CONSTITUTION REVISION

HISTORY AND PERSPECTIVE

The California Constitution Revision Commission

1996

The California Constitution Revision Commission is no longer in existence. Further information on the report of the commission can be found on the world wide web on the California Home Page at www.ca.gov. For future activity on the commission's recommendations, contact the Forum on Government Reform, P.O. Box 22550, Sacramento, CA 95822.

The cover includes a representation of the first California Constitution, adopted in 1849. The back of the report are the signatures of some of those who signed the Constitution at the first constitution convention.

CALIFORNIA CONSTITUTION REVISION COMMISSION

CONSTITUTION REVISION

HISTORY AND PERSPECTIVE

The purpose of this report is to provide historical perspective to the work and recommendations of the Commission. In most cases the issues studied by the Commission are identified and historical analysis is provided. The primary contributors to this work were Pat Ooley, graduate student of Public History at the University of California at Santa Barbara and Amanda Meeker, graduate student at California State University, Sacramento. As archive researchers for the Secretary of State's California State Archives, they made a substantial contribution to the understanding of the history of the many issues faced by the Commission. Their work was greatly appreciated. Two additional papers have been included: one deals with the fiscal system and the major changes that took place in 1933 and the other deals with the troubled history of the place of cities in California government structure.

1996

THE CALIFORNIA CONSTITUTION REVISION COMMISSION

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STATE GOVERNANCE

by Pat Ooley

An Overview of the History of Constitutional Provisions Dealing with State Governance

Although California's constitution has undergone wholesale revision and amendment since its inception in 1849, the work of the original framers remains imprinted in the organic law of the state. Responding to the urgencies of their time, the elected delegates who revised the constitution in 1879 expanded the document, adding nine new articles and some 8,000 words. Between 1966 and 1974, California voters authorized significant constitutional revisions recommended by the Constitution Revision Commission and proposed by the legislature. Since the introduction of the popular initiative in 1911, California voters have approved over 425 amendments to the 1879 constitution. After significant revision and substantial amendment, and notwithstanding the inclusion of popular legislation, the fundamental organization of state government provided for in 1849—executive, legislative, and judicial division of powers—remains intact. The purpose of this essay is to trace the development of sections of the Executive, Legislative and Initiative articles of the state constitution to their historic beginnings in California, hopefully revealing in the process the intent of both framers and revisionists.[1]

The forty-eight men who met in Monterey in September of 1849 framed a constitution for California in just forty-three days. They were in a hurry. Congress, embroiled and divided over slave versus free soil, had repeatedly failed to grant California territorial status. Californians, unable to organize a constitutional government without such authorization, were living under the laws existing in California at the time of the American annexation—a frontier application of Mexican civil law. International law, and the United States Supreme Court, held that the established laws of an acquired province must remain in force until superseded by a formally enacted state government. The time-tested systems of locally governing alcaldes and out-of-court arbitration of disputes had been successfully applied in Alta California since the Spanish administration. But what had functioned as government for a sparsely populated territory of Mexico's far northern frontier amounted to anarchy for the litigious, land-hungry Americans who were continuously arriving in gold-rush California. By the summer of 1849, the situation had become critical.[2]

President of the United States Zachary Taylor suggested a solution for California: frame a constitution and petition Congress directly for immediate statehood when it next convened. That is what California did. In just nine months (June 1849 to March 1850), Californians elected delegates to a constitutional convention; framed, distributed, and ratified a constitution; and elected a first legislature, which then elected two Senators to Congress. With constitutions in hand, Senators William M. Gwin and John C. Fremont, along with two popularly elected Representatives, petitioned Congress for statehood.[3]

Although the Congressional debate over California's entrance as a free state edged the country closer to civil war and secured statehood only through sectionalist compromise (Compromise of September 9, 1850), California had at last acquired a constitutional government. As provided in Section Six of Article XIII, the constitution would become the organic law of the state when popularly ratified. By November 13, 1849, California voters had ratified the constitution and installed their first elected Governor, Lieutenant Governor,

Legislature, and members of the House of Representatives.[4]

Aware of the urgency to get the ratified document before Congress in time for its next session, but equally aware of the significance of their responsibility to their constituents and to posterity, the 1849 framers worked rapidly and diligently. Their principal reference, besides their individual political and legal expertise, was a ''book of constitutions'' containing the constitutions of the thirty United States and the federal constitution. Drawing primarily from the constitutions of Iowa and New York, and secondarily from the constitutions of Louisiana, Wisconsin, Michigan, Texas, and Mississippi, the delegates assembled a new treatise that reflected both contemporary political thought and the proven practices of other states with similar histories and experiences. When necessary, the delegates tailored laws to fit California's peculiar circumstances.[5]

In the thirty years that passed between 1849 and the constitutional convention of 1878–79, California and the nation had endured profound transformation. By the early 1870s, the United States had only recently emerged from the trauma of civil war and presidential assassination. Freed from wartime occupations, yet spurred on by wartime industry particularly in the north, the United States resumed its prewar expansion at an unprecedented pace. The nation had plunged headlong into the tumult that has historically marked the final three decades of nineteenth-century, maturing America: the opening and taking up of the ''public domain'' in the west, the exploitation of what seemed an inexhaustible supply of natural resources, construction and expansion of a mighty railroad network, the arrival of five million foreign immigrants since 1850, industrialization and urbanization, and the financial crash and depression of 1873.[6]

The civil war had provided two important catalysts for change in America—the ascendancy of the Republican party, and a proven federal supremacy over the states. Bolstered by federal laissez faire acquiescence and supported by federal grants, GOP industrialists and capitalists, such as the ''Big Four'' owners of the Southern Pacific Railroad in California, determined economic policy. A new corporate order had emerged for America, with significant social and political implications. Capitalist and industrialist expansion produced a large laboring class concurrently with a class of opulent wealth. The depression of 1873–78 reduced many laborers to poverty. [7]

Holding to the doctrine that governments ruled by the consent of the governed, and that people instituted governments for their own benefit, citizens looked to government for remedy. But people increasingly perceived both federal and local government as corrupt and indecisive—the pawn of corporations and private interests whose unchecked speculations had triggered the financial crash and depression. The perception was not unfounded. Popular newspapers had implicated congressional and cabinet level officials in the Union Pacific-Credit Mobilier scandal (1872), and the Whiskey Ring bribery and tax evasion case (1874). State and municipal governments were even more seriously infected with the fraud and graft of party machines operating in such cities as New York (Tammany Hall), Philadelphia, Chicago, and Washington, D.C. In the west, settlers and newspapers accused federally appointed territorial governors and judges of acting in collusion with corporations and developers in the squandering of public lands. Territorial legislatures, such as Dakota's, were said to be controlled by the railroads.[8]

By the mid 1870s, reform movements were coalescing across the nation. Organized labor, agrarian associations, and women's suffrage groups were demanding, among other things, restrictions on the powers of state legislatures, and government regulation of corporations and monopolies. Reformers turned to government regulation, restriction, and limitation as means to an end. To the chagrin of more conservative elements, the instruments through which they enacted their reforms were their state constitutions. Beginning in 1872 and culminating during the Progressive era in 1913, constitutional conventions were revising and

amending the fundamental law in at least twenty-six states. California's new state constitution of 1879 was one of many.[9]

In the published debates of the 1849 constitutional convention, delegates repeatedly stated that the fundamental law of a state should be brief, with most verbiage dedicated to delineating and restricting state powers, and to the distribution of power. Laws of a statutory nature, or laws of only contemporary significance, were best consigned to the statute books. The zealous revisionists of 1879, however, established a precedent for allowing statutory material to find its way into the constitution. The reform-driven necessity to instruct and restrict the legislature, municipalities, local governments, and corporations repealed the canon of constitutional brevity. Like other revised state constitutions, California's constitution increased in length—from approximately 7,300 to about 15,000 words in 1879.[10]

In his 1930 study of the California 1878–79 Constitutional Convention, political scientist Carl Brent Swisher concluded that most of the reforms so earnestly expounded by the 1879 revisionists went largely ''unrealized'' after the adoption of the new constitution. At the 1879 fall elections, liberal and Workingmen reformers divided among themselves allowing a conservative Republican sweep of the legislature and executive branch. The 1880 legislature '' 'of indefinite postponements' '' effectively ''sabotaged legislation proposed for the purpose of carrying into effect provisions of the constitution which were inimical to conservative interests.'' The prized Railroad Commission ''proved as clay in the hands of the great corporations.'' Astute attorneys delayed enactment for many years of the provisions for taxing railroads by challenging them as unconstitutional in the courts. Corporations, including the Wells Fargo Express Company, brought suit challenging the Board of Equalization's power to equalize assessments and won. The provision which made lobbying a felony ''was little more than a laughing stock.'' [11]

Proponents of reform had championed a new constitution for California, but after 1879, ''the conservative interests by one means or another continued to play a dominant part in California law and politics.'' Even so, observed Swisher, ''agitation did not cease . . . for the interests of great numbers of the people were too vitally affected for that.'' [12]

For the nation, industrialization, capitalist expansion, and corporate growth persisted. Immigrants continued to arrive, expanding the labor force and intensifying urbanization. In 1893, a depression more devastating than 1873 settled on the country. Unemployed workers who marched to Washington for sympathy and redress met with government indifference and city police. By 1900, however, capital growth and investment had pulled the nation from depression. Corporate mergers created huge business entities, headed by men of fabulous wealth and power.[13]

Contrasted with the opulence, however, were the urban ghettos of the working poor, the drudgery and danger of factory work, and child labor. Over time the reform impulse of the 1870s spread from labor and agrarians to urban intellectuals and activists, social workers, and a growing American middle-class. The new ''Progressive'' proponents of reform found expression in art, literature, muckrake journalism, and public forums. Beginning at municipal and state levels, the broad reforms of the Progressive movement gathered momentum as state after state enacted Progressive legislation. As governor of New York, Republican Theodore Roosevelt had successfully sponsored Progressive reforms. As President (1901 to 1909), Roosevelt helped bring Progressivism to the national level.[14]

South Dakota was the first state to adopt the initiative and referendum in 1898. By 1910, Utah, Oregon, Montana, Oklahoma, Missouri, Michigan, Arkansas, and Colorado had duplicated South Dakota's reform enactment. By 1910, the Progressive movement had gained enough authority in California to elect a ''reform governor,'' Republican Hiram Johnson, and a Progressive legislature. On February 9, 1911,

Senate Constitutional Amendment 22, providing for the initiative and referendum, passed the Senate by a vote of thirty-five to one. The Assembly approved SCA 22 by a vote of seventy-two to zero one week later. At a special election held on October 10, 1911, California voters ratified the amendment to Section One of Article IV of the constitution by a vote of 168,744 to 52,093.[15]

Although it was not the intent of the Progressives, their ''direct legislation'' reforms exacerbated the constitutional brevity problem in California. The initiative process made the constitution much easier to amend. As a consequence, each election year's ballot added more statutory law to the constitution (excepting 1915, 1935, and 1939 when amendments were proposed but none ratified). Issues passionately supported by one generation became irrelevant to the next. Once etched into the organic law, however, enactments are not easily removed. By 1948, California's constitution had increased to 95,000 words.[16]

Concurrent with the unbridled growth of the constitution came ballot measures asking Californians if a convention to revise the constitution should be called. In 1898, 1914, 1920, and 1930 voters rejected the propositions. In December, 1930, the California Constitutional Commission established by Governor C. C. Young, reported that ''constant amendment'' of the organic law had:

> produced an instrument bad in form, inconstant in particulars, loaded with unnecessary detail, encumbered with provisions of no permanent value, and replete with matter which might more properly be contained in the statute law of the state.

The Commission unanimously voted for revision.[17]

In 1934, Californians approved the call for a constitutional convention by a vote of 705,915 to 668,080. Interestingly, revisionists in California and in other states were asking for reforms similar to those of the present commission. According to a 1934 Bureau of Public Administration fact-finding report for the California legislature, proposals included: more signatures required for initiative constitutional amendment than for initiative statute; adoption of a single-house legislature, new legislative sessions, and a closer relationship between the governor and the legislature (as promoted by the National Municipal League); elimination of any references to executive officers, except elected officials; ''changes in the machinery'' of county consolidation; an elective State Board of Education; and ''alterations'' in constitutional mandates regarding state allotments to schools. The legislature, failing to comply with the initiative directive, never provided for the convention.[18]

By the mid 1940s, many Californians, including citizen's groups and members of the legislative, judicial, and executive branches of government, were again critically assessing the condition of the state's fundamental law document. In 1947, the legislature established an Interim Commission for the Revision of the California Constitution, composed of ten State Senators and ten members of the Assembly. Governor Earl Warren appointed a 300-member Citizen's Advisory Committee, which he instructed to investigate and address constitutional revision in statewide public hearings, and then report to the Interim Commission.[19]

Alonzo L. Baker, political scientist and legal scholar who served on the Citizen's Advisory Committee, recalled that when the committee reported to the legislature in 1948, many members recommended ''thorough and far-reaching revision.'' But, he added, ''the twenty members from the Legislature who held the residual power would brook no such thing.'' Regarding the Legislative Interim Commission, Baker concluded:

> The only accomplishment of note done by this Interim Commission was to recommend taking out the 14,500 words providing for the San Francisco Panama-Pacific Exposition of 1915. Inasmuch as we were acting one-third of a century after that Exposition closed it was thought it would do no violence to

> the Constitution to eliminate the section! To be sure, such a portion of the Constitution was non-constitutional to begin with: it was a travesty on constitution-making to put it there in the first place. But such is life in California when it comes to its basic State document.[20]

The reform movement did not go away, and, by the 1960s, various states were revising their constitutions. California, however, had first to hurdle the obstacle of legislative resistance to a constitutional convention. Both the 1849 and 1879 framers had provided for major constitutional revision only by calling a constitutional convention (1849 Article X, Section Two, amended in 1853, and 1879 Article XVIII, Section Two). The California Legislature obviated the necessity of a convention by securing voter approval to amend Article XVIII, Amending and Revising the Constitution. The amendment authorized the legislature to act as a constitutional convention, allowing it to submit its own revisions to the electors for ratification. In November of 1962, California voters approved Proposition 7 (Assembly Constitutional Amendment No. 14, Statutes, 1961, Resolution Chapter 222) by a vote of 2,901,537 to 1,428,034.[21]

Why had the legislature repeatedly resisted a constitutional convention? Baker contended that ''the issue of apportionment of seats in the State and Federal Legislatures'' was ''the greatest single barrier to the much-needed revision of State Constitutions.'' Indeed, the 1934 Bureau of Public Administration report listed the ''problem of apportioning the legislature'' as an issue for constitutional revision.[22]

In almost every state, legislatures reapportioned their own districts. Following the federal two-house model, many legislatures based representation in their lower houses on population, and in their upper houses on geography or counties. In addition, many states had not accounted for the great shift of populations from rural to urban areas in their apportionments, and had not reapportioned since the turn of the century. As a result city dwellers had become severely underrepresented at the state and federal levels. Why would a state legislature resist reapportionment? As Baker succinctly described it in 1964:

> politicians and office holders in many State Legislatures and in the Congress . . . have been elected to office from grossly malapportioned districts. Many of whom know their jobs are at stake, for in Congressional redistricting and in reapportionment of seats in the State Houses many incumbents will be on the outside looking in; their base of political operations ''back home'' will be considerably altered; perhaps swept away altogether.[23]

As citizens or local government officials who petitioned for equal apportionment were repeatedly rebuffed by their state legislatures, they appealed to the courts. Several landmark Supreme Court decisions, culminating with Reynolds v. Sims (377 U.S. 533) in 1964, mandated a ''both houses'' rule for all state legislatures. Under the ''equal protection'' clause of the Fourteenth Amendment, both houses of a state legislature had to be based on population. By 1964, the Supreme Court had ordered ''both house'' reapportionment in the states of Tennessee, Georgia, Alabama, New York, Maryland, Delaware, and Virginia. Although previous decisions handed down by the ''liberal'' Warren Court had disgruntled some Americans (school prayer, obscenity cases, school desegregation), a popular majority concurred with the ''one person, one vote'' doctrine.[24]

California's 1849 and 1879 constitutions had each provided for popular representation in both houses of the legislature. The legislature was to determine districts, and to reapportion after every federal decennial census. The 1879 constitution allowed one county to contain more than one district if the size of the population dictated (and the legislature would have to determine that fact), but no county could unite with another county to form one district. As we

have seen, by 1879 the process of urbanization in California had begun, but it had not achieved the massive proportions yet to come.[25]

By 1960, while California's far northern counties of Alpine, Inyo, and Mono contained a combined population of 14,240, Los Angeles County had achieved urban sprawl with a population of 6,011,140 people. Even so, the state constitution still provided that no county could have more than one senator, and no senator could represent more than three counties. Calling California's Senate "the most grotesquely malapportioned in all the United States," Baker predicted in 1964 that the Supreme Court would "not long endure the present rank discrimination against California voters wherein one vote in the 28th Senatorial District (Alpine, Inyo, and Mono Counties) is worth 400 times as much as a vote in the 38th District (Los Angeles County)." [26]

Following the Supreme Court rulings and based on a federal district court ruling that California's Senate was unconstitutionally apportioned (Silver v. Jordan, 241, F. Supp. 576, S.D. Cal. 1964), the California Supreme Court ruled that both the Assembly and Senate had to reapportion by population (Silver v. Brown, 63 Cal. 2nd 270). In October of 1965, the California Legislature passed Assembly Bill No. 1 which fashioned new Assembly and Senate districts. The California Supreme Court later ruled that California's congressional districts, as drawn in 1961, were also unconstitutional and ordered reapportionment (Silver v. Reagan, 67 Cal. 2nd 452). Following the guidelines proposed by the United States Supreme Court, the California Legislature reapportioned its congressional districts in 1967.[27]

By the 1966 elections, California had complied with the court ordered redistricting of Assembly and Senate districts. As Larry N. Gerston and Terry Christensen have observed, the new reapportionment "shifted half of the senate's seats from rural northern areas to southern and urban locations." California's 1966 legislature, with "twenty-two new senators and thirty-three first-term Assembly members," was "younger, better educated . . . more ideological," and not quite as white.[28]

The California Legislature created the Constitution Revision Commission with Assembly Concurrent Resolutions No. 77 and No. 7 in 1963 (Statutes, 1963, Resolution Chapter 181, and First Extraordinary Session, Resolution Chapter 7). The Assembly established the commission, administered by the Joint Committee on Legislative Organization, in order to implement the provisions of Proposition 7 (November, 1962). The resolutions provided for a commission consisting of the Joint Committee on Legislative Organization, who would appoint not more than fifty citizen-members, three Senators, appointed by the Senate Rules Committee, and three Assembly Members, appointed by the Speaker.[29]

To facilitate its labor the Commission subdivided into article-committees which examined and revised the constitution article-by-article. Each committee reported its findings to the Commission which, acting as a Committee of the Whole, considered and finally adopted individual committee reports. The Constitution Revision Commission, which sat from 1964 to 1974, submitted two major reports of recommended revisions to the Legislature in 1966 and 1968.[30]

Beginning with Proposition 1A in November of 1966, over the next nine year, the Legislature submitted fourteen constitutional amendments to the voters for their approval. Each ballot measure, encompassing the legislature-approved recommendations of the Constitution Revision Commission, proposed amendments to individual articles or groups of articles of the constitution. All but four of the propositions passed at the polls. Its work completed, the legislature dissolved the Constitution Revision Commission in 1974
(Joint Rules Committee Resolution 57, March 4, 1974).[31]

California and its constitution have weathered many changes in 146 years. Throughout, reformers and revisionists have seen fit to retain the basic organization of state government

provided for in the 1849 organic law. Reform and revision have, however, established two precedents for California that contradict the constitutional tenets of the original framers.

Triggered by the 1879 revision and heightened by the 1911 ''direct legislation'' reforms, statutory law disorders the document. In 1964, Alonzo Baker reported in 1964 that seventy-five per cent of the California Constitution contained extraneous, non-constitutional material. The 1966–1974 Constitution Revision Commission amendments tidied the clutter, but between 1974 and 1993 voters approved ninety-seven of 151 proposed constitutional amendments. A voter trend since 1990 has been to reject most propositions at the polls, but motivation seems to stem from the question ''How much will this cost?'' rather than ''Does this really belong in the constitution?'' [32]

The second contradictory precedent was born of the need to correct the first—wholesale revision without convening a constitutional convention. Article X, Section Two of the 1849 Constitution, and Article XVIII, Section Two of the 1879 Constitution provided for constitutional revision only by means of a constitutional convention. With voter approval in 1962, the California Legislature amended the constitution to allow for legislature-constructed, partial revision. Like its 1963 predecessor, the California Constitution Revision Commission (established Statutes 1993, Chapter 1243, SB 16) is instructed to discover the defects of and recommend the needed reforms to certain provisions of the fundamental law of the state.

The Executive Branch

Governor's Powers and the Lieutenant Governor

The original framers made provision for a popularly elected Lieutenant Governor in Article V (Executive Department) of the 1849 Constitution. Section sixteen provided for the election, length of term, and qualifications for the office (the same as the Governor), as well as for succession to the office of Governor in case of any disability of the Lieutenant Governor (President pro tempore of the Senate). Section seventeen stipulated the causes for the transfer of the powers and duties of the executive to the Lieutenant Governor such as resignation or death, and including absence from the state.

The twenty-member Committee on the Constitution appears to have used the 1846 constitution of New York as a model for the two sections because they are almost verbatim reproductions of sections six and seven of Article IV of that document. The California delegation adopted sections sixteen and seventeen of Article IV as reported by the committee, without debate, during both Committee of the Whole and second reading consideration of the executive article. At the final reading of Article V, ''one or two verbal errors corrected, and the article then passed'' for enrollment in the constitution.[33]

At the 1878–79 revision, sections sixteen and seventeen, which had not been amended since their construction, became sections fifteen and sixteen of Article IV (Executive Department) of the 1879 document. In its report of the executive article, the Committee on the Executive Department had revised only the first of the two sections by adding a final clause stipulating that the Lieutenant Governor could not hold another office during his term. The second section, providing for the transfer of power and duties, remained unchanged from 1849.

During Committee of the Whole consideration of the executive article, delegate James O'Sullivan attempted to strike out the new clause that had been added to section fifteen by the Committee on the Executive Department, but the house rejected his proposal. The convention adopted both sections fifteen and sixteen without further debate in Committee of the Whole, or during the first and second convention readings of the executive article.[34]

The 1879 framers had preserved the 1849 provisions for a popularly elected Lieutenant Governor who assumed the powers and duties of the executive when the Governor was out of the state. In 1879 at least twenty-two other state constitutions provided for a popularly elected Lieutenant Governor, and the same number of state constitutions stipulated the transfer of power when the Governor was out of the state.

At the November 8, 1898, election voters approved Proposition Five (ACA 36), which amended sections fifteen and sixteen of Article V of the constitution. That portion of section fifteen, which provided for succession to the executive office (Lieutenant Governor, President pro tempore of the Senate), became part of section sixteen and was extended to include a third level of succession, Speaker of the Assembly. The 1879 revision of section fifteen, which prohibited the Lieutenant Governor from holding another office during his term, was deleted. Section sixteen retained the provision for the transfer of powers and duties to the Lieutenant Governor when the Governor left the state. Voters again amended section sixteen in 1946 (Prop. 14, ACA 4), 1948 (Prop. 9, ACA 14), and 1958 (Prop. 7, ACA 5). Each amendment affected provisions of the section regarding succession to the office of governor.

The Constitution Revision Commission reported their recommendations for the executive Article V to the legislature in 1966. As proposed by the Article V Committee, the Commission deleted some ''unnecessary'' words and shortened section fifteen (new section eight) to two sentences: ''The Lieutenant Governor shall have the same qualifications as the Governor. He is President of the Senate but has only a casting vote.'' Provision for the election of the Lieutenant Governor would be incorporated with section sixteen materials in new section nine.[35]

The section sixteen order of succession to the executive office had, by 1966, been amended to (1)Lieutenant Governor, (2) President pro tempore of the Senate, (3) Speaker of the Assembly, (4) Secretary of State, and (5) Attorney General. In the new section nine, the Commission deleted the line of succession, allowing the legislature to determine ''an order of precedence after the Lieutenant Governor.'' The Commission retained, without comment, the provision that the Lieutenant Governor ''shall act as Governor'' during the ''absence from the state'' of the Governor.[36]

Although they retained the instruction that ''The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor,'' the Commission noted that the constitution contained no provision for determining disability of the Governor, or the existence of a vacancy. ''Concluding that decisions on these matters should be, as far as possible, free from political pressures,'' the final clause of section nine stated: ''The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.'' [37]

The legislature presented to the voters in Proposition 1A (ACA 13), the exact recommendations of the Constitution Revision Commission, except that they numbered the new sections nine and ten and added a final clause to section ten. After allowing for the Supreme Court's exclusive jurisdiction to determine all questions, the new section concluded: ''Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute.'' On November 8, 1966, Californians ratified Proposition 1A by a vote of 4,156,416 to 1,499,675.[38]

On November 5, 1974, voters ratified Proposition 11 (ACA 99) which amended sections nine and ten of Article V. The amendments deleted the gender specific pronouns ''he'' and ''his,'' substituting the gender neutral ''The Lieutenant Governor,'' and the possessive ''Governor's'' in their place. Sections nine and ten of Article V, Executive, have not been amended since 1974.[39]

Research indicates that the issues before the present Constitution Revision Commission relating to the Lieutenant Governor—Governor's powers and duties passing to the Lieutenant Governor when the Governor leaves the state, and the separate elections of the Governor and Lieutenant Governor—have not been historically debated. The provisions in question, which date back to the 1849 Constitution, have not, until recently, been ''issues.'' Since the first statewide elections in 1849, California voters have elected Governors and Lieutenant Governors of different political parties concurrently only seven times. More importantly, five of those occasions include the last five gubernatorial elections since 1978.[40]

1886	Governor Washington Bartlett	Democrat
	Lieutenant Governor Robert W. Waterman	Republican
1894	Governor James H. Budd	Democrat
	Lieutenant Governor Spenser G. Millard	Republican
1978	Governor Edmund G. Brown, Jr.	Democrat
	Lieutenant Governor Mike Curb	Republican
1982	Governor George Deukmejian	Republican
	Lieutenant Governor Leo T. McCarthy	Democrat
1986	Governor George Deukmejian	Republican
	Lieutenant Governor Leo T. McCarthy	Democrat
1990	Governor Pete Wilson	Republican
	Lieutenant Governor Leo T. McCarthy	Democrat
1994	Governor Pete Wilson	Republican
	Lieutenant Governor Gray Davis	Democrat

Perhaps, as Gerston and Christensen have suggested, the opposing-party phenomena can be assigned to the relative weakness of the Democratic and Republican parties in California. Perhaps, as Gerston and Christensen have suggested, the California electorate perceives and uses the separate-ballot election of Governor and Lieutenant Governor as a check on the power of the Governor. Whatever the cause or combination of causes, the trend is an historically recent one.[41]

The Superintendent of Public Instruction and the State Board of Education.

The original framers provided for a popularly elected Superintendent of Public Instruction in section one of Article IX, Education, of the 1849 Constitution. Section one instructed the legislature to prescribe the election, duties, and compensation of a Superintendent of Public Instruction, who would serve a three-year term. In 1851, the legislature established the office of the Superintendent, and delineated the powers and duties of the elected position (Statutes 1851, Chapter 126, p. 491). In 1852, the legislature established a State Board of Education consisting of the Governor, Superintendent of Public Instruction, and Surveyor General (Statutes, 1852, Chapter 53, p. 117).

Section one of Article V, as reported by the Committee on the Constitution at the 1849 constitutional convention, was copied from the 1844 Constitution of Iowa, Article X, Section One. During Committee of the Whole consideration of the Education Article, John McDougal, delegate and future Governor of California, proposed to amend section one ''that it be left to the Legislature to elect these superintendents.'' Delegate Morton McCarver responded that he ''was decidedly in favor of placing every thing in the hands of the people, and particularly the subject of School Commissioners.'' McDougal withdrew his amendment and the house adopted the section as reported. During the convention second and third readings of the education article the house adopted section one, as originally reported, without debate.[42]

In 1862, California voters ratified a legislative amendment to section one of Article IX. The amendment increased the Superintendent's term of office to four years, and provided that the Superintendent be elected at the special elections for judicial officers (Statutes, 1862, Chapter 317, pp. 434–35, 579, 586).

The 1879 framers maintained the provision for an elected Superintendent of Public Instruction in Article IX, Section Two of the new constitution. The new section changed the time of election to coincide with gubernatorial elections, and specified compensation to be the same as for the Secretary of State. Although the State Board of Education had been in existence since 1852, the 1879 framers did not specifically cite it in the final draft of the article. Sections three and seven of Article IX provided for the election of county superintendents and local boards of education.

During Committee of the Whole consideration of section two as reported by the Committee on Education, lengthy debate ensued regarding the necessity of having a Superintendent of Public Instruction, and also over the salary he should be paid. Delegates such as William F. White, who favored abolishing the office of Superintendent, argued ''in the interest of economy.'' Thomas H. Laine, who called superintendents ''mere parasites,'' wanted to reduce the salary below that of the Secretary of State. The office had cost the state $16,000. over the last two years. Volney Howard agreed that the education system in California had been ''costing too much.'' John R. W. Hitchcock called the office ''superfluous'' and a ''waste of money.'' Albert P. Overton complained that the school system had cost the taxpayers three million dollars and was ''the ruination of the State.'' [43]

Delegate Joseph W. Winans, who chaired the Committee on Education, cited seventeen other state constitutions that specifically provided for a popularly elected Superintendent of Public

Education. Defending the section he argued that California's school system, with about 150,000 youths enrolled, needed "a single executive head." Alexander Campbell warned: "It will not do to fritter away the powers of this officer, and distribute them here and there at random." It was "a false economy." Wilbur F. Heustis, Charles W. Cross, Jacob R. Freud, Marion Biggs, Eli T. Blackmer, and John T. Wickes defended the office of Superintendent as a necessary, laborious position of dignity, meriting a salary equal to the Secretary of State.[44]

James S. Reynolds, a member of the Committee on Education, questioned the priorities of the delegation:

> Your committee [of the whole] has voted to prevent the counties, cities, and townships from contracting debts to build any school houses at all, but give them unlimited privileges of contracting debts for Court Houses and jails. . . . You have voted to increase the expense of the judiciary from one to two hundred thousand dollars per annum, and you are opposed to increasing the expenses of education. I will admit, sir, that this is consistent, for if you are not going to have any education you will need more judiciary; you will need more Court Houses, and you will need more jails. Why, sir, we had better go to work and see how may more penitentiaries the State can afford to build. You will want some more penitentiaries.[45]

The Committee of the Whole finally rejected Laine's proposal to cut the salary of the Superintendent below that of the Secretary of State, and Hitchcock's motion to strike the section completely. Section two, as reported by the Committee on Education, was adopted by the convention. The house adopted the section without amendment or further debate during the convention first and second readings.

Section seven of Article IX as originally reported by the Committee on Education provided for the popular election of a State Board of Education consisting of two members elected from each Congressional district. The Superintendent of Public Instruction would be ex officio President. Section eight delineated the duties of the State Board of Education, including adopting a series of textbooks, testing of teachers, and granting of certificates. In Committee of the Whole the convention deleted section seven entirely, without debate. They amended section eight (which then moved into position as section seven) by eliminating reference to the State Board of Education and substituting local Boards of Education, Boards of Supervisors, and County Superintendents. The "school book question," which had vexed the legislature for some time (publishing lobbies), was better left to local school boards and county supervisors.[46]

During the convention first reading, Blackmer attempted to amend section seven again by subjecting local decisions to the approval of the legislature. Arguing unsuccessfully that the section provided no uniformity or statewide standards for textbooks or teachers qualifications, Blackmer summarized: "This Convention has decided to do away with the State Board of Education. I voted against striking that out . . . because, in my judgement, it is a need of our system." The house rejected Blackmer's amendment and concurred with Committee of the Whole actions.[47]

During the convention second reading, delegates again made failed attempts to allow legislative authority Thomas B. McFarland was in favor of striking out section seven "and leaving it to the Legislature to formulate a system which this Convention has failed to do." Morris M. Estee argued for a "State system" with uniform rules, laws, and regulations. "The educational interests of this State are the most important interests in the state. We ought to treat it with all the dignity that belongs to it." Future Congressman Marion Biggs accused Estee, who had argued against legislative control of the Railroad Commission, of political inconsistency. " 'Stand by your guns,' " he quoted to Estee, " 'and keep your powder dry.' " [48]

In 1884, a constitutional amendment repealed section seven of Article IX and substituted a provision similar to the original report of the 1879 Committee on Education. The State Board of Education, consisting of the Governor, Superintendent of Public Instruction, and the principals of the state normal schools, administered the publication and distribution of a uniform series of textbooks. The legislature gained authority over county Boards of Education and county Superintendents. A 1912 amendment to section seven extended legislative authority over the State Board of Education. The Legislature would provide for the election or appointment of a State Board of Education.

In 1968 the Constitution Revision Commission reported their proposed revisions for Article IX to the Legislature. They noted that the Superintendent of Public Instruction ''is elected statewide under existing provisions.'' The Commission proposed that ''the Legislature may change the method of selection by two-thirds vote of the members of each house.'' Regarding the State Board of Education, the Commission reported: ''The Legislature's power to determine the method of selection under existing provisions is preserved under the proposal. Statutes presently provide for the appointment by the Governor with Senate approval.'' At the November, 1968 elections, Proposition 1 (ACA 30), encompassing the Commission's recommendations, failed at the polls.[49]

California voters ratified Proposition 6 (ACA 60) on June 2, 1970. The amendment, which favored local choice of appropriate textbooks, reduced section seven to ''The Legislature shall provide for the appointment or election of the State Board of Education and a board of Education in each county.'' (Proposition 8, 1976 added the present provision for joint county boards). Proposition 6 of 1970 also added the present section 7.5 which provides that the State Board of Education adopt textbooks for grades one through eight statewide, to be furnished without cost. Proposition 11 of 1974 repealed the gender specific ''he'' and ''his'' from section two, and Proposition 140 (Political Reform Initiative of 1990) limited to not more than two the terms of the Superintendent of Public Instruction.[50]

Insurance Commissioner

Neither the 1849 nor the 1879 framers provided for an Insurance Commissioner, appointed or elected, in the California Constitution. The Legislature had provided for the office of Insurance Commissioner as early as 1868, but the office did not become an elected one until 1988 when voters ratified Proposition 103. Proposition 103, an initiative statute, added Section 12900 to the Insurance Code which provided for the popular election of an Insurance Commissioner at gubernatorial elections.

The history of the office of the Insurance Commissioner is statutory rather than constitutional. Chapter 300, which established the office of Insurance Commissioner, transferred the powers and duties relating to insurance companies in California from the State Controller to the new Commissioner (Statutes, 1867–1868, Chapter 300, p. 336). Insurance companies nominated the Insurance Commissioner at statewide conventions. The Governor either approved the nomination or appointed another person to serve annually. Section 368 of the Political Code, established in 1872, provided for an Insurance Commissioner—an executive officer, appointed by the Governor, subject to the approval of the Senate. In 1915, the Legislature amended Political Code Section 368 to provide that the Insurance Commissioner serve four-year terms. Provisions for the Insurance Commissioner were transferred from the Political Code to the Insurance Code when it was established in 1935 (Statutes, 1935, Chapter 145).

According to the text of the initiative statute, the ''voter revolt'' that lead to the construction and passage of Proposition 103 in 1988 resulted from ''enormous increases in the cost of insurance,'' making insurance ''unaffordable and unavailable to millions of Californians.'' Insurance ''reform'' was necessary because existing laws ''inadequately'' protected

consumers from the ‘‘excessive, unjustified, and arbitrary rates’’ of insurance companies. In addition to reforms such as rate roll backs, the initiative provided for an ‘‘accountable’’ Insurance Commissioner who would be popularly elected. Section Four of the initiative statute that added Section 12900 to the Insurance Code, read: ‘‘12900 (a) The commissioner shall be elected by the People in the same place and manner and for the same term as the Governor.’’ [51]

The question of whether popular election provides accountability or does not requires further inquiry, but an instructional story of Governor accountability is told in the unprocessed papers of the Insurance Commissioner at the California State Archives. The Watts Riots in Los Angeles of August 11–17, 1965 had resulted in the destruction of $140 million in property.[52] Soon after, business owners in or near the affected area began sending letters of complaint to the office of the Insurance Commissioner. Citing reasons of high-risk, insurance companies were cancelling the property insurance of the business owners. Similar riots had been set off in other cities in the country. In those tense, volatile times another riot could easily be sparked. In their letters to the Commissioner business owners explained that, without insurance, they risked financial ruin.

The letters of reply from the Commissioner’s office asserted that he was unable to help the business owners because the Commissioner did not have that type of regulatory authority over private insurance companies in California. The rebuffed and desperate consumers then petitioned the office of the person who, because he had appointed the Commissioner, was ultimately accountable. Correspondence began to appear from Governor Pat Brown to the Insurance Commissioner inquiring about the situation, and offering suggestions for remedy. Administrative records of the Insurance Commissioner indicate that the office had soon established a review board and was considering the cases of the business owners with cancelled policies on an individual basis.

State Treasurer

Section Eighteen of Article V, Executive Department, of the 1849 Constitution provided for the popular election of a Secretary of State, a Comptroller, a Treasurer, an Attorney General, and Surveyor General. The New York Constitution of 1846 (Article V, Section 1), which probably served as a model for the 1849 framers, carried a similar provision for all of the above officers except the Surveyor General. During Committee of the Whole and Convention second reading consideration of the Executive article, debate focused on the necessity of a popularly elected Comptroller. The House did not question or debate the office of Treasurer.

An 1862 legislative amendment changed the word ‘‘Comptroller’’ to ‘‘Controller,’’ and provided for the election of all the named officers at the same time, place, and manner as the Governor and Lieutenant Governor. Their terms of office would be the same as that of the Governor (Statutes, 1862, Chapter 317, pp. 434–35, 582). The 1879 framers retained the 1849 section as amended in 1862, making only a grammatical correction and relocating it to Section Seventeen of the Executive Article V. The House adopted the section without debate during Committee of the Whole consideration of the article, and during the Convention first and second readings.

Between 1879 and 1966, the only constitutional amendments having any effect on the ofice of the Treasurer were those ratified in 1946, 1948, and 1958 (see above item one), which provided for a line of succession to the executive in case of the incapacity of the Governor or Lieutenant Governor. By 1946, the line of succession had extended down to the State Treasurer. As we have seen, as recommended by the Constitution Revision Commission, Proposition 1A of 1966 repealed the existing line of succession and transferred the authority to determine succession to the Legislature.

Besides the addition of the Lieutenant Governor to the list of popularly elected constitutional

officers, the Constitution Revision Commission made no substantial changes to Section Seventeen (new Section Ten). Their 1966 draft report commented: "In order to obtain greater consistency in draftsmanship, the Lieutenant Governor was added to the list of officers in existing Section 17. Other changes are in phraseology only." [53]

Proposition 1A, ratified by the voters on November 8, 1966, contained the revision recommended by the Constitution Revision Commission (except that it had been renumbered Section Eleven): "The Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer shall be elected at the same time and places and for the same term as the Governor." Proposition 140, the Political Reform Initiative of November 6, 1990, added the final sentence to the present Section Eleven limiting each officer to two terms.[54]

Board of Equalization

The 1849 framers did not provide for a Board of Equalization, but they did mandate that taxes be equal and uniform throughout the state; that property be taxed according to its value; and that assessors be elected in the district or county in which the property is situated (Article XI, Miscellaneous Provisions, Section Thirteen). The provision, which was not part of the original draft report of the article, was first introduced by Henry W. Halleck of Monterey on behalf "of the southern members," during Committee of the Whole consideration of Article XI. The section, probably drafted by Pablo de la Guerra of Santa Barbara, was similar to a provision in the Constitution of Alabama (Browne, Debates pp. 256, 364–65, 371).

Debate over the section was lengthy, and had the effect of splitting the delegation geographically into north versus south. Because there was no "capitation tax," state tax revenue would necessarily come from property, or, more precisely, land. The larger land holders, therefore, would shoulder most of the tax burden. Shouldn't those persons who were earning money in the mines and who were the larger population be taxed, even though they did not necessarily own land?

Concentrated principally in the southern part of the state, the Californio, ranchers had only a vague understanding of the Anglo-American valuation of land for taxation. For the Californios the value of their lands had been based on the cattle the land produced, rather than its potential as sub-divided real estate. Spanish and Mexican law prohibited the subdivision and sale of a land grant. It was important for the Californios to have locally elected assessors who understood their valuation. The Mexican delegates perhaps knew that the only way they could realize the Anglo-based assessed value of their land was to sell it. After considerable debate, the House concurred with the section, as adopted in Committee of the Whole and amended during the convention second reading (As adopted, Section 13 copied in part Section 27 of Art. XI of Texas's 1845 Constitution, provision for locally elected assessors added. Brown, Debates, pp. 364–76).

To facilitate the mandate for equal and uniform taxation the Legislature established the Board of Equalization in 1870 (Statutes, 1869–1870, Chapter 489, p. 714). The Board consisted of the Controller and two Governor-appointed members, serving at his pleasure, for a term of four years. After codification in 1872, provision for the Board of Equalization, its members and their salaries, could be found in Political Code Section 3696.

In an ironic interpretation of the intent of the 1849 framers, the California Supreme Court in 1874 found that Section 3696 of the Political Code was unconstitutional (Houghton v. Austin, 47 Cal. 646). . The court removed the Board of Equalization's power to change property valuations of county assessors because Section Thirteen of Article XI of the constitution had mandated that assessors had to be elected in the district or county in which the property was located. An 1876 amendment to the Political Code provided for a State Board of Equalization which consisted of the Governor, Controller, and

Attorney General. The Legislature repealed the old provision for salaries (Statutes, 1875–1876, Chapter 577, p. 11).

By making a constitutional provision for the Board of Equalization, the 1879 framers assured its continued existence and returned the authority that the California Supreme Court had stripped from it in 1874. The new Board consisted of the Controller and one member elected from each congressional district of the state, to serve four-year terms (Article XIII, Revenue and Taxation, Sections Nine and Ten).

The 1879 debate regarding the Board of Equalization indicates that the convention did not question the necessity of the existence of the Board, or that the members should be elected. Debate focused on the number of Board members, and the power of the Board to change individual assessments. The statements of many delegates show a strong central motivation for interest in the Board of Equalization. Unlike the 1849 Californios struggling to maintain a doomed livelihood, the 1879 reformers seemed determined to revitalize and strengthen the Board in preparation for coming battle. Powerful interests, such as the Southern Pacific Railroad and Miller and Lux, had already used the courts to render the Board impotent. The Board of Equalization had become another weapon of reform.[55]

On November 4, 1884, voters ratified a constitutional amendment authorizing the Legislature to redistrict the state into four equalization districts, and to provide for the elections of Board of Equalization members from those districts rather than congressional districts. On November 8, 1910, voters ratified an amendment which deleted all but the first sentence of Section Ten of Article XIII, which maintained the 1849 provision for local assessment of property. The amendment also created a new Section Fourteen that greatly expanded the provisions taken from Section Ten regarding assessments of railroads. The new section, consisting of almost 2,000 words, delineated in great detail tax assessment for public utilities, personal property, and insurance companies in California.

Records of the Constitution Revision Commission indicate that as early as 1964, the Joint Committee on Legislative Organization, which administered the Commission, was scrutinizing the lengthy and ponderous Article XIII on Revenue and Taxation. Recommendations of the Commission made no substantive changes in the provision for an elected State Board of Equalization, however. By November 5, 1974, the Legislature had placed the work of the Revision Commission on the ballot. Proposition 8 (ACA 32) applied solely to Article XIII, deleting 8,200 words, and transferring many provisions to the statutes books. Sections Nine and Ten of the 1879 Article XIII essentially became new Sections Seventeen, Eighteen, and Nineteen of Article XIII of the present constitution. Proposition 140, ‘‘The Political Reform Act of 1980,’’ limited to two the terms of any Board of Equalization member.

State Personnel Board

There were no provisions for a civil service system in either the 1849 or 1879 constitutions. The system, which became constitutional in 1934, had a statutory history prior to that time.

The Legislature established a civil service system for California in 1913 (Statutes, 1913, Chapter 590, p. 1035). The State Civil Service Commission, a three-member body appointed by the Governor for four-year terms, was created to administer the system. The statute provided for the salaries of the commissioners, and included a proviso that a commissioner could be removed only by an Assembly and Senate concurrent resolution adopted by a two-thirds vote of each house.

In 1921, the Legislature reorganized the State Civil Service Commission (Statutes, 1921, Chapter 601, p. 1020). One member would be designated as the executive, ex officio president, and principal administrator. The statute outlined the duties of the two remaining members who were designated as associates, and established salaries. In 1925 the Legislature again reorganized the Civil Service Commission,

reducing it to one member with a higher salary (Statutes, 1925, Chapter 236, p. 391). In 1927 the Legislature reorganized the State Civil Service Commission still another time, changing it back to its 1921 configuration of three members and authorizing travelling expenses (Statutes, 1927, Chapter 43, p. 75).

In 1929 the Legislature established a new Division of Personnel and Organization within the Department of Finance to administer the state civil service system. The statute transferred the former powers and duties of the State Civil Service Commission to the new Division of Personnel and Organization. Members of the Civil Service Commission, with the approval of the Director of Finance, would appoint the Chief of the new Division who was given the former duties of the executive of the State Civil Service Commission. The Department of Finance retained the State Civil Service Commission as a ''quasi-legislative and quasi-judicial body.'' [56]

Proposition 7, the initiative constitutional amendment that established Article XXIV (State Civil Service) in 1934, created the State Personnel Board as its administrative head and abolished the Division of Personnel and Organization. The Board consisted of five members appointed by the Governor, with the advice and consent of the Senate, for ten-year terms. The first Board would consist of the Director of Finance, the Legislative Counsel, and the Controller, as ex officio members, plus two Governor-appointed members. Members could be removed only by a two-thirds vote of each house of the Legislature, and compensation for members would be the same as for the previous Division of Personnel and Organization. The Board was ''authorized to appoint an executive officer who should be a member of the state civil service, but not a member of the board.'' [57]

Proponents of civil service reform Proposition 7 explained in the ballot arguments why members of the Personnel Board served ten-year terms:

> The act provides a nonpartisan Personnel Board of five members to serve ten-year terms so staggered that each new Governor will have but one appointment on a five-man board upon taking office. This four-to-one ration will be an effective means of preventing political interference with the efficient administration of State business.[58]

In their consideration of Article XXIV for revision in 1965, the Constitution Revision Commission determined to ''continue to provide for the Personnel Board,'' serving ten-year terms.[59]

Proposition 14 of 1970 (ACA 36), revised the Civil Service Article XXIV as recommended by the Constitution Revision Commission. The sections which had originally provided for membership and compensation and duties of the Personnel Board, Sections 2(a), (b), (c), and 3(a), stayed substantially the same (except for the addition of 3(b)). Proposition 14 of 1976 (ACA 40), which repealed Article XXIV and created the present Article VIII, maintained the 1970 organization of the Personnel Board—five appointed members serving ten-year terms with a directive to enforce the civil service statutes—in Sections 2(a), (b), (c), and 3(a) and (b).

THE LEGISLATIVE BRANCH

Legislative Structure

The framers of both the 1849 and 1879 Constitutions provided for a two-house Legislature, consisting of a Senate and Assembly (Article IV, Legislative Department, Section One). Both conventions adopted the provisions without debate. The question of a unicameral legislature was not entertained. The federal government had instituted a bicameral legislature, and it was the adopted practice of the states. It is not surprising, therefore, that the convention proceedings do not contain historical debate on the subject.

As a champion of the newly constructed, and as yet unratified, Constitution of the United States, James Madison eloquently argued that bicameralism would help bring ''order and stability'' to the new government (The Federalist, No. 62). He advocated a ''second,'' ''distinct'' legislative branch as a check on the first branch. As unfortunately occurs in republican governments, Madison argued, elected representatives

> may forget their obligations to their constituents and prove unfaithful to their important trust. In this point of view a senate, as a second branch of the legislative assembly distinct from and dividing power with the first, must be in all cases a salutary check on the government. It doubles the security to the people by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidity, where the ambition or corruption of one would otherwise be sufficient.[60]

The Articles of Confederation (1778) had provided for a single-house Congress of ''annually appointed'' representatives from the various states who served no more ''than three years in any term of six years.'' Madison's treatise, as much an indictment of the Articles as a defense of the new Constitution, offered the upper house of senators serving six-year terms as a check on the ''important errors'' of short-term, unmotivated legislatures.

> [N]o small share of the present embarrassments of America is to be charged on the blunders of our governments. . . . What indeed are all the repealing, explaining, and amending laws, which fill and disgrace our voluminous codes, but so many monuments of deficient wisdom; so many impeachments exhibited by each succeeding against each preceding session.[61]

Every state election changed one-half of the congressional representatives. The ''rapid succession of new members,'' no matter how qualified they were, led to capricious ''public councils.'' A Senate would provide ''some stable institution in the government.'' Inconstant nations, like inconstant people, fall victim to their own ''unsteadiness and folly.'' America, Madison lamented, ''is held in no respect by her friends . . . is the derision of her enemies; and . . . is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs.'' [62]

''Mutable policy'' had proven even more disastrous internally. The ''sagacious, the enterprising, and the moneyed few'' gained unfair advantage ''over the industrious and uniformed'' masses by following and investing in fluctuating commerce and revenue laws. Inconstancy and instability ''poisons the blessings of liberty itself.''

> It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous that they cannot be read, or so incoherent

> that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed? [63]

''No government,'' Madison concluded, ''any more than an individual, will long be respected without being truly respectable; nor be truly respectable without possessing a certain portion of order and stability.'' The document that Alexander Hamilton, James Madison, and John Jay had so diligently defended proved successful. An indisputable masterpiece of organic law, the Constitution of the United States commanded the respect of many nations. It's provisions for such institutions as bicameralism helped bring order and stability to America.[64]

Warning the delegation against ''legislative enactments'' in the organic law, and reminding them that the people had charged them with preparing ''a system by which they can enact laws for themselves,'' delegate Charles T. Botts said at the 1849 convention: ''No civilized people pretend to pass laws without at least making them run the gauntlet of two Houses, differently constituted.'' By 1849, when the framers of California's first constitution set about their work, Madison's doctrine of bicameralism had become as inviolable as the federal constitution itself.[65]

As we have seen, after the turn of the century, the issue of reapportionment had prevented constitutional revision by convention in California. The reapportionment problem also opened the discussion for unicameral legislatures. According to David W. Brady and Brian J. Gaines 'there have been a dozen serious efforts to bring unicameralism to California.'' Differing ''in myriad respects,'' each successive proposal has ''had less to do with unicameralism than some other proposed change.'' As early as 1913, regional tensions brought on by the reapportionment issue had ''manifested in various plans to re-organize the legislature.'' In 1913 and 1915, legislators proposed unicameral constitutional amendments in both the Senate and Assembly. , If they got as far as a vote, however, the bills failed
to get the necessary two-thirds majority (1913—SCA 73, ACA 91; 1915—SCA 16, ACA 38).[66]

The 1920 census clearly revealed the results of urbanization—the majority of Americans lived in cities. In California, seventy percent of the population lived in the San Francisco Bay area counties and in the cities of Los Angeles County and adjacent southern counties. In 1910, thirty-four percent of California's population lived in the Bay Area counties, thirty-two percent lived in the southern counties. By 1920, the shift that would define California's future urban concentration had begun. Los Angeles and the south, with a population of 1,346,600, had overtaken San Francisco and the north's population of 1,069,541 (thirty-nine percent and thirty-one percent respectively of the total state population of 3,426,861).[67]

After 1920, apportionment standoffs in the California legislature occurred at two levels: urban versus rural, and north versus south. For the next forty-four years, until the federal and state supreme courts decided the issue for the legislature, the apportionment battle and accompanying plans for legislative reorganization continued. Unicameral legislative constitutional amendments, if they did reach a vote and many did not, never won the necessary two-thirds majority (SCA 18, 1921; SCA 34, 1923; SCA 12, 1925; SCA 6, ACA 69, 1935; SCA 21, ACA 28, ACA 33, 1937; ACA 24, 1939; ACA 17, 1941).[68]

In 1934, when California voters approved a call for a constitutional convention (the one that the legislature never enacted), several states were appraising unicameralism. By 1936 unicameral bills had been considered in twelve states. The following year twenty-one states considered over forty such proposals. Nebraska had adopted a non-partisan, single-house legislature in 1934, but was the only state to ever actually enact that reform.[69]

Brady and Gaines have noted that after 1964, unicameralism continued to resurface as a popular reform into the early 1970s. Issues that had always underscored the debate became the defining issues after reapportionment settled. Before 1964,

> Proponents looked to unicameralism to improve: (1) efficiency; (2) economy, and (3) responsibility. Moreover, the claim was often made that the legacy of Hiram Johnson's Progressive governorship was an increase in ''executive control and leadership'' that left the two-house legislature ''unwieldy and cumbersome.''

Economy became a ''relatively minor issue'' after 1964. ''The central issues, instead, were efficiency and effectiveness, particularly in executive-legislative relations.'' [70]

In the March 1965 staff report of the Constitution Revision Commission to the Executive Committee of that body, recommended revisions to Section One, Article IV included only simplification of language and deletion of statutory material. Bicameralism was not addressed.

> The language of existing Section 1 which vests legislative power in the Legislature and reserves initiative and referendum powers to the people has been simplified. The provision requiring every statute to have an enacting clause as specified has been deleted; it is to be placed in the Government Code because it does not involve a basic constitutional right.

Following a ''more rational organization of Article IV,'' the Commission recommended removal of the lengthy material added to section one in 1911 (Initiative and Referendum) to the end of the article.[71]

The revision ratified by the voters in 1966 (Proposition 1A) is today's simplified Section One:

> The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.

The lengthy initiative and referendum materials were removed to the end of Article IV, sections twenty-two through twenty-six.[72]

Shorten Legislative Sessions

The 1849 constitutional framers provided for annual sessions of the legislature, commencing on the first Monday of January, but did not stipulate how long each session should run (Article IV, Legislative Department, Section Two). The section as reported by the Committee on the Constitution copied Iowa's 1844 constitution in wording and structure, except that the space for ''annual'' or ''biennial'' was left blank to be determined by the convention. Iowa's constitution of 1844 provided for biennial legislative sessions (Article IV, Section Two).

During Committee of the Whole consideration of the section debate centered on the question of annual or biennial sessions. Delegates William M. Gwin, Oliver M. Wozencraft, Morton M. McCarver, Jacob R. Snyder, and Elam Brown argued for biennial sessions. Gwin and Wozencraft asserted that annual sessions would be expensive and lead to excessive legislation. Gwin noted that all the new states had biennial sessions—Texas, Louisiana, Mississippi, Arkansas, Tennessee, Illinois, Missouri, Iowa, Wisconsin, and Michigan. In Iowa a legislator got two dollars a day for a maximum of fifty days, and one dollar a day after that. The expense would be much greater in inflationary California. McCarver asked how the revenue would be raised to defray the expense of an annual legislature? A land tax would be ''oppressive'' to the limited land owners, and a capitation tax ''revolting.'' Brown feared speedily enacted and repealed laws. Laws need time to be tested. Additionally, no matter how wealthy California was, the worst policy a new state could adopt was ''to establish an expensive system of government.'' [73]

Delegates Robert Semple, Myron Norton, Henry W. Halleck, Charles T. Botts, Edward Gilbert, and Winfield S. Sherwood favored annual sessions. Semple argued that biennial sessions would not allow enough time to enact an entire code of laws for California. It would be "impossible" to keep legislators at the capital for more than two or three months a year. "The rapid progress of affairs in this country, and the great value of time, would render a longer session impracticable." Norton exclaimed "We have no laws here." Regarding the expense, "What of that?" California had proportionate means. "We have great wealth here." [74]

Halleck asserted that "If there is a country in the world, at the present time, that requires the Legislature to meet at least once a year, it is California." The Legislature had to enact new laws to provide for the "peculiar circumstances" of California. In addition, there was an "immense emigration directing its course into California." If necessary limit the length of each session "to a certain number of days or months," but keep the sessions annual.[75]

Botts feared that biennial sessions would leave too much power to the Governor in the interim. The people of California "will not be content that any one man power should govern them in retracting or improving the laws which they may make." Regarding the expense, everything was expensive in California. The people were, however, "the most wealthy in the world." Gilbert reminded Gwin that all of the biennial states that he named had seven to thirty years experience as territories, allowing time to establish and work out their first laws. "Nothing but annual sessions would answer the demands of the community" for the repeal and replacement of the "repugnant" system now in place.[76]

The convention, in Committee of the Whole, adopted annual sessions. Gwin tried to amend the section during the convention second reading with "until otherwise provided by law." The proviso allowed the legislature or the people the opportunity to change to biennial sessions after a few years without having to amend the constitution. After the same debate as occurred in Committee of the Whole the delegation rejected Gwin's amendment by a vote of eight to twenty-five. By 1862 Section Two had been amended to change to biennial sessions commencing on the first Monday in December rather than January. The amendment (Chapter 317, Statutes, 1862) also limited legislative sessions to 120 days.[77]

The 1879 framers adopted biennial legislative meetings, but changed the commencement back to the first Monday in January. With the exception of the session following ratification of the constitution which could run 100 days, regular sessions of the legislature could not exceed sixty days without a loss in pay. The delegation added a final clause to the new Article IV, Section Two prohibiting the introduction of any bill after fifty days from the commencement of any regular session without a two-thirds vote of the members. (The first session was allowed ninety days).

During the 1878–79 debates a general mood of distrust and loss of faith with the legislature prevailed. The Workingmen delegates had run on the platform: "There shall be no special legislation by the state legislature, and no state legislature should meet oftener than once in every four years." Workingmen delegates William F. White, and Charles C. O'Donnell, and Non-Partisans George A. Johnson, and Edward Martin spoke in favor of "quadrennial" sessions. Calling the legislature a "most expensive body," White said that his constituents "have felt the greatest anxiety to have them adjourn." Legislators were becoming professional, "going into politics as a business." If the legislature met only once in four years, the "office hunters" would "be obliged to go at some honest employment." [78]

Johnson and Martin spoke in the interests of economy and popular sentiment. Although quadrennial sessions were a "novelty," Johnson believed "a better class of men" would be elected, "and the interests of the people of this State will be looked after better than they are at present." Martin said that his constituents favored the legislature meeting once in four years. "In fact," he added, "they do not care if it

never meets. They can get along without it.'' Noting that there wasn't a ''State in the Union,'' or ''a civilized government in creation'' where the legislature met only once in four years, the convention rejected the quadrennial proposal.[79]

Section Two, as originally reported by the Committee on the Legislative Department, prohibited any regular session from exceeding sixty days, except the first session called after the adoption of the constitution which could meet for eighty days. Non-Partisans George V. Smith, Walter Van Dyke, and Jonathan V. Webster, and Workingmen delegate Henry Larkin, preferred that the constitution limit the pay of legislators rather than the length of sessions. Smith believed that limiting pay to sixty days would keep regular sessions short. More important than economy, short sessions were desirable because ''the longer the Legislature that is not doing good work is in session the more chance there is for evil.'' Additionally, ''[t]he policy has been in most of the states to reduce the time of service.'' [80]

Van Dyke argued that if you limit the time of the session the legislature ''would be driven in the last few days to consider the most important legislation,'' resulting in ''hasty and ill considered'' laws. By limiting compensation ''you accomplish the whole purpose, and then let the terms be continued until the work is completed . . . properly and in order.'' If the legislature was facing a ''matter of great importance,'' Webster concluded, ''they should not be cut-off from enactment of good laws by a constitutional provision.'' But, if you cut their pay after a specified time, the legislature was ''not likely to stay longer than is absolutely necessary to enact the legislation which is before them.'' [81]

David S. Terry and Joseph A. Filcher, Non-Partisan members of the Committee on the Legislative Department, defended the section they had drafted. Filcher stated that the popular reforms demanded were already in the section as reported. ''The evil of special legislation is aimed at. The lobby influence is aimed at.'' No delegate had proposed any improvement. He asked the convention to quit ''trifling'' with the section and ''get on to other and more important business.'' Workingmen delegate Charles Beerstecher sarcastically proposed an amendment: ''There shall be no Legislature convened from and after the adoption of this Constitution, in this State, and any person who shall be guilty of suggesting that a Legislature be held, shall be punished as a felon without the benefit of clergy.'' The section as amended limited the pay rather than the time of regular sessions to sixty days, and increased the (pay) limit of the first session from eighty to 100 days.[82]

During the 1878–79 debate, the belief that limiting the legislature would shift excessive power to the executive resurfaced. Echoing 1849 delegate Charles T. Botts' sentiment that an unassembled legislature leaves only the governor, Workingmen delegate Peter J. Joyce mistrusted his party's call for quadrennial sessions. Corrupt corporations advocate abolition of legislatures and ''go in for putting power in the hands of the Governors.'' The legislature had passed corrupt bills, but, he wanted to know, ''how many of these corrupt bills have ever been vetoed by the Governors of this State?'' Larkin, who preferred annual over quadrennial sessions, said ''[t]he policy of a republican government'' was to ''bring the representatives a little nearer to the people.'' He believed in ''bringing the Government as near to the people as possible.'' He did not believe in ''leaving it to the Governor.'' [83]

Filcher stated that his ''most vital objection'' to the proposals of the convention regarding legislative sessions was ''the idea of so long absenting the people from those who have power over them.'' The convention could not afford to endorse such a policy.

> The idea that the administration and the Legislature could come in here simultaneously and go out together is not a good one. The administration would be absolutely left to itself during its term. Assuming that the Governor should become implicated in some nefarious practices, I ask you what power there is under such a system to

reach him? You provide that the Governor may be impeached, but as soon as the sixty days of the Legislature are over he is left to himself. One of the best features of our government is that the officers are frequently brought face to face with those whom the people elect to scrutinize their action. The oftener you can send up persons directly from the people, and in this capacity legislators come, to look into and examine the affairs of the State, and confront the officers enlisted with power by the people, the better your government.[84]

At the special election of October 10, 1911 which provided for initiative and referendum, voters ratified a constitutional amendment to Section Two which provided for bifurcated biennial legislative sessions. Each session, beginning in January as provided in 1879, commenced in odd-numbered years and continued for thirty calendar days only. After a mandatory ''constitutional recess'' of not less than thirty calendar days, both houses of the legislature reassembled for the second part of the session. The first part of the session was for the introduction of bills, and only urgency measures were passed. After the recess the legislature considered the bills presented in January. No new bills could be introduced without a two-thirds vote of both houses. The constitutional recess was instituted in order to provide time for the public to read and analyze measures that had been introduced during the first thirty days.[85]

Between 1947 and 1966 the legislature met in annual general and budget sessions. A November 5, 1946 constitutional amendment to Article IV, Section Two switched the legislature back to annual sessions. General sessions commenced in the odd-numbered years, and budget sessions commenced in the even-numbered years. General sessions remained bifurcated with a thirty-day bill introduction period, a thirty-day recess, followed by an unspecified period to consider the bills introduced in January. Budget sessions convened on the first Monday in March in the even-numbered years.[86]

A 1949 constitutional amendment limited the second half of the general session to 120 calendar days, exclusive of the recess. The amendment also restricted the budget session to thirty calendar days, consideration of the following fiscal year's Budget Bill and its appropriate revenue acts, approval or rejection of city and county charters and charter amendments, and acts necessary for session expenses.[87]

A November 6, 1956 constitutional amendment added subdivision (c) to Section Two or Article IV which changed the meeting date of the budget session to the first Monday in February. After the Budget Bill was introduced during a budget session, both houses could take a thirty-day recess, and then reconvene for a session not to exceed thirty days. Between 1958 and 1966, the legislature was able to pass the Budget Bill without reconvening in extraordinary sessions only once in 1960.[88]

On November 4, 1958 voters ratified Proposition 9 (ACA 36), which abolished the constitutional recess and limited general sessions to 120 calendar days, not including Saturdays and Sundays (in effect allowing 166 total days). Proposition 9 also prohibited any bill, other than the Budget Bill, to be heard by committee or acted upon until thirty calendar days after its introduction, a three-fourths vote of the house necessary to override the provision. The thirty-day, bifurcated session initiated in 1911 intended that the public have an opportunity to review bills before they were acted upon. Since that time, however, the number of bills introduced increased, leaving the state printer no time to publish them all for public use. Increasing the session to 120 days allowed the introduction of bills to be spread out, and the printer more time to publish.[89]

The March 1965 Staff Report of the Constitution Revision Commission to the Executive Committee indicates that the Committee wanted to institute two-year legislative sessions, but recommended annual sessions instead.

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Although lengthy, that portion of the report is reproduced here because it illustrates intent and explains why the Committee changed its course.

> As a result of the State's growth its problems have become so numerous and substantial that they should not await the reconvening of the Legislature every two years in a session open to general legislation, or the discretion of the Governor. With each biennium the special or "extraordinary" session which has met concurrently with the budget session in the even numbered year, the list of items which the Governor authorizes the Legislature to consider has lengthened. Special sessions with purported "limited" agendas virtually have become "general" sessions, and the revision recognizes that fact.
>
> Based on the procedure in the U. S. Congress, the Alaska, Massachusetts and Michigan Legislatures, among others, there was some sentiment for annual, regular sessions of unlimited duration. Jockeying for favorable position and the ever-present log jams of legislation toward the end of each session would be avoided. However, legislator-members of the Commission favored a limitation on session length. They pointed out that based on their experience unlimited sessions would be politically unsaleable because they would require even greater compensation for legislators than the members of the public would approve and would require elimination of the long-standing California tradition of the "citizen-legislator."
>
> The Legislature would be established as a continuous body for a two-year period in the same manner as the United States Congress. This will permit legislation yet unconsidered at the end of the first annual session to carry-over until the next regular session. Similar procedure is followed in the U. S. Congress and in the Michigan Legislature, among others. Printing costs and time would be saved. . . .
>
> However, the existing provision was retained following a conference with the Governor and the members of the Executive Committee. It is anticipated that annual sessions without restriction as to subject matter of legislation will diminish the need for special extraordinary sessions except in genuine emergency situations.[90]

The final recommendation of the Staff Report parallels the provision of the constitutional amendment placed before the voters the following year:

> [The new section] replaces subdivisions (a) and (c) of existing Section 2 and provides for the convening annually of a session of the Legislature limited to 120 calendar days (exclusive of Saturdays and Sundays). At present such a session meets only once every two years in the odd-numbered year. The present distinction between regular ("general") and regular ("budget") sessions has been eliminated because the latter which occurred once a biennium in the even numbered year, has been abolished. There will be only one type of regular session; it will be annual and general legislation may be considered.[91]

Proposition 1A of November 8, 1966 (ACA 13) repealed Section Two of Article IV and substituted it with new Section Three. Although the 1965 Revision Commission might have recommended the two-year sessions that we have today, in the end, Proposition 1A did not go that far.

> Sec. 3. (a) The Legislature shall meet annually in regular session at noon on the Monday after January 1. A measure introduced at any session may not be deemed pending before the Legislature at any other session.

The provision abolished the budget session, and eliminated the 120-day time limit. Convening on

the first Monday after January 1, the sessions were of unlimited duration in which any type of bill could be introduced. After all bills had been decided on, the legislature recessed for thirty days, and then reconvened to consider vetoed bills.[92]

Proposition 4 (ACA 95) ''reorganized'' the Legislature into two-year sessions. Ratified by the voters on November 7, 1972, it enacted the changes originally wanted by the Constitution Revision Commission seven years earlier. Proposition 4 amended Section 3 (a) of Article IV to its present construction. In their supporting argument for the amendment, Assembly Speaker Bob Moretti, Assembly Republican Leader Bob Monagan, and Senate Republican Leader Fred Marler advised voters that the proposal would ''streamline'' legislative operations. ''It will result in reforms in operations, greater efficiency, more responsiveness to the public and some modest recurring savings estimated at several hundred thousand dollars.'' [93]

Time Bills Must be in Print

The earliest constitutional reference to the printing of bills can be found in Article IV, Section Fifteen of the 1879 Constitution. Section Fifteen, as originally reported by the Committee on the Legislative Department, provided that all bills must be ''read at length'' on final passage, but the section did not provide for three readings or printing of bills.

During Committee of the Whole consideration of the section, Workingmen delegates John D. Condon and James S. Reynolds proposed amendments to Section Fifteen which would mandate that bills be read ''on three several days in each house,'' and that they be printed with amendments before passage. After encountering opposition from members of the Committee who drafted the section, Reynolds defended the amendments. Every man's experience at the convention showed him the necessity of printing bills. ''It is impossible for a member to understand what he is voting for, or what the provisions of a bill are, by hearing them read at the desk.'' The object of considering a bill ''on three several days, before being put upon its final passage'' was ''to prevent hasty legislation.'' The amendments were not intended to ''hamper'' legislation, ''but to compel it to be done decently and in order, after the legislation has been considered.'' Reynolds later added further support to his argument by showing that at least twenty-one states had put similar provisions in their constitutions.[94]

In defense of the amendments Charles Beerstecher noted that hasty legislation had been ''the curse of this State, and the curse of several States in this Union.'' He could not understand the objections to the provision. ''A bill is introduced and kept in the hands of the Clerk, and he reads it, and it is put upon its passage, and no one sees the bill until it is enrolled.'' Often, ''an entirely different bill is enrolled than the one passed.'' The section, as amended, was ''a guard put on the Legislature.'' The delegation adopted Section Fifteen, as amended, in Committee of the Whole and in the convention first and second readings.[95]

As we have seen, the thirty-day stipulation first appeared in Section Two of Article IV with the adoption of the Progressive amendments at the October 10, 1911 special election. The ''constitutional recess'' of the bifurcated legislative sessions was intended to ''give the public time to read and analyze measures introduced during the first thirty days.'' Section Fifteen had already provided that bills be printed after introduction. People had thirty days to procure a copy of the printed bill and contact their legislator regarding its provisions.[96]

On November 4, 1958 voters ratified Proposition 9 (ACA 36) which amended Article IV, Section Two. As discussed above, this amendment abolished the split legislative session and the ''constitutional recess,'' and extended general sessions to 120 calendar days, not including Saturdays and Sundays. Proposition 9 also mandated that no bill, other than the Budget Bill, could be heard by any committee or acted

on in either house for thirty calendar days following introduction.

Writing in favor of the proposition, Assembly members Allen Miller, and Charles Conrad, and Senator John F. McCarthy argued that, although the 1911 amendment was well intentioned it had ceased to be functional.

> [T]he tremendous increase in legislative problems resulting from the rapid growth and development of our State has caused such a flood of bills that the State Printer is unable to get them into print until the end of the recess and the public has little time to study them. Further, the split session has led to the mass introduction of bills before the recess, which results in little chance to work out details of any proposal. This means that many bills are in skeletal or ''spot bill'' form and convey only that the author has in mind some unidentified change in the law on a particular subject. Such bills mean little to the public, and must be later amended and reprinted—all of which is time-consuming and expensive.[97]

The amendment allowed ninety days for the introduction of bills, giving legislators time to properly prepare bills before printing. Saturdays and Sundays could be used to confer with constituents and answer public inquiries. Proponents promised voters that the Legislative Counsel would maintain a ''digest'' of every measure introduced. With the extended bill introduction period, the Legislative Counsel could keep the index and digest current during the whole session. ''This would allow you [the voter] to examine the index and digest at any time to determine whether legislation you are interested in has been introduced.'' People would have thirty days after introduction to determine the effect of a bill.[98]

Although the Constitution Revision Commission initially wanted to eliminate the thirty-day waiting period in their recommendation to the legislature, they subsequently changed their opinion. The Article IV ''Staff Report'' of 1965 described the process which led to their final recommendation.

> [T]he 30-day waiting period for action on bills after their introduction at regular sessions of the Legislature has been retained. . . . Initial drafts of Article IV eliminated this restriction because the waiting period was regarded as ineffective against the alleged evil it sought to prevent: lack of notice of the content of pending legislation. The Legislature could waive the 30-day delay by a three-fourths vote, and it did not prevent the use of the ''skeleton'' bill or ''author's amendments'' which could alter the entire bill without subjecting it to further delay. No other state constitution contains a similar restriction on the progress of a bill.
>
> However, the provision was restored on the advice of legislator-members of the Commission. They pointed out that in 1958 the 30-day bill waiting period was substituted for the former 30-day recess which occurred after the first month of general session in odd-numbered years. That recess was used for the printing of the bills introduced in the first four weeks of the session; it also allowed various groups to review pending legislation. Eliminating the 30-day period would remove a protection that was intended to be retained when the bifurcated session itself was abolished. Additionally a proposal to shorten the 30-day period to 20 days insofar as committee action on legislation was concerned was rejected in 1962. The League of California Cities and others indicated they still needed the full 30 days to review legislation and to notify a widely scattered membership of the pendency of measures in which they are interested.[99]

As recommended by the Constitution Revision Commission, Proposition 1A (ACA 13) of November 8, 1966 repealed Section Two of Article IV and transferred that portion of

subdivision (a) (containing the thirty-day stipulation) to Section Eight, subdivision (a). The language went largely unchanged, except for modernizing phraseology. The 1879 Section Fifteen providing for three separate readings and printing of bills substantially became new Section Eight, subdivision (b). Subdivisions (a) and (b) of Section Eight have not been amended since that time.

Retirement System

The current constitutional provision which restricts legislative retirement entitlements (Article IV, Section 4.5) is less than five years old (November 6, 1990). Enactments governing legislative retirement have been largely statutory, and they have originated relatively recently (approximately 1947). Discussion concerning the **issue** of legislative retirement has developed only in the recent past. But, if the issue is approached from the question should legislative service be considered a career occupation?, debate can be traced to the 1849 constitution.

There are no specific references to legislative retirement in the 1849 or 1879 constitutions. The 1849 framers provided for per diem and travelling expenses of legislators and constitutional officers only temporarily, until the first legislature could establish salaries by statute (Article XIII, Schedule, Section Fifteen). When the Committee on the Constitution reported the section, they left the dollar figures blank so that the convention could determine the amounts in Committee of the Whole. Many delegates supported a fairly high figure. The duties of government officers were ''onerous,'' and ''high salaries would command the requisite talent.'' The cost of living in the inflationary environment of gold rush California was astronomical. The people would sanction high salaries.[100]

Delegate William M. Gwin argued that if they did not establish low salaries the expenses of government would be enormous and oppressive to the tax payers. He said, ''I have never known an office of honor in the United States where the incumbent makes anything out of it, or even sustains himself upon the salary.'' Charles T. Botts, who inferred that Gwin was electioneering with a popular issue (low salaries), responded: ''there are honorable places which are kept for the rich of the land, and . . . a poor man cannot afford to accept them.'' A low salary ''requires a man of other means to accept an office which will not of itself sustain him.'' The Governor of the state ''could not sustain himself on $6,000 a year,'' but if he was ''worth millions'' he could ''hold the highest office of state in the gift of the people.'' [101]

In all new governments, Gwin retorted, expenditures usually surpass revenues. He did not wish to reserve public office to rich men, but immoderate salaries led to expensive government and ''burdensome taxes on the people.'' The provisions were only temporary, and many ''competent men'' were ''ready and able'' to occupy the offices already. If the salaries were too low the legislature could increase them later. ''I do not desire to fix the salaries below what is proper,'' Gwin concluded, ''nor do I wish to make a political hobby in connection with this matter.'' [102]

For legislators, the convention settled on the same pay they had fixed for themselves—sixteen dollars per diem, and sixteen dollars for every twenty miles travelled. Compared to Iowa's two dollars per diem and two dollars per twenty miles, and New York's three dollars per diem and one dollar per ten miles, California's allowance seems extravagant. When fixing their own compensation, however, the delegates settled on a moderate sixteen dollars, the average daily earnings of a ''mechanic'' in the inflated California economy.[103]

In 1849 public office was not considered to be an occupation. Serving as an elected official was an honor. Political office brought status and influence to a man, but it also carried great responsibility, and frequently, a strain on personal resources. It was an honor and a duty to serve, but the service was not a primary means of support. The sentiment of the age is

probably best reflected in delegate Robert Semple's observation regarding annual legislative sessions. It would be "impossible to keep members of the Legislature more than two or three months at the seat of Government." Legislators would have their private occupations to tend to. "The rapid progress of affairs in this country, and the great value of time would render a longer session impracticable." [104]

The 1879 debate indicates that political office was still not considered to be occupational. Per diem and mileage was to be left to the legislature to decide, but was not to exceed eight dollars per day, ten cents per mile, and twenty-five dollars for contingent expenses per session (Article IV, Section Twenty-Three). Committee of the Whole debate focused on setting the salary high enough to attract the proper talent, and to support a respectable lifestyle in Sacramento, away from home, family, and business. When setting compensation limits, delegates were less concerned with per diem and mileage than with recent abuses of contingent expense funds.

The debates indicate that a propensity towards career politics had begun to develop in the nation, but the delegates who spoke of it attached dishonor to the trend. During Committee of the Whole debate on sessions of the legislature, Workingmen delegate William F. White explained why he supported quadrennial sessions:

> I find in the old State of Pennsylvania they are tired of these political bodies meeting. The young men of the country are turning into politicians as a business. If there was but one session in four years these men would die out between the four years and be obliged to go at some honest employment. All the young men are looking to politics as a means of livelihood. I would rather that one of my sons would carry a hod for a living than to take the best office in the gift of this State. Therefore, I would like to see something done to check this office hunting.[105]

Political office was an honor and a duty, a "gift" of the people or of the state. It was not an occupation.

Until the 1966 revision of Article IV, the constitution had provided that the Legislature set its own compensation by statute, but the constitution had stipulated a ceiling. Any raise beyond that ceiling required a popularly approved constitutional amendment. By 1924, Section Twenty-Three of Article IV limited legislative salaries to $100. a month (substantially lower than 1879's eight dollar per diem if they worked twenty days per month). In 1949 legislative salaries were raised to $300. a month. By 1954, subdivision (b) of Section Two, Article IV set legislative salaries at $500. a month. That figure held until the 1966 revision.[106]

Voters had approved a constitutional amendment which directed the Legislature to provide a retirement plan for state employees as early as 1930 (Article IV, Section 22a added November 4, 1930). The following year, the Legislature established by statute a State Employees Retirement System for California (Statutes, 1931, Chapter 700, p. 1442). In 1939 the Legislature extended the scope of the State Employees Retirement Law to include city, county, and school district employees who wished to participate (Statutes, 1939, Chapter 954). Developing in the statutes and outside the strictures of the constitution, by 1947 the Legislature had established a retirement system for its own members (Government Code Section 9359 et. seq.).

On November 4, 1958, voters rejected Proposition Five, a Senate Constitutional Amendment which would have allowed the Legislature to fix legislator's salaries at an amount not to exceed "the average salary of county supervisors in the five most populous counties" (approximately $10,080. in 1958). Supporting the amendment, State Senator James A. Cobey argued that public officer's salaries, subject to constant review, did not belong in the constitution. Every change required constitutional amendment. A majority of states, the United States Congress, and the Model

Constitution of the National Municipal League, provided for legislative salaries by statute rather than by constitutional provision. The Joint Legislative Committee on Legislative Procedure, California Conference on State Government, Committee on American Legislatures of the American Political Science Association, and the 1957 California Citizens Legislative Advisory Commission supported the amendment.[107]

The arguments of State Senator John A. Murdy, Jr., who wrote against Proposition Five, reflected the seriousness of the reapportionment issue in 1958. He also provided a contemporary opinion of legislative retirement benefits. Malapportioned districts caused pay inequities. A senator representing over five million people in Los Angeles County had a much larger work load than a senator representing a smaller county of 100,000 people, but both senators made the same salary. Conversely, it was more difficult for an Assembly Member to cover a sparsely populated rural district than an urban area. Additionally, the Legislature determined the salaries of supervisors, ''directly or indirectly,'' in the five biggest counties, excepting San Francisco which was regulated by charter.[108]

Higher pay, asserted Murdy, Jr., would have a ''great liberalizing impact'' on the ''already generous legislative retirement system.''

> The present terms of the State Retirement System permits a Legislator to retire at 75% of his salary if he has had fifteen years of service and has reached sixty-three or over. This same retirement formula would apply on any increased salary, not only to Legislators retiring in the future, but would be retroactive to those who have already retired.

Extended to public officers, provisions of the State Retirement System appear to indicate countenance of legislative careers. The defeat of Proposition Five may show, however, that popular disapproval of political occupation prevailed, keeping legislative office less than lucrative. Or perhaps Senator Murdy, Jr. reflected popular sentiment when he commented ''Whether it is possible to buy statesmanship by offering salary inducement is still an unsolved problem.'' [109]

In 1966, California voters passed Proposition 1A (ACA 13), which removed constitutional provisions for legislative compensation and made them statutory in 1966. The 1965 report of the Constitution Revision Commission, which recommended this legislative course of action, provides an important analysis of the post-reapportionment compensation / retirement issue.

> Since 1954 as each of numerous attempts to increase salaries has failed, the California legislators have found other means of increasing both their perquisites (by way of perdiem and mileage or state-leased automobiles and a generous pension plan geared to the cost of living index) and their efficiency (by way of staff assistance and similar aids) until it is now possible for:
>
> (1) A legislator to retire after 30 years of service and receive more in retirement than the constitutionally stipulated salary he received as an incumbent; and
>
> (2) The press to estimate—in however misleading a manner—that a single legislator may have the equivalent of $25,000 in state funds for his individual use in any odd-numbered year (including salary, per diem, mileage . . . or leased automobile and credit card, district office allotment, postage, secretarial assistance, and telephone). (The implication frequently conveyed is that the legislators pocket this entire amount . . . . For the most part the latter items reimburse the legislator for his out-of-pocket expenses; the cost of living in the capital during a session is high).
>
> To the unthinking voter these figures are appalling—made no less appealing by attempts to misrepresent them. The

present impasse on legislators' compensation has been characterized as follows:

> "That the citizen of California should be so stubbornly resistive to adequate pay for a man who copes with the problems of a three billion dollar budget and the intricacies of the technical legislation essential to the largest state in the nation is equally dismaying to the legislator . . . Thus fringe benefit begets salary stalemate and voter opposition to legislative carte blanche begets fringe." [110]

The Commission then proposed an "open, rational approach to legislators compensation:"

> (1) A substantial increase in salary commensurate with the legislator's status as a member of the third and coequal branch of government with the executive and judiciary recognizing that the job of legislator is in fact virtually full-time; and
>
> (2) A program of constitutional and statutory restraints on legislative self-indulgence as to perquisites other than annual salary.
>
> Only with the adoption of a compensation program outlined above will the California legislator be able to justify to the public at election time that he is worthy of his hire and thus open a new era of mutual respect between the California citizen and his Sacramento representative that both deserves.[111]

By 1965, the commission asserted, twenty-eight states had legislative compensation rates set by statute, without constitutional limitation. The United States Congress had always enjoyed that privilege. When was California to join the fold? Echoing the sentiments and fears of the constitution's framers, the commission concluded:

> If the Legislature is to meet annually for approximately six months, it will be necessary to compensate the Members adequately to permit them to be away from their usual occupations. While the California voter has been conditioned to the concept of the "citizen-legislator" over the years, membership in the Senate and Assembly, with each biennium, is becoming more than a part-time vocation.[112]

Proposition 112 of June 5, 1990 (SCA 32) repealed the 1966 legislative compensation and retirement statute (Chapter 163) that ratification of Proposition 1A had authorized (Ch. 163, Statutes, 1966, 1st Extraordinary Session, pp. 721–29). Five months later, initiative constitutional amendment Proposition 140 (Term Limits) limited legislative salaries and operating expenses, and restricted legislative retirement benefits by constitutional provision. In 1965 the Constitution Revision Commission asserted that membership in the Legislature was becoming "more than a part-time vocation." Twenty-five years later, however, a popular initiative amended the constitution to assert that "service in the Legislature" was "not . . . intended as a career occupation." Section 4.5 of Article IV today prohibits the Legislature from accruing more pension and retirement benefits than are already provided by statute.

THE INITIATIVE PROCESS

The great legacy of the Progressive Reform Movement in California, Senate Constitutional Amendment No. 22, passed in the Senate on February 9, 1911 by a vote of thirty-five to one, Senator Leroy A. Wright of San Diego casting the only dissenting vote. On February 16, the Assembly passed the amendment with seventy-two votes in favor and no dissenting votes. Placed before the voters at a special election called by Progressive Governor Hiram Johnson on October 10, 1911, the people ratified the Initiative, Referendum, and Recall constitutional amendment by a vote of 168,744 to 52,093 (see endnote 15).

Since the addition of the Initiative and Referendum to the Constitution in 1911 (Article IV, Section One, 1 (a), (b), (c), (d)), the provision has gone through two constitutional revisions. Following the recommendations of the Constitutional Revision Commission in 1965, the legislature placed Proposition 1A (ACA 13) on the November 8, 1966 ballot. The popularly ratified amendment which revised the Legislative Article IV, repealed the 1911 Section One and subdivisions (a), (b), (c), and (d), and relocated them to the end of Article IV, commencing with Section Twenty-Two (a) and continuing through Section 26 (see endnote 72).

On June 8, 1976, voters ratified Proposition 14 (ACA 40). The amendment reorganized provisions related to voting, the initiative, referendum, and recall, which were "scattered throughout the Constitution," under a single article. As a result, current Article II—titled Voting, Initiative and Referendum, and Recall—contains the original 1911 amendment, fairly intact, except for modernized phraseology and simplified structure.[113]

Constitutional Amendments/Ballot

The language of current subdivision (c) of Section Eight, Article II has not substantially changed.

1911, Article IV, Section One (paragraph two, sentence two, sixth clause):

> the Secretary of State shall submit the said proposed law or amendment to the Constitution to the electors at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election.

1966, Article IV, Section Twenty-Two, subdivision (c):

> The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

Constitution Revision Commission Draft Report, 1965 Comments:

> a new procedural section replacing various similar provisions in existing Section 1 dealing specially with each type of initiative petition. The Secretary of State must submit initiative statutes or constitutional amendments at special or general elections; the Governor may call special elections for this purpose. Existing language requires submission of pending initiative measures at any special election called for placing measures proposed by the Legislature before the electorate. Legislative Counsel indicated the provision was unnecessary because section requires that the Secretary of State present any pending measures to the electorate at the next succeeding election whether it be special or general, called by the Legislature or by the Governor. Legislative Counsel Opinion No. 6865, Aug. 27, 1964.[114]

1976, Article II, Section Eight, subdivision (c):

> [unchanged from 1966]

The primary election, established in 1909, was in effect at the time that the Progressives drafted the amendment in 1911. They used only the terms ''general'' or ''special'' when referring to an election. General elections are those held in November.

Amending Statutory Initiatives

The language of current subdivision (c) of Section Ten, Article II has changed principally to modernize phraseology and simplify structure.
1911, Article IV, Section One, (paragraph six, sentence two)

> No act, law, or amendment to the Constitution, initiated or adopted by the people, shall be subject to the veto power of the Governor, and no act, law or amendment to the Constitution, adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the Legislature at any subsequent session thereof.

1946, Article IV, Section One, subdivision (b)

> Laws may be enacted by the Legislature to amend of repeal any act adopted by vote of the people under the initiative; to become effective only when submitted to and approved by the electors unless the initiative act affected permits the amendment or the repeal without such approval. The Legislature shall by law prescribe the method and manner of submitting such a proposal to the electors.

1966, Article IV, Section Twenty-Four, subdivision (c)

> The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

Constitution Revision Commission Draft Report, 1965 Comments:

> consolidates portions of the sixth paragraph of existing Section 1 with existing Section 1b. No substantive change has been made; language has been simplified and phraseology improved. The last sentence of existing section 1b is unnecessary in view of proposed subdivision and has been deleted. Section 1b was added to the Constitution in 1946 to eliminate any question as to the power of the Legislature to propose to the people an amendment to a statute adopted under the initiative process.[115]

1976, Article II, Section Ten, subdivision (c)

> [unchanged from 1966]

Legislative Review of Initiatives

There is no applicable current constitutional reference to legislative review of initiative constitutional amendments or initiative statutes. (Legislative enactment of initiative statutes and constitutional amendments seems contradictory since initiatives are the popular equivalent of statutes and constitutional amendments which originate in the legislature). The closest reference to legislative review of popular initiatives can be found in the ''indirect initiative.''

The Progressives provided for two initiative processes in the 1911 constitutional amendment: the direct initiative and the indirect initiative. The direct initiative is in use today, but, for lack of use, the Constitution Revision Commission recommended that the indirect initiative be abolished in 1965. Proposition 1A (ACA 13), ratified by the voters on November 8, 1966 repealed the indirect initiative provision (Article IV, Section One, paragraph three).

Using the indirect initiative, voters could propose legislation to the legislature. Qualifying petitions had to contain signatures of registered voters equal to five percent of the votes cast for Governor at the last general election. The Secretary of State sent the petition to the legislature, which had forty days to either enact or reject the unchanged initiative, or amend it. If the Legislature approved the proposal without amendment, it became law. If the Legislature did not approve the proposal without amendment, or if the Legislature rejected it, the Secretary of State had to submit it to the voters at the next general election. The indirect initiative also provided for competing legislative enactments on the same subject.

The text of the indirect initiative as originally drafted and ratified in 1911 follows (note the provision for legislative competing enactments in the section):

> Upon the presentation to the Secretary of State, at any time not less than 10 days before the commencement of any regular session of the Legislature, of a petition certified as herein provided to have been signed by qualified electors of the State equal in number to 5 per cent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law set forth in full in said petition, the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected without change or amendment by the Legislature, within 40 days from the time it is received by the Legislature. If any law proposed by such petition shall be enacted by the Legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the Legislature within said 40 days, the Secretary of State shall submit it to the people for approval or rejection at the next ensuing general election.
>
> The Legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon separate roll call, and in such event both measures shall be submitted by the Secretary of State to the electors for approval or rejection at the next ensuing general election or at a prior special election called by the Governor, in his discretion, for such purpose. All said initiative petitions last above described shall have printed in 12-point black-face type the following: ''Initiative measure to be presented to the Legislature.''

In its 1965 Draft Report, the Constitution Revision Commission succinctly explained why it recommended repeal of the indirect initiative:

> Because the percentage of signatures required for proposing an initiative statute has been reduced and because there have been but four instances where an indirect initiative—that is, a petition to the Legislature, not to the people—has been utilized (and only once successfully), the Commission recommends repeal of the indirect initiative procedure.[116]

It is perhaps applicable to this inquiry to note that the Constitution Revision Commission had considered insertion of some provision for judicial review of initiatives and referendums in the constitutional amendment of 1966, but decided not to proceed. Commission comment follows:

> Inclusion of a provision for judicial review of the initiative (or referendum)

petition or ballot title and summary was considered. It is not necessary to include such a provision because an elector already has that right. Legislative Counsel Opinion No. 6863, Sept. 14, 1964. Also it is inadvisable to stipulate the standard of accuracy or impartiality for the petition or ballot title and summary. The required standard should be left to the courts in the event an elector petitions for review of either item. Additionally, any requirement that the ballot title and summary be identical with that appearing on the petition should be added to the Elections Code.[117]

ENDNOTES

State Governance

1 J. Ross Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849, Reprint Edition (New York: Arno Press, 1973), Appendix, "The Constitution of the State of California," pp. iii–xiii 7,300 words]; Alonzo L. Baker, Problems in State Constitution Revision, with Special Reference to California (Stockton: University of the Pacific, 1964), p. 1; E. Dotson Wilson, Chief Clerk of the Assembly, California's Legislature, 1994 (Sacramento: California State Assembly, 1994), pp. 11, footnote 21, 13.

2 Regarding the application of English common law in United States territories and possessions see William Q. De Funiak and Michael J. Vaughn, Principles of Community Property, 2nd Ed. (Tucson: University of Arizona Press, 1971), p. 56; First-hand accounts of government in pre-statehood California are related in Governor-General Bennet Riley's "Proclamation Recommending the Formation of a State Constitution, or a Plan of a Territorial Government, June 3, 1849," William M. Gwin, John C. Fremont, George W. Wright, and Edward Gilbert, California Representatives to Congress, "Memorial to the Honorable the Senate and House of Representatives of the United States of America in Congress Assembled, March 12, 1850," and J. Halleck, Attorney at Law, and W. E. P. Hartnell, Government Translator, "Translation and Digest of such portions of the Mexican Laws of March 29th and May 23rd, 1837, as are supposed to be still in force and adapted to the present condition of California," in Browne, Report of the Debates, 1849, pp. 3–5, xiv–xxiii, and xxiv–xl; Regarding the civil law system in Mexican California see David J. Langum, Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821–1846 (Norman: University of Oklahoma Press, 1987).

3 Kenneth M. Stamp, "Expansion and Sectional Crisis," The National Experience: A History of the United States to 1877, Vol. 1, 3rd Ed. (New York: Harcourt Brace Jovanovich, Inc., 1973), pp. 276–80; Browne, Report of the Debates, 1849, Appendix, "Constitution of the State of California," Article XIII, Schedule, Sections 6, 7, 8, p. xii.

4 Ibid.

5 Browne, Report of the Debates, 1849 , "book of constitutions," pp. 36, 299; prominent delegate William M. Gwin said that he "had selected the Constitution of Iowa, because it was one of the latest and the shortest," p. 24; an explanation for the popularity of New York's 1846 constitution may be that New York was the native state of the largest number of delegates (eleven); California claimed the next highest number (seven), pp. 478–79; Regarding the influence of other state constitutions in individual articles of California's 1849 constitution see Cardinal Goodwin, The Establishment of State Government in California (New York: The MacMillan Company, 1914), pp. 238–40.

6 C. Vann Woodward, "The Urban Society," The National Experience Vol. 2, p. 444; Alan Kifer, "Depression," and John Mack Farager, "Immigration," The Encyclopedic Dictionary of American History, 4th Ed., John Mack Farager, ed. (Guilford, Connecticut: Dushkin Publishing Group, Inc., 1991), pp. 75, 136–37.

7 For a discussion of the ascendancy of the GOP, the "Republican blueprint" for a "national state," and the establishment of corporate America see David M. Emmons, "Constructed Province: History and the Making of the Last American West," Western Historical Quarterly 25-4 (Winter 1994): 437–59, esp. 443–46.

8 Willie Lee Rose, "The Aftermath of War," The National Experience Vol. 2, pp. 373–74, 376, Implicated in Credit Mobilier, which cost the federal treasury $23 million, were Vice President Schuyler Colfax and future President James A. Garfield; reporters exposed Secretary of War William W. Belknap, Secretary of the Treasury Benjamin Bristow, and three other members of President Grant's cabinet as part of the Whiskey Ring; "Boss" William Marcy Tweed of Tammany Hall, who had controlled the governor and state legislature with bribes, bilked New York City of $200 million. Regarding corruption in the territories see Patricia Nelson Limerick, The Legacy of Conquest: The Unbroken Past of the American West (New York: W. W. Norton & Company, 1987), pp. 84–85.

[9] Charles Kettleborough, ed., The State Constitutions and the Federal Constitution and Organic Laws of the Territories and Other Colonial Dependencies of the United States of America (Indianapolis: B. F. Bowen & Company, 1918), pp. 12–1554; For a contemporary discussion of late nineteenth-century state constitutional revision see Simeon E. Baldwin, Modern Political Institutions (Boston: Little, Brown, and Company, 1898), pp. 45–79.

[10] Wilson, California's Legislature, 1994, footnote 21, p. 11; Baker, Problems in State Constitution Revision, p. 1.

[11] Carl Brent Swisher, Motivation and Political Technique in the California Constitutional Convention, 1878–79 Reprint Edition (New York: Da Capo Press, 1969), pp. 112–14.

[12] Ibid., 114.

[13] C. Van Woodward, ''Political Stalemate and Agrarian Revolt,'' The National Experience Vol. 2, pp. 481–84; John M. Blum and Arthur M. Schlesinger, Jr., ''Theodore Roosevelt and the Progressive Movement,'' The National Experience Vol. 2, p. 511.

[14] Blum and Schlesinger, ''Theodore Roosevelt and the Progressive Movement,'' pp. 511–24.

[15] March Fong Eu, Secretary of State, A History of the California Initiative Process (Sacramento: Secretary of State, Elections Division, November 1992), p. 2; Larry N. Gerston and Terry Christensen, California Politics and Government: A Practical Approach 3rd ed. (Belmont: Wadsworth Publishing Company, 1995), p. 12; California Legislature, Journal of the Senate, 1911, pp. 747–48; California Legislature, Journal of the Assembly, 1911, pp. 834–38.

[16] Wilson, California's Legislature, 1994, p. 13; Baker, Problems in State Constitution Revision, p. 1.

[17] Dean E. McHenry, ''Legislative Problems No. 13,'' Bureau of Public Administration, University of California, Berkeley, Samuel C. May, Director, December 15, 1934, pp. 4, 8.

[18] Ibid., 8–10; Baker, Problems in State Constitution Revision, p. 3.

[19] Baker, Problems in State Constitution Revision, p. 3.

[20] Ibid., 4.

[21] Frank P. Grad, The Drafting of State Constitutions: Working Papers for a Manual (New York: National Municipal League, 1967), p. ii, As stated in the ''forward,'' the National Municipal League decided to publish their working papers (co-authored by the Legislative Drafting Research Fund of Columbia University, State Constitutional Studies Program in 1963) in their original form because of ''the current interest in the subject.'' The 1967 publication was particularly timely ''because of the number of state constitutional conventions under way or about to get under way.''

[22] Baker, Problems in State Constitution Revision, p. 5; McHenry, ''Legislative Problems No. 13,'' p. 9.

[23] Baker, Problems in State Constitution Revision, pp. 5–12.

[24] Ibid.; Gerston and Christensen, California Politics and Government, p. 43.

[25] Robert Desty, The Constitution of the State of California Adopted in 1879, with References to Similar Provisions in the Constitutions of Other States . . . to Which is Prefixed . . . a Parallel Arrangement of the Constitutions of 1863 and 1879 (San Francisco: Sumner Whitney & Co., 1879), pp. 70–71; Constitution of 1849, Article IV, Legislative Department, Sections 28, 29, Constitution of 1879, Article IV, Legislative Department, Section Six.

[26] David Hornbeck, California Patterns: A Geographical and Historical Atlas (Mountainview: Mayfield Publishing Company, 1983), Appendix A "Population of California Counties, 1850–1980," p. 95; Baker, Problems in State Constitution Revision, pp. 10, 12.

[27] Wilson, California's Legislature, 1994, pp. 72–73.

[28] Gerston and Christensen, California Politics and Government, p. 43.

[29] Constitution Revision Commission, Working Papers, California State Archives, Sacramento, California, Finding Aid, p. 1; Wilson, California's Legislature, 1994, p. 14.

[30] Constitution Revision Commission, Working Papers, Finding Aid, p. 7; Wilson, California's Legislature, pp. 14–16.

[31] Constitution Revision Commission, Working Papers, Finding Aid, pp. 11–12; Wilson, California's Legislature, 1994, p. 16.

[32] Baker, Problems in State Constitution Revision, p. 4; Wilson, California's Legislature, 1994, p. 13.

[33] Browne, Report of the Debates, pp. 161, 342, 458.

[34] E. B. Willis and P. K. Stockton, Debates and Proceedings of the Constitutional Convention of the State of California, Convened at the City of Sacramento, Saturday, September 28, 1878, Vol. 1, 2, 3 (Sacramento: State Printing Office, 1880), pp. 271–72, 289, 1198–99, 1426–27.

[35] Constitution Revision Commission, Working Papers, Article V Executive Powers Committee Report, 1965–66, "Articles V, VII, and VIII, Summary of Recommendations," draft, n.p.n.

[36] Ibid.

[37] Ibid.

[38] Secretary of State, Elections, Ballot Arguments, November 8, 1966, Part II, p. 16, California State Archives, Sacramento, California; Wilson, California's Legislature, 1994, p. 14.

[39] Secretary of State, Elections, Ballot Arguments, November 5, 1974, pp. 41, 87.

[40] Wilson, California's Legislature, 1994, Appendix C, "Governors of California, 1849–1994," "Lieutenant Governors of California, 1849–1994," pp. 193–94.

[41] Gerston and Christensen, California Politics and Government, pp. 11–30, 72.

[42] Browne, Report of the Debates, pp. 202–03, 346, 458.

[43] Willis and Stockton, Debates and Proceedings, pp. 1091–97.

[44] Ibid.

[45] Ibid.

[46] Ibid., 1107–09.

[47] Ibid., 1400–01.

[48] Ibid., 1474–76.

[49] Constitution Revision Commission, Working Papers, Article IX Committee Report, "Proposition 1, Article IX: Summary of Proposed Revision," pp. V-1, V-2; California State Archives, Constitution Revision Commission, Working Papers, Finding Aid, p. 11.

[50] Secretary of State, Elections, Ballot Arguments, June 2, 1970 Primary Election, pp. 15–17, 26.

[51] Ibid., November 8, 1988 election, pp. 99, 140.

[52] David Lavender, California: A Land of New Beginnings (Lincoln: University of Nebraska Press, 1972), p. 424.

[53] Constitution Revision Commission, Working Papers, Article V Executive Powers Committee Report, 1965–66, n.p.n.

[54] Secretary of State, Elections, Ballot Arguments, November 8, 1966 Election, Part 2, p. 16.

[55] Willis and Stockton, Debates and Proceedings, pp. 924–40; See the account of the battle between the BOE and the railroad in Kern County told by George V. Smith of Bakersfield, pp. 926–27, or of another encounter with Miller & Lux in Monterey County told by Nathaniel G. Wyatt, p. 921. The BOE lost both cases.

[56] Elsey Hurt, California State Government: An Outline of Its Administrative Organization From 1850 to 1936 Vol. 2 (Sacramento: Supervisor of Documents, 1936), p. 45.

[57] Ibid., 46.

[58] Secretary of State, Elections, Ballot Arguments, November 6, 1934, p. 12.

[59] Constitution Revision Commission, Working Papers, Article XXIV Reports, January, 1965, ''Progress Report,'' p. 1.

[60] Alexander Hamilton, James Madison, and John Jay, The Federalist Papers, ed. Clinton Rossiter (New York: New American Library, 1961), pp. 378–79.

[61] Ibid., 379–80; California Legislature, Assembly, Constitution of the United States . . . Articles of Confederation . . .Constitution of the State of California (Sacramento: Assembly, 1993), ''Articles of Confederation—1778,'' Article V, p. 25.

[62] Hamilton, Madison, and Jay, The Federalist Papers, pp. 380–81.

[63] Ibid., 381.

[64] Ibid., 382.

[65] Browne, Report of the Debates, 1849, p. 33.

[66] David W. Brady and Brian J. Gaines, ''A House Discarded? Evaluating the Case for a Unicameral California Legislature.'' [prepared for California Constitution Revision Commission?], n.d.

[67] Ibid., 4, footnote 6, 5; Following Brady and Gaines selection of urban counties, 1910 and 1920 population totals for the north include San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and Marin counties; for the south, Imperial, San Diego, Riverside, Orange, San Bernadino, Los Angeles, Ventura, and Santa Barbara counties. County and state totals taken from Hornbeck, California Patterns, Appendix A, ''Population of California Counties, 1850–1980,'' pp. 94–95.

[68] Brady and Gaines, ''A House Discarded?,'' pp. 5–6.

[69] Ibid., 7.

[70] Ibid., 7–8.

[71] Constitution Revision Commission, Working Papers, Article IV, Report, 1965, ''Staff Draft No. 1,'' p. 1.

[72] Secretary of State, Election Division, Ballot Arguments, November 8, 1966 Election, Part 2, pp. 10–11, 13–14.

[73] Browne, Report of the Debates, 1849, pp. 76–82.

[74] Ibid.

[75] Ibid.

[76] Ibid.

[77] Ibid., 309–11.

[78] Winfield J. Davis, History of Political Conventions in California, 1849–1892 (Sacramento: California State Library, 1893), p. 386; Willis and Stockton, Debates and Proceedings, pp. 742–43.

[79] Willis and Stockton, Debates and Proceedings, pp. 742–43.

[80] Ibid., 742–45.

[81] Ibid.

[82] Ibid.

[83] Ibid., 742–43.

[84] Ibid., 744.

[85] Wilson, California's Legislature, 1994, pp. 61–62; Secretary of State, Elections Division, Ballot Arguments, November 4, 1958 Election, p. 13.

[86] Wilson, California's Legislature, 1994, pp. 62–63.

[87] Ibid.

[88] Ibid., 63.

[89] Ibid., 62; Secretary of State, Elections Division, Ballot Arguments, November 4, 1958 Election, p. 13.

[90] Constitution Revision Commission, Working Papers, Article IV Report, 1965, ''Staff Draft No. 1,'' pp. 3–4.

[91] Ibid., 2.

[92] Secretary of State, Elections Division, Ballot Arguments, November 8, 1966 Election, Part 2, pp. 4, 11; Wilson, California's Legislature, 1994, p. 63.

[93] Secretary of State, Elections Division, Ballot Arguments, November 7, 1972 Election, Pt. 1, p. 12, Pt. 2, p. 4.

[94] Willis and Stockton, Debates and Proceedings, p. 777, 779.

[95] Ibid., 779.

[96] Wilson, California's Legislature, 1994, pp. 61–62; Secretary of State, Elections Division, Ballot Arguments, November 4, 1958 Election, p. 13.

[97] Secretary of State, Elections Division, Ballot Arguments, November 4, 1958 Election, p. 13.

[98] Ibid.

[99] Constitution Revision Commission, Working Papers, Article IV Report, ''Staff Draft No. 1,'' 1965, pp. 9–10.

[100] Browne, Report of the Debates, 1849, see comments of delegates Stewart, Shannon, and McCarver, pp. 400–01.

[101] Ibid., 401–02.

[102] Ibid., 402.

[103] Constitution of Iowa, 1846, Article IV, Section 25, Constitution of New York, 1846, Article III, Section 6 in Congress, Constitutions of the Several States, (1852), pp. 149, 510.

[104] Browne, Report of the Debates, 1849, p. 76.

[105] Willis and Stockton, Debates and Proceedings, p. 742.

[106] Secretary of State, Elections Division, Ballot Arguments, November 4, 1958 Election, p. 7.

[107] Ibid.

[108] Ibid., 8.

[109] Ibid.

[110] Constitution Revision Commission, Working Papers, Article IV Report, ''Staff Draft No. 1,'' 1965, p 6.

[111] Ibid., 7.

[112] Ibid., 5.

[113] Secretary of State, Elections Division, Ballot Arguments, June 8, 1976 Election, p. 58.

[114] Constitution Revision Commission, Working Papers, Article IV Report, 1965, ''Staff Draft No. 1,'' pp. 22–23.

[115] Ibid., 25.

[116] Ibid., ''Letter of Transmittal,'' 1.

[117] Ibid., 26.

STATE BUDGET AND FISCAL PROVISIONS

An Overview of the Early Years of the Budget Process

Reform During Crisis: The Transformation of California's Fiscal System During the Great Depression

STATE BUDGET AND FISCAL PROVISIONS

by Amanda Meeker

An Overview of the Early Years of the Budget Process

The budget was not a major part of the 1849 California constitution, nor did the issue much engage the framers in debate. They made some brief provisions for a fiscal system, most of which they borrowed from other states' constitutions.

Without debate, they adopted a provision from the Iowa state constitution that money could only be drawn from the treasury through appropriations made by law.[1] They did not include specifics on the appropriations process.

The one major fiscal provision outside of taxation was that the state could not contract any debt in excess of $300,000. There was some debate on the amount to be specified in this section, which was initially set at $100,000, a sum borrowed from the Iowa constitution.[2] The committee actually declared that it was "not particular" about the sum, but "thought it necessary to specify some definite amount." [3] Some members of the convention felt that the $100,000 limit was too low, especially since it would be some time before a tax could be collected for the new government. Others disagreed for various reasons. One delegate opposed any public debt at all, arguing that "if we could not carry on our State Government without contracting a debt of that magnitude, we were certainly starting wrong." [4] Two men optimistically opined that in all likelihood no debt at all would be created after the government got on its feet, no matter what amount the Constitution permitted.[5] The convention finally settled on the sum of $300,000 as a compromise between the initially proposed $100,000 and a counterproposal of $500,000.

The constitution did allow for exceptions to this provision, however. In cases of war, invasion, or insurrection the limit could be automatically exceeded. These exceptions would have been particularly relevant to the framers since the territory had very recently been wrested from Mexico, and since troubles with Native Americans persisted. It was in fact used to justify the issuance of Indian War bonds in 1852.[6] In addition, the limit could be exceeded if the state passed a law "for some single object" that included specifications of the ways and means to discharge the debt within twenty years. Such a law could take effect only if a majority of voters ratified it.

The optimists who predicted that the new state would remain free of debt were incorrect; by December 1850 the total state debt amounted to $485,460.28, and by the next December it exceeded $2 million.[7] The exceeding of the constitutional limit for the most part was not occasioned by war or insurrection, nor had the voters ratified it or even been asked to consider it. Yet it continued to climb. Finally, a farmer who opposed the building of a new road took the matter to court, and in 1855 the California Supreme Court declared all debt in excess of $300,000 unconstitutional.[8] In order to maintain its good standing, the state had to pay off the debts as quickly as possible.

When a new constitution was adopted in 1879, several of the old fiscal provisions were retained while more specific provisions regarding the budget were added. Despite the apparent inadequacy of the 1849 Constitution's debt clause, the delegates to the 1879 Constitutional Convention retained the $300,000 state debt limit. The prohibition against government debt reflected the delegates' general distrust of the legislature. In the same vein, the delegates added various specific prohibitions against state spending. For example, they prohibited any public money from being used to support sectarian causes. Each general appropriation bill

was to include only items to pay the salaries of state officers, the expenses of state government, and institutions under government control. One delegate drew upon his own experience in the legislature to explain the problem they sought to avoid by this clause. He noted that people wanting state funds for their causes would "get their friends in the legislature to demand that these appropriations be included, or they will fail to appropriate anything for the sustenance of the state government." [9] Another agreed: "The general appropriation bill must be acted upon and passed by itself. It should not be cumbered up with extraneous matter that would delay its passage until the last moments of the session." [10]

Another change was made at the 1879 convention regarding the budget process. The 1849 constitution had provided for annual legislative sessions, accompanied by annual budgets, primarily because the framers at Monterey felt that the new state would have a great deal of business to attend to, at least for the first few years. By 1862, however, the pace had slowed, and the legislature switched to biennial sessions and budgets.[11] The 1879 constitution retained the biennial schedule. This move went along with a general feeling that minimal government was best. No one wanted career politicians representing them in the legislature.

In the years since the 1879 convention, issues concerning the state debt have sporadically reemerged. In 1908 an amendment changed the period in which the debt would have to be repaid from twenty years to seventy-five. Then in 1956 the period was revised downward again to fifty years, based on the reasoning that in seventy-five years the interest payments would exceed the principal payments.[12] A 1962 amendment put further strictures on the creation of debt by requiring a two-thirds vote in each house of the legislature, instead of a simple majority, before a bond measure could be submitted to the voters.

The budget process was changed significantly by a 1922 initiative amendment. Sponsored by the Commonwealth Club of California, it instituted an appropriations process much the same as it exists today.[13] The governor was to submit a budget bill to the legislature within the first thirty days of the session. In order to remedy the problems that had arisen when the legislature had formerly appropriated money without having to consider the funds available to meet the appropriations, the governor's budget was to be accompanied by a statement of estimated revenues for the biennium.[14] A budget bill was then to be introduced into each house. This bill was the only one that could include more than one item of appropriation. As a matter of expedience, the governor was given the power to reduce or eliminate any items of expenditure in the budget bill passed by the legislature. Maryland's budget process, which had been adopted in 1916, served as a model for California's new executive budget. It was suggested that the new process would "save money because all appropriations will be handled in a business way, duplications prevented, and extravagance avoided." [15]

A major overhaul of the state's fiscal system occurred in the 1933 with the Riley-Stewart amendment. The state was, of course, in the midst of a severe depression, and many people were finding it more and more difficult to pay their property taxes. The amendment's focus was on changing the system of taxation, but it also affected the budget. It provided that funds for the public school system would be set aside before any other appropriations were made, thus making the budget process somewhat less flexible by increasing the percentage of state spending that was constitutionally fixed.[16] The goal of this provision was to shift some of the school tax burden from the counties to the state.[17] Another provision divided state and local taxation by designating that tax revenues from certain professions could be used only for state purposes, while freeing those professions from local taxation.[18] Most important for the budget process was the provision that general fund appropriations for any biennium, excluding school appropriations, could not exceed by more than 5 percent the appropriations for the previous biennium unless approved by a two-thirds vote of each house of

the legislature.[19] Since budget growth after 1933 almost always exceeded 5 percent, this provision made the budget bill essentially require a super-majority for passage. Riley-Stewart also provided that not more than 25 percent of total appropriations could be raised through property taxes. The consequences of the Riley-Stewart amendment, though significant, were not necessarily intended. Its backers primarily wanted relief from ''confiscatory'' property taxes, though increasing the proportion of state aid for schools and slowing government spending were also important.[20] In 1962 an amendment removed the 5 percent formula, instead simply calling for a two-thirds vote on the budget bill. This move merely recognized the existing effect of the Riley-Stewart provisions. As the ballot argument in favor of the measure pointed out, ''the removal of the formula will not change the practical effect of this constitutional provision.'' The amendment was included with several other deletions to ''remove obsolete, superfluous, or superseded provisions.'' [21]

Unprecedented growth during World War II made an annual budget seem necessary to ''eliminate excessive spending and waste in government.'' The biennial budget forced legislators to guess up to two years in advance what expenditures would be necessary and what revenues would be available, a task that seemed increasingly difficult in the ''fast-moving world'' of the 1940s. In the biennium 1943–45, budget estimates had been off, resulting in excess revenues of over $200 million.[22] As a result, an amendment was adopted that provided for an annual budget, to be introduced within the first thirty days of the general session, held in odd-numbered years, and within the first three days of the budget session, held in even-numbered years. Amendment backers argued that an annual budget would allow the people more control over state finances and would allow the legislature to meet unforeseen emergencies.[23] In 1949 the budget session was limited to thirty days in order to make lawmakers ''get down to the brass tacks work of the session sooner.'' [24] Through the work of the constitution revision commission, in 1966 a general overhaul of the article on the legislature abolished the separate budget session. Instead, the legislature was to meet in annual general sessions, at which the budget would be considered along with general legislation.

The two-thirds vote requirement regarding the budget drew considerable debate at the meetings of the constitutional revision commission in the 1960s and 1970s. In 1966 the minority position argued that ''what they intended in 1933 was that the annual financing plan could be passed by majority vote'' while only excess appropriations would require a two-thirds vote. They also pointed out that ''in most cases where extraordinary majority votes are required, the presumption is that we would be better off having no action at all in the event that any substantial minority so desires,'' while it was imperative to pass a budget.[25] The majority of the commissioners, however, concluded that the two-thirds vote was necessary to protect the different interests of urban versus rural and north versus south.[26]

The topic resurfaced in 1970, when several commission members expressed opinions that the provision was anachronistic, while others suggested that the requirement might be a violation of the federal constitution. In another context, the California Supreme Court had recently ruled that giving one-third of the voters the power to veto a measure effectively gave them double the voting power of the other voters.[27] As one commissioner put it, ''our commission, whose function is to create a modern, revised constitution, cannot vote to include an unconstitutional provision.'' [28] Additionally, they recognized that the two-thirds vote requirement ''is going to subject the minority party, whichever party it is, to the temptation to vote to some extent on purely partisan considerations on the single most important proposal that comes before the legislature year by year.'' [29] Another impetus for the discussion on the issue in 1970 was the fact that the legislature had the year before, for the first time, failed to enact a budget by July 1, the start of the fiscal year. Several commissioners

advocated a majority vote for the budget based on the fact that the super-majority vote had "proved to be in effect a political weapon in the hands of the legislative minority." [30] Others, however, argued that it was the only means the minority party had to stop unwanted appropriations, and that if the vote requirements were changed, "the next thing you are going to have is the simple majority on bond issues on the ballot and the taxpayers again will be at the mercy of those people who don't own any property." [31] The amendment as ultimately ratified did not change the super-majority requirement.

Another amendment of 1970 allowed the legislature to raise interest rates on unsold bonds in order to increase their marketability. The goal was to make sure that already-approved bonds to finance various state projects would be sold. As the amendment's proponents pointed out, the only alternative, an unpleasant one, was "pay-as-you-go financing" and higher taxes.[32]

Yet another 1970 amendment required the governor to submit the budget within the first ten days of the legislative session, instead of within thirty days, and required the legislature to pass a budget by June 15, two weeks in advance of the new fiscal year. This action was based on the failure of the legislature to enact a budget by the start of the fiscal year in 1969 and 1970. The amendment's supporters surmised that the extra three weeks in January would allow legislators more time to consider the budget and that the early mandatory deadline would force the legislature to enact the budget in plenty of time before the fiscal year began.[33] As recent events have demonstrated, problems with the budget have continued despite these changes.

A major part of the problem with the budget process has been that although related to the budget bill, the budget implementation bills are governed by what is known as the single-subject rule and must be considered individually, rather than as a package. Since the 1849 Constitution, all bills except for the budget have been required to pertain to a single subject, which must be expressed in its title, a requirement borrowed from the Iowa constitution and adopted by the California delegates without debate. The framers thereby sought to prevent wily legislators from getting provisions enacted by hiding them in popular legislation. Most delegates to the 1879 convention, with their anti-legislature sentiments, also believed strongly in the necessity of such a provision. As one explained, "in the careless way in which legislation is carried on, mischievous provisions may slip in, unless you have such a provision as this in the Constitution." [34] An opposing argument unsuccessfully countered that since they were providing that bills would be read on three different days, "no member of the Legislature could be voting under a trick." [35]

The provision as it stood in the first constitution, however, had not been entirely successful. One delegate to the 1879 convention described having seen a bill on a general subject that included, somewhere near the middle, a provision to purchase a toll-bridge across the Sacramento River.[36] Another delegate pointed out that while in some instances there was legitimate reason to join two subjects in one bill, as it stood in the old constitution the whole bill would be void if it contained more than one subject. He cited a case in the previous legislative session in which a bill was declared void because it dealt with both the maintenance of booms in the Elk River and the removal of obstructions from that river.[37] Based upon such arguments, the convention concluded that if such legislation were passed, the portion not expressed in the title would be void, while the rest of the law would remain valid.

The application of the single-subject rule to the budget trailer bills has also resulted in confusion. Although the budget bill itself may be enacted, some important part of the legislation necessary to make the budget work can be omitted. To address this issue, a proposition was submitted to the voters in 1993 that would have permitted the budget trailer bills to be consolidated into one bill. Proponents argued that the amendment would promote timely passage of the budget and would stop

special interests from "exploiting the fragmented budget process." The opposition countered that the amendment would make it easier to raise taxes because it would make the budget bill harder to understand, an argument that the voters evidently found sufficiently convincing to reject the proposition.[38]

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Reform During Crisis: The Transformation of California's Fiscal System During the Great Depression*

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Reform During Crisis: The Transformation of California's Fiscal System During the Great Depression

Abstract

In the midst of the Great Depression, California engaged in a massive restructuring of its tax system, reducing the reliance on the property tax and introducing sales and income taxes. Our analysis suggests that this restructuring, which included a voter referendum, was primarily driven by a desire to change the mix rather than the level of taxation. Nonetheless, by introducing new taxes that had a higher revenue elasticity than the existing taxes, California created a revenue system that allowed the rapid growth of spending to continue.

Economic historians have been keenly interested in the acceleration of governments' growth during the Great Depression. Robert Higgs argues that both the size and powers of government grow during perceived crises and that the Great Depression provides a classic example of this phenomenon.[1] John Wallis highlights both the growth of federal government at the expense of local government and the growth of state government during the 1930s.[2] He emphasizes the incentives provided by federal grants to change the nature of and size of government programs, particularly in the area of agricultural price supports and public welfare.

In this paper, we focus on an alternative explanation for the growth of state government in the 1930s: the modernization of the tax systems that occurred during the very early part of the Great Depression. Voters, legislators, and government officials transformed state and local fiscal systems throughout the United States during the Great Depression. Retail sales taxes were introduced at a rapid rate during this period. Of the 46 states that now have retail sales taxes, 24 initiated them during the 1930s, the vast majority by 1933.[3] Many states also introduced personal income taxes during this period. No other decade in this century has witnessed as dramatic a set of changes in state tax structures and fiscal systems generally.

Since the fiscal changes in the states occurred early in the 1930s, they potentially could constitute a third independent factor leading to the growth of government. The majority of these changes occurred before the bulk of the federal grant programs were implemented. To the extent that the modernization of the state tax systems permitted higher, sustained revenue growth by increasing the elasticity of the tax systems, they can also account for the "ratchet" effect emphasized by Higgs whereby the growth of government powers continues after the crisis appears to end.

What led to the modernization of state tax systems in the 1930s? Robert Haig and Carl Shoup discuss the variety of economic and political factors that led to the adoption of the sales tax throughout the country during this period.[4] Along with a team of researchers, they closely analyzed the economic and political developments in the states. Based on this detailed research they believed it was not possible to explain the spread of the sales tax with reference to a single source of revenue or expenditure.[5]

Other research highlights the diversity of factors that led twenty states to adopt broad based sales taxes between 1931 and 1938. Based on an econometric investigation, Kim Rueben suggests that states with more severe employment declines and strict balanced budget requirements were more likely to adopt sales taxes.[6] In general, however, she found only weak effects from economic variables. Jens Jensen, a contemporary observer, emphasized the role of property tax limitations.[7] He pointed out that in 1934 all eight states that had previously adopted property tax limitations had enacted retail sales taxes as compared to only nine of the other 40 states.[8]

Because of these conflicting perspectives, it is valuable to examine in- depth the fiscal history of an important state. The changes in the California fiscal system during the 1930s were as dramatic as anywhere in the country. In 1933, voters approved an initiative measure (the Riley-Stewart constitutional amendment) that quickly led to a major restructuring of the entire state and local system, the immediate introduction of a retail sales tax, and the introduction of a personal income tax two years later. The fiscal system enacted in California during the 1930s has persisted in its basic structure through today.[9] These changes have allowed real per-capita state expenditure to grow by a factor of approximately 10 from 1929/30 to 1989/90.

A close examination of the California experience reveals that this fiscal transformation was neither preordained nor intended as a means to allow government to grow. Although the restructuring of the fiscal system did allow government to grow rapidly over the next several decades, raising additional revenue was not the intention behind most of the fiscal changes undertaken during the Great Depression. Voters were primarily interested in changing the mix of taxes, indeed provisions for expenditure limitations were part of the Riley-Stewart amendment

The actions that were taken during this period were dramatic, unpredictable, and potentially risky. For example, the 1933 Riley-Stewart initiative required the state to give up its principal revenue source for financing the General Fund at a time in which it was widely acknowledged that there was a large General Fund deficit and without an explicit source to replace the lost revenue. On the same ballot, voters also overwhelmingly rejected a measure to use proceeds from the state's special fund (replete with revenue from taxes on gasoline) to redeem highway bonds and meet interest payments.

Four factors emerge from a careful examination of California's fiscal history during the early phases of the Great Depression that are crucial to understanding the fiscal transformation. First, there was an extremely rapid growth of government expenditures during the late 1920s and continuing into the 1930s. The growth of these expenditures was common knowledge but political actors deemed some of this expenditure growth "uncontrollable." Second, the state's taxation of utilities was widely viewed as unsatisfactory and there were strong advocates of change in the name of pure tax reform. Third, intergovernmental relations were central to the debate. The role of the state in financing elementary and secondary education was a key focus of political controversy. Finally, and closely related to the question of intergovernmental relations, were issues concerning the structure of taxation. There was general support for property tax relief but deep divisions over the sources of revenue to support this relief and over the mechanisms that needed to be enacted to ensure that the property tax reform was to be lasting.

This article explores the role of these four factors—expenditure growth, pure tax reform, intergovernmental relations, and, most importantly, a change in the desired mix of taxation—in California's fiscal transformation. It also examines the consequences of the modernization of the tax system for closing the deficits that emerged during the 1930s and sustaining revenue growth which allowed for large increases in government spending in later years.

The following sections analyze the fiscal structure prior to the Great Depression, the rapid growth of government spending, the voting behavior for the Riley-Stewart initiative, and possible fiscal alternatives to major structural changes in taxation. The article concludes by contrasting traditional political histories of California during the Great Depression with its innovative and tumultuous fiscal history. We also reflect on the implications of the change in elasticity of the state's tax system for its future economic growth.

An Overview of California Fiscal History During the Depression

In the period 1929/30, total state revenue was approximately $114.6 million of which $65.3 million was in the general fund and $49.3 million was in special funds that were pnimarily for motor vehicle related expenditures. Tax revenues for the general fund came principally from four sources: gross receipts taxes on public utilities (52.5 percent), inheritance and gift taxes (17.8 percent), the bank and corporation franchise tax (10.5 percent), and the insurance gross premiums tax (10.2 percent). Special fund revenues were largely derived from taxes on motor fuels and motor vehicles.[10] Local governments were primarily financed from the property tax. Cities, counties, and special districts would each level their own property taxes.

The most unusual part of the this tax structure was the heavy reliance on a gross receipts tax on utilities to provide general revenues. This tax originated in 1910 from a prior tax reform effort There were difficulties with the tax from its beginning. The primary problem was that the relationship of net income to gross receipts varied across classes of utilities, varied across different sizes of utilities within the same class, and also varied over time. In 1929, a tax commission documented these differences thoroughly and recommended abolishing the gross receipts tax. The commission advocated that utility property be returned to local government tax rolls but be assessed by the state to insure equal treatment across local jurisdictions. These recommendations were rejected by a 1931 joint legislative committee; nonetheless there were well- documented difficulties with the gross receipts tax.[11]

By the early 1930s, demands for property tax relief became pronounced. The primary demand was for increased state aid for elementary and secondary schools, a policy that had been recommended by the 1931 tax commission. Groups supporting property tax relief and increased state aid placed an initiative on the 8 November 1932 general election ballot This initiative not only provided property tax relief but permitted the introduction of personal income taxes and a sales tax. It was defeated by a nearly 2-1 vote.

Early in the next year, Governor Rolph faced the first state fiscal crisis of the depression. At the end of fiscal year 1930/31, the state had a general fund surplus of approximately $31.5 million. By January of 1933, this surplus had disappeared and a $10 million deficit balance was projected for June 1933. The governor's budget message in January also predicted an additional deficit of $66 million for the 1933-35 biennium if no actions were taken.[12] The governor's own proposals were ignored and the legislature worked through the spring in fashioning a budget and the language for the Riley-Stewart initiative.

The Riley-Stewart initiative, which the voters approved in a special election on 27 June 1933, had four main components: public utility property was to be returned to local property tax rolls and the gross receipts tax abolished in 1935; the state would provide additional support for elementary and secondary schools; limits were to be placed on expenditure increases both at the state and local levels; and the Legislature was to be authorized to raise additional revenue to meet the cost for school aid. The source of this revenue was not described in the initiative but it was generally acknowledged that a sales tax would be necessary.

After the Riley-Stewart amendment passed by nearly a two to one margin, the Legislature faced an enlarged state deficit from the additional school aid. It quickly adopted a retail sales tax based on New York's model and also gassed a personal income tax. The personal income tax was vetoed by the governor. There were other revenue increases as well, but these were insufficient to cover expenditures during the biennium and the state fiscal situation continued to deteriorate.

In the beginning of 1935, Governor Frank Merriam estimated that the carryover general fund deficit balance would be $29 million and

that an additional $95 million was needed to balance his proposed budget The deficit was exacerbated by the loss of the gross receipts tax. He proposed an increase in taxes of $107 million that included instituting a personal income tax and raising the sales tax rate from two percent to three percent These changes constituted roughly half of the total tax increase with the remainder coming from increases in rates of other taxes. The Legislature adopted his policy and Merriam was able to return in two years without asking for a tax increase.[13] During the late 1930s, the state again incurred large deficits but they were quickly erased during the build-up and early phases of World War II. No other taxes were introduced during the 1930s. The state did have to borrow extensively during the 1930s and began issuing registered warrants in November of 1933 at an initial interest rate of 5 percent, a rate comparable that paid on AAA corporate bonds. (Short-term US securities paid less than 1 percent) Initially there was no public market for the warrants but most banks did accept them. The outstanding stock of registered warrants reached a peak of over $98 million in July of 1940; shortly thereafter a rapidly improving economy created fiscal surpluses that allowed the warrants to be retired.[14]

The Growth of Government Expenditure

The budget crises of the early 1930s were precipitated by the rapid growth of spending relative to revenue. During this period, there was also a vigorous debate over whether government expenditures were controllable.

General Fund revenues and expenditures—the most common measure of the fiscal health of the state—are available on a consistent basis only for the 1930s. During the 1920s the only consistent series for government spending is based on the "cost of government." [15] The primary difference between cost of government and what is termed state expenditures is the treatment of funds which are merely shifted from one state account to another state account Such transfers are counted as state expenditures but not as costs of government Thus, cost of government is an accurate measure of funds leaving state coffers. Tables 1 and 2 report data on General Fund revenues and expenditures—the focus of budget crises—while Table 3 reports data on expenditures from 1926–36 based on the cost of government series.

Table 1 summarizes nominal and real growth in General Fund expenditures and revenues which occurred from the 1929/30 through the end of the 1930s. The top panel contains the nominal figures. There were three distinct fiscal periods: rapid growth of revenues and expenditures in the 1920s, sharply reduced growth of revenues in the early 1930s, and a later resumption of growth of revenues and expenditures through the remainder of the decade.

This basic pattern also applies to real magnitudes. From 1925/26 through 1929/30, real total spending (as measured by the cost of government) rose by an average of 11 percent per year. From 1930/31 through 1932/33, real General Fund expenditures grew by 14 percent while revenues fell by 8 percent The increases were greater and the declines were less in constant dollars than in current dollars because of the price deflation that occurred in the early 1930s. For 1932/33 through 1940/41, real General Fund spending grew by 10 and real revenues grew by 18 percent.

Another common way of measuring budget trends is in expenditure or revenues per $100 of personal income. Table 2 presents these trends from 1929/30 through the 1930s. From 1929/30 to 1933/34, General Fund expenditures per $100 of state personal income rose each year. The increase in General Fund expenditures was from about $1.29 to $3.23. Total state expenditures (not included in this table) followed a similar pattern.

From 1929/30 to 1933/34, total state revenues per $100 of personal income also steadily drifted up and then continued to rise to over $5.20 by 1937/38. Similarly, General Fund revenues were considerably higher per $100 of personal income in 1933/34 ($2.51) than in 1929/30 ($1.29), and reached $3.60 by 1937/38.

In summary, expenditures and revenues increased at rapid rates prior to the depression.

During the early years of the 1930s, revenues did decline, but expenditures continued to rise, especially in constant-dollar terms. Expenditures and revenues as a share of the state's economic base also rose during the first half of the 1930s, and revenues per $100 of personal income continued to rise throughout most of the decade. These findings indicate that, over the course of the decade, neither reducing state expenditures nor reducing assistance to local governments were the primary tools used to deal with the fiscal crises spawned by the depression. Debt and the introduction of new taxes were the policy tools chosen.

The rapid growth of spending in the late 1920s and early 1930s triggered a debate as to whether government spending was actually controllable. As noted above, this was a period of rapid growth for the California state budget. In the four years after 1925, total state spending rose by 45 percent. By 1931, it had risen by 70 percent.

As the Great Depression set in, state spending did not slow appreciably; it continued to grow at an average of 8 percent per year in 1930–1932. While in nominal terms it appears that the state did rein in spending to some degree, real spending increased sharply because the price level fell in the early years of the depression. Thus, the onset of the Great Depression did little to slow the growth of state spending. However, it did have a very large impact on the overall budget situation because state revenues deteriorated sharply in the early 1930s.

In the late 1920s, tax revenues were rising by an average of 11 percent per year. Since the overall budget was in surplus during this time, there was more than enough additional tax revenue to pay for the increased spending. However, in the early 1930s, total tax revenues fell by an average of 1 percent per year resulting in large deficits.

It was not any particular part of the budget that was growing. Spending was increasing across the board. Table 3 reports the growth rates of nominal spending (using cost of government series) by programmatic category as well as total and average growth rates for selected periods. In the late 1920s, construction and corrections were growing the fastest In the early 1930s, protection, regulation, and benevolence grew at a particularly rapid rate.

Government officials frequently claimed that the budget crisis was out of their control. In his budget message in 1933, Governor Rolph lamented that "existing laws call for expenditures which make it impossible for the Chief Executive alone to solve the problem of presenting a balanced budget without increasing taxes. . . . The Governor of the State of California has control over only approximately 27 percent of the total budget The remaining 73 percent of expenditures is fixed by law, in other words, by the Legislature and the people. Even though the Governor should desire to reduce materially this 73 percent of the expenditures he is without power to do so." [16]

However, the definition of "fixed" charges in the above statements is rather elastic. It conflates two different types of expenditure. Certain charges were fixed by the California Constitution, for example, interest payments and education expenditures. It is legitimate to consider these expenditures beyond the control of the Legislature. However, the definition of fixed charges used above also encompassed what today is commonly called continuing appropriations. These expenditures were established by the Legislature in previous years and thus could be changed or eliminated by the Legislature. Examples of these types of expenditures included aid to the blind, aid to the aged, aid for vocational education, aid for adult education, salaries of Superior Court judges, and subsidies to hospitals for tuberculosis.[17]

What portion of the budget was constitutionally fixed and thus truly beyond the control of the Legislature? Using the Reports of the State Controller, we calculated the fixed charges during this period.[18] Until 1934, only about 30 percent of all state spending was constitutionally fixed. However, a better measure of the role of fixed spending focuses on the General Fund since the budget crisis was a crisis of the General Fund. Until 1934, close to

half of the total expenditures from the General Fund were constitutionally fixed. The Riley-Stewart Amendment increased this percentage for subsequent years. Out of these fixed expenditures, nearly 80 percent went to education and another 16 percent were paid out as interest The budget problems cannot be blamed on rapid growth in fixed spending; from Table 3 we can see that spending on education grew at a slower rate than the overall budget Fixed charges were only part of the problem. There was clearly a deep-seated reluctance to change the ''continuing appropriations.'' California residents and public officials had become accustomed to growing public expenditures.

Understanding the Riley-Stewart Amendment

The single most critical event in California's fiscal history during the depression was the passage of the Riley-Stewart constitutional amendment. As noted above, California immediately adopted a retail sales tax after the amendment's passage and a personal income tax two years later. These changes put in place a revenue system that would permit rapid growth in government for decades. However, developing an elastic revenue system was not the motivating factor for the passage of Riley-Stewart it emerged as a response to growing voter discontent over the property tax during the Great Depression.

As personal income fell during the depression, property tax delinquencies rose in California as they did throughout the country. California experienced less severe problems than did many other jurisdictions. In Los Angeles County, for example, the percentage of uncollected levies rose from 4.3 percent in 1931–32 to 10.1 percent in 1932-33. This was a far cry from the experience in the midwest with a 37.6 percent rate in Milwaukee in 1931-32 and a 40.6 percent rate and widespread tax resistance in Chicago in 1931–32.[19] Nonetheless, there were persistent demands for property tax relief emerging in California.

As Haig and Shoup and Stockwell discuss, real estate interests began to promote limitations on ad valorem taxation, county officials sought state relief from mandated school expenditures which they believed should be assumed by the state and financed with a sales tax, and farm interests favored personal income taxation.[20] These groups finally coalesced around Proposition 9 which was placed on the general election ballot of November 8, 1932.

This initiative would have provided relief to counties for elementary and secondary school which would have enabled the counties to reduce property taxes. However, it also introduced both a personal income tax and a selective sales tax, as well as mandated that teachers' salaries be a fixed percentage of total educational expenditures.

Critics attacked the proposal along several dimensions, in particular arguing that this amendment increased mandated expenditures in bad economic times.[21] Furthermore, the issue was poorly ''framed'' for the voters.[22] The measure as it appeared on the ballot emphasized new taxes, new spending, and ear-marked expenditures for teacher salaries. No mention was given to the potential for substantial property tax relief that would occur as counties were relieved of required support payments for schools. Proposition 9 was defeated by a vote of 1,1144,449 to 552,738.

In early 1933, Governor Rolph faced the daunting task of developing a budget plan for the 1933-35 biennium. As noted above, on a current-law basis there was a $66 million dollar deficit plus a $10 million deficit carryover from the prior biennium. His proposed budget aimed to close these gaps without tax increases. His recommendations included $24 million in reductions in operating budgets and streamlining, $23 million transferred from the special highway fund to the General Fund, a constitutional amendment to reduce state funds to schools ($12 million) and another amendment to allow funds from a state education permanent fund to be used for operating purposes ($11 million).[23]

The Director of Finance, Rolland Vandegrift, provided the justification for these policies. First, some of the funds transferred from the highway fund were to be used to pay principal and interest on highway bonds and thus were appropriate uses for funds raised by user fees. The remainder of the money transferred from the highway fund was premised on the notion that the highway fund could achieve equal economies to that which the Governor would obtain from the general fund operating budget This transfer was appropriate, he argued, because we "should be more concerned with the welfare and happiness of the individual citizen than we are concerned with the building of inanimate roads." [24]

The most controversial part of the budget was the proposed twenty percent reduction in state funds for schools from $30 to $24 per pupil. Vandegrift offered two arguments in support of this reduction. First, there had been over a thirty percent fall in the general price level since 1924 when the $30 amount was placed into the state constitution. Second, he saw no reason why the schools could not make twenty percent savings as the governor proposed for the rest of the government

Almost every component of the governor's plan was highly unpopular with either legislators or the public. For example, in the June 1933 election, voters overwhelming rejected the notion that highway funds should be used for General Fund purposes when they voted down the seemingly innocuous measures to pay principal and interest on highway bonds from special funds. The San Francisco Chronicle regularly editorialized against what it perceived to be this raid on highway funds during the period preceding the election.[25] Its position was perhaps not too surprising given that both the Bay Bridge and Golden Gate Bridge were under construction. To voters and legislators, reductions in state support of the schools would inevitably mean higher property taxes. Teachers also opposed the plan. Since salaries were a high proportion of school costs, maintaining property tax rates would have required large nominal wage reductions.

The governor's plan was ignored by the Legislature. The State Controller, Ray L Riley, and a member of the Board of Equalization, Fred E. Stewart, assumed leadership in the crisis.[26] They offered an initial plan which was substantially changed by the Legislature but nonetheless bore their names. The resulting constitutional amendment, which we have previously described, was offered to the voters in a special election on 27 June 1933.

Unlike Proposition 9, this measure was ideally framed and, indeed, seemed to promise something for all parties. It emphasized property tax relief through the reduction in school expenditures by counties and an increase in the property tax base. Local expenditure limits were designed to force counties to lower rates and not increase spending with the higher tax base. The utility industry would be free of the gross receipts tax and assessed by the state at a rate comparable to that for local property. And despite the fact that new taxes were clearly on the horizon, the nature of the taxes was sufficiently ambiguous so that debates about the relative desirability of income versus sales taxes could be postponed.

Although the ultimate effect of the passage of the Riley-Stewart amendment was to develop an elastic tax system that would permit the growth of government, at the time the support for the initiative was based on very different considerations. While the proponents of Proposition 9 (real estate interests, farm interests, and county officials) also supported Riley-Stewart, there were new proponents as well. Utility interests favored Riley-Stewart because it abolished the gross receipts tax. In addition, some parties supported Riley-Stewart in order to restrain government growth. Taxpayer organizations emphasized the state and local expenditure limitations and saw this as a method to restrain government Proponents of the measure, such as the State Chamber of Commerce, stressed expenditure limitations along with taxpayer property tax relief.[27]

On the other hand, some parties viewed this as a change in the mix or composition of taxes, away from the property tax to a sales tax. It was

commonly recognized that the passage of Riley-Stewart would bring forth additional state taxes. The strongest opposition in San Francisco was from the Retail Dry Goods Association which opposed a retail sales tax; other opposition was not well organized.[28]

One way to address the question of whether the voters were primarily seeking changes in the tax mix or reductions in the size of government is to analyze the voting behavior across counties.[29] There are two parts to our analysis.

We first establish that the vote across counties was consistent with the direct economic interests of the voters. The counties differed in the extent to which they would benefit from the state assumption of school expenditures and the return of public utility property to the tax rolls. Variables measuring these differences can capture the relative gain from changes in the mix of taxation. The regressions assume implicitly that consumers, who ultimately would bear the burden of a retail sales tax, take its effects into account as voters.[30] We also include other background variables in our baseline regression to capture differences in voter sentiment across the counties.

We then examine the effects of variables designed to explore whether the voters also wanted smaller government To capture this, we use the fact that the counties differed on the absolute level of local property taxation and the rate of growth of property tax rates. If voters desired a lower level of government, awe hypothesize that those counties with either the highest tax rates or, alternatively, the most rapid growing tax rates would be the ones most likely to vote for the measure. These regressions implicitly assume that tastes are the same across the counties; if tastes for public services differed, higher tax rates could be associated with a greater demand for public services.

We now turn to the specification of the baseline regression which establishes that voters were cognizant of their economic interests. The dependent variable in this regression is the percentage of votes in each of the 58 counties in favor of the Riley-Stewart measure. The first two independent variables we include are designed to capture the differences in ideological positions across counties. These can be viewed as proxies for ''fixed effects'' in the attitudes of voters across counties. The two variables we chose were the percentage of ''yes'' votes for Proposition 9 and the percentage of registered Republicans. The support for the prior proposition captures the degree of general sentiment for radical reform of the property tax system. The Republican variable captures the significant but unobserved differences evident in voting behavior in prior elections between members of the two parties.

The next two variables in the baseline regression capture the tax-mix variables. The first is the ratio of average daily attendance in elementary schools to the total population. This measure captures the benefits from the state assumption of county school costs. The second variable is the estimated percentage decrease in property tax rates from the return of utility property to the rolls. These estimates are derived from data from the Board of Equalization that was published in Tax Digest in July of 1935.[31] The other series used in the regressions are also from Tax Digest. Before discussing the results of this regression and subsequent tests, there are two econometric issues that should be addressed. First, the counties differ sharply in size, Los Angeles County having over 2 million people and Alpine County only 241. Although the variables are scaled relative to population, there is the potential for heteroskedasticity. Tests for heteroskedasticity were not significant; nonetheless, the results reported below are robust to alternative corrections for heteroskedasticity.[32] Second, the dependent variable is constrained to lie between zero and one. Regressions using the transformation in where x is the percentage ''yes'' vote, which allow the dependent variable to be unconstrained, yielded similar results.

The first column of Table 4 reports the baseline regression. It has an adjusted R-squared of 32 percent and significant coefficients for the prior Proposition 9 vote, the percentage of Republican registrants in the county, and the

two tax mix variables. One way to measure the electoral significance of the variables is to calculate the effect of a one standard deviation change in each of the variables on the vote count A one standard deviation increase in the Proposition 9 vote would increase the Riley-Stewart vote by 2.9 percentage points while a one standard deviation increase in the percentage of Republicans would have a 2.5 percentage point effect. Similar calculations for the two tax mix variables—average daily attendance and utility property—lead to a 4 and 2.6 percentage point effect—respectively.

The model does significantly over predict the percentage ‘‘yes’’ vote for San Francisco. But it would be hard to find a simple model that would fit San Francisco since its percentage ‘‘yes’’ vote was 36 compared to the statewide percentage of 62. San Francisco did have a very low ratio of school children to overall population—7.3 percent compared to the statewide average of 12.8 percent with a standard deviation of 2.1 percent. It also had a relatively low percentage of utility property that would be returned to the rolls. Although we could find no mention of the school age effect, editorials in San Francisco (as well as Los Angeles) remarked that the elimination of the gross receipts tax would hurt urban areas.

The remaining columns of Table 4 test for the hypothesis that the voters wanted lower government by including alternative measures of the size or growth rate of the local tax burden. None of these variables are statistically significant at conventional confidence levels. Tests were run for the total property tax burden (including counties, cities, schools and special districts) in 1934–35; the county tax rate in 1932–33 (adjusted for assessment ratios in counties); and the growth of the county tax rate between 1929–30 and 1932–33. The growth rate variable was the closest to being statistically significant (its p- value was 0.20) but its coefficient was small and negative. The mean change in this variable in the sample was .60 which translates into a decrease in the Riley-Stewart vote of .47 percentage points.

Since San Francisco was and is both a city and a county, its tax rate exceeded the other county measures. To insure that this one observation did not distort the regression, we effectively removed the observation by adding a dummy variable for San Francisco and then testing the 1932–33 county tax rate. The tax rate was still not significant Alternative measures of fiscal distress (based on failures to meet debt obligations) were also not significant

There were several other measures on the ballot including one allowing special funds from the gasoline tax to be used to pay principal and interest on highway bonds. This latter measure was more prominent in the newspapers than the Riley-Stewart amendment and the total number of voters on this measure exceeded total votes on Riley-Stewart by 4.3 percent However, the percentage vote by county on this measure had no explanatory power for the Riley-Stewart vote in the baseline regression. This continued to be true even when all the other variables were excluded from the regression. We also tested the robustness of our results by excluding the Proposition 9 variable and adding a dummy variable for the urban counties of Los Angeles and San Francisco. These alternative specifications did not change the basic results.

The regressions suggest that the vote was consistent with the direct economic interests of the counties and that there is no evidence in support of the view that voters were trying to reduce the size of government. These results suggest that the local expenditure limitations in Riley-Stewart were a means of insuring property tax relief, not a device to cut the existing provision of government services. However, local expenditure limitations provided important psychological support because of one technical feature of the initiative. The Riley-Stewart amendment called for assessment at ‘‘full cash value’’ because when utility property was returned to the property tax rolls it needed to be assessed at similar values across counties. Since assessments averaged forty-four percent of market value statewide, there was

fear, manifest in newspaper editorials, that existing rates would be maintained and property tax bills would soar. Expenditure limitations would prevent this from occurring. As it turned out, the Board of Equalization chose a 50 percent assessment ratio as ''full cash value.''

Two cautionary notes about the results. First, our test for whether voters wanted to change the mix of taxation or reduce the size or growth of government is contingent upon our proxies for variables measuring government's size or growth. We do not have direct observations on voters' preferences for the size of government Second, the regression results do not address the issue of whether the Riley-Stewart amendment was engineered by politicians seeking to create a more elastic tax structure to allow government spending to continue at rapid rates. While this is an intriguing possibility (in that spending grew rapidly in the 1930s), there is no direct evidence in favor of this hypothesis. Indeed, the politicians would have had to have fooled the taxpayer groups who were adamant about the expenditure limitations in the amendment. There were suggestions, however, that the Board of Equalization supported Riley-Stewart because it gave it a new tax to administer (the retail sales tax) and because the creation of the Franchise Tax Board in 1929 had sharply reduced the powers of the Board.[34]

Alternative Budget Strategies

Were the budget problems of the 1930s avoidable? We previously showed that California state expenditures grew appreciably in the early 1930s while tax revenues declined. Could a more modest expenditure pattern have avoided the budget crisis altogether or was the drop in tax revenues so severe that budget problems were inevitable?

Entering the decade of the 1930s, there was a surplus balance in the General Fund of about $33 million. By 1933, annual current year deficits had depleted this surplus. This depletion of the General Fund surplus balance could have been avoided if the Legislature had restrained spending in the 1930s. Suppose the Legislature had frozen real spending at its 1930 level, thereby maintaining the expenditure increases of the 1920s. In that case, the General Fund would have made it through the Great Depression without a crisis. (See Table 5, columns on consent real expenditure). There would have been a small deficit in 1933, but its small size coupled with surpluses in earlier years would have resulted in a General Fund surplus balance in 1933 that was larger than that in 1930.

Since population was growing in the early 1930s, freezing the aggregate level of real spending may not be the appropriate experiment Suppose instead that the Legislature froze spending at the 1930 level of real per capita expenditures. This allows for a higher level of spending in every year than in the previous experiment In this case, the 1933 deficit would have been larger than if real spending was frozen and the surpluses in the other years would have been smaller. However, the year-end General Fund surplus would still have risen between 1930 and 1933. Thus, the Legislature could have avoided the rapid depletion of the General Fund surplus balance in the early years of the depression with moderate restraint on spending increases.

While the General Fund was experiencing persistent, large deficits, the Riley-Stewart amendment overhauled the tax system. We know that the changes brought about by Riley-Stewart did not immediately eliminate the General Fund deficits. Did the Riley-Stewart changes aggravate or alleviate the imbalance in the General Fund?

Riley-Stewart affected both expenditures and tax revenues. On the tax side, the gross receipts tax was phased out and replaced by sales and income taxes. On the expenditure side, additional spending on education was mandated.

To determine what would have happened in the General Fund if Riley-Stewart had not been enacted, we need to make several estimates. First, we need to project what education

spending would have been in the absence of the additional mandates of Riley-Stewart We do this by assuming that education spending between 1934 and 1940 would have grown at the same rate as it did in the years 1925 to 1933—specifically, 5.67 percent per year.

On the tax side, we need to project the revenues from the gross receipts tax in the years 1936 to 1940. To make these projections, we estimate the relationship between gross receipts tax revenue and income for the years 1919 to 1935 and use it to project gross receipts revenues for the next five years.[35] We obtained the best fit by regressing the log of gross receipts revenue on both the level and change in the log of income. The resulting regression was:

$$\text{Log(Tax)} = -4.12 + .89[\text{Log (Income)}] \; 1.32[\text{Log}(\Delta\text{Income})]$$
$$(2.53) \quad (0.31) \qquad\qquad (0.48)$$

Adjusted R-squared = 0.52 [standard errors in parentheses]

Both the income and change in income variables are significant at the five percent level.

These forecasts from the regression are only meant to be a rough estimate of the projected gross receipts tax. None of the qualitative results that follow depend on the precise numbers generated by the forecast For example, adding two standard errors of the regression to the forecast does not alter the qualitative results. In every year in which we project a deficit using the regression we also obtain a deficit using the tax series plus twice the standard error. The actual revenue raised from the income and sales taxes were much larger than any plausible forecast of the gross receipts tax.

To obtain the projected tax revenues in the absence of Riley-Stewart, we subtract actual sales and income tax revenues from total revenues and add our gross receipts tax projection. General Fund balances without Riley-Stewart and under alternative assumptions are reported in Table 5.

From 1930 to 1940, the General Fund ran an actual cumulative deficit of $116 million. By our projections, in the absence of Riley-Stewart, the cumulative deficit over this period would have been significantly higher, $356 million. Moreover, while the actual budget showed surpluses in 1937 and 1938, in the absence of Riley-Stewart there still would have been significant deficits. Thus, while Riley-Stewart did not eliminate the budget crisis, it did significantly alleviate the crisis.

The final counterfactual question we want to ask is whether restrained spending throughout the 1930s would have made Riley-Stewart unnecessary. We can do this by comparing our projected tax revenues in the absence of Riley-Stewart to the nominal spending levels that would have existed if spending had been held to the 1930 level in real or real per capita terms.

The last two columns in Table 5 report the cumulative deficit in both of these cases. With spending frozen at the 1930 real per capita level, the General Fund would have run small deficits from 1933 to 1935, but not nearly large enough to deplete the $33 million surplus which existed in 1930. Moreover, by the end of the decade, the year-end surplus would have grown by $137 million. Freezing spending at the aggregate 1930 real level would have resulted in an even larger surplus.

The state budget crisis of the 1930s could have been avoided by spending restraint The depression would have caused small deficits in the early 1930s, but the surplus that existed in 1930 was large enough to weather the crisis. Such spending restraint would have prevented the need for registered warrants.

Given that the Legislature did increase spending, it is clear that the Riley-Stewart amendment reduced the General Fund deficits. The revenues from sales and income taxes were larger than the loss of revenue from the gross receipts tax and the increased spending on education combined.

These estimates, of course, assume that spending was largely unaffected by the passage of Riley-Stewart It is possible that the additional revenues from Riley-Stewart allowed spending to grow faster than it would have otherwise grown. This is a question of the causal relations of taxing and spending which is quite difficult

to address. However, to the extent that spending was increased, the deficit-reducing impacts of Riley-Stewart would naturally have been reduced.

Conclusion

There are several ironies in California fiscal history in the 1930s. First, traditional political histories fail to recognize the radical changes that occurred. Second, we see another instance of the law of unintended consequences: actions taken by voters to change the mix of taxation allowed the government to grow rapidly in future decades.

The conventional political history of California takes a dim view of the achievements of the Republican governors in the early 1930s. For example, one historian remarked that James Rolph Jr. was originally a Progressive but ″his nineteen years had remade him into a typical business-oriented Republican, and the ceremonial functions of his office had converted him into a glad-handling official greeter who exuded irrepressible confidence and optimism.'' [36] During his campaign for governor in 1930, he told voters to ''smile with Sunny Jim.'' Although this historian looked more favorably upon the next governor Frank Merriam, he noted that Merriam is ''usually written off as a 'reactionary' by most historians (mainly because he used the National Guard against striking longshoreman in San Francisco in 1934 and state highway patrolman against Salinas lettuce strikers in 19 36) or as a do-nothing conservative who caused California to ''mark time'' in its struggle against the Great Depression while the rest of the nation was marching forward under the glorious banner of the New Deal.'' [37]

Instead, the typical heroes of California political history in the 1930s were Upton Sinclair, leading the EPIC (End Poverty in California) movement in a failed attempt at the governorship, and Culbert L. Olsen, the Democratic governor at the end of the 1930s. Olsen had supported Sinclair and looked on his time as governor as an opportunity to redirect politics in California. His administration ended in failure partly because he was ''oblivious to the fact that the national New Deal was over when he took office in January 1939'' and that Democrats (many of whom were quite conservative) only controlled one house of the State Legislature.[38]

From the vantage point of fiscal history, the administrations of Rolph and Merriam were far from conservative; indeed, they were radical. This period witnessed a dramatic change in intergovernmental relations, a sharply reduced reliance on the property tax, and the introduction of two potent new taxes, the sales tax and the income tax. To be sure, Rolph and Merriam did not act alone. They were assisted by other state officers and members of the Legislature. But they clearly supported major and innovative efforts to restructure the fiscal system.

Undoubtedly the most significant fiscal legacy of this period was that it reduced reliance on the property tax and led to the adoption of income and sales taxation. Similar transformations were taking place in other states. Although it appears that voters in California did not recognize this at the time, their desire to reduce the property tax burden put into place an extremely elastic tax system, thereby permitting a rapid expansion of government in California since the 1930s. A change in the mix of taxes led to an increase in overall revenues. From 1929 to 1945, assessed valuations increased in the state by 21 percent while personal income increased by 148 percent The base for the sales and income tax expanded much more rapidly than the base for the property tax. This provides an example of what Higgs terms the ''ratchet'' effects from fiscal crises. In this case, the ratchet arose from fundamental changes in the tax base.

ENDNOTES

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[1] Higgs, Crisis and Leviathan.

[2] Wallis, ''Birth of Old Federalism.''

[3] Ebel and Zimmerman ''Sales Tax Trends,'' p. 8.

[4] Haig and Shoup, Sales Tax.

[5] Ibid., p. 16.

[6] Rueben, ''Political Economy.''

[7] Jensen, ''Property Tax Limitations.''

[8] Ibid., p. 6.

[9] The most significant modification occurred with the passage of Proposition 13 in 1978 which limited property taxation and increased the role of state expenditures.

[10] See Tables 1-5, Assembly Interim Committee, 1947, pp. 122–27.

[11] Stockwell, Studies in California, p. 38.

[12] Authors' calculations based on the Assembly Journal, January 17, 1933, pp. 468-69. The ending year surplus for 1930-31 of $31.5 million was the contemporaneous estimate.

[13] See his budget addresses in the Assembly Journal, January 22, 1935, pp. 261- 274 and January 14, 1937, pp. 223-31.

[14] Report of the State Controller, 1941/42, p. xii.

[15] This data is available from the Reports of the State Controller.

[16] Assembly Journal, 1933, p. 467. The State Controller made similar claims much earlier.

[17] Assembly Journal, 1933, pp. 470-74.

[18] The State Controller's Reports included tables showing the cost of government which were divided into ''Fixed Charges'' and ''Under Legislative and Administrative Control.'' The ratios in the text are fixed charges divided by total spending.

[19] For data on delinquencies, see Tax Digest, 1935, p. 29. Bieto, Taxpayers in Revolt, provides an in-depth discussion of the organized tax resistance movement in the midwest.

[20] Haig and Shoup, Sales Tax, p. 291 and Stockwell, Studies in California, p. 164.

[21] See Morosco, ‘‘Proposed School Tax,’’ pp. 307–13, for a discussion of other difficulties with the proposition.

[22] For a recent discussion of these issues, see Sheffrin, ‘‘Perceptions of Fairness.’’

[23] Assembly Journal, 17 January 1933, pp. 466–76.

[24] Vandegrift, ‘‘Taxes Must Be Reduced,’’ p. 120.

[25] San Francisco Chronicle 5 June 1933 p. 8 and 20 June 1933 p. 12.

[26] In analyzing fiscal developments in California, we concur with Brownlee, ‘‘Tax Regimes,’’ in finding an independent role for political actors in determining actual outcomes.

[27] Haig and Shoup, Sales Tax, pp. 290–94 and Stockwell, Studies in California’’, pp. 163–75.

[28] Haig and Shoup, Sales Tax, p. 293.

[29] This approach is in the spirit of Attiyeh and Engle ‘‘Testing Some Propositions,’’ pp. 131–46 in their work on the passage of Proposition 13.

[30] We do not, however, have any variables that differentiate the burden across consumers in the different counties.

[31] The 1934–35 county tax rate (which did not contain the utility property) was first adjusted to make the assessed value equal to 50 percent of market value, which was the level at which all property was eventually equalized. This was compared to the estimate of rates after the introduction of utility property.

[32] In other regressions, the data was weighted by the square root of the population. This places large weight on the observations from Los Angeles and San Francisco. The same variables were significant in the weighted as unweighted regressions and no other variables were significant.

[33] See Los Angeles Times, 25 June 1933 p. 8 and San Francisco Chronicle 17 June 1933 p. 10.

[34] Haig and Shoup, Sales Tax, pp. 291–92.

[35] The income series used for this estimate is realized income from the National Industrial Conference Board, Economic Record which is available from 1919 to 1938. For 1939 and 1940, we regressed this series on the income series from the U.S. Department of Commerce which is available beginning in 1929 and used the regression to make estimates for the last two years. None of our qualitative results change if we just use the Commerce series but the sample period for the regression will be very short The Conference Board series allows us to have an additional 11 years of data.

[36] Putnam, Modern California Politics, p. 15. The prior governor, C. C. Young, was a Progressive Republican but his support for prohibition prevented him from winning re-election.

[37] Ibid., p. 22.

[38] Ibid., p. 25.

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TABLE 1

CALIFORNIA STATE EXPENDITURES AND REVENUES DURING THE 1930s

Current Dollars

Fiscal Year	Expenditures		Revenues	
	General Fund		General Fund	
	$ Millions	Percent Change	$ Millions	Percent Change
1929/30	65.3	—	65.3	—
1930/31	69.1	6.0	69.5	6.4
1931/32	76.6	10.7	59.8	–13.9
1932/33	76.5	–0.1	50.1	–16.3
1933/34	107.3	40.3	83.2	66.1
1934/35	112.5	4.8	110.0	32.2
1935/36	142.9	27.0	127.0	15.4
1936/37	145.0	1.4	159.7	25.8
1937/38	163.1	12.5	177.0	10.8
1938/39	207.8	27.4	170.8	–3.5
1939/40	200.4	–3.6	178.1	4.2
1940/41	184.8	–7.8	200.0	12.4

Constant 1982 Dollars

Fiscal Year	Expenditures		Revenues	
	General Fund		General Fund	
	$ Millions	Percent Change	$ Millions	Percent Change
1929/30	427.2	—	427.8	—
1930/31	485.7	13.7	488.3	14.1
1931/32	591.6	21.8	462.3	–5.3
1932/33	629.8	6.5	412.6	–10.8
1933/34	886.2	40.7	687.0	66.5
1934/35	909.8	2.7	889.3	29.5
1935/36	1143.1	25.6	1015.5	14.2
1936/37	1126.7	–1.4	1241.5	22.3
1937/38	1245.6	10.5	1351.3	8.8
1938/39	1604.0	28.8	1318.5	–2.4
1939/40	1548.8	–3.4	1376.2	4.4
1940/41	1390.9	–10.2	1506.3	9.5

Source: Report of Assembly Interim Committee, 1947.

TABLE 2

EXPENDITURES AND REVENUES PER $100 OF PERSONAL INCOME

Fiscal Year	Dollar Amounts Per $100 Of Personal Income			
	Expenditures		Revenues	
	General Fund	Total	General Fund	Total
1929/30	1.29	2.26	1.29	2.27
1930/31	1.52	2.68	1.54	2.73
1931/32	2.09	3.51	1.63	3.05
1932/33	2.43	3.93	1.59	3.16
1933/34	3.23	4.80	2.51	4.09
1934/35	3.03	4.49	2.96	4.44
1935/36	3.31	4.69	2.94	4.52
1936/37	2.97	4.48	3.27	4.75
1937/38	3.32	4.96	3.60	5.21
1938/39	4.23	5.83	3.48	5.12
1939/40	3.76	5.31	3.34	5.01
1940/41	2.92	4.33	3.16	4.69

Source: Report of Assembly Interim Committee, 1947.

TABLE 3

GROWTH RATES IN COST OF GOVERNMENT FOR MAJOR DIVISIONS OF GOVERNMENT

(all values expressed as a percent)

Year	Regulative	Constructive	Educational	Developmental	Protective	Benevolent	Curative	Corrective	Penal	Total Cost
1925/26	9.91	24.66	6.98	–4.34	–3.37	–18.07	8.26	0.28	9.08	9.64
1926/27	17.61	0.35	5.58	–24.38	–0.41	36.55	–5.76	7.26	20.87	5.07
1927/28	3.87	7.64	7.55	0.54	6.70	–8.87	19.74	12.10	7.24	6.72
1928/29	13.52	76.39	6.55	–25.46	63.15	–5.57	–3.94	44.08	6.53	17.65
1929/30	10.66	12.92	10.41	–13.70	175.67	49.03	10.81	–8.47	17.61	12.47
1930/31	91.85	5.23	–0.94	9.09	22.75	60.72	–1.53	4.05	10.75	4.11
1931/32	2.82q	13.02	6.68	4.71	–12.04	–2.10	19.39	–10.43	6.48	6.07
1932/33	–3.19	–22.02	2.60	–7.25	–41.07	14.31	–22.76	–18.27	–19.89	–7.59
1933/34	–9.50	9.64	82.87	–10.86	–42.30	–2.19	4.31	–20.58	2.59	31.08
1934/35	14.05	–0.52	0.86	23.73	25.63	25.90	–8.00	2.32	6.40	4.29
1935/36	7.92	3.47	–0.75	7.45	7.31	769.56	46.82	5.75	–4.61	18.86
Average: 1925/26–1928/29	11.23	27.26	6.66	–13.41	16.52	1.01	4.57	15.93	10.93	9.77
Average: 1929/30–1931/32	35.11	10.39	5.38	0.03	62.13	35.89	9.56	–4.95	11.61	7.55
Average: 1925/26–1921/32	21.46	20.03	6.12	–7.65	36.06	15.96	6.71	6.98	11.22	8.82

Budget Category	Share in 1929/30	Description/Example
Regulative	3.08	Regulatory Boards and Commissions; Dept. of Health; Dept. of Industrial Relations
Constructive	24.47	Public Works; Division of Highways; San Francisco Harbor Commission
Educational	34.01	Schools, Elementary through University
Developmental	1.76	Department of Agriculture; Mining Bureau
Protective	3.91	Department of Natural Resources; Flood Control
Benevolent	1.16	Aid to Veterans, Orphans and Blind
Curative	4.98	Mental Health
Corrective	0.89	Correctional Schools
Penal	1.78	Prisons; police

Source: Reports of the State Controller.

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TABLE 4

RILEY-STEWART REGRESSIONS

Dependent Variable: Percent Yes Vote

Variable	*Baseline Model*	*Regressions With Added Variables*			
Constant	.55 (.19)	.62 (.19)	.63 (.18)	.60 (.19)	.55 (.17)
Percent Vote for Proposition 9	.32 (.14)	.23 (.15)	.30 (.15)	.34 (.15)	.32 (.15)
Average Daily Attendance Proportion	1.99 (.68)	1.48 (.67)	1.98 (.63)	1.88 (.67)	1.96 (.63)
Reduction in Tax from Utility Property	.13 (.06)	.09 (.07)	.11 (.06)	.14 (.07)	.13 (.06)
Total Local Property Rate (All Districts)			–.000013 (.000013)		
County Tax Rate 1932–33		.00027 (.00053)		–.00029 (.00058)	
Percentage Change in County Rate 1929–30 to 32–33					0.10 (.07)
San Francisco Dummy		–.27 (.12)			
Adjusted R^2	.32	.36	.32	.31	.31

Notes: Estimated by OLS over 58 counties. Heteroskedasticity corrected standard errors in parentheses.

Source: see text for detailed descriptions of variables.

TABLE 5

GENERAL FUND BALANCE PER YEAR UNDER DIFFERENT ASSUMPTIONS

Fiscal Year	With Riley-Stewart Tax Changes			Without Riley-Stewart Tax Changes		
	Actual expenditures	Constant real expenditures	Constant real per capita expenditures	No Riley-Stewart expenditures	Constant real expenditures	Constant real per capita expenditures
1929/30	96	96	96	96	96	96
1930/31	371	8954	7007	371	8954	7007
1931/32	–16733	4817	1739	–16733	4817	1739
1932/33	–26383	–1495	–3979	–26383	–1495	–3979
1933/34	–24128	31603	28083	–24096	–1635	–5155
1934/35	–2533	57116	53359	–27636	644	–3113
1935/36	–15951	73651	68879	–40240	21317	16545
1936/37	14763	104705	96673	–20475	42774	34742
1937/38	13846	121083	110605	–36938	42902	32424
1938/39	–36986	115373	104306	–86335	38328	27261
1939/40	–22338	123045	110871	–77776	41350	29176
Cumulative: 1929/40	–115976	638947	577639	–356145	198051	136743

Notes: All numbers are in thousands of dollars.

Source: Authors' calculations (see text) and Report of the Assembly Committee on State and Local Taxation, 1947.

K–12 EDUCATION

K–12 EDUCATION

by Amanda Meeker

Overview of the History of Constitutional Provisions Dealing with K–12 Education

Education has been a vital interest of the state government in California since the state drafted its first constitution. Through the years, as the culture has changed and politics have shifted, ideas about the state's role in education also have evolved. Over time, there has been an increasing belief in the importance of education. As the culture has become more sophisticated, the state has been called upon to provide an ever-widening array of educational opportunities for California's students. Where only an elementary education was once necessary, now Californians see a need for a strong state-provided university education. Another gradual trend, with a few minor setbacks, has been toward increasing local control over education. Where the Legislature once controlled everything from the organization of schools to choosing textbooks, now local districts have much greater authority.[1]

The 1849 Constitution provided that the Legislature should "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvements," and should maintain a system of free common schools to be kept open at least three months out of every year. It also specified various sources of money, such as revenues from lands granted by Congress, that were to be set aside as a permanent school fund. The article on education was similar to that of the Iowa Constitution.

Though the education article was not lengthy, the subject was important to the framers at Monterey. They agreed that education was crucial to the future of the state, and that a free education (for the lower grades) was necessary. Not surprisingly, California's school system was poor in 1849, and those families that did have children with them often had to send their children to the States, Chile, or Peru to be properly educated.[2] By 1850 the new state's educational system had been founded: one public school in Sonoma, with thirty-seven students, and another in Santa Barbara, with twelve.[3]

It was initially suggested that the Legislature should be allowed to appropriate monies out of portions of the school fund for other purposes as it saw fit. Some worried that the school lands, out of whose rents money was to come for the schools, might be located in the mining districts, in which case the "funds derived from them might rise to such an enormous amount that it might be doing the other parts of the State an injustice to appropriate all this revenue to school purposes." [4] The proviso was voted down, however, by a 31 to 5 margin by those who believed it was important that the money be inviolably set aside for education. They pointed out that "nothing will have a greater tendency to secure prosperity for our state . . . than by providing for the education of our posterity" and that no amount of money could ever "secure too great a spread of knowledge." [5] There were practical arguments too. The framers generally agreed that California would benefit from further immigration. For the state to prosper, it needed people to come who would stay, not just dig gold and then return home to their families.[6] A liberal school fund, one man pointed out, would be "an inducement to a most valuable class of the population to come here—families having children." [7] Another encouraged the bachelors present to vote in favor of a liberal school fund as a means of attracting families with potentially marriageable daughters to California.[8]

The article on education stood the test of time better than some of the other articles, but still the revised Constitution of 1879 did make some changes to it. Like the framers of the original Constitution, the 1879 delegates thought education was a cornerstone of their state, and their changes were aimed at securing education's prominent place.[9] One delegate summed up the general attitude of the convention: "it is a right that every child possesses, to be educated freely by the government." [10] The new constitution increased the number of months the schools were to remain in session from three months to six and added a preliminary sentence, taken from the constitution of Missouri, to the article, emphasizing the importance of education.[11] There was some argument on including the phrase, as some felt that a statement of principle had no place in a constitution. Among those who disagreed, one argued that it would provide the answer if anyone should question why the state furnished free education.[12]

Despite their commitment to education, many of the delegates felt strongly that an elementary school education was all that was necessary. This attitude was evident in the section on the state school fund, which was retained from the 1849 constitution. Although the new constitution provided that the public school system could include high schools, technical schools, and teacher training schools, it also specified that all revenue from the school fund was to go exclusively to the grammar and primary schools.[13] While some argued that districts ought to be allowed to set up any kind of school they desired, the majority believed that funds should be guaranteed to educate children only in the lower grades.[14] As one delegate explained, "if it is desired to educate beyond that point, I hold that it is the privilege of every parent to educate their children up as high as they choose . . . but I deny that the State owes that kind of education to the children." [15] The prevailing sentiment was: "every child in the State shall receive the benefits of a common school education—no more and no less." [16]

The general attitude at the 1879 convention was one of distrust of the state government. Throughout the convention, the delegates sought to put strictures on the Legislature, making certain to specify various acts that should be forbidden. In that vein, the delegates agreed without debate that no religious doctrine could be taught in any public school.[17] Considerable discussion of prohibiting the teaching of foreign languages in the public schools was a feature of the debates, but no such provision was ultimately included. The delegates also gave local governments considerably more control over the schools in their districts than they had enjoyed previously.[18] The prevailing opinion was expressed by the delegate who proclaimed his hope that all "amendments tending to centralize power will be voted down." [19] In keeping with that perspective, the new constitution gave the local boards of education, or boards of supervisors where there were no boards of education, the responsibility to choose textbooks for their district schools and to examine teachers and grant teachers' certificates, privileges formerly of the Legislature.[20] By these actions, the delegates hoped to avoid the "corrupting influence attached to the private competition and speculation of the present system." [21] Some were concerned that the relaxation of centralized authority would lead to standards being lowered in counties that lacked enough teachers.[22] However, worries about the lack of uniformity that their restructuring might entail were generally put aside. One delegate voiced quite the reverse sentiment, asking, "How can you allow every one to develop their natural faculties if the study has to be equal and uniform for all?" [23]

Giving local authorities the power to choose the textbooks evidently did not work very well. During the late nineteenth century, there were many more school districts than there are today, with many of them being one-room schools. Teachers were not well trained and, as a dissenter at the 1879 convention had pointed out, many of the county supervisors, "selected with reference to their competency to deal with county roads and such subjects, are not the best

men to deal with the schools.'' [24] As a result, an 1884 constitutional amendment put the decision back at the state level, this time with a new State Board of Education, a body that several delegates had advocated in 1879.[25] The board was to consist of the governor, the superintendent of schools, and the principals of the state normal schools. The State Printing Office would produce the textbooks and sell them at cost to the students, a measure that also had been suggested at the 1879 convention on the grounds that it would ''forever put an end to the disgraceful squabble between rival book houses and the corrupting influence growing therefrom.'' [26] Teachers' examinations and certificates were left with the local boards.

No important amendment to this section occurred until 1912, when it was specified that the State Board of Education should be elected and that textbooks for elementary schools should be provided by the state at no charge. The proponents of free textbooks argued that textbooks were the most necessary of supplies to the students and should be free, thus making the public schools ''free in fact as well as name.'' [27] They also suggested that it would ''remove the last excuse of selfish parents not to send their children to school.'' [28]

As schools improved and a good education became increasingly important in California society, a slow trend in constitutional amendments began toward supporting wider levels of education. A 1902 amendment authorized the Legislature to provide for a special tax to support high schools and technical schools. A 1920 amendment added kindergartens to the definition of the school system. It also specified teacher salaries and mandated that the Legislature provide at least $30 per student into the State School Fund and that it create a State High School Fund with the same amount of money per pupil.[29] World War I inflation had made teachers' salaries less than adequate, while the war boom had brought new jobs to California. As a result, in 1920 there were more than 600 schools in the state that lacked teachers, mostly in the rural areas. The goal of the amendment was to ''provide a more definite and adequate support for public schools,'' and thereby prevent families who could not find suitable instruction for their children in the rural districts from moving off their farms, which might then fall into disuse or be taken over ''by Japanese and other Orientals.'' [30] By mandating the level of state contribution, the proponents argued, the amendment also halted a trend in which the state was shifting the economic burden of the schools onto the counties.[31] In 1946 the state school system was again revised, this time to include colleges, the amount to be provided in the School Fund was raised to $120 per student in kindergarten through the college level, and teacher salaries were again raised. War was again partially responsible for the amendment. Immigration to California during World War II was extremely brisk and birthrates also were rising. Retired teachers were re-enlisted, new teachers were recruited by lowering the credential standards, and others taught two separate shifts of students each day. As the amendment's proponents said, ''California's public school system is confronted with the most serious crisis in its history.'' [32] They sought to resolve it by increasing funding. In 1952 the amount was again raised, this time to $180. In 1964 another change was made, this time a deletion of the section that had been in the constitution since its beginnings in 1849 regarding sources of school revenue. Most of the 5.5 million acres granted by Congress in 1853 had long since been sold, so the provision that their revenues should go into the school fund was obsolete. According to the argument in favor of deleting the provision, the move would not reduce funding for schools, but would merely eliminate ''unnecessary accounting procedures.'' [33]

Such constant revisions of specifics made it clear to the 1960s Constitution Revision Commission that the article on education needed to be pared down to basic law. As one report to the commission concluded, ''Article 9 contains much legislative detail'' and much that is ''outmoded and thus obsolete or meaningless.'' [34] Accordingly, the commission recommended deleting mention of grade levels, specific amounts to be provided to the school

fund, and teachers' salaries. The redrafted article was substantially shorter than it had been, but these three recommendations were not acted upon.

True to the ever-expanding interest in higher education, much of the revision commission's debate centered on the colleges and universities. Nevertheless, the commission did take up various aspects of the article that centered on elementary and high school issues. One major topic of discussion, which never emerged from the discussion phase, was whether state funds should be provided for students who attended private schools. The ongoing debate over who should choose textbooks was renewed during the revision commission's work. Local control had again become a rallying cry, with argument that in a diverse state such as California, local agencies knew best what was desirable for the local children.[35] The proponents of local choice argued, "the best textbook for a gifted child in Beverly Hills may not suit a rural child in Coachella with an English language handicap." [36] A report to the commission pointed out that school districts were becoming increasingly sophisticated and capable of making wise choices for the schools.[37] On the other side, proponents of uniformity cited the advantage to a mobile population if a child could switch districts and still have the same texts.[38]

Most of the revision commission's recommendations were accepted. In 1970, the voters approved providing free textbooks for students in grades one through eight. A 1976 amendment permitted two or more county boards of education to merge to share responsibilities. Additionally, local voters received the right to choose whether their county superintendents of education should be elected or appointed. The county board of education was given the power to determine the county superintendent's salary.

ENDNOTES

K–12 Education

[1] Cardinal Goodwin, The Establishment of State Government in California (New York: Macmillan, 1914), 240.

[2] Delegate Halleck, in J. Ross Browne, Report of the Debates in the Convention of California, on the Formation of the State Constitution (Washington, DC: John Towers, 1850), 351.

[3] Goodwin, State Government, 347.

[4] Delegate Elisha Crosby, in Browne, Report, 204.

[5] Delegates McCarver and Semple, in Browne, Report, 204.

[6] Delegate Hoppe, in Browne, Report, 351.

[7] Delegate Francis Lippett, in Browne, Report, 346–47.

[8] Delegate John McDougal, in Browne, Report, 353.

[9] Delegate Joseph Winans, in E. B. Willis and P. K. Stockton, Debates and Proceedings of the Constitutional Convention of the State of California (Sacramento: State Printing Office, 1881), 1087.

[10] Delegate Alphonse Vacquerel, in Debates, 1102–03.

[11] Art. 9, Sec. 5; Art. 9, Sec 1.

[12] Delegate Lucius Morse, in Debates, 1089.

[13] Art. 9, Sec. 6.

[14] For the former view, see Delegate Winans, in Debates, 1099.

[15] Delegate James Caples, in Debates, 1409.

[16] Delegate Henry Larkin, in Debates, 1412.

[17] Debates, 1401; Art. 9, Sec. 8.

[18] Delegate Larkin, in Debates, 1400.

[19] Delegate Larkin, in Debates, 1400.

[20] Art. 9, Sec. 7.

[21] Delegate O'Sullivan, in Debates, 1401.

[22] Delegate Eli Blackmer, in Debates, 1400.

[23] Delegate Vacquerel, in Debates, 1397.

[24] Delegate C.W. Cross, in Debates, 1476.

[25] See for example Delegate Blackmer, in Debates, 1400.

[26] Delegate O'Sullivan, in Debates, 1401.

[27] Ballot Argument, November 1912.

[28] Ibid.

[29] Art. 9, Sec. 6.

[30] Ballot Argument, November 1920.

[31] Ibid.

[32] Ballot Argument, November 1946.

[33] Ballot Argument, November 1964.

[34] Hollis Allen and Conrad Briner, Study of the Educational Provisions of the California State Constitution, (California Constitution Revision Commission, 1966), 2.

[35] John FitzRandolph, Article IX Background Study, (California Constitution Revision Commission, 1967), 61.

[36] Ballot Argument, June 1970.

[37] Allen & Briner, Educational Provisions,17.

[38] FitzRandolph, Background Study, 61.

LOCAL GOVERNMENT

An Overview of the History of Constitutional Provisions Dealing with Local Government

"Creatures of Statute . . . Children of Trade: The Legal Origins of California Cities

LOCAL GOVERNMENT

by Amanda Meeker

An Overview of the History of Constitutional Provisions Dealing with Local Government

The 1849 Constitution gave the legislature considerable power over local government, making it responsible for providing a uniform system of county and town governments. The Legislature, not the local authorities, had the power to incorporate cities and could restrict their power to tax, assess, borrow, and loan, provisions borrowed from the constitution of New York.[1] The Legislature could provide for the election of county boards of supervisors, though all county officers were to be supported by their respective counties, a provision taken from the constitution of Wisconsin. The framers thought it more likely that the local governments might oppress the people than that the Legislature would do so.[2]

When the framers decided that the Legislature should never create corporations by special act, they added, "except for political or municipal purposes." Although there was considerable argument over this section, no one questioned the advisability of putting the power to create town governments in the hands of the Legislature.[3] Again, there was precedent for their decision; the section had been taken nearly literally from the constitution of New York.[4]

It was not long before various provisions in the new state's constitution began drawing criticism. The state was changing rapidly, and the constitution had been framed for another era. People began calling for a revision of the document as early as 1857.[5] In 1877 the voters approved a measure providing for a new Constitutional Convention, which was held in 1879. The Workingmen's Party, formed in 1877 in San Francisco, played an important role in the convention preliminaries, and took 51 of the 152 seats at the convention, carrying San Francisco, Los Angeles, and Nevada City.[6] Though there was a general anti-legislature sentiment at the convention, the Workingmen's delegates were perhaps the most adamantly opposed to centralized government. As the Workingmen, led by Dennis Kearney, had been holding their riotous anti-Chinese, anti-wealth meetings in the sand lots of San Francisco, the Legislature had been passing special legislation to, among other things, increase San Francisco's police force and to appropriate $20,000 in the interests of the city's public peace.[7] At the convention, although the Workingmen made several proposals that garnered little enthusiasm, such as having a unicameral legislature and abolishing the office of lieutenant governor, their opposition to centralized power did find broad support among the delegates.[8]

The 1849 Constitution's provisions for local government earned considerable criticism. Many delegates at the 1879 convention spoke strongly against special legislation, by which they primarily meant laws affecting singular matters on the local level. As one delegate put it, "there is nothing in the whole state that is more demanded" than "to cut off special legislation." [9] The legislature had been giving considerable time to deciding local matters, to the neglect of more important statewide affairs. According to one delegate, matters "of vast importance to the state" were pushed aside until the end of the session "and then passed, if at all, without any consideration." [10] In the most recent session, in fact, the legislature had passed 572 laws, of which 503 were special legislation.[11]

Additionally, many people felt that the Legislature really had no sense of what was necessary on the local level, and should leave those matters to the people who lived there and did know what their communities needed. As one delegate argued, ''special bills were passed often . . . without any member of the legislature knowing anything about them except the member who introduced them.'' [12] Not only was special legislation, in their eyes, ''detrimental to the interests of counties and townships,'' but it also was ''one of the greatest sources of corruption . . . in our legislative halls.'' [13] As a result, the new constitution included a prohibition against special legislation in thirty-three specific instances and in any other case in which a general law would apply.[14] The provision was ''designed to reduce [the legislature's] labors, so they will be confined almost entirely to the perfecting of the codes; to [stop it from] frittering away the people's money; to prevent jobbery, and to blot out of existence the lobby; and to reduce the Legislature to something like a fundamental body.'' [15] It was pointed out that ''all the more recent Constitutions'' were including similar provisions. [16]

Henceforth, the legislature was to provide only by general laws for the incorporation of cities and towns.[17] A delegate from San Francisco explained that they hoped that this would ''cut off the log-rolling around the Legislature by men who are scheming for the offices. One man wants to be County Judge, another Sheriff. . . . In former times the legislative power was unrestricted. But since then it has been found necessary to place restrictions upon the Legislature. It is the policy now to give the people more direct control, and take away from the Legislature the power to pass special laws.'' [18] Cities and towns were subject only to general laws.

San Francisco came away from the convention with new powers of self government. Cities with populations over 100,000 (which included at the time only San Francisco) were permitted to frame charters for their own government. The provisions of the charter would supersede all special laws that were inconsistent with it.[19] San Francisco was singled out because it was a unique entity. No other town even approached it in population. As one delegate explained, general laws could not ''be broad enough to cover the interests of the people of San Francisco.'' Additionally, of course, the city vociferously called for rights of self-government. There was a large contingent of delegates from San Francisco, one of whom demanded indignantly, ''What reason have these gentlemen to give why we should not manage our own affairs?'' [20] The provision for San Francisco mimicked Missouri's provision for St. Louis. In deference to fears that a city might adopt an ''injudicious'' charter, and that they were making San Francisco into ''an independent sovereignty . . . entirely outside of the control and jurisdiction of the Legislature,'' however, the constitution did provide that the Legislature would have to approve the charter before it could take effect.[21] Interestingly enough, the provisions favoring San Francisco were not enough to win its support; in the election, the city did not provide a majority vote for the new constitution, possibly because merchants, businessmen, and corporations, of which there were many in the city, generally opposed it.[22]

While San Francisco and other cities that might grow to have populations over 100,000 were granted a notable increase in power, the counties did not receive equal rights. Unlike San Francisco, the counties were relatively lightly populated and were not well-organized. Many contained no incorporated cities and were composed largely of undeveloped land.[23] No one at the convention was vocal in demanding rights for counties, so the issue was not discussed. The local government article recognized them as ''subdivisions of this state,'' which has been restrictively construed to mean that they are nothing more than subsidiaries of the state.[24] Additionally, it was the legislature's prerogative to establish a uniform system of county governments and to determine the duties and terms of office of county officials.[25] While it was suggested that the counties should determine the duties of their officers, that proposal was rejected. In opposition to the

suggestion, one delegate complained, ''the Legislature has been so entirely shorn of its power, that it's almost a useless organization.'' [26] In theory, the requirement that the rules be uniform would prevent any special legislation. To avoid any necessity for special legislation, the legislature was permitted to classify the counties by population in order to fix the salaries of the county officials.[27] Putting salaries in the hands of the Legislature was partly due to the fear that if wages were left with the local boards, those boards might very well ''so reduce the pay that these officers cannot afford to hold the office.'' [28] Recent financial troubles of one county had brought it to the point where ''if they could have done it, they would not have had a single officer in the county.'' [29] Nevertheless, there were some objections to putting such broad powers into the hands of the legislature. A delegate pointed out that the counties had frequently petitioned to be able to form their own townships, and that ''local matters should be determined by local officers.'' [30]

Despite giving these powers to the legislature, the perception remained that ''the object of the people in having this convention called . . . was to have as much of the local legislation taken away from the Legislature as possible, and given to the different counties and cities.'' [31] To address this object, the counties were granted the power to make and enforce all laws ''not in conflict'' with general state laws.[32] Local laws could, however, be found in conflict with general laws for various reasons, including if they duplicated state laws in any way, making the grant of power a little less permissive than it appeared.[33] Similar limited home rule provisions had been common in charters that had previously been granted in California, and appeared in the 1875 constitution of Missouri.[34] An additional restriction prohibited the legislature from imposing taxes for local purposes.[35]

Several other provisions regarding counties restricted legislative power. For example, county seats were not to be moved except by a two-thirds vote of the people in the county.[36] This stipulation was intended to prevent the state of affairs in which, as one delegate put it, ''the county seats have been almost on wheels.'' [37] As a later report has pointed out, moving county seats was an important issue, since in the nineteenth century the location of a county seat was critical to economic development.

Another provision was that no new county could be created if it had less than 5,000 people or if its creation caused another county to have less than 8,000 people.[38] Though there was some argument that the provision would in essence prevent any new counties from forming, the object was to prevent indiscriminate creation of new counties, in which ''Carpetbaggers go to work and create a new county in order to place themselves in positions.'' [39] As a delegate explained the purpose of the prohibition, it was intended to ''put the brakes on the very bad practice of dividing up counties for the purpose of making some gentleman's farm valuable, or affording places and positions for hungry politicians.'' [40] Another pointed out that the habit of forming new counties whenever a mining excitement occurred had been ''a great detriment to the State.'' [41] Significant problems with the formation of new counties had in fact occurred. In 1874, for example, Klamath County was dissolved, having been so reduced by annexations to neighboring counties that, according to one report, ''little remained . . . except a mountainous area and an almost unpayable debt.'' [42] It was also pointed out that the new constitution should embrace current political thought on the issue of local versus state control so that it would not ''be behind the age.'' [43] An opposing view that there were counties so large that a man might have to travel 100 miles to the county seat, and the county ought to be able to be divided whether or not it had 5,000 residents, did not sway the majority in their quest to rein in the Legislature.[44]

The constitution had, of course, not pleased everyone, and amendments followed soon after its adoption. Most headed in the direction of increased powers for local governments. Not

surprisingly, other cities sought the same advantages given to San Francisco, and in 1887 the ability to frame a charter was granted to cities of 10,000 or more. Still smaller towns then wanted the same rights, and in 1890 the provisions were extended to include cities of 3,500 or more. Additionally, the charters were now to supersede all laws inconsistent with them, not just all "special laws." As the number of chartered cities grew, so too did questions regarding their status in relation to state government. An 1896 amendment provided that cities and towns were subject to general laws except in municipal affairs, a more liberal grant of power than had been in the section as originally adopted. A 1914 amendment placed the cities even farther from the reach of general laws by providing that chartered cities and towns could "make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters." [45]

In 1911 an amendment allowed chartered cities to establish borough systems of government, in which districts could be granted special municipal powers.[46] A 1914 amendment specified that chartered cities might make and enforce all municipal laws and regulations, subject only to restrictions in their charters, though they were subject to general laws "in all other matters." [47] In 1922 it was provided that no city could be annexed to any other municipality unless a majority of its voters agreed.[48]

In the stipulations about forming new counties, increasing population soon outdated the numbers specified in the 1879 constitution. A 1910 amendment provided that the number of residents in a new county could not be less than 8,000 and no county could be reduced to a population of less than 20,000.[49] The amendment came partly in response to a recent supreme court decision that had held that a special law making a county line change was constitutional.[50] The amendment's purpose was to "make it more difficult to organize new counties within the state." Several new counties had been created over the last twenty years, and the amendment's proponents argued that "sometimes the new county is promoted largely as a real estate venture by residents of a locality that is ambitious to become a county seat." The amendment, they said, would "put a stop to efforts to cut the state up into small and impecunious political subdivisions." [51] In that statement they were correct; no new counties were formed after Imperial in 1907.[52]

In a reflection of the trend toward more powers for the cities, counties also began gaining more autonomy. In 1911 counties were finally given the right to adopt charters for their organization.[53] In part, this addressed problems that had persisted since before 1879. Chief among these was that legislators were passing laws affecting counties about which they knew nothing. According to one witness, "By a time honored custom of courtesy the framing of the county bills is left to the member or members from each county without inquiry." [54] The proponents of county charters saw the measure as a "logical growth from the successful administration of 'charter cities'." They pointed out that although the delegates in 1879 had believed that the "uniform system" of county government would be "impregnable to the assault of those demanding special laws," such was not the case. The legislature had used the permission to classify counties to "put each county in a class by itself," thus evading the prohibition against special legislation while achieving the same effect. The amendment's backers believed that "if the people had a voice in their county government . . . special favors and political 'plums' . . . would not be parceled out." [55] The move was in accord with the new progressive politics in California. Those in favor of the amendment believed that the citizens, newly armed with the initiative, referendum, and recall, could and should actively shape their county government.

Amendments in 1933 further strengthened home rule. The provision that the legislature was to establish a uniform system of county governments (Sec. 4) was repealed. Additionally, the county boards of supervisors were given the power to determine the salaries of all county

officers other than themselves and the district attorneys and auditors. The intention was to "bring flexibility, efficiency, and economy to county government" while also bringing "the matter closer home." [56]

With such constant revisions having added greatly to the length and complexity of the local government article, when the constitution revision commission began its work in the 1960s it found plenty to change. Even without the amendments, the article had been unwieldy, since in their attempt to check the power of the legislature, the delegates to the constitutional convention of 1879 had loaded the article with prohibitions and specifications. As the revision commission pointed out, the local government article was longer than the entire United States Constitution, full of obsolete provisions, and laden with detail that properly belonged in statutory law.[57] The rewritten article, approved by the voters in 1970, pared the article down from 22,000 words to 6,000.[58] Most of the excisions dealt with procedure, such as the steps to frame a charter, or detail, such as the specific instances in which special legislation was forbidden. As a report to the commission noted, such "minute particularization" on these topics "perhaps reflects a somewhat anachronistic distrust of the state legislature." [59] While keeping most of the overall meaning intact, the new article did make some changes, mostly in the direction of granting more power to county governments.

The role of counties had changed considerably since the constitution was adopted. A report to the commission noted, "the power now exercised by county governments goes well beyond the original conception of the county as a local entity administering state functions. A modern urban county . . . can't be accurately called a mere 'legal subdivision of the state'." [60] As the population of the state increased, especially after 1940, and the trend toward suburbanization began, the counties began to shoulder responsibilities formerly in the hands of city governments. Such duties as water conservation, flood control, health services, and library services, once in the realm of the municipal government, became necessary in the counties as well.[61] An author as early as 1947 pointed out that "today county government in California operates neither exclusively as an instrumentality of the state nor as a unit of local self-government. It is in transition with its future course to a certain extent uncharted." [62] Recognizing counties' increasingly important functions, the new article strengthened local government and allowed it greater flexibility.[63] For example, it allowed counties, instead of the legislature, to fix the salaries of district attorneys and county auditors, allowed counties to establish new departments without legislative approval, and required voter approval for a new county to be formed or for counties to be consolidated. It also made many of the article's provisions applicable to both cities and counties.[64] City government was also strengthened; the revised article allowed all cities, not just those with populations greater than 3,500, to adopt charters and allowed a majority vote, instead of a two thirds vote, to repeal a charter.

Local powers were further strengthened after the June 1970 overhaul. An amendment to the new article came only a few months later, at the November 1970 general election. County governments, instead of the legislature, were given the power to determine the salaries of their members, subject to referendum. The proponents of the amendment emphasized the importance of "home rule," pointing out that without the amendment, "salaries are borne by local taxpayers, yet state legislators tell you how much you should be taxed." [65] In 1974 an amendment allowed cities and counties to adopt, amend, or repeal their charters by a majority vote without legislative approval. The goal was pragmatic: to eliminate the need for the legislature to spend time approving charters, none of which had been rejected in the years since the provision had been included in the 1879 constitution, and to save the costs of printing the bills approving the charter actions. Another amendment, approved at the next election, allowed county school superintendents to be either elected or appointed, gave the right to determine their salaries to the county boards

of education instead of the legislature, and allowed counties to establish joint boards of education. Such changes might have pleased the constitution's framer who said, "You cannot bring government any too near to the people." [66]

ENDNOTES

Local Government

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[3] Browne, Report, 108–110

[4] Delegate Winfield Sherwood, in Browne, Report, 110.

[5] Ira Cross, History of the Labor Movement in California (Berkeley: University of California Press, 1935), 105.

[6] Carl Swisher, Motivation and Political Technique in the California Constitutional Convention, 1878–79 (New York: Da Capo Press, 1969), 24.

[7] Cross, Labor Movement, 110.

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[9] Delegate William White, in E.B. Willis and P.K. Stockton, Debates and Proceedings of the Constitutional Convention of the State of California (Sacramento: State Printing Office, 1881), 1271.

[10] Delegate Samuel Burt, in Debates, 803.

[11] Ibid.

[12] Delegate Henry Larkin, in Debates, 1048

[13] Delegate Burt, in Debates, 803.

[14] Art. 4, Sec. 25.

[15] Delegate James Reynolds, in Debates, 750.

[16] Ibid.

[17] Art. 11, Sec 6.

[18] Delegate John Hager, in Debates, 1406.

[19] Art. 11, Sec. 8.

[20] Delegate Patrick Wellin, in Debates, 1060.

[21] Delegate Campbell, in Debates, 1407; Delegate James Estee, in Debates, 1407; Art. 11, Sec. 8.

[22] Cross, Labor Movement, 118.

[23] Arvo Van Alstyne, Background Study Relating to Article XI: Local Government (San Francisco: California Constitution Revision Commission, 196–), 19.

[24] Art. 11, Sec. 1.

[25] Art. 11, Sec. 4.

[26] Delegate Winans, in Debates, 1271.

[27] Art. 11, Sec. 5.

[28] Delegate Byron Waters, in Debates, 1050.

[29] Ibid.

[30] Delegate Hiram Mills, in Debates, 1048.

[31] Delegate Joseph Brown, in Debates, 1063.

[32] Art. 11, Sec. 11.

[33] Governor's Committee on the Law of Preemption, Report, California State Archives, F3675:192.

[34] Leon David and Mark Allen, The Law of Local Government (Los Angeles: np, 1966), 38.

[35] Art. 11, Sec. 12.

[36] Art. 11, Sec. 2.

[37] Delegate Brown, in Debates, 1041.

[38] Art. 11, Sec. 3.

[39] Delegate W.J. Tinnin, in Debates, 1377.

[40] Delegate James Caples, in Debates, 1042.

[41] Delegate Larkin, in Debates, 1042.

[42] University of California, Los Angeles, Bureau of Governmental Research, County Government in California (Sacramento: County Supervisors Association of California, ca.1952), 4.

[43] Delegate Hager, in Debates, 1406.

[44] Delegate L.F. Jones, in Debates, 1046.

[45] Art. 11, Sec. 6, as amended 1914.

[46] Art. 11, Sec. 8.

[47] Art. 11, Sec. 6.

[48] Art. 11, Sec. 7.5b.

[49] Art. 11, Sec. 3, as amended 1910.

[50] *Wheeler v. Herbert*, cited in Van Alstyne, Local Government, 68.

[51] Senator Leroy Wright and Senator Henry Willis, Ballot Argument, 1910.

[52] University of California, Los Angeles, Bureau of Governmental Research, County Government, 5.

[53] Art. 11, Sec. 7.5.

[54] Ballot Arguments, November 1911.

[55] Ibid.

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[56] Ballot Argument, June 1933.

[57] Ballot Argument, November 1970.

[58] Ballot Argument, 1966.

[59] Van Alstyne, Local Government, 16.

[60] Van Alstyne, Local Government, 58.

[61] Stuart Hall, County Supervisorial Districting in California (Berkeley: University of California, Bureau of Public Administration, 1961), 12.

[62] John Bollens, County Government Organization in California (Berkeley: University of California, Bureau of Public Administration, 1947), 1.

[63] Ballot Argument, June 1970.

[64] Art. 11, as adopted June 1970.

[65] Ballot Argument, November 1970.

[66] Larkin, in Debates, 1048.

Creatures of Statute . . . Children of Trade: The Legal Origins of California Cities

by Peter M. Detwiler [1]

The current tensions between the California Legislature and municipal leaders over taxation, special legislation, home rule, and the two groups' respective roles is nothing new. From the first days of the Legislature in December 1849 to the present, legislators and city officials have argued over these issues. Remarkably, the range of topics remains the same. This brief review traces the statutory beginnings of California cities to explain the long-standing differences between the Legislature and cities.

A legacy of legislative interference. Mistrust and meddling marked the California Legislature's relationship with its cities and towns during the first 30 years of statehood. The California Constitution of 1849 permitted a series of abuses that grew worse until the principle of home rule entered the Constitution of 1879. To understand how the need for municipal home rule came about, one must first understand the cities' difficult beginnings.[2]

Local rule before statehood. When California joined the Union in 1850, it had to transform the institutional remnants of Mexican rule and the *de facto* city governments of the Argonauts into a regular system of local government. The *alcalde* — an office that combined the powers of mayor, magistrate, and sheriff — dominated Mexican institutions. The Rev. Walter Colton was Monterey's *alcalde*, with substantial authority over not only the town, but also for 300 miles around. The Yankee notions of separation of powers and constitutionally-delegated power were not evident in a system that relied on personal rule and few written statutes. As more Americans entered California, they characterized the *alcaldes* as capricious and instead installed the public values of their home states.[3]

As California's population exploded from 10,000 in 1846 to 92,500 in 1850, it exacerbated the problems of a society without legitimate civil government. American immigrants became increasingly dissatisfied with the Mexican institutions they inherited and with the failure of a succession of military governors to create a system of civilian government. Commodore Stockton, the second military governor, ordered existing local governments to continue in office.[4] Although Stockton prepared a plan for a territorial government, including the annual election of local officials, he never set it in motion.[5] Miners' districts organized themselves in eclectic blends of remembered civil law and often violent frontier justice. ''In brief, the new mining camp was a little republic,'' wrote Josiah Royce, ''Practically independent for a time of the regular state officials.'' [6] In the absence of formal civil government, residents of San Francisco and other communities simply ignored the military authorities and created their own local institutions. During this ''No-Government period,'' San Francisco elected a 15-member Legislative Assembly which General Bennet Riley declared illegal in June 1849 when he called for the first constitutional convention.[7]

The race to be first. Several of the existing settlements attempted to legitimize their civic institutions when the Legislature met in December 1849. These local governments were ad hoc arrangements like Sacramento's, or the inheritors of *pueblo* government as in Los Angeles and San Jose. Sacramento residents had adopted their own charter on October 13, 1849.[8] Los Angeles residents claimed that Mexican law had conferred charter status on them.[9]

Sacramento's was the first attempt and a close examination of its pursuit of cityhood explains the way that California's first municipalities dealt with the Legislature. Assemblyman P. B. Cornwall broached the subject on December 20, 1849, by announcing that he intended to introduce a bill before Christmas to incorporate

a City of Sacramento. The next day, in the first ''State-of-the-State'' message, Governor Peter H. Burnett charged the Legislature with the issues he thought needed resolution, including the adoption of a ''comprehensive system'' for providing city government.[10] Governor Burnett noted the Legislature's responsibility under the California Constitution.[11] California's first governor had a strong interest in intergovernmental relations.

Cornwall duly introduced his bill for Sacramento's incorporation on Christmas Eve, and on December 28 introduced a citizens' petition for incorporation. A second petition arrived New Year's Eve.[12] The Assembly Committee on Corporations considered all three proposals and rapidly reported back on January 9, 1850. The Committee recommended two bills: a specific incorporation bill for Sacramento and a bill creating a uniform procedure for incorporating cities and villages. Although it recognized the ''evils'' of special incorporation bills, the Committee said that a separate act was justified in Sacramento's case because the uniform procedure for forming a ''small inland village'' did not fit the needs of ''a large commercial sea-port town.'' The Committee concluded that the uniform bill would mean that very few special acts would be needed.[13]

The Assembly Committee's argument against special incorporation acts must not have persuaded everyone because Senator Alexander W. Hope introduced a special bill for Los Angeles on January 14.[14] The fate of Hope's bill for Los Angeles became closely linked with Cornwall's Sacramento bill which the Assembly tabled the next day.[15] Further amendments resulted in the Assembly approving the Sacramento bill unanimously on January 21.[16] In what appears to have been a race to incorporate the first city, the Senate approved the Los Angeles bill on January 24, sent it to the Assembly which considered it, amended it, suspended the deadline rules, and passed it. The Senate reciprocated by passing the Sacramento bill, all on the same day.[17] Curiously, the rapid tandem progress of the two special incorporation bills slowed down with the Los Angles bill reaching Governor Burnett on February 1, but the Sacramento bill not until February 11.[18] This delay, however, actually helped Sacramento's cause.

Governor Burnett vetoed the Los Angeles special incorporation bill on February 8 with two main objections: expediency and constitutionality.[19] The Governor's lengthy veto message noted the experience of other states where special acts produced ''great and serious evils.'' Comparison of special incorporation acts shows, Burnett argued, that they ''are the same in substance'' and the repetition just raises legislative costs as members must either waste time studying each one, or vote ''at random and thus permit abuses to creep in.'' Instead, Burnett wanted a ''comprehensive Act'' to save ''time, labor, and expenses, and in the end be far more beneficial and understood.''

Not content merely to exhort, the Governor outlined his own recommendations for a uniform procedure. Such a law, Burnett wrote, should distinguish between villages and cities and that cities would have ''to contain a given population.'' The notion of a minimum population for incorporation would persist in state laws until 1977.[20] Noting that incorporation attempts would arise when the Legislature was not meeting, Governor Burnett suggested that the Legislature delegate the review of incorporations to the County Courts. This move would not be a delegation of the legislative power over incorporation to the judiciary, he claimed, because a Court would only check the size of the population; an investigation, not a legislative act.

Six years later, when the issue reached the California Supreme Court, the justices swiftly rejected Burnett's reasoning.[21] Burnett's veto message went on to recommend two classes of municipalities based on location: ''cities upon navigable waters'' and ''cities inland,'' because they needed different powers. There was no reason to give all cities the same powers, he said, because some of ''those powers would simply remain dormant.'' If a specific need arose, ''a short special act could be passed for that additional purpose.''

Burnett's second objection to the Los Angeles special incorporation bill was the limited power to taxation that it conferred on municipal officials. Referring to Article IV, Section 3 of the 1849 Constitution, the Governor argued that only the Legislature had the power to tax and that the bill's requirement for a majority of voters to approve a city tax rate failed to protect minority rights. He also worried that the power to widen city streets without compensation to property owners was confiscation. In closing, Burnett said that he vetoed the Los Angeles bill only because of his objection to unlimited taxation, and would not have vetoed it otherwise.

The Senate was apparently unimpressed with Burnett's reasons because five days later it overrode his veto by a vote of 11 to 0.[22] The Assembly failed to gain the two-thirds vote needed to override the veto. On February 14 the vote was 14 to 11, and the next day it was 16 to 12.[23]

Following the success of his veto of the Los Angeles bill, Governor Burnett also vetoed the Sacramento incorporation bill on February 21 with a veto message that was nearly identical to the first.[24] The significant difference was the addition of a new constitutional argument. The Governor cited Article IV, Section 31 of the 1849 Constitution which permitted special act municipal incorporations and reached three conclusions: (1) a municipal corporation is the only type of corporation that the Legislature could create by special act; (2) only municipal corporations and not private corporations may levy taxes; and, (3) the Legislature must restrict municipal corporations' tax powers because no one else can. Despite the Governor's additional concerns, on February 26 the Assembly overrode the veto by a vote of 16 to 5, as did the Senate on a 9 to 2 vote.[25] Sacramento became California's first incorporated city.[26]

Uniform laws. The Legislature took Governor Burnett's advice seriously, however, and proceeded to pass two uniform laws: one for cities, the other for towns. The Cities Act required new cities to have a minimum of 2,000 residents and limited their area to four square miles. The Act described two procedures for incorporation: the Legislature could create new cities, or residents could petition the County Court. The inclusion of both methods represented a compromise between incorporation by special act and the Governor's recommendation for Court participation. Regardless of their initiation, all new cities would be governed according to the uniform powers in the Act. The new law gave communities some latitude regarding the size of their Common Council which could have as few as seven or as many as 20 members. The Governor's objection to unlimited taxing power was countered by restricting cities' property taxes to 2% of assessed valuation.[27] The historical irony is discovering one of local government's earliest controversies re-enacted 130 years later in 1978 when Proposition 13 limited all local property taxes to 1% of assessed valuation.[28]

Communities immediately took advantage of the new uniform law and the Legislature created three new cities under the Act: Sonoma and Los Angeles on April 4 and Santa Barbara on April 9.[29] But even after the uniform Act's adoption, the Legislature passed special incorporation acts for Benecia, San Diego, San Jose, Monterey, and San Francisco.[30] Governor Burnett did not veto these special acts probably because many of them included the restrictions that he called for in his earlier veto messages. The San Diego and San Jose bills, for example, limited property taxes to 1% of assessed value, a restriction tougher than the limit in the uniform law.

The Towns Act was similar to the uniform law for cities in many respects. A town required at least 200 inhabitants and could cover up to three square miles. A petition to incorporate could be presented to the County Court or to the Governor if the Court had yet to be organized. The local governing body was a five-member Board of Trustees. The law limited a town's taxing authority to one-half percent of assessed value.[31] In 1855, the Legislature raised this limit to 1% and, reflecting the needs of the times, allowed towns to regulate bars, levy a $6 annual

tax on dogs, and elect a town recorder to judge infractions of local ordinances.[32]

In 1856, the California Supreme Court declared the Towns Act unconstitutional, dismantling the compromise that Governor Burnett had built with the Legislature. The Court held that the Legislature improperly delegated the power to incorporate towns to the County Courts; impermissible because the courts are not part of the legislative branch. The Supreme Court instead suggested that the Legislature delegate this legislative responsibility to the county board of supervisors or some other body with similar powers.[33] First reprimanded by Governor Burnett in 1850 for passing special acts, the Legislature took his advice and assigned the duty to the County Courts, only to be rebuked by the Supreme Court in 1856 for improperly delegating a legislative responsibility. In response, the Legislature repealed the 1850 statute and adopted a new Towns Act. Virtually identical to its predecessor, the 1856 version delegated the incorporation power to county boards of supervisors.[34] The essence of this arrangement persists.[35]

Legislative interference. After the Legislature settled the early controversies of how to form cities, it succumbed to pressures by economic interests and enacted special legislation for cities. Neither the 1849 Constitution nor case law from other states precluded the Legislature from meddling in local affairs. Four cases exemplify the Legislature's abuses in this period. They also explain why the 1879 Constitution curbed those practices and how subsequent legislation evolved into the home rule doctrine.[36]

The 1859 case of *Pattison v. Board of Supervisors of Yuba County*[37] shows the Legislature's willingness to substitute its judgement for local officials'. The Legislature mandated the Yuba supervisors to place on the county ballot a proposition that required the County to invest in a railroad. When the Board complied, Mr. Pattison sued. Pattison, a local landowner, feared that Yuba County might have to raise his property taxes if the railroad went bankrupt and defaulted on the County's investment. County attorneys argued that the Legislature could do anything it wanted as long as the California Constitution did not specifically prohibit it. Because counties were the state's agents, they had no powers that were inherently their own. Pattison's attorney countered that the Constitution precluded the state government from investing in railroads. Further, the counties were merely agents of the state. Therefore, the Legislature could not require the County to do what it could not do itself. This relationship distinguished counties from cities, they argued, because "municipal corporations, on the other hand, are creatures of statutes, but they are also children of trade." [38]

While Mr. Pattison's attorneys were willing to carve out a more independent role for cities, the Supreme Court was not. Later in 1859 the Court ruled in People v. Burr that it was constitutional for the Legislature to authorize the payment of claims against San Francisco in a manner that, in effect, created a new city debt exceeding the charter limitations on the amount of municipal debt.[39] This conclusion is all the more surprising because San Francisco's charter, like all others of the period, was itself a legislative act.[40] The Legislature's action had the effect of telling local officials how to spend the City's treasury, even though they had to exceed the debt limits the Legislature itself had set in the earlier 1850 and 1855 San Francisco charters.

The complicated 1871 case of Sinton v. Ashbury[41] produced a similar outcome for San Francisco. The Legislature directed the county judge to pay private individuals out of the City's treasury for the cost of extending Montgomery Street.[42] The Legislature overrode the Governor's veto, but the assessor still refused the judge's order. The Supreme Court upheld the validity of the statute that permitted the Legislature to control municipal funds for individuals' gains.

The City of Stockton faced one of the most egregious cases of legislative meddling that eventually led to home rule charters. In 1869–70, the Legislature directed the City to ask voters to donate $300,000 from the municipal treasury to the Stockton and Visalia Railroad Company to

build its line.[43] The bill actually named three private individuals to the board of trustees which handled the payment. The Court's decision in *The Stockton and Visalia Railroad v. The Common Council of the City of Stockton* is significant in its length, covering nearly 60 pages when most of the other decisions in 1871 were less than ten pages.[44] Each of the four participating Supreme Court justices submitted his own, separate opinion and each seemed torn between the structure of the law and his own sense of fairness. Justice Wallace's lead opinion even noted the allegations of corrupt manipulation of the Legislature.[45] Nevertheless, he wrote, the law was constitutional and Stockton cannot defend its treasury by invoking the "spirit of the constitution." Justice Crockett relied heavily on the principle of *stare decisis*, that is, deciding a case from an unbroken line of precedents. Crockett remarked on Wallace's recital of rulings in other states.[46] Justice Sprague took a similar tack and looked back to the 1859 *Pattison* decision.[47] Reluctantly, Justice Temple joined his colleagues in invoking *stare decisis*, but wrote that he would like to agree with Stockton.[48] Good intentions notwithstanding, the City lost and the S.&V.R.R. won its $300,000.

Home rule at last. With legislative meddling constitutionally protected, the only permanent remedy was to change the Constitution. The 1879 constitutional convention offered the opportunity, and the resulting document carried the needed home rule power. The conference delegates consulted several examples and the home rule authority came from the Missouri Constitution which had just been adopted. The California Constitution of 1879 prohibited special legislation, banned special act incorporations, and granted the power to frame freeholder charters to communities with at least 100,000 people. Only San Francisco qualified in 1879 and local politics kept it from adopting a freeholders' charter until 1898. When the Supreme Court reviewed this power in 1880, it noted that it was "manifestly the intention of the Constitution to emancipate municipal government from the authority and control formerly exercised over them by the Legislature." [49]

The issues remain. The issues that divided city officials and legislators in 1849 are still key points in the debate over the proper roles of state and local government: property taxes, special bills, and home rule powers. Local property tax limits troubled Governor Peter Burnett in 1849 as much as it has vexed governors in our own time. Burnett's principal reason for vetoing Los Angeles' attempt to be the state's first city was his fear of unbridled municipal taxes. How ironic to find California's first intergovernmental controversy re-enacted 130 years later in 1979 as the Jarvis-Gann Initiative, Proposition 13. Burnett's insistence on regular procedures for incorporating new cities finally produced a uniform law, but the tide of special legislation has never really stopped. Even though uniform standards inevitably require adjustment to accommodate unique circumstances, the California Legislature still adopts special bills that promote limited interests. The flagrant abuses before 1879 are merely the most infamous; today's special bills are exceedingly mild by comparison.

The 30 years' legacy of legislative interference produced constitutional protections for home rule. This home rule doctrine has become a powerful political myth, invoked to protect certain interests or to promote others.[50] Nevertheless, home rule would not have emerged in California without the necessary evils of legislative mistrust and meddling.

California's cities have two origins: a statutory basis of legal authority and an economic justification. Their statutory basis is clear from the legislative history in this brief review. That cities are centers of economic activity is as obvious as the history of human settlement. The early struggle to mate these dual forces produced municipalities that reflect the characteristics of both parents.

California cities truly are creatures of statute and children of trade.

ENDNOTES

"Creatures of Statute . . . Children of Trade: The Legal Origins of California Cities"

[1] Peter M. Detwiler is a consultant to the California State Senate Committee on Housing and Land Use and teaches in the Graduate Program in Public Policy and Administration at California State University, Sacramento. He researched and wrote an earlier version of this paper for the California Constitutional Revision Commission. The paper was originally part of the "Small Cities" project, co-sponsored by the Institute of Governmental Affairs at UC Davis and Governor's Office of Planning and Research. The author is grateful to Gary D. Rodwell who examined early records and court decisions as an undergraduate intern at OPR from the Intergovernmental Management program of the University of Southern California. He also appreciates the patient encouragement of his friends, Dr. Alvin D. Sokolow, Department of Human and Community Development, UC Davis, and J. Fred Silva, Executive Director of the California Constitutional Revision Commission.

[2] A more formal discussion of this period appears in John C. Peppin, "Municipal Home Rule in California: I," California Law Review, Vol. XXX, No. 1, pp. 6–34, November 1941.

[3] Goodwin, Cardinal, The Establishment of State Government in California 1846–1850, (New York: MacMillan, 1914); Joseph Ellison, "The Struggle for Civil Government in California," California Historical Society Quarterly, Vol. X, No. 1, pp. 17–18 (1931); Theodore Grivias, Military Governments in California, 1846–1850, (Glendale: Arthur H. Clark Company, 1963).

[4] R. F. Stockton, "Proclamation To The People of California," August 16, 1846, quoted in J. Madison Cutts, The Conquest of California and New Mexico, (Philadelphia: Carey and Hart, 1847), page 122.

[5] Cutts, op. cit., page 125 and Rockwell Dennis Hunt, The Genesis of California's First Constitution (Baltimore: The Johns Hopkins Press, 1895), pp. 19–23.

[6] Royce, Josiah, California (Santa Barbara: Peregine Publishers, Inc., 1977), page 221. Royce originally published this book in 1886.

[7] Hunt, op. cit., pp. 26–27; Ellison, op. cit., pp. 143–145; Royce, op. cit., pp. 202–203; Woodrow James Hansen, The Search for Authority in California (Oakland: Biobooks, 1960), pp. 88–96; Neal Harlow, California Conquered: War and Peace on the Pacific, 1846–1850, (Berkeley: University of California Press, 1982), page 327.

[8] Journals of 1850, page 623.

[9] Ibid., page 87.

[10] Journals of the Senate and Assembly, 1849–50, page 606. Cornwall represented Sacramento. Driscoll, James D. and Darryl R. White, List of California's Constitutional Officers, Congressional Representatives, Members and Sessions of the State Legislature and Justices of the California Supreme Court, 1849–1985, (Sacramento: California Legislature, 1985), page 81.

[11] California Constitution of 1849, Article IV, Section 37 and Article XI, Section 4.

[12] Journals, 1849–50, op. cit., pp. 623, 625–26, and 629.

[13] Ibid., pp. 643–4.

[14] Ibid., page 87. Hope's Senate district included both Los Angeles and San Diego. Driscoll and White, op. cit., page 49.

[15] Journals, 1849–50, pp. 660–1.

[16] Ibid., page 701.

[17] Ibid., pp. 109, 719–720.

[18] Ibid., pp. 747 and 841. Assemblyman Cornwall resigned his seat on January 28, 1850, having served just over a month in office. Driscoll and White, op. cit., page 81. Cornwall's departure may explain why Hope's bill for Los Angeles continued to move through the legislative process while Cornwall's Sacramento bill lagged.

[19] Journals, 1849–50, op. cit., pp. 137–141.

[20] When it enacted the Municipal Organization Act of 1977 (formerly Government Code Section 35000, et seq.), the Legislature eliminated a minimum population as a condition of incorporation, delegating the decision of appropriate size to the local agency formation commission (LAFCO). Later, however, the Legislature restored the standard. The Cortese-Knox Local Government Reorganization Act of 1985 now requires a new city to have at least 500 registered voters (see Government Code Section 56043).

[21] The People v. The Town of Nevada (1856) 6 Cal. 143.

[22] Journals, 1849–50, op. cit., pp. 151–2.

[23] Ibid., pp. 855–9.

[24] Ibid., pp. 890–5.

[25.] Ibid., pp. 183 and 914.

[26] Statutes of 1850, Chapter 20 (page 70).

[27] ''An Act to provide for the Incorporation of Cities,'' Statutes of 1850, Chapter 30 (page 87). A lapse of record-keeping that drives historians frantic is associated with this Act. The bill is dated March 11, 1850, but the Journals of 1850 show that March 18 was probably its real date of enactment; Goodwin, op. cit., page 303.

[28] Article XIIIA, Constitution of 1879.

[29] Statutes of 1850, Chapters 56, 60, and 68 (pp. 150, 155, and 172).

[30] Ibid., Chapters 45, 46, 47, 50, and 98 (pp. 119, 121, 124, 131, and 223).

[31] ''An Act to provide for the Incorporation of Towns,'' Statutes of 1850, Chapter 48 (page 128).

[32] Statutes of 1855, Chapter 49 (page 57).

[33] The People v. The Town of Nevada, supra.

[34] Statutes of 1856, Chapter 133 (page 198). The 1856 Act also contained two other changes from the 1850 statute and its 1855 amendments: A $3,000 limit on town debts, and a ''saving clause'' that validated towns already incorporated. The Court issued Town of Nevada during the April term and the Legislature passed the reformed law on April 19; a swift and direct response.

[35] The Legislature delegated its plenary power over the incorporation of new cities to local agency formation commissions (LAFCOs) but county boards of supervisors still have the vestigial duty to call cityhood elections (see Government Code Section 56075).

[36] See Peppin, op. cit., pp. 11–19, for a more complete inventory of legislative interference.

[37] Pattison v. Board of Supervisors of Yuba County (1859) 13 Cal. 175.

[38] Pattison, supra, 177.

[39] The People ex rel. Blanding v. Burr, et al. (1859) 13 Cal. 343.

[40] San Francisco did not get a voter-approved ''home rule'' charter until 1898. Four previous elections failed after home rule charters became available in 1880 and before the successful 1898 vote. See Howard Lee Martin, The Law and Practice of Municipal Home Rule, (New York: Columbia University Press, 1916), Chapter VII.

[41] Sinton, et al. v. Ashbury (1871) 41 Cal. 525.

[42] Statutes of 1869–70, page 146.

[43] Ibid., page 551.

[44] The Stockton and Visalia Railroad v. The Common Council of the City of Stockton (1871) 41 Cal. 147.

[45] S.&V.R.R., supra, 158.

[46] S.&V.R.R., supra, 197.

[47] S.&V.R.R., supra, 201 and Pattison, supra.

[48] S.&V.R.R., supra, 202.

[49] People v. Hoge, et al. (1880) 55 Cal. 612, 618.

[50] Sato, Sho, '' 'Municipal Affairs' in California,'' California Law Review, Vol. 60, No. 4, pp. 1055–1115, June 1972.