Proposition 13:
An Assessment and Recommendation

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In this paper I will briefly review Proposition 13 on the grounds of equity and legitimacy as a form of popular legislation. First I will argue that legislation by initiative is not only inappropriately heavy-handed but also inaccurate as a means of redressing grievances against unpopular governmental practices. Secondly, despite the dubious constitutionality of the Amendment and its dire fiscal consequences, I will argue that most of the components of Proposition 13 should remain in place, citing both the benefits principle and the Serrano decision regarding equity of public school funding. However, Section 2 of the Proposition--the two percent reassessment cap--should be struck entirely on the grounds of severe inequity. The full text of Article XIIIA (the enacted form of Proposition 13) is included at the end of this paper with recommended deletions and changes.

On June 6, 1978, Proposition 13 won a landslide victory in statewide elections and became Article XIIIA, an amendment to Article XIII of the California State Constitution, which governs taxation. The amendment contained six essential requirements:

- All real property is taxed at one percent of assessed value.
- Assessed values are based on full cash value as of March 1, 1975 or revalued when sold or developed.
- Upward reassessment of property is limited to a maximum of two percent per year.
- The sale of real property cannot be taxed.
- A 2/3 vote is required to increase any tax rate at all levels of government in the state.
- Any additional or special tax on real property--approved by the two-thirds vote--cannot be ad valorem.

Motives Behind the Tax Revolt

Historically, property taxes have been extremely unpopular. They are widely perceived as a tax on unrealized gains. In California during the late 1970s, this was particularly true as land values rose at about 11% per year, with associated property taxes rising accordingly. Furthermore, the rate of property taxation in California was unusually high in 1977, averaging 2.58%, which was half again greater than the national average of 1.8%. Combined with sales taxes and state income taxes, the burden on the personal income of Californians totaled 16% of personal income, compared to a national average of 12.1% (Sears & Citrin 1988:6). On a more anecdotal (and visceral) level, the three-year cycle of property reassessments often meant a doubling or tripling of taxes owed in areas where the land values had risen most rapidly.

The above issues are generally perceived to be the primary motives behind the ‘tax revolt’ that ratified Proposition 13 with a majority of 64.8% of the electorate (Sears & Citrin 1988:6). On closer scrutiny what becomes evident is that Proposition 13 did not address many of the

issues that had chronically upset Californians. In some ways the effect of Article XIIIA has been counter to the dominant public will of the time.

The preconditions for the tax revolt began to take shape a decade previous, with the passage of AB80 (1967). Following an assessment scandal in San Francisco, the state legislature required all property to be reassessed at least every three years. AB80 may have reduced corruption, but it also changed reassessments from a discretionary (and often politically sensitive) process into an automatic administrative function.

The changed system caused taxpayer anxieties and a second legislative response by 1972. The post-AB80 system of reassessment was seen as an inexorable bureaucratic juggernaut by many Californians who had never experienced regular reassessments at the actual--or rather, the ostensible—local tax rate (Sears & Citrin 1988:20). The legislature put a cap on the property tax rate of about 2.5%. Exceptions were allowed in order to retire debts, causing the overall average tax rate to be slightly higher than the maximum: between 2.5 and 2.6%. Thus, the property tax rate in California remained unchanged from 1972 to 1978 (Equity Commission 1991).

Under AB80, reassessments continued on a regular schedule through the mid-1970s. For reasons I have yet to discern, local administrators did not lower the tax rates when property values skyrocketed. So far as I know they could have lowered rates under AB80 legislation and the rate cap, just as they can under Article XIIIA.

Meanwhile it is important to note that property taxes were not the only factor in the personal tax burden of Californians. State income taxes were also high, and rose significantly during the 1970s. From FY 1973-74 to FY 1977-78, state income tax rate increased from 1.6% to 2.7%; a 65% increase. Personal income also grew, but only at about half the rate of tax increases (Sears & Citrin 1988:23). Dissatisfaction with a generally high tax rate seemed to drive the popularity of Proposition 13,

In an amazing political gaffe the county assessor of Los Angeles announced the impending round of reassessments in one of the most populous and rapidly appreciating land markets in the state, six weeks before the General Election of June 1978. Amidst the continuing uproar Proposition 13 became law.

Impacts and Responses

Once Proposition 13 passed, the immediate problem was how to implement it. The Amendment was to go into full effect only twenty-four days after the general election, at the beginning or Fiscal Year 1978-1979. Yet the Amendment only specified that property taxes must be reduced to one percent statewide; it did not specify how the reduced revenues should be distributed. The immediate response of the legislature was to base future apportionments of property tax revenue on past precedent. The table below shows the distribution of property tax revenue to the various local agencies, and the relative dependency of each agency on property tax revenue:

	Apportionment of Property Taxes in Late 1970s	Property Tax as Percent of Total Revenue
Schools:	54%	53%
Counties:	28%	40%
Cities:	13%	27%
Special Districts:	6.6%	19%

(source: Equity Commission 1992:21)

By cutting property tax evenly, the agencies would be affected in direct proportion to the degree to which they were funded by property taxes. Clearly, schools would be hurt most severely. Therefore in the long run state finances would have to be restructured if services were to be maintained at anything approaching current levels. For the following fiscal year, the legislature distributed most of the huge general fund surplus to local agencies to make up for the unanticipated revenue shortfall. Senate Bill 154 (1978) is therefore known as the 'bailout bill,' intended only to buy enough time for the state to work out some long-term solutions to a shocking new fiscal situation.

Assembly Bill 8 (1979) succeeded SB154 as the 'long-term solution' to future apportionments. The legislature decided to reapportion a greater share of local taxes to the cities and counties in order to maintain the fiscal self-sufficiency of these agencies. Funding for welfare was fully assumed by the state, relieving a major fiscal burden from the counties. The share of state funding for public schools was also substantially increased, apparently for three reasons: first, to comply with the Serrano decision (discussed later in this paper); secondly, to free up local taxes for the local agencies; and thirdly, because schools could then be funded by income tax, which was not constrained by the new Amendment (Equity Commission 1992).

Three problems persist as a consequence of AB8. First of all, it continues to rely on the precedent-based system of SB154 in determining the relative apportionments between cities and counties. This penalizes cities that had not imposed property taxes up to June 1978, and any jurisdiction in which demands for services increased disproportionately after June 1978 due to growth (Smith 1991:65). The second problem is that legislation of local funding apportionments is in itself a violation of the Separation of Powers agreement in the State Constitution, which prohibits the legislature from interfering directly in the fiscal decisions of local agencies (Smith 1991:56).

The third problem with AB8 is that it assumes that revenue from state income taxes would remain high, in order to fund schools. Unfortunately, the nature of income tax is that it fluctuates immediately with the economy, unlike property tax which is usually very stable. The economy of California slumped in the early 1980s, and after a brief recovery in the latter part of the decade it crashed in 1990. The state itself has therefore been suffering from a fiscal crisis of its own since shortly after AB8 went into effect.

The Shift From Property Taxation to Income Taxation

One unintended side effect was a windfall tax revenue gain to the federal and state government resulting from reduced income tax deductions for property taxes... twenty-two percent of the Proposition 13 property tax cut was transferred to Washington (Equity Commission 1992:27).

Interestingly, the Equity Commission did not mention how much was transferred from local property tax into state income tax. In one respect this is perhaps irrelevant because substantial state funds were immediately transferred to local governments. However, this change underscores the ironic inaccuracy of the tax revolt: Proposition 13 shifted even more revenue to the state at the expense of local agencies; shifted more revenue to the agency which funds the hated welfare, and away from the agencies that funded safety services.

Ironically, property taxes had funded only popular programs: safety services such as police and fire, and popular social services--particularly primary and secondary education. Welfare, the highly unpopular symbol of wasteful 'big government,' was funded by the federal and state governments from income taxes. Actual income taxes have increased dramatically after 1978 since the amount of property tax deductions has decreased. Howard Jarvis, the co-author of Proposition 13, understood this and fielded a petition in the following year [Proposition 9 (1979)] that failed. Stranger still, at the time that Proposition 13 was coming to a vote, the state had accumulated a seven billion dollar surplus--none of it from property taxes. A more reasonable response to the excessive tax burden that would have cut unpopular programs while saving popular ones would have been to cut the state income tax.

Why did the voting public of California slash property taxes and subsequently leave income taxes unmolested? Sears and Citrin noted that the public--even its most highly educated component--does not directly associate specific types of tax with specific types of expenditures and services. Therefore the symbolic role of a tax revolt is far more important in voting decisions than a directed, focused assault on one set of taxes and their associated expenditures. The issue is far more emotional than rational, and the will of the entire voting public is as nebulous as it is overwhelmingly powerful. After reviewing the numerous tax relief proposals put before the voting public in the late 1970s, Sears and Citrin conclude that

> The referenda were put to the voters in bewildering variety with dazzling frequency; the voters scarcely had time to catch their collective breath between polls. And each referendum presented ambiguous as well as technically complex choices. Usually they promised fairly clear consequences to the voter's own tax burden in return for the threat of uncertain consequences for the quality of government services in a wide variety of barely visible areas of life (Sears & Citrin 1988:44).

This may explain the failure of Jarvis' second Proposition. Once the symbolic act had been committed, the public lost interest in pursuing the fight further, even if the next target—income tax—might be somewhat more appropriate given the considerations outlined above.

The First Legal Challenge: *Amador* (1978)

Proposition 13 radically changed the nature of taxation at the local level. Supposedly the Amendment would only reduce taxes and 'cut the fat' out of inefficient government. It would not change the nature of tax collection, allocation, or expenditure. 'Single-subject' initiatives are allowed in California as a means of direct popular overrides of the Legislature. Complex issues can also be ratified by initiative, but their adoption into law requires legislative review and discretion. Constitutional changes, in particular, may require a full constitutional review. On this basis Proposition 13 was challenged almost immediately in *Amador Valley Joint Union High School District v. State Board of Equalization* [22 Cal. 3d 208 (1978)] since it altered several aspects of taxation. By 1979 the California Supreme Court had ruled that Proposition 13 was a 'single-issue' initiative. "The court decided that an initiative will not violate the single-subject requirement 'if, despite its varied and collateral effects, all of its parts are 'reasonably germane' to each other,'" (Smith 1991:61). Perhaps if the Amendment had been challenged on this basis several years later the courts would have been aware of the far-reaching impacts of Proposition 13 on state finance. At the time, though, the increasingly severe cumulative effect of the reassessment cap could not be known.

Yet in the next two years that same court permitted substantial changes in the property tax system that were a direct result of Proposition 13. In *Fresno County versus Malstrom* [156 Cal. Rptr 777 (1979)], the Supreme Court decided that special assessments were not limited by Article XIIIA sec.4. Likewise, in *Solvang Municipal Improvement District v. Board of Supervisors* [112 Cal.3d 545 (1980)] the court allowed special assessments above the 1% limit imposed by Article XIIIA sec.1. Yet, the basis of all property tax is that it is a local tax appropriated for local use. Special assessment districts follow this rationale exactly: they are local geographic areas in which additional taxes that are levied are expended for the good of the inhabitants of that area. What if a city made a special assessment district coterminous with all of its developed area? So far as I know this has never been legally tested, but I find the distinction between local-assessment-for-local-benefit at the geographic level of the district, and local-assessment-for-local-benefit at the geographic level of the incorporated area to be arbitrary and capricious (*see also* Equity Commission 1992:44-45).

In light of the many impacts of Proposition 13 on revenue collection alone, the Proposition should have been regarded as a multiple-issue initiative and therefore ineligible for immediate ratification as a constitutional amendment. Unfortunately the *Amador* decision stated unequivocally that the Proposition was single-issue; it is probably too late to overturn that decision. Hopefully this at least serves as a lesson to the legislature and the state courts: one should adopt a very narrow interpretation of 'single-issue' initiatives, to prevent direct legislation by mob psychology.

In essence, Proposition 13 missed the public's preferred targets by a considerable degree. Although the text of the Proposition is very short, its effects are very complicated and indirect. Yet according to Sears and Citrin, most Californians voted for Proposition 13 as a symbolic act of protest against an excessive tax burden; little regard was given to how the taxes would be reduced or shifted, nor to its impact on the provision of government services.

Part 2: Equity Issues

Equitability of Property Tax Under Article XIIIA

The reduction in local taxes without a corresponding willingness to accept much lower levels of public services has forced local jurisdictions to develop alternative means of revenue collection in the form of user's fees, flat-rate unit charges, special assessments, exactions, and impact fees.

Two basic rationale for property tax are the 'ability to pay principle' and the 'benefits principle,' as with most taxes. Property taxes therefore are typically used only for local expenditures in an effort to maintain horizontal equity. This policy was codified as law in California through the Separation of Powers Agreement (1905). According to Article XIII sections 14 and 24, only local agencies are authorized to levy and expend local taxes (Smith 1991:56,59). In addition there is the argument that major landowners have a greater stake in the welfare of the community in the long run--not just in the quantifiable terms of property value appreciation, but also in the owner's choice to buy land in the area in the first place (Equity Commission 1992:18).

Excepting Section 2, Article XIIIA is more equitable than the preexisting system of taxation according to the benefits principle. Article XIIIA prohibits any ad valorem taxes above one percent. Even special assessments that are ratified by a two-thirds majority can only be flat rate taxes, levied on a unit- or per-parcel basis. This is more fair because some benefits to property are enjoyed in proportion to value (such as the appreciation of property value resulting from community improvements), whereas others are enjoyed equally on a unit basis, such as safety services. Infrastructure service costs are also close to unit-rate per parcel, although service lines are proportionally a little longer in areas with large parcels. In terms of benefits received, then, property taxation should be a mixed system of ad valorem and per-unit levies. This is indeed the pattern emerging in California with a mixture of the 1% ad valorem with special assessments and user fees.

To promote this mixed pattern of local taxation and assessment, I recommend enabling local authorities to levy special assessments by a simple majority rather than a supermajority (changing Article XIIIA, sec.4). This may also protect the property tax system from further challenges. A property taxation system that rests primarily on the 'benefits received' principle, does not depend upon the 'ability to pay' principle for its justification. Hence the resulting property tax structure cannot be challenged on the basis of inability to pay for unrealized gains, because gains are not being taxed.

Impact of Proposition 13 on Public Education

Schools continue to be the hardest hit by the enactment of Proposition 13. From 1971 to 1978 local property taxes provided 53% of the funding for schools. From 1979 to 1986, taxes provided only 22% of school funding. The overall drop in funding was serious, and California public schools continue to be some of the most poorly funded schools in the nation. State subventions have now become much more important in school funding changing from an average of 38% to 69% over the same periods mentioned above (Smith 1991:78).

However state support for schools should be considered in light of the state supreme court's decision on Serrano v. Priest (1971). According to this decision the state should provide proportionally greater funding to schools to offset the geographic discrimination between children in poor and wealthy communities, with their commensurate levels of taxation. Proposition 13 did in fact force a relative increase in state-level funding to schools, significantly reducing the disparity of per-pupil expenditures between districts across the state (Smith 1991:74). Unfortunately, this was done by penalizing all students in California public schools (Equity Commission 1992:44).

The Two Percent Reassessment Cap: A Persistent Problem

Section 2 of Article XIIIA will remain a point of severe and increasing contention so long as it remains law. This section is the cause of inequities between new homebuyers and longtime homeowners. The imposition of a 2% limit to annual increases in property assessments is a structural fault so serious as to be tantamount to an eventual self-destruct mechanism built into the law. One response to this increasing inequity was the formation of the Senate Committee on Tax Equity in 1991 (herein called the Equity Commission). The finding of the Commission are very damning of the effects of Section 2, and the arguments and statistics reported by the committee were drawn on heavily in the Nordlinger case discussed below. The Commission found that

> This acquisition-based assessment cap continues so long as ownership of the property does not change. This feature of Article XIIIA gives rise to a serious equity problem regarding the distribution of the property tax burden...
> The annual reassessment cap has slowed the growth of taxable property value in the state. Estimates of the overall assessment ratio in the state (the ratio of assessed value to the actual market value of the property) range from one-half to two-thirds, with a consensus estimate of 60 percent. This means that 40 percent of current property value, over $1 trillion, is not taxed under acquisition based assessment (Equity Commission 1992:31).

By sampling the 1988 assessment rolls of the State Board of Equalization, the Commission found that 44% of all owner-occupied residences still had a 1975 base assessment year; these homeowners together pay only 25% of the total taxes paid by homeowners. Hence, the other 56% pay 75% of the taxes. This inequity becomes more severe as samples of very recent home-buyers are compared to older cohorts (Equity Commission 1992:33). For houses assessed at the 1975 base rate, market values are 3.2 times greater than the taxed value on average (Equity Commission 1992:36). These homeowners are paying less than one third of one percent of actual market value on their properties. In rapidly ascendant areas such as metropolitan Los Angeles, the disparities can be far more extreme. The plaintiffs in the Nordlinger case found that in Lincoln Park, houses bought in 1989 had a 9:1 disparity in property tax rates. In Santa Monica's Ocean Park, the disparity is 17:1 (Equity Commission 1992:36).

The only argument the Commission counterposes to inequity is the fact that the 1% rate and 2% reassessment cap together form a very simple, predictable source of revenue. This may be a straw-man argument considering the Commissions' attitudes. Of course, the reassessment rate is so far below the actual growth rate of property value that the two percent increase is virtually automatic (Equity Commission 1992:34). However, convenience and predictability of a taxation

system are insignificant when weighed against equity in determining the acceptability of a system of taxation.

The inequities caused by Section 2 of Article XIIIA were exacerbated in a heinous fashion through Proposition 58 (1986). Proposition 58 exempted transfers of property between spouses, divorcing spouses, and from parents to their children (Equity Commission 1992:35). This last exception, if left in place, will be the foundation of a class of landed gentry; a 'native' elite who are all but exempt from property tax (see also Nordlinger v. Hahn 112S.Ct.2326 (1992), Stevens' dissent).

> Certainly, California's grand experiment appears to vest benefits in a broad, powerful, and entrenched segment of society, and, as the court of appeal surmised, ordinary democratic processes may be unlikely to prompt its reconsideration or repeal. Yet many wise and well-intentioned laws suffer from the same malady. [ibid.]

The choice to retain or reject this law was returned to the California public, almost in the form of a dare. Do we have the mettle and the ethical strength to repeal a populist but unfair law?

Strangely, neither the majority, nor the concurring, nor the dissenting opinions in this case explicitly separates Article XIIIA into its parts. The merits and faults of each section of the Amendment could easily be considered independently. Justice Stevens does so implicitly: his entire attack on the equity and constitutionality of Article XIIIA focuses only on Section 2 (see Nordlinger pp. 2341-2346). Yet by reading his argument only, one would assume that it is necessary to strike down the entire Amendment, all six parts. Apparently neither the plaintiff nor the defendant asked the Court to separate the sections. And yet the Amendment itself was clearly designed for such an attack--that is the express purpose of Section 6, here quoted in full:

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(6). If any section, part, clause, or phrase hereof is for any reason
held to be invalid or unconstitutional, the remaining sections shall
not be affected but will remain in full force and effect.
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Future Prospects of Article XIIIA

It would appear that the popularity of Proposition 13 has faded in the face of the chronic fiscal crisis at all levels of state government. Communities affiliated with the state universities have long been resentful of the Amendment, but those communities have been perceived (correctly) by the general public as special, vested interests. A broader source of concern has been the impact upon primary and secondary public schools. Several articles have come out recently against Proposition 13, most recently in the San Francisco Examiner, denouncing its inequity towards children and immigrants to California.

Unfortunately, the Amendment is to some degree a scapegoat for a more complex fiscal crisis. The loss in local autonomy over public schools in fact carries out the spirit of the Serrano decision. Smith (1991) argues that other infringements on local autonomy are not due to Article XIIIA itself, but rather due to the implementation of the Amendment under AB8 of 1979.

Furthermore, cities and counties have accommodated severe revenue shortfalls by charging for services rendered, a system that in economic terms is highly efficient. Some distortions of both development markets and land use policies have resulted from these new fiscal policies, but these effects are generally considered minor (Chapman 1991).

However, if Section 2 of Article XIIIA remains in effect, the shortfall in local revenue will become extreme. Accordingly, so will the demand for state subventions to maintain some level of locally-rendered services. The only two options will be to raise the rates of regressive taxes such as local sales taxes, or to increase the rate of the state income tax.

Recommendations

In summary, then, it appears that Proposition 13 was passed for reasons other than the ones it addresses. Misguided motives notwithstanding, Article XIIIA is now ratified, implemented, and accommodated; to completely abandon this method of taxation now would be politically infeasible. Furthermore, revocation of the entire amendment would also be negative in terms of both the benefits principle and equity for school funding.

With the removal of Section 2, the structure of the taxation system in California would be more equitable than before the passage of the Amendment. To maintain that equitability and provide acceptable levels of funding for public schools, state subventions to local agencies would have be withdrawn and shifted to public education. The restoration of sufficient local revenues to local agencies would free up state subventions, but the state must continue to be the main provider of public school funding. By adjusting only the level of intergovernmental transfers the rest of the structure of revenue collection and allocation could be retained, while dramatically increasing the amount of school funding. Today, the revenue structure in California is legally constrained by constitution and by statute--the Serrano decision and Article XIII--and by popular pressure expressed at the polls--Propositions 13 (1978), 4 (1979), 58 (1986), and 98 (1988) to name a few. With this one alteration of Article XIIIA, the rest of the fiscal readjustments could be resolved in the intergovernmental transfers, which remain largely at the discretion of the various levels of government.

The most feasible means of resolving the chronic fiscal crisis, therefore, is to remove only Article XIII Section 2, and leave the rest of the taxation structure as is. However, as the Supreme Court concluded, this decision must be made by the public in a statewide vote. Neither the courts nor the Legislature could or should make this alteration.

Text of Article XIIIA of the California State Constitution

Recommended deletions printed in strikethrough; recommended changes in italics.

Section 1.
(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.
(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters ~~prior to the time this section becomes effective~~.

~~Section 2.~~
~~(a) The full cash value means the County Assessors valuation of real property as shown on the 1975-1976 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a~~

~~change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-1976 tax levels may be reassessed to reflect that valuation.~~
~~(b) The Fair market value base may reflect from year to year the inflationary rate not to exceed two prevent (2%) for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction.~~

~~Section 3.~~
~~From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computations must be imposed by an Act passed by not less than two-thirds of all the members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.~~

Section 4.
Cities, Counties and special districts ~~by a two-thirds majority vote of the qualified electors of such a district,~~ may impose special taxes on such district except ad valorem taxes on real property or a transaction tax or sales tax on the sale or real property within such City, County or special district.

Section 5.
This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment~~, except Section 3 which shall become effective upon passage of this article~~.

Section 6.
If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

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