California Interventionist Policy:
Social & Environmental Consequences of a Pseudo-Free Market

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Government intervention is a specific strategy, frequently contentious in policy debates, designed to achieve specific political, and in certain cases social, objectives. It is essentially the employment of public policy and the subsequent legislation to achieve a result, many of which vary in their nature or focus. These include pure economic objectives such as increasing growth and employment, raising wages, controlling prices, or addressing supposed market failures. Social objectives exist as well, and include such directives as promoting equality, monitoring work conditions, or ensuring minimum wage control for the labor sector. Theoretically, interventionism is generally a feature of social democratic or progressive ideologies, which believe that certain market outcomes are undesirable and ought to be addressed, and that certain elements of society and financial markets are vulnerable to an unchecked or poorly managed market system.[i] These ideologies generally use an amalgam of both economic and social interventionism, and the two frequently overlap or even complement each others' objectives.[ii] Furthermore, since the underlying objectives of economic interventionism are always basically social in nature in that they wish to benefit or protect the people, one may safely refer to economic interventionist policy as being inherently social interventionist policy as well.[iii]

Whether it is to guide economic or social development, government intervention generally becomes the domain of bitter partisanship and seemingly intractable gaps in ideologies. However, economic intervention is also used by conservatives in an attempt to mitigate free market effects that they see as opposed to their traditions, social order, or state authority.[iv] Therefore, economic interventionism is not only the hallmark of more social democratic or progressive political ideologies, and does not always result in the bureaucratic bloat that a classical liberal, libertarian, or objectivist may bemoan.[v] As J.S. Mill wrote in *On Liberty*, "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."[vi] Competing ideologies will interpret this philosophy in drastically different, and frequently in drastically partisan, ways and advocate entirely different systems of public policy to manage government intervention.

This sort of legislation is by no means relegated solely to the federal level, and states retain their abilities to legislate their own levels of intervention to steer or correct local financial markets or social issues. Throughout its turbulent history, this kind of governmental power was exercised in California over "members of [the] civilized community" for a variety of reasons, many of which contradicted Mill's credo that the government may only intervene to prevent harm to its citizens[vii]. The development of public policy in California, particularly in economic markets, indicates that there was a time when in the state's infancy where the government underwent growing pains in trying to properly guide its turbulent economy. The history of California from 1850 on presents an interesting paradigm whereby economic intervention operated in guise to develop a "free market" system, almost akin to the "invisible hand" Adam Smith first wrote of in his *Wealth of Nations*.[viii] This strategy seems almost paradoxical, as the very definition of a free market system is that it operates independent of outside stimuli, by an "invisible hand" if you will, and any legislative policy to guide it to such a state could be deemed unnecessary.

Consequently, it appears the market forces not only developed rather organically and steadily, but held their own sway and resisted interventionist measures.[ix] However, being that the market is not sentient, but is only a system subject to arguably natural and intrinsic rules, its development is independent of anything else but its own need to proliferate. This can potentially come at the cost of social welfare or environmental sustainability, and it may even come at the cost of the overall well-being of the market as a whole – its longevity and diversity in the goods and services it provides.[x] In California, as in other states in the nation, the federal and state interventionist policies isolated wealth in the hands of a few and created monopolistic business entities, effectively atrophying any competition in various market sectors.[xi] A lack of competition results in a lack of competitive prices for consumers, and so in this particular case the policy of California at the time ran exactly counter to what the largely accepted definition of government intervention is today. To illustrate this point further, a good corollary is the development of both the British East India Trading Company and the Dutch East India Trading Company in the early 17th century. As the fundamental blueprints for corporations, each organization received a royal charter to operate without any hindrance to their progress and startup capital from their kingdoms to augment the investments already made by private shareholders.[xii] Backed by the infallibility of their respective Crowns, the companies retained exclusive rights to trade in their areas and eliminate, with outright martial aggression if necessary, any other competitors.[xiii]

The analogy is not entirely similar, largely because the fragmentary and hierarchical system of government in the United States does not allow for a single agent of the government to give unconditional support to any one organization. Federal, state, and local policies were all influential in shaping California's turbulent rise as an economic powerhouse.[xiv] There was no "royal charter", a *carte blanche,* from the powers that be to dominate and exploit whatever sector of the market lay fallow at the time. However, there was a systematic policy of nepotism and favoritism as powerful and shrewd prospectors would court politicians on all levels of the government to secure their support for whatever ventures they were pursuing at the time. These clandestine arrangements usually came at the expense of social justice, environmental concerns, and sustainable economic practices that would ensure long-term market viability. Two excellent examples include the construction of the Central Pacific Railroad and the judicial review of agrarian water rights, both contentious and convoluted episodes in California's history.

The term *laissez-faire* has become synonymous with the concept of "free trade", and traditionally American economic history has treated the period from 1850 until the early 20th century as one of minimal government intervention, the halcyon days of unhampered market growth.[xv] The period certainly saw the advent of opposition to protectionist measures, such as severely curtailed forms of tariffs, and dubbed all such measures as only counterproductive, and indeed damaging, to the natural development of market forces.[xvi] The traditional idea that intervention is exclusively the policy of more socially democratic or progressive governments, a policy used exclusively to forcibly enforce thresholds on business or economic interests, is obsolete. In fact, the very term *laissez-faire* remains misleading to this day as the market system was not allowed to develop free of any outside intervention, particularly in the early days of California's economic development. These interventionist policies transcended partisan lines, as certain organizations were given free rein by policymakers all across the board to develop their industries as aggressively as possible – essentially an implicit acceptance of monopolistic practices.[xvii]

The practice of monopoly charters had existed for centuries, and the aforementioned formation of the East India companies, both of which secured economic and financial interests with bloody efficacy and efficiency, serve as excellent examples.[xviii] In addition to essentially having royal "licenses to kill" overseas, case in point being the absolute annihilation of Chinese and Arab navies by the Dutch in Southeast Asia, the kingdoms of each country even punished "interlopers" within their own borders that attempted to enter the monopolized industries.[xix] Once again, the analogy to the California monopolies is limited by the scope of powers that the intervening governments had in enforcing their policies. Neither the federal nor the state government of California ever issued explicit allowance for monopolistic corporations or openly prosecuted competing companies, let alone advocated the use of actual war to neutralize the competition, but the existing systems of selective subsidization and the nepotistic awarding of certain contracts created monopolies that were virtually state-sanctioned.[xx] These of course developed with little or no concern for social justice or environmental issues.

The practice of heavily subsidizing certain market sectors certainly proved to be the most effective in creating these conditions. Contemporary economic literature dealing primarily in "interventionist dynamics" has identified subsidization as a distinct form of government intervention.[xxi] Economists have further delineated the basic differences between the impetuses for intervention by denoting *external intervention* and *internal intervention*.[xxii] The former is one that is imposed on a firm, firms, or industry from political-sector reformers. The latter is driven by vested business lobbying.[xxiii] The Central Pacific Railroad, bankrolled by both federal and state subsidization, was the product of both varieties of intervention. It was also the product of closed-door contracts and agreements that lacked oversight or transparency, exactly the opposite of what a supposedly free-market system guarantees: a level playing where competition, the ultimate benefit to the consumer, determines the best product. With no oversight or transparency, it became a gargantuan project fueled by the avarice and nepotism of both policymakers and the industrialists behind it, none of whom had to answer to the public.

The brainchild of an engineer named Theodore Judah, the idea of a transcontinental railroad was initially met with little enthusiasm or support. By eventually securing the funding of wealthy California capitalists Leland Stanford, Collis P. Huntington, Mark Hopkins, and Charles Crocker, the project was tenuously underway. Backed by the tremendous wealth and clout of his investors, Judah was able to receive congressional support with the passage of the Pacific Railway Act in 1862. Soon after construction began, it became all too clear that the businessmen behind the idealistic engineer, later dubbed "The Big Four", could reap tremendous profits. Of course, it was a mutually beneficial relationship, as congress supported it as, "an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean and to secure to the government the use of the same for postal, military, and other purposes".[xxiv] It is an apt summation of the rationale for the congress' involvement and support in building the railroad, although the phrase "other purposes" could be interpreted as the possibility of earning tremendous revenues from a newfound shipping route for private industry.

The original incarnation of the act, later slightly amended, authorized both the dispensation of extensive land grants in the Western United States and the issuance of 30-year, 6% U.S. Government Bonds to the Union Pacific Railroad and Central Pacific Railroad (later the Southern Pacific Railroad).[xxv] Section III of the Act granted 10 square miles of public land on each side of the tracks except where the tracks ran through urban areas or crossed rivers. The bonds were authorized by Section V to be issued at the rate of $16,000 per mile of tracked grade completed west of the designated base of the Sierra Nevada Mountains and east of the designated base of the Rocky Mountains.[xxvi] From 1850-1871, the railroads received more than 175 million acres (708,000 km²) of public land - an area more than one tenth of the whole United States.[xxvii] These provisions amount to an absolute sponsorship of the project by the federal government, a "royal charter" to develop public lands for private industry by issuing an exclusive, or even monopolistic, contract. Congress stipulated that it have access to the railroad for public services, thereby ensuring that the private market sectors were not alone in profiting from this truly impressive piece of infrastructure. However, it makes a sensible case that interventionism is not exclusively limiting when applied, and to characterize this period of California economic history as *laissez-faire* or a truly free-market is not entirely accurate. The development of the railroad included both *external* and *internal intervention*, and the Pacific Railway Act was not meant to limit industry but to expand it at an explosive rate.

A frequent misconception is that government intervention is by its very nature limiting, as in the imposition of quality standards or minimum wage requirements. It may also be an intervention engineered to stoke economic growth, as in the dispensation of land or capital to build infrastructure. The authorization for land grants and government bonds as delineated in the Pacific Railway Act were *external interventions*. These were in turn complemented by *internal interventions*, whereby sympathetic or downright corrupt policymakers would secure government funding for the expensive project. Indeed, when the federal funds proved insufficient for completing the railroad, particularly over the costly region of the Sierra Nevada Mountains, Leland Stanford used his position as governor to secure state funding.[xxviii] Furthermore, stock manipulation and funneling of funds in to Charles Crocker's Contract & Finance Company resulted in the concentration of profits in the hands of the Big Four, not subsidy investors.[xxix]

When the railroad first opened, the Big Four did not believe that freight and passenger revenues would ever provide the guaranteed profits they had received from construction subsidies. Though they originally planned to retire from railroading as soon as they reaped the profits from the initial completion, they perceived additional money to be made in the form of further state land grants.[xxx] The railroad was not the product of a free-market system or an intervention-free public policy. In fact it was manipulated constantly by many different parties. For example, the Big Four set their rates based on what would be most profitable for their company because there was no competition, thereby negating the natural forces of the free market. They went so far as to employ agents that would demand to see a shipper's books, and then determine rates based on the maximum they could charge without bankrupting said shipper. It should be noted that these company stoolies were usually harsh in their tactics when shaking down a shipper, a small-scale version of the bellicose tactics that the East India Companies used to obtain absolute monopolies. The California railroad system enjoyed a degree of freedom from competition that was absolutely unparalleled anywhere else in the United States.[xxxi]

The initial expectations were that the railroad would be the primary transportation conduit between Asia and the Eastern United States. Unfortunately, the construction of the Suez Canal in 1869 diverted much of this traffic to Atlantic shipping routes.[xxxii] Leland Stanford painted a decidedly rosy and exaggerated portrait extolling the railroad's virtues when he wrote that "it has performed the public service so faithfully and expeditiously as almost to annihilate the distance between the Pacific and the Atlantic, and bring the whole country into close and intimate political, social, and commercial relations".[xxxiii] Even with the massive land grants, subsidies, and government funds, the completion of the railroad was initially an economic disappointment.

Despite the chronic underperformance of the rail system, by the 1870's the Big Four owned 85% of the railroad lines in California.[xxxiv] They had also acquired the Southern Pacific, the alternate route and briefly the only competition to the Central Pacific line. In 1884 the two were merged through a Kentucky-based holding company in order to fully exploit the lax tax laws of the state, and once again there was little oversight or transparency to the operations. The Big Four worked the political system, reaping enormous gains and even reneging on contractual obligations that were due to various stockholders and investors in the company. A 1883 civil suit filed by the widow of David Colton, an investor in the company, revealed just how pervasive the corruption had become. The deceased had been promised profits that were not forthcoming, and in the course of investigation for the case it was revealed that substantial bribes were paid to both state *and* federal officials.[xxxv]

Writer and economist Henry George was sharply critical of the massive fortunes amassed by the oligarchy of the Big Four, and described this particular problem as endemic to California where its "evil effects [are] so manifest".[xxxvi] His denunciation of the "unearned increment" from the exponential increase in the value of land rested on his assertion that the railroad had not grown by healthy free competition but by a virtual state-sanctioned monopoly. *Laissez-faire* this was not. Whether by exorbitant bribes, opportunistic favors, or social sway among the various constituencies, the rail interests virtually owned the California policymakers.[xxxvii] Because the Big Four had been the beneficiaries of substantial subsidies in both liquid capital and land, these handouts were a clear sign of "governmental intervention in the workings of a free economy".[xxxviii] The Big Four, whether by their wealth, clout, or wiles, were the chosen beneficiaries of extremely lucrative handouts.

George's championing of a simple remedy for this overwhelming problem consisted of a single massive tax on land that would equal its "rental value and thus have the effect of appropriating its ownership and income to the government".[xxxix] The naive idea as outlined in his 1879 book *Progress and Poverty* was enormously popular during his time, but quickly lost its appeal. His lasting contribution was his accurate characterization of supposed *laissez faire* economics as actually being highly regulated by interventionist policies on federal, state, and even county levels.

The government subsidization that drove this entire process forward was significantly composed of land grants. The federal authorities turned over grants of land in the millions of acres that were to be used for public services. Six million acres were turned over to finance public education and to house public colleges and buildings. Another two million acres were swampland and had no attached stipulations on their utilization. The actual dispensation of said land was fraught with carelessness and fraudulent dealings, and eventually led to the massive land monopolies that further alienated the general populace of the state.[xl] Further exacerbating the situation was the fact that the Treaty of Guadalupe Hidalgo bound the state to prior land ownership lines. In 1871 Henry George censured the monopolistic ownership of land and observed that "the Mexican grants were vague, running merely for so many leagues within certain natural boundaries, or between other grants, though they were generally marked out in rough fashion".[xli] With these huge tracts of land, some of them vestiges of the *encomiendas* during the era of Mexican rule, came the contentious issue of water rights. As a vital component of all habitats and nearly every aspect of development, water rights and distribution still form the core of countless policy arguments today. It is for many ground zero in the battle for environmentally sustainable public policy.

Two beneficiaries of this pell-mell distribution of land were Henry Miller and Charles Lux, the leading cattle barons of the state. They eventually owned over a million acres of land, and had acquired both banks of the San Joaquin River in a solid strip more than 100 miles long.[xlii] To this already impressive list of holdings they added another stretch of riverbank property some 50 miles long that couched the Kern River.[xliii] Banking on the fact that the state would adhere to a “riparian” legal doctrine as per Common English Law, they hoped to reap massive profits by selling it off. The outrage that ensued enveloped the entire state as water was the literal lifeblood of the state’s economic machine, watering the fecund agricultural fields and fueling urban developments. To emphasize how much the issue still resonates today, particularly for Californians, Joan Didion in her 1979 collection of essays *The White Album* remarked that Californians “think about water with a reverence others might find excessive”.[xliv] Miller and Lux found themselves amidst a flurry of litigation, and the law firm of James B. Haggin and Lloyd Tevis challenged the wealthy landowners. With so much at stake, the arbitration was eventually presided over by the state supreme court.

To quell the riotous disputes that had ensued, the state government had to intervene in 1886 in the form of the California Supreme Court’s ruling in the case of *Lux v. Haggin*. There were two competing legal doctrines: “riparian rights”, which gave landowners the sole right to divert water and deprived owners of land not contiguous to waterways of that same right, and “prior appropriation rights”, which gave the first user the right to divert it and sell it to others.[xlv] The control of water was immeasurably important, a vital component in California’s agricultural development, and as such was a focal point of interventionist state policy. Unfortunately the *external intervention* of the judiciary resulting in a ruling that only obfuscated the issue, couched in opaque legal jargon that birthed the ramshackle “California doctrine”. In 1985 Donald Worster wrote in *The Capitalist Control of Water Use* that “nowhere was the law more complicated, more filled with compromise, than here”. [xlvi] This complication and compromise would prove to be disastrous in the decades to come.

After the State Supreme Court's wildly unpopular *Lux v. Haggin* ruling, irrigation advocates in the Legislature employed *internal intervention* and precipitated congressional debate. In a special session in 1887, lawmakers hotly debated issues of appropriation, riparian doctrine, and the role of government. The most significant legislation was sponsored by Assemblyman C.C. Wright of Modesto. He became the law’s namesake, and the Wright Act provided for the creation of irrigation districts under local public control. It did not, however, abolish the "California

Doctrine" of dual water rights, which would continue to be defined in the courts. Few of the initial districts formed under the Wright Act were successful, but by the beginning of the twentieth century much of the Central Valley had been brought under cultivation by irrigation districts and private water companies.[xlvii] Water was no longer under public stewardship but was now controlled by private interests, which by their very nature exist to be profitable. That is the intrinsic property that makes them viable, that provides consumers with necessities, commodities, or luxuries – but it is that very same characteristic that makes profit-based entities operate outside the context of the public good, environmental sustainability, or long-term survival.

State intervention continued well in to the next century, and various state agencies would apply *external* pressure on the private owners to ensure that vested interest groups received the ample amounts of "liquid gold" necessary to run the state's economy. Under Governor Goodwin J. Knight in 1956, a special session of the Legislature created a single State Department of Water Resources (DWR). This consolidated the power structure by replacing the State Engineer's Office, the Water Project Authority, the State Water Resources Board, and the Division of Water Resources of the Department of Public Works, and made future *external interventions* more efficient. Its original focus was delineating California's water problems, forecasting future water supply needs, and evaluating existing water resources. It has published updates known as the Bulletin 160 series six times between 1966 and 1994.[xlviii] Eventually water management became a complicated amalgam of private and public entities, where the oversight was limited in its efficacy because of the labyrinthine network of agencies. With so many vested interests at stake, and so much to gain or lose, a systematic and unified policy towards resource management became crucial.

Instead the state system became fragmented, with government intervention running both ways to sometimes benefit private interests and sometimes benefit public organizations. With this vast lattice of state and local agencies, California's water infrastructure became among the most complex in the world. The sheer ingenuity and size of the size of the system would prompt essayist Joan Didion to write that "so much water is moved around California by so many agencies that maybe only the movers themselves know on any given day whose water is where, but to get a general picture it is necessary only to remember that Los Angeles moves some of it, San Francisco moves some of it, the Bureau of Reclamation's Central Valley Project moves some of it and the California State Water Project moves most of the rest of it, moves a vast amount of it, moves more water further than has ever been moved anywhere".[xlix] This infrastructure was made possible only by federal and state land subsidies, state judicial arbitration, and the further creation of state agencies to monitor and control this invaluable resource. State intervention directly shaped water distribution in California, ensuring its economic viability.

The development of the California's water laws was similar to government subsidization of the Central Pacific in that both were instances of *internal intervention* operating upward in the governmental hierarchy. Individuals with vested interests, irrigation advocates in the former case and Theodore Judah with his cadre of capitalists in the latter case, pressured federal or state entities to change policy in their favor.[l] They generally moved from a downward position up to provoke government intervention to secure their economic needs. In the case of Leland Stanford as California's governor, he actually applied pressure to his own peers in office to develop legislation that would provide *external intervention* in the Big Four's favor.[li] Some of these instances were riddled with corruption, and bribery and fraud were just tools in the juncture of business and politics. "Business as usual," as they say.

The idea of unbiased economic interventionism is not easily separated from mere abuse of power in a corrupt or degraded power structure. Though the Big Four employed brutal tactics in furthering their business interests, they did build an infrastructure that proved immensely beneficial to California's economy. It is true that it lagged initially, but eventually the rail system made the state a viable competitor in international trade. Whether the long-term benefit to the economy was justified by the swindling of American tax dollars is difficult to say. Those four venture capitalists that made the entire project possible, so reviled in their time, eventually bequeathed their tremendous fortunes for philanthropic purposes. By bypassing the natural processes of the free-market system, the typical paradigm of free competition and no government intervention, they went on to become incredibly wealthy while simultaneously making the state economically competitive as well. It begs the question if such a thing as a true free-market even exists, whether such a system could even operate.

The federal and state government's initial enthusiastic support of the intercontinental railroad venture operated almost as the "invisible hand" that ensured its construction. The natural flow of market forces was clearly disrupted by the intervention; although the case can be made that they were not entirely negative. Largely the product of new legislature being drafted, the intervention in the railway construction is distinct from the development of California's water laws. The dispute over water monopolization was initially determined by the arbiter of the state supreme court.[lii] It would eventually hand down a decision that was then overturned by congressional power prompting the state to intervene and create agencies that could more efficiently distribute the water.[liii] This form of intervention was the result of a need for an objective assessment based on economic necessity. Californians needed water, and they needed it quick. The impetus was that simple, and it was that crucial.

Government intervention rarely conforms to the accepted view that economic intervention is purely the domain of large, bureaucratic governments, somewhat socialist in their ideology, with the distinct intention of limiting or capping industry. It can be used to stimulate the economy, as in Franklin D. Roosevelt's New Deal Program in the 1930's[liv], or it can be used to protect those vulnerable to unchecked market forces. In the fight for California water rights, even those state agencies that eventually managed the entirety of the water distribution for the state proved to be immensely corrupt and did not always act in the best interest of the people or a sustainable environment. Not only was water not always fairly distributed long after the contentious 1870's, but policymakers took little regard in long-term sustainable solutions to water supply and environmental protection.

There is no better example than William Mulholland's brutal takeover of Southern California's water supply by draining the Owens River in Eastern California, using a series of aqueducts that were built on land grants that were given to him under nepotistic circumstances.[lv] The entirety of that water was diverted to the metropolitan Los Angeles area, all under the auspices of the Department of Water and Power (DWP), the city's local agency that handled all water issues.[lvi]

The corruption that drove the development was rampant, and Mulholland used everything from bribery to extortion to gain political support.[lvii] The environmental devastation that occurred in Eastern California is now entirely irreversible as desertification continues to spread through the area.[lviii] Los Angeles then expanded rapidly, fueled by the sudden influx of water with little regard to sustainable development until it was forced to begin diverting water from the Colorado River. The terminus of the Colorado River was once on the eastern coast of Mexico, where it drained in to the Gulf of Mexico as a large delta, but the amount of water drawn off has so severely lowered its watershed level that it no longer reaches the sea but dries up where it has left an indelible scar that is an “ecological disaster”. [lix]

In these cases intervention would be necessary to ensure that responsible growth is possible, to ensure that industry can be sustainable. Without it, industry would undoubtedly expand and grow, become more powerful than anyone could imagine, but at what expense? If a government can intervene on behalf of an industry to ensure that it becomes profitable, lucrative, and competitive, surely the government can intervene on behalf of dispossessed people or ensuring that certain resources remain stable and viable. Without that, there would be no one at the wheel, and the machine would drive itself *ad infinitum* with no direction and no goal.

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