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Sexual Propositions

The bedroom and the ballot

For so many gay rights activists and their supporters in California, waking up on November 5, 2008 was a painful process, akin to greeting the day with a wretched hangover or a bruising injury. Late the night before, it had become clear that fellow Californians passed Proposition 8—the landmark ballot measure validating “only marriage between a man and a woman,” rescinding a right granted to them by the California Supreme Court only six months earlier. In California’s bastions of homosexuality—Polk Street, Bernal Heights, Castro in San Francisco, West Hollywood and Silverlake in Los Angeles, various districts in Oakland, and even in the provincial capital of Sacramento—gays and their supporters immediately decried the climate of “hatred” and “bigotry” that had engulfed the presumptively liberal state of California.¹

Elsewhere—but particularly in the rural and suburban bastions of Proposition 8 support—proponents celebrated the victory as a triumph of direct democracy. In carefully calibrated statements, one after another supporter emphasized that the ballot measure had vindicated the sacrosanct principle of limited government. “It upholds the people’s right to govern themselves,” Reverend Jim Franklin of the Cornerstone

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Prop 8 supporters march in Salinas.

Church in Fresno said.² Elder L. Whitney Clayton, prominent member of the Church of Jesus Christ of Latter-Day Saints, repeatedly emphasized: “We’re not antigay.” But if Franklin and Clayton believed this, it seems unlikely that most Proposition 8 supporters did. More likely, supporters were convinced by the extraordinarily expensive and strikingly mendacious advertising campaign that preceded the November election. With a price tag of \$83 million, largely funded by the LDS Church, the campaign warned voters that schoolteachers would be forced to indoctrinate children into the “homosexual lifestyle.” In one particularly effective television advertisement, a distressed teacher complains to his principal: “I became a teacher to mold children, not mess them up.” “Our hands are tied here, Terry,” the exasperated principal responds. “You’re preaching to the choir.”

Given the passions ignited on all sides by Proposition 8, it was difficult then—as it is now—to view the result of the election as anything other than a referendum on homosexuality.

And yet, to view it in this way would obscure a much more significant story about California politics. First, Proposition 8 serves as a reminder that California has become, to quote journalist David S. Broder, “not a government of laws but laws without government.”³ Since the progressives inserted the ballot initiative into the State Constitution in 1911, Californians have voted on an astounding 329 initiatives, second in the nation only to Oregonians, who got a head start when they implemented the process in 1904.⁴ Political scientists are certainly not of one mind about the effects of direct democracy on our republican form of government, but the case of California suggests that the initiative process is not only alien to the spirit of the United States Constitution, but tends to trample minority rights and can even look a lot like mob rule.

Second, a more surprising element of this story is the extent to which California—simultaneously celebrated and reviled for its fabled sexual tolerance for the past half-century—has



November 2008, supporters of marriage equality protest the passing of Proposition 8 in San Francisco. Proposition 8 was the culmination of an effort, spanning four decades, to harness the power of the ballot initiative to regulate sexual issues.

pioneered the use of sexual propositions, ballot initiatives designed to either expand the scope of “obscenity” censorship or to suppress the rights and aspirations of homosexuals. A close study of all statewide ballot initiatives in the United States between 1904 and 2009 reveals a startling fact: Second only to Oregonians, Californians have placed more sexual propositions on the ballot than residents of any of the other twenty-two states where the statewide ballot initiative is available.⁵ Viewed through the prism of sexual propositions, the political landscape of California looks quite different than we generally imagine. If, for example, Californians are inclined to regard themselves as cosmopolites whose policy interests are akin to those of their “blue state” brethren in, say, Massachusetts, Michigan, and New York (which does not provide for statewide ballot initiative), they might be surprised that, in the realm of sexual propositions, they behave more like voters in the “purple” and “red” states of Colorado, Nevada, Montana, and South Dakota, and nothing at all like voters in Missouri,

Oklahoma, and Wyoming, traditionally conservative states in which citizens have access to the state initiative process but have never bothered to muster any sexual propositions.

Understanding this unfamiliar landscape requires us to place Proposition 8 in its proper perspective. It was not an anomalous low point in California politics. Rather, it was a promontory from which we might look back to see the historical trajectory of California’s pioneering role in advancing sexual propositions. From that vantage point, several facts become clear. Unlike Proposition 13, which simultaneously started the national tax revolt and revived direct democracy, sexual propositions generally have not been grassroots campaigns. In almost every case, they have been crafted by a small group of individuals with heavy financial backing and presented to voters, who were then forced to make a critical decision on an issue about which they had been generally unconcerned and widely uninformed.⁶ Additionally, just as Proposition 13 served as a model for tax opponents nationally,

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stimulating a surge in the use of the initiative, California's sexual propositions stimulated widespread emulation, with sixteen states ultimately following suit.

Finally, although sexual propositions are far less common than ballot initiatives concerning education, election policies, government administration, the environment, taxation, and insurance, their use has increased steadily since first being introduced in California in 1966. In the twenty years that followed, seven sexual propositions were introduced in the United States; in the second twenty years, fifteen were introduced; in the year 2008 alone, three measures were placed on the ballot.⁷ Their growing relevance demands our close attention to another California story gone national, and, perhaps, awry. Ultimately, sexual propositions have served to rile emotions and vindicate the initiative process, while doing nothing to protect us against the moral dangers they purport to eradicate.

Trial Run: The Road to Proposition 16

A moral battle has raged in California since the first Argonauts arrived in 1849, often trading their bibles for booze, or their hard-earned gold nuggets for fleeting bits of affection at a the local brothel. The exotic entertainments that they fancied are so well documented that they need not be recounted in detail here, but it is sufficient to say that they deviated wildly from what Americans generally regarded as "proper" and "virtuous."⁸ "A stagnant pool of human immorality" was how one observer of early San Francisco described the adult recreational area of the city.⁹ Sharing this view was a cadre of both Protestant and Catholic priests who assailed the ungodliness of erotic entertainment and prostitution. Perhaps most colorful among them was Father Terence Caraher, pastor of the Roman Catholic Church of St. Francis, who took his crusade to ice skating rinks in turn-of-the-century San Francisco. "Some of the male skaters,"

Caraher complained, "speak to one another afterwards of their experiences and their conquests of young women in the rinks, and where do the skaters go after they leave the rinks? I answer, some of them go to perdition!"¹⁰

Through the late nineteenth and early twentieth century, purveyors of salacious periodicals and live entertainment skirmished frequently with church leaders throughout Northern California, but it was never a fair fight. For every crusading minister, there were countless customers in an ever-expanding market for erotic entertainment. The ministry usually succeeded only when their desire to suppress ungodliness dovetailed with the interests of business elites, as in the case of the Panama-Pacific International Exposition of 1915 or the rehabilitation of North Beach and Union Square shortly after World War II.¹¹ When a critical mass of homosexual men and women began to express their affections in dimly lit bars, darkened alleys, and public parks, many church leaders wrung their hands, but they often found that the San Francisco Police Department was an inconsistent and unpredictable ally. In late-blooming Los Angeles, the clergy's quest for godliness found a much more receptive audience in the largely Protestant population of Midwestern origin. There, they were able to forge an alliance with progressive reformers who viewed the suppression of ungodly behavior as central to the project of "good government" reform.¹² More directly, the best tool at the disposal of ministers and other folks concerned with ungodly behavior was the charge of "lewdness" or "obscenity" brought before municipal courts. They generally found sympathetic judges who were easily convinced that the offending material in question met the low threshold for charges of indecency, lewdness, and obscenity.¹³

Californians' modern dispute about the limits of private sexual behavior and erotic consumption began in 1957. While the landmark ruling *Roth v. United States* reaffirmed the longstanding argument that the First



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Amendment did not protect obscenity, it also limited the definition of obscenity to only those works that, “taken as a whole,” appealed to “the prurient interest” of the “average person, applying contemporary community standards.”¹⁴ In short, the decision robbed religious leaders of an important tool: the charge of criminal obscenity or indecency. “A flood tide of filth,” a popular Los Angeles television newsman named George Putnam fretted several

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years after the decision, “is threatening to pervert an entire generation.”¹⁵

The Roth decision loosened one giant boulder in a countercultural avalanche that would soon engulf the nation’s metropolises. While the decision certainly expanded the market for erotic books, magazines, and films, the sexual revolution drew more of its momentum from other significant events of the 1950s and early 1960s. Chief among these were the proliferation of “homophile” publications by early gay and lesbian activists in the mid-1950s, the overt homoeroticism of the Beat movement, the FDA’s approval of the birth control pill, the increased incidence of premarital sex and cohabitation among heterosexuals, innovations in erotic entertainment, and the new visibility of a once underground gay bar scene. In this last instance, *Life* magazine shattered the conspiracy of silence about homosexuality by publishing a two-part series on “Homosexuality in America” in June of 1964. Featuring photographs of bare-chested and leather-clad patrons in a dimly lit San Francisco

gay bar, the issue sold more than 7.3 million copies and served as a beacon for homosexuals nationwide. “An engraved invitation to every faggot in America wouldn’t have caused more of a sensation,” a character in Jack Fritscher’s memoir-novel, *Some Dance to Remember*, said. “Reading *Life’s* expose in Iowa was like discovering a travel agent’s dream brochure.”¹⁶

But if gays, lesbians, the countless new consumers of erotica, and the legions of Free-Lovers flocking to California felt that they had trounced both the church and mainstream American values, their celebration was premature. Many practices that had become socially acceptable—even passé—among a healthy proportion of Californians remained legally proscribed. California law still prohibited sodomy and other forms of consensual homosexual and heterosexual contact. The San Francisco Police Department, under antiprostitution enforcement practices, regularly quarantined women they regarded as socially undesirable. Four years after Carol Doda first dropped her top at a San Francisco nightclub in June of 1964, topless dancers in California were regularly arrested for, and occasionally even convicted of, lewdness. If some conservative spokespersons today regard California as hopelessly, shamefully, and inevitably libertine, many “traditional” Californians of the 1960s did not. Although they were not yet a unified group under the banner of “social conservatism,” they believed that California could still be “saved” and that whatever battles they had lost on the streets, and on the newsstands, could be won at the ballot box. Galvanizing this group for the first time in California was E. Richard Barnes, a retired Naval chaplain who stormed into the California State Assembly in 1963 and launched the modern crusade to “clean up” California.

Having served as a chaplain in the Korean War, Barnes retired to San Diego, where he continued to provide spiritual guidance to veterans and their families through the 1950s. But in 1961, at the age of 55, Barnes joined the Long

Beach-based Christian Anti-Communism Crusade and made a decisive move toward a political career. In the summer of 1961, Barnes regularly gave speeches alongside the Crusade’s founder, Fred C. Schwarz, to ever larger and sympathetic crowds, even appearing before the Committee on Elections and Reapportionment in September to offer testimony in defense of a bill outlawing the Communist Party in California. The bill never made it out of committee, but Barnes was apparently emboldened by his foray, and subsequently put his name forth as a Republican candidate for State Assembly District 78 in San Diego. Benefitting from the 1961 Reapportionment, during which an extra Republican assembly seat was added to San Diego, Barnes faced a weak Democratic rival in Robin Goodenough. Though he had no political experience, Barnes knew how to give sermons, and how to use his new seat in the Assembly to combat what he viewed as sinful behavior.¹⁷

On one hand, Barnes was very much in step with the California Republican Assembly of the early 1960s, combating taxes and lobbying hard against the Rumford Fair Housing Act, the most significant piece of antidiscriminatory legislation in California at the time. His young aide, former publisher of the *Oceanside-Carlsbad Banner*, William K. Shearer, was a political mastermind who engineered the passage of Proposition 14 in 1964, killing the Rumford Act. And, like other members of the California Republican Assembly, Barnes threw his support behind the presidential bid of Barry Goldwater. According to then California Attorney General Stanley Mosk, Shearer even submitted regular articles to a Jackson, Mississippi, newspaper in which he declared that Goldwater’s opponent, John F. Kennedy, bore similarities to Adolf Hitler.

But even conservative Republicans scratched their heads at Barnes’s evolving demagoguery. Sometime between his election and his arrival in Sacramento, Barnes appears to have realized that anticommunism was a political non-starter, particularly in the strongly Democratic Assembly.

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Highly adaptive, he redirected his rhetorical paranoia at pornography, making at least twenty attempts in the Assembly to strengthen California's obscenity code and eviscerate the substance of the Roth decision. Failing in this, Barnes adopted a strategy—still somewhat novel at the time—of crafting an initiative to give "the people" the right to bypass the legislature and effectively reinterpret the Supreme Court's decision. Described as the CLEAN initiative (California League Enlisting Action Now), and certified with almost 500,000 signatures as Proposition 16 for the 1966 ballot, the measure sought, among other provisions, to strike the "utterly without redeeming social importance" test from the California obscenity code. But the shrewdest section of the initiative tackled Roth's invocation of "contemporary community standards." Since Roth, judges in California and elsewhere had dismissed countless obscenity charges on the grounds that the works did not violate "contemporary community standards," because they usually interpreted "community" to be the State as a whole. Proposition 16 sought to establish "the jury as the exclusive judge of 'the conscience of the community,'" offering legions of suburban and rural supporters "local control" over obscenity.

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Anti-Communism Crusade, to appeal to conservatives like Frawley. Beyond the conservative charge that obscenity degraded the moral fiber of Americans, rendering them defenseless against Communist aggression, there was no clear explanation for why Frawley would throw his support to Barnes's somewhat exotic campaign. However, given Frawley's extraordinary business acumen, and the fact that he had recently moved his Connecticut-based company to California to launch its newest stainless steel safety razors in one of the nation's biggest markets, advertising could not have been far from his mind. Very few pieces of Proposition 16 literature would appear in 1966 that did not also inform readers about the virtues of the "Super Krona Comfort Edge."¹⁹

To the extent that the voluminous Proposition 16 campaign literature made a coherent argument, it went something like this: pornography was a \$2 billion industry (a totally unsubstantiated and highly unlikely figure); 75 to 90 percent of pornography fell into the hands of kids (an unsubstantiated, but admittedly likely figure); most crime was the function of exposure to pornography (a claim with absolutely no scientific or criminological support, then or now). But the rhetorical pitch of the campaign literature was truly outlandish. "Is Your Child Less Than a Pig?" one newspaper insert read, citing an obscure code against "worrying any animal for profit or gain." "Pigs are protected by statute. Your child is not protected against profiteers in filth, obscene and pornographic material!" In another newspaper insert, Barnes predicted the themes of the new pornography coming to Californians if they failed to pass Proposition 16: "whipping, gagging, sex rituals, transvestia, sadism, masochism, homosexuality, phallic symbols, inter-racial affairs, wife swapping, lesbianism, group orgies, voyeurism, [and] aphrodisiacs." And in another, readers were asked "what

kind of woman do you want your daughter to be? What kind of woman do you want your son to marry? What kind of woman do the girls of America want to be?” The answer, naturally, was a woman of “goodness” and not the “degenerate picture of woman and man shoved at them from all sides.”²⁰

Countless colleagues in Sacramento, and dozens of California newspapers, including the *Los Angeles Times*, regarded Barnes as a crackpot, but his numbers looked very good. Weeks before the general election, a reputable polling organization found California voters favoring Proposition 16 by a 2-to-1 margin, and another, more dubious poll showed a 6-to-1 margin in support of the measure. But there was an October surprise: gubernatorial candidate Ronald Reagan’s support for the measure moved from staunch to tepid because he thought it overbroad, and just days before the election, while advising voters to support the measure, he added, “even if it is ruled unconstitutional.” Reagan beat Edmund “Pat” Brown by a large margin, and voters soundly rejected Proposition 16.

A Succession of Failed Initiatives

After the November drubbing, Barnes tried to fall more in line with the California Republican Assembly, seeking to defeat environmental protection legislation, reject teacher retirement packages, and cut taxes. But even then, his positions remained extreme. At one point, he led the charge in California to abolish federal income taxes. In 1971, he infamously wrote a letter to Richard Nixon, widely circulated in the press, in which he described Nixon’s efforts to befriend the Chinese as “suicidal idiocy.” Barnes’s public lampooning of the President alienated many supporters. He was ousted from the Assembly in 1972 and did not return to politics.

Though we quickly forget failed initiatives, Proposition 16 set an important precedent for conservatives in California. Though it lost “badly” by the standards of most pundits at the time, more than 2.5 million voters (43 percent of the electorate) supported it. Clearly, there was a very large audience receptive to Barnes’s core message that California was in a moral free fall. The first California initiative to deal with obscenity or sexuality in any form, Proposition 16 also field-tested the use of the initiative for moral or “value” issues. And it performed beautifully, demonstrating that even a complex and constitutionally dubious position could win support, particularly when it characterized children and the

family as at risk. A veritable pariah to his party by the time he left office, Barnes may have actually been a visionary, anticipating a “family value” agenda and “social conservatism” almost twenty years before it became a pillar of the Republican Party platform.

During Barnes’s time in the Assembly, he had found an ideological ally in John Briggs, a Republican from Fullerton in Orange County, one of the only counties in which the majority of voters supported Proposition 16. Although Briggs was more than twenty years younger than Barnes, he shared his record of military service in Korea and strong religious convictions. However, unlike Barnes, Briggs was no firebrand; he politely and vaguely advocated for “fiscal responsibility, free enterprise, and local control” in his first of two failed bids for the Assembly in 1962. By the time of the 1966 election, Briggs stepped up the intensity of his rhetoric, vowing to end California’s policy of “subsidizing laziness and immorality” through welfare programs. He also ran for a seat in the less competitive thirty-fifth Assembly District, far north of Orange County in the Santa Barbara and Ventura area.²¹ When Briggs finally took his hard-earned seat in 1967, the former insurance broker focused most of his energies on trimming government spending, cutting taxes, and revamping insurance policy. If in his heart Briggs shared Barnes’s moralistic zeal, there was little indication of it in the first decade of his political career.

When Briggs ascended to the more powerful role of State Senator from Orange County and gubernatorial aspirant in 1977, however, he veered hard right, unleashing a moral invective against homosexuality. In the years since the *Life* article, and since Proposition 16, homosexuality had moved well above ground in California. When Saturday Night Live (and later David Letterman) musician Paul Shaffer co-wrote the disco track “It’s Raining Men” in 1979, San Francisco’s Castro Street may have been on his mind; both the street and city were awash in openly gay revelry. In a remarkably candid interview with the *Los Angeles Times* in October of 1978, Briggs worried that allowing open homosexuals to teach children portended “a period of moral decay in this county” that would lead to the death of “civilization.”²²

Briggs was no innovator. He simply followed the lead of Anita Bryant in Miami, the songstress-turned-spokeswoman for Florida orange juice. The thirty-seven-year-old mother of four was politicized by a recently passed Dade County ordinance barring discrimination against gays in

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public accommodations, housing, and employment. Taking a page from Barnes’s playbook, Bryant formed Save Our Children, Inc., an antigay group that promulgated the notion that allowing homosexual teachers in schools would destroy an entire generation of students. Bryant’s group collected more than six times the 10,000 signatures required to force the law to a ballot for a referendum. More importantly, during the four months between the passage of the ordinance and the June 7 referendum, Bryant’s high profile forced the issue of homosexuality into the national spotlight, making it one of the top media stories of 1977.

On the day before the Dade County referendum, Briggs flew to Miami to lend his support to the Bryant campaign. Warning Miami voters about the danger of “the San Francisco influence,” Briggs vowed to carry Bryant’s fight back to California. During the campaign, Bob Green, Bryant’s husband and manager, also warned that failure to reverse the ordinance would mean that “Dade County will become like San Francisco where many ‘gays’ dominate daily life.”²³ The next day, voters in Dade County repealed the ordinance by a margin of two-to-one, a blow to advocates of gay rights in Florida and nationwide. On the following day, Briggs stood on the steps of City Hall in San Francisco, announcing the “Briggs Initiative”—Proposition 6—banning homosexuals from teaching in California schools. “San Francisco,” Briggs told the sizeable crowd, “is the fountainhead of all homosexual activity in the country. It is in a captured-nation status, and the people want to be liberated.”²⁴ Echoing a theme from Barnes’s campaign that would only become louder on the march, decades later, toward Proposition 8, Briggs flipped the script of victimization: the rights of social conservatives were being violated by the practices of libertines.

Citing both the moral decline of California and the vindication of the property-tax cutting measure, Proposition 13, Briggs warned that citizens’ rights as parents and taxpayers were threatened by the employment of homosexuals in public schools:

We know that the undermining of traditional values which began in the ‘60’s has left many Americans in a moral vacuum which they try to fill with drugs, alcohol, and ‘alternative life styles’ . . . In June, we Californians gave the nation a new idea. The Jarvis [sic] Amendment has made fiscal responsibility respectable again and is serving as a model of inspiration for the rest of the nation. Now the nation is watching us again. We’re going to put America back on the high road, not because the politicians want it, but because people demand it.²⁵

For John Briggs, California’s role as a vanguard in a national tax revolt augured well for its role as a vanguard in the national restoration of traditional values.

Proposition 6 lost by a 58 to 42 percent margin, almost exactly the same margin by which Proposition 16 had lost in 1966. As in 1966, “value” initiatives clearly had legs, drawing the support, in this instance, of more than 2.8 million voters. But for social conservatives, the lessons of Proposition 6 were more complicated than those of Proposition 16. First, while Ronald Reagan tepidly supported Proposition 16, he vigorously opposed Proposition 6, courageously breaking with his party’s advice that he ignore the issue as he built his campaign for the Presidency. Without the support of the Republican Party’s greatest statesman, Briggs faced a tough battle. Second, in the decade since Proposition 16, gays and lesbians had become a political force, exercising a decisive influence in San Francisco politics. Throughout California, homosexuals—Harvey Milk the most famous among them—lobbied hard against Proposition 6, canvassing neighborhoods and flooding newspapers with editorials. Finally, to overcome his handicaps, Briggs needed more money, but it was not easy to come by. Noticeably absent from Briggs’s funding roster was the LDS Church. Since Proposition 16, LDS had become extremely influential in ballot initiative politics. “If the church really wanted to,” Los Angeles LDS leader John K. Carmack bragged in 1978, “it could in eight days get 500,000 signatures. . . . If President Kimball [the LDS President in Utah] said ‘Drop everything and qualify this initiative for the ballot; the country’s morals



THEY ARE UNDER ATTACK

Broadside from Richard E. Barnes's Proposition 16 campaign in 1966. An attempt to strengthen obscenity laws in California, and to protect families from the "attack" on traditional values, Proposition 16 lost. But Richard E. Barnes pioneered the use of the ballot initiatives of social issues, a technique that would find later success in Proposition 22 (2000) and Proposition 8 (2008).

hang on this,' that word would go about all over."²⁶ But LDS passed on supporting Proposition 6 because it had lost faith in California's conservatives to pull off a victory: despite heavy LDS backing, conservatives had failed to collect the votes for a moderate version of Barnes's antiobscenity ballot initiative in 1972. "I don't think the church likes to be a loser," Carmack said, and Briggs was obviously regarded as a man headed for a loss. Moving forward, conservatives would have to secure the blessings of LDS—which already had more than 400,000 members in California by the late 1970s—to win a values initiative in an increasingly liberal state.

After the frustrating results of the 1966, 1972, and 1978 values initiatives, California's conservatives largely retreated from the ballot initiative process. In 1978, they made one

final attempt to have "community" defined locally on matters of obscenity, just as Barnes had tried to do in 1966, but they failed to get even enough votes to put the measure on the ballot. And they did not succeed in qualifying a single sex-related "values" initiative for the next twenty years. This had almost nothing to do with any major strategic reconsideration on their part, but with the fact that conservatives, many of who now identified themselves as "social conservatives," did not need the ballot initiative to further their agendas in the 1980s and early 1990s.

Beginning with Ronald Reagan's ascent to the White House in 1981, California conservatives enjoyed three Republican presidential terms. Beginning in 1983 with George Deukmejian, they enjoyed four Republican gubernatorial

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terms. Deukmejian’s successor, Pete Wilson, reneged on a campaign promise by vetoing an assembly bill that banned workplace discrimination against gays and lesbians. And many social conservatives—though certainly not all of them—saw an ally in the AIDS epidemic starting in 1981, because it brought the sexual revolution to a screeching halt and appeared to vindicate their long-held belief that homosexuality was unnatural. By the end of the millennium, many social conservatives, and the LDS church in particular, exhibited great compassion for AIDS victims. But it must be said that in the early days of the disease, many of them were opportunistic. “It’s something you ought to be looking at,” Georgia Congressman Newt Gingrich said of AIDS at a speech before the American Coalition for Traditional Values. “AIDS will do more to direct America back to the cost of violating traditional values, and to make America aware of the danger of certain behavior than anything we’ve seen. . . . For us it is a great rallying cry.” And, shortly before joining Reagan’s staff, Patrick Buchanan sarcastically lamented, in the *New York Post*, the fate of “the poor homosexuals.” “They have declared war upon nature,” he wrote, “and now nature is exacting an awful retribution.” “The sexual revolution,” he continued, “has begun to devour its children.”²⁷

Same-Sex Marriage and the Resurgence of Sexual Propositions

The climate for social initiatives returned in the early 1990s as a new movement for same-sex marriage in California, and beyond, gained steam. Early in 1989, the San Francisco Bar Association endorsed amending the Family Code to recognize marriage “between two people,” and later that year the San Francisco Board of Supervisors passed a law granting domestic partnership licenses to same-sex couples.

Similar efforts were simultaneously underway in Massachusetts, Washington, D.C., Vermont, Iowa, and Hawaii. By the early 1990s, the legalization of gay marriage appeared imminent, and opposition to it became an essential pillar of social conservatism generally, and of the Republican Party in particular. Vice President Dan Quayle became one of the first national leaders to acknowledge and vilify the trend when he told the audience of *Good Morning America* in 1992 that “so-called gay marriage” and heterosexual marriage were not “morally equivalent.”

Social conservatives quickly framed the issue as one of states’ rights. Alarmed that same-sex marriages from permitting states would now be foisted upon states that did not sanction gay marriage, many rallied for a federal law defending traditional marriage. In 1996, the Defense of Marriage Act emerged, protecting states from having to recognize gay marriages from other states and reaffirming that the term *marriage* was exclusively reserved for the union of a man and a woman. It sailed through both houses of Congress and was quickly signed into law.

Meanwhile, in California, social conservatives enjoyed no such “protections.” Although the Family Code of California unambiguously defined marriage as a civil contract between a man and a woman, another section of the Code recognized the legitimacy of gay marriages that had been contracted in other states where it was legal. In fact, as legal scholar Barbara J. Cox has observed, California courts had repeatedly validated alternative marriages from other states, even though they were not legal in California, including common-law marriages, proxy marriages, and polygamous marriages.²⁸ In other words, the fact that gay marriage was not yet legal in any other states was no guarantee that Californians would not ultimately have to recognize gay marriage. This was the climate in which the first new social initiative in decades emerged. Proposition 22, which would amend the Family Code to read “only marriage between a man and a woman is valid or recognized in California,” appeared on the general election ballot in November of 2000.

Introducing the ballot initiative was William J. “Pete” Knight, a Republican from the desert city of Palmdale, who was first elected to the Assembly in 1992 and then to the State Senate in 1996. A retired United States Air Force pilot, former test pilot at Edwards Air Force Base, and the brother and father of gay men, Knight possessed both all-American credentials and animus toward homosexuals. His son, David,

remembering what happened when he revealed his sexual orientation, told a reporter in 1999, “From that moment on, my relationship with my father was over.”²⁹ Knight went on subsequently to introduce to the Legislature three bills limiting marriage to a man and a woman, but each failed to make it out of committee. Frustrated, Knight circumvented the legislating process and took Proposition 22 to the voters.

From the beginning, it was clear that the lessons of Proposition 16 and Proposition 6 were not lost on Knight. He quickly raised almost \$1 million. As had been the case since Proposition 16, the bulk of the money came from a very small group of wealthy donors, largely concentrated in Orange County. Though 650 donors chipped in, the lion’s share of the million came from a clique of four Orange County multimillionaires. The leader of that group, Howard Ahmanson, heir to the Home Savings of America fortune, was also an advocate for the Christian Reconstructionist movement, which sought—among other things—to rewrite national laws to be consistent with Biblical ones. He was also a trustee of the Chalcedon Institute, whose founder, Rousas John Rushdoony, advocated the death penalty for homosexuals. Even more significant than the financial support of these Orange County powerbrokers was the institutional support of the Catholic Church and, more importantly, the LDS Church, which instructed its 750,000 California members to lend whatever support they could to the Knight campaign. Securing the support of LDS—which John Briggs had been unable to do—would prove invaluable to the campaign’s success.

Proposition 22 was the first values initiative to pass in California, and it passed by an overwhelming margin of 61 to 39 percent. Knight had read the mood, raised the money, locked down religious support, and soundly vanquished his rivals. But he also had done something remarkable that his predecessor did not: he had located extraordinary public support well beyond the ranks of hard-line social conservatives. More than 4.6 million of 7.5 million registered voters in California agreed with Knight’s amendment in the March 2000 primary. Yet, eight months later during the general election, California voters overwhelmingly supported Democrats Al Gore for President and Dianne Feinstein to the Senate and picked up five seats in the House of Representatives. The Knight initiative succeeded in part because a healthy proportion of Democrats voted in favor of the measure, proof of just how far such measures had come since Barnes’s first foray. Sexual propositions, in short, had gone mainstream.

Although the Family Code of California unambiguously defined marriage as a civil contract between a man and a woman, another section of the Code recognized the legitimacy of gay marriages that had been contracted in other states where it was legal.

“This is a great victory,” Knight told supporters the day after the election. “We in California have voted by the millions to keep marriage the way it has always been and the way it should always be—between a man and a woman.” Yet, Proposition 22 had almost no immediate practical effect, other than to alienate homosexuals and their allies. Until other states legalized gay marriage, there was nothing broken that Proposition 22 could fix. And to critics, its passage was a painful reminder of how undemocratic direct democracy could be. There had been no grassroots campaign to ban gay marriage, no passionate mass of voters upset about a provision in the California Family Code. But when presented with the opportunity to limit gay rights, even Democratic voters got on board.

Supporters of gay marriage immediately filed legal challenges to Proposition 22, beginning a long legal battle that is still unresolved. In February of 2004, San Francisco Mayor Gavin Newsom challenged Proposition 22 by ordering the city clerk to issue marriage licenses to gay couples. For a brief period, thousands of gay couples in San Francisco rushed to marry. One of the most notable marriages of that tumultuous period was that of Joe Lazzaro and David Knight, the ostracized son of William Knight. Joined only by their two best friends, Lazzaro and Knight exchanged their vows in the spectacular rotunda of San Francisco City Hall in 2004. William Knight did not attend.



William “Pete” Knight with wife, Helena, and sons David (left) and Peter (right) in front of an experimental X-15 rocket-powered aircraft, mid-1960s. A retired Air Force pilot, William Knight rose to prominence in the California Legislature in the 1990s and introduced Proposition 22, the first successful sexual proposition in California, on the 2000 ballot.

On March 15, 2008, the California Supreme Court ruled that the Proposition 22 was unconstitutional, stimulating another frenzy of gay weddings—more than 18,000—from June 16 through November 5. And then voters passed Proposition 8.

Morality by Plebiscite

Contrary to the claims of Barnes and his followers, voluntary exposure to pornography did not produce generations of murderous rapists. Contrary to the claims of Briggs and his cronies, tolerance of homosexual teachers did not produce generations of morally damaged, sexually molested students. Contrary to the claims of Proposition 22 and Proposition 8 supporters, allowing gay people to get married will not—cannot—destroy or devalue heterosexual marriage. During the five months in 2008 in which gay marriage was legal in California, there was no rash of heterosexual divorces, no mass movement of straights abandoning their vows. At the heart of each of these sexual propositions is a



October 2008, the Protect Marriage Bus Tour stopped in Fresno and invited people to sign their names indicating their support of Prop 8. Proposition 8 was the culmination of an effort, spanning four decades, to harness the power of the ballot initiative to regulate sexual issues.

meddlesomeness that runs contrary to the spirit of direct democracy as it was originally envisioned, but is consistent with the letter of the law. And yet, as our historical tour of California’s political landscape suggests, the use of sexual propositions has not only intensified, but has also drawn the support of a widening spectrum of voters. In short, the evidence suggests that we will continue to seek and find moral satisfaction at the ballot box, even when doing so eradicates no verifiable dangers and alienates a political minority.

Of course, there are technical solutions to this problem. For example, as advocates for California State constitutional reform have suggested, we might authorize the legislature to hold hearings on the impact of proposed initiatives, allowing them to better educate the voting public. Additionally, we might require supermajorities for constitutional and even statutory initiatives.³⁹ But ultimately, the fix for this problem is not technical but probably spiritual. It requires Californians to fully appreciate the contingency of their own perceived rights. Unless the United States Supreme Court has ruled that those rights cannot be abridged, it is entirely possible that somewhere in California, someone is preparing to abridge them.

Ultimately, the fix for this problem is not technical but probably spiritual.

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Notes

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