PRIMITIVE BUREAUCRATIC TRIBES ARE STILL ATTEMPTING TO QUIET VOLCANIC ERUPTIONS WITH HUMAN SACRIFICE.

TAX REVOLT

Prop 13 ends new Deal approach

By Larry Remer

WHILE THE REST OF THE country watches anxiously, anticipating the day when the Great Taxpayer Revolt will reach them, Californians are carefully sorting out the new economic arrangements last month's passage of the Jarvis-Gann Initiative—Proposition 13—will mean.

Though Howard Jarvis is the paid director of the Apartment Owners Association of Los Angeles and much of the financing of the initiative drive came from powerful real estate interests, at the base of this movement is a widespread feeling of anti establishment frustration and populist anger. The overwhelming passage of Jarvis-Gann was a clear signal that the middle class is fed up with high taxes and big government. Witness this *Los Angeles Times* report on the Jarvis victory party the night the initiative passed:

"When Jarvis assailed foes of his initiative, including Gov. Brown, Assembly Speaker Leo McCarthy, and Los Angeles Mayor Tom Bradley, he drew loud and sympathetic boos from the crowd.

"The loudest came when he attacked institutions which fought Prop. 13 either editorially or with campaign contributions ... The *Los Angeles Times*, Bank of America, Atlantic Richfield, and Broadway-Hale Stores."

How did Howard Jarvis and the real estate lobby wind up leading such a potent, grass roots movement?

The answers are hidden in the character of California's political economy, in the failure of Gov. Brown and the liberals in the state legislature to respond to a growing crisis, and in the inability of the state's progressive forces—unions, citizen groups, and community organizations—to mount a strong effort on behalf of progressive tax reform.

After nearly 30 years on the hustings, Howard Jarvis' time came in 1978. The 78-year-old tax reform advocate had been dismissed as a crank after two previous efforts to limit property taxes had failed. But that was before inflation in the cost of California homes and property began climbing at rates of more than 15 and 20 percent annually. When $35,000 homes became $60,000 homes in less than three years, with assessments and taxes keeping pace, the stage was set for a homeowners' tax revolt.

Progressive alternative blocked.

At the same time, the state government was picking up an unbelievable surplus of more than $5 billion, thanks in part to the refusal of Gov. Brown to embark on new spending programs.

It was assumed that the state surplus would be used to provide tax relief to beleaguered homeowners and, early this year, when Brown convened a special session of the legislature for that purpose, a progressive tax reform bill—SB 154—came to the fore.

Led by the California Tax Reform Association (CTRA), a citizens' tax lobby, and backed by a broad coalition of progressive forces, including the Service Employees International Union (SEIU), the state AFL-CIO, and Tom Hayden's Campaign for Economic Democracy, with broad support from community groups throughout the state, SB-154 would have used the state surplus for tax relief for homeowners and rebates for renters. It would also have closed tax loopholes.

But 1978 is an election year for Brown and he began the year with an eye toward muting criticism from the business community that his administration was anti-business.

Instead of plugging tax loopholes, Brown pledged to fight for the creation of one: elimination of the unitary method of taxation, which allows the state to take into account the worldwide operations of multinational corporations in figuring what percentage of that business came as a result of their California assets and should therefore be taxed. Japanese auto manufacturers had cited this tax as a major reason for refusing to construct auto assembly plants in California, and Brown hoped his gesture would woo them.

It was estimated that elimination of the unitary method of taxation would cost California taxpayers between $100 and $200 million annually.

With his eyes on the corporate elite, Brown failed to go to bat for SB-154, effectively killing it.

This gave Howard Jarvis the political opening to put Prop. 13 on the ballot. With the burgeoning coffers of the real estate lobby at his disposal, Jarvis collected 1.2 million signatures in record time.

No effection coalition.

Even so, most pundits feel that Brown and the legislature could have headed off the passage of Prop. 13 if they'd designed an adequate alternative. But Prop. 8—which they offered on the same ballot as Jarvis—offered too little too late. Brown refused to earmark more than $1.5 billion of the surplus for tax relief and, during the legislative wrangling over the shape of the proposal, the real estate lobby bottled up any truly progressive tax remedies.

In the meantime, the battle to stop the Sundesert nuclear plant from being built moved to center stage for the state's activist network, which presently lacks the resources and organization that would have been necessary to counter Jarvis. And labor was hopeful that the opposition of Brown, coupled with opposition from the corporate establishment, which felt Jarvis was too drastic, would effectively stop Prop. 13. Thus, no effective activist-labor coalition came together to fight Prop. 13.

Those most affected by Prop. 13 are public employees, who face massive layoffs, and the poor, who face imminent cuts in social services. It will be a year, however, before the true impact will be seen. Just two weeks after the passage of Prop. 13 Brown signed an emergency bailout bill, which dipped into the surplus to provide local governments with 90 percent of the funds they would have lost and forestall, temporarily, layoffs and massive service cutbacks.

End of the New Deal.

Nevertheless, Jarvis-Gann is a watershed in the post-World War II development of California. Ever since FDR, liberal government economics have been based on New Deal theories that by taxing the middle class, the poor can be given the bare essentials. That premise is dead as a political postulate. The middle class won't buy it. The number of poor have been growing with the bite of government getting bigger. At the same time as the middle class' lifestyle is threatened by inflation and unemployment.

If the poor want more money for social services in the future, they will have to ask the government to increase taxes for large corporations and wealthy individuals.

Playing to the Jarvis mood of the voters, Brown has done an adroit political pirouette. He abandoned his Jarvis opposition a week before the election when the polls definitely said it would win. By the week *after* the election news commentators across the state had nicknamed him "Jerry Jarvis" for the way he was insisting that his "era of limits" philosophy had been consistent with the ideas of Jarvis all along.

By taking a hard line against scheduled cost-of-living increases for state employees, Brown has indicated that labor support is expendable in November. He made page one headlines—and many say votes—when he was booed by 1,500 public employees on the Capitol Mall in Sacramento just after he announced his bailout plan.

California labor unions—with public employees constituting a major component—are faced with a serious dilemma as a result of Jarvis: how to protect jobs in the face of angry taxpayers. Many public employee union leaders have noted an increased "proletarianization" of their members, with less reliance on civil service protection and a greater appreciation of the values of unionism.

In an effort to forestall any drastic cutbacks in a year when the state surplus is gone, an effort is being mounted by a labor-community coalition to put a measure on the November ballot that would limit the Jarvis tax ceiling to residential property, putting commercial and industrial properties back on the tax rolls. A petition drive—spearheaded by the same forces that pushed SB-154 initially—has been started to garner 100,000 signatures in an effort to pressure the legislature to pass a bill that would place such a measure on the ballot.

It would be more likely that such a grass roots effort from the progressive forces in California would succeed if the Jarvis cuts had taken effect immediately. But now that they're postponed for a year, and until after the election, it would take a firm gesture by Gov. Brown to get such a measure through the legislature and onto the ballot. Still smarting from the Jarvis vote, Brown has yet to indicate which direction his zenguru instincts will take him. ■

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The Bakke Decision

By Laurence R. Sperber

JUSTICE LEWIS F. POWELL JR. HAS manufactured an unforeseen compromise solution to the potentially disastrous consequences of the *Bakke* case for affirmative action programs in education and general employment. Powell secured the agreement of four justices to his holding that race may continue as a factor in the selection of university students, while joining four other justices in the conclusion that quotas or goals as utilized by California's Davis Medical School in its affirmative action program were invalid.

In dissenting, the only black member of the Court, Justice Thurgood Marshall, viewed the decision as carrying dire consequences for the hope of racial equality. But in the week since the decision there has been an astonishing consensus among affirmative action advocates that the opinion can be lived with. Eleanor Holmes Norton, chief of the Equal Employment Opportunity Commission, said her affirmative action programs in industry would survive, noting that Powell had cited with approval appeals court cases upholding numerical targets in industry.

It is clear, if nothing else is, that *Bakke* did not deal a death blow to employment quotas, yet. The Court's refusal on July 3 to disturb the AT&T affirmative action settlement bears out this view.

Quick to abandon commitments.

Doubts remain, however. Columnist Tom Wicker wasted no time in finding that "a preliminary study of the Court's blizzard of opinions suggests that the validity and potential of affirmative action programs may have been seriously—if not fatally—undermined by the decision...." And buried in Anthony Lewis' more cheerful analysis lies an unwitting key: "Whether universities will use their discretion to continue bringing more black and other minority students into the stream of higher education will be entirely up to them."

So what's wrong with that? A pair of California examples from recent history, after the California *Bakke* decision but before the Supreme Court's solution, show that the administrators of two leading California law schools were quick to temper their enthusiasm for affirmative action by drastic cuts in the program at Hastings Law School and UCLA law school.

In both places the students protested. At Hastings the students won almost all their demands—that there not be cuts in the number of minority students admitted, and no reduction in the power of the student advisory admissions committee. At UCLA the administration waited till just before final exams to cut the Chicano input in half, and the ensuing strike that tied up classes (a sit-in) was beaten by the on-rush of exams. Even so the administration secured peace by promising to "reconsider."

It has never been the universities' goodwill that created or preserved affirmative action; it will be less so now. At least the fixed numerical goals gave the civil rights people a standard by which to judge the performance of the schools' admission methods. Now quotas are out, and race is "a factor."

There is a plurality opinion on the Supreme Court finding a First Amendment interest in a diverse student body, which means that education must serve the people. Who will keep the admissions officers "honest," except the persons whose interests are at stake? How can they judge performance without resort to ratios, like those which fill the pages of the dissenting justices, showing that after all these years we have only 1 or 2 percent minority practitioners of medicine or law?

Join the real world.

Justice Harry A. Blackmun concurred in saying "race as a factor." His words are worth repeating, coming from a white conservative:

"I, of course, accept the propositions that...Fourteenth Amendment rights are personal;...and...the Fourteenth Amendment has expanded beyond its 1868 conception.... This enlargement does not mean for me, however, that the Fourteenth Amendment has broken away from its moorings and its original intended purposes. Those original aims persist. And that, in a distinct sense, is what 'affirmative action,' in the face of proper facts, is all about.... I am not convinced, as Mr. Justice Powell seems to be, that the difference between the Davis program and the one employed by Harvard is very profound or constitutionally significant. The line between the two is a thin and indistinct one. In each, subjective application is at work.... The cynical, of course, may say that under a program such as Harvard's one may accomplish covertly what Davis concedes it does openly. I need not go that far, for despite its two-track aspect, the Davis program, for me, is within constitutional bounds, though perhaps barely so.

"The sooner we get down the road to accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene.... In order to get beyond racism, we must first take account of race. There is no other way...."

Is proof required?

One serious pitfall in the case is the general agreement by everyone that there was no evidence in the record that Davis had discriminated in the past. Some justices assumed the absence of evidence was tantamount to the fact of no past discrimination. Powell noted that cases that had allowed affirmative action all were instances where past discrimination had been found to exist in the policies of the institution or employer by some court, administrator, or executive agency. (Of course, the university in fighting the case did not want to prove that it had discriminated in the past.)

There has been a growing line of court decisions requiring not simply societal discrimination, but proof of intentional discrimination. Conclusions drawn from statistical summaries of minority population compared to admissions no longer will suffice. Statements have been made public showing a past policy of discrimination at the medical school of the University of California. California Justice Stanley Mosk has said that if there had been such evidence it would have been another case. But now the law is that quotas or goals cannot be saved in the absence of proof of prior discrimination of an intentional kind.

If this doctrine is extended to employment cases, it will be a roadblock in the path of the essential goal of ending a situation where blacks and browns suffer double unemployment rates and consistent economic disadvantage. The federal courts are loaded with cases that have followed *Bakke*.

Nothing seems more absurd than requiring proof of discrimination in a society where it is the rule, not the exception.

UPI

The most unfortunate result of the Court's decision to order Allan Bakke (above) admitted to the U.C.-Davis Medical School is that it focuses undue attention on affirmative action programs when the real culprit is the lack of opportunity for everyone.

Even though the compromise avoided a disastrous decision, we must not lose sight of the historical fraud perpetrated in the plurality opinion. The last word on the subject must be taken from Justice Marshall's angry dissent:

"There is thus ample support for the conclusion that a university can employ race-conscious measures to remedy past societal discrimination, without the need for a finding that those benefited were actually victims of that discrimination.

"While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic that, after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible.... In declining to so hold, today's judgment ignores the fact that for several hundred years Negroes have been discriminated against, not as individuals, but rather solely because of the color of their skins. It is unnecessary in 20th century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape the impact.

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