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CALIFORNIA GOVERNMENT

Politics and Administration

By
WINSTON W. CROUCH
and
DEAN E. McHENRY

Revised Edition



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Preface



FOUR YEARS AGO, at the time the first edition of this book appeared, the authors sought to justify its publication on the dual grounds that California had long been a laboratory for political experimentation and that no comprehensive treatise had theretofore been available to students and others who sought information about all levels of California government. We offer the second edition for equally practical reasons: the book has been out of print for many months, and California government has undergone great changes to meet the new conditions imposed by a fighting war, an uneasy peace, and a vast population increase.

On the whole, reviews of the first edition were favorable, but they did call to our attention various sins of omission and commission. We have added some maps and charts, brought the tables and text up to date with postwar figures and data, and rearranged some of the chapters to make them fit current state administrative organization. The request for more comparative information from other states we have met only in part; the general picture in other states has been indicated wherever possible, but the inquiring reader who wants detailed data on other states must go to a book on general state government or to the handy *Book of the States*, which is issued biennially by the Council of State Governments. A number of books also are available on governments of particular states.

More extended treatment has been given to several problems that events have given priority on the public agenda. An account of the recent attempts to secure general constitutional revision is included. The unique device of cross-filing, and proposals for a new primary law are given fuller analysis. Note is taken of the recent tendency to create new commissions, boards, and other state agencies without attempting to integrate them into the basic departmental organization. An effort is made to assess the impact of the 1948 aged- and blind-aid proposition on the welfare and fiscal structure of the state.

Both the authors have been out of the state for extended periods since the first edition appeared. After having viewed this state and its institutions from the perspective of London and Paris, Washington, and Wellington, we have renewed pride in California's pioneering role in respect to the initiative, the referendum, the recall, municipal home rule, county home rule, the merit system, the manager plan, and other innovations. On the other hand, we find even more acute the need for our big democracy to find answers to such pressing governmental and social problems as how political parties may be made to play their proper role, how much the ballot must be shortened to get responsible government, how to minimize legislative-executive friction, how to develop a balanced social welfare program—given the voting strength of a steadily increasing aged population—how to expand public services rapidly enough to meet the needs of a population that has risen by over 3,000,000 since 1940, and how best to provide local services to people in great metropolitan areas.

We are grateful to students and teachers, to colleagues and officials, for information and inspiration during the past twenty years in which we have been active in studying California government. In the preparation of the second edition we acknowledge particularly heavy obligations to Dorothy Wells, librarian in the Bureau of Governmental Research, and Abraham Holtzman, now a graduate student at Harvard University.

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CHAPTER I

California's Position in the Union



Admission of California.—On September 9, 1850, President Millard Fillmore took pen in hand and signed a document entitled "A bill to admit California as a state into the Union." The admission of California as the thirty-first state was in keeping with its fabulous reputation born of the gold rush. Omitting the usual territorial stage, California, the prize of the Mexican War formally ceded by the Treaty of Guadalupe Hidalgo in 1848, drafted a constitution and asked Congress for admission. This request of the people of California only added fuel to the sharp battle between free and slave states, but the Senate and House finally passed the act of admission. The admission of California broke the deadlock in the Senate, bringing the number of free states to sixteen, as compared with fifteen slave states.¹

The new state had a population in 1850 estimated at 100,000. Its people were concentrated in the Mother Lode and Sacramento Valley sections. An overwhelming proportion were miners; agriculture occupied less than 2 per cent of the gainfully employed men. Representation in the United States House of Representatives was set at two. Contrast this with the 1940 official census report of 6,907,387 total population, and the July 1, 1946, census estimate of 9,550,727. Agriculture and manufacturing now far exceed mining as sources of wealth. California, for the decade of the 'forties, has been represented by 23 Representatives in the House (out of 435) and has had 25 electoral votes (out of 531). The miners who sought gold in 1849 overlooked acres of diamonds in the backyard of the Mother Lode—the fertile valleys, the equitable climate, the rich petroleum resources, the dense forests—an empire larger than the British Isles and in many ways more generously endowed with resources.

¹ Cardinal Goodwin, *The Establishment of State Government in California* (New York: Macmillan, 1914), 341–342, shows that the South did not lose control of the Senate by California's admission, for two of its first three senators were proslavery men.

National powers and state powers.—Both the national and the California constitutions declare that the Constitution of the United States is the supreme law of the land. In a federal system, the distribution of powers between the central government and the self-governing parts is a most crucial task. The American Constitution specifically delegates to Congress power to:

tax and borrow
regulate interstate and foreign commerce
enact naturalization and bankruptcy laws
coin and regulate money
fix weights and measures
punish counterfeiters

establish post offices and post roads
grant copyrights and patents
provide for army, navy, and militia
constitute inferior federal courts
govern territories
make laws necessary and proper for carrying out the foregoing

Elsewhere in the federal document may be found the treaty power, authority to dispose of property, sanction to enforce prohibitions of slavery, and grants of citizenship and suffrage. In a period of nationhood of 160 years, federal power has expanded greatly, often at the expense of state authority. Most of this expansion has come, not from formal constitutional amendment, but from broad construction of the federal powers listed in the original Constitution. As problems have become more acute and widespread, national solutions have been sought, and the required legislation has been hung upon the federal power to tax, to regulate commerce, and on other original federal powers.

After the delegation of specific powers to the federal government, the remaining powers, if not prohibited, are reserved for the states. Various attempts have been made to classify state powers. Clearly the broadest authority possessed by the state comes through its "police power," which permits the state to protect the public health, safety, morals, and welfare. Some state powers, often called concurrent, are shared with the nation; among these are the powers to tax and to borrow. States establish and control local governments, conduct elections, incorporate and charter concerns, establish civil and criminal law. The exercise of such authority by a state must be within the confines set by the federal constitutional guarantees of civil liberties and the definitions of federal powers. In the last analysis a conflict between national and state jurisdiction is settled in the federal judiciary.

California's obligations to other states.—The Federal Constitution requires that each state give *full faith and credit* to the "public acts, records, and judicial proceedings of every other state." In practice, a state is required to accept another state's laws, pardons, charters, deeds, vital records, and court decisions and records. California permits the Southern Pacific Company to operate under a Kentucky charter, accepts at face value a birth certificate from Massachusetts, and enforces in its courts an ordinary civil judgment of the North Dakota courts. In each case, California officials do not examine the underlying facts, but merely determine the authenticity of the document concerned. Notable exceptions to the full faith and credit rule do exist, however. Another state's criminal court proceedings are not necessarily accepted here. Divorces obtained in one state are not invariably valid in another, but the United States Supreme Court has at last extended the full faith and credit clause to divorces in which the parties are given full opportunity to argue the question of residence.

Citizens of each state are entitled to all *privileges and immunities* of citizens of the several states. This guarantee means that citizens of California may go to other states and enjoy protection, residence, suits in courts, property, tax equality, business, and trade. An extensive array of exceptions exists, however, making the rights more restricted than might be assumed from the sweeping language. For example, states are permitted to require a period of residence and citizenship before a new resident may engage in certain professions. Nonresidents may be restricted considerably in their participation in a state "proprietary function," such as taking fish and game or attending an institution of higher learning. The University of California validly charges a nonresident tuition fee of \$150 per semester, and the state makes higher charges for fish and game licenses issued to nonresidents than for those to residents. The courts do not consider a corporation a citizen under the meaning of the privileges and immunities clause; a corporation, therefore, may be required to have a license in order to operate outside its home state.

Finally, a state is obligated by the Constitution to provide *extradition*—to deliver up a fugitive from justice and to turn him over to the authorities from the state in which the crime was committed. Normally the process works smoothly. For example, Illinois officers discover in this state an ex-convict who failed to serve out a prison term; application for extradition is made to the Governor of Cali-

fornia who has the fugitive detained and turned over to Illinois representatives. Sometimes, however, a governor will receive evidence that a person for whom extradition has been requested has reformed, or that the prison system of the demanding state is faulty, and will decide not to extradite. The governor's decision not to render up the fugitive cannot be attacked in the courts, but a new governor may reconsider the case, or the fugitive may be apprehended in another state with a less lenient governor.

What a state cannot do.—The federal Constitution contains several specific restrictions on the states. These prohibitions may be listed as follows:

- 1) No treaty, alliance, or confederation (with foreign nations).
- 2) No letters of marque and reprisal (to prey on commerce).
- 3) No coinage of money, no emission of bills of credit, nor other than gold and silver coin made legal tender. (The "Ham and Eggs" retirement life payments schemes of 1938 and 1939 might well have foundered on this constitutional rock: the warrants could have been deemed bills of credit, and owing to their inevitable use to pay public employees and state bondholders might have been ruled legal tender.)
- 4) No bills of attainder (punishment by legislature without court trial).
- 5) No impairment of valid contracts (neither weaken nor alter the obligation of contract).
- 6) No *ex post facto* laws (retroactive criminal laws).
- 7) No titles of nobility (except honorary colonels).
- 8) No state taxes on imports and exports or on tonnage of vessels (with certain exceptions).
- 9) No taking of liberty or property without due process of law (includes both substantive and procedural due process).
- 10) No denial of equal protection of the laws.

Federal obligations to states.—The most sweeping of the federal guarantees to the states is that respecting the *republican form of government*. In the first place, there is little agreement on what constitutes republican form. Moreover, the courts regard this as a political question, and decline to rule when a specific state (like Louisiana under Huey Long) is alleged to have departed from republican institutions. It remains for Congress to indicate approval or disapproval of a state's regime by acceptance of Senators and Representatives, or the President to choose between contending groups by use of troops to "restore order."

The United States also assures the states of *protection against foreign invasion and domestic violence*. Invasion is easy to ascertain, and clearly is a federal problem. Domestic violence, however, nor-

mally is considered as not requiring federal intervention until the state signifies through governor or legislature or both that it must have help. The federal government may intervene even without a call from a state authority. In 1894, despite the protests of Governor Altgeld of Illinois, President Cleveland broke the Chicago Pullman strike with federal troops. In 1941 a strike-bound aircraft plant in Los Angeles was opened by the army on the grounds that the factory had been commandeered by the federal government for defense production.

Congress plays the major role in the *admission of new states*. The normal admission procedure begins with the organization of a territorial government. California skipped this step, moving from a military government of conquered territory to application to Congress for admission. Congress next enacts an enabling act detailing procedure for framing the state constitution. If the document is satisfactory to Congress, a resolution of admission is passed. Once admitted, the state is equal with all other states, and is not bound by conditions imposed by Congress before admission. Arizona, for example, was forced by Congress as a requisite to admission to remove the recall of judges from her proposed constitution. Directly after admission, however, she added this recall device to her constitution by amendment.

The federal Constitution also assures each state of *equal representation in the Senate*, which may not be denied without the state's consent. Since the adoption of the eleventh amendment, each state is *immune from suit by individuals* in the federal courts.

State services for the Union.—States are obliged to *conduct elections* to fill various federal offices. Within the broad limits imposed by the federal Constitution, the state determines who holds suffrage rights in the election of federal officials. States have a very important role in the *federal constitutional amending process*, for one method of proposal and both schemes of ratification require state action.

Federal grants-in-aid.—The position of the state in the Union cannot be described in constitutional terms only. Federal powers have been construed broadly through the years, and their use has altered the federal system profoundly. This alteration has been most far-reaching through federal grants to the states. Money is appropriated by Congress to the states for activities that are regarded as of national interest; if the states will accept the conditions

imposed they may receive the grant. Such a scheme makes possible the collection of federal taxes and the reallocation of the proceeds over the nation, and thereby facilitates the enforcement of minimum standards over the whole country.

In 1946-1947, California received \$97,151,815^a in federal grants, the largest amount of federal aid received by any state. This was over 20 per cent of the total state budget. For 1947-1948, about \$120,000,000 was provided to California in the form of federal grants-in-aid; this represented in excess of 15 per cent of the state budget. The quantitative picture and the variety of services aided may be seen from a tabulation of some of the federal contributions for that year, which appears as table 1.

Congress allocates the money by states in accordance with various factors, such as need, number aided, rural population, total population. Usually a state is required to match federal money dollar for dollar, but occasionally a state's share may be more, less, or nothing. Federal administrative officials may be given sweeping supervisory powers over the aided state function, as in highways, or little or none, as in land-grant colleges. The grants-in-aid program is also being employed, under the Hatch Act of 1940, to impose restrictions upon the political activities of state employees in institutions receiving federal aid.

Over one-half the amount received by California in federal grants is allocated for social welfare. One of the unfortunate results of federal aid is a tendency to expand aided functions unduly and to neglect or starve unaided functions. In education this often means that vocational work receives facilities and staff that are denied to general education. In social welfare, aid to the needy aged takes state and local funds (in order to match federal) that might more beneficially be applied to child health and welfare services—services that might in time reduce the number of dependent old people. The situation in the schools can be improved greatly by the launching of an extensive program of federal aid to general education, which probably will be the next great development in grants.

Some California groups and individuals opposed the campaign for federal aid to general education that was before the Eightieth Congress, on the ground that the state would pay out in added federal taxes more than it would receive in aid for its schools. It is

^a This figure is from United States Secretary of the Treasury, *Annual Report of Fiscal Year Ended June 30, 1947*, Table 107. It is compiled on a checks-issued basis.

TABLE 1

PARTIAL LIST OF ESTIMATED FEDERAL GRANTS-IN-AID TO CALIFORNIA FOR
FISCAL YEAR 1947-1948*

State department	Service aided	Federal contribution
Education.....	Vocational education.....	\$ 1,077,490
	Vocational rehabilitation.....	1,110,000
	Maritime academy.....	25,000
	School lunch program.....	1,708,733
	Total Education.....	\$ 3,921,223
Employment.....	Unemployment insurance ad- ministration.....	13,376,087
	Employment service adminis- tration.....	6,953,200
	Total Employment.....	20,329,287
Public Health....	Public health services.....	2,873,424
	Hospital construction.....	2,000,000
	Total Public Health.....	4,873,424
Public Works....	State highways.....	17,932,761
	County roads and highways....	3,790,025
	Total Public Works.....	21,722,786
Social Welfare....	Needy aged.....	56,955,499
	Needy blind.....	2,151,092
	Needy children.....	4,833,396
	Child welfare services.....	137,187
	Other welfare.....	4,670
	Total Social Welfare.....	64,081,844
Veterans Affairs..	Veterans home.....	357,600
	Total Veterans Affairs.....	357,600
	Grand total federal aid.....	\$115,286,164

* Governor of California, *Budget for the Fiscal Year 1948-1949*, A50-51. Some traditional federal grants are not listed here, including agricultural extension, forest funds, agricultural experiment stations and land-grant colleges. The grants unlisted here totaled approximately \$5,000,000 in 1947-1948. In addition to grants, California received nearly \$2,000,000 in "shared revenue" under various federal laws.

likely that such a grant program with an allocation plan based on need would operate to the superficial disadvantage of the richer states. Californians must not forget, however, that this is one nation, and that low educational standards weaken the nation. Moreover, since California's population increase comes in large part by migration from states with lower educational standards, this state has a great stake in seeing that the best possible educational facilities are provided for future Californians by adoption.

Federal credits for state taxation.—Recently Congress has used its taxing power even more directly to shape state policy. In the system of federal credits for state taxation, or the tax-offset device, a federal tax is levied, but if a state levies a similar tax for an approved purpose, the United States will yield and collect only a small part of its original levy.

This device was used first in tax collections on estates. Since 1924 the federal government has given up to 80 per cent credit to taxpayers who paid a state inheritance tax. For example, assume Mr. Smith of Santa Barbara died in 1928 leaving to Mrs. Smith a large estate on which the federal tax was calculated to be \$10,000. If California collected as much as \$8,000 in inheritance tax, the federal government waived this amount and collected only \$2,000. If the Smiths had lived in Florida, which until 1931 refused to enact such a tax, the full \$10,000 would have been collected by the United States. As was expected, the few states with no death taxes hastened to enact them; by 1941 all states except Nevada had such levies.

A similar device was employed by Congress in 1935 to force states to enact unemployment-insurance laws. The Social Security Act provided that a federal pay-roll tax should be levied upon employers. However, if the state sets up an unemployment-insurance system which receives the approval of the Social Security Board (since 1946 the Social Security Administrator), the federal government waives 90 per cent of its tax, and collects only 10 per cent which it subvents to the states for administrative expense. California received over \$13,000,000 in this way in 1947–1948. All the states hurried to establish unemployment insurance plans. In the future the federal government may make even further use of this powerful weapon over the states.

Federal-state coöperation.—Congress occasionally has employed its power to regulate commerce to help a state in some problem which it otherwise could not control effectively. This has been done