AFTER THE TAX REVOLT:
California's Proposition 13 Turns 30

JACK CITRIN AND ISAAC WILLIAM MARTIN, EDITORS

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REVIEW ESSAY BY DANIEL H. LOWENSTEIN*

In my more than forty years of living in California, I have never seen the public as exercised as they were during the months leading up to the election on Proposition 13 in the June 1978 primary. I recall a lunch debate on Proposition 13 — I believe it was held by the Commonwealth Club in Sacramento — where I was seated at a table with several farmers. The image persists in my mind of the muscles in the neck of one of these men, strained to the limit by the emotions he was feeling. That image has been my personal emblem of how highly charged were the political passions in that season. I have never again seen their like.

As any reader of this journal must be aware, Proposition 13 was approved by a large majority and has had a major influence on California's subsequent history. To paint with a broad brush, the proposition limited property taxes to one percent of assessed value, rolled assessed values back to the levels of 1975–76 (a significant reduction in those inflationary days), limited subsequent assessment increases to two percent per year even if the market value increased by a much greater amount, and

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made it more difficult to raise taxes by requiring voter approval at the local level and requiring a two-thirds vote for tax increases in the state legislature.

No one doubts that Proposition 13 was one of the major events of the late twentieth century in California. Whether it was for good or bad or both continues to be a lively subject of public debate. In addition, a sophisticated corps of scholars has scrutinized Proposition 13 from almost every angle.

The Institute of Governmental Studies is ideally situated to contribute to the study of Proposition 13. Located at the University of California, Berkeley, it provides to its students and to the public a combination of academic work at the highest level and a close, hands-on association with practical government and politics that includes frequent participation by officials, journalists, activists, and just about anyone else with first-hand knowledge of government and politics, whether international, national, or California-oriented. Thus it is no surprise that the present director of IGS, Jack Citrin, together with sociologist Isaac William Martin, on the thirtieth anniversary of enactment (June 6, 2008), convened some of the best of the scholars who have studied Proposition 13, together with activists and other knowledgeable people, to assess the proposition's legacy. The resulting papers make up the book under review.

According to Martin, the participants' mandate "was a simple one: assess what we have learned about the political, economic, and fiscal consequences of Proposition 13 over the last 30 years." Some of the essays reflect original research and fresh thinking. However, the book's intended audience is not primarily the small group of specialists who are familiar with the scholarly literature on Proposition 13. Instead, the book is directed to a general audience, which can include but should not be limited to students in courses on California government or finance. It can be recommended to anyone seeking either balanced and broad information on Proposition 13 in one short volume or an introduction to the measure with references facilitating future research.

The book contains some annoying though minor flaws. It is short, and most of the contributions are concise, but still a general index would be helpful. IGS does not seem to have provided fact-checking, copy-editing, or proofreading. Thus, the state senator who led the drive for Proposition 13's unsuccessful alternative, Proposition 8, was Peter Behr, not "Philip Behr" (p. 90), and the former columnist for the *New York Times* and *Newsweek* is Anna Quindlen, not "Anna Quidlen" (p. 162). No uniform style rules were imposed, so "Proposition 13" in some chapters becomes "Prop. 13" in others. Lack of proofreading in some chapters results in garbled sentences that are occasionally not easy to decipher. But such blemishes do not seriously detract from a useful and informative volume. Each chapter contains ideas or information worth reading and each is clearly written.

Three of the authors are included as advocates: John Fund, a *Wall Street Journal* columnist, and Joel Fox, former president of the Howard Jarvis Taxpayers Association, write in defense of Proposition 13. Jean Ross, executive director of the California Budget Project, a liberal group, criticizes it. According to Fox, critics of Proposition 13 believe that "if taxes could be easily raised[,] spending would be increased and problems would be solved" (p. 159). Setting aside the imputation of complacency, Fox's characterization appears to fit Ross, who writes that without the supermajority requirement for state tax increases, "lawmakers could have and probably would have raised state taxes to make up at least some of the shortfall in revenues caused by the measure's 53% reduction in property tax revenues." As Citrin writes in his introduction to the book, the "proper balance between public and private spending is a value judgment" (p. 6). That does not mean the proper balance cannot be debated. Fund, Ross, and Fox all present their cases effectively. Still, a volume like this one is not the place to look for comprehensive consideration of that large question.

Fund writes in his chapter that it is difficult for anyone on either side to consider Proposition 13 objectively. "One of the hardest things in politics is trying to understand voting trends you profoundly disagree with," he writes. "That goes for both sides of the political spectrum" (p. 30). As a general matter, I believe Fund is right. Nevertheless, although the skepticism if not outright hostility by most of the scholarly contributors can be detected,[1] by and large they manage to present the issues they address fairly. One reason for this is that all the contributors agree on at least one point, namely that Proposition 13 is still popular among California voters. Mark DiCamillo, director of *The Field Poll*, documents that popularity in his chapter and all the contributors accept it. The recognition that there is no practical prospect of repealing Proposition 13 in the foreseeable future no doubt reduces the temptation to attack it indiscriminately.

It remains true that Proposition 13 has some well-known drawbacks, which could hardly be omitted from a book of this sort. The most overtly hostile scholarly contributor is law professor David Gamage, for whom "Proposition 13 is both an important component and a powerful symbol of California's flawed fiscal constitution" (p. 51). His point is that because of Proposition 13's limit on property taxes, California ranks near the top among the states in its reliance on the income tax, which is "among the most volatile of the major state funding sources" (p. 53). Given that neither California's legislature nor those of most other states have had much success in good economic times of saving up surpluses to assist in getting through bad times, Gamage argues that the revenue volatility resulting from disproportionate reliance on income taxation is the primary culprit for California's frequent budget crises.

Although the point is not directly related to Proposition 13, Gamage also observes that California is one of seven states that tax capital gains at the same rate as ordinary income. This further exacerbates revenue volatility. One of the most interesting policy recommendations in the book is Gamage's proposal that revenues from the tax on capital gains should be unavailable for spending and instead should be saved as a rainy day fund. A supermajority would have to certify that a fiscal crisis exists before the rainy day fund could be tapped.

In the absence of any such remedy, Gamage's point that Proposition 13's property tax restraints have required reliance on more volatile revenue sources holds. Fox points out that this difficulty is at least partially offset by a stabilizing effect of Proposition 13. One of the measure's most

[1] David Doerr, who was a long-time high-level tax consultant for one of the legislature's tax committees and who at the time of the IGS conference was a consultant with the California Taxpayers Association, is an exception.

basic — and most controversial — features is that it bases assessment for property tax purposes on acquisition price, enhanced by a maximum two percent increase each year, rather than on market value. David Doerr points out that the acquisition value assessment system "acts in a counter-cyclical manner to provide stability in the flow of property tax revenues to local government" (p. 81). Fox enjoys quoting a *Los Angeles Times* article to the effect that tax assessors had credited Proposition 13 for its "unexpected role as a tax stabilizer" (p. 164).

Perhaps Proposition 13's greatest drawback is its removal of control over their own major revenue source from local government agencies and the enhancement of the power of state over local government. Of course, the basic removal of control is the limit on property taxes that was placed in the state constitution by the voters. Relying on a legal opinion of the legislative counsel, the Legislature has gone further by assuming control of the allocation of property tax revenues among the various local government agencies within a county (the county, cities, school boards, special districts, etc.). My UCLA Law School colleague Kirk Stark explains the resulting distortion in what he calls "fiscal federalism." Fox does not defend the enhancement of state power but he denies that the legislative counsel's opinion accords with the intent of Proposition 13's authors. According to Fox, the authors intended that each local agency in a county would continue to receive the same percentage of property taxes raised within the county that it was receiving when Proposition 13 was passed. In my judgment, the pertinent language in Proposition 13 is sufficiently obscure that either interpretation is plausible. But Fox's interpretation is hardly ideal as policy. A particular allocation frozen as of 1978 could, over time, become increasingly unworkable.

Another popular argument among Proposition 13 critics is that the acquisition-based assessments benefit commercial and industrial landowners over residential owners, because residential land changes hands more often than commercial and industrial land. Under the acquisition-based system, when the land is sold, the assessment is brought up to the market value, though the new owner subsequently gets the benefit of the two percent limit on annual assessment increases until the land is sold again.

Doerr briefly presents a surprising empirical refutation of this argument:

> Commercial and industrial property assessment averaged 75.1% of market value from 1988–89 to 2006–07.
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> For owner-occupied property, the average for the same period is 66.3%. . . . Thus, if all properties were assessed on an *ad valorem* basis . . . , homeowners would be paying a much larger percentage of the total property tax burden (p. 83).

None of the other authors addresses the question, though some express the hope that someday, somehow, the voters will authorize split-roll assessments separating residential from commercial and industrial properties. Indeed, though in general this book provides a comprehensive review of issues raised by Proposition 13, relatively little attention is given to the measure's effects on non-residential property.

As was mentioned above, the acquisition-based assessment method has been controversial. It is criticized in this volume as unfair and inefficient. Steven M. Sheffrin says that Proposition 13 is "emblematic . . . in its iconic unfairness," and he claims that even defenders of the measure, "of course, recognize its potential unfairness in terms of horizontal equity — that property owners with identical houses in the very same jurisdiction may have radically differing tax burdens" (p. 117).

If so, I believe the defenders of the measure — and its critics also — ought to reconsider. Interestingly, Sheffrin himself goes a long way toward explaining why. The simple claim, endlessly repeated in debates on Proposition 13, that it is unfair for a homeowner who bought his house thirty years ago to pay a much lower property tax than his neighbor, who bought his identical house last month, depends on "a snapshot of the situation" (p. 121). Sheffrin concedes that under certain highly stylized conditions, including all homeowners owning their homes for equal time periods and home values increasing at a constant rate, homeowners would be treated uniformly over time, though in any given year the homeowner who recently bought his house would pay a higher tax than his neighbor who is approaching the end of the ownership cycle. Nevertheless, the fact that these conditions are never even approximately met "generate[s] intertemporal inequalities" (p. 122).

Sheffrin never explains why he thinks fairness requires *ex post* equality among taxpayers. Many institutions, public and private, are regarded as beneficial because people are treated equally *ex ante*, though it is known that in the result, they will fare differently. The most obvious example is insurance. Sheffrin does not pursue this line of thought. If he did, he might point out that it can sometimes be known *ex ante* that some homeowners are more likely to have short ownership periods than others. But *ex ante* equity does not require complete ignorance of how things are likely to turn out. You, as my neighbor, may know that you are an extremely cautious person while I am a *schlemiel*. You therefore know that as one who is less likely than I to set your house on fire accidentally, you are the better risk for homeowner's insurance. That does not make homeowner's insurance inequitable. The issue is admittedly a tricky one and I do not claim to have thought it through to the bottom. But for the present, the claim that the acquisition method of assessment is inequitable seems to me to be unmade.

In contrast, Terri A. Sexton's chapter makes a strong demonstration that the acquisition method has significantly inefficient properties by penalizing homeowners who move. As she writes:

> A key argument used to garner support for Proposition 13 was that senior citizens were being forced to sell their homes because they could not afford their rapidly rising property taxes. By the mid-1980s this argument had completely reversed; senior citizens could not afford to sell their homes because they could not afford the increased property taxes on new, though smaller homes. (p. 108).

The inefficiency has been only partially mitigated by amendments in 1986 and 1988 that provide a one-time ability to transfer the assessed value of the old house to the new house for homeowners over 55 who move. The disincentive to move may have an external beneficial effect of increasing stabilization in neighborhoods — or so the Supreme Court believed in *Nordlinger v. Hahn*, 505 U.S. 1 (1992), in which the acquisition method was upheld. But Sexton points out a number of likely harmful effects (p. 110).

Still, as a number of the authors point out, the inefficiency is offset by the substantial sense of security that Proposition 13 provides to homeowners and homebuyers. That sense of security is probably Proposition 13's most important benefit. Empirical exploration of its incidence, its depth, and its nature would be a useful subject of study for social scientists interested in Proposition 13.

To summarize, *After the Tax Revolt* leaves little doubt that the adoption of Proposition 13 was a major event whose influence is still very much with us more than thirty years later. Some of the important claims made by both defenders and critics are overblown, but other claims made on both sides have merit and are significant. It is impossible to say exactly what the balance is between the measure's advantages and its drawbacks, but they are probably close enough that one's final judgment will rightly come down to where one stands on the basic question: Would California be better off with higher taxes and higher government expenditures than we have now? That is a question on which liberals and conservatives ought to be able to agree to respectfully disagree. ✯