HOME RULE:

AN HISTORICAL PERSPECTIVE

by Peter M. Detwiler

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. Since the legislature's first days in 1849, 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.

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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 Forty-Niners into a regular system of local government. The *alcalde* — an office that combined the powers of mayor, magistrate and sheriff — dominated Mexican institutions. For example, Monterey's *alcalde,* the Rev. Walter Colton, had substantial authority over not only the town, but also the 300 miles of territory surrounding it. However, Yankee notions of separation of powers and constitutionally delegated power conflicted with a system based on personal rule and few written statutes. As more Americans entered California, they viewed the *alcaldes* as capricious and instead sought to install the public values of their home states.

California's population exploded from 10,000 in 1846 to 92,500 in 1850, exacerbating the problems of a society that lacked 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. But while he prepared a plan for a territorial government, including the annual election of local officials, he never set it in motion.

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 Grass Valley-born Harvard philosopher Josiah Royce in 1886, "practically independent for a time of the regular state officials." 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 period, for example, San Francisco elected its own 15-member legislative assembly, which a later military governor, General Bennet Riley, declared illegal in June 1849 when he called for the first constitutional convention.

The Race To Be First

Several of the existing settlements attempted to legitimize their civic institutions when the California Legislature met for the first time in December 1849. These local governments were either ad hoc arrangements like Sacramento's or, in the case of Los Angeles and San Jose, inheritors of pueblo government. Sacramento residents had adopted their own charter on October 13, 1849, the first city to attempt to establish cityhood by charter, while Los Angeles residents claimed that Mexican law had conferred charter status on them. A close examination of Sacramento's efforts illustrates 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 the 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.

Sacramento Acts First

Cornwall introduced his bill for Sacramento's incorporation on Christmas Eve, and by New Year's Eve had introduced two citizens' petitions for incorporation. The Assembly Committee on Corporations considered all three proposals and on January 9, 1850, responded with a recommendation for 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 seaport town." The committee concluded that the uniform bill would mean that very few special acts would be needed in the future.

The committee's argument against special incorporation acts was not entirely persuasive. On January 14, Senator Alexander W. Hope introduced a special incorporation bill for Los Angeles. The fate of Hope's bill became closely linked with Cornwall's Sacramento bill, which the assembly tabled the next day. After making further amend-

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ments, the assembly unanimously approved the Sacramento bill on January 21. In what appears to have been a race to incorporate the first city, the senate approved the Los Angeles bill on January 24 and immediately 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. Then the rapid tandem progress of the two special incorporation bills suddenly slowed. The Los Angeles bill reached Governor Burnett on February 1, ten days before the Sacramento bill reached his desk. This delay helped Sacramento's cause.

Los Angeles Incorporation Blocked

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

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The governor then outlined his own recommendations for a uniform procedure. Such a law, Burnett wrote, should distinguish between villages and cities. Also, cities would have "to contain a given population" (the notion of a minimum population for incorporation would persist in state laws until 1977). Noting that incorporation attempts would arise when the legislature was not meeting, Burnett suggested that the legislature delegate the review of incorporations to the county courts. Since a court would only check the size of the population — an investigative, not legislative, act — he claimed this move would not be a delegation of the legislative power over incorporation to the judiciary.

Burnett's veto message went on to recommend two classes of municipalities — "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, he reasoned, "a short special act could be passed for that additional purpose."

Burnett's second objection to the Los Angles special incorporation bill involved the limited power to tax that it conferred on municipal officials. Citing 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. The senate was apparently unimpressed with Burnett's reasoning. Five days later it unanimously overrode his veto, although the assembly had failed twice to gain the two-thirds vote needed to override the veto.

Setback for Sacramento

Following the success of his veto, Burnett also vetoed the Sacramento incorporation bill on February 21, issuing a veto message that was nearly identical to his earlier message. The significant difference was the addition of a new constitutional argument. The governor cited constitutional provisions that permitted

special act municipal incorporations and reached three main conclusions:

- A municipal corporation is the only type of corporation that the legislature could create by special act;
- Only municipal corporations and not private corporations may levy taxes; and
- The legislature must restrict municipal corporations' tax powers because no one else can.

Despite the governor's additional concerns, on February 26 the assembly and senate both overrode the veto. Sacramento became California's first incorporated city.

Uniform Laws Passed

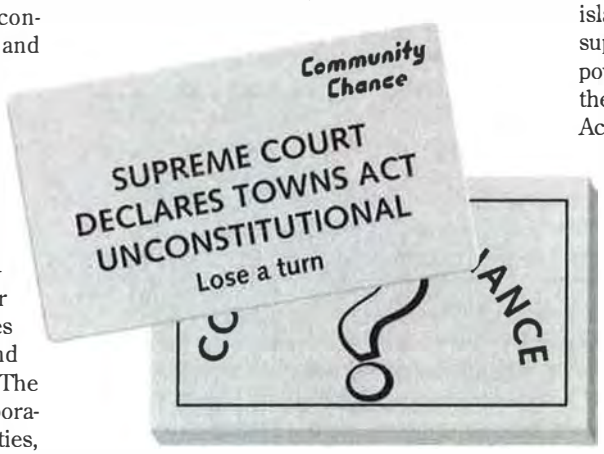
The legislature nevertheless took Governor Burnett's veto message seriously, and proceeded to pass two uniform laws: one for cities, the other for towns. The Cities Act required new cities to have a minimum of 2,000 residents and limited their area to four square miles. The act described two procedures 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 members or as many as 20. The governor's objection to unlimited taxing power was countered by restricting cities' property taxes to 2 percent of assessed valuation.

Communities immediately took advantage of the new law. In April 1850 the legislature created three new cities under the act: Sonoma, Los Angeles and Santa Barbara. At the same time, however, the legislature also passed special incorporation acts for Benicia, San Diego, San Jose, Monterey and San Francisco. Governor Burnett did not veto these special acts, probably because many of them reflected the restrictions that he called for in his earlier veto messages. The San Diego and San Jose bills, for example, limited property taxes to just one percent of assessed value.

The Towns Act, the second of the two uniform laws, was similar to the Cities Act 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 would be a five-member board of trustees.
- A town's taxing authority would be limited to one-half percent of assessed value. (In 1855, the Legislature raised this limit to one percent, 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.)



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In 1856, the California Supreme Court declared the Towns Act unconstitutional, dismantling the compromise that Governor Burnett had build with the legislature. The court held that the legislature improperly delegated the power to incorporate towns to the county courts, which was deemed impermissible since the courts are not part of the legislative branch. The court instead suggested that the legislature delegate this legislative responsibility to the county board of supervisors or some other body with similar powers. 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. The essence of this arrangement persists to the present day.

A Legacy of 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 California Supreme Court cases exemplify the legislature's abuses in this period.

- In the 1859 case of *Pattison v. Board of Supervisors of Yuba County*, the court upheld a state law that called for the county's supervisors to place on the county ballot a

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proposition that required the county to invest in a railroad. The court endorsed the position that the legislature could do anything it wanted as long as the state constitution did not specifically prohibit it. Because counties were the state's agents, they had no powers that were inherently their own. This relationship distinguished counties from cities, the plaintiffs argued, because "municipal corporations, on the other hand, are creatures of statutes, but they are also children of trade."

- 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 that exceeded the charter limitations on the amount of municipal debt (despite the fact that San Francisco's charter, like all others of the period, was itself a legislative act and contained debt limits previously established by the legislature).
- The 1871 case of *Sinton v. Ashbury* 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. The court upheld the validity of the statute that permitted the legislature to direct municipal funds for individuals' gains.
- A second 1871 case, *The Stockton and Visalia Railroad v. The Common Council of the City of Stockton*, represented one of the most egregious cases of legislative meddling. In 1869-70, the legislature directed the city to ask voters to "donate" $300,000 from the municipal treasury to the railroad to build its line. The bill even named three private individuals to the board of trustees that handled the payment. The court issued a decision comprising separate opinions in which the four participating justices variously noted alleged corruption in the legislature and raised issues of fairness. Nevertheless, the court cited prior case law in upholding the constitutionality of the legislature's action. The railroad won its $300,000.

Home Rule at Last

With legislative meddling thus found to be constitutionally protected, the only permanent remedy for cities was to change the state constitution. The 1879 constitutional convention offered the opportunity. The convention delegates consulted several existing documents, most notably the recently adopted Missouri Constitution, the first state constitution to authorize home rule for cities. Incorporating that constitution's home-rule provisions almost verbatim, 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. When the California Supreme Court ultimately reviewed this power in 1880, it noted that it was "manifestly the intention of the [new] constitution to emancipate municipal government from the authority and control formerly exercised over them by the legislature."

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. The issue of local property tax limits troubled Governor Peter Burnett in 1849 as much as it has vexed governors in recent 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 see 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.

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