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HOW AND WHY THE UNIVERSITY OF CALIFORNIA GOT ITS AUTONOMY

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HOW AND WHY THE UNIVERSITY OF CALIFORNIA GOT ITS AUTONOMY  
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**ABSTRACT**

The University of California became a "public trust" in 1879 as part of a larger revision of California's Constitution approved by California voters. The University henceforth gained the exclusive power to operate, control, and administer the University of California, becoming virtually a fourth branch of state government, a "constitutional corporation . . . equal and coordinate with the legislature, the judiciary and the executive. It was a watershed moment in the history of California's land-grant public university, fundamentally shaping the state's subsequent development of the nation, and the world's, first coherent approach to building a mass higher education system. Status as a *public trust* set UC on a spectacular course, helping it to create an internal academic culture and drive to meet the socioeconomic needs of the state relatively free of the often contentious political interventions found in many other states. UC emerged as one of the most productive and prestigious university systems in the world. Yet over the past six or so decades, the unusual status of the university's governing board has been on occasions a source of frustration for lawmakers who have wanted to be more directly involved in controlling and formulating university policy, from admissions practices and tuition, to how funds are raised and spent, what academic programs UC should or should not provide, and proposals to revise the membership and authority of the Regents. The following provides an historical account of how and why the University of California gained this unusual level of autonomy. In essence, and in the context of 1870s California, delegates to the state's second and last constitutional convention in 1878 heard the complaints of UC's president Daniel Coit Gilman shortly before he left in frustration to become the head of Johns Hopkins University, and chose to protect it from further "legislative control and popular clamor." Ultimately, the delegates and the voters chose the university's lay board with a representative mix of Californians and lawmakers, the Regents, over the legislature as the best way to organize and promote UC.

**Keywords:** University of California, University Autonomy, California Constitution, Higher Education Law and Politics

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*However well we may build up the University of California, its foundations are unstable, because it is dependent on legislative control and popular clamor – UC President Daniel Coit Gilman, 1876*

The University of California became a "public trust" in 1879 as part of a larger revision of California's Constitution approved by California voters. It was a watershed moment not only in the history of the university. It shaped and in many ways determined California's subsequent effort to build its pioneering higher education system – the first coherent approach to creating mass higher education in the United States, indeed the world.

The new constitution of 1879 gave the UC Board of Regents and its academic leaders and faculty an unusual level of autonomy from lawmakers. Previously, the young university had the standing as only a statutory provision under its 1868 charter, subject to often conflicting and contested proposed laws and efforts at reforming the mission of the campus in Berkeley. After 1879, the Regents gained the exclusive power to operate, control, and administer the University of California,<sup>1</sup> becoming virtually a fourth branch of state government, a "constitutional corporation . . . equal and coordinate with the legislature, the judiciary and the executive," stated California's attorney general Edmund G Brown shortly before becoming governor in 1958.<sup>2</sup> This meant that the university's board, and its faculty and administrators, acquired and retained authority for managing all academic affairs of the institution, including the hiring and promotion of faculty, what to teach, policies related to admissions, establishing and planning

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\* The historical analysis in this essay is adopted from my previous book, *The California Idea and American Higher Education* (Stanford University Press, 2000, and 2007): <http://www.sup.org/books/title?id=339>

new campuses, and even the authority to condemn land. No statutory law passed by the state legislature could usurp this authority.

But status as a *public trust* did not mean that California's land-grant university could simply act without regard for the social and economic needs of California, or without cooperation and support of past and future governors and state lawmakers. The university had to comply with state fiduciary laws that applied to all state agencies. Further, by 1911, UC became dependent on substantial state funding based on an innovative model – enrollment based funding – creating a powerful partnership between lawmakers and the university that would expand the university's presence in almost every corner of California.

In prior decades, the annual state budget for the university was a minor provision based on property taxes collected by the state, with no relationship to enrollment and the workload of faculty to teach students and to pursuing research and various forms of public service – part of their broad mandate since the universities founding. Enrollment based funding changed everything. It created a contract with the state to predictably fund the university, allowing and encouraged it to grow in students and academic programs that keep pace with California's spectacularly and constantly growing population and economy. This financial investment and the university's dependence on taxpayer funding helped align the interests and concerns of lawmakers and university leaders, but waned in the 1990s and has been seemingly lost in the wake of the Great Recession. From the 1920s until 1960, UC agreed to accept students from the top 15 percent of all high school graduates as the state grew in population, revising that to 12.5 percent as part of the 1960 Master Plan as part of a budget deal with lawmakers.

The 1879 constitution elevated the legal status of the UC Board of Regents and the university, while purposeful retaining the composition of the Regents set by the university's 1868 state charter. It followed the common model of other major state universities by including lay members of California society among its membership, along with the governor and other statewide elected officers, alumni and eventually faculty and student representatives. This is uniquely American model only now being replicated in other parts of the world. The Regents were intended to provide a vital link to economic and other interests in the state and supporters of higher education as a vehicle for socioeconomic mobility and economic development, to lawmakers in Sacramento, but also a buffer from sometimes short-term and popular demands of some state constituents and sometimes opportunistic political forays of politicians. The UC Regents, in turn, delegated significant authority to university faculty, primarily in the form of the Academic Senate, to manage academic affairs of the university, and to administrators to guide its policy, financial and operational activities under a system of "shared governance" - all with the objective to support the teaching and learning, knowledge production, and public service mission of the university.

This elevation of UC to a *public trust* set it on a spectacular course that created an internal academic culture focused on quality and performance, and a drive to meet the socioeconomic needs of the state relatively free of the often contentious political interventions found in many other states. UC emerged as one of the most productive and prestigious university systems in the world. Following the model of a selective, research-intensive university, UC became nation's first multi-campus system, beginning with the establishment of UCLA.

University research helped bolstered and in many cases transform California's economy, from citrus and wine industries, to electronics in the post-World War II period, and played a critical role booming technology sectors, including forming the primary engine for biotech. Five of its campuses are ranked among the top 25 universities in the world; and Berkeley is ranked as the best public university globally.

UC academic leaders also promoted the general development of education in the state – in part to insure that it could pursue and shape the idea of the American research university, but also to expand access and promote socioeconomic mobility. In other states with public land-grant institutions, universities were often forced by lawmakers to lower admission standards in an effort to expand access, and to establish of new campuses without a sense of how they might relate to each other. California was very different.

President Benjamin Ide Wheeler and key faculty at Berkeley helped envision and support legislation in 1907 that created the nation's first system of junior colleges (now the California Community Colleges), fundamentally determining the evolution of California's current tripartite public system of higher education. To help bolster the idea of the community college and established ways for student to transfer at the junior year to Berkeley, faculty created an upper and lower division curriculum, invented and defined the idea of the Associate of Arts degree, and accredited both community colleges and the state's public high schools to help support access to a higher education degree. One result is that UC remained a relatively highly selective public university, increasingly research-intensive, and increasingly influential in the socio-economic development of California, yet broadly accessible because it offered alternative paths to be admitted and succeed. By the 1930s, some 40 percent of students at Berkeley and what became UCLA were transfer students. California's innovative model quickly spread to other states, but

without the same magnitude of historical success. California's community college began to grow dramatically, with local communities establishing nearly two each year until the 1960s. Combined with a growing network regionally based state colleges (what became CSU by the 1960s), the CCC and CSU systems became the primary entry point for students, creating a relatively efficient system for taxpayers and elevating California as the leading state in terms of college-going and degree completion rates for most of the 20<sup>th</sup> century.

Without UC's status as a public trust, California's higher education system, and the university itself, would simply not exist in its present form. It is probable that we would have had a system more like the State University of New York (SUNY) formed on the 1950s – more a collection of different institutions under a single board, than the relatively coherent tripartite system found in California.

Over the past six or so decades, the unusual status of the university's governing board has been on occasions a source of frustration for lawmakers who have wanted to be more directly involved in controlling and formulating university policy, from bills to establish new campuses often without regard to statewide planning needs, to admissions practices and tuition, how funds are raised and spent, what academic programs UC should or should not provide, and proposals to revise the membership and authority of the Regents. In the post-World War II period and up to 1960, for example, there were numerous proposed bills to establish a "superboard" to revamp the Board of Regents or create a new board that would govern all of California higher education. The distinct mission, multi-campus academic culture that is a key part of UC's success (the "One University" model), and claim on state resources as the primary research university for the state, would have dissipated. The University of California system as we know it would not exist.

The legal status of the university, and the support of alumni and political allies, has, thus far, protected it from such initiatives. But despite the legal status of UC, there have been a number of spectacular instances of lawmakers, and in particularly governors, forcing their political will on the university – witness Governor Ronald Reagan's successful campaign to have the Regents fire Clark Kerr, and Governor Pete Wilson's successful effort to have the Regents end the university's affirmative action policies as part of his bid to run for president.

One can debate the current positives and negatives of such an unusual level of autonomy. The recent interest of some lawmakers to propose a constitutional amendment to end UC's public trust status (Senate Constitutional Amendment 1 introduced December, 2014), reflects, I sense, a growing frustration with the now grand disjuncture between the historical mission of UC and the long-term pattern of disinvestment by state government. This malady led UC President Janet Napolitano to propose a five year plan to further raise tuition intended to partially make-up for lost funding on a per-student-basis, and support the university's growing financial aid program – a third of all tuition goes to financial aid. But much of the focus of lawmakers, and the governor, is on the tuition side of the equation and a desire to see further reduction is UC's operating costs. UC already has among the highest student-to-faculty ratios among like universities. How much further can it go up? Frustration over the salaries of top administrators and the university's recruitment of fee paying international students to also help mitigate budget cuts are also reasons that lawmakers seek greater control over university affairs. SCA 1, authored by a Democrat and Republican senator, would repeal UC's constitutional provision by January 2017 and henceforth make it, "subject to legislative control as may be provided by statute."<sup>3</sup>

In the current political and budgetary environment, a constitutional amendment to increase the authority of the legislature to shape and manage UC affairs seems like a distraction from the big issues facing California and its once robust higher education system. The social contract of the past created a funding model that allowed UC, and CSU and local community colleges to provide quality academic programs and grow in enrollment capacity. As noted, the historic link of workload funding forged in 1911 no longer exists. With its possibly permanent demise, even in the face of an improved economy and a growing state budget surplus, that ability and incentive to maintain access to public higher education for Californians similar to the past is and has been dissipating. California is projected to grow to 51 million people by 2060. How will California higher education possibly grow to meet this expanding demand without an unpredictable state government partnership?

The following provides an historical account of how and why the University of California gained the status of a *public trust* - Article IX, section 9 of the California State Constitution. After numerous attempts by university critics and by some lawmakers to turn the state's emerging university into a vocationally oriented institution for the training of farmers, delegates to the state's second and last constitutional convention heard the complaints of UC's president Daniel Coit Gilman shortly before he left in frustration to become the head of Johns Hopkins University. They chose to protect it from further "legislative control and popular clamor." They proposed making UC a new branch of state government, putting their faith into a semi-autonomous lay board, in the hopes of protecting the university from further legislative caprice. Ultimately, the delegates chose the university's lay board, the Regents, over the legislature as the best way to organize and promote UC, purposefully limiting the authority of lawmakers.

Yet the path to that new status, modeled on the University of Michigan's similar status, was tumultuous. Proposed language in the new constitution would have relegated the University of California to a vocationally oriented polytechnic with no research mission and little room for liberal arts education and graduate training. But a last minute parliamentarian move and appeal to the delegates orchestrated by Regent Joseph Winans and supported by Berkeley alumnus Jacob Fraud revised that language, elevating the university's autonomy and preserving its broad mission and purpose in California society.

This is an historical story with peculiarities related to the difficult politics and needs of a young state attempting to build public institutions. Yet it also provides context for current debates on the relative merit of providing UC with a high level of autonomy. Political instability, along with declining public investment in public universities, is a national phenomenon, with numerous and growing examples of often politically oriented interventions and threats to the public purposes of these important institutions – such as the array of destructive initiatives in Texas, Florida, Wisconsin and Arizona. Public universities need to be accountable and responsive to their major stakeholders, particularly as they have grown in importance for socioeconomic mobility and economic competitiveness. However, they also need to be protected from the political ambitions and desires for micromanagement that is the DNA of most politicians whether they are right or left wing.

### The Price of Disillusionment

The establishment of the University of California in the Berkeley hills in 1868 brought high hopes. Governor Haight stated that the new university would transform California into an enlightened and significant new member of the Union. The San Francisco *Evening Bulletin* proclaimed that the state university had “not come a day too early. It will be a good day for California when the University shall open its doors and freely invite the youth of the state to enter without price. What the Michigan University is now doing for the West we hope to see the University of California do for the Pacific Coast.”<sup>4</sup>

Another editorial explained that only twenty-three years had passed when “the Golden Gate was thronged with ships from all parts of the world, bringing thousands of gold-hunters who laid the foundations of the state . . . Today the walls of the first free University in the world confront the Golden Gate from the opposite shore of the Bay, where soon will stand the perfect structure, a magazine of new thoughts and new motives, ready for the new and bright day of the future.”<sup>5</sup> One proponent predicted that California's new university would quickly become “a mighty anchor in the stream of time,” with the “present uncertainties and disorders hurrying by and leaving it unmoved.”<sup>6</sup>

Yet by 1872, and after only three years of full operation, the purpose and management of the university was already under attack. A growing class of farmers and laborers viewed the university, and its Board of Regents, as conspirators engaged in a plot to further a new and primarily urban caste of wealthy Californians. Many farmers had joined the California State Grangers, a national, populist political movement that was quickly gaining momentum. The Grange movement began in 1867 as a social and educational organization for farmers, and it quickly gave voice to their political interests in an age of increasing hardship for farmers. After the Panic of 1873 and during a national depression that lasted until 1877, several state Granges gained control of mid-western legislatures.

In California, discontented farmers rose in anger not only against the owners of the state's banks and the railroads, but also against the new university and its allegedly classical curriculum, one thought more suited for the training of gentlemen than for farmers. Indeed, the required courses for all students at the university looked much like those at the great eastern citadels of knowledge such as Yale and Harvard. Leaders of the Grange argued that federal land-grant funds that helped establish UC in 1868, be directed exclusively toward training students in agriculture and mechanical arts. The Morrill Land Grant Act passed by Congress in 1862 stated that its “leading objective” was “to teach such branches of learning as are related to agriculture and the mechanic arts, in such a manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education in the industrial classes in their several pursuits.”<sup>7</sup>

Grangers charged that the Regents and new president, Daniel Coit Gilman, Henry Durant's successor, had colluded to ignore the requirements of the university's land-grant charge. The new state institution, stated the Grange, was manipulated and used by the same bankers, railroad owners, and other business interests that restricted credit and victimized the yeoman farmer and the individual laborer. Emerging labor groups and their sympathizers joined the protest. Together, the Grange and labor attacked the university, claiming that it failed to meet the charge of the Morrill Act.<sup>8</sup>

Fueling the protest, Henry George's *Daily Evening Post* publicized the protests of the Grange and the San Francisco-based Mechanics Deliberative Assembly. Distrust of the new institution by this politically powerful coalition, with the support of two of the university's fourteen faculty, created a furor. “Both within and without, the university had at that time foes who were grimly

determined to turn it from the broad ways on which it had been established," notes William Warren Ferrier in his 1930 book, *Origin and Development of the University of California*.<sup>9</sup>

William Swinton, professor of literature, and Ezra Carr, director of the university's college of agriculture, echoed the charges of the Grange, stating that Gilman's Yale heritage, autocratic approach toward the faculty, and lack of "knowledge, interest or sympathy for industrial education" were altering the true purpose of the institution. Perhaps in an effort to survive this mutiny, Swinton and Carr did not initially attack the Regents, but rather Gilman, who, according to Swinton, influenced the board toward "a tacit attitude of antagonism to the wishes of the people of the State in regard to certain phases of practical education."<sup>10</sup>

Carr, in particular, thought the university's curriculum and enrollment, and a corresponding level of resources, should be dedicated primarily to agricultural and mechanical arts programs, perhaps in proportion to the total number of farmers within California's population.<sup>11</sup> The funds were slow in coming, hindering the development of a university farm on the Berkeley site, he charged. In Carr's opinion, the money was being siphoned off to build the more traditional elements of the new College of Letters and Sciences.

Bolstered by Carr's support and that of the Mechanics Deliberative Assembly, in early 1874 Grange members proposed a number of solutions for consideration by the legislature. Most included reinforcing and enlarging the role of agriculture and mechanical arts programs, for example, by constructing new buildings and increasing funding. Another legislative proposal would abolish the board of Regents. In its place would be a newly constituted State Board of Education with fifteen members and with authority not only over the university, but also the state normal school in San Jose, public elementary schools, and the handful of new secondary schools. Six of the members would be the same ex-officio representatives on the former board of Regents: the governor, lieutenant governor, speaker of the assembly, superintendent of public instruction, and the presidents of the Mechanics Institute of San Francisco and the State Agricultural Society. Added would be the head of the State Grange as an ex-officio member and eight new members who would be elected to four-year terms from each of California's congressional districts.<sup>12</sup>

### **Gilman and a Legislative Investigation**

The powerful voice of agricultural interests and charges of Regents' mismanagement of land-grant funds prompted a legislative investigation. Both Carr and Swinton stated their support for the Grange proposals before a legislative hearing. After less than two years at Berkeley, President Gilman was angered by Carr's apparent attempt to increase funding for university agricultural programs by exploiting the wrath of the Grange. He also sought to fend off Carr and Swinton's personal attacks and the Grange's charges of mismanagement and inattentiveness to agricultural needs.

At the 1874 hearing, Gilman explained that agricultural programs were in place awaiting student demand. In his judgment, the Regents were adept managers of federal land-grants, following the spirit of the Morrill Act as practiced in other states. The 1862 federal grant, explained Gilman, was only one of six funding sources for the university. The others included previous federal grants and gifts from private donors. Gilman also presented a detailed listing of revenues and debts for the university. These data compared the management and sale of federal scrip in other states. To demonstrate the good intentions of the university, Gilman presented plans to improve "practical training" in agriculture and to offer a series of lectures to the public on agricultural topics. Gilman also submitted a list of agricultural facilities needed by the university, which he hoped the legislature might fund. Reflecting the sentiments of Benjamin Silliman, Jr. and Governor Low in establishing the university, Gilman concluded that his trusteeship was for "a university, and not a high school, nor a college, nor an academy of sciences, nor an industrial school . . . Some of these features may indeed be included in or developed with the university, but the university means more than any or all of them."<sup>13</sup>

Gilman and selected members of the Regents launched a successful campaign to defeat the Grange Bill. Five months later, the Regents dismissed Carr. Looking back on his fight with the Grange, in 1906 Gilman noted that California's university "was a state institution, benefited by the so-called agricultural grant, where it was necessary to emphasize the importance of the liberal arts, in a community where the practical arts were sure to take care of themselves."<sup>14</sup> Working with a sympathetic board of Regents, Gilman sought to nurture the varied fields of a university, one that would look and operate much like the private institution he recently had left.

Although Gilman was among the first to articulate the concept of academic freedom and to define the role of the modern university, by 1874 he felt he was fighting for the life of his institution, and specifically for the ability of its president and board to govern its affairs. He viewed his victory as temporary. Frustrated with the highly charged political environment that cast doubt on virtually every action by the university, in 1875 Gilman left to become the first president of Johns Hopkins University. In Baltimore, and with the largess of benefactor and banker Johns Hopkins, Gilman would successfully build his ideal university,

devoted to research and graduate training under the German university model, a pioneering and private university free of legislative meddling.

Gilman's departure was a statement of frustration, a blow to the university, and a warning to Californians. Gilman wrote in his letter of resignation, "for university fighting I have no training; in university work I delight. I therefore beg of you to release me from the post I hold, at the earliest day you can consistently do so."<sup>15</sup> Gilman's resignation was also victory for the Grange, but it was not enough to dispel the opinion of many farmers and urban social activists that the university remained an extension of a corrupt upper class of urbanites. Ezra Carr's dismissal from the university after the defeat of the Grange bill, dubbed by one newspaper "treachery to the people," fueled the fire of capitalist conspiracy theories. Due to his popularity among farmers, Carr ironically proceeded to win the office of California's superintendent of public instruction (1875-1880). His election made him an ex-officio regent, as stipulated by the 1868 Organic Act.

### **A University or a Utilitarian Polytechnic?**

Carr's new position and the persistence of the Grange kept the political movement to reform the university alive, a festering problem for the Regents that would not be resolved until the end of the decade. In 1876 at the next legislative session following the defeat of the Grange bill, legislation introduced by Assembly Speaker and ex-officio Regent Gideon J. Carpenter, and supported by Superintendent Carr, proposed to disband the Regents and reform the institution's curriculum in the vein of a polytechnic. This time, the angle of proponents of university reform was legalistic. Carpenter claimed that the fifteen-year terms of the Regents contradicted a provision of California's 1849 constitution that stipulated four-year terms for all state officials. Under this rubric, Carpenter's bill would reconstitute the Board of Regents as an elected body with purview over all public education. In addition, land-grant proceeds would be reserved for "practical instruction," and the superintendent of public instruction, who at the time just happened to be Carr, would become the chair of the board.<sup>16</sup>

The Regents issued a statement warning of the "disastrous effects" if the Carpenter Bill was passed. John LeConte, returning to the post of president following Gilman's departure, claimed that the bill was unconstitutional. First, noted a statement from the Regents to the legislature, the four-year term limit was for elected officials, and, second, the constitution intended the state university "to be an independent institution, having a complete unity in itself, and distinct from the general system of common schools."<sup>17</sup> The assembly passed the bill, but the state senate postponed consideration. A subsequent report of a senate subcommittee of the legislature did not necessarily concur with the university's contention that the bill was unconstitutional, but it did disclaim Carpenter's insistence that term limits applied to the Regents. Interpreting Article XI of the constitution "is not free from difficulty," explained the subcommittee, "but from the examination we have been able to make, and the light before us, we believe it does not" apply to the Regents.<sup>18</sup>

The Carpenter bill was defeated. But two years later at the next session of the legislature, Senator N. Greene Curtis revived it, offering a similar bill that also advocated the establishment of regional institutions using land-grant funds, and hence rivals to the Berkeley campus.<sup>19</sup> The Curtis bill, after additional university protests, was eventually withdrawn due to a lack of support.

### **The Call for a New Constitutional Convention**

While university reform remained on the political agenda of the State Grange and other critics of the University of California, it was a fading concern for most Californians. By the mid-1870s, political fervor focused on the regional effects of a severe drought that ruined many farmers, a nationwide economic depression, the proliferation of corporate corruption and swindles linked to the railroad industry, and racist anger over the increased use of Chinese labor. While financial institutions such as the Bank of California slipped into bankruptcy, the Central Pacific Railroad (what would become the Southern Pacific) only increased its political and economic power. The railroad and its subsidiaries conspired to control government, increase its land holdings and expand its near monopoly of transportation rates. Federal land charters gave the Central Pacific ten million acres of California land. This and subsequent grants made the company the largest landowner in both California and Nevada.<sup>20</sup>

High unemployment, depressed prices and social upheaval in cities such as San Francisco caused many Californians to seek political solutions that would, it was hoped, cleanse the state of its multiple ills. In rural California, the State Grange increased its political strength focusing its efforts on the water rights of farmers and unregulated railroad rates. In San Francisco, unemployed workers rioted in 1877. An angry crowd fought police, burned businesses, and murdered members of the local Chinese community. Only a massive military force aided by local vigilantes eventually brought order (a throwback to San Francisco twenty years earlier), inaugurating a period of restrictions on public gatherings and a semblance of martial law. A year later, California's Workingmen's party was formed, headed by San Francisco laborite Dennis Kearney, a demagogue who talked of both class revolution and deporting the Chinese.

Henry George, a moderate member of the party, later reflected that Kearney was "the true spring and foundation of arbitrary power, the connection between Caesar and the proletariat," and that his followers were "men utterly ignorant and inexperienced."<sup>21</sup> Kearney alienated George and other possible rivals within the new party by his rhetoric of violence, including his call for "a little judicious hanging." With Kearney's base of power secured, the Workingmen's Party declared: "The rich have ruled us until they have ruined us. We will now take our affairs into our own hands . . . We propose to destroy the great money power of the rich by a system of taxation that will make great wealth impossible in the future." If violence was necessary against either the Chinese "or those who employ [them] . . . let those who raise the storm by their selfishness suppress it themselves."<sup>22</sup> Feeding on economic instability, the Grange and "Kearneyism" formed an alliance on certain key issues, creating a potent political force.<sup>23</sup>

There was also widespread dissatisfaction with the old constitution's inadequate provisions for representation within the state assembly and senate. The number of assembly was limited to 40 representatives, irrespective of California's population. As a result, numerous farming counties had no representation in this house.<sup>24</sup> California's population had expanded from an estimated 50,000 in 1850 to around 870,000 by 1870. By that time, the state economy was no longer dependent solely on the mining of precious metals. As the state's agriculture economy increased in its size and importance, farmers demanded additional representation and power.<sup>25</sup>

The idea of drafting a second constitution presented an opportunity for reform-minded Californians to reorganize state government, restrict monopoly, and pull California out of its political and economic woes. The constitution of 1849, seeking flexibility and professing trust in the honesty and integrity of future officials, provided ample powers to the legislature to levy taxes, make appropriations, grant franchises, and allocate public land for economic development. Yet according to the members of the Workingmen's Party and other reformers, it had simply provided a vehicle for plundering the state and serving the economic interests of the railroads. "The Workingmen, I may say the whole people," remarked William White, a future and influential representative of the party, "conscientiously believe that a majority of the members of (the) Legislature that has just adjourned, were bought and sold like things in the market by the powerful corporations and the thieving rings of the state."<sup>26</sup>

In the face of economic collapse and under the pressure brought by these reform factions in both rural and urban areas, there was growing support for a new constitutional convention. In 1876 and in the depths of California's economic depression, the California Legislature passed an act calling for, with the approval of the general electorate, a second constitutional convention to be held in Sacramento. This was in fact the fourth time voters were presented with such a proposal, each defeated; the first had been in 1859, the second and third in 1860 and 1873. This time, however, the voters approved it, launching a fervent race to elect delegates and control the convention among competing political factions in the state.<sup>27</sup>

Democrats and Republicans had long been clear rivals with different visions of the role of government and the preferred dynamics of economic and political life. California Democrats advocated a limited role for state government, sought innovation from the yeoman farmer, and were wary of centralized power, corporate or public. Reflecting national norms, the state's Republicans believed in entrepreneurial risk-taking and were convinced that an alliance of business and government was necessary to shape the national culture and economy. The Republicans also formed the essential core of entrepreneurs and professionals, largely in San Francisco, that not only supported the development of the common schools, but also envisioned the university as a possible replication of the great eastern institutions of learning. Here was an influential contingent that served on the university's board of Regents and provided political support for Gilman and his successors.

Fearing the radicalism and growing strength of the Workingmen's Party and its coalition with disenfranchised farmers, however, Democratic and Republican party leaders found their mutual differences less important than disarming their common enemy. Economic hardships, racial fears, and outrage at corporate control over state government could allow radicals within both the Grange and the Workingmen's party to dominate the upcoming constitutional convention in Sacramento. To combat this possibility, Democrats and Republicans agreed to join forces to promote "nonpartisan" candidates in a vast majority of the district elections. This strategy was a significant step in limiting Workingmen's Party representation. It was also the formation of an alliance of the more moderate factions that would determine the fate of the University of California during the convention.

Following elections, 152 delegates arrived in Sacramento in September 1878. The delegates included 51 Workingmen's Party members, 78 nonpartisans who were mostly farmers and lawyers, 11 Republicans, 10 Democrats, and 2 independents. "The convention itself was vaguely divided into three groups," explained Henry George: "first, the lawyers, who largely represented corporate interests; second, the Grangers, who represented the ideas and prejudices of the farmers and the landholders; third, the Workingmen, bent on making capital for the new party, and desirous of doing something for the working classes, without the slightest idea of how to do it."<sup>28</sup> Most of the Workingmen's delegates represented moderate elements of the party. In part, this



was due to a disproportionately low representation from the San Francisco area where the more radical elements of the party were based.

Once in Sacramento, the delegates engaged in a struggle to control the organization of the convention. The first task was to select the convention's president and the membership of the various working committees. While members of the Grange and Workingmen's parties met in a bid to control the convention, nonpartisans also formed caucuses for the same purpose.<sup>29</sup> After several internal splits, the nonpartisan caucus managed to elect their candidate, Joseph P. Hoge, as the convention president. It was a major victory for the more conservative elements of the convention.

Hoge was a San Francisco corporate lawyer, chairman of the Democratic State Committee since 1868, and "noted for his legal ability, his vigor, and his profanity." Hoge proceeded to manage the appointment of nonpartisan representatives as the chairs for thirty-one special committees. Each committee was to focus on important policy area, including education.<sup>30</sup>

### **A Chance for University Reform**

For six months, convention delegates engaged in a divisive debate over conflicting visions of California's future. Many of the delegates had come to Sacramento bent on expelling the Chinese, taxing the wealthy and regulating industry. The reform impulse also raised the question of the management and future role of the University of California.<sup>31</sup> Supporters of the university had approached the convention with apprehension, knowing that the university remained a target among a large contingent of farmers and urban workers. The structure and control of the university was viewed as part of California's vast and complex problems. "Every settled institution, the university included, trembled with fear of menaced calamities," reflected historian William Carey Jones.<sup>32</sup>

Throughout the 1870s, the university had escaped the populist demands to convert the institution to a polytechnic, and to wrest its management from the Regents. The convention promised to revisit the debate, only this time the result would be conclusive.

In only the second week of the convention, with the committee structure just beginning to take form, William F. White, the Workingmen's delegate and a farmer from Pajaro Valley, proposed strict language for consideration by all delegates: "The Legislature shall enact laws for the modification and management of the State university, so that hereafter all instruction shall be of a practical character, and confined to such teaching as shall properly belong to all mechanical arts and sciences, and to all sciences properly relating to agriculture, and no other."<sup>33</sup>

White's resolution called for significant changes in the composition of the board of Regents and also insisted that, until the University of California was reorganized to serve the desired purpose, no appropriations or proceeds from land-granted to the state should be used for the university's operation.

With the support of Grange and Workingmen's Party delegates, White even suggested that the constitution mandate that "every student shall spend at least two hours every day in manual labor, at some mechanical art or in cultivating the ground" to reinforce the apprenticeship system and draw students closer to the life of laborers and farmers.<sup>34</sup> This demand was in fact a reflection of a larger "manual-labor" movement that other innovative universities had adopted.

White's proposal instantly pitted the Grange members and Workingmen Party delegates against supporters of the university. Farmer Jonathan Webster from Alameda supported White's basic proposal to limit land-grant resources to "practical purposes." But in his mind it did not go far enough. Webster demanded that the Regents be elected and that their membership be expanded. He proposed an amendment requiring two Regents be elected from each congressional district.<sup>35</sup>

White's resolution and Webster's amendment was quickly embraced by most delegates. Yet procedurally no action could be taken until the special Committee on Education reported its recommendations. Here the university had substantial support for maintaining the existing board and increasing its autonomy.

### **Joseph Winans and the Committee on Education**

Joseph Winans, a nonpartisan lawyer from San Francisco, was appointed chair of the Committee on Education. Winans was a forty-niner who graduated from Columbia, and then practiced law for six years in the New York before venturing west and establishing a firm in Sacramento. In 1852, he became the city attorney for Sacramento. Nine years later, he opened the extremely successful firm of Winans and Belknap in San Francisco, and shortly after that was elected the president of the San Francisco Board of Education and became a Regent of the University of California.<sup>36</sup>

Winans would become a ceaseless defender of the university at the convention. But he also had the help of largely sympathetic committee at the convention. In total, the composition of his committee included eight nonpartisan and five Workingmen delegates including Jacob Freud, a recent graduate of Berkeley and the only university alumnus at the convention. The other twelve members included lawyers and farmers of largely moderate persuasion and another regent, J. West Martin, a banker from Alameda County and president of the Oakland Gaslight Company.

While Freud was a Workingmen's party delegate, he was not a follower of Kearney or other radical elements of the party. The young delegate sided with the committee majority in seeking to protect the existing university governance system. In later and lively debate on the convention floor, Freud gave a passionate speech for his alma mater: "I rise to speak in defense of the university. Objection has been raised to the appointment of a portion of the Board of Regents. It is urged that they be elected directly by the people . . . But, sirs, experience has invariably shown that the election of Regents involves the destruction and ruin of the university." Freud protested that elections would allow political "prejudices [to] creep into the institution and poison its best blood, and vitiate its highest energies. It sets the university adrift upon the boisterous sea of politics, sure to wreck to pieces on the rocks of partisan life and party contention."<sup>37</sup>

Freud also combated the attacks of mismanagement, stating, "many rumors, nearly all utterly unfounded, prevail as regards to the agricultural department of the university." These included the charge that only one student was enrolled in the department, but there were actually "some twenty students." "To be sure, the students are not exercised in plowing, and hoeing, and reaping, and threshing, for these are mere mechanical operations of agriculture, and are best acquired on the farm at home," concluded Freud; "but they are taught why to plow, when to plow, and how deep."<sup>38</sup>

To clear the university from charges of mismanagement, Martin asked university president LeConte to submit a statement to the convention explaining the institution's finances and plans for its agricultural program. In similar detail to the report furnished by Gilman in 1874, LeConte provided cash receipts, disbursements, and investments between 1868 and 1878. Despite the contention of some, the president noted that the university was not operating with a deficit and had significant holdings in land and buildings.<sup>39</sup>

Accompanying LeConte's statement was a report by Professor Eugene W. Hilgard, since 1875 the director of agricultural programs at Berkeley. Trained in the geological and soil sciences at the university of Heidelberg, Hilgard held positions at the university of Mississippi and the university of Michigan in agriculture and agricultural chemistry before coming to California in 1874 at the age of forty-four. During his first year at Berkeley, Hilgard initiated the first exhaustive study of California soils -- indeed, the most thorough analysis undertaken by any state -- in which he investigated the relations of soils and vegetation. As described by E. J. Wickson, a professor of horticulture at the university during the Progressive Era, Hilgard's pioneering work gained "world-wide significance" because it studied "soils formed under humid and arid and semi-arid conditions and [demonstrated] the natural superiority of the latter" under a carefully regulated system of tillage and irrigation. His findings, along with those of other researchers such as Wickson, had tremendous implications for California's growing agricultural economy.<sup>40</sup>

In his statement to the convention delegates, Hilgard explained the need for university agricultural research to meet the needs of farmers, specifically to prevent the cyclical crop failures. The role of the university, he insisted, was to aid farmers and further the science of agriculture, not to provide an apprenticeship system and trade school, as advocated by former director Ezra Carr and implied in delegate White's earlier demand for forced student labor. Enrollment was growing, curriculum was more diversified, and "a garden of economic botany" was being laid out in Berkeley to conduct scientific experiments on key California crops.

The university must provide a "professional education" to the sons of farmers, insisted Hilgard. "For mere drill in farm operations no sensible man will send his son to college," stated his report, "and business management of a farm will never be learned under the artificial conditions of a College farm. I am unable to see why, of all professional schools, the Agricultural College should be saddled with the task of converting young men to farming, by keeping them surrounded with what some are pleased to term an 'agricultural atmosphere.'"<sup>41</sup>

In his deliberations with the Education Committee, chairman Winans conceded a need for the university to expand its service and training mission in agriculture and industry; but again he noted the complexity of that task and the need for patience. As Gilman argued in 1874, Winans noted that courses were in place, but students interested in farming and the like were slow in coming. Enthralled with Michigan's 1849 definition of its university as a "coordinate branch of state government," Winans also urged a similar level of autonomy for the University of California, primarily to protect it from the corruption of California's legislature, although he did not advocate the election of Regents, as practiced in Michigan since its inclusion in the state's constitution status in 1849.

On January 21, 1879, some five months after the opening day of the convention, Winans presented the recommendations of the education committee. "The University of California shall constitute a public trust," proposed the committee, "and its organization and government shall be perpetually continued in their existing form and character, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and of the Legislature of this State, and of the Congress of the United States, donating lands and money for its support."<sup>42</sup>

Winans told the convention delegates that public education "constitutes the very corner stone of republican institutions" and that "ignorance is the parent of vice, and vice soon hardens into crime." Though the education committee was late submitting its report, Winans urged the adoption of all nine sections of the proposed Article IX of the new constitution on education that dealt with not only the university, but all public education.<sup>43</sup>

### **Webster's Counter Resolution and Later Conversion**

The proposal spurred immediately debate among convention delegates regarding the purpose of a public system of education and whether it should include high schools or a university. Summarizing the seemingly endless arguments and amendments, delegate C. W. Cross saw two sides. "The one says that no funds shall be taken from the public treasury to educate a boy or girl beyond the common English branches; the other says that it is better to educate beyond that limit."<sup>44</sup> It was as if the entire idea of publicly supported education was once again being debated, much to the frustration of Winans and other members of the Education Committee. Another delegate complained that the series of contradictory proposed amendments "shows that if the multiplication table was introduced here, there would be several amendments to it."<sup>45</sup>

Slowly the convention moved through the sections of the education committee's report, adopting most of its recommendations. But the sentiment of the majority of delegates was decidedly against the university becoming a public trust. Jonathan Webster introduced a version of his earlier resolution, insisting that the university remain in the ultimate control of lawmakers, and that the Regents be elected, and requiring that all funds generated by the Morrill Act be used exclusively for a new "College of Agriculture and Mechanical Arts."

As in 1874, Grange and sympathetic Workingmen's Party members believed that agriculture and mechanical arts programs remained "swallowed" within the university's College of Letters. How anyone could "claim that the best education for the lawyer is the best education for the future farmer," concluded one delegate, "is one of those dark and bloody mysteries which defy logic as well as common sense."<sup>46</sup> In support of Webster, delegate and granger W. W. Moreland contended that land-grant proceeds were being mixed with other university monies, with virtually no funds supporting the agricultural programs. Moreland and others worried that this might mean forfeiture of the federal grant and an obligation for the state to reimburse Washington. Despite this abuse of the Morrill Act, complained Moreland before the delegates, "we are not only asked to continue this institution in its present form, but in its present character" and with the status of a public trust that could not be revoked "no matter what naughty things it may do hereafter."<sup>47</sup>

Thomas H. Laine, a nonpartisan delegate from Santa Clara saw the need for the university to avoid the political pitfalls predicted by Winans, but also wanted accountability. He ventured a convoluted compromise. His amendment would make the university a public trust, but the composition and charge of the Regents would remain under the control of state government. Gone was the insistence on the election of Regents. But also missing was the level of autonomy sought by Winans. The university, insisted Laine, "should be forever under the control of the State."<sup>48</sup> It was a position that found great support among the majority of delegates. Despite the protests of the ever-vigilant Winans, the convention delegates adopted Laine's resolution by a vote of 68 to 49.<sup>49</sup>

The Laine amendment remained the official position of the delegates for over a month. But as the convention came to a close, Winans managed to persuade Jonathan Webster of the error of his ways. The Alameda farmer had come to the convention as an ardent opponent of the Regents and the university. He had since undergone a conversion, now convinced by Winans on the merit of a university free from the political meddling of legislators. Webster now valued the idea of a highly autonomous university. He presented yet another amendment drafted with the help of Winans. Gone was specific language requiring a direct link of land-grant funds with a College of Agriculture and Mechanical Arts. Instead, Webster embraced the vague language of the Morrill Act that essentially allowed state's to use the land-grant proceeds for a wide array of academic courses.

The federal land grant, stated Webster's amendment, "shall be invested as provided by Congress; and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one college of agriculture, where the leading subjects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanical arts." Webster also included

language that any college monies "diminished or lost" through "neglect, misappropriation, or any other contingency," would be replaced by the state.<sup>50</sup>

Most important, Webster's amendment stated that both the university and the Regents should constitute a public trust. Laine angrily retorted that the substitute language be rejected: "It is practically the same one that we disposed of after long debate . . . I know that this Convention is not in a condition to listen to any talk."<sup>51</sup> The convention delegates who were now rushing to complete their task quickly rejected the amendment. It appeared that the university would remain under the direct power of the legislature.

### **A Final Vote to Create a Public Trust**

There remained a final reading by the convention delegates of each section of the proposed constitution, including Article IX relating to education, and a final opportunity for University supporters to reverse the fortunes of the Berkeley campus. In late February, six days before the end of the convention, the delegates voted on Article IX. Delegate Laine was no longer in Sacramento, apparently making his way back to his ranch in Santa Clara. It was his assumption that the main constitutional issues were settled. The gathering in Sacramento had in fact exceeded its mandated one hundred days, and many weary delegates, exhausted by the months of debate, were no longer receiving compensation for their efforts and headed back to their long neglected farms and businesses.

Perhaps encouraged by Laine's absence, and at the urging of Winans, Webster once again offered his substitute for section nine. "It is at the earnest request of the friends of the university that I offer it now," stated Webster to the some 130 delegates that remained in Sacramento. Winans protested that the existing language in Article IX would "not only throw the university into the hands of the Legislature, but make it the plaything of politics . . . as long as it is made subject to legislative caprice; so long as it can be made subject to the beck of politicians; so long as it can be made to subserve sectarian or political designs, it will never flourish." Winans went on to note the success of the University of Michigan under an autonomous board, which resulted in "a magical effect," producing the "noblest college existing on the continent." For California's university to flourish, he insisted, it "must be beyond all power of assault and subversion." Winans urged adoption of the Webster amendment: "This amendment now pending meets the wishes of the Regents and of that class of agriculturists who take an interest in this institution."<sup>52</sup>

Joseph Brown, a farmer, noted his surprise that "this would come up again, after all that was said in opposition to it . . . we carefully avoided the words 'public trust.'" Yet with the convention quickly coming to a close, discussion among the delegates remained limited. The Webster amendment was brought to a vote, passing by a final tally of 70 to 59. Immediately after, the entire article on education was passed, sealing the autonomous position of the university.

Rather than significantly changing and restricting the governance of the university, the twisting events of the convention promised to transform the university into a unique entity of the state. The debate had lasted the length of the convention. The swift and calculating actions of the university's supporters, and specifically Winans, helped to overturn the larger sentiments of the convention.<sup>53</sup> The Webster amendment appeased agricultural interests by formally establishing the College of Agriculture and Mechanical Arts. Hilgard, Carr's replacement, gave farmers new faith in the university.<sup>54</sup> By the time of the convention, Hilgard had established clear goals and an experimental farm that promised significant advances in agriculture, and won many converts among the more conservative and moderate Grange members.<sup>55</sup>

However, the success of university supporters is perhaps best understood within the context of a deep distrust among most convention delegates in the legislature. While delegates were divided on numerous issues pitting labor versus capital, including agricultural interests still angry over the university's administration, enough of them were convinced of the need to protect the university from the seemingly inexhaustible corruption and politicking of lawmakers. The efforts of Winans and Webster amendment on the question of whether the Regents or the legislature would provide the best management of the state university. In the end, the delegates to California's second constitutional convention chose the Regents.<sup>56</sup>

Among the majority of Californians who could vote, the new constitution was regarded as either too conservative or too radical. In San Francisco, the stronghold of the Kearnyites, the new constitution was rejected by 1,500 votes out of a total of approximately 38,000. Henry George, who at the time was engaged in writing *Progress and Poverty*, opposed its ratification in large part because of its failure to incorporate his single-tax concept on private land, introduced in his 1871 pamphlet *Our Land and Land Policy*.<sup>57</sup> In the end, however, the agricultural districts with significant Grange representation provided the margin of victory for the new constitution.

A verbose document that reflected the cleavages among the delegates, the constitution passed in May 1879 with 53 percent of the vote.<sup>58</sup> Besides making the university, and specifically the Regents, a public trust, the institution would now be "subject only

to such legislative control as may be necessary to insure compliance with the terms of its endowment and the proper investment of and security of its funds."<sup>59</sup> The Regents suddenly possessed exclusive power to operate, control, and administer the University of California,<sup>60</sup> becoming virtually a fourth branch of state government.<sup>61</sup>

In future years, only five other existing public universities shared this unusual level of autonomy: the state universities in Michigan, Colorado, Idaho, Minnesota and Oklahoma. Unlike California's board of Regents, however, most require the general election of their board members with shorter terms or other structural differences that affect the autonomy of their public colleges and universities.

### Becoming a Public Trust – Not Enough

The 1879 California constitution gave the Regents tremendous autonomy to manage the Berkeley campus, but with what? A year after the convention, the university received only a \$10,000 state appropriation from the state, constituting less than 8 percent of its total and meager operating expenses. There was no promise of a substantial increase in state funding. Being a public trust alone would not allow the University to emerge as a leading model of the American research university.

Twenty years after the convention, Benjamin Ide Wheeler left Cornell to become UC's new president. Most of the endowment from the land-grants had been spent on buildings and operational expenses. As noted previously, they state appropriated funds based a small percentage of income from property taxes. At the same time, more and more Californians wanted access to some form of postsecondary education. The Berkeley campus grew in enrollment and programs but under severe financial stress. Wheeler marveled at the lack of state support for its public university.

Wheeler thought Berkeley's problems acute: "Its equipment and income have been steadily outgrown in its rapid development; its buildings are entirely unworthy of its standing and its work."<sup>62</sup> Only three other states exceeded California in the number of high school graduates who went on to college, noted Wheeler: Massachusetts, Connecticut, and Maryland. Wheeler appealed to lawmakers that no institution in the nation, was forced to educate so many students with so few resources: "the estimated income for the present year provides for the 2,300 students entrusted to our care an average of \$134 per student . . . the cheapest education *per capita* attempted by any university in the country of like, or approximately like, standing."<sup>63</sup> He was appalled at the large classes and the heavy workload faced by faculty. "The situation here at present is, I sometimes think, pathetic, and sometimes ludicrous," Wheeler wrote to the governor: "The students have come down like an avalanche. We have no elasticity in our budget by which to provide for them. We are doing our best, but it is only by a miracle that the multitude can be fed with the seven loaves."<sup>64</sup>

Wheeler successfully gained new funding from the state, but in bits and pieces from lawmakers. All would change by 1911 when reform governor Hiram Johnson and the legislature agreed to create an enrollment based funding model. Progressive like Johnson valued the university, and higher education in general, and saw expanding access and adequate state funding as the key to a progressive and competitive California society.

Steady funding by the state *and* the university's elevation to the status of a public trust allowed for the development of an internal university organization and culture that would help create one of the world's premier research universities. Without both of these attributes, what would have become of the University of California? What will become of it without one or both of these foundational pieces to the university's success? One can speculate on a counterfactual history and an altered future. But that is for another paper.

### FOOTNOTES

<sup>1</sup> Bion M. Gregory (Legislative Counsel of California) to state Senator Henry J. Mello, January 6, 1989, California Postsecondary Education Commission Library; Constitution of the State of California (1879), Article IX, Section 9; *Regents of the University of California v. City of Santa Monica*, 77 Cal. App. 3d 130, 135; *San Francisco Labor Council v. Regents of University of California*, 26 Cal. 3d 785, 788-789; Joint Committee on Legislative Organization, Constitution Revision Commission, "Article IX, Education: Background Study," January, 1969, pp. 16-19, University of California, Santa Barbara, Special Collections.

<sup>2</sup> Edmund G. Brown, 30 Ops Attorney General 162 (1957).

<sup>3</sup> State Constitutional Amendment No. 1 Introduced by Senators Lara and Cannella and co-authored by Senator Anderson, December 4, 2014: [http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0001-0050/sca\\_1\\_bill\\_20141204\\_introduced.htm](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sca_1_bill_20141204_introduced.htm)

<sup>4</sup> Cited in William Warren Ferrier, *Origin and Development of the University of California* (Berkeley: Sather Gate Book Shop, 1930), p. 285.

<sup>5</sup> *Ibid.*, p. 323.

<sup>6</sup> Quoted in William Carey Jones, *Illustrated History of the University of California* (San Francisco: Frank H. Dukesmith, 1895) p. 31.

<sup>7</sup> Known also as the Agricultural College Land Act, 1862; Bean, *California*, pp. 201-02.

- <sup>8</sup> "Memorial of the California State Grange and Mechanics Deliberative Assembly on the State University" (Sacramento, 1874) in *Pamphlets on the University of California*, UCA.
- <sup>9</sup> Ferrier, *Origin and Development of the University of California*, p. 131.
- <sup>10</sup> "Professor Swinton's Testimony before the Legislature of California Given to the Joint Committee on University Affairs," 11 March 1874, in Ezra S. Carr, *The University of California and Its Relations to Industrial Education* (September, 1874) in *Pamphlets on the University of California*, UCA, pp. 42, 55.
- <sup>11</sup> Ezra S. Carr, "Response from the Professor of Agriculture," in *Statements of the Regents of the University of California, to the Joint Committee of the Legislature* (San Francisco: Excelsior Press, March 3rd, 1874) p. 18.
- <sup>12</sup> "Memorial of the California State Grange and Mechanics Deliberative Assembly," pp. 7-8; Swett, *Public Education in California*, p. 263-264.
- <sup>13</sup> *Statements of the Regents of the University of California, to the Joint Committee of the Legislature, March 3, 1874* (San Francisco, 1874) in *Pamphlets on the University of California*, UCA, pp. 5, 14-15; Ferrier, *Henry Durant, First President University of California*, p. 98; Stadtman, *University of California*, p. 71-74.
- <sup>14</sup> Daniel Coit Gilman, *The Launching of a University and Other Papers: A Sheaf of Remembrances* (New York: Dodd, Mead & Co., 1906) p. 327.
- <sup>15</sup> Ferrier, *Origin and Development of the University of California*, p. 362; Falk, *The Development and Organization of California Education*, p. 32; Fabian Franklin, *The Life of Daniel Coit Gilman* (New York: Dodd, Mead & Co., 1910) p. 160-161.
- <sup>16</sup> *California Assembly, An Act to Reorganize and Simplify the School System and Public Education of the State of California*, Bill No. 374, Secs. 3, February 8, 1876; California Senate, "Report of the Senate Special Committee to Whom was Referred Certain Questions Relative to the Regents of the State University," March 6, 1876.
- <sup>17</sup> "Memorial by the Board of Regents, The State University, Disastrous Effects of the Passage of the Carpenter Bill - Its Unconstitutionality," (April 1876) in *Pamphlets on the University of California*, UCA.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *California Assembly, An Act to Reorganize and Simplify the School System and Public Education of the State of California*, Bill No. 198, Secs. 3, 11, January 16, 1878.
- <sup>20</sup> George E. Mowry, *The California Progressives* (Berkeley: University of California Press, 1951) p. 11; Walton E. Bean, "Ideas of Reform in California," in George H. Knoles (ed.), *Essays and Assays: California History Reappraised* (San Francisco: California Historical Society, 1973) pp. 13-25.
- <sup>21</sup> Henry George, "The Kearney Agitation in California," *Popular Science Monthly*, 17 (August 1880).
- <sup>22</sup> From the Workingmen's party organizing meeting of 5 October 1877, in which Kearney was elected president, cited in the *Sacramento Bee*, 24 April 1878.
- <sup>23</sup> See Kevin Starr, *Americans and the California Dream: 1850-1915* (New York: Oxford University Press, 1973) p. 132; John W. Caughey, *California* (New York: Prentice-Hall, Inc., 1940) p. 442-50.
- <sup>24</sup> Paul Mason "Constitutional History of California," in *Constitution of the State of California and the United States and Other Documents*, California State Senate (Sacramento: State Printing Office, 1949) p. 299; Hubert Howe Bancroft, *History of California* (San Francisco: Bancroft, 1884-90) Vol. XXIV, pp. 370-71.
- <sup>25</sup> Carl Brent Swisher, *Motivation and Political Technique in the California Constitutional Convention: 1878-79* (Claremont, CA: Pomona College, 1930) p. 6.
- <sup>26</sup> William White in a letter to the *Watsonville Pajoronian*, quoted in Peter Scott Van Houten, "The Development of the Constitutional Provisions Pertaining to the University of California in the California Constitutional Convention of 1878-1879," (unpublished dissertation, University of California, Berkeley, 1973) p. 13.
- <sup>27</sup> Ernest A. Engelbert and John G. Gunnell, *State Constitutional Revision in California* (Los Angeles: University of California Bureau of Governmental Research, 1961); Winfield J. Davis, *History of Political Conventions in California, 1848-1892* (Sacramento, 1893) pp. 390-93.
- <sup>28</sup> George, "The Kearney Agitation"; Bancroft, *History of California*, pp. 373, 407.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Swisher, *Motivation and Political Technique*, pp. 33-42. Swisher also explains some of the differences between the approach of Grangers and Workingmen delegates: "The farmer delegates distrusted the clannish Kearneyite agitators, much too thoroughly to unite them in any case where the effect of doing so was not perfectly clear. They did not vote for the workingmen's candidate for president. It was the workingmen who finally shifted their votes, and by doing so came near to defeating the conservative candidate. Such a combination revealed possibilities for the future, but there seemed small chance for the framing of a workingmen's constitution."
- <sup>31</sup> Engelbert and Gunnell, *State Constitutional Revision in California*, p. 96.
- <sup>32</sup> Ferrier, *Origin and Development of the University of California*, p. 360.
- <sup>33</sup> *Debates and Proceedings of the Constitutional Convention of the States of California, 1878-79* (Sacramento: State Office, 1880) p. 85.
- <sup>34</sup> *Ibid.*
- <sup>35</sup> *Debates and Proceedings* (1879) p. 173.
- <sup>36</sup> In Verne A. Stadtman (ed.), *The Centennial Record of the University of California* (Berkeley: University of California, 1967) pp. 293-96.
- <sup>37</sup> *Debates and Proceedings* (1879), p. 1110.
- <sup>38</sup> *Ibid.*
- <sup>39</sup> *Ibid.*, p. 437.
- <sup>40</sup> E. J. Wickson, *Rural California* (New York: The Macmillan Company, 1923) p. 33; E. W. Hilgard, *Soils: Their Formation, Composition and Relations to Climate and Plant Growth* (New York: The Macmillan Company, 1906).
- <sup>41</sup> *Ibid.*, p. 438.

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- <sup>42</sup> *Ibid.*, p. 1087; Howard H. Peckham, *The Making of the University of Michigan, 1817-1967* (Ann Arbor: University of Michigan Press, 1967) p. 31. As a result of its 1849 constitutional convention, Michigan University's Board of Regents were given the unique responsibility to conduct "the general supervision of the university and the direction and control of all expenditures from the university funds" free of legislative interference.
- <sup>43</sup> *Debates and Proceedings*, (1879)p. 1087
- <sup>44</sup> *Ibid.*, p. 1087.
- <sup>45</sup> *Ibid.*, p. 1089.
- <sup>46</sup> *Ibid.*, pp. 1113, 1116.
- <sup>47</sup> *Ibid.*, pp. 1110, 1113.
- <sup>48</sup> *Debates and Proceedings*, (1879) p. 1123.
- <sup>49</sup> *Ibid.*, p. 1401-2.
- <sup>50</sup> *Ibid.*
- <sup>51</sup> *Ibid.*
- <sup>52</sup> *Ibid.*, p. 1476.
- <sup>53</sup> In a memorial to Winans after his death in 1887, the Regents noted that it was "mainly due to Mr. Winans' endeavor [that] we have the present clause in our State Constitution relating to the university." "Memorial to the Late Regent Winans," *Annual Report of the Secretary of the Board of Regents of the University of California* (State Office: Sacramento, 1887) p. 7.
- <sup>54</sup> "The story of his winning over a hostile group of farmers at a meeting shortly after his arrival in California," explains Van Houten, "and the statement of one of their leaders that, 'By God, the man knows something,' approaches legendary status" Van Houten, "The Development of the Constitutional Provisions," p. 166; David Barrows Stewart, "The Development of Constitutional Provisions Pertaining to Education in California," (unpublished dissertation, University of California, Berkeley) pp. 138-44; *California Constitution of 1879*, Article IX, section 9.
- <sup>55</sup> As explained by Dudley T. Moorehead, with eighty-seven delegates, "agricultural counties could control the convention if their representatives voted according to sectional interest." He concluded that "the changes made in the organic law by the convention were inaugurated and sanctioned by the representatives of agriculture."<sup>55</sup> Analysis of balloting by Peter Van Houten shows a more complicated story: "The combination of the lawyers, most of whom were non-partisans, the even split among the farmers, and the sizable minority of Workingmen was sufficient for the eleven vote margin by which the Webster amendment was approved." Van Houten, "The Development of the Constitutional Provisions," p. 166.
- <sup>56</sup> A 1969 Constitution Revision Commission remarked that the political climate during the establishment of the university in 1868 made it virtually impossible to place the institution within any constitutional amendment. Statutory law provided flexibility for legislators to intervene within the affairs of the university, or to change the governance system of the institution, as threatened by the Grange in the early 1870s. "But by the time of the convention, the events of the intervening years changed the nature of the debate," notes the commission report. Constitution Revision Commission, "Article IX, Education: Background Study," pp. 16-19.
- <sup>57</sup> Henry George, *Progress and poverty: An inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth*. (Middleton: John Bagot, 1879); Article XVII, section 2 did state that "the holding of large tracts of land, uncultivated and unimproved, by individuals or corporations is against the public interest and should be discouraged." But it also noted that any future state policies be consistent "with the rights of private property," a far cry from George's insistence that such land be heavily taxed and given to the masses.
- <sup>58</sup> The 1879 Constitution was passed by a total vote of 77, 52 to 67, 34; Bean, *California* p. 203.
- <sup>59</sup> *California Constitution of 1879*, Article IX, section 9.
- <sup>60</sup> Bion M. Gregory (Legislative Counsel of California) to state Senator Henry J. Mello, January 6, 1989, California Postsecondary Education Commission Library; Constitution of the State of California (1879), Article IX, Section 9; *Regents of the University of California v. City of Santa Monica*, 77 Cal. App. 3d 130, 135; *San Francisco Labor Council v. Regents of University of California*, 26 Cal. 3d 785, 788-789; Joint Committee on Legislative Organization, Constitution Revision Commission, "Article IX, Education: Background Study," January, 1969, pp. 16-19, University of California, Santa Barbara, Special Collections.
- <sup>61</sup> Edmund G. Brown, 30 Ops Attorney General 162 (1957).
- <sup>62</sup> *Ibid.*, 8.
- <sup>63</sup> *Ibid.*, 24.
- <sup>64</sup> Cited in Clark Kerr, "Remarks by President Kerr: Ninety-Second Charter Day Ceremonies," University of California, Berkeley, March 21, 1960, University of California Archives – Bancroft Library (henceforth UCA).