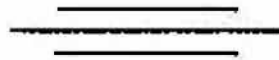


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Development of the Central State  
Agency for Public Education in  
California  
1849-1949

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## CHAPTER III

### THE CONSTITUTION OF 1879

In discussing the demands for a new state constitution, Cleland calls the years just preceding the Constitutional Convention of 1878-79, "The Discontented Seventies."<sup>1</sup> Much of the discontent stemmed from the operations of the Central Pacific Railroad, which was becoming a very effective monopoly under the direction of the Big Four: Mark Hopkins, Collis P. Huntington, Leland Stanford, and Charles Crocker. Known as the "Great Absorber," or the "Great Monopoly,"<sup>2</sup> and more picturesquely as "The Octopus," the Central Pacific battled, combined with, or swallowed its rivals to control an area where expanding industry and growing agriculture made transportation a critical factor. It was the biggest landowner, the biggest employer, and the richest enterprise in the state; and it could break the merchant, industrialist, or agriculturist who defied it.<sup>3</sup> Those who did not resent its raw power, manifested in rate wars, land evictions, and by-passing tactics, denounced its political influence and ability to evade a fair share of taxes.

Industry in general developed to a point where economic cycles worked hardships on large groups of employees. Mining had been done by individuals or small groups of men with simple equipment in the years following the Gold Rush; but later, as operations were conducted on a large scale, underwritten by big issues of stock, expensive equipment was employed, and workers adopted new attitudes as they exchanged the status of gold seeker for that of wage earner.<sup>4</sup> Other California industries employed thousands of wage earners especially vulnerable to the economic depressions of the times.

Farmers felt the effects of buying stocks which rose and dropped at rapid pace; many of them were deeply in debt, and, in 1877, drought in the San Joaquin valley and in southern

<sup>1</sup> Robert G. Cleland, *A History of California: The American Period* (New York: Macmillan, 1922), pp. 402-23.

<sup>2</sup> Hittell, *History of California*, IV, 487.

<sup>3</sup> Caughey, *California*, p. 447.

<sup>4</sup> Carl B. Swisher, *Motivation and Political Technique in the California Constitutional Convention, 1878-79* (Claremont: Pomona College, 1930), p. 7.

California killed many sheep and cattle and left farmers without enough food for another season.<sup>5</sup>

Depressions and panics were especially hard on the cities with their large segments of wage earners. In 1875 the Bank of California failed, and the full effects of the national panic of 1873 were delayed in reaching California until as late as 1877.<sup>6</sup> Business cycles were accentuated by unregulated marginal buying and uncontrolled speculation. A dozen bank failures are recorded for the period 1875-1880.<sup>7</sup> Business failures, widespread unemployment, and political exploitation of these conditions followed.

Political developments under these circumstances have been effectively summarized by Caughey:

California state government, never a glorious achievement of probity and efficiency, sank in the seventies to the nadir of disreputableness. It was the legislature that seemed to be guilty of the most flagrant abuses. The scandalous laxity was in conformity with the mores of the day as represented by New York's Tweed Ring, Jay Gould's Black Friday, the Credit Mobilier, the Star Route scandals, the Indian Frauds, and the Whisky Ring. It was also locally engendered through the proximity of frontier backgrounds, the precedents of vigilante days, the prevalence of speculative enterprise, the prominence of nouveaux riches, and, Californians would have added, by the machinations of the railroad.<sup>8</sup>

Resentment for real and fancied wrongs was directed against the railroad and against the Chinese in California. Different in color, language, and customs, they became perfect scapegoats in the unhappy years, and pent up discontent reacted against these foreigners who worked for less than white men and persisted in clannishness and strange habits. Unconstitutional laws, riots, and persecutions confronted them, but they continued to enter the state. A suggestion of the general feeling is found in Bancroft, where in a chapter on the "Mongolians," he considers them under a subheading of "Disgusting and Altogether Damnable."<sup>9</sup>

Groups opposing the Chinese, the railroad, land monopoly, and corruption in politics united to form the Workingman's

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<sup>5</sup> *Ibid.*, p. 8.

<sup>6</sup> Caughey, *op. cit.*, pp. 321-25.

<sup>7</sup> Swisher, *op. cit.*, p. 9.

<sup>8</sup> Caughey, *op. cit.*, p. 447.

<sup>9</sup> Bancroft, *History of California*, VII, ix.

Party in San Francisco, in October, 1877.<sup>10</sup> They demanded an eight-hour day, direct election of United States Senators, compulsory education, a better monetary system, abolition of contract labor on public works, abolition of the pardoning power of the governor, abolition of fee payments to public officials, state regulation of banks, industries, and railroads, and a more equitable taxation program.<sup>11</sup> These reforms they hoped to achieve in a new state constitution, where adequate provisions would safeguard their rights, countering corruption and influence in legislature and courts. Such organizations as the Workingmen's Alliance, the Anti-Chinese Association, the Industrial Reformers, the People's Protective Alliance, the Grange, and—most noble conception—the Supreme Order of Caucasians, supplied followers and ideas.

Into this scene stepped a young Irishman, Denis Kearney, born in County Cork thirty-one years before, who had come to San Francisco as an officer on a ship, and remained to work as a drayman. Hittell provides a vivid portrait:

In person he was short and stout, what is called thick-set, of coarse features, restless dark eyes, cropped black hair that stood up, quick motions and loud, penetrating voice. He was not a scholar; but he had picked up considerable information from newspapers and political pamphlets, and some practice in speaking at clubs and labor unions, where he would work himself up into a white heat declaiming against capital, monopoly and Chinese immigration.<sup>12</sup>

Crowds would gather in the sand lots opposite the San Francisco city hall, and there Kearney, master of the dynamic slogan, would fling such phrases as "The Chinese must go," and "Every workingman should get a musket"; and allude to "A little judicious hanging" for capitalists, or "The fate of Moscow" for the city, if San Francisco failed to heed him.<sup>13</sup> Larger crowds joined the sand-lotter, and soon the Workingmen became well known to farmers and other voters in many sections of the state.

Democrats and Republicans throughout California overlooked lesser differences in a common solicitation for property

<sup>10</sup> Caughey, *op. cit.*, p. 453.

<sup>11</sup> *Ibid.*, p. 454.

<sup>12</sup> Hittell, *op. cit.*, IV, 599.

<sup>13</sup> Caughey *op. cit.*, p. 455.

rights and fear of the mounting strength of the Kearneyites. In the election of June 19, 1878, the non-partisans elected seventy-seven delegates to a Constitutional Convention at Sacramento; the Workingmen, fifty-one; Republicans, eleven; Democrats, ten; and there were three Independents.<sup>14</sup>

Swisher studied the occupations and backgrounds of the delegates, and found that an analysis of the tickets on which they ran gave only a superficial view of their fundamental attitudes and loyalties.<sup>15</sup> He points out that of the 152 delegates, fifty-seven were lawyers. Swisher felt that most of these lawyer delegates were likely to respect established authority and were not commonly given to sweeping reform.

Important differences in the personality and feeling of the typical Workingman delegate from San Francisco, as compared with the Workingman delegate from a rural area are also pointed out by Swisher. While the San Francisco Workingman was a laborer who had little property at stake, and a wage earner as distinguished from an enterpriser, many of the rural delegates of the Workingmen were farmers and professional men, who "whatever their grievances . . . had a stake in the existing order," and "could not afford to threaten existing interests with the same abandon as that of their brethren in San Francisco."

Regardless of the ticket on which they were elected, Swisher found the delegates tending to fall more specifically into occupational groups in facing issues. These groups included first, large capitalists, their lawyers and friends, and a few big landholders; second, small farmers opposed to land and water monopolies, and afflicted with heavy mortgages, and pressing taxes; third, city laborers with little or no property.<sup>16</sup>

The solidarity and party discipline manifested by the Workingmen delegates at the beginning of the Convention had an effect of uniting various elements against them, to achieve common ends.

The Convention met first on September 29, 1878, and con-

<sup>14</sup> Swisher, *op. cit.*, p. 24. For a different point of view concerning "Kearneyism" and its effects, see James Bryce, *The American Commonwealth* (New York: Commonwealth Publishing Co. 1908), II, 439-64.

<sup>15</sup> Swisher's Chapter II, "The Choice of Delegates," is a discriminating and enlightening analysis.

<sup>16</sup> Swisher, *op. cit.*, p. 31.

tinued in session until March 3, 1879. More than three times as large as the Convention of 1849, it was unwieldy, its members more long-winded, and it produced a cumbersome, complex, detailed document. The atmosphere of the Convention was frequently strained due to disputes over parliamentary law. At times, members got badly tangled in the complicated procedural rules and regulations.

In such an atmosphere the relative lack of political experience, particularly in parliamentary procedure and knowledge of law, weighed heavily against the Workingmen. Evidence of future alignments and loyalties in the Convention was provided at the beginning, in the election of J. P. Hoge of San Francisco as President of the Convention. He was an able lawyer, an experienced politician, and for several years had been chairman of the Democratic State Committee. After several ballots he was elected over W. J. Tinnin, a non-partisan merchant, around whom Workingmen and some farmers had rallied.<sup>17</sup>

Most of the issues which had led to demands for a new constitution, and provided the Kearneyites and other elements with much of their electioneering material, implied social and economic reform. They had to do with taxation and adjustment of tax base and assessments; regulation of banks and financial agencies; control of the railroads and other big industries and businesses; land and water monopoly; and Chinese immigration. With 152 delegates, thirty committees, diversity of interests represented, and inability to attack effectively some objectives, such as the Chinese immigration problem, the half year of sessions solved few of the announced problems. Membership seemed fairly evenly divided between liberals and conservatives, alignments on many issues were nearly equal, committee reports were inconclusive in themselves—"it was inevitable that the final product should be a 'bundle of compromises.'" <sup>18</sup>

As in the Convention of 1849, education was not a major matter of business. The first lively debate on educational matters occurred when the proposed section regarding the superin-

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<sup>17</sup> *Debates and Proceedings of the California Constitutional Convention of 1878-79* (Sacramento: 1880-81), pp. 15-22.

<sup>18</sup> Caughy, *op. cit.*, p. 457.

tendent of public instruction was read to the Convention, sitting as a committee of the whole. The Committee on Education was headed by J. W. Winans, a lawyer of considerable prominence in the state. Educated at Columbia University, he was a member of the Board of Trustees of the State Bar Association, and of the Board of Trustees of the State Library. He was one of the organizers of the Pacific Bank, and a Regent of the state university.<sup>19</sup>

The proposed section on the superintendent of public instruction provided that, "He shall receive a salary equal to that of the Secretary of State," and opposition arose at once to this attempt to put the office on such a level. Amendments were offered to fix the salary at \$2,400, and to strike out the section entirely, thus abolishing the office and leaving the work of the superintendent of public instruction to be done by county superintendents.<sup>20</sup> At this point Marion Biggs, a delegate who had been much on the side of "economy, retrenchment, and reform," arose to make a strong plea for a well paid superintendent who would provide expert leadership in the position.<sup>21</sup> It was one of those instances where a man usually in one alignment of opinion in the Convention swung out of it with regard to a specific issue, and this departure gave added force to the particular endorsement. Biggs was a farmer, president of the State Agricultural Society, and aware of the values of public education.<sup>22</sup> He said in part:

So far as the Superintendent of Public Instruction is concerned, I think it is the duty of the Convention to make provision that he should receive a reasonable compensation. . . . I look upon the position of Superintendent of Public Instruction as one of the most important in the State. We should have a right man in the right place—a suitable man for Superintendent of Public Instruction.<sup>23</sup>

Many of the remarks on this issue showed that the men who made them had little or no knowledge of the duties and responsibilities of the office they so easily discussed. On the other hand, members of the Committee on Education made specific statements based on evident study of the situation.

<sup>19</sup> Bancroft, *op. cit.*, VII, 405.

<sup>20</sup> *Debates*, pp. 1091-93.

<sup>21</sup> *Ibid.*, p. 1093.

<sup>22</sup> Bancroft, *op. cit.*, VII, 402.

<sup>23</sup> *Debates*, p. 1093.

Ultimately the section was adopted substantially as drafted by the Committee on Education.

County superintendents of schools had been elected biennially since 1855 when legislation had been passed to provide for this officer.<sup>24</sup> With only little opposition, the Convention adopted a new section of the article on education providing that county superintendents would be elected at each gubernatorial election, just as the state superintendent. The argument for making the four-year term a constitutional provision was ably presented by Eli T. Blackmer, who had come to California from his native New England only a few years before, and was superintendent of schools of San Diego County:

I think it is quite a wise provision. It is one of those positions that grows with the work that is connected with it, and the interest in the kind of work that is to be accomplished by the County Superintendent, is more strongly impressed upon him the longer he holds his position. Now, sir, with a term of two years he has just begun to realize the necessities of the work, the last two years of his term will be of much greater value to the county than the first two. . . . There are twenty-three States in the Union that have this system of county supervision.<sup>25</sup>

The Constitution of 1849 had provided for a system of common schools by which a school would be maintained in each district for three months in each year. Districts which failed to support a school would be deprived of their share of the school fund. The Committee on Education proposed that the term be lengthened in the new constitution to six months, and considerable debate was touched off. Again, a delegate who had consistently favored retrenchment, was moved by other considerations to support a strengthening of the state school system. Thomas H. Laine, a lawyer and delegate from Santa Clara County argued:

I am in favor of a half year's school, and that it should be at the expense of the state; . . . rich men who are able to resist escape the payment of the tax, and it falls upon a few poor men to keep up the three months, or six months school; but when it is levied by the State it falls upon all alike. . . . I desire to give every child a chance for a half year's school, and let the State support it.<sup>26</sup>

<sup>24</sup> *California Statutes* (1855), pp. 231-32

<sup>25</sup> *Debates*, p. 1098.

<sup>26</sup> *Ibid.*, pp. 1100-1101.



Like the constitutional provision for election of county superintendent at the gubernatorial election, the six-month school term was already a part of the School Law. The section submitted by the Committee on Education was finally accepted with a six-month term, but it is interesting to note that on this matter, the debate ran along lines indicated by Laine's remarks, and not on the educational advisability of a six-month term, nor on a comparison of other state constitutional provisions therefor.

The most critical part of the debates regarding public education, from the point of view of a central state agency for public education, concerned the State Board of Education. It will be recalled that at the time of the Convention, the State Board of Education was a creature of the legislature only, having no constitutional foundation and having evolved through statute a professional ex-officio membership made up of the governor, the superintendent of public instruction, the principal of the State Normal School, and the county superintendents of six of the counties. It was required by law to meet at least four times a year, and its duties included adoption of a uniform series of textbooks, the making of rules and regulations for the public schools, formulation of a course of study, and the issuance of life diplomas to teachers. Its work was closely tied in with that of the State Board of Examination which prepared questions for teachers' examinations, and issued state education diplomas and certificates to public school teachers.

When the matter of a state board of education came up in the Convention, it was considered in the same manner as the issue of the county superintendent or the problem of the length of the school term. In viewing these issues, little or nothing was said about educational values, but the debate followed the now familiar pattern of constitutional provision to prevent legislative abuse, decentralization of responsibility away from state control, retrenchment and economy in state offices, and prevention of lobbying or other undue influence on the legislature.

There was a general feeling that there was much graft and corruption in attempts to influence the State Board of Education to select textbooks, and in the disclosure of State Board of Examination questions, and there was a desire to shift a con-

siderable degree of responsibility for public education from the state level to local agencies. With regard to a state board of education, the pressures which had grown in the "Discontented Seventies" to a point where the Workingmen were able to sway a strong segment of the electorate in 1878, were as forcibly present as in any situation confronting the Convention. Delegate Laine proposed a section of the article on education to read:

The local Boards of Education, or the Boards of Supervisors and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools for their respective counties. The text-books to adopted shall continue in use for not less than four years. They shall also have control of the examination of teachers, and grant teachers' certificates in their respective jurisdictions.<sup>27</sup>

Winans, Chairman of the Committee on Education, joined in agreement with Laine's proposal. In their zeal to restrict lobbying, corruption in textbook selection, and disclosure of State Board of Examination questions, and in their desire for decentralization of responsibility, Winans and others apparently lost sight of, or chose to disregard, the effect of the proposal on the state agency of education. Some of Winan's remarks are quoted:

This . . . will lodge the power in the local Boards, where it should reside. This matter of State uniformity has done great evil to the State and mischief to the people. . . . It induces these men who publish books in other States to come here and purchase their entrance into our schools by the use of bribes. . . . You destroy the method, and entirely overwhelm the possibility of its further existence, when you adopt this system of allowing every locality to determine its own course of education, and you realize the highest interests of the people. As we have adopted the general principle of local legislation, we should certainly adopt the same course here.<sup>28</sup>

In the same vein are remarks of Delegate Brown, a sheriff, lawyer, and politician from Tulare County:

I am opposed to centralization, as much so on matters pertaining to education as on political matters, and I am under the impression that the principles . . . offered by the gentleman from Santa Clara are correct, and I hope they will meet the approval of this committee. It is in accordance with the principles which this body has already adopted. It gives to certain parts of the country certain rights and the control of their own affairs. . . . It is a sort of freedom that will tend to keep the

<sup>27</sup> *Ibid.*, p. 1108.

<sup>28</sup> *Ibid.*, p. 1108.

people of the counties awake because they will feel a personal liability and responsibility resting upon them in matters of education.<sup>29</sup>

With such sentiments the section proposed by Laine was adopted substantially as he had presented it.

In the light of the preceding discussion the brief summary of educational matters in the Convention offered by Swisher seems apt:

Most of the delegates had come to the convention imbued with the desire to secure certain specific reforms in government which would result in economy to the people of the state, or to the groups to which they belonged. Advanced theories of education were not a part of their equipment. Retrenchment was their cue, when they came to discussion of the cultural needs of the State.<sup>30</sup>

Though adopted by a large majority of the Convention, the compromise Constitution of 1879 was bitterly opposed by extreme conservatives and extreme liberals, and many others in the state. Workingmen denounced the document as violently as the capitalists; it did not get a majority in San Francisco, home of the Workingman's Party, in the popular election. It was adopted, however, May 7, 1879, by the narrow margin of 77,959, to 67,134 votes out of an electorate of about 161,000. A heavy rural vote reflected Granger approval of provisions for a Railroad Commission and Board of Equalization stipulated in the new instrument to regulate corporations and control taxation practices.<sup>31</sup>

In 1849 California had been the fifth state to provide for a chief state school officer in the state constitution. In 1879 California first made constitutional provision for a specific salary for the office. This was done by making the salary of the superintendent equivalent to that of the secretary of state, and fixing the latter at \$3,000. As late as 1908, when the salary of California's superintendent was raised to \$5,000 by an amendment, only three states paid their elected chief state school officer more than the \$3,000 specified in California's Constitution of 1879.<sup>32</sup>

In omitting a state board of education, however, California was lagging behind a growing national trend. By 1879

<sup>29</sup> *Ibid.*, p. 1109.

<sup>30</sup> Swisher, *op. cit.*, p. 98.

<sup>31</sup> Swisher, *op. cit.*, p. 109; Caughey, *op. cit.*, pp. 457-58.

<sup>32</sup> *California Constitution, 1879*, Article IX, section 2; Article V, sections 2, 19; Cubberley, *State School Administration*, p. 275.

twelve states had already specified a state board in their constitutions, and these were in every section of the country except New England.<sup>33</sup>

Chief county school officers appeared in the state constitutions of Kansas in 1859, and West Virginia in 1863. In 1868 Florida and Mississippi included the office in their constitutions, and in 1870, Virginia and Illinois. Colorado followed in 1876, and in 1879 Louisiana and California provided for a chief county school officer in their constitutions.<sup>34</sup>

Few states have included the county board of education in the state constitution. In the Maryland Constitution of 1864 such a provision appeared for the first time in any state constitution, but it was discontinued in that state in 1867. In 1879 California and Louisiana provided for county boards in the state constitution. The only other state to make such a provision was Florida in 1885.<sup>35</sup> In connection with this kind of provision, however, Matzen makes an interesting observation which emphasizes a tendency of the California Constitutional Convention of 1878-79:

It may be noted that only four states have made a constitutional provision for a county board of education, and that one of these, Maryland, discontinued this provision in a later constitution; whereas, on the other hand, twenty-nine states have made a statutory provision for such a board in some form. This condition seems to be indicative of a general tendency to leave the matter of providing county boards of education to legislative enactment.<sup>36</sup>

In his biennial report for the years 1878-1879, Superintendent Carr printed the entire article on education from the Constitution of 1879. Carr's remarks, however, were limited to consideration of section 7 of the article, which read:

The local Boards of Education, and the Boards of Supervisors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers, and the granting of teachers' certificates, within their several jurisdictions.

Carr briefly but definitely analyzed the situation:

<sup>33</sup> Matzen. *State Constitutional Provisions for Education*, p. 4.

<sup>34</sup> Matzen, *op. cit.*, p. 77.

<sup>35</sup> *Ibid.*, p. 93.

<sup>36</sup> *Ibid.*, p. 94.

Under Section 7, Article IX, we find that the essential features of a State, as distinguished from any other system for the maintenance of public schools, have been abandoned, and the most important element of State control, viz., the determination of the qualification of teachers and selection of text-books, is now relegated to local municipal boards, city and county.

We have thus gone back twenty years, and, unless the wisdom of the Legislature should prevent, may experience all the evils which result from the lack of unity in plan, in standards, and in control.<sup>37</sup>

Under the new instrument, responsibility for public education in California at the state level had been strengthened in two ways: The superintendent of public instruction was made equal, in salary at least, to the secretary of state, by the constitution, and his important place in the state government thereby acknowledged; and, a six-month term was substituted in the constitution for the former three-month term, as a general requirement of the California school system.

But most of the educational changes were in the direction of the desires of the Workingmen, farmers, and other reformers, who had demanded a new constitution to decentralize governmental functions, control possible corruption and undue influence of the legislature and state boards, promote retrenchment, and limit the powers of future legislatures. Thus county superintendents elected for four-year terms were provided for, and they, the local boards of education, and the county boards of education were given power to adopt textbooks, and responsibility for determining the qualifications of teachers. No constitutional provision was made for the State Board of Education, nor was there mention of the State Board of Examination. The extent of the shift toward decentralization in the case of the latter two bodies is appreciated when it is recalled that at that time, both were organizations of professional educators, largely advisory in functions to the superintendent of public instruction. They were like the two arms of the superintendent in his leadership of the public school system of the state, and as far as the constitution-makers were concerned, he could be armless.

<sup>37</sup> *Eighth Biennial Report, 1878-79, California Superintendent of Public Instruction, pp. 16-17.*