters' anger overflowed, and Proposition 13 passed in 1978 with an overwhelming 64.8 percent majority vote.⁶⁹

Proposition 13, according to Mathews and Paul, has given us bad government. Its requirement of a two-thirds vote in the state assembly and state senate to raise revenues and to approve budgets has undermined the power of the legislature.⁷⁰ With any two-thirds vote difficult or impossible to obtain, the public has made fundamental budget decisions via initiative rather than by the legislature.⁷¹ Unfortunate examples of this shift abound. The 1979 Gann Initiative created a complex formula for limiting state- and local-government spending.⁷² Propositions passed in 1988 and 1998 exempted tobacco taxes from the Gann Initiative and mandated ways in which the legislature could spend taxes.⁷³ Proposition 98, passed in 1988, created a complex formula for K–14 education spending.⁷⁴

California Crackup adduces an interesting indication of the legislature's marginalization here: 1996 was the first year in which more money was spent on initiative campaigns than on all of that year's legislative races combined.⁷⁵

The result has been government by initiative, supported by an industry of initiative writers, signature gatherers, campaign

66. *Id.* at 38.

67. *Id.* at 40–43.

68. *Id.* at 41.

69. *Id.* at 43–44; Byron Williams, *Aspects of Proposition 13 Simply Must Be Reformed to Save California*, HUFFINGTON POST (July 19, 2009), http://www.huffingtonpost.com/byron-williams/aspects-of-proposition-13_b_240239.html.

70. MATTHEWS & PAUL, *supra* note 59, at 60.

71. *Id.*

72. *Id.* at 64.

73. *Id.* at 65.

74. *Id.* at 65–67.

75. *Id.* at 68.

consultants, and the like. An ugly example here is the state lottery. A signature-gathering firm drafted an initiative to create a state lottery and then found a business to fund the initiative.⁷⁶ The initiative passed, and the signature gathering-firm prospered (to the tune of \$2 million for the signatures and campaign), and the business prospered even more (by running the lottery).⁷⁷ The lottery was less beneficial to the state. The lottery has contributed less than 2 percent of the state's K-12 education budget but is effectively marketed as pro-education.⁷⁸ Ironically, that the lottery was an initiative has turned out to be its downfall, because now the legislature is powerless to improve the lottery's old, pre-Internet provisions in a rapidly changing world.⁷⁹

All of these and more initiatives have so tied the legislature's hands that it becomes difficult to reconcile the overlay of initiatives' budget requirements with the legislature's own fiscal process. With the two-thirds requirement and rapidly changing economic circumstances, "difficult" becomes "impossible." The result has been late budgets laden with one-time gimmicks, overly optimistic projections, and hidden borrowing. These devices make each subsequent budget that much harder to produce than the one before it. We seem to be in a never-ending downward spiral of budgets that have been simultaneously draconian and phony, and they have been all part of a secret process that only Franz Kafka could appreciate.

If state government has fared ill under Proposition 13 and its progeny, local governments have fared worse. Mathews and Paul explain how local governments, increasingly dependent upon state dollars, have seen their authority usurped by the state with strings attached to those state dollars.⁸⁰ With local governments having less influence, fewer capable people are running for office on city councils, school boards, and the like. As a result, local governments' management weakens, and the local governments' quality declines, making them even less influential.

76. *Id.* at 62.

77. *Id.*

78. *Id.* at 63.

79. *Id.* Initiatives, even those that merely enact statutes rather than amend the state constitution, cannot be amended without another vote of the people, unless the initiative's own language allows legislative amendments. *See* CAL. CONST. art. II, § 10(c).

80. MATTHEWS & PAUL, *supra* note 59, at 50-51.

In sum, *California Crackup*, like *Remaking California*, is critical of the various two-thirds requirements that initiatives impose. The tyranny of the majority has been replaced by an even worse tyranny of the minority.

Nor are the requirements of the two-thirds majorities the only ill effect of initiatives. Many Californians know that Proposition 140, passed in 1990, established the nation's strictest term limits.⁸¹ Fewer Californians know that Proposition 140 also mandated a reduction in spending on the legislature's own operations.⁸² To cope with this reduction, legislators have maintained their large personal staffs but reduced the size of the well-regarded non-partisan Legislative Analyst's Office and closed the Assembly Office of Research.⁸³

With nature abhorring a vacuum, special interests have moved into Sacramento. For example, public employee unions successfully lobbied for high salaries and unsustainable pensions for their members. Such lobbying may have been facilitated by one-stop shopping at a legislature weakened by a lack of strong leadership and a lack of expert staff.⁸⁴ More generally, Proposition 13 and the Gann Initiative may not have decreased government spending. In fact, spending may be easier because of a lack of accountability.

Finally, Proposition 13 has directly created some bad public policy for California's citizens. Poor people tend to rely on the public sector: schools, health care, libraries, transportation, and so on.⁸⁵ With the public sector's decline, *California Crackup* points out that the gap between rich and poor has increased.⁸⁶ Schools have been particularly affected: the combination of the *Serrano v. Priest* decisions⁸⁷ (which equalized per-pupil spending) and Proposition 13 has been "more about leveling [schools] down than raising [them]

81. *See id.* at 73.

82. *See id.* at 74.

83. *Id.*

84. *See* CAL. CTR. FOR PUB. POLICY, REFORMING PUBLIC EMPLOYEE COMPENSATION AND PENSIONS 2 (2010), available at <http://www.californiacenterforpublicpolicy.com/Reforming-Public-Employee-Compensation-Pensions.pdf> ("The \$2 to \$5 million in annuity value that [public safety] employees may receive through pension programs in their early to middle fifties makes these employees' comprehensive career compensation among the highest in America.").

85. The other half of this equation—namely, a trend of the rich opting out of the public sector—is well introduced from a nationwide perspective in Robert B. Reich, *Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, at SM16.

86. MATHEWS & PAUL, *supra* note 59, at 45.

87. 557 P.2d 929 (Cal. 1976); 487 P.2d 1241 (Cal. 1971).

up.”⁸⁸ Certainly, the decades-long decline of California’s public elementary and secondary schools is evidence of the leveling down.

The demonization of Proposition 13, though, must be kept in perspective. Proposition 13’s supporters, led by the Howard Jarvis Taxpayers Association, have counterarguments,⁸⁹ to which *California Crackup* may have given short shrift. More importantly, Proposition 13 remains popular with California voters.⁹⁰ Accordingly, reformers trying to fix California will need to live with the reality of Proposition 13, at least in the near term.

Mathews and Paul begin their discussion of solutions with the observation that California needs both political reform (a better-structured government)⁹¹ and budget reform (honest accounting and spending)⁹² and is unlikely to get one without the other.⁹³ Within this framework, they propose ideas that are similar to those in *Remaking California*, including the same proposal of a unicameral legislature with proportional representation.⁹⁴ They also share *Remaking California*’s skepticism that nonpartisan redistricting or top-two primaries will effect major change.⁹⁵

Offering broader solutions is further complicated because politics in the future may be different than politics are now. Social media—such as Facebook, Twitter, and YouTube—have already changed fundamentals of everyday communication, just as e-mail, the Internet, cell phones, and Blackberries fundamentally changed communication in the 1990s and 2000s. President Barack Obama’s success in the 2008 primaries showed how voters could be energized and organized via social media, even by a poorly funded campaign

88. MATHEWS & PAUL, *supra* note 59, at 51.

89. *See, e.g., Proposition 13*, HOWARD JARVIS TAXPAYERS ASS’N, <http://www.hjta.org/propositions/proposition-13> (last visited Nov. 11, 2010).

90. *See, e.g.,* Evan Halper, *Voters Skeptical of State Reforms*, L.A. TIMES, Nov. 9, 2009, at A7. Not only do most voters continue to support Proposition 13 generally, they oppose even such modest tinkering as removal of commercial property from some of Proposition 13’s protections. *Id.* Moreover, in November 2010, voters approved Proposition 26 that expanded Proposition 13’s reach by classifying certain fees as taxes, thereby requiring a two-thirds vote to raise such fees. CAL. SEC’Y OF STATE, *supra* note 41, at 6.

91. MATHEWS & PAUL, *supra* note 59, at 126–50.

92. *Id.* at 105–26.

93. *Id.* at 79–104.

94. *Id.* at 127–34, 136–38.

95. *Id.* at 117–19, 122.

that initially was a long shot.⁹⁶ The 2010 Tea Party movement showed how social media could be used to build an influential political movement, even without a central, top-down organization.⁹⁷ While Mathews and Paul do not dwell on these issues, solutions to California's problems should account for how social media may change politics.⁹⁸

Mathews and Paul do propose two important and basic changes to California's government. First, they want to reverse much of the centralization of power in Sacramento and give local governments authority to deal with local problems.⁹⁹ As an example, they point to crime. The state has spent billions building, staffing, and operating prisons, but experts question whether such spending has been effective. Mathews and Paul suggest moving anti-crime programs to the local level, where counties and cities could tailor priorities of police, probation, substance abuse programs, prisons, and so forth to fit local conditions.¹⁰⁰

As a corollary, the authors suggest reducing the number of various special districts (flood control, mosquito abatement, and so forth) and transferring those districts' budgets and operational responsibilities to counties and cities.¹⁰¹ This transfer would improve accountability and, perhaps, reduce waste and corruption.

The second fundamental change Matthews and Paul propose is putting some controls on the initiative process, which is responsible for much of the current mess. The proposed controls include: (a) mandating that the professional governmental staff draft initiatives, so as to reduce incomprehensible, self-contradictory, or

96. David Carr, *How Obama Tapped Into Social Networks' Power*, N.Y. TIMES, Nov. 10, 2008, at B1.

97. See, e.g., Judson Berger, *Modern-Day Tea Parties Give Taxpayers Chance to Scream for Better Representation*, FOX NEWS (Apr. 9, 2009), <http://www.foxnews.com/politics/2009/04/09/modern-day-tea-parties-taxpayers-chance-scream-better-representation>.

98. One possibility, related to social media, is having initiative petitions signed electronically rather than using traditional paper petitions signed by hand. A trial court judge recently ruled that a "virtual petition" containing electronic signatures is invalid under California law. *Ni v. Slocum*, No. Civ. 492074 (Cal. Super. Ct. order filed Apr. 5, 2010); see CAL. ELEC. CODE §§ 100, 9009, 9012 (West 2010). However, an appeal or political debate may serve to keep alive this possible method of making the initiative process accessible to proponents who lack the \$2.5 million to gather signatures, even if the method would probably also increase the number of initiatives.

99. MATHEWS & PAUL, *supra* note 59, at 157–58.

100. *Id.* at 158–60.

101. *Id.* at 160–63.

other improper drafting;¹⁰² (b) allowing the legislature to amend voter-approved statutory initiatives, just as other statutes may be amended;¹⁰³ (c) requiring approval of constitutional initiatives in two different election cycles¹⁰⁴ or, alternatively, approval by two-thirds of the voters in a single election;¹⁰⁵ (d) requiring approval of an initiative by a super-majority of voters if the initiative's provisions themselves imposed a super-majority;¹⁰⁶ (e) requiring that initiatives have funding sources (or, in the case of bonds, repayment sources),¹⁰⁷ and (f) allowing the legislature, by majority vote, to place a counterproposal next to a voter-sponsored initiative on the same ballot, and allowing voters to choose one or neither.¹⁰⁸

Do any of *California Crackup's* or *Remaking California's* proposals have a realistic chance of adoption? Might, possibly, some optimism be warranted? For example, could Californians' current, overwhelming unhappiness with the state's direction¹⁰⁹ evolve into support for fundamental reforms that formerly would have been unsupported? The answers to these questions are unknown. What is known is that Californians should not allow the state to continue to decline. In other words, if no consensus promptly develops in favor of the two books' proposed reforms, then Californians will have to adopt other reforms or face worsening crises.

In the past, California has thrived because of its tremendous natural resources: gold, fertile land, manageable water, temperate climate, timber, fisheries, oil, harbors, and scenic beauty. Born with

102. *Id.* at 175.

103. *Id.* at 176.

104. *Id.* California's original 1849 constitution had a somewhat similar requirement: article X, section 1 specified that any constitutional amendment had to be approved by a majority of each house of two successive legislatures before being submitted to voters. CAL. CONST. of 1849, art. X, § 1 (entire constitution rewritten in 1879); *Strauss v. Horton*, 207 P.3d 48, 80–81 (Cal. 2009).

105. MATHEWS & PAUL, *supra* note 59, at 176.

106. *Id.* at 177.

107. *Id.*

108. *Id.* at 178–80.

109. According to a September 2010 Field Poll, 80.7 percent of Californians believe that the state is on the “wrong track,” while only 11.7 percent believe the state is headed in the “right direction.” FIELD RESEARCH CORP., TABULATIONS FROM A SURVEY OF CALIFORNIA VOTERS ABOUT THE PERFORMANCE OF GOVERNOR SCHWARZENEGGER AND THE STATE LEGISLATURE, THE DIRECTION OF THE STATE, AND WHO'S MOST TO BLAME FOR DELAYS IN PASSING A BUDGET (2010), available at http://media.sacbee.com/smedia/2010/09/27/16/0928tabs.source.prod_affiliate.4.pdf.

these advantages, California, Mathews and Paul write, has been a great state but rarely has had “great government.”¹¹⁰ As some of California’s resources wane and as other states and countries begin to develop their own resources, California’s natural advantages may decline in importance, and, accordingly, the lack of great government may become an even larger detriment.

Nowadays, residents and businesses alike are able to take advantage of modern transportation and communications to locate, or relocate, in other states and other countries. If an ineffective government makes the state unattractive to residents and businesses, then California’s future will be bleak.

It is a measure of the depth and urgency of California’s difficulties that these two earnest and thoughtful efforts, *California Crackup* and *Remaking California*, were published at almost the same time, and just before a seminal state election occurred. Both books will alarm and reward the reader.

110. MATHEWS & PAUL, *supra* note 59, at 18.