

**DESTINY AND THE LAW: THE CALIFORNIA LAND ACT OF 1850**

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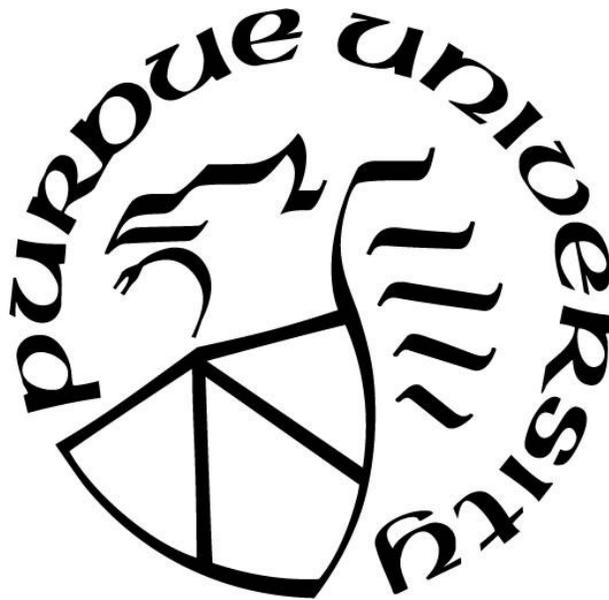
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*To My Parents, Karen and Konrad*

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## ABSTRACT

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The California Land Act sought to remake landholding in early California. Though bound by promises to uphold existing ownership in the treaty of Guadeloupe Hidalgo, the United States attempted to use the law to fundamentally change who held land in California and the exploitation of its resources. Analysis of archival materials demonstrates that the California Land Act intended to transform California from a ranching-based economy dominated by large landholders of Spanish descent into an agrarian economy dependent on small scale farming modeled on the traditional land use of the eastern United States. This intrinsic policy characterized the legislative formation of the act, and years later influenced North American settlement policies of formerly French and Imperial Mexican territories. As such, this study focuses on a little understood agent of change: the administrative law. A careful examination of the crafting and implementation of the California Land Act reveals that land law legislation and its extra-judicial commission, alongside other more traditional markers of American occupation, occupied a prominent place in the continued colonization California.

## INTRODUCTION

1846 was a watershed year in American and California history. In the midst of fulfilling its self-proclaimed “manifest destiny” to expand from ocean to ocean, the United States made war upon Mexico. The Treaty of Guadalupe Hidalgo brought an end to this conflict, resulting in the United States’ seizure of several Mexican northern territories, including New Mexico, and the coastal territory of Alta California.<sup>1</sup> The treaty demanded of the conquering Americans to respect the individual property claims of the *Californios*, the original Hispanic settlers of California, this being a necessary step for the desired integration of these former Mexican citizens into the United States.<sup>2</sup> However, this process was suddenly, unexpectedly, and profoundly obstructed by the discovery of gold in 1849 and the rapid explosion of immigration following statehood. In this context the land claims of these *Californios*, and the way they would be absorbed into the American legal system, came into question. During this process the United States would attempt to transform California from a ranching-based economy dominated by large landholders descended from the original Spanish settlers of the state into an agrarian economy dependent on small scale farmers modeled on the land use traditions of the eastern United States. This process explicitly sought to make California more “American.”<sup>3</sup>

In an attempt to remedy this situation, the United States Congress passed the *Act to Settle the Private Land Claims in the State of California*, more commonly then and now referred to as

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<sup>1</sup> For a broad depth study of the Treaty of Guadalupe Hidalgo and its Legacy see: Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo; A Legacy of Conflict* (Norman: Univ. Oklahoma Press, 1990). This work does a good job of demonstrating the political and diplomatic issues that occurred during the treaty’s formulation, as well as its legacy for both the United States and Mexico.

<sup>2</sup> For the most well-regarded social history of the Californios see Leonard Pitt, *The Decline of the Californios; A Social History of the Spanish Speaking Californians, 1846-1890*, (Berkeley: University of California Press, 1988) (2<sup>nd</sup> Edition). This work will be discussed in some detail later in this study.

<sup>3</sup> In this case American means integration into the broader American system of landholding, and the broader legal and political community of the United States.

the California Land Act. It established the California Land Commission, “for the purpose of ascertaining and settling Private land claims in the State of California.”<sup>4</sup> The commission would consist of three commissioners, appointed by the President, and confirmed by the Senate. In addition, the act called for a secretary, “skilled in the Spanish and English languages. . .to act as an interpreter, and to keep a record of the proceedings.”<sup>5</sup> Finally the commission included an agent of the United States government, who would represent the nation’s interest, be “learned in the law” and bilingual as well.<sup>6</sup> This focus on linguistic skills either anticipated with remarkable sensitivity the difficult cultural and legal problems to be faced by the committee, or simply served as lip service to the stated requirements of Guadalupe Hidalgo. Throughout the duration, this ambivalence underscored the more than six-hundred cases adjudicated by the commission, with the majority ultimately appealed to the federal courts. This study explores the impact of the Act and its attendant commission on the new state, which in turn implicates a myriad of issues central to the overall process of American expansion in the mid-nineteenth century. Demonstrably, through a redefinition of real property rights as equities, and an extensive system of administrative and appellate scrutiny, the United States government sought to fundamentally change land use in California, using a fungible definition of property rights as a novel tool of colonization.

This dissertation provides for a more comprehensive understanding of the California Land Act through the lenses of legislative intent, and practical application. Through a careful study of the debates surrounding the legislation, and the work of the California Land Act’s implementation committee, two facts are apparent. First, the California Land Act was an attempt to profoundly remake landholding in California, with an aim towards putting more land in the hands of American

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<sup>4</sup> 31<sup>st</sup> Congress, Sess. II, Ch. 41

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

settlers streaming in from the east. In this process redefining property rights in the golden state. Secondly, the California Land Act failed – in spite of the best litigious efforts of the Federal government – due to the tenacity of the *Californios* in defending their claims, and the simple fact that those claims were inherently legitimate. Following a lengthy appeals process, the courts upheld the vast majority of all land grants, most of which would be disposed of through subsequent sale by their original owners. All told, the United States government used the California Land Act to redefine vested property rights of those protected by treaty in such a way as to reshape the basic economy of California and substantially change the use of land in the state.

The California Land Act was written entirely within the language, philosophy and political attitudes of American political and legal conventions. Its authors viewed themselves as spokesmen for The United States as a nation of laws, a nation that placed an almost religious significance onto the legal rights given to citizens. As stated in countless legal preambles, they asserted that new laws passed by the nation exemplified the goals and desires of the national government united in a common goal. In the case of the California Land Act, the United States Congress enacted a law that serves as a uniquely enlightening illustration of the antebellum project of continental expansion.<sup>7</sup> The California Land Act demonstrates this self-perceived union of law and national intent to an almost unprecedented degree of clarity as it was the result of a wholly intentional act by the Federal government whose motives became all the more clear as the discovery of gold demanded an accelerated payout of political capital. The Mexican War itself was a planned war, one fought with the sole aim of expanding the territorial boundaries of the United States. In turn, California entered the Union with the Missouri Compromise the goal of which was to allow the

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<sup>7</sup> This study contains an extensive bibliographical look into westward expansion and manifest destiny, but perhaps the most formative work in my mind is Anders Stephanson's *Manifest Destiny; American Expansion and the Empire of Right*, (New York: Macmillan, 1996).

further expansion of statehood westward. As the California Land Act was designed to incorporate the existing system of property ownership in California into this broader project, it embodies the very nature of the process of westward expansion. The written Act and its commission offer a discrete view into the legal aspects of manifest destiny and the ways in which this broader project collided with resistance by well-heeled and litigious locals, like Abel Sterns and the De la Guerra family, determined to defend their lands.

Analysis of archival materials demonstrates that the intent of the California Land Act was to transform California from a ranching based economy dominated by large landholders descended from the original Spanish settlers of the state into an agrarian economy dependent on small scale farmers modeled on the land use traditions of the eastern United States. This intrinsic policy was carried out across the legislative formation of the act, through its application, and was ultimately influential on the North American settlement policy of formerly French and Imperial Mexican territories. Study of the Act highlights an important and neglected aspect of Manifest Destiny and American expansion. Traditional scholarship on the subject views the agents of this work as the settlers themselves, who arrived from the east to claim the new lands. To the consternation of the *Californio* gentry, the American military machine, always euphemistically called “the cavalry” backed these doughty pioneers when difficulty arose.<sup>8</sup> This study seeks to add another player to this stage: the administrative law. A careful examination of the crafting and implementation of the California Land Act reveals that land law legislation and its extra-judicial commission, alongside

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<sup>8</sup> In his book *Flush Times and Fevered Dreams*, Joshua Rothman (Athens: University of Georgia Press, 2012), 20. outlines a story of explosive growth in a different earlier frontier, the trans-Mississippi of the American south. He makes an important point about American ideas of the frontier when he writes, “But many sought not merely a place where they might make a better life. They sought the place where they might make the best of all possible lives. And in the nineteenth century the best place was always someplace else.” Thus, the concept of a frontier could mean many things to many people, ultimately amounting to the idea of opportunity being found someplace better than here. This these is apparent throughout this study. The dream of gold or land in California was for many just that, a dream. However, the fact that this dream was shared by so many in the aftermath of the gold strike at Sutter’s Mill meant that land ownership in the state became a matter of national legal policy, and immediate legislation.

other more traditional markers of American occupation, occupied a prominent place in the early colonization of California. If it is nothing else, the story of the California Land Act is the story of a group of property owners, and the conflict that arose when they came into contact with a rush of landless settlers. This conflict was further complicated by the racial and political issues that dominated California in the 1850s, and the ongoing desire to spur growth in the new state.

This study of the California Land Act and its attendant commission will consist of a historiographical discussion followed by five chapters. These chapters will examine the general historical background of the act, its drafting and implementation, and the impact it had on California, and American expansion. They are entitled, Chapter One: The Long Birth of a New Kind of State. This chapter examines the history of California, and the basis of its land titles. Chapter Two: Creating California examines the creation of the state of California and the land issues that swirled around its founding. In addition, this chapter looks at the Treaty of Guadeloupe Hidalgo, and the impact it would have on crafting land policy. Chapter Three: The Genesis of the California Land Act looks at the legislative debates that surrounded the formation of the act. Particular attention is paid to the impact that those debates, and the ideals of men like Senator Gwin and his opponent Senator Thomas Hart Benton had on land policy in the state. Chapter Four: Equity and Destiny; The Motives that Shaped the California Land Act examines the motives and historical trends that fueled the formation of the California Land Act. This chapter also shows how changing ideas about property and land use fueled the debate over the states' land. In Chapter Five: The Commission and its Work, the impact and process of the Land Commission is discussed through the use of specific case studies. In addition, we examine the lengthy appeals process and the impact these proceedings had on the *Californios* and the *Ranchos* themselves. These chapters

will be followed by concluding remarks about the land act and its place in California and American history.

### **Historiographical Debates**

This study begins by considering three primary areas of scholarship of westward expansion in the nineteenth century: direct discussions of the California Land Act, broader studies of Manifest Destiny, and analysis of the changes and challenges that faced American law in the nineteenth century.

The literature on the California Land Act itself begins with Hubert Bancroft's broad and influential study of the history of California written barely a generation after the events it described. Over time two major schools of thought branched from his treatment of the nature of the Act and its attendant Commission.<sup>9</sup> The first, following Bancroft's model, views the commission as a tool to steal land from Mexican *Californios*. This scholarship largely points to the collapse of the fortunes of *Californio* families, and the fact that few retained their economic status. Perhaps the most notable example of this is Leonard Pitt's *Decline of the Californios*. Pitt, holds that the act was specifically created to extend preference to Anglo Settlers who were streaming into California, and that *Californio* claimants were mystified by the commission and poorly represented at the bar.<sup>10</sup> Pitt insightfully examines the squatter pressure that faced the *Californios*, but as his study preferred the broad strokes of cultural transitions, he avoided more granular consideration of the ways that the *Californios* interacted with the commission, and the motives inherent in its day to

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<sup>9</sup> Hubert Howe Bancroft, *The History of California Volume VI 1848-1859*, (San Francisco, The History Company, 1888), accessed via <https://archive.org/details/worksofhuberthow23bancrich/page/n5>

<sup>10</sup> Pitt, 83-100. For more on this view of the land act see: Augustin Resendez and Robin Santos Doak, *California 1542-1850.*, (New York: National Geographic Society, 2006), Hubert Bancroft, *History of California*, (San Francisco: The History Company, 1890).

day proceedings. Pitt further sought to focus on cultural change rather than the systemic changes impacting the *Californios* during the period, beyond the initial political pressure caused by the gold strike.

Significantly, public perception and historical generalizations have long been the basis of understanding California during this period, but that perception often ignores the actual situation created by the Act, and the ways that individuals dealt with it. The eminent historian of California, Kevin Starr, noted in his much larger study of California history that while most of the cases brought before the commission were upheld, it came at a great cost to the claimants. He argued that many participants were forced to sell their land to cover the attorney's fees, creating the perception that the commission was actively taking land from Hispanic citizens and giving it to white settlers.<sup>11</sup> While Starr usefully speaks to public understanding, he chose not to delve into the specific workings of the commission, nor does he link the actions of the commission to broader trends in American law and politics.

Linda Heidenreich, in *"This Land was Mexican Once" Stories of Resistance in Northern California*, echoes Starr's argument about the perception of the California Land Act.<sup>12</sup> Heidenreich persuasively asserts that the net effect of the law was to classify all land not covered by the claims as free, and thus make it open to Anglo settlers. Focusing on the legislative history of the act, she quotes Senator Thomas Hart Benton's explicit claims that the intent was to disenfranchise Latinos.<sup>13</sup> For this was indeed one of Benton's arguments. It is not a complete picture of the act or its creation. David Vaught seeks to add a more complete and nuanced account of the act and its creation by revealing how the relative skill of the advocate might counteract what might be

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<sup>11</sup> Kevin Starr, *Americans and The California Dream, 1850-1915*, (London: Oxford, 1973).

<sup>12</sup> Linda Heidenreich, *"This Land Was Mexican Once" Stories of Resistance in Northern California*, (Austin: University of Texas Press, 2007).

<sup>13</sup> *Ibid*, 89.

otherwise viewed as inevitable in his, *After the Gold Rush: Tarnished dreams in the Sacramento Valley*<sup>14</sup>. His discussion of the commission highlights the ability of a good lawyer to present a better case. In addition, he noted that many Mexican claimants, unfamiliar with American law, struggled to conform their cases to the requirements of the commission. Yet, while Heidenreich and Vaught decidedly show the challenge faced by the *Californios* may have been daunting, the record shows that the vast majority of *Californios* won their cases.

The second view to branch out from post-Bancroft histories of California is typified by Paul Gates and David Hornbeck. In his 1971 article entitled, “The California Land Act of 1851,” Gates concluded that the act was a statesmanlike measure that ultimately succumbed to partisan bickering in Washington.<sup>15</sup> In 1979 David Hornbeck addressed the subject of the California Land Commission in his article, “The Patenting of California’s Private Land Claims, 1851-1885.”<sup>16</sup> Hornbeck, a geographer by trade, was primarily concerned with the technical aspects of integrating land into the broader system of landholding, such as the recording, legal description, and establishment of a chain of title. He argued that while the process may have been confusing to many applicants, it succeeded in establishing legal title over California land.

In 1999 Karen B. Clay furthered this discussion in her article, “Property Rights and Political Institutions: Congress and the California Land Act of 1851.” Her primary focus was on the way that the American state chose to integrate existing ownership of property into its territory.<sup>17</sup> Her work relies heavily on political science theory, and mainly deals with the choice to set up a commission as a means to integrate claims rather than other alternatives like seizure or purchase.

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<sup>14</sup> David Vaught, *After the Gold Rush: Tarnished Dreams in the Sacramento Valley*, (Baltimore: John’s Hopkins UP, 2009). Pg. 45-46.

<sup>15</sup> Paul Gates, “The California Land Act of 1851” *California Historical Quarterly*, vol.50, no.4, (December 1971).

<sup>16</sup> David Hornbeck, “The Patenting of California’s Private Land Claims, 1851-1885” *Geographical Review*, v.69, no.4, (October 1979).

<sup>17</sup> Karen B. Clay, “Property Rights and Political Institutions: Congress and the California Land Act of 1851,” *The Journal of Economic History*, v.59, n.1, (March 1999).

She concluded that the act was an attempt to balance competing interests and provide a solution that would accomplish the goal of integration, and gain acceptance in California.

It is clear that this debate between the older Bancroft modeled histories and the newer more social science focused studies will benefit from a more detailed and comprehensive discussion of the act. While two camps might exist in the historiography, this study purposely fails to fit neatly into either. A careful examination of the Act is important, not only to show the ways in which it was implemented, but because the California Land Act was a legislative action wholly unique to California. None of the other states acquired before or since have the same method of property integration. Indeed, a careful examination of archival materials will show that both camps are essentially right. While the act was crafted by individuals who sought to advance the interests of white settlers, the act itself ultimately was implemented in a reasonably fair-minded fashion. This truth is however often obscured by the reality that the population pressures caused by both statehood and the gold rush forced many *Californios* to sell their claims long before they ever made it to the commission for examination.

What none of the author's outlined above have done is examined the California land Act through the lens of the dynamically changing nature of property in nineteenth century America. The California Land Act was more than a political action or a land grab. It was a fundamental redefinition of property in the state, and an attempt to completely reshape land use in California. It was not simply a question of who would own the *Ranchos*, but a question of how the land would be used. No study up to this point has looked at these events through this lens, and that is the primary goal of this dissertation.

## American Expansion

This consideration of the specific circumstances of California adds necessary depth to the broader historiography of American continental expansion and land use during the nineteenth century. This dissertation proposes that the California Land Act served as a unique contributor to American expansion, one which brings to light the idiosyncratic use of land law as a tool of Manifest Destiny in the State of California, bringing much needed clarity to our understanding of property exchange during the early statehood period. This use of law in California is unique because instead of focusing on the wholesale confiscation of lands from one group in favor of another, it instead sought to redefine the meaning of property rights in the state, and specifically shift land use from a ranching based economy to one that favored cultivation by small farmers. Many authors, beginning with Frederick Jackson Turner, have discussed manifest destiny as a discrete process by which territory was consumed by the United States during the nineteenth century.<sup>18</sup> Following this, numerous scholars have illustrated how law served as an important vehicle for continental and commercial expansion<sup>19</sup> My study provides a real-world intersection of these historiographies in the actions of the California Land Commission.

The scholarship of America's westward movement in the nineteenth century is vast in quantity and diverse in tactics and motivations. For American expansion in the nineteenth century

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<sup>18</sup> Frederick Jackson Turner, *The Frontier in American History*, (University of Virginia: eBook, Summer 1996). <http://xroads.virginia.edu/~HYPER/TURNER/> Anders Stephanson, *Manifest Destiny; American Expansion and the Empire of Right*, (New York: Hill and Wang, 1995), Alexander Saxton, *The Rise and Fall of the White Republic*, (New York: Verso, 1990), Reginald Horsman, *Race and Manifest Destiny; The Origins of American Racial Anglo-Saxonism*, (Cambridge: Harvard UP, 1981). Thomas R. Hietala, *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*, (Cornell UP: Ithaca, 1985).

<sup>19</sup> James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States*, (Madison: University of Wisconsin Press, 1956), Stanley I. Kutler, *Privilege and Creative Destruction; The Charles River Bridge Case*, (Baltimore: Johns Hopkins UP, 1990), Morton Horwitz, *The Transformation of American Law 1780-1860*, (Cambridge: Harvard UP, 1979).

sought to define what it meant to be an American, and harbored both the common theme of a unified destiny for Americans and American ideals. During the period of continental expansion, this meant the forging of a trans-continental state, one which brought former French and Spanish possessions into the hands of American settlers and under governmental control. At the same time this nationalist rhetoric fostered in those Americans a sense of exceptionalism which held that destiny had a specific course in mind for them. In the process it was used to quash ethnic differences in the name of a unified white Anglo Saxon culture and with this sought to unify the nation in the face of sectional differences.

The process of continental expansion is most famously expressed by Frederick Jackson Turner in his landmark work, *The Frontier in American History*. Turner argued that the American people were created by a diverse group of immigrants coming to a new continent and encountering a harsh frontier fraught with danger. This frontier would prove to be the crucible where ideas of national identity were formed, where people stopped being German, French, or English and became a unified culture with the common purpose of settling and exploiting the wilderness. While the racial and nationalistic basis of Turner's ideas have gone out of fashion in current academic scholarship, the notion of American expansion as a dialectic that created a nation has not. Reference to problematic studies like Bancroft's and Turner's serves not to imply that their scholarship is without significant reproach, but rather to properly frame the historiographical issues that this dissertation speaks to.

Anders Stephanson argues that the exploitation of the frontier and the concept of manifest destiny was used by American politicians to unite people under the banner of expansion.<sup>20</sup> Specifically he views this process as critical to the creation of a unified Anglo-Saxon American

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<sup>20</sup> Anders Stephanson, *Manifest Destiny; American Expansion and the Empire of Right*, (Hill and Wang: New York, 1995)

identity. This argument is echoed and expanded upon by Reginald Horsman who posits that in the process of calling for expansion, American identity became identified more for what it was not, creating a definition that excluded Mexicans and other Hispanic peoples as well as Native Americans and African Americans.<sup>21</sup> This had the effect of allowing marginalized white groups like the Irish, to become American and a part of the broader Anglo-Saxon destiny. This strategy is highlighted in the current study by the actions of Senator William Gwin during the debates over the future of land in the golden state. Gwin met with many of the antebellum advocates of western expansion to discuss California's role in uniting the Union in the wake of the Missouri Compromise of 1850. During the debates over the California Land Act itself, Gwin used his role as a proponent of expansion to shepherd through a vote on the law despite often violent disagreements between regional partisans. This idea of forming a unified American identity through the use of territorial expansion both echoes Turner's frontier crucible, and significantly broadens the notion by postulating that the acquisition of territory both defined national identity and facilitated its expansion.

In *The Rise and Fall of the White Republic*, Alexander Saxton builds on how ideas of race and class were used to focus American attention on the frontier in order to balance a tenuous political system in the east.<sup>22</sup> By uniting all Americans behind a broad American identity of whiteness, lawmakers in the United States (for a time) diverted attention from real sectional differences over slavery and industrialization. This focus on expansion as an outlet for tensions building up around a sectional crisis is echoed by William Weeks, although he eventually

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<sup>21</sup> Reginald Horsman, *Race and Manifest Destiny; The Origins of American Racial Anglo-Saxonism*, (Harvard UP: Cambridge, 1981).

<sup>22</sup> Alexander Saxton, *The Rise and Fall of the White Republic*, (Verso: New York, 1990).

concludes that further expansion put even more strain on intersectional ties.<sup>23</sup> Both Saxton and Weeks are joined in their geo-political focus by Thomas Hietala, who saw the broader concept of Manifest Destiny as a way for the United States to grow its way out of the intersectional problems that faced the east - a task which only succeeded in delaying war.<sup>24</sup> Saxton particularly provides one of the crucial intellectual underpinnings for this study, as he directly identifies the conflation of a broader white identity with a national American identity. This definition of white eastern American political and economic culture as American is necessary to understand the ways in which the California Land Act specifically sought to remake California in the mid nineteenth century.

Indeed, this dissertation shows an echo of this narrative of growth as a politically stabilizing force in the crafting of the California land act itself. A large part of the reason that the land act was so crucial was that California was seen as more than just a colony. It became an instant state, and the rapid growth of the port of San Francisco offered the possibility of this new state to serve as a bridge to the expansion of trade to China and the rest of the Pacific Rim. Additionally, this State was created out of a compromise that sought to channel these possibilities into a de-escalation of the political tensions over slavery.

Walter Nugent expands upon these ideas in his *Habits of Empire; A History of the American West*. Nugent indicates that expansion, and specifically expansion during the era of the Mexican War, occurred both because of a desire for territorial gains, and to secure a platform for those gains in the future.<sup>25</sup> In addition, he states that the desire of the United States to not simply possess California, but to transform it into an American state, one with the industry and intensive

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<sup>23</sup> William Earl Weeks, *Building the Continental Empire; American Expansion from the Revolution to the Civil War*, (New York; Ivar R Dee, 1997).

<sup>24</sup> Thomas R. Hietala, *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*, (Cornell UP: Ithaca, 1985).

<sup>25</sup> Walter Nugent *Habits of Empire; A History of American Expansion*, (New York: Vintage 2008), 220.

agriculture that marked American progress in the east. Nugent's view of California, and its place in the Union, dovetails well with the detailed examination of this present study. The main difference in approach is one of the perspectives of analysis. This study focuses on the way that these national level aspirations translated into a discreet legal policy attempting to directly change the nature of landholding and use in the state of California. While understanding the broad political narrative is important, it is no less important to see the ways in which that narrative translated into policies that affected the daily lives of Americans in the new state, and how the limitations of laws inhibited the ability of litigants to get concrete results from these broader level policies.

Implicit within all of these discussions of American expansion is the notion of Americanization: the process of new parts of North America becoming American. The concept of Americanization during the mid-nineteenth is defined by Reginald Horsman as "Americanization consisted not in changing institutions but in changing the racial characters of the population."<sup>26</sup> In this view the project of making something "American" went beyond extending the laws and jurisdiction of the United States, to fundamentally reshaping society into the image of the eastern United States. While some like Horsman and Stephanson directly confront cultural issues, the more geopolitical studies rest on the assumption that growing the union fundamentally altered the basic struggle that dominated early nineteenth century politics. They instead define Americanism as a shared project of expansion in order to curb destructive regionalism. In this perspective the doctrine of manifest destiny is an obfuscating tool attempting to substitute a shared destiny of Americans for the states' rights of the Southerner or the drive to modernize that took hold in the

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<sup>26</sup> Horsman, 283. While Horsman is directly speaking to issues relating to Cuba during the 1850s, I believe that this concept applies equally as well to California during the period. Additionally, I believe it describes the work of the CLA quite well, with one caveat: I believe that this process extended beyond the mere racial makeup of California to the fundamental economic underpinnings of society. Gwin and his did not simply want to replace Latino *Rancho*s with white, but to do away with *Rancho* society as a whole.

northern states. Quite clearly, and this argument is strongly posited in this dissertation, this is a process that is extremely important for the history of California, and indeed for the California Land Act. California was a state that was born of the Missouri Compromise, which was a very express attempt to use expansion to bind up the sectional differences caused by slavery. In addition, this study will show that the process of Americanization was undertaken on legal level by the California Land Act. While the CLA seems on its face to be race neutral, the redefinition of Mexican grants as equities sought to fundamentally alter the property rights of the Californios, with the express intent of attracting settlers from the eastern United States. While Saxton specifically excludes economic change in favor of race, the system of change offered by Gwin amounts to nothing less than an attempt to foster both a cultural and economic change to California, encompassing both authors definitions of Americanization. In the process, we can examine a more practical implementation of the broader intellectual ideas underpinning the motivations of westward expansion.

Amy S. Greenberg offers yet another dimension to this debate, by introducing the concept of manhood into the question of American destiny.<sup>27</sup> Greenberg saw the period following the Mexican war as a debate over what sort of men Americans would be, a battle between a martial manhood of warlike actions to ensure regional domination, or a more passively moral code that sought more peaceful territorial expansion. Greenberg believed that as the martial strain of ideas gained increasing traction, American men embarked on increasingly violent foreign adventures, exemplified by the filibustering expeditions of the 1840's and 50's. California of this era is of course born of the expansionist expeditions of men like John Charles Fremont, who Hixson

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<sup>27</sup> Amy S. Greenberg, *Manifest Manhood and the Antebellum American Empire*, (Cambridge: Cambridge UP, 2005).

identifies as being particularly emblematic of the type of settler colonialism that Greenberg detects in her discussion of expansion.<sup>28</sup> This idea of manifest manhood could also be observed in William Gwin. Though not a warrior, his life is marked by a series of risky adventures on the frontier crafting a sort of legislative and political form of the military concepts that Greenberg discusses.

In support of her conclusions, this study postulates that the California Land Act, and its attendant enforcement process constituted a discrete example of this process at work. In fact, it should be viewed as an understudied, but highly relevant test case for examining nineteenth century expansion. In California we find the culmination and distillation of all of the United States' expansionist goals of the era. The Pacific coast offered new trade routes to the orient, as well as the possibility of extending American hegemony into the Pacific Rim. Furthermore, the new state offered stable farming and mineral extraction possibilities, despite being sparsely developed in the pre-American era. California's annexation also arrived at a time when regional tensions were at their height, ensuring that any solution to its incorporation into the union would provide a prime example of the idea of expansion as a safety valve to growing domestic tension. A detailed study of the motivations for the passage of the act, as well as the debates held in Congress, is necessary as a means to better understand the broader project of Americanization, defined here as the fundamental racial and societal reshaping of California, as well as the direct policy aims of the American government.

This complicates and contrasts with the narrative of American expansion offered by Walter Hixson in his work *American Settler Colonialism*.<sup>29</sup> Hixson views the settlement of the western United States as a fundamentally colonial project. One marked by the use of extreme violence and the stripping of legal rights and protections of the inhabitants of the settled lands. While this

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<sup>28</sup> Walter Hixson, *American Settler Colonialism*, (New York: Palgrave Macmillan, 2013). pg. 99.

<sup>29</sup> Ibid.

analysis is undoubtedly true when discussing the behavior of the United States government and its settlers in their conduct with Native Americans inside California and throughout the American west, a more complicated portrait of settlement in California is offered in the following pages. Here, when faced by a wealthier and more European density of inhabitants, the United States government did not engage in wholesale pogroms against the *Californios*, but instead worked politically and legally to limit their influence and ensure the success of American settlers. Certainly, this does not directly rebut Hixson's conclusions, but rather it proposes some refinement to show that the sort of settler colonialism that he postulates could be more nuanced than physical violence. Men like William Gwin were as much settlers as the workers in the goldfields, they simply fought their battles with legislation instead of rifles.

Broadly speaking, this study seeks to both bridge gaps in, and expand the existing literature on American continental expansion. By redefining property rights, Gwin and the CLA sought to fundamentally change both the economic system in California, and the cultural makeup of the state. The destruction of the *Ranchos* in favor of smaller yeoman farms was not simply an economic issue, but one that effected the basic nature of society in California. While the language and philosophical underpinning of this study is steeped in this debate, none of these sources have spoken directly to the practical application of property law to the broader project of Manifest Destiny. This study uses a discrete example, The California Land Act, as a way to add to this literature, show that the law and legal process can be as powerful a tool of colonization as national policy or military might.

## Legal Expansion and Property Rights

The third aspect of historiography that this current study engages with is the expansion of American legal ideas in the nineteenth century. This dissertation posits that the California Land Act serves as an excellent discrete example of the development of constitutional ideas about property and land use in the nineteenth century. Furthermore, the California Land Act defines a historical moment when ideas about land use, nationalism and national identity collided in a very public way. This project will show that the California Land Act was created and enacted specifically with the notion of transforming property holding in California in mind. Additionally, this transformation was designed to both make California far wealthier, and significantly alter the demographics of landholding in the state. For while the topic of this dissertation may suggest a perspective solely within the historiography of westward expansion, and to be certain it touches upon aspects of that vast nineteenth century project, it also goes beyond it and this is the case largely due to the following circumstances unique to post 1846 California. In the settlement of the state of California, the United States butted up against many different types of property claims. In the case of the California Indians, who were ostensibly citizens under Mexican Law, many of their claims were simply legally brushed aside by a disinterested Congress.<sup>30</sup> Their lands were deemed *terra nullius* and thus open to settlement.<sup>31</sup> This was not at all the case with the Mexican Land Claims. This dissertation shows that with the California Land Act the American government sought to fundamentally remake property holding in California. However, the treaty of Guadeloupe Hidalgo prohibited any wholesale disregard of Mexican land grants, and thus created a complex issue that challenged traditional notions of property ownership in California, and

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<sup>30</sup> Madley, 163-4.

<sup>31</sup> Hixson, *Settler*, 122.

reinforced trends in land use that had begun in the United States during the early nineteenth century. As a result of this, a key portion of literature that this dissertation speaks to is that of the nature of property rights during the nineteenth century.

Genuine insight into the complicated arbitration of land transitioning is found in the historiography of the legal concept of real property. Charles Beard's 1913 *An Economic Interpretation of the Constitution of the United States* argues that the founders were land owners who were deeply committed to the concept of property ownership, and that this ownership was crucial to a republican form of government.<sup>32</sup> Beard also asserted that the founders were speculators to the core, and thus saw the need for territorial expansion.<sup>33</sup> Taking into account these concepts, he found that the constitution was primarily a document designed to preserve the interest of property owners with little regard to the needs or wants of the landless or smallholders. This very discussion sits at the heart of this dissertation. If it is nothing else, the story of the California Land Act is the story of a group of property owners, and the conflict that arose when they came into contact with a rush of landless settlers. This conflict was further complicated by the racial and political issues that dominated California in the 1850s, and the ongoing desire to spur growth in the new state.

Beard's approach was never the less well steeped in the scholarship of the day, arguing in broad strokes about national trends. A more modern take on property and its place in the constitution can be found in Gregory Alexander's *Commodity and Property*. Alexander articulates a definition of property, explaining how it has changed since the founding:

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<sup>32</sup>Wikisource Contributors and Charles Beard, *An Economic Interpretation of the Constitution of the United States*, 1913, read at [http://en.wikisource.org/wiki/An Economic Interpretation of the Constitution of the United States](http://en.wikisource.org/wiki/An_Economic_Interpretation_of_the_Constitution_of_the_United_States), (accessed March 26,2019), 324.

<sup>33</sup> Beard, 325.

Property has been a powerful symbol in American history. It has signified more than one tradition, more than one message for Americans. One of those traditions is a commitment to allowing individuals to satisfy their personal preferences and to increase their wealth through market exchange. . . . Another has been to the idea of property as the foundation for the proper social order – the proprietary tradition.<sup>34</sup>

Alexander placed property ownership within the community, arguing that with ownership comes a sense of duty and a set of responsibilities. Alexander viewed that this duty was particularly important in the early days of the republic (and to the founders who occupied that time and place) because the idea of freely alienable property was virtually nonexistent in the colonial environment. The tension between social order and free exchange of wealth was an ever-present problem for California during this period, establishing what rights the *Californios* possessed, and ensuring their ability to transfer those rights is the primary reason behind the passage of the California Land Act.

Another more general take on property and its role in American history is *American Property*, wherein Stuart Banner argues that property is an ever-changing thing that has gone from meaning “land” to more esoteric concepts. His central thesis was that, “The ‘property’ we talk about now, however, is not the same as the property of 1900, which was not the same as the property of 1800, and so on. Our conceptions of property have changed over time, to match the changes and goals we [the American people] feel are worth pursuing.”<sup>35</sup> Banner conceives that property is treated by the Government as a means to effect societal goals and values and that those goals have changed since the time of the Constitution. In California during this period the Federal government sought a direct intervention in the meaning and nature of property in the state, all aimed at accomplishing what it deemed a necessary goal; making land available to new settlers.

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<sup>34</sup> Gregory Alexander, *Commodity & Property; Competing Visions of Property in American Legal Thought* (Chicago: University of Chicago Press, 1997), 17.

<sup>35</sup> Stuart Banner, *American Property; A History of How Why and What We Own*, (Cambridge: Harvard University Press, 2011), 291.

The first is that the inherent nature of property has shifted over time. Ideas about what constitutes wealth, and what that wealth confers have adapted and changed. The second commonality is more compelling. One constant in all these studies is the fact that the framers had a genuine preoccupation with the link between property ownership and democracy. While Beard's interpretation may have gone out of fashion, the basis of his critique, that the founders created a system that privileged the wealthy at the expense of the landless remains almost unchallenged. While many issues were discussed at the Constitutional convention, the basic design of the American system of representation has enshrined within it a desire to preserve property rights, and to limit the political power of poor majorities. A final commonality is that the notion of individual property rights is deeply embedded in almost every aspect of constitutional protection. As James Ely notes, the Fifth Amendment protects liberty and property, two concepts the founders believed were inseparable.<sup>36</sup>

A direct understanding of property rights, and what the framers of the Constitution meant by the concept of property is necessary to understand the impact that the California Land Act had on the history of the state. The Act fundamentally altered the definition of what property was in California for holders of Mexican land grants in order to align more closely with ideas based on imported values and laws. While the ultimate definition of that property will be shown to be vastly different than standard landholding in the United States, it would be impossible to discern without a good understanding of what real property in the early nineteenth century amounted to.

It is not enough to simply define the nature of property in the American tradition. Instead, to understand the impact that American property law had on California during the early statehood period, it is important to understand how the early nineteenth century effected American's ideas

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<sup>36</sup> James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights* (New York: Oxford University Press, 1992).

about land and landholding. The first decades of the century were a dynamic time for the new United States. This period is often termed as the birth of the market economy, an event well documented by Charles Sellers in *The Market Revolution*.<sup>37</sup> In this work he illustrates how advances in technology, transportation, and population growth fundamentally altered the way the United States operated. As markets emerged all across the nation, a need arose to exploit new lands and bring them into this emerging national commercial system. In supplementing this view, as Paul Johnson notes in *Shopkeepers Millennium*, his ideas about how labor was sold, how goods were produced and how these processes changed as the industrial revolution began in America.<sup>38</sup> This changing nature of America, and the spread of professionals, tradesmen, engineers, lawyers, and clergy into the farthest reaches of the American nation had a profound impact on California. Not only did understandings of progress and the highest use of property become integral to formulating landholding issues in the state, but the California Land Act was created and enforced by the type of professional men described in Sellers' work.

All of the above constitute a body of work on the nature of property as a right, and the nature of property in the United States, that serves as the foundation of this study. At its most basic level the California Land Act was a legal and political mechanism to transform one form of property into another. The problem that the United States was faced with in 1850 was taking the Mexican (and sometimes Spanish) titles owned by the *Californios* prior to the Mexican War and converting them into a form of title that was more easily integrated into the rest of the United States. The creation of the California Land Act, and its attendant enforcement, fit into this broader understanding of the immutable rights of property owners and the boundaries of those same rights.

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<sup>37</sup> Charles Sellers, *The Market Revolution*, (New York; Oxford, 1991).

<sup>38</sup> Paul Johnson, *A Shopkeepers Millennium*, (New York: Hill & Wang, 1978).

William Gwin's framing of the Act took great pains to describe titles in California as something legally less than the bundle of rights that so characterizes the understanding of property ownership under the Anglo-Saxon common law, the foundation of American legal theory.

In 1956, James Willard Hurst's *Law and the Conditions of Freedom in Nineteenth Century America* revolutionized the discussion of property in the nineteenth century.<sup>39</sup> In his view, property was a means for the government to promote desired economic activity. Hurst's arguments revolved around a discussion of "vested interest" versus the "creative release of energy". In this the goal of the American government in the nineteenth century was to promote growth, and this was best accomplished by tapping into the creative resources of a growing population. Consequently, only with improved access to land would Americans adequately exploit the vast frontier. This view directly opposed the traditional common law idea of vested rights. Vested rights are those property rights that give an individual control over property without active exploitation, or that allow individuals exclusive monopoly over economic activity. Hurst found that policy makers felt that these vested rights needed to be limited to allow for the success of national expansion.

Stanley Kutler's examination of the Charles River Bridge Case, conveniently abbreviated CRB in the literature, in his book *Privilege and Creative Destruction* best represents this concept. This case, involving the construction of a second bridge between Boston and Cambridge Massachusetts, decided by the Taney court in 1837, marked a change in the way that American law interpreted the right of property by breaking from traditional views. Kutler wrote that, "The Charles River Bridge case confirmed an evolving shift in the legal standing of vested privilege. Whatever the validity or merit of their claims, politically the Charles River Bridge proprietors

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<sup>39</sup> James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth Century*, (Madison: Wisconsin UP, 1956).

never could refute the charges that their claims to exclusive privileges constituted an intolerable stranglehold over the community.”<sup>40</sup> With this, Kutler argued that the CRB case changed the way property was understood from that point forward. Echoing Hurst he pointed to the abandonment of vested interest in favor of this new focus on creative endeavor. In essence the bridge was the embodiment of the battle between vested rights and the needs of the community. The original bridge was small and old, and built at a time when Boston was a smaller colonial seaport. As the city expanded into outlying areas, it needed a new outlet of commerce. However, an old charter of exclusivity prevented this expansion. By allowing the new bridge to be built the court struck a blow for progress, one that changed the future of the nation. This serves as a surprisingly apt allegory for the litigation of land ownership in California as we will see later.

Peter Magrath ably explores vested rights in *Yazoo: Law and Politics in the New Republic*.<sup>41</sup> He told the story of the Yazoo land scandal that led to the landmark case of Fletcher v Peck. This case, involving the resale of previously sold land, wherein the land sale was invalidated due to bribery, is one of the most famous cases handed down by the court prior to CRB. McGrath argued that the case elucidated the doctrine of vested rights in the context of contract (and held that the contracts clause applied to the states) a doctrine that would remain in place with some modification until the New Deal era. It also served to enshrine the idea of vested rights in the canon of American law.

This exploration of vested rights continues in Francis Stites in *Private Interest and Public Gain*.<sup>42</sup> Stites went into some depth to detail the history of the Dartmouth College v. Woodward.<sup>43</sup>

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<sup>40</sup> Stanley I. Kutler, *Privilege and Creative Destruction; The Charles River Bridge Case*, (Baltimore: Johns Hopkins UP, 1990), 155.

<sup>41</sup> C. Peter Magrath, *Yazoo: Law and Politics in the New Republic, The Case of Fletcher v. Peck*, (Providence: Brown University Press, 1966).

<sup>42</sup> Francis N. Stites *Private Interest and Public Gain: The Dartmouth College Case, 1819*. (Amherst: Univ. of Massachusetts Press, 1972).

<sup>43</sup> Dartmouth College v. Woodward 17 U.S. 518 (1819)

He argued that Dartmouth, while not the most heralded at the time, was one of the most enduring cases handed down by the Marshall Court. He stated that Dartmouth clarified the role of vested rights in the contract's clause of the Constitution, and they came out of the belief that individual holding of property without state interference was necessary for development. While CRB modified both these cases, the authors rightly examine their enduring importance. Furthermore, it is worth noting that while CRB did limit the application of vested rights, it did not do away with them. In fact, the notion of vested rights and the freedom of contract would become increasingly important well into the early twentieth century.

These studies help to demonstrate that it is impossible to separate the dynamic nature of property in this period from changes that were taking place in society. For at the time of the founding, property and land ownership were inextricably linked. By 1850, land was only a subset of the notion of property. As cases like Charles River Bridge demonstrate, conceptions of property extend far beyond the right of an individual to possess land but extend to their ability to engage in economic activity that maximizes their economic potential. This idea was equally true for a company who sought to build a toll bridge, and individuals who sought to realize the inherent potential in land newly acquired by the United States. Later scholars of Hurst's work challenge the assumption that these concepts work in a vacuum. Elizabeth Brand Monroe notes that it is not simply enough to say that this liberal view of property rights caused explosive growth. She contends that technology, and the regulatory laws that fostered the implementation of that technology were also contributors to this phenomenon.<sup>44</sup> However, in the case of California, the innovation was an attempt to fundamentally alter the nature of landholding itself, unbound by any single technological innovation. The need to maximize the economic creativity and human capital

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<sup>44</sup> Elizabeth Brand Monroe, *The Wheeling Bridge Case; Its significance in American Law and Technology*, (Boston: Northeastern University Press, 1992), 156.

of the United States and turn it loose on the ever-expanding territorial frontier was a big part of the expansion of property rights in the nineteenth century. In this case “frontier” does not mean any sort of single monolithic Turnerian project. Instead, as the United States acquired territory it was necessary to foster economic creativity to transform these new lands into economically exploitable states. Adam Soward wrote that Hurst’s ideas explain the motives of settlers arriving in the far west during the period, “Thus, law and the market developed in ways to promote specific historical and cultural worldview concerning the proper use of nature. . . consequentially, large numbers of Americans arrived in the Far west equipped with a government on their side that was willing to use its power to foster economic growth.”<sup>45</sup> However, as the conditions of American growth changed, so did the rights of settlers who came into conflict with the interests of other property owners, forcing the government to strike a new balance. This process of negotiation, compromise and exploitation in California is the subject of this dissertation.

These concepts of dynamic property and vested rights cannot be overstated in the impact they had on the California Land Act and the work of the California Land Commission. In 1848 the United States was faced with the task of absorbing and administering a large new territory containing equally large vested landholding interests. Like the Taney Court in Charles River Bridge, the Congress was faced with the question of whether to protect existing landholders’ interests at all costs or focusing instead on the possibility of growth and expansion of economic development in the new state. As growth served to focus the issue in crafting the California Land Act, the Congress sought, as Hurst outlines, to release some of the pent-up creative energy in the lands of California and facilitate its transformation from a rural cattle ranching backwater into a

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<sup>45</sup> Adam M. Soward, *The United States West Coast; An Environmental History*, (Oxford UK: ABC-CLIO, 2007), 86-87.

dynamic growing state that boasted urban development along with agricultural and industrial growth.

As all of this scholarship shows, the role of property is central to the history of the United States. At the founding, the framers of the constitution understood property as the bedrock of the republican form of government. A deep respect for the right to own property is embedded in the very structures of the American democracy. At the same time, as America was faced with the prospect of territorial expansion. The industrial revolution began to change the experience of all Americans. Property was able to transform from the static notion of land ownership to a more complex set of ideas about the ability of individuals to create economic value and sell their abilities on the market. When this expansion was spent, property entered a new phase, one which brought it into increased contact with governmental regulations and inevitable political squabbling. Through all this there remained one defining truth, property is the fuel driving the engine of change in the United States.

California's history and historiography revolves around the acquisition and use of land. From the prehistoric settlers who first settled its fertile valleys and seacoasts after a long journey from Asia, to the ever-expanding housing developments of the twentieth and twenty-first century, new arrivals prioritized owning a piece of what became the golden state. This was never more apparent than in one of the most tumultuous periods in California's history: its acquisition from Mexico by the United States in 1848. Being born from the violence of the Mexican American War which raged from 1846 to 1848 the state of California emerged as one of the primary prizes sought by the victorious United States. The far-flung Mexican province of Alta California boasted few non-indigenous people, less than 10,000 by most figures, spread across a great deal of temperate and fertile land. However, it contained something far more important to bureaucrats, speculators,

and politicians of the United States of 1848: exploitative potential. This work seeks to examine the way that the United States sought to realize this potential through legislation and litigation, and the motivation behind its desire to do so.

In embarking on a project like this wherein the competing authority of perspectives on manifest destiny and legal conceptions of property struggle over defining the character of national expansion loom large, it is important to outline what this study is not. One of the overriding questions raised by the United States' expansionist policy in the nineteenth century is the impact it had on Native Americans. The catastrophic impact European contact had on the natives of California has been well documented since Theodora Kroeber's seminal *Ishi in Two Worlds* was first published in 1961.<sup>46</sup> This has been highlighted more recently in *An American Genocide; The United States and the California Indian Catastrophe*, by Benjamin Madley.<sup>47</sup> While an account of this is essential for understanding California's past, the expropriation of indigenous lands is well beyond the scope of this study. Instead this study seeks to focus on the fate of the Mexican land grants during the Early American period. These grants were themselves the result of expropriated native lands, but that expropriation came at the hands of the Mexican and Spanish governments' decades or centuries before. And while this process continued well after statehood as native tribes struggled to maintain access to their tribal lands, it falls outside the scope of this discussion. The lands themselves that are at issue in the cases and laws examined by this study do not include aboriginal title as defined by the United States. Litigation over these lands was extensive but occurred outside the scope of the mechanisms administered by the CLA. American Settlers to the new state largely treated Native American lands in the state as *terra nullius* – that is unoccupied

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<sup>46</sup> Theodora Kroeber, *Ishi in Two Worlds*, (Berkeley: UC Press, 1961).

<sup>47</sup> Benjamin Madley, *An American Genocide; The United States and the California Indian Catastrophe*, (New Haven: Yale, 2016).

territory.<sup>48</sup> In furtherance of occupying this land they engaged in a dreadful pattern of massacres and killings which have been termed an “American genocide” by modern scholars.<sup>49</sup> The litigation of the Mexican land claims may have involved some of the same actors who perpetrated this genocide, but the legal mechanisms at issue were simply not the same.

In addition, a great deal of the scholarship of this period has dealt with the personal interactions between the newly arrived Americans and the *Californios*, this too is not the main topic of discussion in this work. While the impact of statehood on the property of the *Californios* is central to this narrative, the action in this case occurs in hearing and courtrooms and not necessarily the cultural clash of two different groups encountering one another in the towns, ports, and valleys of the state. This study combines two crucial elements in the historiographical discussions of property that are outlined above. This literature discusses both the defining of the American property right, and the way that right was fundamentally altered in order to facilitate westward expansion. The California Land Act occupies a space that fits neatly between these two discussions. In order to enact the act, William Gwin sought to fundamentally re-define the nature of property in California. He accomplished this by deeming the land grant titles to be equities. This redefinition was intended to make them more legally fungible in an effort to render them suspect. This was undertaken principally for the same motives that Hurst outlined in his seminal study. The basic goal of the CLA was to remake property in California to facilitate expansion, in the process it touched on the definition of property in the state, and the way it would ultimately be utilized. This study to build upon these previous scholars work by examining the way that property in the early nineteenth century could be used as a unique tool for expansion. The intersection of property and equity is one that is little discussed in major works on the topic. The discussion of equitable

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<sup>48</sup> Walter Hixson, *American Settler Colonialism*, (New York: Palgrave MacMillan NY, 2013), 122.

<sup>49</sup> *Ibid*, 122.

property and the impact it had on the land rights of the Californios is a novel discussion, and one that expands the literature to examine a little discussed but none the less notable moment in the development of property rights in the United States. California is the nation's most populous state, and almost all of inhabited California is built out of lands once held as equitable property by the Californios. This fact alone warrants an in depth study of this kind.

Much of the writing devoted to the early period of California's statehood is devoted to two major themes, the decline of the *Ranchos* and the explosive growth of the gold rush. This dissertation is simultaneously about both, while not exploring either in the traditional way. Scholars working on the subject view decline of the *Californios* from two different perspectives since the turn of the twentieth century. The older narrative is one deeply steeped in nostalgia. First, the *Californios* themselves serve as a stand in for a chivalrous past of the new state. The *Ranchos* are seen as vast estates that provided a sort of rough equality for the inhabitants of the state. Since the demise of this system it has become an increasingly idealized and caricatured vision of the past, exemplified by the long-standing annual Fiesta in Santa Barbara where well to do white locals dress in fanciful Spanish costumes over a weekend of play-acting ceremonies, and the numerous *Californio*-themed riding teams that turn out each year for Pasadena's Tournament of Roses parade. This view ignores the reality that the *Ranchos* themselves typified an economic system that provided little in the way of opportunity for those not fortunate enough to be members of the powerful landed families.<sup>50</sup> In addition, this system of economic exploitation ensured that the economic potential of this large and fertile land was tied to a rather inefficient system of development.

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<sup>50</sup> David Weber, *The Mexican Frontier*, (Albuquerque: UNM Press, 1982), 66. In fact Weber notes that when the Mission Lands were divided up, forming the basis of the Mexican grants, poorer Californios were specifically excluded from acquiring interest in the newly available lands.

The second perspective views the decline of the *Ranchos* through the lens of race. It is incontrovertibly true that the end of the *Ranchos* saw control of the majority of the new State's lands moving from the Hispanic *Californio* families that dominated the Spanish and Mexican period to the hands of the largely white settlers, miners, and speculators who arrived after statehood and in the wake of the gold rush.<sup>51</sup> This must never be discounted or minimized. But supplementing this is the story of land and property in early California as a layer added to a discussion of race, or at least a consideration of race beyond the traditional parameters that modern scholars of the west traditionally inhabit. The California Land Act marks an intervention that goes well beyond both land seizure and traditional racial politics. Instead it marks a moment in American history where property law, and the very concept of property was altered in an effort to fundamentally change land use in California. In his writing, William Gwin, author of the California Land Act, never gives any indication of a personal animus towards the *Californios*. Gwin himself would ultimately end his political career working for Emperor Maximilian of Mexico, attempting to create a landholding plan to develop the Mexican *Norte* states of Chihuahua and Sonora in the same way his Land Act fostered growth in California.<sup>52</sup> Gwin's attack on the landholding traditions did not arise from simple racism, but instead came from a desire to reshape the way that land was used, and how property was held in California as part of an effort to better exploit the new state's vast resources.

Fundamentally, the long and difficult history of California's racial and cultural divisions does not exclusively lie with the *Ranchos* and their demise. By the time of statehood many *Rancho*

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<sup>51</sup> For a broader discussion of trends in California's history I recommend Kevin Starr's two works elsewhere cited in this discussion, he notes the overall switch in landholding during this period from a macro level. In addition to being perhaps the most prolific chronicler of California's past since Bancroft, he was also my instructor as an undergraduate at USC. His teaching and writing inspired my love of my home state's history and helped shape my work as a historian. Kevin Starr, *Americans and The California Dream, 1850-1915*, (London: Oxford, 1973), Kevin Starr, *Inventing the Dream*, (London: Oxford, 1986).

<sup>52</sup> William Gwin, *Memoirs on the History of the United States, Mexico, and California of Ex-Senator William Gwin, Dictated by Himself for the Bancroft Library*, 1878, C-D 96, The Bancroft Library, University of California Berkeley, 220.

families had intermarried or sold large portions of their estates to Anglo settlers who arrived in the decades before the Mexican war. Much of the racial conflict that would arise during the nineteenth and twentieth centuries in the state would come as a result of further immigration of both Anglo and Hispanic immigrants into the state during the explosive period of growth that followed statehood. Sheer numbers alone illustrate this, as less than 10,000 non-native people lived in the state prior to statehood, and they were almost immediately demographically overwhelmed by the influx of settlers caused by the gold rush, which by conservative estimates brought half a million new settlers to the state. As a result of this, the true racial component to this discussion of Mexican land grants during the early statehood period is not any particular racial animus Gwin or others may have held toward the *Californios*, but rather the broader racialized process of manifest destiny that the California Land Act forms a small but significant part of.

If the gold rush serves as a demographic zero hour for the new state, it is important to examine the debates over the *Ranchos*, the largest and most important pre-gold rush institution in the state still active at the time of its admission to the union. For this is as a key moment in determining what the United States Government sought to create in the new state, and not quash a *de novo* examination of that historical moment under the press of events to come. Indeed, at the moment of statehood the legislators in Washington did not know the goldfields would soon play out, nor was it a given that the farmland of the new state would eventually serve as one of the nation's principle agricultural powerhouses. For the United States in 1850, California was a wholly new and precious possession, one which was shockingly undeveloped by the standards of the United States despite having also been administered under almost one hundred years of European occupation.

This leaves the student of California during this period with a difficult set of circumstances regarding race. It is clear from an examination of the secondary literature by authors like Horsman, Hixson and Madley that the overall project the United States was engaged in during the period was one of racialized manifest destiny. It was a project that was sold to Americans with the promise of creating a unified American culture and brought about through war and genocide at the expense of those who were excluded from this new vision for the west. However, those in power viewed the *Californios* without the same level of hostility as was directed towards the Native Americans inhabiting the state. While Gwin himself viewed the *Californios* as white, he did not view them as American, and made clear his contempt for Spanish Colonialism in his speeches before Congress. Indeed, what is most surprising about the California Land Act is not that it was created out of a broader racist project of expansion, which it certainly was, but that it was administered in such a way that most *Californios* were able to defend themselves in court and retain their lands. While the debts incurred in this process proved ruinous for many, the California Land Act was not the sort of racist bad faith legislation found in the American south's black codes, or in the federal government's Chinese Exclusion Act of 1882. Instead in its place we find a piece of legislation that was both a part of manifest destiny, and the child of legal trends about land use and ownership as it evolved since the birth of the republic.

While California's future was very much undecided in 1850, it did not lack for advocates of its value to the United States. California served as an outlet for the ideas and dreams of eastern supporters of expansion. This advocacy even transcended the ongoing debate over slavery, with such men as Henry Clay and John C. Calhoun both viewing the new state as crucial to the expansion of the United States as a nation in ways that went well beyond questions over the admission of slave states and free states. They viewed California then as the nation's most powerful

outpost along the Pacific coast, and a crucial engine of increased American trade and influence along the Pacific Rim. Their predictions proved accurate beyond their perceived scope.

This dissertation postulates that the California Land Act was the physical manifestation of these desires. The Act was conceived as more than a simple bureaucratic solution to the need for American legal title to the large tracts of land that economically dominated the golden state. The debates and private thoughts of the act's creator William Gwin clearly show that the legislation was created and crafted with the goal of transforming the physical reality of California in mind. Congress operated from the presumption that the *Rancho*s represented an antiquated artifact of the unsuccessful process of Spanish colonization, which prevented the rich land of California from reaching its economic potential. This view was part of the larger thrust of American expansion that sought to transform the frontier from a place of unrealized potential to a settled, and profitable, part of the United States. Moreover, this process was closely linked with the evolution of property rights in the minds and practice of America's Legal community. The early nineteenth century would see the birth of a dynamic concept of property, one that would seek to offer opportunity for growth and expansion, at the expense of some property holder's vested interests. While this process may have begun on the banks of the Charles River in Boston, by 1850 its impact was felt along the sunny coast of the nation's newest state.

Understanding the California Land Act is most properly a willingness to look beyond the story that everyone knows. To be sure, the *Californios* lost their land and power in the early years of statehood, but a close examination of the record shows that the vast majority of land claims were upheld. Just as certain, the United States set up a biased system that was designed to cause the *Californios* to fail, yet the Land Commission worked well with claimants, was bilingual, and saw the *Californio* landowners ably represented by legal professionals. The story of the California

Land Act is far more than a tale of David against Goliath or one groups fight for ancestral land. Instead it is more appropriately told as a story about the broader political, legal and economic changes that were sweeping the United States in 1850 and the ways that those changes impacted the nation's newest state, and the overall project of American expansion.

## CHAPTER 1. THE LONG BIRTH OF A NEW KIND OF STATE

Competing national ideas of what California was fed the very language and fundamental ideas expressed in the administering of the California Land Act. A survey of these forces and circumstances that made up the idea of “California” must be provided to serve as a foundation of our understanding of land claim litigation. The identification of these political and cultural undercurrents allows for a better understanding of the forces at work in the crafting and implementation of land policy in California. It is important for this study to layout the specific chain of historical events that led to the formation of the California Land Act, and the circumstances that led to California’s development and entry into the Union. This chapter will provide a brief outline of Spanish and Mexican settlement in North America, and California specifically, and the way landholding was established in these new lands. Additionally, it will examine the spread of the United States into these lands, and the impact that the Mexican War had on the state and the broader concept of manifest destiny and the impact it had on expansion. This baseline framework is crucial to understanding the impact the California Land Act had on landholding in the state, and the ideological and political framework that served as the bedrock of its creation.

If you were to ask most American schoolchildren, or indeed most American adults to choose one iconic image representing the United States in the nineteenth century, many would select the “covered wagon”. The Conestoga wagon was a simple box on wheels covered by a canvas tarp. But to many Americans its image is as powerful a symbol of exodus and settlement as the journey of the Israelites out of Egypt in the bible. Many children of the early years of home computing fondly remember playing the computer game *Oregon Trail*, which asked players to guide their simulated wagon and family across the mountains and plains of the American west,

avoiding hostile natives and animals, with the eventual hope of a new life on the Pacific coast. It allowed children to live the life of a pioneer gregariously without leaving the safety of the classroom, failure being found with ignominious death, and success with exploitative homesteading.

The nineteenth century dawned on the American west full of possibility. It was a possibility born in the minds of those men in Washington, New York, Boston and Philadelphia who dreamed of the never-ending westward expansion of the United States. However, this vision existed primarily among white Americans, with little regard for those already inhabiting those lands. The west was, and is, a heterogeneous entity. Expanding from Virginia and Massachusetts in the seventeenth century, to Ohio and Kentucky in the eighteenth century, by the nineteenth century the west had come to mean any lands that lay west of the Mississippi, that great river that served as the economic and transport heart of antebellum America.

The nineteenth century was also a time of worldwide upheaval, as political and technological revolutions swept the globe. In Europe the revolution of 1848 displaced many in what increasingly became overcrowded continent. At the same time the steamship allowed for faster and cheaper travel across the Atlantic to the Americas. This combination meant that by the early part of the nineteenth century the eastern ports of North America teemed with immigrants from Germany and Ireland, seeking lands to settle, and a place to call home. This influx challenged the existing Anglo Saxon, protestant majorities in the United States, and demanded that the new nation find a way to integrate these newcomers into the republic without changing its essential character. In order to accomplish this, eastern Americans had to find a solution to the west.<sup>53</sup>

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<sup>53</sup> For a broader discussion of immigration and westward expansion during this period see: David M. Emmons, *Beyond the American Pale: The Irish in the West, 1845-1910*, (Norman: U of Oklahoma Press, 2012), and Ray Allen Billington and Martin Ridge, *Westward Expansion: A History of the American Frontier*, (Albuquerque: UNM Press, 2001).

In 1820 the west was a land shared by two revolutionary republics. The United States of America, and the *Estados Unidos Mexicanos*. The U.S.A. came into possession of vast amounts of land in the center of the continent as a result of the Louisiana Purchase brokered between Spain and the United States by Napoleon Bonaparte. The legal transition of land ownership notwithstanding, the Jefferson administration, in an effort ensure the growth of the agrarian empire envisioned by its leader saw this great tract of land as an almost inexhaustible bounty, ready for the exploitation of doughty pioneers.<sup>54</sup>

Mexico, on the other hand was only just at the beginning of its life as an independent nation. Settled long before the United States, European governance grew out of the aftermath of Cortez's defeat of the Aztec Empire in 1521. Mexico became the jewel of the Hapsburg Empire, but a jewel far different than its neighbor to the north. Rather than drawing solely from European immigrants, Mexico built a vibrant *mestizo* culture combining the traditions and blood of the native inhabitants with those of settlers from the Iberian world. By 1820, the global Spanish empire had become deeply frayed, and the trauma of the Napoleonic Wars and the dire pressure they asserted on the Spanish Imperial Government drove a wedge between European Spain and its American colonies. In 1819 colonial elites, known as *criollos*, rose up against the authority of officials appointed by Spain. The struggle lasted two years and by 1821 Mexico gained its independence from the Spanish crown.<sup>55</sup>

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<sup>54</sup> For a good discussion of Jeffersonian ideals of empire and settlement see Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville: UVA Press, 2000), Francis D. Cogliano, *Emperor of Liberty: Thomas Jefferson's Foreign Policy*, (New Haven: Yale, 2014), Adam Wesley Dean, *An Agrarian Republic: Farming, Anti-Slavery Politics, and Nature Parks in the Civil War Era*, (Chapel Hill: UNC Press, 2015), For a more basic Virginia centered discussion of Agrarian ideals see Christopher Michael Curtis, *Jefferson's Freeholders and the Politics of Ownership in the Old Dominion* (London: Cambridge UP, 2012).

<sup>55</sup> The story of Mexican Independence and the decline of the Hapsburg and Bourbon Empires is a fascinating story, however it lies far outside the scope of this narrative. For a more in depth look at this tumultuous era in Mexican history see Timothy J. Henderson, *The Mexican Wars for Independence*, (New York: Hill and Wang, 2009), Leslie Bethell, *Mexico Since Independence* (London: Cambridge UP, 1992), Jaime E. Rodriguez O, "*We Are Now The True*

This new United States of Mexico faced many challenges. At the time, the nation included all of present-day Mexico, and much of the modern American states of Texas, New Mexico, Arizona, California, Colorado, Oregon, Utah and Idaho. However, to a large degree this land was vacant by colonial standards. Mexico's population was concentrated in the center of the country, around the great capitol of Mexico City, which was then (as now) the largest city in the Americas. While questions of the West's role in the fate of the nation would dominate American politics in the nineteenth century, questions of *El Norte* (the North) would loom large in the minds of Mexican leaders.<sup>56</sup>

The three principle areas of Mexican settlement north of the modern boundary were Texas, New Mexico, and California, each with its own unique history of indigenous and colonial traditions. New Mexico was the oldest, but in many ways the least profitable colony. Settled a bare 60 years after the conquest of Mexico, the colony was continually plagued by hostile relations with local Indians, and occupied terrain difficult for commercial exploitation. The history of New Mexico, and its ultimate struggle with Spanish and Mexican land claims is well documented in *Manifest Destinies; The Making of the Mexican American Race*, by Laura Gomez.<sup>57</sup> While the two colonies traveled parallel paths, they differed greatly in demographics and economies by 1850. California was a more strategically valuable possession, with its ports and fertile valleys. In addition, the Gold Rush brought thousands of American and European immigrants to the state, swamping the *Californio* population. Most importantly perhaps, the way that the United States

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*Spaniards; Sovereignty, Revolution, Independence, and the Emergence of the Federal Republic of Mexico, 1808-1824*, (Stanford: Stanford UP, 2012).

<sup>56</sup> Weber, 228.

<sup>57</sup> Laura Gomez, *Manifest Destinies; The Making of the American Race* (New York: NYU Press, 2018).

chose to deal with land claims was completely different as the California Land Act differed greatly from the surveyor general system employed in New Mexico.<sup>58</sup>

Texas, the vast expanse north of the more settled area of the nation was targeted by the Mexican government for growth. It was an arid land, but one that would support the raising of cattle, and settlements in the area would provide a buffer between Mexico and its neighbor to the north. Originally settled by immigrants from the Canary Islands off the coast of Spain, this predominantly Hispanic population proved insufficient to adequately exploit the land.<sup>59</sup> Consequently, the Mexican government turned to alternate methods to settle the land.

In 1819 Stephen F Austin, American *empresario* and the man responsible for much of the Mexican era American immigration to Texas, approached the Spanish Crown seeking a grant of land to offer to incoming settlers from the United States. This offer was seized upon by the new Mexican government, allowing him to serve as an *impresario*, recruiting settlers from the United States on the understanding that they would become Mexican citizens and convert to Catholicism. Austin, and others like him, brought droves of settlers to the Mexican state of *Tejas*, but with these settlers came conflict with the United States.<sup>60</sup>

While California was among the last of these principle colonies to be settled, it was among the first to be discovered. The story of California, and Spanish rule of the state, begins in 1540, a mere nineteen years after the Conquest of Mexico. In that year, Juan Rodriguez Cabrillo, a conquistador of Portuguese extraction, began a voyage of discovery that would bring California into the Spanish Empire. By that point Cabrillo had a long history in the Indies. Born about 1500,

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<sup>58</sup> Ibid, 129.

<sup>59</sup> There are many good histories of early Texas that lie outside the scope of this study, for more information see: Donald E. Chipman & Harriet Joseph, *Spanish Texas, 1521-1821* (Austin: UT Press, 2010), Jesus F. De la Teja, *San Antonio de Bexar; a Community on New Spain's Northern Frontier*, (Albuquerque: UNM Press, 1996).

<sup>60</sup> Amy S. Greenburg, *A Wicked War; Polk, Clay, Lincoln and the Invasion of Mexico*, (New York: Random House 2012), 8.

he had taken passage to Havana as a young man and arrived in time to join Cortes' expedition to Mexico in 1519. He spent the next two years fighting his way across central Mexico with the conquistador, from their initial landing to the eventual conquest of Mexico City. Following the conquest, Cabrillo was charged with exploring and settling modern Guatemala, where he was master of a large encomienda of native peoples. In the course of this work he became very rich, owing largely to the successful exploitation of a gold deposit he discovered on his lands.<sup>61</sup>

In 1539 Cabrillo was charged by the Viceroy of New Spain, Antonio de Mendoza, to voyage north along the Pacific coast to discover and chart the lands he encountered. Cabrillo set out in 1542 in command of three ships led by his flagship, the galleon *San Salvador*.<sup>62</sup> The journey proved important, but perhaps not for the reasons that Cabrillo might have hoped. Conquest in the sixteenth century was a for profit enterprise. Cabrillo consequently self-financed his voyage in return for a share of any treasures to be extracted from any indigenous peoples encountered. At the time, this must have seemed a safe bet, as Cabrillo's own wealth came as a result of two such journeys. But like many who would later come to California seeking riches, that dream proved elusive.

On September 28<sup>th</sup> of 1542, Cabrillo's fleet landed in San Diego. Here they found a good natural harbor and a sparse native population. Cabrillo's fleet continued north, eventually landing on Catalina Island and charting many of the Channel Islands. The trip would prove disastrous for Cabrillo, for while wintering on the islands he suffered a fall on a rock and eventually died from his injuries. The Spanish government determined from the outcome of the expedition that

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<sup>61</sup> Kevin Starr, *California*, Loc. 372-384, for a longer discussion of the life of Juan Rodriguez Cabrillo's life see: Harry Kelsey, *Juan Rodriguez de Cabrillo* (Pasadena: Huntington Library, 1998). While Cabrillo's story may not seem crucial to this discussion, I feel a brief mention of his voyage is important. The essence of this dissertation is the nature of European landholding in California. Cabrillo represents the moment when that land passed into European classification. A direct through line of conquest and settlement runs directly from Cabrillo to the Mexican grants, as both were part and parcel of the same system of colonization and conquest.

California was not another Mexico. Spanish colonization during the sixteenth century relied on the subjugation and virtual enslavement of native populations, and the extraction of large amounts of precious metals.<sup>63</sup> It was clear that California did not possess the urbanized Indian populations that existed in Mexico and Peru and was a great distance from Mexico City and as a result California was not prioritized for settlement.<sup>64</sup>

California is protected by the vast Sonoran and Mojave deserts sitting squarely astride the direct route from settled Sonora to Southern California. Beyond these deserts lie the high passes of the Sierra Nevada range, a match for any traveler before motorized transportation. Still, to these new settlers, California was a verdant Eden. The state teemed with game, from deer to the great grizzly bears of the mountains. Sardines, abalone, crab and sea urchin teemed in coastal waters, and the inland valleys offered seemingly unlimited opportunity to plant crops. Above all, the new immigrants were awed by the land's possibilities as a vast pasture, and the herds that they drove across the desert were soon multiplying on the abundant grasses of the new settlement.<sup>65</sup>

This is not to say that the land was empty of human habitation. California was instead one of the most densely populated areas of North America, occupied by one of the most diverse populations of native American groups anywhere on the continent. The indigenous population of California did not live in great cities like the Aztecs of Mexico, nor were they nomadic followers of great herds like the tribes of the plains. Instead they lived primarily in small hunter gatherer groups moving camps based on the availability of game and the season. A nineteenth century British description, relying on earlier Spanish writings describes the California Indians, "The

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<sup>63</sup> Spanish Colonialism is a topic that is as vast as the Atlantic is wide, good overviews of the subject can be found in, John Fisher, *The Economic Aspects of Spanish Imperialism in America 1492-1810* (London: Oxford UP, 1992), John Huxtable Elliot, *Empires of the Atlantic World; Britain and Spain in America, 1492-1830*, (New York: Yale UP, 2007).

<sup>64</sup> Kevin Starr, *California; A History*, (New York: Modern Library, 2007), eBook loc. 453.

<sup>65</sup> Starr, *California* loc. 223-268.

fashion of the aboriginal Indian's life was strange, and perhaps peculiar to California. Their villages were clusters of rudely constructed huts, built with little care, and frequently burned on account of the vermin which infested them. However, their life was a happy one."<sup>66</sup> The description continues to describe a fairly successful hunting and gathering society, sustained by the abundance of California's mild climate.<sup>67</sup> As is evidenced by this contemporary description, the pleasant life of the California Indians met with some level of contempt from the new settlers, who often mistook their harmonious way of living with nature for a lack of sophistication, a view that would ultimately prove disastrous for indigenous groups.

Onto this new land the Spanish placed a colonial template well worn by 200 years in the Americas. For Spanish interest in California only really emerged in the early eighteenth century. At this point Mexico had been a successful colony for almost two centuries. However, as the colony had grown it had acquired new neighbors spawned by other European powers. Both Great Britain and France also acquired territory in North America, and as their colonies grew, the sparsely populated lands of *El Norte* were increasingly threatened by the encroachment. In response, Spain sought to establish settlements to better extend its control over these lands. California was a prime place for expansion, its mild Mediterranean climate and abundant natural resources made it an ideal candidate for settlement. Spanish California was marked largely by two

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<sup>66</sup> *California 1850*, 1856, Rosenstock 90.253.15172, The Autry Library

<sup>67</sup> This description is however far from idyllic. For instance, he is critical of the California Indians for their treatment of women, "The lordly savage of California, plunged in the lowest barbarity, regarded his wife as his slave. Often after a long day of toil she returned with the reapings of her industry, there was no fire to cook with, no wood to make one, and she was driven tired and hungry, to search for the necessary fuel. The man lolled on his couch of leaves and clay, and the woman, after her daily labor, prepared the evening meal. She suffered uncomplaining apathy, and was frequently condemned, as a reward for her constant devotion, to the most rigorous punishment, often to the death, for the most trifling offense." *California 1850*. This passage is notable, not for its racialized discourse and harsh description of native life, but for the high regard for women, and indeed the native women of California. It is possible that this is simply an outgrowth of the broader social metaphor of California as female, and more targetedly a female in need of rescue from a naer do well husband. However, this description shows great sympathy for the plight of women, a rarity in literature of this type at the time, as is for that reason notable in and of itself.

great institutions, each administered under law by established conventions: The Mission and the *Rancho*.

By design the missions of California drew on a long heritage of Spanish colonial traditions. The Spanish Crown was charged by the Pope in 1494 with custody of much of the New World. In return, the Treaty of Tordesillas charged the colonizers with the responsibility for the souls of those they found in the new lands. Catholicism was to follow the Conquistadors from the Caribbean to Mexico and eventually arrive in California.<sup>68</sup> The church in California would be centered around missions. In 1769, Fray Junipero Serra of the Franciscan Order embarked on an expedition to Alta California to explore the possibility of establishing missions to convert native peoples.<sup>69</sup> He found ample opportunities for the Franciscans in the north and that same year established the first Mission at San Diego, soon followed by another further north in Monterey. Eventually these missions would grow and expand to include 21 different structures dotting the coast from San Diego in the south, to San Francisco in the north.<sup>70</sup>

The principle duty of the Mission was to bring Christ to the natives, and this would be the heart of the Padre's work. However, being rather remote from other colonial centers, to accomplish this task the Missions needed to be self-sustaining. Rather than just places of worship, the California Missions would each become productive communities (it is no coincidence that the names of many of the missions, like San Diego, Los Angeles, Santa Barbara, Monterey, and San

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<sup>68</sup> For a fun account of the Treaty and its background see, Steven R. Brown, *1494; How A Family Feud in Medieval Spain Divided the World in Half*, (New York: Thomas Dunne Books, 2011).

<sup>69</sup> Starr, *California*, 570-590. Spain and Mexico divided California in half for administrative purposes. The northern portion, roughly what is today's state of California was referred to as Alta California. The southern portion, running south from the current national boundary and west to the border of the Mexican state of Sonora was (and is) known as Baja California. Baja California was settled far earlier by the Spanish, and by the early 18<sup>th</sup> century contained an array of missions established by the Jesuit Order. These were transferred to the Franciscans following the expulsion of the Jesuits from Mexico in 1767.

<sup>70</sup> Good overviews of the mission system can be found in David Weber, *The Spanish Frontier in North America*, (New Haven: Yale UP, 1992), and Elias Castillo, *Cross of Thorns; The Enslavement of California's Indians by the Spanish Missions*, (Fresno: Linden Publishing, 2017).

Francisco correspond to the names of California's modern-day coastal cities). A mission might include a church, a rectory which housed the Franciscan brothers, and a *presidio*, where Spanish soldiers could be posted to protect and violently control the attached native settlement. In addition, Mission Indians, as they became called, were expected to work for the success of the Mission. Beyond simple work around the church, this included service in the Mission Industries. These enterprises varied. Often agricultural Missions grew food for their own use, but also goods to share with other Missions and to trade with secular colonists. Some Missions, like San Luis Rey, which occupied the land north of San Diego raised cattle. These cattle grazed free on mission lands which extended as far inland as modern-day Palm Springs and were tended by native herdsmen who lived in a series of bunk houses across the vast property.

Other Missions were more industrial in nature. San Gabriel located just south and east of Los Angeles occupied a unique position among the Missions as the main producer of wine, both sacramental and for general consumption. Wine, an integral part of both catholic worship and Iberian culture, was produced extensively by religious institutions in Mexico. At San Gabriel the Franciscans set up large vineyards with both a winery and distillery producing wine and spirits for use across California. They introduced the European grapevine (*Vitus Vinafera*) to North America, planting a domesticated grape now known as the Mission grape and making a sweet wine known as Angelica.<sup>71</sup>

This is not to say that life in the Mission system was a pastoral Arcadia. Discipline enforced by the Franciscans was often harsh. The basic charge of the Mission was to wipe out the highly

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<sup>71</sup> The wine was sweet because it was made by the addition of raw grape distillate produced by the Mission into the fresh juice of Mission grapes. This produced a wine similar to sherry or port that could withstand shipment by cart across arid California. The Introduction of many crops was advanced by the Franciscans. Mission olives, Mustard and other plants that are ubiquitous to modern Californians arrived in the Golden State by way of Mexico and the Missions. For a good discussion of grape growing in California see The University of California Agricultural and Natural Resources Publication 3419, *Wine Grape Varieties in California*, (Oakland: UCANRCS, 2003), pp.3, 171.

developed culture of the natives they encountered. Native Americans who lived in a mission were expected to strictly adhere to catholic religious practice, learn and speak Spanish, and unfailingly serve the Franciscans and the mission. Many were forced to abandon traditional hunting practices and cultural traditions.<sup>72</sup>

The institution of the Mission is singularly important to the development of California, and the eventual shape of its entry into the United States. Many reasons for this are not immediately obvious. As the Missions were among the most productive enterprises of early California, they each employed hundreds of native peoples, and dotted the coast from San Diego to San Rafael. These missions were linked by the royal road, *El Camino Real*, which provided the only reliable land-based route of transport in California. The availability of plentiful labor saw the cultivation of agricultural plantations, and the laying out of successful cattle pasturing schedules. In short, during the Spanish era, California's most successful, visible, and region spanning enterprise of settlement was the Mission system. Yet, after the Mexican War for Independence, the missions went into a steep decline. Indian populations continued to decline sharply from the initial days of Spanish arrival, and the new Mexican government had its own complicated relationship with the Catholic church.<sup>73</sup> In addition, the Mexican State, unlike its Spanish Imperial predecessor, was not a colonial power. It did not rest its national prestige on financing far flung colonies with the hope of competing with the European powers. California itself was not a particularly prosperous colony, and the new nation could ill afford to use its limited resources to prop up a religious mission far from Mexico City.

What it could do was encourage immigration to the new colony by offering land to those willing to settle, and to make the existing land grants more productive. This opportunity presented

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<sup>72</sup> Starr, California, loc. 647-699, Madley 27-30.

<sup>73</sup> Madley 35-36.

itself when in 1833 the Mexican government moved against the California Missions. By dissolving the Missions, it unlocked a large amount of good land that could be given to Mexican settlers in order to increase productivity in Colonies. By disestablishing the Missions, the Mexican government sought to take the strength of the religious Missions of the colony and transfer it to the secular engine of the colony, the *Rancho*.<sup>74</sup> With this, the centuries old Californian tradition of legally redefining land use continued.

The second cornerstone of Spanish California was the *Rancho*, the very institution that the U.S government challenged with the CLA. The Spanish *Rancho* mirrored (in many ways) the rise of the great hacienda in the northern parts of Mexico. A *Rancho* functioned much like a secular Mission. The word “*Rancho*” itself refers to the vast tracts of land that were provided to colonists who immigrated to California from Mexico. The *Ranchos* themselves were originally granted by royal decree of the King of Spain, often under the auspices of the Viceroy in Mexico City. Following independence, the government in Mexico City replaced the Spanish Crown as granting sovereign. The grants themselves were large and generous, often totaling hundreds of acres. Each *Rancho* was generally owned by one family, but the actual property like the Mission was inhabited by more than just its legal owners.

One of the challenges the colonists of California faced was the distance between California and Central Mexico. In order to create a profitable colony, it would be necessary for the *Californios* (as these settlers would be called) to produce something for sale to Mexico. The main business of the *Rancho* was cattle. Eighteenth and nineteenth century societies had an almost endless need for leather goods, using the strong hides in everything from millworks to shoes. Cattle were well suited to the large grassy open spaces of California; they could be managed with minimal manpower in

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<sup>74</sup> Weber, 66.

their pastures and could be driven efficiently overland from Sonora. The primary goods produced were not meat but hides, and the rendered fat from the animals, known as tallow, which was commonly used for making candles. The economy of Spanish and Mexican California became focused on this hide and tallow trade.<sup>75</sup>

It was not a centralized economy. Most of the work to produce hides for trade took place on the far-flung *Ranchos*. Cattle were slaughtered, hides dried in the sun, and fat boiled down to render the tallow. The hides (known as “California banknotes” to traders from the United States) were sold at market in San Diego, San Francisco, Santa Cruz or, most commonly, the colony’s capitol at Monterey. This trade’s profits sustained the *Californios*, and it began to attract Americans from the east to the small colony. Men like Richard Henry Dana came to California on trading ships, and stayed, attracted by the mild climate of this new land. Dana’s view of California, published in *Two Years Before the Mast*, one of the most widely read travel narratives of the nineteenth century are very representative of the typical observations by visitors to California from the east,

Such are the people who inhabit a country embracing four or five hundred miles of sea-coast, with several good harbors; with fine forests in the north; the waters filled with fish, and the plains covered with thousands of herds of cattle; blessed with a climate than which there can be no better in the world; free from all manner of diseases, whether epidemic or endemic; and with a soil in which corn yields from seventy to eighty fold. In the hands of an enterprising people, what a country this might be!<sup>76</sup>

For Dana, California is a land of possibility, one mismanaged by its current owners.

Indeed, it should be no surprise that Dana held this view. Dana’s description was echoed by a British chronicle in 1850,

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<sup>75</sup> Starr, *California*, loc 875.

<sup>76</sup> Richard Henry Dana. *Two Years Before the Mast*, (Project Gutenberg: eBook, 2000), eBook.

certain it is that, for its wealth, California is unrivalled among the various sections of the world's service. The descriptions which were at first regarded as the exaggerated pictures painted by a florid imagination, appear now as rough sketches, to which experience has imparted still stronger colors.<sup>77</sup>

In the 1840s most Americans lived on small farms that operated at basic subsistence level. At the same time, the spreading market economy, and its use of new technologies (like the ship that transported Dana to California) had begun to knit these far-flung settlements together. Ranches on the scale of those in California were unheard of, and that such vast tracts of land were used only for grazing likely seemed simply wasteful. To a modern eye this seems naïve chauvinism, but it should be remembered that aside from a few surviving remnants of this period (like the Hearst Ranch below Big Sur) this type of land use is no longer found in modern California.

The large cattle ranch is an artifact of Americas past (and a state-wide reality in many western states less populous than California) that is iconic to many. There is perhaps no better-known image of rugged individualism than the cowboy of the nineteenth century attending to these vast estates. However, California's form of cattle ranching was fairly unique at the time. The golden era of the *Rancho* in California lasted from about 1800 until 1848. This was between thirty and seventy years before the great cattle drives of the 1870's and without the ease of access to distant markets provided by the transcontinental railroad, that made those great movements of cattle financially viable. By the 1870's live cattle came by rail to meat packing centers in the Midwest and east coast, thus ensuring that fortunes could be made in the form of thousands of pounds of flesh on the hoof. In Mexican California this was impossible. The fastest route from California to the east coast took weeks by steamship, and the export of live cattle simply was not a possibility. As they could be transported in bulk cheaply, cargos of hide and rendered tallow provided the only financially viable export of the colony. To a modern reader, the picture of

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<sup>77</sup> California 1850

thousands of cattle, slaughtered only for hide and tallow likely seems disturbingly wasteful, but to a nineteenth century visitor, one who had an arguably closer relationship to the production of food and general animal husbandry industries, this inefficiency must have seemed shocking indeed.

However, it was not the observations of abundance and waste characterized by Dana that would ultimately bring California into the Union, but two larger and more inevitable geopolitical factors; location and expansion. California's location captivated many in the east, and most significantly realized the dreams of Washington law makers. To Mexico, California was simply a remote portion of the north, but for the United States it was the gateway to the east. As the United States of the 1840's was becoming a global trading empire, its merchants fantasized about the ultimate prize: The China trade. China, recently opened to trade by British military action, beckoned the great swift clippers of British and American mercantile houses to fly across the world's oceans with cargos of furs and opium to trade for Chinese silk, tea, and porcelain. The dreams of this trade were further fueled by the very commodified hides that the *Californios* sent off to the eastern United States. In places like Lowell, Massachusetts those hides were turned into the belts that drove steam driven machines. These machines wove cloth, made shoes and tools, and other increasingly inexpensive consumer goods. American merchants saw a near inexhaustible supply of Chinese consumers for their new goods but feared that those markets would be closed off by the exports from European factories if proper steps were not taken. As early as 1811 American mercantile interests had sought a pacific port to facilitate this trade, and by 1840 they were frantically campaigning for one. California, with its deep protected harbors at San Diego and San Francisco would be perfect as a hub for this trade, and the insatiable American merchant enterprise found its target.<sup>78</sup>

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<sup>78</sup> Starr, California loc. 883, Greenberg, 57, 67.

The second, and perhaps most important, factor in determining California's future was expansion. In 1846 California became the primary site where the question of American continental expansion found purchase. Since the moment that the first English settlers set foot on North American soil, the basic narrative of their descendants has been one of territorial expansion. Jamestown lead to Plymouth and Massachusetts, but colonies spread far beyond their original borders, causing conflict with the French and Native Americans. By the 1770's colonists had spilled across the Appalachians into Tennessee and Kentucky, and by the dawn of the nineteenth century as far as the Mississippi and New Orleans. This unending lust for land was driven by immigration, an agrarian based economy desiring new land for exploitation, and a thriving market for land speculators. But by the 1820's it had transcended from a practical concern to a mission mandated by God.

Manifest Destiny, as this mission became known, would prove to be the driving force behind nineteenth century American expansion. Simply put, it was the firm belief that God had ordained that the United States should stretch from the Atlantic Ocean to the Pacific. It built on the Christian notion of a chosen people gifted a new land by a benevolent God and charged with the exploitation of that land as a means of offering praise to that deity. Much as the biblical Hebrews cared little for the Canaanites who already inhabited their chosen land, Americans of the nineteenth century were unconcerned with the both the native and European inhabitants of the American west.<sup>79</sup> This attitude served to escalate tensions between the young United States and its continental neighbors, most notably Mexico.

In 1846 a border dispute over the boundaries of the new state of Texas spilled over into full scale war between nations. This war was fought across the vast borders of the belligerent

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<sup>79</sup> A more in-depth look at Manifest destiny is found later in this chapter, but a good overview of this discussion can be found in *Habits of Empire; A History of American Expansion* by Walter Nugent (New York: Vintage 2008), 23.

nations. The desire to expand the boundaries of the United States to include California had long been an American goal, as noted by a British chronicle in 1850,

The United States, however, had long looked towards the valleys of the Sacramento and the San Joaquin as outlets for the enterprise of their energetic population; and from time to time bands of emigrants had proceeded over the rocky mountains, across the desert basin, and over the Sierra Nevada, into Alta California, where they settled and became wealthy on the improvement of the soil; felling timber, erecting mills, building storehouses, and clearing lands. . . and evidence of their activity was seen in small prosperous oases studding the country.<sup>80</sup>

These very appetites drove the war and determined the process of land litigation that followed.

Much of the Mexican War is well beyond the scope of this study, but it is worth noting the status of California at the time of the war. California had maintained a small *Rancho* centered population since its initial settlement in the 1770s. This population had modestly grown as the original families grew and spread across the state. Following independence, in an effort to make the colony more profitable, the Mexican government had engaged in the practice of granting large tracts of land to the descendants of these original settlers. These grants eventually numbered more than six hundred and constituted the vast majority of the remaining arable land in the state.<sup>81</sup> However, the far-flung province was weakly defended by a small number of soldiers, principally charged with keeping the peace in ports and warding off any incursion by hostile native groups. In the event of war, the main worry of Mexico - unconcerned with the comparatively meager exploitation of beef herds - would be protecting the valuable mines north and west of Mexico City, and preventing sea borne invasion via the large Caribbean port of Vera Cruz. In addition, the Mexican State had not enjoyed the level of relative stability that had aided the United States in its growth during the early nineteenth century. Since independence in 1821, Mexico had had a series

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<sup>80</sup> California 1850

<sup>81</sup> Starr, *California*, loc 727.

of unstable governments, and by 1846 Mexico was ruled, for the second time, by the military Dictator Juan Antonio Lopez de Santana. A man most skilled in self-promotion and enrichment, he offered little prospect of a successful defense against a motivated, well-armed, population and resource rich United States.

In addition to these expanded *Ranchos*, a steady stream of immigrants from the eastern United States trickled into California. By virtue of the hide trade, a good number of Americans, like Dana, had traveled to California on commercial vessels, and many had chosen to stay. Men like Thomas O. Larkin, and Abel Sterns had worked their way into *Californio* society, often speaking Spanish and marrying into local landholding families. However, these men's loyalties did not lie entirely with their new home as they maintained close ties with friends and family back east. Larkin, one of California's most prominent Anglo citizens served as a sort of ad hoc American consulate in Monterey, mediating disputes and providing more familiar social outlets.<sup>82</sup>

In the overland direction, the United States sent Captain John Charles Fremont to California with the charge of mapping the approaches to the state and the passes through the Sierra Nevada Mountains in 1845. Fremont traveled with a small force of 62 men, many of them surveyors. Upon his arrival in the state he became acquainted with certain factions among the Anglo settlers who were particularly hostile to the Mexican government. These men seized the outbreak of war between the United States and Mexico as an opportunity to seize control of parts of California. What has become known as the Bear Flag revolt broke out in June of 1846 near Sonoma. By July the Bear Flaggers had linked up with Fremont and placed their ad hoc militia under his command.<sup>83</sup> While their contribution to the overall course of the Mexican War would be

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<sup>82</sup> Starr, *California*, Loc. 875.

<sup>83</sup> Greenberg, 122.

almost nil, this incident does a good job of representing the deep tensions that existed between Anglo settlers and the *Californios* in the pre-conflict period.

While the Mexican War, and the treaty of Guadeloupe Hidalgo which constituted its ending, provide the legal and political framework for the inclusion of California as a state, the economic impetus occurred in Jan 24, 1848 when James W. Marshall, a native of New Jersey, and all-purpose pioneer, found some curious golden flakes on the banks of the American River near his farm. This discovery, which occurred a little over a week before the signing of the treaty of Guadeloupe hidalgo, is better known by the name of the village nearby: Sutter's Mill.<sup>84</sup>

What followed Marshall's discovery was nothing short of a phenomenon. Gold fever struck not only the United States, but the entire western hemisphere. It is estimated that over 300,000 immigrants poured into the new territory over the course of a year. These prospective prospectors, who would be forever immortalized under the nickname Forty-niners as most arrived the year following Marshall's discovery, came from all walks of life and backgrounds. Some left lives and families behind to strike it rich, some simply jumped ship in San Francisco. In fact, this became such an endemic problem that San Francisco of 1849 was a harbor literally overrun with abandoned vessels, left to rot for lack of men willing to abandon their golden dreams.<sup>85</sup>

While a great deal of gold was pulled from California's mountains and rivers, the vast majority of prospectors found only frustration in the goldfields. However, even the most jaded gold seeker recognized the incredible natural wealth of California. Beyond the mining claims, California's teeming forests, coastal grasslands, and fertile valleys offered farming and herding

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<sup>84</sup> More detailed studies of the gold rush can be found in Mark A. Eifler, *The California Gold Rush: The Stampede that Changed the World*, (New York: Routledge, 2017), Leonard L. Richards, *The California Gold Rush and the Coming of the Civil War*, New York: Knopf, 2007).

<sup>85</sup> Greg Miller, *New Map Reveals Ships Buried Beneath San Francisco*, (National Geographic Online, June 2, 2017), <https://news.nationalgeographic.com/2017/05/map-ships-buried-san-francisco/>

prospects for those willing to lay down pick and shovel and pick up the plow. However, one crucial obstacle stood in their path. The vast majority of the arable land in the state, and almost all the land near California's port cities were held by the descendants of the pioneer families that had first settled the territory's *Ranchos*. Now that's not to say these were currently occupied. In fact, these new settlers could often find farmland, build a small home, and plant a crop, and bring it to harvest before encountering another human being.

Inevitably though it was only a matter of time before they came into conflict with the *Californio* family who owned the land, despite living on a *Rancho* miles (sometimes as much as 100 miles) away. When confronted with this prior ownership of their land some settlers vacated, but the majority who had nowhere more desirable to go simply stayed and trespassed on the land. The *Californios* had almost no way to remove the squatters, as the institutions of Mexican government had been destroyed by the war. Vigilante tactics were ruled out as well, as the squatters and recent immigrants outnumbered the *Californios* ten to one.

A British chronicler in 1850 illustrated the importance of America's attempt to legislate this booming western territory in 1850,

How long the prevalent fever may endure it is impossible to indicate, but the United States would seem to be advancing with a plan for the regulation of the property in land. They wish to define the right of settlement, and lay down laws on the subject of mining; but it must be recollected that when the gold was first discovered a very short time ago, California was like a basin scooped in the bed of the sea, into which immediately rushed a wild and tumultuous torrent of population, and that this heterogeneous multitude is still heaving to and fro in the valley of the Sacramento, among the interior hills, and along the shore. It will be difficult, consequentially, to infuse into a region so situated the elements of order, and the principles of a strict, though liberal administration.<sup>86</sup>

This "torrent" of immigration from the eastern coast of the United States to the western frontier would provide the backdrop for some of America's most enduring images of the 19<sup>th</sup> century: the covered wagons of Oregon Trail.

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<sup>86</sup> California 1850.

Along with computer game programmers of the 1980's, academics have also addressed this period in America's past, labeling the movement of people from east to west with the rather grand sounding term, manifest destiny. This process was first, and most famously, discussed by Frederick Jackson Turner in his *The Frontier in American History*.<sup>87</sup> Turner, often considered the father of the modern historical profession, considered westward migration crucial to the philosophical underpinnings of the United States. He held in his "frontier thesis" that the basic character of both the American people and the American state was forged on the frontier. He believed that through interaction with a hostile but fertile wilderness, full of the dangers posed by native Americans, wild animals, and rugged terrain, immigrants from the more settled regions of Europe became Americans. They forged an identity that prized self-reliance and individualism and fostered an economic and political system focusing on the individual's ability to succeed through hard work and individual effort. To the modern scholar this idea sounds antique, and racist, but the conversation Turner began continues to be discussed in larger considerations of the impact of western migration on the development of the United States.

In the succeeding hundred years a great deal has been written about the project of settling the west as a mission to bring Anglo-Saxon culture to the former Mexican possessions. Authors like Anders Stephanson, Alexander Saxton, and Reginald Horsman, and Thomas Hietala all indicate that this process of settlement was explicitly racist.<sup>88</sup> They claim that the aim of American settlement was to remake these new lands in the American image, not to peacefully incorporate Mexican traditions and Native American traditions into the culture into the United States. At the

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<sup>87</sup> Frederick Jackson Turner, *The Frontier in American History*, (University of Virginia: eBook, Summer 1996), <http://xroads.virginia.edu/~HYPER/TURNER/>

<sup>88</sup> Anders Stephanson, *Manifest Destiny; American Expansion and the Empire of Right*, (New York: Hill and Wang, 1995), Alexander Saxton, *The Rise and Fall of the White Republic*, (New York: Verso, 1990), Reginald Horsman, *Race and Manifest Destiny; The Origins of American Racial Anglo-Saxonism*, (Cambridge: Harvard UP, 1981). Thomas R. Hietala, *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*, (Ithaca: Cornell UP, 1985).

same time, modern scholars of manifest destiny have turned away from the notion that expansion was a process, akin to that of colonization, and focused on American settlement of the west as something that was done to the new lands, and not a process that changed both the colonizer and the colonized.

The concept of manifest destiny is one that is deeply embedded in the history of the United States. The settlement of the American west remains quite inseparable from the basic foundational myths of the American nation. Since the moment that the first English settler touched the shores of Virginia, the history of the American colonies and the later United States has been inextricably linked with the way westward. Walter Nugent wrote, “The belief had its source as far back as the Puritan’s conviction that America was ‘exceptional,’ chosen by providence – Nature’s God – to occupy, settle, and exploit the great expanses of North America.”<sup>89</sup> Jamestown became Virginia, which eventually settled Kentucky and the Ohio valley. Plymouth became Massachusetts, which settled New England and other eastern colonies. By the early nineteenth century, the United States stretched from the Atlantic coast to the Mississippi river.

Perhaps the most powerful things about manifest destiny were its flexibility, and its ability to transcend the mundane, but often deadly serious, political conflicts of the day. In this manifest destiny is much akin to its longer-lived little brother, American exceptionalism. Both offer a little bit of something for everyone. In essence both grant the sanction of the almighty to the dreams and aspirations of both the individual and the state. To Americans of the 1840’s and 1850’s this could have been both a personal and a national project. Like Turner’s wilderness, manifest destiny was a project undertaken by an individual. The classical narrative reads thusly: if a man in 1849 left New York for the gold fields of California, his primary goal might have been to seek his fortune.

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<sup>89</sup> Nugent, 23.

However, the license that allowed him to take his fortune from the ground of this new territory was the endorsement of the almighty. By traveling to the wilderness, he was acting out a patriotic god's plan for himself and his people, for like the Israelites of old, this new land was promised to god's chosen people.

This idea of a personal variant of manifest destiny also made it a unifying force in a United States deeply divided by sectional conflict.<sup>90</sup> The Americans streaming into the west prior to the civil war brought with them visions of recreating versions of the lives they had left behind in the east. For the settlers who occupied Texas, this often meant bringing slavery and the plantation traditions of the *antebellum* South. In spite of the fact that these southerners were joined by numerous immigrants from Europe and elsewhere, the state of Texas took on a distinctly southern flavor.

In 1803 the Jefferson administration undertook a political action to shape the basic nature of the new nation. Thomas Jefferson, author of the Declaration of Independence, favored a very particular vision for the United States. Jefferson desired a new nation based on the establishment of a strong yeomanry. This meant providing opportunity for individuals to create self-sustaining farmsteads. Believing that a nation was only as good as its citizens and that self-sustaining farmers would be politically independent and morally sound, Jefferson held they be able to use their vote to shape a wise government preserving the democratic experiment launched by his declaration. The key element missing from Jefferson's vision was land. If new land was not settled, then it would be impossible to create a society of yeomen. Instead, the second and third sons of landowning farmers would become tenants, or even worse to his enlightenment mind shaped by the pastoral ideals of Rousseau and his followers - city dwellers.

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<sup>90</sup> Michael Morrison, *Slavery and the American West; The Eclipse of Manifest Destiny*, (Chapel Hill: University of North Carolina Press, 2000), 4.

The purchase of the former French lands (many people forget that the land was actually purchased from Spain who had acquired it in the aftermath of the Seven Years War) in the Mississippi territories set the focus of nineteenth century America. Instead of merely focusing on the rapid pace of industrialization that was already beginning in the nation's eastern population centers, the focus was on the rapid settlement and population of the west. Jefferson embraced this when he sent Lewis and Clark on their cross-continental journey to better ascertain this new Louisiana Purchase. This expedition introduced Americans to the new lands but highlighted some of the problems that faced the new nation's quest for expansion. For the purposes of this study, these were twofold. First, the lands between the Mississippi and the Pacific were far larger than the settled territories of the United States. Additionally, while the technological revolution that was spreading across the western world was bringing locations along the east coast and navigable eastern rivers closer together, much of the west was isolated from efficient transportation, an obstacle long known to *Californio* traders. In fact, one of Lewis and Clark's primary objectives was to chart a riverine passage to the Pacific. This task proved difficult, and it was clear after their return that the idea of opening up the west with river transport was impossible.

The second aspect of the west that was revealed by the expedition was that the empty expanse west was anything but empty. Americans, even in the twenty-first century, tend to look at the old west as vacant. The west in our popular imagination is not that dissimilar of Turner's vision of the frontier; an open range of harsh natural features that tested the fortitude of any that sought to tame it. In fact, if you have had the opportunity to travel across our nation's vast middle, it might only serve to reinforce that view. The vast prairies and farms of the great plains are understandably less populated than more coastal and urban territories. However, in 1810 these lands were not unoccupied. Much like the eastern seaboard at the time of first contact, the new lands were home

to Native Americans and a smattering of European traders and adventurers, with their own ways of life and rich cultures. These inhabitants were not necessarily eager to offer up their homes on the altar of the newcomer's messianic visions.

Early expeditions into the west also revealed the presence of vast areas settled and held by Spain, and its successor in interest, The United States of Mexico. As already evidenced, the recorded statements of visitors to California during this period clearly show that the Mexican possession was unique in its climate and suitability for economic exploitation. However, there are deeper forces at work. By the 1830's it had become clear to many in the United States that the Louisiana Purchase lands were simply not enough to satisfy the voracious appetite for expansion acquired by the United States. America in the early nineteenth century was a rapidly growing nation, welcoming immigrants from across Europe to its shores. In order to provide economic opportunity for its citizens, the United States needed farmland and mineral wealth that was easily exploitable.<sup>91</sup> It was at about this point that American settlers began to come into conflict with Mexican interests. Following independence from Spain in 1821, the United States of Mexico acquired all of the Spanish Empire's continental possessions in North America. This included modern day California, Arizona, Utah, and New Mexico. Almost immediately, American settlers began to venture into Mexican lands generating mounting tensions. War erupted in Texas, and the lingering issues from that war would eventually draw the United States into conflict with Mexico.

In this scrambling for western territory California was a somewhat unique case. Even before the discovery of gold, Americans viewed California as a sort of paradise. Unique to almost every other territory that the United States gained in the period between 1803 and 1848, California was considered a prime place for settlement. It had access to sea transportation, sporting large

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<sup>91</sup> Derek S. Hoff, *The State and the Stork; Population Debates in U.S. History*, (Chicago: University of Chicago Press 2012), 41.

welcoming harbors at San Diego, San Francisco, and Monterey. It had a climate far milder than that almost anywhere in North America. It boasted the long warm growing season of the American south, without the relentless humidity and malarial swamps that plagued that region. The state boasted a large population of game, ranging from deer to bear, and its coastline teemed with abundant and easily extracted sea life.

A number of natural assets made it attractive to the United States aside from climate and resources. One of the principle problems that United States expansion faced in the southwest and plains areas was the presence of well-organized and comparatively large hostile Native American populations. Indeed, much of the history of the west in the nineteenth century revolves around struggles with Native Americans for mastery of these lands. In California no such problem existed. The Mission system installed by the Spanish had confiscated much of California's land from its native inhabitants, and 100 years of Spanish and Mexican colonization had greatly reduced the numbers of native peoples. Additionally, the California Indian tribes were comparatively small and fairly insular. The great diversity of language and culture among the native peoples also complicated resistance.<sup>92</sup>

A second factor that points to California's uniqueness was its location. It should come as no surprise that California has a long coastline along the Pacific Ocean. In addition, it contains two fine natural harbors in the San Diego and San Francisco bays. In the mid-nineteenth century, despite the growth of railroads, the only efficient way to move goods or people great distances was by water. And those water routes were significantly shortened by the rise of the steamship. Even prior to the building of the Panama Canal in the early twentieth century, steamships traveling to Panama relayed passengers from the Caribbean to the Pacific sides of the isthmus using a short

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<sup>92</sup> Madley, 16-41.

rail line that connected Aspinwall on the Caribbean with Panama City. This ensured that travelers could make the journey from New York to California in a few scant weeks instead of the months it might take overland. This rail line was available for use from about 1855, but even before this, passage could be secured via the Chagres river in local canoes.<sup>93</sup>

To be sure, the goal of American settlers was not to create a heterogeneous nation that encompassed the various people who occupied the North American continent. Instead it was to craft a white American nation out of the lands that were currently occupied by Native Americans and citizens of Mexico. In order to create this nation and to make these lands truly American, they needed to be settled and made productive in such a way to foster the growth of the United States as a whole. It was not enough for the United States to nominally control a distant wilderness. True American dominion would come with the exploitation of new lands by white, Christian, male American farmers, miners, and ranchers.<sup>94</sup>

The Land Act itself was born from a treaty that ended an expansionist war perpetrated as little more than a naked land grab. However, the California Land Commission occupies a unique place in this brazen land grab because it was needed to legitimize, or de-legitimize in some cases, the title to the new lands that the United States had acquired and commanded by treaty to recognize. In this transcontinental nation it was acceptable for land to be taken from non-whites, but it was unconscionable for the title to that land to be brought into question. The process of integrating Spanish land claims into the American legal system is simply another aspect of conquest, if one that is legalistic in nature.

The early nineteenth century is often heralded as a time of technological revolution, but not all of these innovations were mechanical in nature. Certainly, many of the technologies that

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<sup>93</sup> Aims McGuiness, *Path of Empire: Panama and the California Gold Rush*, (NY: Cornell 2009).

<sup>94</sup> Hixson, 123-126.

form the basis of modern life had their inception during this period. The telegraph, the railroad and the steamship, and the advent of factories mass producing consumer goods all saw their roots during this era. But there were other technologies and doctrines that were formulated during this time period that had an equally consequential effect on the growth and development of American society. The growth and refinement of American property law during the first half of the nineteenth century did as much to advance the growth of the American nation as any transport or communication advancement. It was during this period that the United States transformed from a modest nation that hugged the Atlantic coastline, to a transcontinental power, and the basis of this power was the exploitation and acquisition of land. To foster this, the American nation needed a legal system that assisted in the unleashing of the economic potential of these new lands and fostered the smooth incorporation of new territories into the existing legal framework. Much like the steam engine propelled an exponential growth in production, and made travel across the continent cheaper, safer and faster, these new legal concepts allowed the United States to become more productive, and to aid in making newly acquired lands an economic asset far faster than they might have been a century earlier.

This is not to say that the goal of expansion to California was specifically to make California into a mirror image of the lumbering industrial titan of the eastern United States. While a close examination of the debates that occurred surrounding the formulation of the California Land Act shows that the United States wanted to change landholding in California, it did not seek to dispossess the *Californios* in a wholesale manner, nor did it seek to drive them from the new state. Instead it sought to remake the state into a new California, one that would be prosperous and grow, but also one that would be more American and less Spanish. This idea of malleable change is something that is very important to understanding the process that was taking place across the

United States at the time, but most specifically in California. The goal of westward movement was not to simply make San Francisco look like Boston, but rather to incorporate it into the idea of the United States by expanding its own definition of self.

Thinking back to Turner and his frontier thesis, expansion is not a task to be accomplished, but a process that hones the individual and the state into a sharper and better instrument. No one contemplated a California that did not contain at least some of the contours of its Mexican and Spanish past. No one desired to pull down the Missions or change the names of the Spanish pueblos, instead they sought to rise to this new challenge that faced the American state and use California as a new opportunity for immigrants from Europe and city dwellers from the settled east to become truly American. They would do this by toiling in the mines and the fields, to asserting mastery over foreign lands and cultures, and releasing the potential that existed inside the very idea of America. In essence the desire was to complete Jefferson's dream: a nation with land to expand and prosper, and individuals with the opportunity to grow a larger, richer, and more virtuous nation.

## CHAPTER 2. CREATING CALIFORNIA

To understand the California Land Act, and the impact that it had on the growth of early California it is important to better understand what landholding looked like in 1848 when California was acquired. This chapter examines the impact that the Treaty of Guadeloupe Hidalgo had on land in California. This treaty, which ended the Mexican-American War guaranteed the property of Mexican citizens who resided in the state. In addition, this section also looks at the way the United States Government understood landholding in California, and why it sought to alter the existing state of affairs. It will show that through a combination of prejudice, misunderstanding, and greed, it was commonly believed that the *Ranchos* must be transformed for California to become a prosperous state.

### **Motives for Acquisition**

The Mexican-American War, fought between the United States and Republic of Mexico, had a profound impact California's future. It began in 1846 with skirmishes across the Mexican-American frontier, ultimately culminating in an American invasion of Mexico and the occupation of Mexico City by General Winfield Scott. In spite of its short duration (under two years) this conflict had an indelible impact on geography, demographics, and political climate of the United States. This chapter shows the impact that the war, and its end, memorialized in the Treaty of Guadeloupe Hidalgo had on the formation of California, and more specifically on landholding and the way the *Ranchos* would be treated in the new American state of California. Ultimately this chapter will show that the United States faced a daunting task in finding a way to integrate California into the nation. This was further complicated by the discovery of gold in 1849, and the

ensuing gold rush that followed. This population pressure created the need for the American government to find a way to both abide by the letter of its commitment in the treaty and produce a way to make land available to the thousands of settlers streaming into the state.

Ultimately the Mexican War served to almost double the size of the United States and put an end to conflicts between the United States and Mexico over disputed lands in Texas and modern-day New Mexico. It also served to answer the question of which young nation would dominate the North American continent from that time forward. The war itself concluded with the Treaty of Guadeloupe Hidalgo, a treaty unique in American history. First, Guadeloupe Hidalgo attempted to answer the dilemma posed to the victor in any war: how to gain the spoils of victory without ensuring further conflict. While the outcome in 1848 left Mexico – a nation of roughly equal size and population – defeated and thoroughly humiliated, the United States had begun the war on little more than a pretense (the difficulties along the Rio Grande notwithstanding.)<sup>95</sup> Adding insult to injury, this was the second time in the decade that the nation of Mexico had faced complete defeat under the leadership of Antonio Lopez de Santa Ana.<sup>96</sup> All of this in spite of great geographical distances faced by the invaders (it is more than 2,300 miles from Norfolk, Virginia, the principle naval harbor of the United States to Vera Cruz, where the invasion of Mexico would take place), and the fact that an early nineteenth-century army traveled by foot, horse, and sailing ship. Each expensive and slowly paced. Yet, in the process of this assault, Mexico's elected government collapsed, and the nation was forced to recall the corrupt dictator Santa Ana, a man more famous

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<sup>95</sup> No less luminary than Howard Zinn notes that while actual incidents of violence precipitated the beginning of hostilities along the Texas – Mexico border, the war itself was a planned action desired by the Polk Administration, and was met with anticipation in Washington, Howard Zinn, *A People's History of the United States: 1492-Present*, (New York: Routledge, 2009), 150-2.

<sup>96</sup> Prior to the Mexican-American War Mexico had lost Texas to a band of American expatriates and local rebels, culminating in Santa Ana's defeat at the battle of San Jacinto, and the creation of the short-lived Republic of Texas. For a more in-depth study of these events see: William C. Davis, *Lone Star Rising*, (New York: Simon & Schuster 2017).

for killing Davy Crockett and having a funeral for his severed leg than any actual military or political accomplishment. By 1848 Mexico's armies were defeated, Santa Ana in exile in Jamaica, and its capitol city occupied by American troops.

Second, even with the overwhelming success on the battlefield, the United States faced an interesting challenge. There was nothing, militarily speaking, preventing the United States from taking whatever land was wanted from Mexico. In fact, had political will desired, all of Mexico might have been annexed, an end called for by some Americans.<sup>97</sup> But annexing all of Mexico meant long term, government funded occupation of a large populous area. During the conflict itself, the United States got a small dose of what guerrilla warfare might look like in the rugged terrain of Central Mexico. This experience tempered any excitement over ownership of Mexico's vast mineral reserves.<sup>98</sup>

Additionally, the Mexican War itself was not universally popular in the United States.<sup>99</sup> For example, opposition to the war proved the impetus for American transcendentalist philosopher Henry David Thoreau to compose his famous tract *Civil Disobedience* as well as his eventual jailing. His position, although espoused with greater eloquence and feeling than his compatriots, was not unique at the time.<sup>100</sup> Furthermore, Mexico was the product of a different colonial tradition, spoke a different language, and practiced a different faith than much of the United States in 1848.<sup>101</sup>

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<sup>97</sup> Amy S. Greenberg, *Wicked War, Polk, Clay, Lincoln and the 1846 US Invasion of Mexico*, (New York: Vintage, 2013), 248. One of the principle non- strategic objections to this was the fact that many Mexican citizens were Catholic, and nonwhite. In addition, Mexico had outlawed slavery in the constitution of 1821, and many southern politicians feared the inclusion of Mexico would have tipped the balance of power within the Congress irreparably towards free states.

<sup>98</sup> Greenberg, *A Wicked War*, 254

<sup>99</sup> Greenberg, *A Wicked War*, 173.

<sup>100</sup> Greenberg, *A Wicked War*, 263.

<sup>101</sup> Howard Zinn notes Thoreau's opposition to the Mexican war, Zinn, 157. He notes a wonderful exchange between Thoreau and Emerson "When Emerson visited Thoreau in jail and asked 'What are you doing in there?' it was reported that Thoreau replied, 'What are you doing out there?'"

Finally, Mexico was a free nation. Almost as soon as it secured independence from Spain, Mexico emancipated its modest slave population. In fact, disputes over slavery were one of the driving forces behind the secession of Texas (pro-slavery) from Mexico (anti-slavery) during the 1830's.<sup>102</sup> The delicate balance of representation in Congress that fully characterized American politics in the first two-thirds of the nineteenth-century held for the time being.

That is not to say that Mexico was not an attractive target for American expansion, just that it was complicated and fraught with potential non-starters. One existing legacy of both pre-colonial settlement and the centralized nature of Hapsburg and Bourbon rule was that the nation of Mexico's population was heavily concentrated in the areas surrounding the capitol of Mexico City. In Washington, many thought that perhaps Mexico's greatest unexploited assets were the large tracts of land inherited from the Spanish in the west. These lands were wild and contained few settlers, but they were also geographically contiguous with the American lands west of the Mississippi. They were attractive to the United States precisely because they were perceived as wild, and for many Americans in 1848, it was easier to imagine settling empty lands than accommodating a settled population with a different social and religious character. Although, in truth, from New Mexico to the Pacific, Mexican and Spanish pioneers had settled modest chunks of this vast empty space, and any sort of settlement between the US and Mexico would need to come to some sort of accommodation with the populations already in residence. Addressing this, Guadeloupe Hidalgo granted respect for the property of those citizens living in California and New Mexico, now parts of the United States.

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<sup>102</sup> Anthony Torgot, *Seeds of Empire: Cotton, Slavery, and the Transformation of Texas*, (Chapel Hill: UNC, 2015), 61, Quintard Taylor, *In Search of the Racial Frontier, African Americans in the American West: 1528-1990*, (New York: WW Norton & Co, 1998), 42-45.

This also constituted a large incorporation of a non-Anglo population. This is no small issue. The United States of the 1840's and 50's was rapidly growing, most significantly due to a massive influx of immigrants. The principle source of this immigration was Europe; more specifically the German States and Ireland. Both of these nations faced populations in a state of flux resulting from domestic strife: the revolution of 1848 in Germany, and the Great Famine in Ireland from 1845-1849. Significant portions of both these populations were Catholic, and this fact greatly concerned many Protestants in America's eastern cities. The idea of adding large numbers of Hispanic catholic citizens troubled the kind of men who joined the No Nothing Party and other organizations that opposed so-called foreign influence of "popery". Still, in 1848 California and New Mexico might have seemed remote and far away, at least compared to the changing boroughs and neighborhoods of Philadelphia, Boston, and New York City.

Yet regardless of this distance, a nation of laws would – in theory at least – respect the promises made on the international diplomatic stage. And a key component of the treaty the United States accepted to end the Mexican war was a promise to respect the property rights of the *Californios*. Most namely, the text of the treaty states that

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, shall be free to continue where they now reside . . . retaining which they possess.<sup>103</sup>

The treaty further specifies that:

In the said territories, property of every kind . . . shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.<sup>104</sup>

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<sup>103</sup> *The Treaty of Guadeloupe Hidalgo*, 929. The Library of Congress, <https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=009/llsl009.db&recNum=975>

<sup>104</sup> *Guadeloupe Hidalgo*, 929-930.

These affirmations of the rights of Mexican citizens were quite unambiguous, and it is likely that the framers of the treaty did not imagine that this provision would be especially difficult or complex to enforce. In 1848, as the treaty was being negotiated, the protection of these rights need only be addressed in a few directly worded statements. At least this seemed to be the case before the unexpected events of 1849. Yet before gold and statehood, the treaty itself does pay some credence to the key tension that would sustain throughout the early days of statehood for California. On one hand there existed an obligation to protect existing vested property interests in the state, and abide by the terms of the treaty, and on the other, there was a driving need to open lands for settlement and exploitation. This conflicted directly with the goals and desires of existing property owners.

Furthermore, the once-Mexican citizens of California in question brought along another legacy: the Mexican Land Grants. Accordingly, the California Land Commission attempted to incorporate this group of entrants to the United States into the political and legal framework of the nation. And these prospective Americans would enter the United States with vast tracts of land, considerably more than most new Americans arriving on eastern shores. Commissioner Hall wrote in 1852, delivering an opinion in Arguello v. United States, that regardless of any language in the Treaty of Guadeloupe Hidalgo, “the property of Mexicans thus situated, would doubtless have been entitled, by the law of nations, to such protection of the government of the United States.”<sup>105</sup> He allows for considerable flexibility in the government’s ability to respect their right as he notes that “a large portion of the lands in this State, claimed by individuals under the Mexican government, were supposed to rest on incomplete or imperfect status.”<sup>106</sup> Questions over the status of a land

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<sup>105</sup> Arguello v. United States, published in *Organization, Acts and regulations of the US land commissioners for California*, Mason, Whitton, and Co.: San Francisco, 1852. 8.

<sup>106</sup> Arguello, 8.

claim became the heart of the commission's *raison d'etre*. In the same case Commissioner Thornton laid the aims of the American government bare, "It is clear in my mind that the legislative intention was that perfect titles, as well as inchoate titles: those perfected to complete right as well as those of an equitable nature should all be presented."<sup>107</sup>

This idea is extremely important. This interpretation by the board demanded that all holders of land grants, even those with perfect documentation to prove ownership of their land, must present their documents to the commission, and have their title validated into American law. If they did not, "the bar of limitation, working a forfeiture to the government, in the case of failure thus to present, within the prescribed time is expressed in terms as comprehensive as the requirement of presentation."<sup>108</sup> In essence Thornton argues that if claimants do not have their title validated by the commission within the time contemplated by the act, their land will be forfeit, and it will fall into the ownership of the American government, the original sovereign of the land.

This set a fairly high standard to hold all property owners in California to. The commission met in only two places in a state that was by contemporary standards quite large. In addition, claimants must prepare a petition to have their land validated. This required assembling witnesses (and transporting them to testify) and procuring the necessary legal documents. The latter were most likely stored in the former Mexican and Spanish records housed in San Diego, but some grants might reside as far away as Mexico City. These procedures were the minimum to be undertaken by those with perfect and uncontested claims. If they failed to present, even if no other individual had claim to their land, the property would forfeit to the United States government. Commissioner Hall offered some insight into this requirement when he stated that, "the separation

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<sup>107</sup> Arguello, 19.

<sup>108</sup> Ibid.

of public lands from those of individuals was doubtless and important object [of the act].”<sup>109</sup> Commissioner Thornton reiterated this idea, and took it even further when he wrote “The Government of the United States having become, to the extent above stated, the owner of the domain of California, in accordance with her accustomed usage, and the settled policy of the nation, desired appropriate and dispose of the lands thus acquired in such manner as to convert them to the use of her citizens, by a sale thereof, on such terms as the people, through their representatives, may devise.”<sup>110</sup> While this may sound entirely expected to the jaundiced reader of American history, it is quite contrary to the letter and the spirit of the Treaty of Guadeloupe Hidalgo. Indeed, at least to some degree, this marked a departure from what might be considered the regular order of things with regard to land ownership claims in the rest of the nation.

This is a notably innovative use of the law, and a uniquely express combination of property law and manifest destiny. In the case of the California Land Act, the objective was not simply to use land in California to further expand the United States, but to fundamentally change the way that land was used in a place already settled by European immigrants. This use of land law, and the project of using land law to remake the state is something truly novel in the case of California, but also a unique application of legal principles that had been developing over the course of the early nineteenth century. Subsequent chapters of this study will clearly show that throughout the early nineteenth century American courts had expansively defined property in new ways focused on national growth. In the case of California, this trend was focused on directly remaking land titles in the state, and directly shifting land use in the state.

While nefarious motives are not mutually exclusive, a very basic, somewhat sound rationale explains the work of the commission. In order for property to flow freely within the market

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<sup>109</sup> Arguello, 8.

<sup>110</sup> Arguello, 17.

between individuals, there must be a great degree of certainty as to the quality of interests to be conveyed. In the eastern United States individuals could expect that most interests they acquired would be part of the normal local property market. In addition, it was easy to determine if an individual interest was valid. Beyond consulting a property index a purchaser could ask around, find other citizens of the area who might know local property owners, and determine if they were buying a valid piece of property.

California was very different. In fact, the state of land ownership in California seemed perfectly constructed to make purchasers of titles uncomfortable. As the Gold Rush brought large numbers of people from around the world to the region, the price of land rose dramatically. In addition, the pressures of this new population provided an incentive for the long-term owners of land to sell off portions of their large estates. These estates were so large that it was difficult for most people to understand their boundaries. If a newly arrived American sought to purchase land, he might be faced with either a deed in a different name from that of the current Mexican grant holder, one that may or may not have been recorded, or one that was almost certainly in a foreign language largely not known to most individuals he might encounter in the local area. Additionally, the landholding patterns in the state left large portions of range land unused for months or even years at a time, thus any fraud perpetrated could go some time without being discovered, further complicating the legal issues of property ownership.

In this complicated context, forcing all California land owners to re-approve their landholdings made a certain amount of sense. Coupled with the frantically paced atmosphere of California during the Gold Rush, it is easy to understand that officials wanted to create a new baseline for all property owners in the state. By having all landowners in the state appear before the commission, a new recorded baseline gave confidence to the purchaser to buy what they thought they were

buying and ensured that all improperly held land was turned over to the United States Government for distribution and settlement.

The new federal possessors of California likely looked toward the future in their desire to have all the titles authenticated within a few years after statehood. A persistent fiction in California history is the notion that the Federal Government was solely responsible for the breakup of the *Ranchos*. Yet this process was in fact largely pre-determined by the Gold Rush.

The system of landholding and exploitation that existed in the state is perhaps one of the most romanticized in American history of the west. Less than forty years after the end of the Mexican War, Helen Hunt Jackson's *Ramona* lamented and romanticized the lost era of the *Ranchos*.<sup>111</sup> Far from the idyllic Arcadias described in the novel and voraciously consumed by American readers at the end of the century, the *Ranchos* were the last gasp of a system of colonial exploitation built on the virtual enslavement of native peoples and ownership of nearly all of the colony's wealth by a small number of elite families. The myth of a genteel *Rancho* past was largely cast aside by conquering Americans, yet it was still occasionally celebrated well into the late twentieth century as the increasingly diverse state looked for a less Anglo-centered past. In truth, most of the roughly 10,000 inhabitants of the state lived in varying states of agricultural peonage before the Mexican war with little hope of possessing their own land or making a better place for themselves in colonial society. By no means would the American takeover change this. And for California's native population, things became significantly worse. The commonly held and politically advantageous view of an idealized agricultural society put a glaze of gentility on a fairly exploitative system.

True or false views of the *Californios* and their vast *Ranchos* aside, they were swamped under the demographic tidal wave of the Gold Rush and the resultant explosion in land values. Outside

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<sup>111</sup> Helen Hunt Jackson, *Ramona*, (New York: Signet, 2002).

of a few coastal ports, the essential value of land in pre-American California was dictated by that land's ability to aid a *Rancho* in its pursuit of success in the hide and tallow trade. After the arrival of the miners, land acquired value for exploitation as mines, truck farms, homes, roads and other necessities of a growing populous. Small hamlets like Yerba Buena rapidly grew to large cities like San Francisco. The cash poor *Californios* were unable to exploit this demand for themselves. The only strategy to garner a piece of gold rush wealth afforded to their advantageous position was to raise money by selling land.

Just such sales proved particularly difficult for the new state. For if land passed from *Californios* to Americans without some sort of approval process, the title of these new owners would only really be as good as those they bought it from. And the documents certifying that ownership would exist outside the American legal system. Complicating this further, these deeds were in a format unlikely to be understood by the property owners, or indeed most American trained legal professionals. It was no small task for the owner of one of the roughly six hundred tracts of land to prove to a specialized body that they legitimately possessed land held by their family for generations. They needed to provide documents and witnesses, and an insider's understanding of what land was owned by whom. They had to present long term neighbors that could testify to boundaries and provide some sort of documentable relationship with the original grantor listed on the Mexican deed. If sales and subdivisions of these estates occurred, purchasers further down the chain of title were increasingly less able to prove the validity of their title. In addition, if fraudulent deeds and boundaries did exist amongst the *Californios*, the problems they caused would be multiplied as further buyers relied on these documents for future sales.

In this light it is both understandable and prudential that the United States would seek to validate California title *en-masse* to ensure the stability of the property markets of the new state.

This need was fostered as much by the events of the gold rush as anything else. Absent the large influx of settlers and investment caused by the discovery of gold, the problem of land titles might not have proved as urgent in 1850. As this best characterizes the goals of the commission, an understanding of how the commission was organized is needed.

### **The Structure of the Commission**

The finders of fact of the deliberative body were referred to as Commissioners. They would act in a manner similar to appellate judges, ruling *en-bloc* on the merits of the claims brought before the panel. However, unlike an appellate court, they would review the claims *de novo* hearing testimony from witnesses, as well as examining documents and other exhibits.

The tribunal was staffed with three commissioners. The three original commissioners were Hiland Hall of Vermont, Harry I. Thornton of Alabama, and James Wilson of New Hampshire.<sup>112</sup> It is interesting to note that the board comprised individuals of varying regional allegiance but dominated by New England. In addition to the Commissioners, one law agent, George W. Cooley of Massachusetts was provided to represent the government's interests in matters before the Commission.<sup>113</sup> The Commissioners were also provided with five clerks who would keep the record, perform administrative tasks, and translate testimony. This presumably fell to the three clerks whose state of residence is listed as California.

It is clear that while local knowledge was valued by the board, they did not want it to be dispositive. For this was manifested by an overriding fear held by many. Namely, that a commission containing too many Californians might prop up claims of questionable legitimacy.

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<sup>112</sup> *Organization, Acts and regulations of the US land commissioners for California*, (San Francisco: Mason, Whitton, and Co., 1852), 1.

<sup>113</sup> *Ibid.*

Perhaps the goal, as inferred in the language of the commission, demanded impartiality, as the community of American *Californios* was quite small, and many conflicts of interest might have existed. In his recorded memoirs, William Gwin indicated that a disagreement existed during the framing of the California Constitution between the *Californio* and Early Settlers, and the newly arrived immigrants who arrived with the gold rush.<sup>114</sup> Gwin considered himself a member of this newer faction. During the framing of the constitution, the primary cause at issue was the disposition of land, more precisely the fear of bias towards existing landholding interests.

The committee enacted its own governing set of regulations, which were remarkably limited. The length of the written text of the regulation pronouncement stretches to encompass roughly three printed pages, providing a narrative description of the expected process of presenting a case to the commission. They hold that all petitions

shall be. . . in writing, signed by the claimant or his counsel, addressed to the Commissioners, and filed with the Secretary of the Board, which petition shall set forward the names of the original and present claimants; the nature of the claim; the dates of the original grant and the several assignments or conveyances.<sup>115</sup>

In addition to this expected list of case items, petitioners needed to provide

the power and authority under which the granting officer acted; the quantity of the land claimed; its locality; when surveyed and certified. . . the nature and extent of every known interfering claim. . . and said petition will be accompanied by a copy of the original grant and a translation of the same, or by reasons for not furnishing them.”<sup>116</sup>

This requirement, while briefly stated, constitutes a fairly significant undertaking. For this was required not just of those whose ownership of land was challenged, but by all those who purported to own land whether it be contested or not. The very precise language of the filing requirement shows that the commission did not simply seek to satisfy the conflicts that existed in land claims but sought to examine each and every claim of existing property ownership for validity. Quite

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<sup>114</sup> Gwin.

<sup>115</sup> *Ibid.*, 5.

<sup>116</sup> *Ibid.*, 5.

evidently, the goal of the commission was not to take a snapshot of California as it existed in 1850, even though the language in Guadeloupe Hidalgo suggested exactly this. Indeed, a simple summary of property ownership would have been the easiest and cheapest way for the United States to process Mexican claims. But it is important to remember that legal actions in the United States – especially in the nineteenth century – typically arose out of controversy. In this case the controversy was so simple and direct, it almost evades notice by modern observers due to its very modern characteristics. Namely, this was an era in America before the forced reporting and accounting of modern tax and social welfare schemes and yet, an accounting of this nature is exactly what the United States demanded. This context, mired in the conflict between expectations based on *laissez-faire* precedence and the insistence of a new officious political bureaucracy, provides considerable insight into the Commission’s work. Its goal was not to provide justice, or settle a dispute, but to create an accounting for all of the land in California that the Mexican government had distributed. The spoils of war were to be invoiced and inventoried. In order to accomplish this, the commission required all of the documents that created and documented the disposition of that land.

This documentation highlighted the intersection between the basic concept of property and the law of property. In terms of common usage property is a fairly simple concept of ownership. Every child understands ownership the moment they declare that their favorite toy or article of clothing “is mine.” This basic concept often extends in most people’s minds to homes, cars, jewelry, and sometimes (quite incorrectly) people. At law, every new student is instructed to view property not as an item, but as a bundle of rights. In the law’s eyes property ownership is more of a series of rights and duties that come with possession of an item or a piece of land. In the case of real property (land) these rights often allow the exclusion of others, but obligate the owner to do certain

things, like pay taxes or maintain their property in such a way that it does not diminish the value of others' property. The basic work of the California Land Act and its Commission is to fundamentally change the rights and duties held by one group of owners: in this case the Californios. In order to do this, the framers of the Act, and those that enforced it, had to embrace the notion that property is a fungible concept. One that can be altered and changed based on shifting definitions of the rights encompassed in the concept of ownership. In addition, they had to acknowledge the flexibility of the law as a tool to alter the meaning of landholding and property rights.

The claimant's burden of producing the necessary documents was of a fairly technical nature, likely requiring the help of an attorney or another specialist familiar with the process. This was a fact known to the commissioners, who provided that

If the claimant desires to prosecute this claim in person, he will, on application for that purpose, be aided by a clerk of the Board in the preparation of his petition, without charge; and will be allowed all proper facilities in the prosecution of his claim.<sup>117</sup>

Nonetheless, even with the help of the clerk (which documentation suggests was rarely sought as all claimants listed name attorneys attached to their petitions) this represented a substantial undertaking for an individual. Whether for a clerk or attorney, the task likely necessitating a long stay in San Francisco or Los Angeles, and a good deal of effort – and consequently a good deal of legal fees – in the prosecution of a petition.

Even in the nineteenth century any legal proceeding was fraught with danger for the unwary. Consequently, self-representation was well beyond the abilities of most Americans not to mention those new to the American legal system. Perhaps what is most interesting about the process is that while the commission's ostensible charge was to settle private land claims in

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<sup>117</sup> Ibid, 5.

California, these were not claims in the conventional sense as most did not originate as contestations. Even as some of the disputes arose over land conflicts, in reality the commission was designed to force existing landowners to justify their ownership of land before an extrajudicial body. If they did not, the implication was clear: they would lose their land. Faced with the severity of this threat many claimants before the committee sought to retain their own counsel. Among the most prosperous of this first generation of California lawyers was the firm of Halleck, Peachy, and Billings, based out of San Francisco. This firm ultimately represented many of the *Californios* in actions to retain their land. A careful examination of their papers yields the revealing fact that the successful defense of these claims, from the initial presentation to the conclusion of the ultimate appeal, could cost the landowner upwards of five thousand dollars. Certainly, a great deal of money for the mid nineteenth century that meant a great deal more to land-rich, but cash-poor claimants.<sup>118</sup>

A bilingual clerk given by the commission facilitated the operation of the process. It seems likely that this linguistic requirement was the reason for the inclusion of three Californians in the list of court clerks. However, it is important to note that all three of these individuals, John Clar, M.R. Palmer, and James T. Overstreet, have Anglo and not Hispanic names. While they likely had lived in California for a length of time sufficient to have developed connections to *Californio* society along with a fluency in Spanish, it is worth observing the concession to representation only went so far as no *Californios* were included on the board or its many offices. While the commission most certainly knew itself as a body attempting to create a new California that combined elements of both the old and the new, there is no evidence in the record that the United States tried to fundamentally change legal procedure in an effort to combine the Spanish and Mexican traditions

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<sup>118</sup> Halleck Peachy Billings Papers, Folio 1, The Huntington Library, Pasadena, California.

with those of the United States. In addition, while Gwin does indicate a close relationship between the “old hands” – his term used for Anglo settlers who arrived before the Mexican-American War – and the *Californios*, their long-term goals may not have been so unified. For while the older American settlers often intermarried with *Californio* families, they also used their local knowledge to acquire title to land grants whose owners had decided to sell rather than face the task of adapting their lifestyle to the new age. Abel Sterns, the southern California land baron is typical of this, arriving in California in 1829, he married Arcadia Bandini, the daughter of a land grant family, and acquired interests in *Ranchos* across the southern half of the state. Success at the commission was no less important for these men but their ultimate goal was often the subdivision of the vast grants. And they had little interest in maintaining all aspects of the pre-statehood traditions of California.

It may be useful to view the role of the commission during this period akin to that of a modern factory – the perennial metaphor for nineteenth century institutions. This is especially useful because law provides the basic understanding and structure for the development of land, in the same way that a factory takes basic elements like iron ore and makes useful items from them. At its most basic level a factory takes in raw materials and reshapes those resources into useful products. Instead of trying to create a new California by combining Mexican laws and procedures with American traditions, the California Land Commission instead took the raw material of Mexican land grants and the vast tracts of the state that they controlled and spit out viable useful American land titles that could be used to open up the new state to settlement and economic exploitation. Mexican land would become American land, but not just in name. The change in name reflected a more fundamental change in function. With this in mind, the inclusion of bilingual clerks and Anglos familiar with Mexican California is less a validation of long-

established power structures and more a way to quickly interpret and process the claims necessary to affect these ends. Additionally, in order to undertake this process, the raw materials of this transformation, the grants themselves had to be broken down to their most basic components, the physical land and the paperwork that recognized its historical existence. It was not enough to take California of 1850 at face value, instead the status quo needed to be broken down, studied, and be rebuilt into a tool for the growth of California. Only then could it be easily incorporated into the United States.

The commission met in two places – San Francisco and Los Angeles – in an effort to adjudicate claims in both localities with some degree of efficiency. These locations were as much representatives of the new American order as they were an attempt to ease the burden of travel of claimants, witnesses, attorneys, clerks, court staff, and commissioners. For Mexican and Spanish California had two principle administrative capitols: San Diego and Monterey. In fact, references in the cases repeatedly state that the centralized records for all of California were kept in San Diego. More than just as centers of record keeping, in the Mexican era, San Diego and Monterey also served as the main commercial ports in California as crucial centers of the hide and tallow trade. But as Anglo settlers came to California, power moved to San Francisco, home to the commerce created by the gold rush and the largest white settlement in California. To the south, Los Angeles, still a small town, was becoming the agricultural center of Southern California. This strategy could not have been lost on the landowners: forcing *Californio* claimants to come to the new American centers of power to seek validation of their landholdings cemented the change in governance.

## The Processing of a Claim

Having examined the basic principles, aims, and structures that contributed to the commission, it is worth discussing the actual process that a claim underwent. First, one must consider the general way that the Commission conducted business. It is worth noting that the process of the Commission as a whole seems to have operated reasonably well and with a good measure of efficiency. The time frame for presentation of the claim was short, and consequently most claims were processed prior to 1860. The massive bureaucratic feat of transforming America's youngest and second largest state, acre by acre, took less than a decade.

On the level of an individual claimant, the pace of the process felt quite different. For most of the state's landholders, the process began with a visit to a lawyer, most likely at the firm of Halleck, Peachy, and Billings. The legal team was then contracted to prepare the presentation before the board for a fee.<sup>119</sup> The record shows the cases proceeded smoothly without any conspicuous challenges to the Commissions' authority.

The novelty of the procedure did not seem to intimidate the claimants. An examination of the records indicates that most claimants came to the Commission well-prepared. Witnesses testified and presented evidence. Commonly, *Californios* brought neighbors or new Anglo settlers to attest to their ownership of land, their general good character, and their responsible stewardship. The claimants often brought original copies of their land grants and supplementary documents supporting their claims. These Spanish documents were admitted to the record and then dutifully copied in by the clerks with a translated English copy to aid the commissioners and appellate courts.

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<sup>119</sup> A careful review of the documents of the surviving files of Halleck, Peachy & Billings, one of the largest law firms in the state at the time follows in this study. However, for purposes of the present discussion this amounted to around five thousand dollars.

The United States Attorney rarely countered any of their arguments or offered testimony to rebut the claimant's evidence. This may simply stem from the fact that no such evidence existed. This might seem surprising, as land disputes have long been a part of the legend of the American west and seem to be something of a hobby in modern California. However, the *Ranchos* in question by the Committee were vast, and the developed portions along with the primary pastures resided well within the boundaries of the grants, thus ensuring minimal disagreement with neighbors. Significantly, the vast majority of the cases before the commission occurred while the land grants were more or less whole, thus smaller subdivided interests that might have been more concerned about the micro-boundaries of individual claims did not yet exist.

The court clerk transcribed deeds and documents into the record in the original Spanish, but clearly translated them for the commissioners, as none spoke any Spanish. Reference to Spanish language documents is common in opinions. In addition, the aim of the commission was not an outright effort to settle disputes, but instead, this long process was to make a thorough accounting of the grants themselves.

Despite institutional complacency and nineteenth-century American prejudice, no outward preference seems to be given to those witnesses who testified in Spanish versus those who testified in English. Both are cited equally by the commissioners. Their testimony is given weight in opinions, and indistinguishable in the record other than a small notation that it was translated by the clerk. This raises the question of linguistic drift. The clerk of the court was an Anglo, trained in the American legal tradition, as mandated by the act. There is the possibility that the translation might obscure some of the meaning of the testimony inferred with the subtleties, colloquialisms, and rhetorical strategies of the originating language. However, this seems unlikely as the testimony is very practical in nature. Most testimony given before the court comes in the form of a description

of the land in question, with rather detailed components, often taking the form of a meets and bounds description, for example “from Creek A to Hill B.” This is coupled with a discussion of the genealogy of the claimant because the original grants were made to another – often related – individual, now deceased. Many of the witnesses describe the family relationships of the claimants, indicating that the land had passed from one individual to another, and describing the sometimes-complex relationships that led to inheritance. Additionally, since the primary concern of the testimony was locating the precise geographic location of the land, evidence which rarely contradicted testimony, it is unlikely that testimony was substantially altered in its translation between languages. Rather than exhibiting hostility to Spanish language documents and testimony, the opinions issued by the court seem glad to simply have physical documentation of the boundaries and ownership of the claims in any language.

### **Competing Definitions of Property and Competing Property Litigation**

Any lack of potential antagonism aside, this process was still expectedly a fairly complicated and difficult undertaking. More so, it also deviated from more common practice for landholding validation. Generally speaking, the right to own property is deeply embedded in the pantheon of protected rights in the United States. Over the course of their lives, all Americans own some property to one degree or another. The concept of property is commonly limited to the ownership of real estate in everyday conversation, but that’s a convenient misunderstanding of its more legal definition. All items that are owned by an individual are property, from the clothes they wear, to the food they eat. Broadly speaking, property is divided into two basic categories, *real property*, and *personal property*.

Personal property includes all items not permanently affixed to the earth. Clothing, livestock, jewelry, books, food, furniture, and firearms are all examples of personal property. In fact, emblematic of the time during the deliberations of the Commission, it was possible in some states (although not California) to own other human beings as personal property. The second basic form of property is real property. It is from this term that we get the common shorthand *real estate* – simply put an estate in real property. This includes land, structures attached to the land, fixtures attached to those structures, and permanent crop bearing plants like orchards.

This latter form of property was particularly important to the formation of the United States. In framing the Declaration of Independence, Thomas Jefferson drew heavily upon the writings of the English philosopher John Locke, including his principles relating to property. Locke's influential ideas about the natural rights of individuals were summed up under the intellectual troika of "Life, Liberty, and Property." While Jefferson altered this slightly to "life, liberty and the pursuit of happiness", ideas about land ownership were never far from the minds of the nation's founders.

When the United States separated from England, it retained one institution of English governance virtually untouched, the *common law*. The common law is quite literally a law for the common people, separate from a law for a king or a law for the church. By 1776, the common law was one of the most lauded and applied aspects of governance in the British realm. The new United States, founded mainly by lawyers, chose to keep this system so strongly emphasized in their educations. The common law is a system of analogies and principles created based on hundreds of years of jurisprudence. To enact a case under the common law, a plaintiff had to allege a cause of action under a writ (basically a principle that articulated under what circumstances an individual

could sue another) and explain how the facts of their case fit into the basic pattern of the cause of action.

The work of the commission was a departure from this pattern of established and ingrained common law procedures. Typically, and almost universally true amongst the cases that will appear in later sections of this study, a civil case under the common law would involve two private entities as parties. In cases where a State or government official was a party, they operated in the same manner as a private plaintiff or defendant, with the same legal rights and burdens before the court. It is this history that makes the California Land Act and its stated goal of rooting out fraud in California's landholding so unique. The history of the United States courts is full of cases regarding the ownership of all kinds of property. However, it is almost universal that a claim of fraud concerning a deed of land be a private action undertaken by a purchaser of an interest against a seller, or the eventual heir of a seller. While the government might be a party if they were the seller or purchaser of land, it is fairly rare for them to simply examine deeds in an attempt to double check their authenticity. In addition, most cases involving land fraud where the United States is a party would be criminal matters. The court would examine the intent and actions of the person before the bar, with an aim to mete out justice.

In the case of the California Land Commission, this prosecutorial aim is almost totally absent. The Commission is never concerned with the punishment of individuals, even in cases where it rejects a claim. In fact, by the time that many of the cases were heard by the commission, the vast majority of the original grantees were dead. This factor alone would have made criminal action exceedingly unlikely.

The normal process (i.e. not the process favored by the California Land Commission) that takes place when an individual purchases a piece of property in a common law jurisdiction is

characterized as follows. As with any contract, both parties come to an agreement over the price for a piece of property to be sold. The common law, through a doctrine known as the statute of frauds, requires that any agreement to convey a legal interest in real property be concluded in writing. To satisfy this, the seller provides the buyer with a document known now, as it was in the nineteenth century, as a deed. A deed contains a few key components. First, it must contain a description of the property to be transferred. In the modern world this is often accomplished by referencing an assessor's parcel map, which serves as a unified illustration of the property boundaries of a jurisdiction. In nineteenth century America these unified catalogs of property ownership were uncommon. Instead, descriptions generally took the form of what was known as *meets and bounds* descriptions, that indicated the boundaries of the property based on its relationship to landmarks. Instead of describing the location of a property being 25 yards north of the intersection of 1<sup>st</sup> and Main Streets, a meets and bounds description would be more colorful. It might list that a property began 10 paces north of a large oak tree near a hilltop and ran for two leagues west until it reached a dry creek bed. This sort of description is more difficult for a modern property owner to ascertain, as many of the landmarks listed might have disappeared within a few years after the creation of the deed. But nonetheless, meets and bounds descriptions form the basis of title in many of the older parts of the United States. Deeds often also contain warranties, essentially promises that the seller actually possesses the interests that they are transferring, and that no other person will interfere with a purchaser's enjoyment of their newly acquired title. In the nineteenth century these warranties were even more important than they are today. In a far-flung United States, a purchaser often had nothing but the word of an individual to guarantee that they were actually purchasing good title to land. This was viewed as so important that a deed containing these promises became known as a warrantee deed. A violation of these warrants would

give a grantee an action in property law against the grantor. This was in contrast to another method of transferring property, the quit claim deed. This sort of deed promised the transfer of nothing more than the grantor held, with no express or implied warranties.

The second crucial part of property transfer is *recording*. This simply means taking a deed to a relevant governmental office, often a county recorder, and having the deed copied into the master file of property transactions. This is done to prevent fraud; it allows a subsequent purchaser to have an official record of who owns what piece of land and when they acquired it. This is not a perfect system, for it allows for title fraud to occur even today. And in the early nineteenth century this problem was far more acute. Even in the more settled parts of the United States, life patterns and limited availability of fast, safe, and affordable travel options, meant that people were less likely to travel far from their homes. Consequently, it was not so likely that they would bother to formally record deeds. With distant frontier communities full of new settlers, it was even more possible for an individual to sell land without attracting the attention of those who might know the history of the property, thus enabling fraud. In truth, incomplete recording was such a problem that a legal instrument was invented to attempt to work around it. The quit claim deed was, and is, a document commonly used when long term recording interests are spotty or unavailable. It is a written deed that offers no warranties, but instead transfers whatever interests the grantor possesses to the grantee, with no promises about the nature of that interest. This format remains common in areas subject to old meets and bounds titles, in no small part because it is now often difficult to ascertain exactly where properties originally began and ended. Over time an individual piece of real property may have changed size, as fences or streams moved. The quit claim ensures that a purchaser gets all of the previous owner's interest, while a more specific deed might exclude other interests acquired over time.

The common law legal system is set up to deal with deeds of both these types. However, things become more difficult with the introduction of foreign instruments. For example, the *Californios* acquired their deeds from the Spanish and Mexican governments. The Spanish grants were of little interest to the United States in the aftermath of Guadeloupe Hidalgo, but the Mexican grants were under a great deal of scrutiny. This was largely due to the age of the grants under consideration. The vast majority of Spanish grants date from the eighteenth century and were offered to the original settlers of California in exchange for immigration to the new settlement. These included some large *Ranchos* and the Pueblos of Los Angeles, Monterey, and San Diego. However, during the earlier Spanish period, the largest landowner was the Church, characterized by the mission system it operated throughout California. Designed to be self-supporting, the missions included large amounts of pasture, often populated by local Indian tribes. A representative example of this is the Mission San Luis Rey founded in 1798 just north of San Diego, in modern day Oceanside. Prior to secularization in 1833 it ranged cattle across fairly large tracts of land stretching from modern day Escondido to Temecula. This territory included the current reservations of the Pala and Pechenga tribes, who provided workers to the mission industries. The Mexican Government passed the secularization act with the clear purpose to divest the church of its extensive landholdings in California. For since the initial days of conquest, the Mexican Catholic Church had been a powerful force in the New World and over time it acquired vast tracts of land, much of it exempt from taxation. Mexico sought to maximize the value of its landholdings, generating income from areas like California which were far from the metropole of Mexico City.

The unique strategy employed by the California Land Commission stems from the nature of this earlier transition. Mexico is the inheritor of a far different legal system than the United States, one not reliant on the common law. Mexico was (and is) what is known as a civil law nation. This

was inherited by the colony from the legal traditions of Spain. This tradition draws more on Roman law than the common law system does. It is more centrally-focused, with judges and notaries applying laws and administrative decisions made by the colonial or Imperial governments in Mexico City or Madrid. On top of this was layered the *Code Napoleon*, a series of modernizing reforms that were brought to Spain by the French Emperor prior to independence. Adding to the stew of legal traditions were local rules with special dispensations, conventions, and precedents developed under centuries of colonial rule by Hapsburg and Bourbon Kings. Suffice it to say, the nature of a landholding interest in Mexican California was somewhat different than that of an average American property holder.

The grants themselves were similar to a deed that a normal property owner in the United States would have, but they were not designed to easily fit into the American system that tasked the owner with so much political weight and economic pressure. With this in mind, it is a little surprising that the United States chose to do anything at all. Most of the landholdings in California were large, often amounting to hundreds of acres, and the total number of claims before the Commission amounted to a little over eight hundred. Any controversies over these small number of claims could have been settled in state courts. In fact, the most common controversies over landholding, issues of deed recordation and the like, would eventually enter the state court system after the large *Ranchos* were broken up through later sale. What then was Congress' rationale for the creation of the California Land Commission? As we shall see, the public reason was an abiding fear of fraud and graft in the Mexican grants. Fears that were based on largely imaginary beliefs.

The American desire to find fraud in the Mexican grants is easily found in government documents of the era. In 1860, after nearly 10 years of work, a report to Congress was prepared by the attorney general's office that outlined the work of the California Land Commission since its

inception in 1851. The report outlined the staggering amount of work that the commission had undertaken,

Under the act of 1851. . . eight hundred and three claims comprehending nineteen thousand one hundred and forty-eight square miles of territory were presented before the board of land commissioners, and nearly all of them were confirmed either by the board or by the district courts to which they were appealed.<sup>120</sup>

These lands encompassed much of the best land that California had in offer:

a very large portion of the best mineral and agricultural region in California, the ports, commercial points, sites for fortifications, lighthouses, and other national purposes, were covered by Mexican grants, real or fabricated. In all the territory conquered or purchased from Mexico there seemed to be not an island or place for a fort, a customhouse, hospital, or post office, but must be purchased upon his own terms from some private claimant under a pretended title from Alvarado, Micheltoarena, or Pio Pico. It was incredible that such grants could have been made by any government. But they are supported by such an array of testimony by Mexican Officials and other witnesses as to render defense hopeless, unless by some vigorous means thorough means investigation could be had, and proof obtained that would demonstrate the fraud.<sup>121</sup>

This sense of frustration is palpable throughout the report, almost as if it is unbelievable to the Attorney General that useful land could have possibly been owned or exploited during the Mexican period.

There are a few systemic reasons for this disbelief. An American arriving in California in 1850 would find the state largely empty. And the established pattern of settlement in the trans-Mississippi was for open land to be available for settlement at little or no cost. To a new arrival, the notion that the barren dry valleys and empty seacoast could be owned by one of the few individuals already living in the state, boggled the mind for two reasons. First, in the United States large landholding estates were rather uncommon. The eastern colonies were settled primarily along the seacoast and engaged in either village-level agriculture (New England and the Middle Colonies)

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<sup>120</sup> *The Private Land Claims of California* (A report to Congress by the Attorney General), F862.1 V4, The Bancroft Library, Berkeley California, 4.

<sup>121</sup> AG Report, 4.

or cash crop agriculture (the South). And none of the terrain they encountered in California was amenable to such use of the land. Second, the landholding and stewardship traditions of New Spain, and later Mexico, were vastly different from those found in the English colonies. From the time of the Spanish Conquest in the 1520's the Spanish had invested settlers with large tracts of land as a reward for settling. In the English model, individual settlers or small cooperative groups would travel to the edge of settled territory and attempt to extend the boundaries of the colony. This is in direct contrast with the more entrepreneurial system practiced in Spain and Mexico. Spanish and Mexican colonization rested on well-heeled individuals putting together large expeditions to win tracts of land and settle them. Essentially the Spanish and the Mexicans preferred to invest land in larger scale impresarios that would settle new lands with little financial and military aid from the home country. American imperialism often took the form of smaller holders striking out while depending on the national government for protection from other nations and hostile natives.

At the same time, it is possible that the timing of the Mexican grants was viewed with suspicion. Much of the land challenged before the commission was granted after 1835 immediately following the dissolution of the missions. And this land was granted to those who already owned large tracts of land. To an outside observer this would seem a brazen land grab by those with convenient ties to the government. The Attorney General's report makes note of the fact that many of those involved in granting were closely related to those who received grants.<sup>122</sup> To an American this self-dealing might have smacked of the inherited privilege that existed in the Europe their ancestors left for the new world. In America, they reasoned, political will demanded that things be done differently.

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<sup>122</sup> AG Report 4.

And unsurprisingly to those familiar with the tradition of booming real estate values in California over the past century, the American conquest of California fundamentally changed the value of land in California. But this change was perhaps not necessarily in the minds of American officials in the 1840's.

For *Californios*, all of these conflicting systems of land evaluation was a confusing, foreign quagmire. In the 1820's and 30's California was the backwater of a new revolutionary state. Their ancestors had arrived as colonists with little aid from Spain, and with the creation of Mexico that aid was even rarer. When the Mission system was disbanded, a large percentage of California's useable land would lie fallow if no one claimed it. As California faced almost no population pressure in the 1830s, it was physically about as far as one could get from both the eastern United States and Mexico City as a place could be. Other than those who already owned and maintained land in the region, there were few others with the means and desire to claim what was newly available.

It is also worth considering that the American's weren't entirely wrong in their assessment of Mexican California. For all the romance of the *Rancho*, Mexican and Spanish California were very stratified, closely held societies. A few families owned almost all of the land in the state. In addition, these families almost totally controlled the economy of California. The governors of California almost uniformly came from the ruling class of *Californios* and the land grants that were made after the dissolution of the missions went almost exclusively to members of California's great families. In addition, the *Ranchos* on which they lived were vast even by the standards of the southern United States, and those estates were thinly populated.

One must also consider that a different tradition of public service existed in California. Governing Mexican California was a somewhat thankless task with the colonial government

chronically under-funded and given few resources. One of the few compensations for service was the ability to ensure a favorable atmosphere for your business interests. While this may sound like simple corruption, it is instead a part of an alternative system of colonization that had existed in the Indies since the arrival of Columbus. The Spanish crown was uninterested in spending its own money to settle new land, instead it allowed private individuals a great deal of leeway in their ability to undertake military operations, found settlements, and deal with the indigenous peoples they would encounter. This opportunity was offered in return for the self-financing of colonial expeditions.

California in 1830, while 300 years removed from Cortes' expedition against the Aztecs, was the inheritor of the same tradition. The *Californios* who served as governor of Alta California were entitled to advance their interests as compensation for their service. The families that received land from the Missions were simply being rewarded for their long-term commitment to the success of California. To put things in more materialist terms, who else in California would be able to make any use of the land? California in the early nineteenth century was not a land of explosive growth. The kind of influx of humanity precipitated by the gold rush was unimaginable. Giving the Mission lands to those who offered the best opportunity to bring them back into production, and the best chance of enriching the colony, simply made good business sense.

The Americans' difficulty in accepting the Mexican grants is itself very strange, as the terms of Guadeloupe Hidalgo were unambiguous: the property of the *Californios* was legally protected. The United States might simply accept property ownership in California as it appeared the day they signed the treaty and be done with it. To be sure, the absorption of these new titles would have challenged some aspects of the American legal system, but in the face of the high-quality documentation that the *Californios* offered in support of their claims, this obstacle was

surmountable. Yet the Attorney General's report illustrates that the new state, which appeared largely empty to visiting Americans, was in fact inhabited by people with both a deep connection to the land, and well-documented title. This realization caused a great deal of consternation and frustration among the newly arrived American settlers, and their supporters and representatives in Congress. In order to better discover why this frustration occurred, a closer examination of the reasons for the creation of the California Land Act, and the underlying issues that existed in the United States at the time must be undertaken.

### CHAPTER 3. THE GENESIS OF THE CALIFORNIA LAND ACT

The California Land Act was the initiating political engine that transformed the former Mexican territory of Alta California into the United States' newest state. Yet historically, the act has taken a backseat to the broader and much more famous debate over the Compromise of 1850 that preceded it. To be fair, it should be viewed as an extension of that debate. Historians of Manifest Destiny have long seen the drive westward as a means to avoid the debates over slavery that by 1850 had begun to cripple the effectiveness of the Federal government.<sup>123</sup> Consequently, much of this discussion occurs at the broader level of national policy. Yet a close consideration of the California Land Act proffers the opportunity to discover just how this policy worked on a practical level. Additionally, it offers us the ability to determine how the U.S. government chose to act once given almost total free reign to create a new economic order in a new state.<sup>124</sup> In many

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<sup>123</sup> Anders Stephanson, *Manifest Destiny; American Expansion and the Empire of Right*, (New York: Hill and Wang, 1995). Reginald Horsman, *Race and Manifest Destiny; The Origins of American Racial Anglo-Saxonism*, (Cambridge: Harvard UP, 1981), Alexander Saxton, *The Rise and Fall of the White Republic*, (New York: Verso, 1990), William Earl Weeks, *Building the Continental Empire; American Expansion from the Revolution to the Civil War*, (New York; Ivar R Dee, 1997). Thomas R. Hietala, *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*, (Ithaca: Cornell UP, 1985).

<sup>124</sup> I think it is appropriate to say a brief word about the sources for this chapter from the outset. The discussion of the debates concerning this act are drawn from two primary sources, the Congressional Globe, which served as the reporting document for Congressional debate during the period in question, and the writings of senator Gwin himself (dictated to graduate students at the University of California). I am well aware that relying on Gwin for much of the more candid information concerning the debates raises the odd eyebrow. I think in this case it's not only necessary but serves our purposes far better than a strict reliance on secondary sources could possibly achieve. One of the crucial ways that this study differs from a traditional political history is that it is not an attempt to provide an accurate and balanced reference document to the debates that occurred over California during its first years of statehood. This is not a study of divisions in Washington during this period, nor is this study particularly interested in the views of Congress people outside of Gwin and Benton. This chapter is an attempt to craft something closer to a legislative history of the California Land Act as a legal document which might be utilized by a lawyer arguing the case. A great deal of practical legal history is less concerned with overall context, then it is with the actual intent of the legislators in crafting the statute and how they explained the statute to those voting on its passage. In this case the author and advocate for the California Land Act was none other than William Gwin. What this chapter serves as is an examination of both the motives and advocacy of the Act undertaken by the sole framer of the Act, namely Gwin. While the previous chapters provide good historical context to his thoughts, his thoughts are absolutely crucial to understand what the California Land Act was, and what his goals in its creation were. No other source could possibly achieve this. We start this chapter knowing that the California Land Act was enacted into law, what we are seeking to discover is what was that law intended to mean when it was placed before Congress, and what were the ultimate goals of its creator. To accomplish this, we have been gifted with a long form account created by the man responsible for the act,

ways, the primary drafter of the document, William Gwin. embodies the desire of the government. He was pitted against one of the most formidable legislators of the day in Thomas Hart Benton of Missouri. An examination of this debate will show that competing visions existed for land in California, and that those visions were directly tied to two different ideas of what landholding should look like in the state.

This chapter establishes a legislative history of the California Land Act in a unique way. One of the most difficult problems in the law and legal history is discerning just what exactly the authors of a law meant in their language and inferences. Indeed, it is almost an impossible task to determine what members of Congress imagined while voting for or against a particular piece of legislation. However, in this particular case we are offered an avenue into an atypical degree of insight. For Gwin not only left speeches in the Congressional record, but in the 1870s he authored a candid history of his own life with the help of graduate students at the University of California. This document has remained, largely unexamined, in the archives of that University to this day. This offers the ability to discern the mind of the Act's author while writing and working for the passage of the act. Certainly, the ultimate effects of the Act differed from Gwin's intent at its creation – no architect sees his imagination purely constructed – nevertheless we can discern the intellectual and political foundations drawn upon to formulate the law. This clearly demonstrates that while subsequent events would prove his vision false, William Gwin's goal in crafting the

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written only a few years after the act's passage. This source is absolutely invaluable in understanding the California Land Act, and should and will be examined at some length. I understand it is possible that Gwin is less than candid in his memoir. However, I feel this source is credible for a few reasons. First, Gwin's discussion of the land act in his memoir matches well with and elaborates on the statements he makes in Congress recorded in *the Congressional Globe*. Second, this "memoir" was not a published work, instead it was basically an interview by students at the University of California as part of an attempt to record and preserve California's past through interviewing important early Californians still living. Third, Gwin had all but retired from public life after the civil war and was not a hotly contested figure. While it is natural for a human being to want to portray themselves in a positive light, there is no indication that Gwin was attempting to change his position on the California Land Act, simply to offer more detail about his work.

California Land Act was to fundamentally transform landholding in the Golden State. He considered this nothing short of unlocking the economic potential of the new territory with an eye on both enriching the United States and establishing a base for further expansion across the Pacific. Due to highly evident biases and stubborn ignorance, Gwin is a decidedly imperfect source for accurately reporting the events of the era. With this in mind, the purpose of this chapter is not to rewrite the narrative history of the states' political formation, but instead to establish the goals of the act beyond those contained in the final law.

### **Gwin's Rise to Prominence**

Senator William McKendree Gwin took the same road to California shared by many of the restless and opportunistic young men settling the American west. Born in Tennessee in October 1805, Gwin grew up pursuing an ambitious education. He attended the University of Transylvania in Kentucky and went on to study both law and medicine. Choosing medicine over the law – which he never practiced – he worked for six years as a doctor and by his own account found great success.<sup>125</sup> His political career began in 1833 when the Jackson administration appointed him Marshal of Mississippi. Gwin served as marshal until the election of Benjamin Harrison drove him from office.

When gold fever overtook the nation in 1849, he immigrated to California and rose very quickly through the new government. Later that year, he became California's first United States Senator. Gwin wrote, with the distancing humility of a third-person narration, that he intended all along to become California's first senator.

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<sup>125</sup> Gwin 1. Gwin's manuscript was dictated to one of Bancroft's graduate students as part of a project to preserve California's past through the stories of its earliest prominent citizens. The manuscript is very lengthy and unpublished (written in the hand of its assembler) but Credited in the Bancroft's catalog as being produced by Gwin himself. Thus, passages from this text are often written in the third person.

Monday, General Taylor was inaugurated. . . Mr. Gwin returned from the Treasury Department where he was settling his accounts, met Senator Stephen A. Douglas in front of the hotel (Willard's) and while looking at the procession as it passed remarked that the next morning he intended to leave the city en route for California. . . and announced himself then as a candidate for the US Senator from California and that within a year from that time he would ask him to present his credentials as a Senator from the state of California. Judge Douglas received that announcement with surprise and astonishment but after some little hesitation replied that he believed that Mr. Gwin would succeed and cordially hoped he would.<sup>126</sup>

Gwin immediately set to work. Soon after landing in California, Gwin was appointed to the San Francisco Committee of Public Safety.<sup>127</sup> He parlayed this into an appointment to the convention in Monterey to form a state constitution. Gwin believed that the federal government had left California in a deplorable state. His rise from obscurity seems somewhat surprising to a modern audience, but in many ways, he is the exemplar of a new type of American making its mark on the nineteenth century.<sup>128</sup>

In the nineteenth century, particularly on the eve of statehood, power in California remained fluid. New technologies like the railroad, the steamship, and the telegraph linked the hinterlands with the eastern coastal centers of finance and power. In 1800 a lawyer was limited to practicing in a large eastern population center, but by the 1820's the backcountry was linked to the coast. With this contraction of distance, professionals could now prosper across the western states.<sup>129</sup> More importantly for men like Gwin, a man of limited means but great ambition could

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<sup>126</sup> Gwin 6. Gwin would share his voyage to California with Joe Hooker of Civil War Fame, and Jesse Benton – Fremont, wife of John Charles Fremont and daughter of Sen. Thomas Hart Benton.

<sup>127</sup> Gwin 7. The Committee was founded to combat an anti-American riot led by a gang known as the “hounds.” The “hounds” were eventually exiled from the county.

<sup>128</sup> Starr, *California*, loc. 1388, Kevin Starr offers a good discussion of Gwin's rise in his work, noting as well that, “California had need of Gwin's considerable political skills and rapport with the South, which held the veto on California's admission.”

<sup>129</sup> A good discussion of the rise of the inland professional class is found in Charles Sells's *The Market Revolution*, elsewhere cited in this work. For a good understanding of the technological impacts of the changing time see: Daniel Walker Howe, *What Hath God Wrought; The Transformation of America*, (London: Oxford, 2007).

move from the fairly crowded ranks of power in east, to an important and central role in newly opened territories.

He came to a territory with a military government that, following the Mexican War, largely ceased to function in any meaningful way. In the absence of its authority, California devolved into a loose group of largely independent local governments. Gwin laid the fault entirely with Washington. Thus far, the only federal official furnished to the new land was that of postmaster. Gwin and others in California sought to act where the Federal authority failed, creating a constitution and a territorial government. California convened a commission in Monterey to accomplish this goal on September 1, 1849. The commission membership included notable early California leaders like Gen. Vallejo, Gen. Sutter, and Pablo de la Guerra (among others).<sup>130</sup> Gwin wrote that the commission divided itself between the delegates appointed by long standing inhabitants of the state and the newcomers (who already outnumbered them).

They were afraid of the newcomers who formed a vast majority of the voting population. They looked upon them somewhat in the light of the Goths and the Vandals who had come to take possession of the country regardless of the rights of older inhabitants.<sup>131</sup>

Gwin felt this suspicion keenly, losing the vote for president of the Commission. He then found his place serving on the commission with Capt. Henry Halleck, then Secretary of State of California.<sup>132</sup> Still determined to shape the commission, Gwin insisted that he work closely with

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<sup>130</sup> Gwin 13-14. This group adopted a constitution that guaranteed new American and former Mexican residents of California (male) universal suffrage, and prohibited slavery.

<sup>131</sup> Gwin 8. These proceedings were also discussed at some length by William Henry Ellison in his *A Self Governing Dominion, California, 1849-1860*, (Berkeley: UC Press, 1978). Ellison relies primarily on the same source from Gwin cited directly in this dissertation. The California Constitution of 1849 is an understudied source, often appearing in larger discussions of slavery or other later events, a full-length study of the document would be a very good contribution to the legal history of the golden state.

<sup>132</sup> Gwin 13. Halleck seems to have been the intellectual force behind the drafting of the state constitution, basing the document on the State Constitution of New York. Starr provides a good overview of Halleck's contributions to the new state in *California*.

members of the *Californio* and Old Hand factions during the drafting of the territorial constitution and enjoyed a close working relationship with them.<sup>133</sup>

When a dispute began to arise in the convention that put the *Californios* at odds with the newer settlers, Gwin found his chance to make his mark. One of the problems that faced the new territory was the question of taxation. In this era before income tax one of the only realistic avenues for the government's collection of operating capital was land taxes. The *Californios*, who owned the vast majority of California's land refused to back any proposal that created a tax on their large holdings.<sup>134</sup> Gwin feared that this question would break up the Convention before it could enact a constitution. He brokered a compromise to preserve land taxes while giving nervous landowners a degree of autonomy. Control of said land taxes devolved to local entities, which were largely controlled by the landholders themselves. This proved acceptable to both the new settlers, the old hands, and their *Californio* allies.<sup>135</sup> By design, this transferred primary power from the new elected state government to local officials often beholden to larger landowners. Members of the convention hoped that this would serve as a check to the power of emerging population centers in the San Francisco Bay area and the goldfields of Sacramento. The Constitution was adopted with the settlement of these divisive matters and Gwin was elected Senator on the second ballot (Fremont was elected on the first.) Both were dispatched to Washington with the rest of the delegation to steer California's admission into the Union.<sup>136</sup> The drama of his own ambition aside, Gwin's account makes clear that even from its earliest inception, one of the primary focuses of governance in California was the management of the state's vast land resources.

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<sup>133</sup> Gwin 21. The Californio and Old Hand Factions were seen as the guardians of the interests of existing landowners.

<sup>134</sup> Gwin 28.

<sup>135</sup> Gwin 29.

<sup>136</sup> Gwin 32.

William Gwin's rise to power as one of California's first senators is a colorful story, but that should not mask an underlying truth. He went to Congress with a goal: to aid in the transformation of the new state. The purpose in examining Gwin's account of the 1849 convention is not to discover a broader truth about the deliberative body, but rather to better understand his self-determined identity in the new government of the state. Gwin places himself squarely on the side of the newcomers to the state, the men arriving in the goldfields with the hope of new opportunities. To achieve this end, Gwin viewed his role as one designed to counterbalance the influence the old hands had on his senatorial colleague Fremont. This framework serves to better illustrate the choices he made while in Congress, and motives at the heart of his construction of the California Land Act.

### **Representing New Interests in Washington**

Before all this, during his time in Congress, Gwin became a great friend and confidant of John C. Calhoun, who he was even earlier acquainted with from his time living in Mississippi.<sup>137</sup> Gwin recalled that as early as 1844, Calhoun had his sights set on San Francisco as "destined to be the New York of the Pacific."<sup>138</sup> Calhoun confided his belief that expansion into California was necessary to ensure commerce with Asia, a trade he predicted to be the cornerstone of the world-wide network of trade.<sup>139</sup> Indeed, Calhoun's advice was the reason for Gwin's immigration to

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<sup>137</sup> Gwin 3. This is echoed by Leonard Richards in *The California Gold Rush and the Coming of the Civil War*, (New York: Vintage Civil War Library, 2008). The friendship is also noted in Calhoun's papers. John C. Calhoun, Clyde N. Wilson, *The Papers of John C. Calhoun Volume 17* (Columbia: University of South Carolina Press, 1959, 526.

<sup>138</sup> Gwin 4. Arthur Quinn notes in *The Rivals; William Gwin, David Broderick and the Birth of California*, (Lincoln: U. of Nebraska Press, 1997), 64. That Calhoun's views of California were shaped by communications he had received from Thomas O. Larkin, the American consul general.

<sup>139</sup> Gwin 4. Quinn, 15, notes that Calhoun had long been a steadfast advocate of the establishment of a trading port at San Francisco as a cornerstone of American expansion.

California. However, his return to Washington proved far from a joyous reunion.<sup>140</sup> When the California delegation arrived at Calhoun's home in early 1850 to pay a courtesy visit, they were informed that the Senator was too unhealthy to receive them. When upon learning William Gwin was among them, he invited in his old friend to speak privately. Gwin found Calhoun both gravely ill and greatly dismayed by the admission of California into the Union. Calhoun believed that California's admission

would destroy the equilibrium between the North and the South in the senate, the only safeguard the south had against the numerical superiority of the North, and that the equilibrium once destroyed, the agitation of the slave question would become more intense, and inevitably result in Civil War, and the destruction of the south.<sup>141</sup>

Thus, Gwin's arrival in Washington placed him squarely in the middle of the century's great question for the American experiment: Can the United States balance its unbounded ambition with the deep sectional divisions that had already begun to fracture the settled east? Gwin personified the hope that westward expansion would overcome the political perils of slavery and unite the nation in a vision focused on growth and trade. Significantly as a southerner, Gwin put aside any concerns about the survival of slavery, coming to Washington with the hope of refocusing the political debate on the great opportunities that existed in his new state. His surprise at the state of Calhoun and the political climate in Washington shows how out-of-step his hopes were with the political realities along the Potomac.

Gwin was also received by the other pillar of early nineteenth-century federal politics: Henry Clay. Upon returning to Washington from New York (where he was making a brief visit) by an urgent summons, he met with the elder statesman. Clay outlined a pressing problem. As

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<sup>140</sup> Gwin 34.

<sup>141</sup> Gwin 33.

Gwin well knew (from his meeting with Calhoun and other southern connections) the South united in opposition to the admission of California into the Union. Clay saw this opposition as a direct threat to the stability of the nation. He informed Gwin that he intended, “to propose a compromise of all the questions on the subject of slavery then agitating the country.”<sup>142</sup> Gwin, “rather to the surprise of Mr. Clay, promptly acquiesced in his views and agreed with Mr. Clay that all these views had better be settled at once.” Gwin also met with President Taylor, whom he contends was violently opposed to the compromise. In fact, Gwin credited the sudden expiration of the president as the only thing that prevented the debate from causing civil war.<sup>143</sup> This trio of meetings with Calhoun, Clay, and Taylor show that the focus, at least initially, in Washington was centered on the mathematical effect on American representation that California might have, rather than the lucrative possibilities (in trade access and mineral and agricultural exploitation) that the incorporation of the new state presented. Yet, in the face of these now evident pressures, Gwin remained undeterred.

After the passage of the compromise of 1850, and the admission of California as a state (and the seating of her Congressional delegation), one of the first issues that the Senate sought to address was the controversy over Mexican and Spanish land claims. Gwin wrote that Fremont, having drawn the “short” senate term in order that the new States’ Senators not be both elected to the same term, agreed to take the lead in legislation to better aid his re-election prospects.<sup>144</sup> This unity of purpose ended there. Gwin wrote that Fremont immediately operated as the representative of the large landholding interests in California.<sup>145</sup> Gwin saw two principle reasons for this. Firstly,

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<sup>142</sup> Gwin 36. Quinn notes the close relationship between Clay and Gwin writing, “Gwin and Clay were brothers under the skin, or perhaps nephew and uncle, for Gwin was an aspiring Clay in training, He would be to Clay what Jeff Davis was to Calhoun.” Pg. 85. On the same page Quinn also confirms the fact that Gwin was summoned to discuss the current state of politics by Clay himself.

<sup>143</sup> Gwin 37.

<sup>144</sup> Gwin 41.

<sup>145</sup> Gwin 42.

unlike Gwin, Fremont was one of the owners of a Mexican land grant (the vast Mariposa grant in the center of the state). In fact, Fremont owned what was commonly supposed to be among the most valuable of all California land grants, “estimated all the way from one hundred thousand to one hundred million dollars in value.”<sup>146</sup> Still, Gwin did not believe this was the primary reason for Fremont’s advocacy of a liberal policy toward the validation of land grants. Gwin considered it pure favoritism. His sensitivity to the needs of grant holders was mostly due to their support in his election to the senate.<sup>147</sup>

[Fremont] was selected by the native and older portion of the inhabitants of California as the special representative of their landed interests in the Congress of the United States, while Mr. Gwin was looked upon as the representative of the newcomers, who had no land.”<sup>148</sup> This is somewhat unsurprising, especially considering Fremont’s innate desire to cast himself in an aristocratic light, and Gwin’s more Jacksonian image.

Gwin details that immediately upon the seating of California’s delegation, debate over the land claims issue began. This first session of debate saw little action and a great deal of sharply divided opinion. This became particularly clear as Fremont, and his father-in-law Thomas Hart Benton of Missouri, argued in favor of the claimants.<sup>149</sup> Gwin recalled that Benton was so vigorous in his defense of the claimants that he called for the outright endorsement of the land claims without further delay.<sup>150</sup> To set this stage, earlier in the session a dispute broke out between Benton and Sen. Henry Foote of Mississippi on the Senate floor which “which resulted in Benton’s advancing upon Foote with the object of assaulting him, and Footes’ retreating and drawing a pistol in self-

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<sup>146</sup> Gwin 42.

<sup>147</sup> Gwin 42. It is worth remembering that during this period Senators were not popularly elected, and powerful men like the land grant holders could maintain a great deal of power in State government despite comparatively small numbers.

<sup>148</sup> Gwin 42.

<sup>149</sup> A broader discussion of the relationship between Fremont and Benton can be found in David Roberts’s, *A Newer World; Kit Carson, John Charles Fremont, and the Claiming of the American West*, (New York: Simon and Schuster, 2002). Roberts details the rather scandalous details of Fremont’s courtship of Benton’s daughter. Jessie Benton was eleven years the junior of Fremont, then only fifteen.

<sup>150</sup> Gwin 43.

defense.”<sup>151</sup> This ill feeling, which began in the debate over the Compromise of 1850, spilled over into the debate concerning land grants. A great scene took place on the senate floor with both Foote and Benton verbally savaging each other. Fearing a repeat of the previous ugliness, Senator Daniel Dickenson of New York made a motion that stopped debate. This proved ineffective. As Gwin reports,

While the galleries were being cleared, Col. Benton was very violent in his language in regard to what Foote had said. . . Mr. Fremont, the son-in-law of Col. Benton, met Mr. Foote in the anteroom, between the senate chamber and the Vice Presidents room, and denounced his remarks as ungentlemanly and insulting to Col. Benton as well as himself. Foote struck him once, and the blow was returned when Sen. Mangrum of North Carolina and Clark of Rhode Island, men of powerful physique, who happened to be coming from the Vice President’s room to the Senate Chambers at the moment this collision occurred, seized the belligerents. . . and forcibly separated them. The result was a challenge from Fremont to Foote, but the matter was amicably arranged by friends of both parties.<sup>152</sup>

Years later this event was hailed as the only time a gun was actually drawn in Congress.<sup>153</sup> All of this occurred during the latter part of the Congressional session, and this dispute all but insured that the matter of California land titles would not be addressed during the rapidly closing session.

This event gives insight to the context of the creation of the California Land Act and the context in which this debate took place. The political climate of Washington in 1850 was deeply divided. The Civil War and its attendant causes are one of the most studied events in American history, but what is less evident is the impact that the politically poisonous issue of slavery had on the more mundane business of Congress. On its face, The California Land Act had nothing to do

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<sup>151</sup> Gwin 43. This event is noted by Ben Wynne in *The Man Who Punched Jefferson Davis; The Political Life of Henry S. Foote*, (Baton Rouge: LSU Press, 2018), 152. Wynne records Benton’s response as, “Benton ripped open his jacket and shirt, exposing his chest, and began bellowing at the top of his lungs, ‘Stand out of the way. I have no pistols. . . stand out of the way and let the assassin fire!’” Lest we think Benton a pacifist we should remember that he had once wounded Andrew Jackson in a duel and was as much a product of the rough and tumble politics of the early republic as Foote.

<sup>152</sup> Gwin 43-44.

<sup>153</sup> Los Angeles Herald, Volume 36, Number 108, 17 Jan 1909, CDNC

with slavery. For by the time the bill was eventually debated, the compromise of 1850 was law. However, the debate over the compromise, and the sectionalism in Congress, was so deeply embedded that it almost resulted in a gun battle in the senate anterooms. The Congressional alliances and coalitions of the 1850's had less to do with traditional party lines than regional association and a perceived allegiance to either slavery or its abolition. It is no accident that the eventual debate would be framed around the leadership of a southerner with long standing ties to both pro-slavery factions and centrist compromise Congressmen (Gwin) and the father-in-law of California's senior senator John Charles Fremont, a noted anti-slavery advocate who would eventually run for President on such a platform. This was Thomas Hart Benton, an opponent of the southern faction during the compromise of 1850.

When Congress reconvened, Gwin found himself as the sole representative of California in the senate, as Fremont did not arrive to take his seat. Gwin viewed the land grants as "a subject of the greatest consequence, requiring of speedy legislation, as there was constant danger of collision between the owners of Mexican grants and settlers on what the latter deemed to be public lands."<sup>154</sup> In support of his bill he read a note to the Senate, which he claimed to have received from a constituent:

It appears by my last advices from Sacramento that the parties there claiming under Captain Sutter have not only succeeded in obtaining authority from the courts to eject a settler from the house which his own hands have built upon what he believes to be the public domain, but have also got judgment for a considerable amount as back rent and damages, for the alleged unlawful withholding of the premises against the rightful owner as assignees from Captain Sutter. But in addition to this, the parties who became bail for the settler. . . are now required to pay the full amount of said bail (say fifteen hundred dollars) as indemnity to the settler claimant, for alleged depreciation of the value of the property. . . during the trial.<sup>155</sup>

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<sup>154</sup> Gwin 46. It is no wonder that he was particularly concerned as he viewed himself as the representative of these self-same settler interests.

<sup>155</sup> Gwin 49.

This letter goes to the heart of Gwin's goals in presenting the bill to the senate. It details as tragic a tale as a nineteenth-century American could contemplate. A hardy yeoman pioneer is thrown off his land by the assignee of a notorious land speculator. Then, the good people of the community, who posted the trial bond for the settler, are ruined by an unconscionable claim for lost income. This tragic tale of woe took place in no less an important locale than the sensational gold fields of Sacramento. The letter (if it did in fact exist) goes to the heart of the fears caused by the existence of the pendant land claims: that the vast project of settling and exploiting California through the colonization of the land by yeoman farmers and small landholders from the eastern United States would be suborned by landed interests already in California. For these interests desired no less than the occupation and control of all valuable land in the new state. It is also noteworthy that the letter and its implications debuted in the absence of California's senior senator, Fremont, owner of one of the larger Mexican grants, and commonly viewed in California as the appointed champion of the *Californios* and their heirs. The Senate, largely ignorant of the specific nature of competition over land in California, was presented with one well-curated vision of the situation in the state.

### **The Position of the Settler/Miner**

Gwin insisted that the presentation of this inflammatory anecdote to Congress was not an attempt to sway the passions of his fellow senators, but to draw their attention to the necessity of action by Congress into the land patenting system.<sup>156</sup> While this stated motivation may seem a little suspicious, it does point to one issue that is commonly overlooked in the discussion of California's admission to the Union. Unlike most additions to the Union before 1849, California was not raw land. The vast lands of the Louisiana Purchase and the swampy everglades of Florida

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<sup>156</sup> Gwin 49.

contained few men that the United States would consider citizens.<sup>157</sup> Perhaps the most convenient analogies to California are found in the American annexation of Texas and Louisiana. Yet any superficial resemblance is coincidental. Texas, a land settled by Spain and Mexico in a manner very similar to its colonial activities in California, was by the time of its incorporation into the United States a very different prospect from California. From 1819 to 1836 Texas had absorbed an almost ceaseless stream of immigrants from the American South. These men (notably political leaders like Sam Houston) brought American institutions with them, forming a state government fundamentally different from other parts of Mexico. Including, most critically, slave ownership which had been prohibited by the Mexican Constitution of 1821). In addition, these settlers, united with Hispanic residents disillusioned with the chaos that marked Mexican politics of the 1820s and 30s, rebelled and defeated the Mexican government with minimal direct support from the American Government. While the Republic of Texas was fairly short lived, it had the benefit of delivering to the United States a ready-made state, having already determined questions of land ownership, and put in place an American-style political and judicial system.

Louisiana (the State, not the larger purchase lands) and New Orleans mark an even more singular case of annexation into the United States. While Texas and California were large tracts of lightly settled land, Louisiana was a thriving French (and Spanish) colony for hundreds of years.<sup>158</sup> In addition, while American settlers did enter and live in Louisiana, they never came to outnumber (or even achieve parity) with the native Creole and Cajun populations. Louisiana was also a slave economy, with its agriculture consolidated into a large-scale plantation system. Small yeoman

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<sup>157</sup> Rightly or wrongly the United States Government's Indian policy in the antebellum period had little in common with its treatment of Anglo settlers. In fact, one such case that emerged in Georgia regarding the title to native lands and the state's ability to sell those lands resulted in a dire schism between the Marshall Court and President Jackson. *Worcester v. Georgia*, 31 U.S. 515 (1832)

<sup>158</sup> For a good overview of colonial life in Louisiana see: John Lowe, *Louisiana Culture from the Colonial Era to Katrina*, (Baton Rouge: LSU Press, 2008), Shannon Lee Dawdy, *Building the Devils Empire; French Colonial New Orleans*, (Chicago: U of Chicago Press, 2008).

enterprises were hampered by an exceptionally harsh climate. And while Louisiana had an entrenched system of landholding outside of the American norm, it also had a fully functional courts system that decided local land controversies.

Even more so, Louisiana stands apart as the main goal of its annexation was not expansion, but access. In the early nineteenth century, the main mode of transport was water borne. For farmers and producers of goods in the vast American interior this meant riverine transport. Steamships remained expensive and rare until the 1830's and most goods traveled down the Missouri and Mississippi rivers by timber rafts.

They were then broken up and sold along with the goods they carried when they arrived in New Orleans. Prior to American acquisition of New Orleans, American goods were subject to taxation upon entry into Louisiana, and subject to the political whims of the colony's Spanish and French owners. As most of the goods were destined for the growing cities along America's eastern seaboard, shipment between two locations in the United States required export to another nation, considered an unreasonable expense. The goal of the acquisition of Louisiana was not to allow economic exploitation of the colony itself, but to use the port of New Orleans as a conduit to facilitate the exploitation of the vast American interior, an effort that succeeded with stunning rapidity.

Of these three examples, Louisiana was perhaps most successful in retaining its colonial institutions. The state to this day retains a political structure that mirrors much of colonial rule, and a legal system that adopts many of the principles of the Code Napoleon and Roman Civil Law, concepts at best tangentially influential on broader American common law.

In the end, these annexations offer mostly superficial points of comparison with California. For there is one critical way that California differed from these other former Spanish possessions.

Namely, the precarious nature of its population. Simply put, the demographics of California in 1849 were in a state of flux virtually unique in American history. It is no accident that Gwin's plea for redress of land claims used the Sutter lands in the Sacramento Valley as an example of the problems that plagued the new state. The discovery of gold near Sutter's Mill on the American River created the population pressures that brought the selfsame need for Congressional action. For while many among this rush of people pouring into the state came from the eastern cities of the United States, this body of prospective miners included substantial populations of Europeans, South Americans, and Chinese. This influx created a large and diverse population, but one virtually without institutions.

California's history is replete with stories of the storm of growth that broke upon the heretofore sleepy colony. In San Francisco, the small port which became the destination for incoming miners, it became almost impossible to get a ship out of the area. The crews and the officers of these ships often deserted, leaving their vessels to rot at their moorings<sup>159</sup>. In the gold fields, men lived in tents for months on end, without proper food, clean water, or sanitation. Gold fever was such that men arrived in California with no mining experience, and no real notion of how or where to find gold, just a simple desire to carve out a fortune from this rich land.

Gwin's cites the Sacramento legal action as a local decision undertaken by the City of Sacramento under the guise of a minor boundary dispute or an action to eject trespassers. Pointedly, it does not refer to the larger issues at stake in resolving the California land grants. Lack of federal action would insure that issues relating to American treaty obligations, the fundamental right of property ownership, and the settlement policy of a nation would be decided in courts barely a year

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<sup>159</sup> *National Geographic* June 2, 2017. Accessed Online. There is a great deal of information about this fact available. In fact, as detailed by this article, the San Francisco Maritime National Historical Park commissioned its archeologists to create a map all of the wrecks crowded into what is today the financial district.

old, and under a body of law with no clear contours. Tellingly, Gwin's one previous request to the senate was the appointment of a federal district court judge to adjudicate litigation in the new state, a need that had existed for almost a year.<sup>160</sup> In 1849 the nearest federal court would have been found in Texas, and it is unclear if that court even had California as part of its portfolio. Land claimants and settlers in 1849 literally had no option aside from vigilante action and local government to resolve their disputes over land issues.

The oldest land grants dated from the time of Spanish rule, but most of the grants in question were made after 1821 during the Mexican period with the majority originating in the 1830's. During this period the territorial governor was vested with the power to grant unoccupied lands. These grants had become a major issue in California during the Mexican period because after the dissolution of the Missions in 1833, a great deal of California's best agricultural land was up for grabs.<sup>161</sup> The distribution of these lands created a great deal of disquiet among Americans newly arrived in the territory. It was assumed by all parties that the earlier, more formal, Spanish grants were sacrosanct. It was upon these later Mexican grants that the anxieties of Americans focused. Americans feared that the great *Rancho* families of the territory had used their position to plunder the land reserves of the colony, and the lack of colonial oversight allowed them to further consolidate their already vast holdings.

In 1850, William Carey Jones was appointed by the Department of the Interior to go to California as its special agent and investigate these existing land titles. He prepared a report published by the Department, the contents of which were heavily cited throughout the debates concerning the California Land Act. He examined both the existing condition of land titles in the

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<sup>160</sup> Gwin 47.

<sup>161</sup> David Weber *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico*, (Albuquerque, UNM Press 1982).

new state and the process by which those land titles were initially acquired. He found that the procedure for procuring a grant required that applicant first to petition the governor for some land, which the governor would then grant, and then it would be sent to the legislature in Mexico City for ratification.<sup>162</sup> In theory, the land was surveyed as a part of this process, but in practice no actual surveys were conducted in Mexican California (or Spanish California for that matter). The grants were almost always ratified by the legislature with little evaluation of its contents and became binding instruments.<sup>163</sup>

However, after the initial notice of approval and the granting of the document from the governor, few of these grants were recorded. Most lands were understood in meets and bounds descriptions that used local landmarks. Jones found that “a grant by the territorial governor. . . constituted a valid title, and with the approbation of the departmental assembly a perfect one.”<sup>164</sup> This question of the validity of title would be a vexatious one, even though the governmental agent charged with determining the nature of California property ownership had no doubts about its veracity. Much of this difficulty, as Jones noted, arose from the complex and unfamiliar nature of the titles in the Mexican period. This lack of clarity regarding the titles in California amplified an already difficult situation. Without consistent understanding of where the *Ranchos* were, and what the boundaries of their lands constituted, it was a virtual inevitability that disputes would arise between landowners and settlers.

One need simply to consider the issue in the terms of Gwin’s example. A new settler to the state would operate under a nineteenth-century understanding of land settlement. Whereas upon seeing empty land on which he sought to live, a modern American might seek out a real estate

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<sup>162</sup> William Carey Jones, *Report of the Secretary of the Interior communicating A copy of the Report of William Carey Jones, Special agent to examine land titles in California*, Sen. Ex. Docs., 31 Cong., 2 Sess., Vol. 3, Doc. 18, 1850, 4.

<sup>163</sup> William Carey Jones, 5.

<sup>164</sup> Jones, 26.

agent and attempt to purchase the land. A new immigrant to California would assume the land vacant and thus owned by the United States government in public domain, and therefore available for settlement. This was the case in the Louisiana Purchase territory, and in places like Kentucky, Tennessee, Ohio and Western New York for their ancestors. The most legally-minded among the settlers could look to local archives or registrars for an indication of available land, but this would have been of little help. As the Jones report indicates, it was uncommon for Mexican land grants to be recorded, and even if they were, the descriptions of land boundaries were vague and dependent on a degree of local knowledge that a newcomer would almost certainly lack. A settler saw land, enthusiastically assumed – often erroneously – its availability, and then struggled at the absence of familiar purchasing mechanisms to realize his vision of settlement.

The idea of a unified parcel map (rare even in the eastern United States at the time) was years ahead. Still, maps of the land grants did exist. Called *disenos*, these maps commonly accompanied the original grants from the Mexican government. However, it was uncommon for these maps to be available outside the hands of the recipient families. Often kept secure along with the original granting documents, these were not available to prospective settlers inquiring about desired properties. Furthermore, these maps rarely showed exact boundaries of claims, much less illustrated property lines between grants, town lands, or unowned areas.

Thus, the savvy settler of 1849 was left with two options. First, he could consult local landowners and ask them nicely about the boundaries of their land, which they had no incentive to give him. Secondly, he could just attempt to find an out-of-the-way place suiting his needs and hope that this land was available. It is clear from the necessity of settling land claims that many settlers took the second route more often than the first. In addition, in claims like the one on Sutter's grant, many so-called "settlers" were in fact miners seeking to extract gold from the land, without

much desire for long term development. Thus, further decreasing the incentive to negotiate their claims with local Rancheros.

### **The Burden of Land Ownership**

From the very beginning, Gwin framed the debate over California land claims with these difficulties of the incoming settlers and miners in mind. And yet it is just as easy to imagine the opposing, and persuasive, argument held by a landowner like Fremont. The United States in 1850, with most of the men in the senate chamber landowners with extensive holdings, was not given to allow issues of property ownership to rest in anarchy. If an individual or a family had begun to squat on their land, the legal means to seek immediate ejection were evident and certain. However, by immediately framing the debate in the context of American settlers battling against foreign courts and landowners, Gwin subverted this by establishing an emotional connection between the immigrants to California and the wealthy eastern landowners sitting in Washington.

The bill to settle the California land claims was brought before the senate for a second time in December of 1850. Following Gwin's proposal accompanied by the Sacramento note, the senate began debate on the issue. At this point, the opposition to Gwin's designs on California's land started to solidify. Thomas Hart Benton, a powerful senator from Missouri, and fierce proponent of westward expansion rose in opposition to Gwin's bill. He argued, "the importance of the bill requires that we should have a full senate – I shall be able to show that the effect of the bill will be to violate our treaty with Mexico, to violate the laws of nations, and to despoil the inhabitants of California of their lands."<sup>165</sup> Benton was particularly concerned that holiday left the senate at half

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<sup>165</sup> Gwin 48.

capacity, and he feared that without more allies he might not be able to counter Gwin's vision for the land claims. The bill was ultimately postponed until after the New Year.<sup>166</sup>

On January 3<sup>rd</sup> the bill proposed by Senator Gwin again came before the consideration of Congress. Gwin advocated an extensive extrajudicial system of ratifying land claims. Under his proposal, the government would create a commission comprised of three commissioners to hear each land claim. He specified that his would not be limited solely to claims in controversy, rather it insisted that all claims to property dating from the Mexican period were to be brought before the board to be ratified. Once they arrived before the board, the format of presentation would proceed like that of a trial. The petitioner would call witnesses to testify (under oath) as to their knowledge of the matter at hand. Petitioners could present documentary evidence, often in the form of wills or deeds attesting to their ownership. The commission provided for a secretary that spoke Spanish, and an agent of the U.S. Government – a lawyer – to represent the Government's interests in all proceedings. The decisions of the committee were appealable to the federal courts. Gwin proposed that such proceedings be open for a period of seven years, meaning that owners could seek the approval of the commission at any point during that period. This model favored the interests of the new settlers as it provided a short window of time for the existing landholders to ratify their claims. After seven years, land not accounted for (during those seven years) would be open to settlement. Further, by forcing all landowners to appear before the commission, a unified record and accounting of all the property held by these large grants would be created. This was crucial because it provided individuals arriving in the state a map of available lands. It allowed those who arrived in the state hoping to purchase a part of one of the Mexican grants the security of knowing that the seller of the interest actually possessed of the land up for sale. While this ratification of title might

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<sup>166</sup> Gwin 49.

have increased the value of the *Californios* holdings, this would not outweigh the costs and risks associated with complying with Gwin's plan.

Thomas Hart Benton offered an opposing process. He proposed that Congress authorize the creation of a recorder to be vested with the power to record existing title. While assisted by clerks, this recorder would conduct business in a more informal setting wherein petitioners would present their documents to be recorded privately. The recorder would then judge the validity of the claim. If approved, no further action was taken. If rejected, the petitioner had no recourse and consequently lost any claim to the land. This process authorized no appeal and required no oversight of the decisions of the recorder.

Unexpectedly, the time to record a deed was limited to three years and any owners who missed that window would have been left without any recourse. While this lack of appeal might seem disadvantageous to the *Californio* property owners, Benton's proposal would in fact have been quite helpful to their interests. The informal and speedy nature of the process would have ameliorated one of the most daunting problems that faced the *Californios*: the cost of complying with a complicated legalistic process. Benton's plan did not even specify a need for representation. As most of the *Californios* possessed fairly good documentation of their claims to their land, under this procedure, they faced little difficulty in convincing a recorder of their veracity. And finally, in three years from the beginning of this process, the cash poor *Californios* would have good, reliable title to aid them in selling portions of their vast estates insuring liquidity.

## **The Debate**

Perhaps the most notable thing shared by Gwin's and Benton's two proposed solutions is their novelty. Commissions had been authorized in previous instances of the incorporation of

foreign lands into the United States, but these were limited in scope and mostly created to resolve technical difficulties and aid in the settlement of disputes between property holders. All other disputes were simply given over to local courts (both federal and state) to decide the validity of claims. American legal history is replete with famous instances of land claims gone wrong, whose prosecution led to farther reaching court cases. In fact two of Justice Marshall's most impactful cases, Cherokee Nation v. Georgia and Worcester v. Georgia were directly concerned with the ownership of land obtained by treaty and the ability of states and the United States government to dispose of those lands to settlers.<sup>167</sup> Tellingly, the simple solution of allowing California courts to decide California claims – following the paths scouted by these earlier precedents – was not proposed. In the absence of other likely motivating factors, it is possible that a new direction was determined due to the pressure exerted by the influx of Americans following the discovery of California's gold. For while other lands (like Florida and Louisiana) were settled after the beginning of the American period, neither had the massive pressure for land development that the gold rush created in California. Still, it is more likely that this was not contemplated simply because California did not have a preexisting system of internal courts large enough to immediately undertake the work of parsing out the claims. As evidenced by the Sutter note that Gwin presents to the Senate, California in 1850 was a wild place outside of the old Spanish pueblos. Setting up a comprehensive system of state courts would take time, the very commodity that the Senate did not possess. Supplementing this practical desire for efficiency and structure, it is also possible that the federal government simply wanted to preserve federal influence over the appropriation of lands obtained by treaty with the United States. This makes sense as it reflects the spirit of John Marshall's decisions in the Cherokee cases. In this light, the devolution of the power to

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<sup>167</sup> Cherokee Nation v. Georgia, 30 U.S. 1 (1831), Worcester v. Georgia, 31 U.S. 515 (1832).

administrate the results of Guadeloupe Hidalgo to the new state of California was a potential assault on federalism just at a time when the southern states were agitating for more control over local laws.

The two proposed solutions truly differed regarding the degree of the finality of the commission's decisions. Gwin believed that the decisions of the land commission should be appealable to the Supreme Court. Benton disagreed, "He [Benton] said that the litigation would be very expensive to the land claimants, and the delay might be ruinous to their interests."<sup>168</sup> Gwin countered that "the vast area of the land claims, covering the most valuable portion of the state, most of which were inchoate, made it dangerous to have any other tribunal to decide finally upon the validity of these claims, and that an inferior tribunal might be tampered with, and that fraudulent claims on a gigantic scale were liable to be confirmed."<sup>169</sup> This response is a tad contradictory: on the one hand Gwin acknowledges that most of the productive areas of the state fall under the land claims, but on the other hand he cautions against the specter of fraudulent claims. He implies that these hypothetical fraudulent claimants were inevitably the *Californios*, the owners of these "inchoate" claims. At the same time by defining most California's land claims as inchoate, he renders all claims as something less than complete. With this, he deems the claims to be unfinished following the rationale that they had yet to be processed through the vetting system that he proposed. Interestingly Gwin claims to fear the possibility of the corruption of the very mechanism for processing the claims that he is advocating. His acquaintance with the power structure of California when he attended the state commission at Monterey convinced him of the possibility that the *Californios* and their allies amongst the old hands might yet retain enough power to sway the proceedings in the state.

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<sup>168</sup> Gwin 49.

<sup>169</sup> Gwin 51.

This is a curious position to consider from a modern perspective. Most modern American legal procedures feature the possibility of appeal, and the fear of misconduct by lawyers, judges, and witnesses is a commonly held concern. Benton sought to avoid this with proposed finality to the Commissions judgement. He knew that for the owners of the land claims, despite doing nothing other than residing on their land, an appeals process would ensure that the commission or Benton's recorder was simply the first stop in a long series of legal proceedings required to sustain good title to the land. On an even more utilitarian level, finality also undercuts the need to go to the expense and bother of setting up an entire new commission. Under Gwin's plan, the commission serves as just the opening salvo in a long process that could last years. Perhaps Gwin's road map for the process did not form a necessarily cohesive and logical system, but it did outline a complicated undertaking designed to extract the maximum amount of land with the minimum amount of governmental action.

To Gwin's desired end, his plan flips the burden of proof traditionally characterized in American court proceedings. Generally, with the possible exception of an action to quiet title<sup>170</sup>, the owner of a piece of land, who occupies the real property in question and possesses a valid deed to that land, need not bring an action against the government to prove their ownership of that land. Rather, any challenger needed to prove that the owner's title was invalid, and they were unlawfully in possession of that land. In the case of Gwin's proposal, that burden belonged to the grant owner. In a reverse of the traditional model, if unable to establish ownership, the land defaulted to the government.

Gwin began his defense of his bill with a plea to the temporal nature of the subject matter.

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<sup>170</sup> A quiet title is an equitable action to rejuvenate a land title with possible flaws.

We are left with the claims hanging over us, like the sword of Damocles, to fall perhaps when least expected, upon the unsuspecting settler or occupant, who by his labor and industry may have given value to the land for which he had reason to suppose he could get a land title from his government.”<sup>171</sup>

This brief statement meant more as a plaintive opening than a true argument reveals a good deal about Gwin’s perspective on land in California. In this case, the official charge of Congress was to find a way to respect the possessions of the *Californios* as mandated by the Treaty of Guadalupe Hidalgo. Circumventing this, the victim of Congress’s inaction in Gwin’s speech is not an owner, but a settler or occupant. Compounding this, these claimants were not necessarily worried that land they had purchased would be repossessed by the new government, but that the land they improved and gave value to would be taken by some individual with a title claim to it. As evidenced from the very outset of his argument, Gwin’s aims go far beyond a desire to respect existing title. He focused directly on the role that new immigrants to California would play in the development of the state.

Gwin further echoed this sentiment by stating, “If the Spanish and Mexican towns [the grants of land given by the Spanish and Mexican governments to the cities and towns of Alta California ] are to enjoy the benefits of this immense donation, give it also to the American towns, the inhabitants of which are intrepid emigrants, who, by their labor and enterprise, have made California the wonder of the age.”<sup>172</sup>. Gwin’s primary concern was the rights of recent emigrants to the state (like himself) who are bent on transforming California through cultivation and industry. In fact, his defense starts with an appeal to the notion of basic fairness. He contends that Guadeloupe Hidalgo was too generous to the *Californios*, and the land claims are an opportunity

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<sup>171</sup> Speech by Senator Gwin, Appendix to The Congressional Globe, 31<sup>st</sup> Congress, Session 2, Vol. 2, 1851.130.

<sup>172</sup> Globe, 130.

to rebalance the scales in favor of the newly arrived emigrants to the young state. He creates a legal framework for an adversarial dichotomy between old and new, and domestic and foreign.

Gwin also referenced the earlier colonial period in order to clear up an often-misunderstood aspect of California history. Most of the land claims targeted were not Spanish land claims in origin. Even today most Californians (even those of legal or historical profession) refer to the land grants globally as “Spanish” land grants. This is motivated perhaps by a desire to conjure images of an idealized colonial past, or from simple ignorance owing to linguistic difference. Regardless, this phrasing dates from the period coinciding with the California Land Act. Gwin argued before the senate,

These Spanish grants for which the senator pleads so beguilingly; and what are they? Pueblo and Mission lots; privileges of grazing and cutting wood. Not a single large contested land claim in California, so far as I have been able to ascertain ever emanated from the government of Spain.<sup>173</sup>

Gwin was, in large, correct. California during the Spanish period was dominated by coastal towns and missions. By the time of the Mexican War of Independence the mission system was already dissolved, and the vast lands owned by these institutions confiscated. An examination of the commission’s later work reveals that it is quite rare for Spanish claims, usually smaller disputes over land holding in the pueblos of San Diego, Los Angeles or San Francisco, to come before the commission. Indeed, most of these pueblos had functioning local magisterial systems to settle such disputes.

Instead the vast majority of the disputes to arise concerned the grants made during the period when California was controlled by Mexico (1821- 1848.) These grants differed from the original Spanish grants in several key ways. Benton was correct in his assertion that the Spanish

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<sup>173</sup> Gwin 54-55.

grantees were enticed to immigrate to California with the promise of land as a reward. This strategy was common throughout the Spanish Empire, employed even in its first outposts in the Caribbean. The Mexican grants were offered to citizens differently. Instead of an attempt to entice new settlers, the Mexican grants sought to encourage existing settler families to expand their hold over the territory, expanding their ranching enterprises to make California more profitable. While a small number of grants may have been given to newly arrived settlers, the overall goal of the Mexican state was economic not demographic expansion. Additionally, the government sought to dispose of the Mission lands – often the most profitable grazing lands near the coastal settlements – in such a way as to ensure that these lands were properly exploited.

Gwin had little time for Benton's paean for the Spanish grantees, arguing that their claims are to be reported to the secretary of the interior, the people not to be disturbed in their rights. . . or driven by our oppression to abandon their homes, and seek protection and other laws under the fraternal government of Spain; a government which has swept like a pestilence over the fairest portions of America ; whose officers were the robbers of this continent; who spread devastation by fire and sword everywhere they went. And why driven from our country to seek such an asylum? Because this board is to inquire into the tenure by which they hold their possessions<sup>174</sup>

Gwin attacks Benton by simultaneously oversimplifying the process he proposes and appealing to the prejudices of his audience. In this passage Gwin shows deep contempt for Spanish society, a contempt that reads very false to a modern scholar. Still, in the midst of this rant there is an important aspect that requires recognition. Gwin objected to Spanish colonialism not solely due to the racial or religious differences that a modern reader might expect, but he criticized the methods by which the Spanish exploited this new continent. This is not to say that Gwin is in any way critical of the harsh treatment the Spanish meted out to native societies, or the racial caste system that evolved in the mature colonies.

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<sup>174</sup> Gwin, 55.

Instead he abhors the way they used the land itself. In this passage Gwin attacks the *Ranchos* themselves, these large cattle stations operating on vast tracts of arable land. A southerner like Gwin, familiar with the large plantations of the Antebellum South, saw in even the humblest *Ranchos* comparatively as massive expanses of land. In addition, these staggeringly large lands were occupied by a small number of people making little impact on the land aside from seasonal grazing by cattle herds. To Gwin and the new arrivals he represented, this was the height of waste and indicative of an inferior system of land exploitation. The irony was likely lost on him. He hoped to settle California in much the same way that Mexico sought to improve the state via the land grants. In both cases new grants would be used to foster the economic expansion of a state by further aiding settlers already there, rather than be focused on creating a new system out of thin air.

Clearly though, Gwin was not acting from pure economic concern. Throughout his discussion Gwin, goes to great lengths to treat the Spanish and Mexican grants as inherently foreign. His criticism of the *Ranchos* goes well beyond a simple attempt to modernize landholding. This is a form of civilizational racism. Students of the nineteenth century are used to far more vulgar and overtly offensive statements on race in primary and then well into later secondary sources. Certainly, many of the men elected to Congress in 1850 made statements that a modern audience would find unconscionable in social and political contexts. Even so, Gwin's laudable-by-a-degree moderate language does not obscure the racist attitude at the heart of his legislation. In viewing all of Hispanic civilization as unworthy, he dismisses the vast majority of nations and people in the western hemisphere. The basic notion underlying his comments is that this society was fatally flawed, without the same level of merit as the Anglophone society he inhabited. This

view must have struck a discordant tone coming from the junior senator from a state where a significant portion of the population was of Hispanic descent.

Gwin specifically targeted the claims granted by Mexico, “It is the recent grants held by a few individuals, covering an immense extent of the most valuable portion of the country, that we wish examined and decided, - claims where the property is now assessed at \$10,000,000 dollars, and daily becoming more valuable.”<sup>175</sup> This was in accord with much of the focus by all parties. It is unclear as to why the Mexican grants monopolized the ire of American legislators. It is possible that they were simply unwilling to attack grants that might in fact predate the United States. But, more likely, the Mexican grants, being far more recent than the Spanish grants, offered less developed and more accessible land. After all, they were mainly carved out of the older mission grants. Even with this, it is also entirely possible that the Mexican grants were targeted through simple ill will. The United States had just finished a war with Mexico, one that cost a fair number of lives. Many in the United States government may not have had a high opinion of Mexico on the basis of the conflict and it was a topic of frequent discussion that the recently deposed Santa Ana regime was famous for its corruption and graft.<sup>176</sup>

All this serves to determine the major thrust of Gwin’s proposal: his contention that the land title in California is imperfect. “It is notorious that the claims in California are unaided by surveys from Spain or Mexico, and their locations are not consequentially fixed or established.”

<sup>177</sup> This position is directly contrary to the report tendered to the Senate by the Department of the Interior, which clearly states that while surveys were unavailable, this had little bearing on the

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<sup>175</sup> Gwin 57.

<sup>176</sup> Will Fowler, *Santa Ana of Mexico*, (Lincoln: University of Nebraska, 2009), 308. It was even believed at the time that Santa Ana may have pocketed the 6-million-dollar indemnity that was paid to Mexico by the United States after the war.

<sup>177</sup> Globe, 134.

quality of the title or the owners abilities to understand their lands' boundaries. While Gwin was correct that no real unified survey of California land had ever been conducted, this was also true of many places in the United States at the time. And his concern was never directed to these regions outside of California. The meets and bounds titles just like those possessed by many of the *Californio* grantees, exist as good title to this day in many eastern states. But to Gwin, California required stricter examination.

### **Redefining Californian Land**

For his notion that the existing titles in California are somehow imperfect is crucial for his ultimate justification of his proposed solution.

Our titles in California are equities. We call you to examine them in a liberal and beneficent spirit, and confirm all that are just. We ask the interposition of a board to collect the evidence and. . . we claim the right of appeal to that power in Washington. Private rights will thus be judiciously separated from public domain; the Government surveys will prepare the land for donation and sale to the people of California, to be converted by them into permanent homes, resting upon indefensible titles from the Government.<sup>178</sup>

By labeling California Land Grants as equities, Gwin relegated them to the role of mere promises, giving them less than the full force of law. As equities (derived from the English Courts of Equity, a separate legal body that became influential in the United States in the nineteenth century) these grants now lacked the same *prima facie* value of most property estates in law. When Gwin charges that these equities be examined in good faith, he is simply pointing out that fairness and not law is crucial to deciding cases based in equity. This critical realization, together with his earlier statements about the virtuous toil of settlers, shows his hope that the commission and the courts not simply provide for existing owners, but take notice of the need to be fair to newer settlers.

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<sup>178</sup> Globe, 135.

Gwin's exact motives for labeling California's land grants as equities is unclear. Generally, equitable title is used for interests barred by the statute of frauds, usually because they are not found in a written deed. For example, an equitable estate in real property might arise when a grantee purchases a piece of land from the grantor who promises to convey that land. If the grantor were to fail to sign over the deed to the property, but the grantee tendered payment and occupied the land, an equitable interest might arise. This is clearly not the case in California. It was very rare, if not unheard of, for a grantee not to be in possession of the deed given to them by the Mexican government. If they were not in possession of the deed it was almost certainly as a result of loss, not lack of a deed's existence. While the Mexican grants were given to members of a few select families controlling much of California, these were official documents, prepared by the local government, signed by the Governor, and generally ratified by the Mexican national government. To be certain, labeling unverifiable claims as equities makes a great deal of sense, but labeling well-documented claims as equities was highly unusual. Gwin's linguistic maneuvering starts to become clear though. However unprecedented in practice, the denigration of the claims is consistent with Gwin's earlier description of the California land grants as inchoate. Now it is established that California property exists in a rudimentary or lesser way than a fully realized property interest.

### **A White California**

If all of this discussion points to Gwin having grandiose dreams for the new state, his conclusion makes it a certainty,

Then California the thirty-first star of the American constellation, now beaming upon the waters of the Pacific. . . will draw within her golden gates the treasures of the East; and under the impulse and the spirit of enterprise peculiar to our race, human sagacity cannot

foresee the altitude of her future greatness, nor the imagination of man predict the grandeur of her destiny.<sup>179</sup>

Thus California, with the help of Gwin's commission was to become a new Eden for the (white) American race, one serving as a bridge beyond the mere continental ambitions of expansion to the great Pacific, and access to the China trade.

This link between the racialized destiny of the United States and the Commission is evident. While Gwin attempts to craft a system to ascertain the value of existing land claims held by (largely) Hispanic residents of California, he is in actuality sowing the seeds of his own visions for a global white future. Again, Gwin looks at California as a prize to be claimed, and the California Land Act as a concrete way to bring about this vision. This is the crucial dynamic that underlies the entire debate. Viewed on a macro-level, this underscores the motives and goals of Gwin and the act's supporters. On its face, the task that Congress is undertaking in crafting the California Land Act satisfies the basic requirements of the treaty of Guadeloupe Hidalgo; requiring that the United States respect the property of individuals living in the former Mexican lands. One would expect for Congress, and California's own Congressional delegation, to seek a law that simply ratified the claims and ensured the certainty of the landowner's property. However, Gwin's rhetoric, and his own description of events later in his life, clearly shows that this is not the motive at all. In crafting the California land act, the true goal of the Congress was to facilitate the growth of California into a bridge to the China trade. Gwin himself notes this dream during his initial visit to his old friend Calhoun upon his arrival in Washington. The mere fact that this is even mentioned in the context of a debate over California land grants shows that many in Congress felt that the *Californios* and their land holdings were a serious impediment to that progress. In support of this, Gwin invoked

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<sup>179</sup> Globe, 135.

all the dreams of manifest destiny to harness support for his bill, one clearly aimed at limiting the power, and decreasing the influence of the *Californios*.

Thomas Hart Benton attacks Gwin's position that the land grants were mere equities as a result of the lack of a proper survey. He asserts that "the distribution of lands in California was taken out of the general system, first of Spain, and then of Mexico. . . that these grants became full legal title without further confirmation by the mother or central government."<sup>180</sup> In his speech, Benton echoed the conclusions of the report presented to Congress by the Department of the Interior. Gwin did not answer that claim, and at no point did Gwin directly refute the conclusions of the report. Instead he attempted to stand on the general principles of American law, which were not applicable at the time of the creation of the land grant. Indeed, Gwin's assertion of the land grants as equities was not a universally held opinion. The more logical conclusion, that the Spanish grants constituted legal title slightly complicated by the transition from one nation to another, was apparent to those in Congress and actively endorsed by some.

Benton warned that the commission proposed by Gwin presented a serious problem. "And now these 'legal' grants are all to be impeached in mass—all held to be invalid until the contrary is proved – all subjected. . . to three sets of lawsuits to try their validity."<sup>181</sup> Benton's argument, while somewhat hyperbolic, is basically correct. The creation of a commission coupled with the requirement that property owners make their case before said commission created a real presumption of inadequacy for land claims. If individuals, otherwise untroubled by legal action regarding their ownership of the land, did not choose to petition the commission, they would lose their land. In effect Gwin's plan would create an affirmative duty to petition for an individual's right to possess property that he already owned. Benton argued before Congress, "It must be that

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<sup>180</sup> Speech by Senator Benton, The Congressional Globe Appendix, 31<sup>st</sup> Congress, Session 2, Vol. 2, 1851.51.

<sup>181</sup> Benton, 51.

the claimant except in some great cases, and cases in which probably some American is arranged. . . that the parties will surrender their claims rather than undertake to pursue them through three lawsuits.”<sup>182</sup>

Benton believed that it was especially unfair to apply this policy to the *Californios*, “whom were induced by the most liberal assistance on the part of the Crown of Spain to go there and accept these lands as a gracious gift.”<sup>183</sup> Further, he rightly pointed out that an individual could be forced to litigate their claim no less than three times, all in the service of a lawsuit they were forced to bring themselves. This circumstance is decidedly unique, especially in the nineteenth century. This all took place in 1850, eleven years before the United States even considered its first income tax, when property taxes were levied exclusively by local, not national, governments in the United States. While you may need to file paperwork to memorialize the purchase of land in order to protect your interests, owners are allowed to quietly enjoy their property without the interference of the local or national government, assuming they are abiding by the law. In the case of the Land Commission’s treatment of California, that presumption is flipped on its head: if the *Californios* wanted to continue on as they had for more than a century, they needed to bring an action before the tribunal and prosecute it through any possible appeals. A failure to undertake this long and difficult process would result in the loss of their property. To Thomas Hart Benton this was unconscionable.

Benton focused on the appeals, and particularly on the presence of an attorney to represent the government when he argued that

The substitute bill provides that the district attorney is to appear before the board of commissioners to attend the interests of the United States. This is converting the examination before the commissioners into a real lawsuit. . . Of course this, this would

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<sup>182</sup> Gwin 52, Speech by Thomas Hart Benton Jan 8 1851.

<sup>183</sup> Gwin 52-3

bring up counsel on the other side; and every claim would be a trial at law, with ruinous appeals to the district court, and afterwards to the Supreme Court.<sup>184</sup>

This argument represents a fairly nuanced view of how the law works, one that goes beyond the level of commonplace policy debate. Benton was trying to describe the kind of “legislative drift” that takes place when a law is passed. He postulates that once enacted, Gwin’s commission would be abused by the government to extract land from otherwise deserving claimants. He considered

Illegal, Oppressive, Ruinous power ought not be put in the hands of judges and attorneys under the supposition that they will use it with moderation and justice. . . All California must be alarmed at such a terrible inquisition over property. Those who are actually pursued through three courts will be actually ruined by expenses and delays.<sup>185</sup>

Benton suspected, as all evidence led him to, that Gwin designed his commission to bleed claimants of resources. This was an especially apt description, as holders of land grants tended to be people with large tracts of land, but limited liquid assets. And they were constantly under pressure to sell land to the influx of settlers and investors who had flocked to the state. Benton used a simple example to try to illustrate the unfairness of Gwin’s bill,

when California was settled, about the time of the revolution. . . about contemporaneously with the settlement of Kentucky. . . suppose Kentucky had either just now been acquired. . . or that she had joined as Texas did, or that she had been ceded to us by some foreign power. In either case suppose any power should undertake to enforce upon California, requiring every citizen to go before a tribunal and make good his title to his land, and then go before another tribunal and make it good there, and after that make him come before the Supreme Court of the United States, and if he did not make it good in all three cases, take away his land and give it to the public. Suppose we undertake to do such a thing as that in Kentucky. Sir we would have a revolt in which men of Kentucky would quit these United States.<sup>186</sup>

This is an interesting way to define the legislative and legal process. The traditional interpretation of litigation is to put faith in the system. The argument being that the ultimate desire of any policy

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<sup>184</sup> Benton 52.

<sup>185</sup> Benton, 52 – 53.

<sup>186</sup> Gwin, 58-9.

is to arrive at truth and justice, and American law traditionally chooses the adversarial system as the best way to arrive at a fair policy. Good intentions aside, in the time since 1850 a great deal of legal scholarship tenders some doubt on the proposition that justice is always administered fairly in the United States. By virtue of making this argument, Benton cast a cynical and very modern eye toward the mechanisms of justice. And, indeed, he was most likely correct. The lengthy and daunting appeal process, and the very cloud on the individual's title that the proceedings would incur, prevented a grant holder from receiving full value for their land. For the title would be unproven and any purchaser would have been forced to go through the commission process themselves.

Benton finished his argument with a powerful imploration to his fellow senators' sense of fairness,

It is a crime against one man to disturb him unjustly about his property. . . Our treaty with Mexico secures to every inhabitant of the ceded countries 'the free enjoyment of his property' how is that enjoyment to be free, or enjoyment at all. . . which is impeached by a government and pursued. . . to invalidate and destroy them.<sup>187</sup>

Benton's argument was designed to appeal to his fellow senator's deeply held belief in property rights (an issue of some import in the 1850s) and force them to sympathize with the holders of Mexican title over the needs of newly arrived settlers. This was a compelling position for many at the time. The nineteenth century was as much about exploitation of property as it was about expansion. Industrialization paralleled western expansion, and the creation of urban spaces came to dominate power in the United States. While new technologies spread the market economy to the American west, small farmers and laborers in the east moved to new manufacturing centers like Lowell, Massachusetts and Rochester, New York. These workers did not settle in these

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<sup>187</sup> Benton, 53.

growing cities to become craftsmen or landowners, but to become industrial wage workers in the new factories driving the industrial revolution.

The members of Congress that Benton addressed were not personally acquainted with the workers who toiled making shoes and cloth in the northeastern mills, but they were intimately ingrained in the society and lobbied interests of the wealthy and influential owners of these enterprises. The idea of ironclad ownership of property was paramount to those individuals in the east who maintained large holdings. The tension between a landed elite and a swelling landless population came further into focus as the United States changed from a nation of farmers to a nation of industrial workers. The California land commission framed important implications for these issues. If nothing else, the *Ranchos* of California almost exclusively provided the raw leather needed to produce the shoes that were one of the primary products of the early industrial revolution. At the same time, the *Californios* were facing a circumstance not that far divorced from the wealthy citizens of the east. A new boom was bringing large numbers of poor individuals into their lands seeking a new life. This presented the vexing question of how to preserve the rights of the wealthy few in the face of numerous poor fortune seekers. If the *Californios* could lose their lands in the name of the common good, would that not threaten the unified ownership of the eastern factories that prospered on the backs of near indigent labor?

Gwin responded to Benton's arguments with a plea for urgency, laying his intentions bare. "There is a constant danger of collisions between the land claimants and the settlers; and if we wish to prevent the shedding of more blood in that country, we must act speedily, summarily, and finally on this subject."<sup>188</sup> The violence that Gwin alludes to likely comes not as a result of consternation about the nature of title, but pressure from settlers to take lands from the grantees.

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<sup>188</sup> Globe, 56.

He further echoed this when he argued, “If this bill becomes law [Benton’s], I do not believe there is power enough in this government to carry it into execution in California. It will spread consternation throughout the state; it will be looked on as an edict to confirm all the great land claims.”<sup>189</sup> With this, a brief glimpse into Gwin’s real intentions for offering his bill reveal themselves. Assuming that the “great land claims” actually existed (which they did) the treaty of Guadalupe Hidalgo was created specifically to protect them. Indeed, the very hearings in which Gwin was speaking were convened to find a way to implement that treaty. But Gwin argued for nothing less than crafting an implementation scheme that subverted the intent of the treaty. He designs it specifically to separate *Californios* from land to which they are entitled.

What is more, he advocated that the subversion of Guadeloupe Hidalgo is a necessary condition to the peaceful existence of the state. This was a radical position. In 1850 the United States was a nation that embraced an unequal distribution of land, and the sanctity of property. Contrastingly, the California Land Act was debated almost immediately after the adoption of the compromise of 1850. A great deal of the discourse over slavery during this period was centered on questions of property. The Fugitive Slave Act served to deeply inhabit the national debate over Slavery that centered on the notion of individuals as property. The Act made it a crime for anti-slavery citizens of the north to aid the escape of enslaved peoples. This is an extremely hard-nosed and despairingly literal interpretation of property rights.

Contrast this with Gwin’s focus on the feelings of new arrivals in California and his worries about the potential for violence if the great *Ranchos* aren’t broken up. The Fugitive Slave Act created real violence, both between the escaped people and the slavers, and northerners who sought to help fugitives out of sincere belief. This abhorrence of violence is barely voiced when the

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<sup>189</sup> Globe, 61.

property of southern slaveholders is considered (despite the fact that many of the largest slaveholders owned vast tracts of land throughout the American south that could have been made available for smaller yeoman farmers.) But when the lands of the *Californios* are addressed, the mere specter of land troubles is offered as a valid deciding-factor by Gwin.

The debate over the California Land Act combined many of the political currents swirling about governance in the mid-nineteenth century. The property rights of *Californio* landholders temporarily obstructed the inexorable force driving America west. This called into question the deeply held American belief in the sanctity of property ownership. The solution, ultimately adopted in Gwin's bill, amounted to a system that seemed to directly challenge the sanctity of property rights in favor of the needs of newly arrived settlers.

The debates themselves followed the increased pattern of sectionalism and incivility common in the Congresses of the 1850's. The incident in the coatroom, where a member of the southern delegation drew a pistol on Benton, fits into the broader context of violence in Congress that would ultimately culminate in the severe beating of Charles Sumner by Preston Brooks in 1856. Admittedly, the actual debates about the Act have a tenuous relationship to the deep divisions that were fostered by the Compromise of 1850. Yet in times of deep political divisions, almost all issues seem to bear the imprint of those stresses. In the case of the Land Act, Gwin exploited his close contacts with the southern and border factions in Congress to craft his bill, and to support its passage. Benton's opposition was in part due to this political alignment. However, Gwin's bill spoke more to the process of westward advancement than it did to eastern factionalism. Gwin's debate with Benton was less about how California would be settled than it was about who would ultimately profit from that settlement. Gwin's solution was neither northern nor southern; rather it seems almost Jeffersonian in its desire to foster the growth of independent farmers.

In the end, these debated issues directly impacted the lives of its participants. Fremont litigated his personal claim of land ownership all the way to the Supreme Court. For by the time of the debates, many of the large claims were in the hands of men like Fremont, American adventurers who had traveled to California after the Mexican War. Most purchased their claims (lawfully and voluntarily) from *Californio* families, sometimes gaining them through marriage. This meant that in many cases (including Fremont's) the owners of these large vested land interests were white American settlers, although these were fairly wealthy, unlike Gwin's more humble settlers.

Unsurprisingly, the debate between Gwin and Benton was never about the preservation of the *Californios* or the survival of the *Ranchos*. Instead, the debate sought to determine what the power structure in American California would look like, and what sort of opportunity would exist for those newly arrived. Gwin's recollections, and his statements in Congress, do not on their own create a new understanding of how Americans as a whole felt during the period. That is not the goal of this examination. Instead, Gwin's own words offer insight into his feelings about the world in which he lived, and how he hoped to change it through legislative action. This is of paramount importance for those wishing to understand that mechanisms at the heart of the California Land Act's creation. As the act's author and its principle advocate Gwin created a law to make those ideas and beliefs into a reality. Even as the ultimate results of his actions differed from his initial designs, his desires shed light on the California Land Act's place in the process of manifest destiny and the evolution of property rights in the nineteenth century.

## CHAPTER 4. EQUITY AND DESTINY; THE MOTIVES THAT SHAPED THE CLA

This chapter seeks to contextualize the California Land Act in amongst the broader legal and political trends that marked the nineteenth century American west. It shows that the California land Act serves as an excellent example of Willard Hurst's ideas about the changing nature of landholding during the period. Additionally, the California land act intersects well with the broader narrative of manifest destiny that drove American political action during the period. This chapter postulates that while the California Land Act was part and parcel to both, through the use of the legal concept of equitable land title it took a novel approach to redefining property ownership, one that was particularly focused on reshaping land use in the state.

The romantic legacy of the United States often presupposes manifest destiny through idealized visions of westward expansion. In the popular imagination, the pioneer of the old west might appear not all that different from Frederick Jackson Turner's vision of the brave frontiersman a rugged individual who strikes out into the untamed wilderness to make his fortune (this is not an accidental gendered pronoun), often with his family and all his worldly possessions loaded in the back of a Conestoga wagon. For many, this era established one of the foundational myths of American opportunity. It fosters the notion that there was a time when all a man needed was bravery and a willingness to work in order to establish a successful existence. This is reflected in the enduring popularity of media like the Laura Ingalls Wilder series books set on the frontier, and the perpetuating nostalgia of the educational video game *Oregon Trail*. This vision, although greatly simplified and obfuscating, is not a complete fiction. Individuals did rely on bravery and hard work to establish lives in the American west. Some individuals even struck out for the territories in prairie schooners, facing all the attendant risks of starvation, difficult terrain, and

hostile natives captured so dramatically in movies, books, and video games. Nonetheless, this vision unquestionably obscures the reality that large landowners and investors played a major and primary role in the development of the American west. Or to put it more aptly: the Americanization of the American West. In California, this initially came in the form of the wealthy men who purchased the vast *Ranchos* from the – long-since settled – Californio settlers. In fact, these men would eventually come to control the majority of the *Ranchos*, leaving their names stamped on California and America as a whole.

### **Anxiety and Fraud**

If California was to be a land of speculation, then the proceeds of the speculators must be assured. Perhaps the greatest threat to the purchase and investment in land was the specter of fraud. If a large enough sample of the grants were tainted, all of the existing titles in California would fall under a cloud of suspicion. This in turn would drive down the value of the land, making the investment of the newcomers less lucrative. In Washington, William Gwin was cognizant of this looming problem. Citing this, Gwin directed a great deal of his ire in Congress at fraudulent claims. While the evidence of actual fraudulent activity with regards to land claims is limited, his insistence allowed that some claims were inevitably challenged. Gwin's account indicates that some large-scale fraudulent claims existed, paying particular attention to one concerning land in and around the city of San Francisco.

Limantauer, a Frenchman who had lived long in the city of Mexico, presented claims covering a large portion of the city of San Francisco and the islands adjacent upon which fortifications were constructed., Mare Island, and an immense area up the coast, north of the Golden Gate. Every form of law had been strictly complied with in the preparation of these papers, and it seemed impossible to detect the fraud. . . but it was discovered that the seal of state, which was affixed to all Mexican land grants, and the seal that was used in the Limantauer grants, had one important difference. . . the wings of the eagle on each

differed from an eighth to a sixteenth of an inch, and was demonstrated that the seal on the Limantauer grants was counterfeit.<sup>190</sup>

Gwin notes that the fraud was discovered when the documents were scrutinized. This seems like a fairly low-level scheme for a few reasons. Most of the claims presented before the commission came not just with documents, but also with extensive witness testimony from locals and neighbors. In addition, the commission had access to the old Mexican records, and it would have been fairly easy to look for traces of grants in those locations.

It is interesting that Gwin points to a situation like that of Limantauer as an example of possible problems, because the situation was entirely singular. The vast majority of Mexican grants were given to residents of the state, most of whom were members of longstanding *Californio* families. Limantauer was a French national that resided in Mexico, and not a resident of California. He was (if he did indeed own the lands to which he laid claim) an absentee owner. In addition, the Limantauer grant was for lands that surrounded the city of San Francisco, which would have been a prime location for faking a grant (due to the simple fact that the land was already valuable at the time of its presentment). The lands in question were fundamentally unlike those in the rest of California at the time.

The opponents of the land grants in Congress found their ideal foil in Limantauer. The basic desire embraced by the those most opportunistic of the first American travelers to set eyes on California was to help the state realize the economic possibilities presented by its natural abundance. The concept of creative release of energy infused property law in the nineteenth century, and this situation was a textbook example. This notion found that the idea of an absentee foreign landlord possessing some of the most useful and productive lands adjacent to California's

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<sup>190</sup> Gwin 65.

largest city, located on the states (and indeed the United States') finest natural harbor borders on criminal. To this mindset, Limantauer was no more than a squatter as those others newly arrived coming to occupy vast parts of the state. Indeed, Limantauer used either connections or fraud to gain control over lands he never had any intention of developing, and with an eye to pure speculation. To the newly Arrived Americans his case presents the least sympathetic possible conditions of ownership in the new state, and the least likely to assist in unleashing the dormant potential of the new state.

In some ways, Limantauer is the exception that proves the rule about grant validity in California. Fraudulent claims did exist, but they did not arise from the sort of systemic corruption that critics, like Gwin, trumpeted in Congress. No obvious indications of malfeasance by Mexican officials was ever found to have altered the course of land holding in the state. Instead, the primary example of true fraud that was actually discovered was a clumsy attempt to fake legitimate documents by a suspicious raconteur that never resided in the state. And again, unlike the vast ranching land making up most of the land in California, the parcel sought by Limantauer was known to be coveted by the United States government for use as a valuable military installation. Forts, not herds, insured a rapid escalation in land value.

Limantauer, though sensational with his targeting of choice real estate was not, however, the only claim deemed fraudulent. The trend became a problem for the United States. Such claims, once

failed in the Courts, they were brought before Congress, and a powerful lobby was formed in Washington for the purpose of securing legislative confirmation of these claims. The government was constantly annoyed on the pacific coast, as well as in other portions of the United States, in securing sites for fortifications, navy yards, lighthouses, and other public works by the extortionate demands of the owners of the property that was required for government uses. Every important site in California was covered by a private claim – Fort Point, Alcatraz, Goat Island, Angel Island, Mare Island etc.<sup>191</sup>

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<sup>191</sup> Gwin 178.

This issue posed an interesting problem. Unlike most claims the goal here was to secure proper title for the United States government, not to simply aid settlers in acquiring land. The area particularly in question is Mare Island, a peninsula in the eastern portion of the San Francisco bay that the Navy had targeted for use as a base and shipyard. Gwin writes

Mr. Gwin at first thought it was better to settle these claims, without inquiring into their validity, in order to proceed with the public works that were so much in demand on the pacific coast. It was by his advice and counsel that the sum of fifty thousand dollars was paid to claimants to mare island, in order that the work on the Navy yard should be promptly commenced. But it was soon perceived that there would be no limit to the demands. There was in every case more than one claimant, and even to this day new claimants to Mare Island turn up, although every conceivable claim was removed by purchase more than a quarter century ago. It therefore became necessary to protect the government against these claims, whether fraudulent, or whether the title to the property was correct, by passing a law to take private property for public use.<sup>192</sup>

Mare Island refers to an area in the East Bay. In fact, Mare Island is only an island in name – it is really more of a peninsula separated from the mainland by salt flats. The “island” itself shelters one of the best anchorages for deep draft vessels in all of northern California. Once determined as such, the United State Navy targeted the area to become its largest base and shipyards on the west coast. In the years since, this installation was so successful that it remained open until the 1990s, having served as a primary base in two World Wars. The fight over Mare island, and other similar plots of land on the Pacific coast perhaps confirms Gwin’s fears about massive title fraud for lands that did not go through the normal patenting process,

But this law did not suit the parties who had claims that were rejected by the courts, and they appealed to Congress and on the 17<sup>th</sup> day of May a bill was introduced to the Senate to confirm the Bonita Diaz claim under the pretense of quieting the title to the land upon which Ft. Point was built. . . The question is of great importance to the People of California, and this is the first time that a private land claim in that state has been brought upon that body for confirmation for action. That question has heretofore been left to the courts. The claim, which includes the valuable property at Fort Point, also includes valuable property worth millions upon millions of dollars.<sup>193</sup>

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<sup>192</sup> Gwin 178-9.

<sup>193</sup> Gwin 180.

It seems that while the commission process (with all its interminable appeals) was an acceptable inconvenience for the private citizens of the state, the United States government demanded a far more assured level of certainty. For the most part, this reality of fraudulent claims falls far short of the fears voiced during the initial debates over the act. The fact that the bulk of the claims revolved around American naval bases is telling, as it focuses on the possibility of a large cash settlement for a federal acquisition of property.

While Limantauer shows that the potential for fraudulent claims existed in California, in truth this potential existed all over the United States. For even as the long saga of the Limantauer grant demonstrates the potential for abuse, it also indicates that the fraudulent claims in California were often easily discoverable clumsy frauds, featuring poorly manufactured grants and inaccurate seals. Insidious as it may be, this is not the sort of fraud that an alteration in the very bedrock of landholding is necessary to prevent. After all, as much in the nineteenth century as now, there exists the potential for the fraudulent creation of counterfeit grants. That being said, the handful of possibly fraudulent claims surrounding military posts perhaps did not justify the rendering of the more than six hundred other California titles suspect.

Still, Gwin remained enthusiastically focused on the possibility and danger of fraudulent claims, enough so that he maintained his position in memoirs written decades after his concerns were proven a gross exaggeration.

Mr. Gwin's opposition to the first bill named, and to its reference to the military committee, was of so determined a character that it was never reported back to the senate for its action. For years afterward, such claims were pressed upon congress, and even to this day, one of them, the Santillian Claim, is before Congress. . . All of these claims are not charged to be fraudulent. Many of them were forgeries, sustained by false swearing, and have been a source of constant expense and litigation to the State.<sup>194</sup>

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<sup>194</sup> Gwin 181.

Modern readers are inclined, naturally enough, to consider historical actions a *fait accompli*. But the issue of fraudulent claims in California was a ruse concocted to justify increased and unwarranted scrutiny on the *Californios'* claims. However, the issue complicates further.

The worry expressed by Gwin and the Senate about the threat of fraudulent claims is both understandable, and in many ways prudent. Land fraud was a common enough occurrence in the United States of the nineteenth century. In fact, notable land fraud cases involving the grant of newly acquired lands had already been litigated all the way to the Supreme Court, most famously in Fletcher v Peck, decided by the Marshall court.<sup>195</sup> While the possibility of fraud certainly provides a convenient excuse to cast doubt on the Mexican land grants, the existence of actual fraudulent claims, and the ultimate faith that the commission used in regarding the majority of valid land grants lays the motives bare. It proves that this is more than simply a legislative convenience used in bad faith to separate valid owners from their lands. To the twenty first-century reader the amount of distrust expressed by legislators toward the Mexican system of property law reads decidedly Anglocentric and likely racist. However, putting the specific history of cultural and military conflict between the U.S. and Mexico aside for a brief moment, it remains understandable that a kind of legalistic caution is expressed when accepting fragments of another system into the greater body of American law. While the treaty of Guadeloupe Hidalgo demanded that the Mexican grants be respected, the California Land Act was an elaborate method of addressing the problem of grant incorporation, undertaken with some measurable degree of good faith. And such scrupulous courtesy is not always a given in the history of America and its defeated adversaries.

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<sup>195</sup> Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810)

More so, the formalities of deeds took on far more importance in the nineteenth century than they do today. Today, the average purchaser of real estate in the United States never actually handles a deed. In fact, in many states the buyer never comes into possession of it unless all mortgage obligations on the land are paid off. In order for an American deed to be valid, it needs to be signed, witnessed and often notarized. When it is recorded it is affixed with an official seal that is dated by the office of the registrar. These conventions of bureaucratic oversight are relics of an age when the risks of fraud were high, and the availability of confirmation of the legality of deeds was limited. Such formalities were crucial in this earlier context; they served as concrete, tangible indicators protecting purchaser from the least sophisticated sorts of deception.

As with *Limantauer*, the fraud was only revealed following a very close inspection of the Mexican seal affixed to the documents. Even then, this was a lucky discovery. Average courts in the federal or state systems might not have the ability to verify a twenty-year-old Mexican seal. Even if such an expert existed, it proved very difficult to find anyone with the necessary knowledge to authenticate a seal. In the *Limantauer* case it was the Federal government acting as a party – a party faced with a significant expenditure of money if the deed proved correct and willing to invest in an extra dose of due diligence.

Alternatively, the California Land Commission was a specialized body assembled with the detection of such nefarious strategies in mind, although it was ultimately not the determiner of *Limantauer* fraud. The Commission, tasked with acquiring a great deal of familiarity with the official seals and stamps of Mexican California, found that the most difficult thing about evaluating the legislative history of a law is that there is no one single reason for the passage of any given law. For a law must both embody the theoretical framework of its drafters and create a real-world series of steps to effect change. In the case of the California Land Act, the fear of fraud is not

simply a racist fear of the other, it is also a recognition of the limitations of the nineteenth-century legal systems. One does not necessarily preclude the other, and both goals provide the basic framework of American acquisition of California's lands.

### **A Land of Ideal Eastern Opportunity in the West**

Beyond a fear of fraud, to better understand the contours of the California land Act, it must be placed in the context of the growth and expansion of the American economy in the nineteenth century. This economic model offers a different perspective on manifest destiny and American expansion. While notions of racial superiority and exclusionary settlement policies are certainly an important part of understanding American expansion, limiting any examination to a few narrow channels risks missing the nuance and depth characterizing an important moment in national history directly impacting the lives of thousands of individuals. Consideration of the systemic economic motivations that provided the backbone of the expansion process establishes a more holistic vision of what drove Americans to seek mastery over the west. Gwin wrote,

Mr. Gwin during his whole term in the senate was persistent in his efforts to have the titles to these private land claims finally settled, and their boundaries defined, so that the public domain should be thrown open to actual settlers and cultivators of the soil. The slow progress that was made in the adjustment of these claims induced him to offer a bill in the Senate, allowing actual settlers and cultivators to own any land in California, to prove up their preemption for one hundred and sixty acres of land, and if in the end the ultimate decisions of the private land claims, it was not found that these preemptors had located on lands within private claims, the private land claimant was entitled to a floating claim, located on any public land in lieu of what had been taken by the settler. So formidable was the opposition to the passage of this bill that it was never favorably acted on in the Senate.<sup>196</sup>

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<sup>196</sup> Gwin 65.

This focus on cultivation is crucial to understanding the broader goals of the California Land Act. The act was designed both to open California to settlers and to break up the large existing land claims.

Significantly, even while California today is the nation's most populous state, about 48% of the states' land remains in the public domain. These visions of an immediate settlement of California by masses of doughty pioneers were driven more by ideology than reality. In 1850 much of California was arid. It was not until the turn of the twentieth century that a new aqueduct system provided sufficient water to meet the needs of large-scale agriculture in many portions of the state. The scheme that Gwin was elaborating is also quite novel, assumed the propensity of newly-arrived settlers to generate immediate production from a landscape that needed another half-century of infrastructure development. The "floating" grant of land allowance would have almost certainly ensured that the *Californios* were bombarded with the near constant encroachment of squatters, as it removed one of the primary disincentives to attempting to settle on controversial land. If a settler could be assured that land would be available from the common holdings, why not attempt to squat on prime land owned by a distant *Californio* drowning in bureaucratic red tape? In the worst case, they would receive the land without ever having to settle the land through legal channels in the first place. With the gates of opportunistic squatting flung open thusly, it is easy to envision the great *Ranchos* dying a death of a thousand cuts. Their estates on prime land inundated with squatters, each trying to carve off a section for farming. Unable to sustain numerous lawsuits for ejectment while presenting a protracted case to the commission, an owner might be forced to sell, or be crushed under the weight of mounting legal debts. In fact, Gwin records that,

“He was severely criticized for introducing this bill, and the opposition of the owners of the great land claims was too formidable to secure its passage.”<sup>197</sup>

Gwin’s plan is best understood in the context of the broader trends that were shaping American society at the time. Only thirty years earlier, it is somewhat questionable that the Senate would have been concerned by the disposition of California lands to a similar degree. Often lost in discussion of the gold rush were the other changes occurring in the American economy. Even in the early days of 1850, the notion of linking the Atlantic and the Pacific oceans with a rail link was being contemplated by industrialists in the east. Without these daydreams of a high-speed future, the settlement of California would not have proved so pressing of an issue. The nineteenth century was an era marked by gold rushes in locales so varied as California, the Yukon, Australia, and South Africa. Gold fever swept the world. However, in spite of all these places receiving a fevered influx of would be miners, only California would go on to become a densely packed population center.<sup>198</sup> This was due partially to the fertile nature of the states’ lands, but without two of the more revolutionary technological developments of the early nineteenth century, this could never have even started.

The miners and settlers arrived in California on steamships, powered by a propulsion system not available before the 1820’s. Many traveled across the Isthmus of Panama on a railroad that considerably shortened and aided what had been, only a few years before, a long and arduous journey.<sup>199</sup> The steamship, in fact, made the gold rush possible. It was steamships that brought

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<sup>197</sup> Gwin 84.

<sup>198</sup> Australia and South Africa have both gone on to become populous and prosperous nations, however their patterns of settlement are vastly different. In 2017 Australia claimed 24 million inhabitants to California’s 39 million, despite Australia’s much larger area and status as an independent nation. South Africa’s population is considerably larger at 59 million but cannot really trace its settlement to the gold rush period, as many of the nation’s current inhabitants trace their roots from earlier waves of migration, like the Boers who arrived more than a hundred years prior to the discovery of gold, or the numerous descendants of indigenous peoples who comprise the majority of the nation’s citizens.

<sup>199</sup> Aims McGuiness, *Path of Empire*, (Ithaca: Cornell UP, 2009).

news of the gold strike to the east. It would be steamships, and later the railroad, that would make California a prosperous new state.

Gwin's insistence on the rights of squatters was a mere sham serving his self-serving hopes of making California more American, more protestant and whiter. This is demonstrably true: Gwin clearly was dismissive of the Hispanic settlement of the state and felt that the *Ranchos* and their owners had squandered an abundance of natural wealth. However, without placing California in the broader context of nineteenth century expansion, it is difficult to understand his point, especially considering the fact that the states' wealth was not – as much as Gwin may insist otherwise– being wasted. California, as a Spanish and Mexican colony, was a profitable enterprise. It fulfilled the basic requirement of colonies, in that it shipped valuable raw materials back to the metropole in great quantities accounting for a value in excess of the costs of maintaining the colony. The hide and tallow trade was an important part of the North American economy. It was only the changing nature of American society that made the idea of a sustainable American presence on the Pacific coast feasible.

With a connection to the east via steamship, and later railroad and telegraph, Gwin and his allies imagined that California could become more than a colony; it had the potential to become an integral part of the nation. And to this desired end, their legislation ultimately achieved the transfer of the *Californios* land into the hands of the newly arrived Americans. However, the net effect of a policy must not be confused with the primary motivation of the policy itself.

For example, Gwin argues consistently for the interests of the new immigrants to the state. He is not incorrect in pointing out the inefficiency of the *Ranchos* which, though profitable, by dominating the economic system of California, stifled all other possibilities for economic growth. In the debates over the act, neither Gwin's nor his opponents supported the *Rancho* system

continuing. In fact, it was already doomed by two emerging trends: the large number of people that the gold rush brought streaming into the state and the changing nature of the world economy. In the same way that the factories of Rochester changed the ways that shoes and clothing were produced for the broader American market, the steamship and the increasing interconnectedness of the world meant that California was no longer the romantic land of Richard Henry Dana's novels. It was something entirely different and even more alluring. It was a valuable and dynamic economic asset.<sup>200</sup>

The hide and tallow trade of old California was a relic of the past. Those with the foresight saw the future of the state in the protected harbor of San Francisco bay facing boldly east into the Pacific, and the mines of the Sacramento delta. The real question being asked during the debates was whether or not the *Californios*, and the old hands who owned many claims, would easily be able to profit from the sale of the lands, or would the federal government be the principle actor in setting the terms of settlement for the new arrivals in the state. Though highly problematic, this is not exclusively and in-and-of-itself a racist enterprise. If it were, following the strategies of the day, there would have been discussion of altering the process for the American citizens in possession of land claims. As such the California Land Act transcends traditional understandings of race. It is a gross oversimplification to understand the act simply in terms of its potential to disparately affect racial groups. Instead it must be examined through the lens of the nineteenth-century American project of continental expansion.

The issue at hand is one more accurately depicted as the intersection of race and progress.<sup>201</sup> That many of the existing landholders in California in 1851 were defined as non-white is evident,

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<sup>200</sup> Paul Johnson, *A Shopkeepers Millennium*, (New York: Hill & Wang, 2004), Richard Henry Dana, *Two Years Before the Mast*.

<sup>201</sup> The topic of race and manifest destiny generally is ably addressed by many authors including Alexander Saxton, *The Rise and Fall of the White Republic*, (New York: Verso, 1990), Reginald Horsman, *Race and Manifest Destiny*;

at least in terms of how some of the parties involved conceived of race. In addition, the national project of manifest destiny, which drove Americans west throughout the nineteenth century, was founded on explicitly racist terms. At the same time, the underlying economic and technological trends that made westward expansion possible and desirable were fueled by conceptions of whiteness, and also by the increasingly global and national economy created by advances in travel and communication.<sup>202</sup>

This economic picture was already complicated by the fact that upon the granting of statehood a large portion of the state's land and wealth was concentrated in *Californio* hands. In order to understand this process, the role played by the California Land Act will be framed within the broader expansion of the American economy, and the legal system underpinning it. Legal historians have long held up the Taney Court's decision in Charles River Bridge v. Warren River Bridge<sup>203</sup> as heralding a new period in American legal history. In this case the court crafted a limited vision of property rights built upon narrowly construing vested interests. In the case itself, the Warren River Bridge Company was granted a charter to charge tolls for its bridge from Boston to Cambridge Massachusetts. The bridge itself was built across the Warren River. At first, it was a primitive small bridge, adequate upon its initial construction, but was struggling to meet the needs of the growing city. The Charles River Bridge company built another bridge and gained a charter to charge tolls for passengers along its route from Boston to Cambridge. This bridge provided essentially the same service in a slightly different location. With a new design

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*The Origins of American Racial Anglo-Saxonism*, (Cambridge: Harvard UP, 1981). Thomas R. Hietala, *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*, (Ithaca: Cornell UP, 1985).

<sup>202</sup> A good discussion of the way that technological advances intersected with continental expansion and economic growth can be found in Charles Sellers, *The Market Revolution*, (London: Oxford UP, 1994). and David Walker Howe, *What Hath God Wrought*, (London: Oxford UP, 2007).

<sup>203</sup> Charles River Bridge v. Warren River Bridge, 36 U.S. 420 (1837). James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States*, (Madison: University of Wisconsin Press, 1956), Stanley I. Kutler, *Privilege and Creative Destruction; The Charles River Bridge Case*, (Baltimore: Johns Hopkins UP, 1990), Morton Horwitz, *The Transformation of American Law 1780-1860*, (Cambridge: Harvard UP, 1979).

recognizing a need that the Warren River Bridge was struggling to provide, it allowed for a great deal more traffic. The Warren River Bridge Company sued, claiming that the Charles Bridge's charter illegally impaired its rights as the bridge operator along that route. The Charles Bridge countered that the right to operate a toll bridge ought not to be exclusive, and the Charles Bridge was a finer and quicker route, that would allow more traffic to cross at a faster rate. If the Charles Bridge were allowed to exist, the Warren Bridge would be forced into bankruptcy.

The Court sided with the Charles Bridge. They argued that a strict construal of property rights would limit the growth and innovation of the nation, and while it might place a burden on those who own vested interests, this burden should not be allowed to trump a young nation's need to grow and innovate. The Warren Bridge had existed for many years, and during that time it had been immensely profitable. It is understandable that the operators, accustomed to success, would want that success to continue indefinitely, and consider such a protection of their business a likely enough service of the law. However, during the time of its success, the Warren Bridge had not used its profits to improve or expand its operation. The court was given a choice between an indefinite *status quo* that would limit the growth and success of Boston or embracing the often-cruel actions of the market, where a smaller competitor could be swallowed by the larger resources of a newly arrived competitor. It was not a question of whether the smaller Warren Bridge would be allowed to earn money, it had long since repaid its investors many times over and provided a great deal of profit for its owners.

The Taney court's decision was not to crush the smaller enterprise, but rather to allow a newer, larger, and more innovative enterprise to compete in the open market. In many ways this is analogous to the situation in California as considered by Gwin and his allies and, to a lesser but still significant degree, his opponents in the Senate. From this perspective, shared by those

indoctrinated by an education and practice in American law, the *Californios*, owners of vested rights, controlled the vast majority of the useful land in the new state. Their stewardship of the new state was longstanding and profitable, ensuring the successful use of the land. For many years their occupation of the land had maximized the value that existed in their remote corner of Mexico. The *Californios*, like the Warren River Bridge Company, operated a concern that was dependent on market domination for continued success, because without vast tracts of land the herding agriculture they depended on for their prosperity would be untenable. Like with the Taney court envisioning a congested and stagnating Boston trade environment, this was a frightening prospect for those charged with fostering the growth and expansion of the new state.

There are several logical reasons for this anxiety of those desiring a kind of progress other than maintaining herds. Beyond the simple ability to exclude newcomers from land ownership in California, the *Californios*, who had deep familial connections to one another, might have been able to limit the amount of land for sale in order to drive up prices on the land. At the time of the California Land Act's inception, land prices in the gold fields of Sacramento, and the growing port of San Francisco shot up in value. In addition, land speculation by the established American residents of the state, the so-called Old Hands, had begun in earnest throughout the state. The likelihood of a new stage of exploitation never seemed more certain, and access to the land was being frustratingly made less of a bargain to those with the means and desire to master such wealth.

A second issue was the fear that the *Californios* might simply just retain the land. In the United States of 1850 this embodied one of the two major models of accepted agricultural production. The first, much loved by Thomas Jefferson and his intellectual descendants, was the Yeoman model. This was typified by individual families owning smaller plots of land worked for substance and small profit. This was the common system north of the Mason-Dixon line, and as

such, it occupied a significant place in the mythology of the United States. These farmers were often viewed as a bulwark of the republic, and essential for the independence of the American electorate. Many Jeffersonians believed that these yeomen were crucial for the electoral independence necessary to operate a virtuous republic.<sup>204</sup> The *Ranchos* of California, which employed hired labor in a state of quasi-peonage, was more reminiscent of the European systems that many regarded as symptomatic of tyranny. The alternate method practiced in the United States was the plantation, represented by the vast farms worked by slaves dominating the antebellum south (and ironically the sort of farming that Jefferson actually practiced). While California conclusively chose to prevent slavery from taking root in the new state, to a Jeffersonian, an agricultural economy based on large estates had a great deal in common with the slaveholders of the south, even if it was worked by paid employees. As such, this was anathema.

This is all the more amplified in that the 1850's by a moment of fracture in American history. In this period the United States went from being a young dynamic nation boldly facing opportunity and challenge, to an ungovernable mess soon to descend into civil war. However, this collapse of the American experiment (and subsequent rebirth following the bloody Union victory) was not necessarily apparent to those living it at the time. In many cases, the antebellum period is rife with contradictions seeming slightly implausible to the modern student of history. Thomas Jefferson was both a slaveholder, and a champion of individual liberty and successful yeomanry.<sup>205</sup> William Gwin was both a southerner, and a man seemingly uninterested in the spread of slavery. Thomas Hart Benton was a staunch Jacksonian Democrat, yet was a fierce opponent of the spread of slavery. He was even a close ally of his son-in-law, Fremont, who would become one of the

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<sup>204</sup> Jeffersonian ideals are well known during the period and are discussed in almost any work on the period. For an especially well written one consult, Gordon Wood, *Empire of Liberty; A History of the Early Republic*, (London: Oxford UP, 2009).

<sup>205</sup> Wood, 277.

first leaders of the abolitionist Republican Party. Senators and statesmen might both fight to preserve the *status quo* in the eastern United States and contend that institutions like chattel slavery were corrosive and ill-suited for national expansion and success.

The disposition of the lands in the new state of California was one such instance of contradiction that characterized politics of the day. A system of large estates that employed just enough people to make them profitable is a system that focuses its energy on protecting the vested interests of one group, at the expense of growth by the whole.<sup>206</sup> This was a fact that was unlikely lost on the south, as it saw its ability to match the northern states' economic might slowly erode during the early nineteenth century. Thus, the California Land Act was as much about the culture of the United States, as the culture of Mexican California. While men like Gwin were dismissive of the Mexican system, what concerned them about it the most were its reflections in portions of the American system. When desiring to maximize the potential of California's lands, they were also trying to adopt what they viewed as the best aspects of American life in the east.

A final more cynical concern determining the stakes of the debate over managing California's land, was the perceived necessity that the new state as a whole be successful. Regardless of political ideology and preferred models of agricultural extraction of resources, to the men debating in Washington, California presented a fairly unique opportunity for growth with its ready-made influx of settlers. If those teeming hordes of restless settlers did not have adequate opportunity for success, they might become rebellious. This was no small concern as California was very isolated. Alternatively, this massive body of labor might simply leave the state for

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<sup>206</sup> In fact, Weber notes in his work *The Mexican Frontier*, that when the Mexican grants were being prepared specific measures were taken to exclude both poorer Californios and new arrivals to the state from Mexico from receiving access to new grant lands. David J. Weber, *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico*, (Albuquerque: UNM Press, 1982), 66-69.

greener pastures. Either way, this population needed to be controlled. Congress in 1852 was just as aware of the economic realities of the gold fields as any prospector. The vast majority of would-be miners arriving in the state simply could not make a living, much less a fortune, from mining. By the time most arrived, the easily accessed Placer deposits were exhausted, and the stories of plucking nuggets from the ground with little or no effort proved untrue. Most were forced by reality either to find work on larger scale mining crews or to employ themselves in another trade. Something needed to be done to accommodate this body of disillusioned constituents. Even as the gold rush raged across the state it was obviously apparent that Gwin and others in Congress believed that for long-term success the state would need to support a larger agricultural population. After all, this was the model that settled the rest of the United States, but the presence of the *Californios* seemed to complicate this effort.

In the end, Gwin's major defense relies on the notion that his solution is superior to those undertaken by prior Congresses,

The law to adjudicate land claims having passed, three commissioners were appointed, and the commission was promptly organized, and the adjudication of land claims was begun, and continued successfully for many years. The wisdom of this measure has been demonstrated by the quieting of land titles in California in one third of the time that was accrued in litigation in the acquired territories of Louisiana and Florida. Even to this day, after the expiration of three quarters of a century since the acquisition of Louisiana suits are pending in the US Court for settlement of Claims originating under the French and Spanish governments; and the same may be said of Florida after the lapse of more than half a century since its cessation by Spain to the United States.<sup>207</sup>

This focus on the finality of judgment is significant for two reasons. Finality is an important concept because it stands for the idea that litigation eventually has an end, a moment when all appeals are exhausted, and the last judgment will stand. First, Gwin's scheme offered significantly less finality than the one proposed by Benton and the *Californio* interests. Second, it is unclear from

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<sup>207</sup> Gwin 70-71.

his example whether the pending litigation concerning Louisiana and Florida came as a result of the Spanish grants themselves, or the later transfer and subdivision of those interests. Truly, it was mainly the latter, and Gwin's California scheme in no way prevents fraud or other disputes by the holders of subsequent interests. In fact, Gwin's own discussion of fraudulent grants indicates that some of the litigation continued well past the expiration of the period outlined in the California Land Act.

Gwin certainly knew that one of the ways that California differed from other parts of the former Spanish Empire was the vast nature of the grants, and the relatively small number of individuals who held the title to those lands. Over the course of the work done by the commission, a little over six hundred cases were decided. Even accounting for the division of interests, six hundred cases constitutes comparatively few possible owners (California in 1850 had a population that already numbered in the hundreds of thousands). The vast majority of potential land disputes arose, not because of invalid origin grants, but over questions of boundary and access. The large nature of the *Californio* grants made invalid origin disputes unlikely. The grants, while large, were accompanied by in-depth meets and bounds descriptions, often supplemented by *disenos* – fairly detailed maps outlining the location of grant boundaries vis-a-vis local landmarks. Adding to this mass of evidence, the boundaries of grants had often been established for generations (in the case of former mission lands, the *Californios* often simply gained ownership of grants that originally predated their own). Across the range of adjudicated claims still available for study, boundary disputes are very rare. Boundary disputes might arise following the sub division of the land after the commissions' work, when the vast estates were broken into smaller parcels. Only in these instances would matters of a few yards be critical. Finally, unlike Florida and Louisiana, which had seen large influxes of settler populations prior to joining the United States, California received

most of its early immigrants following the beginning of American control during the gold rush period, meaning that the real crush for land took place during the period after the granting of the land titles.

An examination of one such *diseno*, illuminates the functions and limitations of such a conception of land in the Spanish/Mexican system. Indeed, as much as the grant document itself, witness testimony, or the other sorts of evidence brought before the Commission, they provide perhaps the most powerful and easily understandable form of reference for a grant of land. When examining one of these documents, it is worth first noting all the things that it is not. A *diseno* is not a modern topographical map, nor is it an accurately surveyed map that provides precise delineations of the boundaries of a piece of property. The maps do not contain some of the map features most familiar to anyone who takes a casual interest in geography. There is neither a scale nor a grid for measuring distance. This is largely because they were drawn without a desired adherence to any sort of accurate scale. The basic function of the *diseno* was as an illustrative companion to a meets and bounds description. California in the nineteenth century was a remote and sparsely populated region and methodical surveying was an arcane and rare art. Very few of the *Californio*'s estates were surveyed during the Mexican or Spanish period, and the vast remote nature of the lands in question meant doing so stood as an unnecessary and therefore foolish expense. At their most direct purpose, a *diseno* served as a guide for the landowner to illustrate or demonstrate the extent of his holdings in a visual medium. They indicated individual landmarks like mountains, or rivers. They provided important information for those who worked the land, like the rough locations of cattle pens and bunkhouses for the *vaqueros*.

As an example, let us examine the *diseno* for the *Rancho Laguna Temecula* in Southern Riverside County.<sup>208</sup> Clearly marked on the map is a corral for cattle, local mountain ranges, a pass through the mountains, and a local lake. The borders of the grant are clearly marked with a broken line. This makes a great deal of sense given the specific ways in which the land was used, as it was a map created by and intended for those actively engaged in the business of ranching. The crucial elements for a cattleman of the nineteenth century was access to water and to pastureland. The *diseno* succeeds on all these counts. If the land was transferred, the new owner could easily understand the location of these useful amenities. The map provides a requisite compass rose, allowing the user to situate the map in relationship to the landmarks depicted in the map. It does not provide any kind of scale, and at best tries to roughly approximate distance. As a result of the lack of precise measurement, the actual line-in-the-dirt boundaries of the grant were impossible to determine from the map.

In many ways, what the *diseno* presents is just as important as what it does not. These maps are often seen as being a quaint artifact of a simpler era. At the first glance of a modern admirer of instrument-based cartography, they seem a little crude given their lack of scale and limited (if even present) color palette. Still, it contains quite a lot of information. And this information says a great deal about those that made it. On the one hand, as previously stated, the main purpose of the map was clearly to aid those engaged in the business of cattle raising and yet no sense of scale or measured distance is indicated. This is precisely because such measurable data is largely irrelevant for those herding cattle. So long as the map roughly approximated distance, this was useful enough for the herdsman.

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<sup>208</sup> *Diseno Rancho Laguna Temecula*, The University of California, California Digital Library, <http://cdn.calisphere.org/data/13030/jp/hb9g5008jp/files/hb9g5008jp-FID4.jpg>

On the other hand, measured distance is immensely important for those engaged in the business of land speculation. While the use of the land often factors into its sale, just as important are the parcel's size and location. The fact that the *disenos* include little information in this regard is illustrative of the fact that the mapmakers never really imagined a time when the land itself might increase in value. Or more accurately, and to the very heart of the matter, they never really imagined a time when the land might be used to a different purpose.

This is not to say that they were useless for the purchasers of the early American Era. Many of the *Ranchos* did not share borders with other grants, instead between them was unused land that had not been granted by the Mexican government. The value of any piece of land is mostly dictated by location in relationship to useful amenities and the inherent assets of the property. Americans who sought to settle the state were planning on engaging in agriculture, like the *Californios*, even if that agriculture was to take a different form. Knowing the availability of water and pasture is a must for determining speculative value. Many of the other landmarks detailed in the meets and bounds, once used simply to determine rough boundaries, provided the keen-eyed investor with the availability of timber, transportation routes, potential mining sights, plowable flat earth and any other sort of exploitable feature.

Perhaps the most important thing that the *disenos* highlight is the change in status that was occurring for California during the period. California had been a remote colony since its founding in the eighteenth century and was not so different from Virginia and Massachusetts in the early colonial period when land was plentiful and people fairly scarce. With the coming of the United States, and the gold rush that coincided with statehood, California was transformed from a sleepy backwater into the physical embodiment of the American dream. For the owners of this land, it meant a transition from a time period when a roughly sketched map was suitable for understanding

and holding a piece of land, to an era when boundaries would be measured by trained surveyors and accurately recorded with government offices.

However, for Gwin and his fellow authors of the act, the transitory nature of documenting land was less important than the burning question of who owned the lands in California now coveted by both incoming settlers and the American government. Gwin publicly argued that the Land Act would set to rest the types of questions raised by imperfect documentation and recordation of titles even as any challenge to this assertion was rare as most of the parcels in question were rather large and spread out. But, to his thinking, such questions might manifest themselves more readily if the *Ranchos* were sold and divided up into more manageable acreages used for farming. Minor issues of boundary, while not yet a problem, might be one day become critical, and a wholesale accounting of land ownership could stave off an eventual disaster.

The finality that Gwin promised, in his efforts to streamline his transformation of California, was shaken when confronted with the issues that arose over the United States' government's acquisition of Mare Island for naval use. His assertion of the effectiveness of the land act was undermined by Gwin's documented rationale. During the 1851 session of Congress, Gwin introduced a bill to apportion money for the creation of a Navy Yard on Mare Island in San Francisco Bay. Though ultimately successful, these plans met with some trouble,

Like all of the rest of the land around the bay of San Francisco, Mare Island was claimed by certain persons and in order to facilitate the work on the Navy Yard, Mr. Gwin advised that the claims should be compromised, and those who were found to have the best title should be paid to relinquish their claims to the island. Fifty thousand dollars were apportioned and paid for this object, after a thorough examination of all claims to title for the island; yet strange to say, a quarter century after there are parties setting up claims to this property. The law offices of the government must have strangely neglected their duty if these claims have any validity.<sup>209</sup>

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<sup>209</sup> Gwin 82.

This is an illuminating passage. It shows that Gwin's argument about the finality of claims adjudicated under his system is at best an oversimplification. In addition, it shows the degree to which the commission could be influenced by political pressure brought by Gwin and the Congress. While he touts its finality and the need for certainty of ownership, he himself advocated the short circuiting of the system due to the need for a timely determination, an option that was not available to the *Californios* he was elected to represent. It is not unusual for an American government (even a pre-Civil War United States) to set aside general principles in favor of military expedience. It is also possible that the tightly enclosed nature of the Mare Island lands (a small peninsula of land on the far eastern shore of San Francisco Bay near the modern-day city of Vallejo) meant that the commission's work of parsing out the boundaries of Spanish and Mexican era documents and maps simply didn't lend itself to work of this type.

It is more likely, however, that the United States government didn't like leaving its certainty of interest, and its constitutional obligation to fairly compensate landholders for government takings, in the hands of such a board. While this does not directly speak against Gwin's design, it is notable that the government itself preferred a modified version of Benton's plan when it came to establishing a naval presence in the bay.

This focus on finality is best understood with a switch of perspective. It is beyond question that once a claimant began the process, it could draw out for many years. Making the Commission's decisions appealable within the legal system contrasts directly with what we commonly hold to be finality. To truly streamline the process Benton's method of allowing a recorder to ascertain properties and leaving it up to the state courts to administer disputes would have been far easier, faster, and more certain. Thus, in order to understand why Gwin touted the finality of his bill, further investigation is necessary.

His proposal exceeds Benton's in finality in one critical way, although Gwin's did so with designs on land redistribution. The proposal calls for all the claims to be made within a relatively brief period: three years. Compounding this, it creates a rather high entry cost to prosecute those claims, meaning that undertaking a claim before the commission is significantly more difficult than simply approaching a local recorder. Once the claim was made, numerous stages of appeal required prosecution, all at considerable expense to the owners. This had the net effect of forcing the *Californios* to act. Their choice was between committing large amounts of resources to fight for their claim and selling at a reduced price to someone who was willing to prosecute the claim.

Forced obligations – wherein the citizen is required to respond to government demands or be faced with fines or imprisonment – are common for modern Americans. Unavoidably, everyone is forced to pay taxes on a yearly basis. Regarding such forced obligations, following the comparatively more relaxed periods of the eighteenth and nineteenth centuries, the growth of the welfare state over the course of the twentieth century gradually increased the basic obligations of citizenship, many of which involve regular expenditure of money. In 1850, these obligations were minimal. Income tax did not exist, nor did the draft or any of the depression era social programs that require registration and contribution. Property tax existed, but that was generally accessed with notice and a fixed demand for payment. The obligation created by the CLA demanded you prove your ownership or lose your assets. It created a duty to act, and duties to act are fairly rare in the American legal system. This prevented the *Californios* from stalling for time, or delaying compliance with the act. With the initial bar set so high many of the *Californios* were forced to sell their lands, and this sale in turn fed the expansionistic goals of the authors. The men they sold to did not have the same attachment to the *Californios'* way of life in that they were not ranchers. Instead they were more likely to see the acquisition of these great estates as an opportunity to profit

from the further sale of portions of that land following the confirmation of their title by the Land Commission. An important part of effecting a transformation in property holding is ensuring that the actions bringing about this transformation take place in a timely manner. In this regard, the comparatively brief timeline that Gwin's act required ensured promptness.

### **Fertile Lands for Virile Americans**

Gwin's solution is best framed in terms of his proposal on the growth and expansion of the United States. Whether the subject in question was California or elsewhere, Gwin was an advocate of expansion. During a debate in 1852 about the possible annexation of Cuba (which he supported) he asked his fellow senators to look further afield to other possible venues for expansion.

There are other islands beside Cuba in which the United States are interested. There are a group of islands called the Sandwich [sic] Islands, which we in California look upon as our summer residence. And when the senator from Virginia talks about ripe fruit, it ought to be known that that fruit is ripe also, and ready to fall.<sup>210</sup>

This comment echoes the quotation from Richard Henry Dana that began this project. Evocation of ripeness and fertility is at very heart and soul of nineteenth-century expansionism. As soon as one prize is plucked, the expansionists move on to another target.<sup>211</sup> The florid prose is more than a simple rhetorical flourish. The Sandwich Islands, known today as Hawaii, were occupied by another nation, in this case the indigenous Kingdom of Hawaii. Like California, it was coveted for agricultural cultivation, making the discussion of ripe fruit particularly apt. Present in both appraisals is a casual dismissal of alternate modes of agriculture and nation building. Ultimately

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<sup>210</sup> Gwin 95.

<sup>211</sup> For an interesting discussion of Empire and Masculinity see Amy S. Greenberg, *Manifest Manhood and the Antebellum American Empire*, (Cambridge: Cambridge, 2005).

the great Pacific Ocean could not impede manifest destiny as the acquisition of Hawaii would take place forty years after California's, following a similar pattern.

Tellingly, upon his arrival in Washington, one of Gwin's first acts as California's newest Senator was to meet with John C. Calhoun to discuss and plot just this sort of American expansion in broad terms. Despite the deep divisions in the United States over the utilization of annexed territory, one thing shared between north and south was a zeal for territorial expansion, and a sense that the destiny of the United States would be found in the distant, and alluringly fecund west.<sup>212</sup>

As presaged by his visit to Calhoun's home, Gwin's advocacy of expansion went well beyond California and Hawaii.

Mr. Gwin was an earnest advocate of the Annexation of the Sandwich Islands and the extension of our territory south. The Gadsden Treaty, as it was called, at a later period came before the Senate for ratification, He proposed that the boundary, instead of the one that was adopted in the treaty, should begin thirty miles south of Magdalena, and run across the continent to the Gulf of Mexico striking the Gulf of Mexico thirty miles south of the mouth of the Rio Grande river.<sup>213</sup>

Throughout his entire career in the senate Gwin remained a constant advocate of expansion and exploitation. It seems that the location of the land was less important than the desire to acquire it. This is a critical point, because while it is tempting to attribute Gwin's motives solely to self-enrichment, or his representation of the new arrivals in California, Gwin's time in Congress clearly shows that he was in favor of American expansion as a broadly framed, globetrotting endeavor. And he did not limit that desire to Mexican territories alone.

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<sup>212</sup> William Weeks offers a discussion of the impact of Expansion on the politics of the antebellum period. William Earl Weeks, *Building the Continental Empire; American Expansion from the Revolution to the Civil War*, (New York; Ivar R Dee, 1997).

<sup>213</sup> Gwin 96.

Gwin's commitment to expansion only began with the acquisition of new lands. Gwin firmly advocated of the use of lands once they came into the control of the United States. In his words,

Mr. Gwin was also an earnest and constant friend of the policy of granting preemptions on the public lands, to actual settlers and cultivators, and also in favor of homesteads, and has already been stated in a previous part of this narrative that in the session of 1850 and '57 he very nearly succeeded in passing a bill supporting these homestead and preemption principles.<sup>214</sup>

This commitment to the exploitation of land was part of a broader nineteenth-century concept of focus on the highest use of raw land, and the settlement of land along patterns that dominated the eastern United States. In support of the homestead act of 1857, Gwin argued

they may charter, and open the whole of the residue of the public domain to actual settlers, citizens of the United States, or having signified their intention to become such, who, after three years occupation, shall have a fee simple title to a quarter section for each settler, being the head of a family.<sup>215</sup>

Gwin is consistent over time in advocating for the exploitation of new lands regardless of the way they were acquired or the nation they were received from. This unfailing attitude points more to an overall vision of American expansion than a single desire to take land from any specific group. While the story of westward expansion is often told in racial terms, Gwin's actions and writings indicate that there was also a powerful philosophical and economic component to legislative decision making during the period. It is important to evaluate both the covert and the overt racism that marked American policy during the period but ignoring the race neutral factors that drove men like Gwin to champion the growth of the United States deprives us of crucial tools for interpreting and understanding the past. The study of American expansion is thus as much about the where and how of colonization as it is about the who and why. Gwin's focus on individual families and the

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<sup>214</sup> Gwin 97-8.

<sup>215</sup> Gwin 108.

lives of settlers underlies his understanding of how California should be settled. It also directly speaks to American's conceptions of redoubtable nineteenth century pioneers. In some ways this vision served as one of the factors that united Americans across the north south divide. It is easy to assume that after the compromise of 1850, little common ground existed between slave interests and those of free soilers. However, Gwin's initial meetings in Washington with Calhoun and others proves that despite the deeply held divisions over slavery, Americans were still firmly focused on the west, and the opportunities that existed for growth and expansion along the pacific.

There is also a more conceptual framework to be considered. A common refrain in Gwin's discussion of expansion is possession. In his view, American mastery over a piece of land is dependent on more than ownership, it must control every aspect of that land's development. In his view, California, Cuba, and Hawaii are more than simple homes for growing populations, they are adventures to be had, and quests to be undertaken. While Gwin knew the value of the states' lands, he rarely seems to speak in terms of dollars and cents. In 1852, Congress was provided with a detailed survey of the value and potentials of California's land, but that seems somehow inconsequential to Gwin. Gwin did not envision bank vaults full of gold, nor trade routes prospering. For Gwin, the self-stated goal was the plucking of the ripe fruit of unexploited land. The justification for this action lies in the proof of the intelligence and virility of the men who saw unrealized value, and the superiority of the nation and political system that produced them.

The history of American land exploitation does not always follow the basic narrative of settlement that most Americans learn in grade school. This narrative teaches that beginning in sixteenth century Massachusetts, people immigrated to this land to farm small family plots and be self-sufficient. This idea is inextricably linked with the vision many Americans carry of pioneer families moving west in covered wagons to settle the vast frontier. This process in turn created the

hardy self-reliant individualists that would forge America into the world power that it is today. This idea, formalized by Frederick Jackson Turner in his *The Frontier in American History*, and the “frontier thesis”, is still commonly accepted as the master narrative of American expansion.<sup>216</sup> Turner’s essential argument is that America is more than the sum of its various immigrant populations. He argues that the American character and nationality was created by the interaction of European immigrants with the rugged frontier environment found in the new world. It views the American landscape and its indigenous inhabitants as the anvil upon which a nationality was forged. Even before Turner’s memorialization of this process, the use of the frontier as the defining aspect of the American character framed the master narrative of American nationalism since at least the time of the revolution. For the men who drafted the California Land Act, the prototypical American would have been someone like James Fennimore Cooper’s Hawkeye, found on the pages of *The Last of the Mohicans*, first published in 1826.<sup>217</sup> Hawkeye was the orphaned child of pioneers raised by an adopted Native American father, who imparts the traditions and skills of wilderness survival passed down amongst his people to the young white man. In Hawkeye we see Turner’s thesis come to life. A protestant American warrior who takes on the wilderness, and while incorporating its lessons into his life never loses the essence of the Anglo-Saxon culture at his core. While this vision itself is somewhat absurd to modern Americans, it nonetheless contributed to what men, like William Gwin, saw as their role as legislators and leaders of the nation.

This description of the heroic white frontiersman gives short change to another factor that was common in the United States’ exploitation of conquered lands: speculation. Land speculation entered into American life at the moment the first colony was established in Jamestown. In fact,

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<sup>216</sup> Frederick Jackson Turner, *The Frontier in American History*, (University of Virginia: eBook, Summer 1996). <http://xroads.virginia.edu/~HYPER/TURNER/>

<sup>217</sup> James Fennimore Cooper, *The Last of the Mohicans; A Narrative of 1757*, (New York: H.C. Carey & I. Lea, 1826).

the basis of colonial expansion in the British colonies and then United States depended on it. When the Virginia Company or the Massachusetts Bay Company was founded, the only real assets they possessed was title to land. The justification for establishing a colony was to increase the value of that asset and profit from the work of settlers upon that land. While viewing expansion as a test of character is a fine way to justify the sometimes-harsh nature of settlement, the real, quantitative value that nations find in expansion is speculative value. The treasure invested by the United States in pursuing a war with Mexico could be recouped and surpassed only if the lands acquired at Guadeloupe Hidalgo generated more value than they possessed upon their acquisition.

Over a generation earlier, in the aftermath of the American Revolution, many of the nation's founding fathers speculated in lands along the Ohio. The Louisiana Purchase, which more than doubled the size of the United States in 1801, was a massive exercise in land speculation by the United States, with the hope that settlers could eventually make the expenditure of capital worthwhile. With these precedents, speculation inevitably formed the heart of the California Land Act. However, what's good for the government is not necessarily good for private individuals. The *Californios* were not speculators in the conventional sense, even in their initial arrival long before the Mexican-American War. Instead, when they acquired their large tracts of California land, their goals were simply to assemble the necessary assets to engage in a type of agriculture that required a great estate: the production and sale of cowhides for the trans-coastal hide and tallow trade. Their ancestors, commissioned by Spain in the latter part of the eighteenth century to settle the state, might have been speculators of a kind, but with few prospects beyond self-sufficiency on the horizon. A thriving, post-settlement real estate market was neither anticipated nor would it arrive until the late 1840s. The notion that the value of the land itself would exceed a possible home for future family members and a modest income was outside of their purview.

After the Treaty of Guadeloupe Hidalgo, the fear in Washington was that these large tracts would fall victim to individual speculators who might hold this land with the hope of extracting maximum speculative value. In doing so, they would drive up land costs, preventing the newly arrived settlers from bringing the land into production. This kind of purchase and acquisition of large tracts of land is exactly what men like Gwin sought to prevent with legislation like the California Land Act. This opposition, however, went well beyond a dislike of the *Californios* and their existing system. The motive was as much about a fear of the American character as it was a perceived Mexican stubborn refusal to sell. The ultimate fear of the authors of the act, was that the lands of the *Californios* would make a few new immigrants very rich, rather than provide sustenance for the masses of settlers that the gold rush brought into the state. This vision of a California dominated by large interests seemed even more plausible in light of John Charles Fremont's acquisition of the Mariposa grant, commonly held to be the most valuable parcel in the state, and his desire to exploit its mineral resources. In the eyes of Gwin and his allies, the process had begun already.

Modern authors have long sought to best frame this question of nineteenth-century land use. In 1955, J Willard Hurst proposed a thesis about the use of land in the nineteenth century, one deeply rooted in the process of westward expansion. He argued that in the nineteenth century land was settled in such a way as to affect the release of creative energy. He wrote,

we drew two working principles concerning the use of the law. (1) The legal order should protect and promote the individual release of creative energy to the broadest extent compatible with the broad sharing of opportunity for such expression. . . (2) The legal order should mobilize the resources of the community to help shape an environment which would give more liberty by increasing the practical range of choices open to them and minimizing the limiting force of circumstances.<sup>218</sup>

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<sup>218</sup> James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States*, (Madison: University of Wisconsin Press, 1956), 6.

This principle finds that governmental attitudes toward land favored those that would make the best use of the land, commercially exploiting it and facilitating economic growth. Beyond a simple passive approval, he argues that the forces of governmental power, what he terms the “resources of the community,” should be used by the law to affect an environment that allowed the maximum expression of this creative release, across the broadest swath possible. In Hurst’s terms, the creative release of energy amounts to the actualization of the land’s potential. This refers to more than simply improvement of the land. Hurst, in his formulation of the principle, draws on the experience of the Taney court in the *Charles River Bridge* case. The creative release of potential is the ability of people to make the best and most beneficial use of the land. In the case of Boston, it was a bridge between Boston and Cambridge, in the case of California, this use is mines and farms that the framers of the act hoped would be used to grow the state.

Crucially, Hurst’s principle accounts for a level of government facilitated exploitation of land resources in terms far broader than even the framers of the Act understood. Hurst contends that the most important aspect of this release was the ability to foster innovation. It is this innovation that makes the release of energy creative. By allowing individuals to pursue their interests, unfettered by the desires of the holders of vested interests, it allows for local innovation and growth.<sup>219</sup> In the California example, this might mean that an emigrant farmer could shift from cattle production for the hide trade to food production to feed the growing local population. The basic question is whether the law should privilege the right of an owner to enjoy their assent in the

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<sup>219</sup> These ideas were echoed and discussed by other subsequent legal scholars including, Stanley I. Kutler, *Privilege and Creative Destruction; The Charles River Bridge Case*, (Baltimore: Johns Hopkins UP, 1990), Morton Horwitz, *The Transformation of American Law 1780-1860*, (Cambridge: Harvard UP, 1979). Stuart Banner, *American Property; A History of How Why and What We Own*, (Cambridge: Harvard University Press, 2011), 291, James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights*. (New York: Oxford University Press, 1992). Francis N. Stites *Private Interest and Public Gain: The Dartmouth College Case, 1819*. (Amherst: Univ. of Massachusetts Press, 1972).

same way that they always have, or to promote the development of the land into a productive part of an ever-changing economy.

This argument is particularly useful to understand nineteenth-century policies regarding expansion for two key reasons. The first of these, westward expansion, has already been discussed at some length. However, it is worth continuing to note that the American settlement of the west was one of the largest and most successful national settlement projects undertaken in world history. In 1801 much of the American west was sparsely inhabited, by 1962, a large portion of the United States' population would reside in the west, and California would be the nation's most populous state. The second key reason is inextricably linked with the first: technological development. Most of human history has featured the invention and development of new technologies. However, the nineteenth century was a moment when technology functionally changed the way individuals lived, and society operated. The telegraph, the steamship, the factory and the railroad all fundamentally altered human existence. Goods became cheaper to produce and ship, meaning that a greater portion of labor be devoted to specific economic activities driving an increasingly national economy. In addition, the railroad, the steamship and the telegraph meant that a larger nation could be more interconnected than the smaller coastal United States of a few decades before.

For these technologies to succeed, the law needed to make provision for progress. Advancement dictated that the newly arrived technology would supersede an older, less efficient one. The telegraph put an end to the horse-borne messenger, the steamship ended the age of sail, and the railroad ensured that settlers no longer needed to travel by wagon. American expansion in the nineteenth century was more than simple physical expansion, it was a fundamental change in the efficiency of space, and the way that human beings made use of that space. The area of land literally increased, but the distances it contained shrank in practical use. Accordingly, while

agriculture remained an integral part of the American economy, the nature of that agriculture changed. In 1840, the economic bedrock of California was the trade in hides and tallow. Due to the distance goods from California had to travel to markets for sale, these products remained the only viable options. By the end of the decade, the same innovations that rapidly brought people to the state ensured that products from the state could be traded on the international market. As the *Ranchos* faded, they were replaced by orchards and vineyards producing wine, nuts and fruit for the rest of the United States. By 1892, Southern California, long viewed as too arid for agriculture was shipping Oranges as far away as London, England, to be sampled by no less a luminary than Queen Victoria herself.<sup>220</sup> While gold was the product that brought people to California, the state's mild climate, agricultural possibilities, and the rapid growth of San Francisco into the United States' premier settlement along the Pacific coast quickly made the new state an integral part of the national economy and an incubator for much desired economic innovation.

This discussion shifts the view of land from one focused on the acquisition of a definable asset, to one that views land as a raw material that can be transformed into a usable commodity. This is an important distinction. By shifting the focus of value to the cultivation and exploitation of the land, the value of landholding shifts from long term asset possession to the individual and his or her ability to make the land productive. This view of the value of land stands at odds with the system that prevailed in the old world featuring a landowning class and a cultivating class. The shift was also necessary to bring about successful expansion. American expansion was a national project, but a personal endeavor, and individuals needed motivation to risk the journey. If nothing was to be gained personally, there was little incentive. In fact, to one degree or another, personal speculation has always been at the heart of the American experiment. Personal speculation drove

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<sup>220</sup> Kevin Starr, *Inventing the Dream*, (London: Oxford UP, 1986), 133.

former indentured servants to cross the mountains into Kentucky and Ohio. The same motive existed for their great grandchildren who sought a future even further to the west.

By defining the value of land as its potential, rather than in its existing value, expansionists of Gwin's ilk sought to create a more egalitarian way to share the proceeds of colonization. However, it also places a large degree of pressure on the existing holders of title. Throughout the period, settlement in the west was marked by an almost total disregard for the existing occupants of western lands. Perhaps the most notable thing about California was that the land was already owned by settlers of European extraction who sought to retain that ownership. This fact made the task of settlement even more difficult. In most of the west the United States Government provided the necessary lands for exploitation by white settlers and speculators by simply brushing aside (or at times violently suppressing) the claims of Native Americans. Yet in California, the United States was forced to confront actual legal title rooted in the European legal tradition. This carried great risk because without the available lands the release of creative energy might founder providing no real incentive to spark the minds of settlers to drive westward.

Frustrating ambitious industrialists and ravenous expansionists, America in 1840 was a nation with vast assets, but comparatively little production. It was what might be termed "cash poor." The nation spent much of its early life acquiring land, but it often lacked the ability to turn those gains into economic growth. Hurst's view of a more dynamic form of property is a concept which may be difficult to ingest for those used to seeing land as static. One must first reconsider land in terms of its potential. An acre could become a productive farm, developed into a factory, or transitioned into the commercial center of a new town. As Hurst sees it, the value of the land rests in its potential, not in its value on the open market. Thus, the mitigator of this potential is a system that places excess value on the stability of property at the expense of development.

Framing the Congressional debate in these terms, Thomas Hart Benton argued for the concept of vested rights, the more traditional model with its roots in American colonial history. His system of simple recordation would have allowed the maximum advantage for those who held title to land. More so, it would accept at face value claims about the boundaries of the land owned. California under this system of land distribution would allow the holders of large grants to retain control over them and to either subdivide their holdings for the profitable sale of smaller parcels or to be sold whole to large unified buyers. This would mean the consolidation of power in the hands of men like Fremont, effectively replacing the *Californios* as the land-holding elite of the new state. This ensured that opportunity in the new state be concentrated in the hands of those who came to the new land with considerable assets or backing from the east, but it left little opportunity beyond peonage for anyone else.

If California was to stay in the hands of large landowners, those owners would naturally seek to maximize their own profit, something that is often accomplished through the limiting of competition. These large landholders had little economic interest to subdivide their lands. In fact, one of the early arrivals in the state, the Hearst Family, owns the Piedras Blancas land grant in its entirety through the present day. This ranch was originally a Mexican Land grant dating to around 1840, eventually purchased by George Hearst in 1865. Outside of “Hearst Castle,” which was gifted to the State of California after William Randolph Hearst’s death, the *Rancho* is farmed much in the way it was during the Mexican era, with large herds of grass-fed cattle moving pastures with the seasons. This highlights the philosophical question that the state faced: would it adopt a land policy that sought to ensure the genteel livings of those in possession of large estates, or would it focus on maximizing development across the state, at the risk of sacrificing certainty in the ownership of land?

William Gwin's position best argued for the free release of energy. He believed that the use of the commission would free up the maximum amount of land for the federal government, and this in turn would be parsed out to farmers, miners and settlers to then increase the normative productivity of the land, allowing for the maximum growth. For this release of creative energy to take place, land must be made available. But, of course, most of the land in California had at least nominal owners. If not released, the pattern of large estates focused on the cattle trade would likely continue. By broadening the ownership of land, productivity is increased, and the power of grant holders is diminished. At the same time, the new division of the land would favor smaller farms and mining operations that more closely resembled the Jeffersonian model of small landholders on self-sustaining farmsteads. California would shift from a wide-open range grazing herds of cattle, to a veritable garden focused on more labor-intensive agriculture.

In effect both policies, at least to their intents, would bring about the creation of a new American dominated California. But they drastically differ in the sort of system of landholding they would create. In order to understand this, the concept of land development must be considered in a more holistic sense. Hurst modeled a systemic legal framework for understanding development. If large amounts of land are owned by a limited number of owners, some development will take place. Indeed, these owners might enjoy a great deal of success and create very profitable enterprises. However, to ensure maximum efficiency the land must be distributed to several smaller owners. While each small owner might not enjoy the level of concentrated profits experienced by a large landowner, the overall amount of aggregate development far outpaces the efforts of one large scale enterprise.

For example, if Blackacre is an estate of 100 acres, a cattle ranch might produce an enterprise valued at 1000 dollars for one owner. If Blackacre were divided into ten identical parcels,

each worked by a farmer to produce crops, with each farm valued at 200 dollars, the aggregate development value of the land would have doubled to 2000 dollars. While each 10-acre farmstead might not make its master a wealthy man (leaving each with only one fifth the assets of the rancher) the state and nation as a whole benefit from a doubling in the productive output of Blackacre.

This is the process that Hurst describes when referring to the release of creative energy. If viewed from a national systemic level, large landholders like the *Californios*, whose privilege is entrenched giving them little incentive to aggressively develop their land, are a drag on the economy. The history of California is rife with examples of this very contention. Prior to the American conquest, California was dominated by large comfortable landowners. Little effort was made to attract settlement, despite large amounts of arable land, and the *Ranchos* provided a fine living for the prominent *Californios*. While the pressures of the gold rush might force some changes, there is only so much risk and enterprise that the large land owners could be expected to take. By attempting to free up some of the estate lands to settlement, Gwin led vanguard for this new attempt to unleash the economic potential in the United States' natural assets. It is this very drive that informs a great deal of our modern conception of the nineteenth century; the pioneer in the prairie schooner came west to start over, not to purchase an estate.

Hurst did not advocate the de-emphasis of vested interests out of a concern for economic fairness. The process that he documents ultimately occupied a period of American history that was marked by a stark division between the rich and the poor. To be certain, in many cases, those ultimately benefiting from the creative release of energy were already quite wealthy. In understanding the justification for this policy, one must not focus on the relative financial status of the parties, but instead consider the property's ultimate economic capacity. In California, this meant that those ultimately able to make best use of the land had access to assets far greater than

those of the *Californios*. Hurst argues that giving precedence to the interests of growing and expanding enterprises was justified by the increase in national utility that these owners provided.

This view contrasts with the English model favoring entrenched interests with vested rights. Vested rights, meaning ancient or long held rights to property, prevented other individuals from further exploiting the property for further commercial innovations. Hurst argues that it was alternative release of creative energy that allowed for the rapid expansion that the United States experienced in the nineteenth century. This needed an availability of open lands for the process to absorb, and the willingness of the government to open those lands for exploitation by those other than existing elites. Supplementing this, he discusses the concept of legislative drift, the notion that while these ideals may have existed in state action, sometimes the end result is far different than the intended policy. Thus, while an egalitarian notion of innovation was the ideal, circumstances unique to individual situations could pervert this, ensuring the survival of the holders of vested interests.<sup>221</sup> This thesis seems tailor made to describe William Gwin and his documented perspective on American growth. More than his perspective, it also describes his experience: Gwin himself was one of these restless young men who moved to the frontier with an eye towards taming the west. Moreover, when Gwin arrived in California, he immediately allied himself with the interests of the new settlers and miners that had recently arrived in the state.

In California, this brand of nineteenth-century politics is often explicitly framed in light of racism, and rightfully so. Racist motivations, strategies, violence, policies, and convictions are the very building blocks of manifest destiny. A disregard for native peoples and cultures are the bedrock upon which American expansion is built. In the specific case of California, America operated during the Mexican War with a good deal of contempt for Mexico and the Mexican people.

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<sup>221</sup> Hurst, 35.

But expansion-minded policy makers are motivated by a myriad of other complimentary issues. One must pause to consider that racism alone does not provide a complete explanation for the California Land Act and the transfer of California's land from pre-American *Rancho*'s to the smaller holdings typical of modern California.

The question that faced Congress in 1850, revolved around who would control California, and what sort of place it would be. Immediately following a war, one may be inclined to think that this largely meant a transfer of land from Mexican to Anglo, and a shift in purpose from Mexican methods of use to American methods. But in fact, one often overlooked aspect of the California Land Act is that by its establishment in 1850, many of the *Ranchos* were already in Anglo hands. The *Californios* were not rich by the standards of large landowners in the eastern United States of 1844, and by 1850 the costs of running their *Ranchos* and the attendant costs of the American takeover had pushed many to the brink of ruin. The obvious solution to this problem was to sell some or most of their land to new, well-financed, immigrants. Thus, by the time of the Commission's work, many of the Plaintiffs were as American as the commissioners.

The primary worry of Gwin, and those of a like mind in the east was not that California's land would remain in the hands of the *Californios*, but that it would be consolidated in the hands of a few very rich Americans, Americans like Fremont. Noble impulse was not, however, driving Gwin and his compatriots. Modern scholars struggle sometimes to separate past movements with ostensible similarities from those that thrive today. as such, the California Land Act was neither about ensuring an equal distribution of wealth, nor was it targeted at wealthy individuals. Instead it was wrapped up in nineteenth-century conceptions of land use, and a deeply held understanding of what sort of nation the United States should be.

The *Ranchos*, and indeed much of Mexico in the 1840's, centered around large landholdings by one wealthy family. This family then employed local individuals. This system, known as the *Hacienda*, came to dominate much of northern Mexico.<sup>222</sup> The workers on these estates rarely owned any land, and persisted entirely upon the will of the landowner to feed and clothe them. With the influx of new emigrants this became untenable. For a hundred years, the *Ranchos* survived precisely because of their size. Many parts of California are fairly arid. In order to maintain large cattle herd, the *Ranchos* constantly move pastures both to accommodate the changes in season (California for all intents and purposes has two real seasons, a hot summer and a cooler wetter Spring/Winter/Fall), but also to avoid destroying the pasturelands with overgrazing. Similarly, it was important to move the livestock in an effort not to exhaust limited water supplies. All of this was accomplished with very limited improvement to the land. Almost totally absent was the structure of irrigation, road building, and intense cultivation that marked much of the eastern United States, or central Mexico for that matter.

As immigrants from the East poured into California, they immediately impacted the *Californio* owners who wanted to continue, in some form, the life that their families had lived for generations. As they sought to enjoy their fully vested ownership of the lands and profit from it, the influx of settlers made this impossible. What Hurst argues, is that the release of creative energy is not simply desirable, but it is necessary for successful growth and expansion. It is less of a strategy for generating profit that it is an ideology for perpetuating the life of a nation. The needs of the United States, and those Americans who inhabited the state had changed. If left to the devices of the natural disposition of lands it is likely that the vast estates would continue to transfer from the ownership of a handful of Mexican families, to a possibly smaller group of American

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<sup>222</sup> For a discussion of this system see Francois Chevalier, *Land and Society in Colonial Mexico: The Great Hacienda*, (Berkeley: UC Press, 1963).

speculators. To be sure, recent immigrants to the state would find this obstructive to their hopes and dreams. But what Hurst asserts is that without the creative release of energy, the growth and expansion of the United States would be stifled. Channeling wealth to less people would have prevented the type of dynamic growth that marked the nineteenth century and transformed California.

To Hurst, it follows that upholding vested rights creates economic bottlenecks. As with the Warren River Bridge in the Taney Court's case, this serves to discourage innovation, preventing an exponential expansion of the economy. Indeed, the Charles River Bridge was never simply about a bridge. It was not about one owner winning a right to exist at the expense of another. Truly, the decision cared little about the tolls either business might accumulate. It was about the economic activity that a newer, larger bridge made possible. Just as in Massachusetts, the question of the *Ranchos* in California was about more than the land itself. The break up and sale of the *Ranchos* would result in necessary innovation. Smaller farms allowed for more specialized products, often crops that required more intensive labor, and consequently more employees, than cattle ranching. In turn these farms required infrastructure to bring their crops to market. This resultant infrastructure supported the expansion of small settlements into towns that would grow into cities. As these cities grew, they brought lawyers, doctors, courts, factories to thrive in the new state. This created markets for new goods like the products that Levi and Strauss were already selling to miners in the Bay Area. These goods and products then traveled to ports where they were shipped east to further invigorate the national market.

All of this dynamic growth was impossible without the expansion Hurst describes. Take for example two of the land grants already discussed in this study. The Piedras Blancas land grant was bought by one of the wealthy men who came to the state in the aftermath of the Mexican War.

George Hearst was a wealthy easterner whose son, William Randolph Hearst, would go on to be one of the great entrepreneurs of the late nineteenth and early 20<sup>th</sup> centuries. George Hearst himself became one of California's early senators in the decades following Gwin's term of office. To this day, the land grant remains largely undeveloped, farmed and pastured in much the way it was prior to Hearst's ownership. A visitor to San Simeon (the small village that is nearest to the estate) can see herds of cattle and wide expanses of range land. The main development in the region is Hearst Castle, a large house built by William Randolph Hearst, and later donated to the state of California in return for a decrease in property taxes. A visitor transported from 1840, might be surprised by the tourist busses that wind their way up the hills for Castle tours, but they would surely feel at home with the free-range cattle ranching that forms the primary economic activity of the area.

This is contrasted in the example of the Mission San Gabriel grant outside of Los Angeles. Newly arrived Americans purchased the sleepy inland area in 1850, then quickly and successfully broke it up into smaller parcels. These ultimately became the cities of Alhambra, San Gabriel, and South Pasadena. Today these former grant lands are home to hundreds of thousands of people, with vibrant commercial and industrial districts. The Mission San Gabriel lives on, serving as a parish church, and a tourist/educational site home to what it claims is the state's oldest grape vine. But aside from the immediate grounds of the mission, little remains of old California. The groves and vineyards that once formed the bedrock of San Gabriel's role in the Mission economy are long gone, given way to modest (and in the case of South Pasadena palatial) homes, strip malls, and office buildings. While the beauty of Piedras Blancas and its open ranges is powerful, for a growing nation trying to expand, the highly populated and very prosperous San Gabriel valley was the dream.

Following Hurst's rationale, if growth and expansion are stifled, the alternative is not simply a slowed rate of growth and expansion, it is complete stagnation. The release of creative energy is necessary to foster successful growth. In a California dominated by a few large landowners, fewer immigrants travel to the new state, which in turn results in less development, and the value of land remains unchanged and, more importantly, unsold. In fact, without the overall expansion of the economic infrastructure of the state, by the time that the gold fields were played out, the state would be economically worse off than it was prior to its acquisition by the United States. Everything is the same, except there is less gold now. In this context, it was not a question of how California would grow, but if it would grow.

The pull of the past remains strong. Tradition and history are powerful motivators for actions by both individuals and nations. The romance of the *Rancho* period persists today as a powerful part of California's culture and history. Nostalgia for this bygone era was already strong by the 1880's. In 1884 Helen Hunt Jackson wrote the romantic novel *Ramona* which presented a forbidden romance between a mixed-race woman and a native man.<sup>223</sup> This was, aptly, set against the backdrop of greedy Americans arriving in Southern California looking to break up the pastoral world of the *Ranchos*. Still later, this idealization of the past was echoed in Zorro, a pulp character created in the early twentieth century, featured in numerous television and film adaptations since. Zorro is a *Californio* vigilante, a swordsman of super heroic skill who wears a mask and rights wrongs. His exploits often highlight his role as Don Diego de Vega the owner of a large *Rancho* which is threatened by injustice, often in the form of newly arrived Americans.

For the last 120 years Americans, as well as the modern inhabitants of California itself, have viewed the *Rancho* period as a lost moment of bucolic peace. To this day, elementary school

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<sup>223</sup> Helen Hunt Jackson, *Ramona*, (New York: Signet Classics, 2002).

children in the state build models of the California missions, take trips to *Rancho* and mission sites, and visit the yearly pageant performance of the Ramona story in the small town of Hemet. In spite of this reverence, few of the present-day inhabitants of the state are in any way related to the *Californios* of this period. Nonetheless, the era serves as a creation myth for the state and its people.

Yet a re-examination of this period, in light of Hurst's thesis, lends a different perspective. The *Californio* era was marked by a few powerful people and groups preserving control over almost unimaginably vast holdings. Today, California the third largest state in the U.S. and its most populous, but for much of its earliest period the best portions of this land were divided into roughly six hundred large estates. By comparison, the most recent US Census estimates that over six million California households own their own homes. Any examination of this period, and how it shaped landholding in the Golden State, must at once contend with myths and nostalgic remembrance with a critical and analytical eye and look beyond.

The pastoral model of the *Rancho* had many downsides from an economic perspective favoring the greater good. The *Ranchos* required a great deal of land but employed comparatively few people. Those employed on the *Rancho* were little more than peasants with no opportunity to own land or improve their situations. Many of these the laborers were native peoples motivated by a desperate desire to survive, having lost a traditional way of life. The vision of Gwin and the model of Hurst both hold this system as unacceptable. However, the end of this way of life brought terrible repercussions. The breakup of the *Ranchos* and the intensive settlement of the state ended a way of life and a unique culture created through almost two hundred years of settlement. This accelerated the exploitation of California's natural resources, and the brutal extermination of its diverse and vibrant native culture.

However, the alternative suggested by a California untouched by the CLA would likely have its difficulties as well, if only with regard to the health of the nation as measured by economic success. To begin, California with its vast estates intact would be anathema to everything commonly understood as modernity. Generations of wealth and productivity beyond that produced by any other state in the union would be absent and the lands on which cattle grazed in 1850, that became the breadbasket of the nation by 1950, would remain comparatively arid grasslands. In reality, unprecedented production resulted due to the adoption of the type of intensive agriculture that immigrants from the east originally sought to bring to the state.

Just the same – playing the game of historical what-ifs – it is possible that this development might have happened irrespective of the fate of the *Ranchos*. In the modern era, if there is exploitation to be had, it inevitably must be so. It is also clear from the results of the California Land Commission's inquiry into the land grants that the Act had at best a tangential impact on the fate of the great *Ranchos*. Regardless, in evaluating the purpose of the act, and what it reflects about the goals and methods of American expansion, we must evaluate more than just the results of the effort or an imagined history that played out differently. The California Land Act was a clear demonstration that American expansion in the state would embrace the model outlined by the Taney court in Charles River Bridge. This comes in direct contrast to the language of the Treaty of Guadeloupe Hidalgo, which seemed to enshrine the property of the state's inhabitants with the force of international law. The Act and its enforcement clearly indicate that, irrespective of diplomatic niceties, the original intent of the United States in its acquisition of the new territory was the hope that it be rapidly redistributed, serving as a permanent and developed base for the United States on the west coast. It also shows that the official policy of the United States was to

favor the labors of those who sought to build and grow the nation over those who hoped to collect on investments made either in the past or made newly valuable by the good work of others.

## CHAPTER 5. THE COMMISSION AND IT'S WORK

This chapter illuminates through the use of case studies the work of the California land Commission, and ways in which it implemented the California Land Act. In the process it is clearly shown that the claims presented to the Commission were extraordinarily well documented and accompanied by extensive eyewitness testimony. At the same time these claims were vigorously appealed by the United States, at great expense, through the federal courts. An analysis of the proceedings demonstrates that while the claimants were ultimately successful much of the time, the cost of defending these appeals proved ruinous, and consequentially led to the breakup of many of the state's large *Ranchos*.

The actual adjudication of the claims was vast in scope. Over six hundred claims eventually came before the Commission, far more than can be examined individually with any degree of detail in this project. Instead, the work of the commission will be viewed through two different lenses. First, one of the guiding principles outlined by Senator Gwin in the crafting of the California Land Act was the firmly held belief that the land titles in California served as equities and this observation ultimately proved essential in understanding how and why the commission conducted its business. Secondly, an examination of several test cases, drawn from different geographic locations across the state help to better define the commission's work. This analysis will show that while the federal government clearly sought to prosecute claims as vigorously as possible, this effort was ultimately stymied by the strength of the *California's* claims, and their own willingness to defend them. One issue that faced the commission from its inception was the scope of the claims in California, and how many of them would be truly contested. In a letter to the Attorney General of the United States, an "Anonymous Californian" outlined the size of the problem,

The total claims – genuine, fraudulent, duplicates and triplicates – presented in California, aggregated about twelve and a half million acres. Of these one third, as to area, were overlapping or duplicate claims . . . leaving about eight and one half million acres as the quantity of all land claimed in California under all sorts of grants, genuine or fraudulent. Of these from two thirds to three fourths were lands which were in the actual possession of the claimants, and had been so before the conquest.<sup>224</sup>

Accordingly, contained within the debate at the framing of the California Land Act is perhaps the most unique aspect to California's land titles, one outlined by Gwin on the senate floor,

Our titles in California are equities. We call you to examine them in a liberal and beneficent spirit, and confirm all that are just. We ask the interposition of a board to collect the evidence and. . . we claim the right of appeal to that power in Washington. Private rights will thus be judiciously separated from public domain; the Government surveys will prepare the land for donation and sale to the people of California, to be converted by them into permanent homes, resting upon indefensible titles from the Government.<sup>225</sup>

By explicitly labeling California Land Grants as equities – through sheer insistence – Gwin relegates them to the role of mere promises, giving them less than the full protection of the common law. Just as crucial, equities (derived from the English Courts of Equity, a separate legal body that became influential in the United States in the nineteenth century) do not have the same *prima facie* value that most property estates in law do. Equity was a somewhat daring concept in the American law at the time. Long a part of English jurisprudence (equitable doctrines developed in the sixteenth and seventeenth centuries), in the 1850's English equitable decisions were only beginning to be accepted by American courts. Equity is less concerned with legal formalities and more focused on balancing the interests of those before the bar in order to affect a solution that the court deems is fair. Consequently, courts of equity are far more likely to adopt a balancing test in order to ensure maximum utility. In fact, it would not be until 1869 in the case of *Willard v. Tayloe* that

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<sup>224</sup> Fraudulent Land Claims F862.1 E9. Bancroft Library. The University of California Berkeley Claims, 4.

<sup>225</sup> Gwin, 135.

the Supreme Court would formally recognize the role of equity in Federal Court.<sup>226</sup> Tellingly, the *Willard* involves a lease (an interest in land, albeit one created by a contract under which the case was decided). Justice Field in *Willard* wrote,

In general, it may be said that the specific relief will be granted when it is apparent from a view of all the circumstances of the particular case that it will subserve the ends of justice, and that it will be withheld when from a like view it appears that it will produce hardship or injustice to either of the parties.<sup>227</sup>

While *Willard* is the first Supreme Court case to enshrine equity, the Federal courts had practiced a kind of equity almost since their inception in 1789. It was, however, very much an evolving doctrine.<sup>228</sup> When Gwin charges that these equities be examined in good faith, he is simply pointing out that fairness and not law is crucial to deciding cases based in equity. Simply put, the common law has its limits. One of those limits is its need to focus on documents, and the legal formalities of those documents, to provide interests in land. This, together with his earlier statements about the virtuous toil of settlers, demonstrates his desire that the commission and the courts not simply provide for existing owners, but take notice of the need to be fair to newer settlers. Applying equity to California's titles is a unique use of this doctrine, one contrary to its previous interpretation in American courts.

### **The Intersection of Civil, Common, and Napoleonic Laws with American Equity**

To understand the impact of holding these lands in equity a brief outline of the concept is offered. Equity was, until the mid-nineteenth century, a parallel body of law existing independent of the common law, common law being that which is generally understood by laymen to be “the

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<sup>226</sup> *Willard v. Tayloe*, 75 U.S. 577 (1869)

<sup>227</sup> *Willard*, 75.

<sup>228</sup> Kristin A. Collins, "A Considerable Surgical Operation" Article III, Equity, and Judge Made Law in the Federal Courts, (Durham: Duke Law Journal, v. 60, no. 2, November 2010).

law.” This idea of parallel bodies of law was not unique in Europe. In England, many separate bodies of law can share jurisdiction over a single matter. It was not uncommon for medieval English plaintiffs to choose a legal avenue among either the Common Law, Ecclesiastical or Church Law, and local Baronial or manor law. Often these different courts applied vastly different principles and sets of values and render very different decisions. As time passed, the Reformation muted Church law, and the centralization of English power during the eighteenth century vastly deemphasized the role of the landed nobility and their ability to offer legal judgments upon those in their jurisdiction. This left the common law as the primary law of the land.

This was, however, somewhat problematic. For the common law is a strange creature. Modern readers with at least a passing eye on legal issues of the day, likely view the common law as the modern system of statutes and courts. While the twenty-first-century legal system is indeed rooted in the common law tradition, the eighteenth and nineteenth century common law courts behaved quite differently, serving a more organically evolved sense of legality. The common law was not originally a statute-based body of law, instead it involved the application of a great number of legal precedents that courts absorbed over many years. It also was conducted under a system of writ pleading, where plaintiffs would shoehorn their legal issues into one of several arcane writs allowing them to bring a case to court.

Another factor unique to California compounded the peculiar nature of the Common Law. One of the most obvious facts distinguishing California remains one of the most challenging for a Federal body derived from English systems of law: Spain originally settled California. For those unfamiliar with the legal history of Europe this factor may seem minor, but it forms the basis of all the actions that the United States took in California. Spain is an ancient nation, its lands settled long before the first stirrings of modern civilization began to occur in the British Isles. And as an

ancient nation, innumerable conquering forces, governments, and factions each contributed one way or another to the fabric of Spanish life. Phoenicians, Goths, Romans, Umayyads, French, Fascists, and Republicans all ruled Spain at various moments in its history, leaving marks on its legal traditions. Two of these conquests in particular formed the basis of Spanish legal tradition in the nineteenth century.

The Romans occupied one of the greatest empires of its day. It spanned most of the Mediterranean world, creating religious and cultural traditions that formed the bedrock of much of modern European society. Crucial in uniting this vast empire was the law. The Roman law, known as the civil law, served as the legal code for all Roman Citizens. It allowed for the creation of laws or statutes, and for their interpretation by magistrates. It offered protection for contracts, rules to settle land disputes, and provisions to maintain public order. The civil law became the cornerstone of Roman civilization, but like the empire itself was fleeting. Beginning in the fifth century, the Roman Empire, beset by internal corruption and external pressures began to decline. Adapting to new political realities, the former Roman provinces changed in a number of fundamental ways. Still, civil law did not disappear from the realm of legal procedure in the territories no longer under Roman control. In much of continental Europe, new barbarian kingdoms incorporated the civil law, along with Christianity, into their new kingdoms. And a civil law system based on the interpretation of statutes continued to reign on the continent, including in places like Spain.

A notable exception to this was England. Great Britain was one of the first provinces abandoned by the Romans, and those who came next, the Anglo Saxons, had little interest in adopting Roman ideas. Instead they created a legal system that combined Germanic tribal principles with influences from Danish and Frankish law creating what became known as the Anglo-Saxon Common Law.

Spain, unlike England, retained the civil law, although in a form influenced by hundreds of years of Moorish occupation and hundreds more of Hapsburg rule. And by 1800, just preceding the period at hand, a new influence arrived to impress itself upon the Spanish Law. Rising to power in the chaos of the French Revolution, Napoleon Bonaparte's conquests across Europe approached the vast expanses reached by his ancient predecessors. What is commonly regarded, constituting his most lasting legacy, was his influence on European legal traditions. Everywhere that the Emperor's armies marched they brought with them a legal code known as the *Code Napoleon*. In 1808 the Emperor seized the Spanish throne from Charles IV, giving it to his own brother Joseph. Joseph's new kingdom would have a new law, one which he proposed at Bayonne in that same year. The *Code Napoleon* featured an attempt to bring some of the enlightenment ideals that had driven the French Revolution to the practice of European law at large. Designed to root out the feudal traditions persisting since the middle ages, it heralded true legal equality for all of Europe's citizens. This system made its way to colonial holdings like in Mexico, forming a basis of law that oversaw the redistribution of Mission land in California.

And this was the legal world into which American troops, settlers, politicians, and lawyers stampeded during the 1840s. At times there was a mere overlaying of legal traditions, and at others a more violent substitution, *Californio* landowners witnessed a clash of culture from a unique perspective. As they came to understand, property cases under the English system of common law had a few problematic quirks. One limit of the common law was its inability to physically force actions on litigants. The court typically decided damages. If a person trespassed on another's property, the court could assess the damages, and force the trespasser to compensate the land owner. It could not, however, force the trespasser off the land. This became an even graver problem when it came to a discussion of the sale of property. Typically, the common law abided by the

simple rule of “first in time is first in right.” This meant that the holder of the oldest recorded deed was deemed the owner of a piece of real property (real estate). This seems logical and simple, but it is often very difficult to apply. Legal ownership of a piece of property is ensured by a deed. A deed is a legal document that transfers the rights of one holder of a piece of land to another. It contains all sorts of warranties and special language making it enforceable in a court of law. Ideally, a local municipality records the deed, imbuing it with a degree of legitimacy, and putting others on notice of the ownership of the land. While this may seem very straightforward, in real life, particularly in a frontier nation like the United States, these formalities were not always followed. Commonly, even in the modern world, purchasers fail to record or incorrectly record necessary documents pertaining to their property. In addition, colonial society often did not have easy access to legal representation, or even courts with their attendant judges, clerks, and infrastructures. These could be located days or even weeks away from isolated settlements.

A parallel body of law known as equity or chancery developed to fill this gap. Equity serves as a body of law dedicated to solving many of the problems that law otherwise was ill-equipped to handle. Rather than dealing with monetary damages, equity offered what is now known as “equitable relief”: the ability for a plaintiff to come to a court asking it to force another individual to take some sort of action. This is obviously useful for a variety of legal issues, none the least of which was property.

Often property passes between individuals via will or gift, and in those circumstances, a recorded or written deed is not always present. But a written deed is one of the primary requirements to transfer real property at common law. This is necessary to satisfy the statute of frauds, a deeply held tenant of common law requiring all legal instruments relating to real property to be memorialized in writing.

Answering this, one of the primary underlying principles of equity is that of “clean hands.” Generations of law students have learned in their first year of study that when one comes to a court of equity one must have clean hands. Simply put, this dictates that in order to prevail in equity an individual must be in the right. Furthermore, as this is a means of litigating conflict, they must be someone who has been wronged by another. But, and this is critical to the notion of clean hands, the conflict must be initiated by the opposing party without malice. Equity is not a place to divide the spoils of a swindle, instead it is designed to correct the harsh textual nature of the common law.

This idea of clean hands is aligned with the notion of equitable estates in property. In 1824 the Supreme Court of Pennsylvania, in the case of Chew v. Barnett, addressed the nature of equitable estates in real property. The case concerned the conveyance of over 100,000 acres of land. The court wrote,

When that conveyance was executed, the legal title was with Jeramiah Parker, by patents with the commonwealth; Judge Wilson having nothing but an equitable title under the articles, could convey nothing more; his deed, therefore, passed to Mr. Chew only an equitable title. . . It did so but only in equity, and to entitle him to call for conveyance from Judge Wilson; not as vesting the title in him. . . the conveyance operates as an agreement to convey, which, when title has been subsequently acquired may be enforced in Chancery. . . In equity, whatever ought to be done is considered as actually done, and this maxim of peculiar force . . . is so, only for giving parties a common law remedy on an equitable title.<sup>229</sup>

There is a great deal in this decision relevant to equitable estates in the early nineteenth century. First, one of the primary concerns of the court is its ability to give redress. As previously discussed, during this period of legal history the courts of common law and chancery were merging. In fact, the court in Chew notes that Pennsylvania at the time did not have a chancery court. This is its justification for the application of the maxim of “peculiar force.” Essentially this method allows a court of law to apply equitable principles to a legal decision, precisely because an equitable title

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<sup>229</sup> Chew v. Barnett, 1824 WL 2392 (1824).

is not a legal title. Instead it is a promise to convey legal title, a sort of shade of what we commonly think of as real estate ownership. However, this equitable title comes with a major caveat. Instead of a typical property conveyance case where a court relies on deeds and contracts, an equitable case relies on determining the terms of a promise to the plaintiff only what they “ought” to have.

This is particularly relevant for California titles, which Gwin willed to be equities. One of the primary concerns held by the United States in administering California land was the threat of fraudulent titles. This fear is simultaneously understandable and somewhat questionable. The United States of the nineteenth century was rife with land fraud, and not simply of the equitable variety. One need to look no farther than the landmark Supreme Court cases of Cherokee Nation v Georgia and Worcester v Georgia to provide a sample of what land development in the nineteenth century looked like.<sup>230</sup> Land conveyance was often called into question based on the ability of the conveyor to actually sell the land, or the tangled nature of ownership of land acquired from colonial powers of native peoples.

In California these questions of equitable property played out in the adjudication of both valid and invalid land claims. It is unclear why California was targeted as a place likely to harbor fraud, other than the general low opinion of Mexican administration held by many in Washington and to fuel Gwin’s plaintiff cries to the senate with a sense of desperation and a need for an immediate and just solution. In fact, some deeds, notably those granted during the Spanish period were generally held above reproach. It is unclear why the Congress placed such faith the Bourbon administration of California, but a distinction was drawn.<sup>231</sup> Regardless, the treatment of land as equity served an advantage to the United States. Here, the notion of clean hands comes to the forefront. In Chew the court stated that in equity the court treats that which ought to have been

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<sup>230</sup> The Cherokee Nation v. The State of Georgia, 30 U.S. 1 (1831), Worcester v. Georgia 31 U.S. 515 (1832).

<sup>231</sup> Gwin 54-55.

done as done. In the case before them this was a simple matter for while it was clear that a conveyance was made, it was a much larger issue when dealing with land on the scale of California. The court would only be empowered to ratify the equitable titles of the *Californios* if they were satisfied that they were doing what ought to have been done. This does not simply mean they must follow the text of the treaty of Guadeloupe Hidalgo as one might expect. Rather it necessitated an examination of the original granting documents and circumstances that led to the original acquisition of the land. In essence, the evaluation of a California grant entailed the re-examination of the internal land dealings of the Mexican governments of the 1820s-50s and if the court found any malfeasance, it was not empowered to grant title.

### Three Cases at the Commission

The California Land Commission and its attendant commissioners put this process into action. In order to get a better understanding of the ways in which a claim was adjudicated this study now examines three cases, each serving as examples to illustrate the complicated legal processes and traditions at work.<sup>232</sup> The first case is De La Guerra y Noriega v US, concerning the *Rancho* known as Conejo.<sup>233</sup> *Conejo*, meaning rabbit in Spanish, refers to a grant of land given to a branch of the

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<sup>232</sup> The following cases were selected because I believe them typical of the experiences of Californio landowners. In addition, these files are fairly extensive, and contain a great deal of ephemera, like bills from court clerks, that are not always present in every case. Other cases I that are typical of this pattern include (but not limited to) Near Gabriel, Bancroft MSS Land Files 47 SD, Providencia MSS Land Files 30 SD, San Lucas MSS Land Files 34 SD, San Bernardino MSS Land Files 12 SD.

<sup>233</sup> United States District Court (California: Southern District), *Responsible party*

*Guerra y Noriega, Jose de la, 1779-1858, Claimant, Conejo grant: [Ventura and Los Angeles counties, Calif.] : Jose de la Guerra Y Noriega, claimant: case no. 107, Southern District, 1852 – 1857, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>, 1.*

venerable De La Guerra family. This family, brilliantly chronicled by Sam Truett, influence Southern Californian life and culture considerably.<sup>234</sup>

That the ranch encompassed the northwestern part of the San Fernando Valley, extending across into the area currently known as Camarillo. Jose De la Guerra y Noriega petitioned the board to confirm his ownership of the land as required. In support of his claim he offered five witnesses, a copy of the original grant, and a deed that gave the land to his father.<sup>235</sup> Of the five witnesses, four were *Californios* (Arguillo, Carillo, Levarribas, and Rodriguez).<sup>236</sup> Their testimony confirmed with assertions. They testified that the claimant owned *Rancho Conejo*, that it had been in the possession of his father, and that the previous family to own the land had deeded the property to Jose's father.<sup>237</sup> The fifth witness called in support of the claim was one Mr. Hartnell. Hartnell appears as the proverbial California "old hand". He testifies to being fifty-five years old, and to having resided in California for 30 years. This meant that he arrived in the region in the early 1820's, shortly after Mexican independence from Spain.<sup>238</sup> He testifies to the truth of Jose de la Guerra's claim, but also crucially (as cited by the Commissioners in their opinion) confirms the authenticity of the handwriting on the deed that granted the land to De la Guerra's father.<sup>239</sup>

The Commission concludes in De la Guerra's favor, a likely outcome considering that the U.S. Government neither challenged any witness testimony nor presented a competing case. The record makes clear that the U.S. law agent, charged with representing the government, attended the

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<sup>234</sup> Samuel Truett, *Continental Crossroads; Remapping the US Mexico Borderlands History*, (Durham: Duke UP, 2004).

<sup>235</sup> De la Guerra, 5-6, 13-20.

<sup>236</sup> De la Guerra, 8-12.

<sup>237</sup> Ibid.

<sup>238</sup> De la Guerra, 11-12

<sup>239</sup> Ibid.

testimony, but he chose to remain silent.<sup>240</sup> The issue was not settled though, for on October 12th of 1854, almost immediately following the commission's decision, the De la Guerra family received a notice that their case was to be appealed to the U.S. District Court. This notice came in the form of a pre-printed document with lines for filling in the relevant case details. This was not a standard form, but one specially prepared by the U.S. Attorney for the appeal of cases originating from the Commission.<sup>241</sup> In fact, it appears that the case is without controversy.

The use of preprinted forms was much in favor with Pacificus Ord, the U. S. Attorney in Los Angeles. His petition of appeal to the U.S. District court was one such document. His form states the reason for appeal as, "Your petitioner further represents and insists, that the said claim is invalid; and said decision of said commissioners is erroneous and ought to be set aside for many errors and infractions of evidence and law apparent in said transcript."<sup>242</sup>

Curiously, this appeal was filed by form without specific charges of error. It is unlikely that a court would be especially receptive to such a filing, for it seems that the U.S. is asking the court to simply retry the entire case. This is not a typical function undertaken by appellate courts. The U.S. Attorney likely thought precisely this as he dropped the appeal in December of 1856, following the initial filings by both parties.<sup>243</sup> Importantly though, this did not stop the court from issuing an opinion confirming the Commission's decision.<sup>244</sup>

Commonly then, as now, lawyers use pre-made legal documents for almost any filing with a court. This is done because filings are often very complicated documents that include arcane language necessary to properly plead a case. This was even more the case in the nineteenth century,

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<sup>240</sup> De la Guerra, 1.

<sup>241</sup> De la Guerra, 102.

<sup>242</sup> De la Guerra, 73.

<sup>243</sup> De la Guerra 86.

<sup>244</sup> De la Guerra, 80.

as notice pleading, the modern format that focuses on transparency, had not yet replaced the older idea of writ pleading. However, what is truly unusual about the preprinted form used in this case is that it contains no case specific information other than the docket number, parties' names, and the date of the Commission's decision. It makes no specific attempt to address any individual errors the Commission might have made. It just makes a blanket assertion that they exist (in preprinted form). This seems less like an individual appeal resulting from the diligent prosecution of the Governments case, and more like a standard operating procedure. The second case examined here is *Bandini v U.S.* This case involves the scion of another old California family, Juan Bandini and his *Rancho Jurupa*. Jurupa was a land grant encompassing much of what is today northern Riverside County. Juan Bandini was represented by his attorney, J.R. Scott.<sup>245</sup> Bandini, in contrast to De la Guerra, who had no attorney of record at the time of the presentment, called only one witness, one Abel Sterns. Sterns was, like Hartnell, an "old hand." The record indicates that he had been living in California for twenty years and was a resident of Los Angeles.<sup>246</sup> Other than this single witness, the main body of his claim was the inclusion of three documents. The first was a copy of the grant, which deeded the land to Bandini's father. The second was an act of the San Diego Assembly recognizing the grant. The final document was an act of judicial possession, created by the Mexican court that upheld the original grant to Bandini's father. Abel Sterns, a man clearly familiar with Anglo-Saxon property law, was called to certify the signatures and authenticity of the grant, and to state that the land had been given, "in fee simple" to Bandini's

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<sup>245</sup>United States District Court (California: Southern District), Responsible party

Bandini, Juan, 1800-1859., *Jurupa grant [Riverside and San Bernardino counties, Calif.] : Juan Bandini, claimant : case no. 213, Southern District, 1838-1879*, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>, 4.

<sup>246</sup> Bandini, 6.

father.<sup>247</sup> This statement stands out in the record of the case as “fee simple,” a legal term of art, refers to an Anglo-American common law estate of property. It holds that land held in fee simple absolute (or fee simple as it is commonly used) is land that is unencumbered by other interests. The holder of a piece of land in fee simple has full rights over that property and can sell or encumber it at his or her leisure. All of the documentary evidence that Bandini presents was translated by the clerk of the court for the benefit of the Commissioners but written into the record in its original Spanish.<sup>248</sup> This had purpose, because without translation the original grant is fairly complicated to understand, given its meets and bounds description of the property at hand.

Again, as in the De la Guerra case, the claimant’s petition was not opposed by the United States. Also, as before, no evidence or witnesses were presented by the government. In addition, setting aside the basic principle of law that if you do not present evidence to counter an opponent’s argument you accede to its veracity, the evidence presented by Bandini presents is remarkable. Not only is he able to provide the deed, but he can provide numerous written verifications of the deed as well as an individual familiar with the grant, fluent in English and familiar with American law. And yet, in spite of all of these factors, Pacificus Ord appealed the case to the U.S. District court. The appeal was filed with precisely the same form document that was used in the De la Guerra case, but with the relevant information for the Bandini case filled into the blank spaces. Unwilling to leave it to the appellate court as De la Guerra had, Juan Bandini was not a man to be trifled with. Unlike the other appellants examined in this study he sent a great deal of information to the U.S. District Court, including the deposition of several new witnesses, original copies of the Spanish era land documents supporting his claim, and his own testimony, which was not admissible at the commission level. Again, failing to adhere to the scheme implied by the Act, the

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<sup>247</sup> Bandini, 8.

<sup>248</sup> Bandini, 11-27.

court promptly held for Bandini, upholding the Commission's decision. Following this loss at the district court level, the U.S. Attorney appealed to the Supreme Court, who refused to hear the appeal, sending the matter back to the district court for finalization.<sup>249</sup> It is remarkable that the U.S. Attorney would have sought to further prosecute the appeal, particularly as the court records are bereft of any evidence offered by the U.S. Government, aside from the original form appeal.

One other event of note is documented in the court files for this case. Following the filing of appeal by the U.S. Attorney, but before the rejection of the Government's ultimate appeal to the Supreme Court, *Rancho Jurupa* was sold. The property was sold by Juan Bandini to none other than Abel Sterns, the old California hand who testified on his behalf before both the commission and the District Court. The contract, a copy of which is in the record, records that the deal was made in Los Angeles (perhaps while present for court proceedings as both Sterns and Bandini are listed as residents of San Diego County). It provides that Bandini would convey the land to Sterns in return for seven thousand five hundred dollars.<sup>250</sup> While this was a considerable sum in 1860, when the contract was made, it memorialized the transfer of a disproportionately massive quantity of the state's land, including much of modern-day Riverside and San Bernardino counties.

The final case illustrating the mechanisms of claimant, court, and appeal is that of *De Cota v U.S.*, and the *Rancho Santa Rosa*. Maria de Cota, the claimant, was represented by her attorney Henry Hancock.<sup>251</sup> *Rancho Santa Rosa* was located in Santa Barbara County, north and east of the city of Santa Barbara. In defense of her claim, De Cota presented five witnesses and a copy of the

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<sup>249</sup> Bandini, 139-141.

<sup>250</sup> Banidni 97-98.

<sup>251</sup> United States District Court (California: Southern District), Responsible party

Olivera de Cota, Maria Jesus., Claimant, *Santa Rosa grant [Santa Barbara County] : Maria Jesus Olivera de Cota et al, claimant : case no. 294, Southern District, 1836-1863*, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>, 2.

land grant. The grant, dated to 1832, was signed by then Alta California governor Figueroa, and contained considerable detail in its description of the lands granted to Maria de Cota's father, Don Francisco de Cota.<sup>252</sup> Her five witnesses presented before the board are listed as Howard, Dew, Gallardo, Chapman, and Kaner.<sup>253</sup> All five testified to the same principle facts. They stated that Don Francisco was indeed Maria de Cota's father, and he had indicated that she was to be his heir. In addition, they all described *Rancho Santa Rosa*, and claimed that the land Maria de Cota now occupied, and was petitioning the board to ratify, was in fact the same land that her father had occupied. And they confirmed that this was the very land indicated in Governor Figueroa's original grant.<sup>254</sup>

Notably, as seen in other cases, the witnesses were not limited to *Californios*. Four out of the five men called to testify before the Commission were Anglos, but again they were old hands, having known Francisco de Cota in the era before American rule. This willingness to testify across cultural lines well established not only in the three case studies presented here, but in most of the other cases put before the commission. And, as before, the United States called no witnesses, presented no evidence, and articulated no claim before the board that Maria de Cota's grant was in any way defective.

The Commission confirmed the grant, highlighting in its opinion the importance of the witness testimony supporting the information relayed in the original grant. Once more, the case was appealed to the U.S. District court by Ord, which again affirmed the Commission's decision. This confirmation came after the receipt of the previously mentioned pre-printed appeal form, which arrived only distinguishable from those others documented in this study by the De Cota name and

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<sup>252</sup> De Cota, 20-31 (with a translation attached in the file).

<sup>253</sup> De Cota 3 (witness list), Testimony, 8-17.

<sup>254</sup> De Cota, 8-17.

the particulars of the Santa Rosa *Rancho* filled into the blank lines.<sup>255</sup> The particulars of this appeal are not contained in the district court file, but a document dating from 1861 prepared by the District Judge who presided over the appeal noted that it was unsuccessful, and the matter was remanded to the District Court to allow for a formal order establishing the boundaries of the *Rancho Santa Rosa*.<sup>256</sup>

### **The High Cost of Validating the High Cost of Land**

Having now considered three key examples of how individual claims were prosecuted before the board, key similarities are evident. First, the court made extensive use of documentary evidence from the Spanish period, showing little bias against evidence created by a different legal tradition, or national government. This is unsurprising as the use of original grants was set out in the Commission's own rules for petitions. In addition, as demonstrated in the Bandini Case, the commissioners would take note of the decisions and legislative proclamations of the prior Mexican government. Indeed, the Commission placed a premium on these documents and routinely referenced them in their decisions. But also, as seen in all three cases, it was common to call witnesses to corroborate the documents provided to the board. In two out of the three cases the witness who affirmed the authenticity of the documents was an Anglo with longstanding connections in California.

Some authors have claimed that Attorneys representing the *Californios* were responsible for many of the difficulties that their clients experienced.<sup>257</sup> But examination of the cases does not corroborate this. At least as indicated in archival materials, the *Californios'* attorneys most often

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<sup>255</sup> De Cota, 76-79.

<sup>256</sup> De Cota, 86-87.

<sup>257</sup> Pitt, 83.

served their clients well, with relatively few cases ever even being contested on the merits. In the representative examined opinions, neither the commissioners nor the federal judiciary find any fault with the attorneys that appear before them. As to the argument citing the cost of representation as the mechanism by which *Californio* interests were harassed, this could vary, Cost was in many ways determined by the duration of the case, as generally attorneys increase their fees for cases of longer duration. Admittedly, this study is the first to examine the land commission by a legal historian with training in the law, and perhaps a degree of sympathy with those practicing law in the past colors some of its conclusions. Yet many of the previous authors looking to account for the *Californios'* eventual decline in status in the American period assign blame on an unnamed cabal of corrupt attorneys. And they do so with little evidence to substantiate that contention.

An examination of the papers of Halleck, Peachy and Billings, the law firm charged with prosecuting many of these claims, shows that quite the opposite was true.<sup>258</sup> Of critical importance is the fact that the *Californios* who sought to keep their land enlisted the help of lawyers to defend their interests. This is highly significant for a few reasons. First, historical scholarship quite rightly documents that the early nineteenth century marked a rapid growth in the American legal profession. No less luminary than Charles Sellers remarked that as the market revolution moved inland, it brought with it the need for legal services, and the practitioners who provided that work.<sup>259</sup>

As shown, these back-country lawyers came to have an outsized impact on the nineteenth century. The most notable example of this is Abraham Lincoln, an Illinois lawyer-turned-president who guided the United States through the Civil War. While California's lawyers rose to comparatively lower heights, they nevertheless impacted on the growth of the state, and the nation

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<sup>258</sup> Halleck, Peachy & Billings *Correspondence*, Box 3, Bancroft Library, University of California Berkeley.

<sup>259</sup> Charles Sellers, *The Market Revolution*, (Oxford, Oxford UP, 1991).

as a whole. The legal profession in California during this period is remarkable because it was created from whole cloth a mere two years before the passage of the Act looking to define the contents of the state. California during the Mexican period contained very few practitioners of American law. Even then, the type of law practiced in the United States during the nineteenth century varied greatly from that practiced in Mexico during the same period. The systems were so different – Mexican and Anglo, Civil and Common, etc. – that proved almost impossible for experts on one form to gain competency in the other.

One of the side effects of the passage of the act was that it created an immediate demand for real estate lawyers in the new state. Without enough time to create its own legal bar, California came to rely on attorneys trained in the United States to satisfy this burgeoning demand. And no lawyer would cast a longer shadow on California's early legal community than Henry Halleck. Henry Halleck was, like William Gwin, something of a *renaissance* man. Born in 1815 in upstate New York, Halleck began a military career once graduated from the United States Military Academy at West Point. He served with distinction during the Mexican War, eventually being posted to California at the end of the conflict. Halleck served as the military governor's representative to the Monterey convention in 1849 and served an important role in formulating California's constitution. Seeing opportunity in the legal field from this ideal vantage point, he partnered with Archibald Peachy and Frederick Billings to form a law firm.

One is struck by an examination of the Halleck, Peachy, and Billings' papers by the professional and familiar way they practiced law. The records may offer an incomplete picture of their practice, but they contain extensive preparatory materials pertaining to previous acquisitions of land by the United States, most specifically in a memo prepared discussing the government's

actions in Florida.<sup>260</sup> Additionally, the firm offered its services in a modern professional manner, billing clients for time spent and appearances at hearings across the state.<sup>261</sup> What's more, the files indicate that the majority of their practice was served in representing land grant holders. Their services, while often costly, were most often successful.<sup>262</sup>

As demonstrated in the record, the U.S. representative at the Commission was content to allow the claimant to bear the burden of proving their case. This is, in terms of legal precedents, a fairly onerous burden. Typically, in American law, a recorded deed sufficiently established ownership. So, the Commission process really functioned as an elaborate form of forced recording, where the old deeds are re-authorized by the Commissioners

This raises the looming question of why the federal attorney filed an appeal and why this was so uniformly the case as to require pre-printed appeal forms. The single-mindedness of the strategy is curious, as the formulaic nature of the appeal documents limits their utility. In many cases the written district court opinion does not survive, but the documents that do make very little reference to any actual alternative theory of ownership proposed by the U.S. Attorney. This harkens back to the debates over the creation of the act wherein Thomas Hart Benton gravely feared that landowners would be swamped by a tidal wave of complex procedure, and risk losing their land due to the high cost of pursuing the case. In truth, most claims were not challenged by outside parties, but one would entirely assume otherwise – demurring to Benton's theory – given that the vast majority of claims were appealed.

Evidence of a sinister motivation behind the appeals comes from a document tucked away in the De Cota Case. It is a receipt for \$97 to the defendant from the Supreme Court for the cost of

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<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

the District Court hearing an appeal.<sup>263</sup> It was written in Chief Justice Taney's own hand, and a notation indicates that the bill was paid 5 years later. Ninety-seven dollars was a substantial sum in 1863 (the date of the receipt). It does not include the cost of the lawyer's work for the appeal, nor the expenses such an appeal might have entailed. The fact that it took five years for the bill to be paid may well say something about the difficulty of raising that much money. Kevin Starr notes in his work on the period that the costs entailed in defending a claim before the Commission often forced the sale of the claimant's property.<sup>264</sup> This is bolstered by a notation in the Halleck, Peachy, Billings papers that sets the fees associated with a defense of a land grant to rest around approximately five thousand dollars: a large sum indeed.<sup>265</sup> Even as many claimants were quite wealthy, much of that wealth was tied up in the very land in question, and this land was difficult to sell or use as collateral while litigation over its ownership was ongoing, as any potential buyer might wish to wait for the court's decision. In fact, this rule is proven by the exception of Bandini's transfer of his land to Abel Sterns during the appeals process. While Stern's willingness to testify on Bandini's behalf indicates a close relationship between the two men, selling your land during the midst of a federal appeal questioning your title is hardly ideal. His on-hand participation in securing the grant belies something other than pure altruism.

This miring of the client in legal process indeed served the United States, and its representative Pacificus Ord, as an attempt to win claims. By forcing the claimants to spend resources and time, when their major asset—their *Rancho*—was tied up in litigation, the U.S. Attorney allowed pressure on claimants to abandon their claims. This provided a great advantage for the United States Government looking to free up California land to purchasers. As established in the treaty, any land

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<sup>263</sup> De Cota, 92.

<sup>264</sup> Starr, 135.

<sup>265</sup> HPB.

that was not in the possession of a private individual at the time of Guadeloupe Hidalgo would go to the US government. Much of the perceived value of California was in its land and the potential for development or resource extraction. Even if the appeals did not seek to force abandonment of the claims outright, it is possible that the intent was to ensure that the process would be so costly that grant holders be forced to sell significant landholdings to finance their legal actions. Either way, the net effect was the same.

Furthermore, the secondary literature indicates that American attitudes toward the Spanish system of land tenure were deeply negative. Prior to the Mexican War, some groups of Anglo settlers began settlements operating on the more American system of smaller family owned farms. This alien style of farm and labor distribution contrasted with the large *Rancho* system worked by tenants or hired labor. This second generation of American settlers charged that the *Californios*, and the old California hands with whom they had extensively intermarried, were misusing the land, and not rendering it productive. This clashed with deeply held notions of American destiny and led to resentment. By stretching out the appellate process and making it as expensive and as onerous as possible, the American government broke the land claims by outlasting the claimants. If the U.S. attorney had appealed to a higher court, and the claimant been unable to answer the appeal, it is likely that they would have lost the land in question. Somewhere along the steps of the initial filing, the chain of appeals, and even so far along as the aftermath of a Supreme Court case, the U.S. government would win, even if it lost at every stage along the way.

On the question of prosecutorial intent, one wonders, while the outcomes are evident in the historical record, what were the motivations of the United States in prosecuting the cases so vigorously? The answer is abundantly clear: examination of the legislative history of the California Land Act demonstrates that Senator Gwin, the act's author, sought to extract land from the

*Californios*. It is equally clear from the success rate of these lawsuits, documented in the Attorney General's report that this process – using the strategies Gwin instituted to facilitate this goal – largely failed.<sup>266</sup>

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<sup>266</sup> AG Report.

## CONCLUSION: THE LEGACY OF THE CALIFORNIA LAND ACT

Assigning clear trajectories of causality between the motivations deliberately written into the California Land Act and the actual changes to land ownership in California that followed is a difficult task. Any discussion of the ultimate role it had in shaping the state is one of intentions versus realities. A careful examination of the Congressional record, federal court filings, and its decisions clearly reveals that the Act attempted to harvest the maximum amount of land possible from the *Californios* for redistribution to new settlers. It is also perfectly evident in the record that the *Californios* fought ably to retain their lands and that, resultingly, they succeeded in a high percentage of cases. The key question at hand though is whether the mere existence of the Act, and its demand that property owners undergo an extensive and expensive process in order to retain their lands, accelerated the sale of their estates to the Anglo buyers who ultimately subdivided the grants for development. Truly it is impossible to ascertain the motives of each of the over six hundred different property owners from governmental records, but one major indicator of motive is found amongst Senator Gwin's papers.

As with every one of his colleagues, Gwin's career in the senate was caught up in the conflagration that engulfed the United States in 1860. Gwin, a southerner, had maintained ties to southern democrats during his time in the Congress. However, he was never an advocate of secession. But secession happened nonetheless, and war began. Amidst this turmoil, he embarked on one of the most fascinating and doomed odysseys in American political history. Nearing the end of his term, in 1860 Gwin looked for a way to continue his political life.

As it happened, he possessed one notable accomplishment to trade on: the California Land Act and the subsequent successful settlement of California. While this one man certainly does not deserve sole-credit for the success of the state, Gwin was among California's founding fathers,

and he did play a formative role in defining land holding and property rights in the state. Shortly after his arrival to California, his term, if based on nothing other than his being present, saw the state transform from one of Mexico's most isolated provinces to a U.S. state in only a few short years. His term in the Senate oversaw the new state boasting a thriving agricultural and mining economy, and one of the United States' great port cities in San Francisco.

Immediately after his removal from office, Gwin found himself in France, renewing acquaintance with friends he had made in the French embassy.<sup>267</sup> France itself embarked on a new political course in the middle of the nineteenth century, one that saw value in a man of Gwin's accomplishments. Following the revolution of 1848, and the final ousting of the French monarchy, Louis Napoleon Bonaparte, nephew of the former French emperor, rose to power. Eventually styled Napoleon III, the emperor of the French. During the 1860's Napoleon's interest in the state of affairs in Mexico grew. Deeply troubled since before its war with the United States, by 1846 the Mexican State was almost totally moribund. It began to default on loans made by European nations to finance its government, and these nations grew increasingly concerned. Mexico's principle debtor was France. Concerned about this investment, France invaded Mexico in 1861, and by 1863 Mexico City was in their hands. Other than validating these actions as those of a justifiable collector, France also saw the conflict as a civilizing mission to transform Mexico with the aid of European culture.<sup>268</sup>

Mexico in 1863 was highly vulnerable to such an attack. Following the Mexican American War, as the United States expanded, Mexico shrank. In this environment, the political instability that gripped the country since its independence from Spain only intensified. Between the end of

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<sup>267</sup> *The Gwin Episode*, Wm. Gwin Papers, The Bancroft Library, C-B 378, Box 1.

<sup>268</sup> For an in-depth study of this project see, Edward Shawcross, *France, Mexico and Informal Empire in Latin America, 1820-1867*, (Springer: Cham Suisse, 2018), 62.

the Mexican War and the French invasion of 1861, Mexico saw a near constant parade of newly installed presidents, civil strife, American meddling, and an almost total breakdown in any cohesive government from the second Mexican Republic. The only silver lining was that the American Civil War offered a respite from American insistence of supremacy in the hemisphere, the so-called Monroe Doctrine.

At this exact moment, Gwin came to the attention of Napoleon's ministers in Paris. They saw Mexico as an extension of a new French Empire seeking to exploit the untamed lands of the Mexican *Norte*.<sup>269</sup> Gwin wrote of this episode,

It is a noticeable fact in history to show what great importance attached to Sonora as a mining country. That while Mr. Gwin was residing in Paris, during the American Civil War, he agreed, at the request of the French Emperor, to inaugurate a scheme of colonization in Sonoma, and but for the downfall of the Imperial Government in Mexico he no doubt would have succeeded.<sup>270</sup>

In this very moment Gwin's role in the California Land Act and the development of the State's resources becomes clear. Northern Mexico, like California in 1820 was a land dominated by cattle ranching based around large Haciendas. These ranches functioned largely like the great California *Ranchos* of old and used land in what could be termed to nineteenth-century eyes as an inefficient manner. What so enticed the French was that Gwin led the charge by the United States government to attract settlement and ensure the economic development of California.

This identification of Gwin as the architect who employed the California Land Act to resettle the state is fundamentally telling. For Gwin neither discovered gold at Sutter's Mill, nor was he in any way instrumental in the Mexican War. He crafted the California Land Act and

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<sup>269</sup> A good study of Gwin's Time in Paris and Mexico City can be found in Rachel St. John's article, "The Unpredictable America of William Gwin," (Journal of the Civil War Era, Vol.6, No.1 [March 2016]) pp.56-84. Gwin was clearly a man with broad dreams. However, for purposes of this study the inclusion of his Mexico adventure is intended to primarily highlight the importance of the California Land Act, and to examine the way he viewed it in hindsight as a policy.

<sup>270</sup> Gwin 97.

oversaw its implementation. This alone made sufficient impact on those in Europe and Mexico that Gwin found himself in a personal audience with the Emperor of France, nephew of Napoleon I, and one of the most powerful men on Earth.

At its most broad, this study shows that the California Land Act served as a legal blueprint for Manifest Destiny. This statement is – on its face – both obviously true and difficult to prove. Certainly, the California Land Act offered a legal solution to the problem of territorial expansion. What is less clear is how the act was viewed by those who were in the professional business of nineteenth-century expansion. Americans, and American scholars often fall into the trap of viewing the United States' history as both unique and isolated. But in Gwin's visit we see something to the contrary: the recognition by a European colonial power that the California Land Act was an important and desirable part of the American conquest and subsequent colonization of California, and that the contribution of Gwin's law was worth copying in their attempts to expand their empire. For this was also an era of colonial expansion in Asia, Africa, Central America, and the Middle East undertaken by the European powers. Each of those powers undertook these enterprises believing, like Americans, that their nation's destiny was both unique and ordained by god. But France hoped that some of Gwin's Californian success might be transferable to them. Any perceived singularity in the French endeavor might be put aside if another California was on the line.

The scheme almost seems to be invested in the ideological underpinnings of Gwin's decidedly American perspectives on manifest destiny and the spirit of the American settler. For the French imperialists were uninterested in attracting settlers from southern Mexico or the French Empire. Instead the goal was to replicate the colonization of California in Sonora and Chihuahua, down to attracting the same population of settlers,

he (Archduke Maximilian) had had a great deal of intercourse with Americans in the Naval Service, as well as private citizens, and he considered it a fortunate event for Mexico if this policy could be established by immigrating Americans, and enterprising citizens of other nations, to that portion of Mexico so remote from the seat of power.<sup>271</sup>

The Archduke's (later Emperor's) preference in settlers is both surprising and illuminating.<sup>272</sup> The desire for eastern American immigration, seasoned liberally with the flotsam of Europe, exactly mirrors the goals of the United States in California.

The plan that Gwin prepared was just as specific in discussing the distribution of land, "The policy of disposing of the agricultural lands should be in exact accordance with that of the United States which has produced such wonderful results in that country during the last forty years." Clearly looking to make the process even more efficient, Gwin goes on to outline a slightly harsher version of the land grant policy for California. In this,

All owners of grants should be required to deposit their evidences of title with the general of colonization and order an exact survey and chart of each grant: which survey and chart should be deposited in his office – a copy furnished to the claimant and a copy transmitted to the Ministerio de Fomento of the Empire – all lands outside of these surveys will be the Imperial domain. Any lands covered by titles where the claimant fails to deposit the evidence of his title and provide means for the survey within a specified time shall be declared Imperial Domain.<sup>273</sup>

This solution to the problem of existing land grants draws heavily on Gwin's experience with the California land grants, particularly in its handling of claims not presented before the government. Also, he explicitly calls for a survey to be conducted before any claims are ratified. This is perhaps in response to the occasional struggles of the commission in determining the exact boundaries of the claimant's land, halting its intended speedy progress. Another major difference is that the lands in northern Mexico not owned by existing claimants would be sold by the government to

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<sup>271</sup> Gwin 223.

<sup>272</sup> The Archduke Maximilian of Austria was the younger brother of Emperor Franz Josef of Austria. He was tapped by Napoleon III to become Emperor of Mexico after French intervention.

<sup>273</sup> Memorandum of Mexican Colonization, Wm Gwin Papers, Bancroft Library, CB 378 Box 1.

individuals seeking to own land, or as Gwin puts it “actual settlers and cultivators.” This language clearly expresses a preference that does not include the homestead or adverse possession distribution of lands in the American west.<sup>274</sup>

Most notable about Gwin’s plan is not its blatant resemblance to the California Land Act and its mechanisms, but that these specific resemblances were cherry-picked as those best suited to dealing with Sonora and Chihuahua. One of the central concerns of this study is just how the United States used the California Land Commission as a legal method of colonization. Comparison of Gwin’s work in Mexico, and his description of his plans in Mexico, with his actions in California lead to a number of critical conclusions.

First, Gwin saw his work as a part of a larger American project of expansion. He makes certain in his Mexican plan to praise the land laws of the United States as contributing to the prosperity that the United States experienced throughout much of the antebellum period. Second, he credits the policy of challenging the large Mexican landholders as the most critical cause for redistribution of land to smaller American and European settlers who would farm on the American model. This second factor is perhaps the more important part of the proposition as Northern Mexico of 1860 differed in one key way from California of 1850. Both had systems of landholding revolving around large scale cattle ranching, but the similarities ended there. In 1860 the *haciendas* of northern Mexico were not distantly isolated relics of the colonial past. And unlike the *Californios* who faced an influx of immigration brought on by the gold rush and a change in national government, Mexican haciendas faced neither of these. Indeed, perhaps either one of these cataclysmic factors might have doomed the *Californios* regardless of the land policy eventually adopted by the United States. While Maximilian was backed by French troops in an attempt to

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<sup>274</sup> Ibid.

recover European debts, the new Mexican Empire he sought to forge fully intended to include the existing economy and power structures already instituted throughout Mexico.

At least that was the plan. The French placed Maximilian in an unenviable position. Charged with creating a new state from a nation badly battered by war and revolution, the price of his crown was fealty to a French Empire seeking to recoup monies loaned to, and long since spent by, previous Mexican regimes. Napoleon III's interactions with Gwin show he knew little about the conditions in Mexico, and he cared little for the risk Maximilian faced in pursuit of French Imperial schemes. Circumstance determined that Gwin's schemes came to nothing. French intervention was defeated, and Gwin returned to the United States.

What then is the lesson of Gwin's adventure in Mexico? More than the last adventure of an exciting career, it points to something deeply ingrained in nineteenth-century ideas of what constituted successful colonization. Given Gwin's absence from most accounts of California's entry into the United States, it is surprising that contemporary statesmen credited his role in California's growth and success to such a degree that he would be received by the Emperor of the French and charged with an important diplomatic and colonial mission. That his involvement with the French schemes into Mexico came to nothing has little bearing. What matters is that he was clearly the man for the job.

What then was the precise nature of Gwin's contribution to California's success? Gwin records in some detail the actions he took on behalf of the state in his memoir, and therein lie some answers. Obviously Gwin consented to produce this document to cast a positive light on his efforts on California's behalf. To evidence this, he relied on the principle legislative achievement of his time in Congress: the California Land Act. Already related to the success of California as an American settlement, Napoleon, in embracing Gwin, cast an altogether new light on that act. No

longer viewed simply as a resolution of the terms of Guadeloupe Hidalgo, it became an imperialist template to take ranching lands and make them productive.

For Gwin, the end of his Mexican odyssey meant the end of his public life. Upon his return to the United States he was interned as a possible southern sympathizer. Upon his release after the war, Gwin retired to California, eventually having his biography recorded by the graduate students of the imminent historian Hubert Bancroft. In the years since Bancroft's tenure the historical profession has abandoned the practice embodied in the drive to record such biographies as a most crucial components for constructing accepted historical narratives. This is now known as the "great man theory" of history. This focused on talented and powerful individuals (almost always white Christian cis gendered men) who left their marks on history and determined its course. This study, while focused on one such man and making considerable use of one such historical source, should not be understood as any sort of accepted reliance on that antique and obsolete form of scholarship. Instead, Gwin is useful precisely because he is largely forgotten today. His powerful position as one of California's first senators made him a likely candidate for great man-status, but this was never realized. His fame is eclipsed by his fellow senator John Charles Fremont, as well as that of men who would follow him into the Senate like George Hearst or Hiram Johnson. But unlike these luminaries of early Californian history, Gwin is more instructive because he so perfectly serves as an example of both the kind of men succeeding in early California, and the changing nature of the United States in the years preceding the Civil War.

In Gwin's biography we find a combination of the rural professional, a group that would ultimately spawn great political leaders like Abraham Lincoln and Steven Douglas, and the political adventurer, as embodied by Sam Houston and Davy Crockett. These men retained access to power in the east, but due to various circumstances felt they could rise even faster in the west.

In Gwin we also see the specter of the *filibuster*, Americans striking out to make their fortunes in central and south America, sowing the seeds of chaos in those regions. While Gwin's time in Mexico was neither as violent or as successful as that of, say, William Walker in Nicaragua he provides a through line between the settlement of the American west and these smaller, more eccentric expeditions.

Perhaps most importantly, Gwin's is the true face of manifest destiny. While collectively defined as such, the drive into California was not about national goals. The men who took passage to San Francisco saw themselves less of agents of a national destiny as agents of their own self-enrichment. Consistently during the debates in Congress, and during his self-imposed exile during the Civil War, William Gwin sought to leverage his plan to closely scrutinize the *Ranchos* for personal advancement. While there is no indication of any corruption during his time as California's senator, his close identification with the incoming settlers allowed for his serving two elected terms in the senate, preserving his place as a state leader. Having fled the country at the outbreak of war, this plan served as the only currency he possessed to regain the status he lost. In many ways the Land Act itself mirrored the man who created it: audacious, complex, fairly clever, but ultimately unsuccessful. The California Land Act did not break the *Ranchos*, rising land values and population pressures did that. Gwin left his mark on very little (save this study), but he belongs to a fascinating era of audacious schemes and big plans, a legacy continuing to mark our nation to this day.

Again, here one takes care not to confuse intent with causality. The story of the California Land Act is not, nor has it ever been a story about the powerful crushing the powerless. It is not the story of one man's work to fundamentally alter the nature of landholding in California. Rather, the debate over the land act led to a decision by a group of powerful political elites in Washington

to attempt to curb the power of a small group of local financial elites in the new state of California. Over the last one hundred and fifty years, nostalgia and revision have altered the meaning of the land grants, and the act itself. To Californians, the *Ranchos* evolved into a romantic vision of a pre-industrial past amidst the bustle of the world's ninth largest economy.

The true story is more complicated and a lot more interesting than some imagined retelling of *Ivanhoe* amongst the chaparral. California in 1849 was dominated economically and physically by more than six hundred large cattle ranches encompassing the vast majority of the state's arable land. These ranches practiced a type of agriculture requiring vast tracts to make them profitable, and at the same time closed off opportunity for the development of more intensive land use outside the boundaries of the *Ranchos*. To be sure, they each provided a comfortable living for one extended family, but they required the extensive exploitation of native and poor Hispanic labor to tend to the herds and the property.

When the United States acquired California, it was not a question of whether *Rancho* life would be changed, but rather how it most certainly would change. Men like William Gwin, who recently arrived in the state, feared they would be closed out of an opportunity to develop the land. Faced with the inevitable dissolution of the *Ranchos*, Gwin and his allies thought that if they were simply sold to rich eastern Americans as whole tracts of land, it followed that small holders and new migrants to the state would be closed off entirely.

This is precisely the eventuality that Gwin sought to prevent in crafting his bill. Put simply, it allowed smaller cultivators to more broadly exploit the state's land. From another point of view, the traditional narrative of California history characterizes this process at best as greedy, and at worst as racist. As the *Californios* were Hispanic and many of the settlers were white, race is not an absent issue. However, this is not the sum total of matters to consider. First, this distinction is

somewhat complicated by Gwin's stated belief that the *Californios* were of European extraction. Secondly, the economics of the matter lend themselves to more complex discussion. Eastern Americans followed a legal system originally designed by holders of property to automatically side with the holders of property. Whether this is a lingering fondness for John Locke's original mantra of Life, Liberty, and Property, or the simple desire of many Americans to become landholders themselves, it is this almost instinctive predisposition that makes the Taney court's decisions in cases like Charles River Bridge so powerful and counterintuitive. Taney acts seemingly against the holders of settled property interests in an effort to ensure the most gain for society as a whole. This constitutes a form of economic utilitarianism that saw the curtailing of vested interests in property for the expansion of a nation and the development of industry and commerce. While Boston certainly faced these issues in the early nineteenth century, California only began to reckon with them after the arrival of the Americans in 1848.

The *Californios*, for all the mythology associated with early California by the modern inhabitants of the state, were a group of vested interest holders with little to gain through the rapid expansion of the state. While property values rose during the gold rush, there was little incentive for the *Californios* to sell off large tracts of land to the newcomers. Indeed, to be more than the site of another nineteenth century mining boom, California required a massive shift in landholding.

Unleashing the potential of California's lands routinely conflicts with the holdings of vested interests throughout the state's history. One of the watershed moments in the state's landholding history is the passage of Proposition 13 in 1978. This controversial measure – which all but eradicated state income generated by property taxes – passed by almost two thirds of the vote. Part of the so called “tax payers’ revolt” it is commonly credited with harkening in an era of

conservative policies in the state that culminated in the racist, and ultimately unconstitutional, proposition 187, which sought to strip social services from immigrant residents of the state.

Proposition 13 owed much of its immense popularity to the fact that real estate in California appreciated throughout the 1970's (and indeed through the 21<sup>st</sup> century) at a rate far higher than the national average. Many home-owning Californians – especially those nearing retirement – feared losing their homes due to spiking property taxes hinged upon increased property values. However, residential real estate only formed one part of the equation. Proposition 13 froze the property tax basis on all real estate, regardless of use. Now even commercial enterprises like parking lots, office buildings and shopping centers are all covered by the property tax freeze. No more than 1% of the property value, forever. This so-called tax payers' revolt was nothing more than a permanent enshrinement of the types of vested rights that Hurst viewed as being a barrier to productive use of property. For California, this marked the end of a policy of favoring growth and expansion that was first enshrined in the California Land Act more than one hundred and twenty years before.

When Hurst formulated his ideas about the dynamic nature of property, he directly addressed the tendency for individuals holding ancient title to hamper innovation and growth simply because it was unnecessary for them to do so to return a handsome profit. In the Case of the Charles River Bridge, the Taney Court specifically ruled that the Warren River Bridge company should not have an exclusive license because it would be detrimental to the community as a whole by preventing the expansion of transit craved by the growing Boston.

In 1850, William Gwin feared much the same result if California's lands were left in the hands of the owners of the large *Ranchos*. When Gwin talks about opening these tracts up for development he is not simply trying to break the political power of the *Californios*, but he is trying

to ensure that California's economy is not dominated by a very few extremely wealthy landholders with no incentive to further develop their holdings. Without a proactive solution, such landowners lacked reason to sell their lands to those who – Gwin hoped – might make innovations.

This idea of creative destruction, and the unleashing of the dynamic potential of property, is at the heart of the debates of 1850. As Proposition 13 demonstrates, this remains at the heart of the land use debates occurring in the golden state to this day. Proposition 13 favors vested commercial interests over newer purchasers of the land. What would be the incentive to develop a parcel if it made a comfortable income, due to low property taxes, if substantial improvement might cause a tax reassessment?

Critics of the measure contend that as times change, and California changes, a growing population needs amenities and opportunities to thrive and provide for its citizens. In the 1850s this meant mines and farms to employ and feed the new arrivals in the state. Today, proposed solutions take the form of high-density housing in urban centers to accommodate the influx of Californians who have chosen to move back to urban centers, forsaking the suburbs. The truth behind both these debates rests on one incontrovertible fact: in California, property and physical space always serves as the basis of the debate over what the state should be, and who should control it. California experiences a disproportionately higher rate of migration, both in and out, than any other state in the union. This debate over property and vested rights boils down to the question of who should prosper in the far west: should it be those who came to colonize and profit first, or those who seek to develop the state to its highest use.

As stated in his own speeches before Congress, Gwin considered the *Californios* to be of European stock. This assertion side-stepped any real debate regarding the granting of citizenship

rights to the *Californios*. This was significant, for other groups deemed non-white were targeted in nineteenth-century California on entirely different and drastically more severe terms.

As it relates to personal experience, I was struck by an example of this distinction while walking through my hometown of Temecula. The oldest building in this town is an adobe house built in 1879 and now serving as a professional office. On this building is a bronze plaque that reads

this house built in 1879 by Jose Gonzales is the oldest adobe home still standing in southwest riverside county. . . [his daughter] Ysabel, born April 25, 1879 was the first white girl born in the Temecula Valley. Jose was Riverside county's first tax accessor.<sup>275</sup>

There is a great deal to unpack in this quote, and it raises many questions as it seeks to state facts. But one such detail stands out – particularly given the subsequent degradations faced by Hispanic inhabitants in the time since. Jose, an immigrant to California from Spain, was clearly accepted as a white man by the American administration of this small corner of California. In addition, his daughter is recorded as the first-born white child of the area. It is unclear what whiteness in this discussion means, and who would qualify under the plaque's definition. What it does infer, behind the forcefulness of that direct statement, is that individuals of Hispanic extraction, at least in the early years of statehood, were not necessarily grouped into one racial or social identity.

Many different theoretical strategies provide valuable insight into California's early statehood period, and this dissertation adds analytical tools to this body of scholarship. Studies devoted to race and racism are key to an understanding of the transition from Mexican governance to statehood. It is unquestioned that the legacy of institutional racism against peoples of color is an important way to examine the formation of California as a state. However, this dissertation seeks to more closely examine the intent of the author of the California Land Act itself, and the

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<sup>275</sup> Plaque, Adobe Plaza, 27645 Jefferson Avenue, Temecula California, 92590.

ways that his unique vision for the state's future impacted the way that the United States fashioned its policy toward landholding in that state.

It is quite clear from the forgoing study that William Gwin, the act's principle author, promoted a specific perspective on the proper way to develop the state of California. His was a vision of economic development that traced its roots to the Taney Court's decisions about property, and the best model to develop it. In seeking to break up the great estates, Gwin was less concerned with the establishment of Anglo-Saxon culture, than he was with the growth of American systems of land use. More than anything else, he sought to ensure the land would be worked to its maximum potential. His pride in the California Land Act led him to Europe and Mexico in an attempt to promote his success in California as a model for economic expansion in Northern Mexico, going so far as to meet with the Emperor of France.

Manifest destiny is a well-understood and fundamental part of American history. Yet it did not emerge fully formed from Horace Greeley's pen as he implored veterans of the Civil War to, "Go West young man, go west and grow up with the country." Instead it was the result of legislative experiments and policies, like the California Land Act, which sought to determine what the economic nature of American expansion would look like. Gwin's vision of economic exploitation was but one facet leading to the transformation of land ownership in California, but it alone enshrined the doctrine to place potential economic growth above the interests of individual landholders.

## BIBLIOGRAPHY

### Archival Sources

Bandini, Juan, 1800-1859., *Jurupa grant [Riverside and San Bernardino counties, Calif.] : Juan Bandini, claimant : case no. 213, Southern District, 1838-1879*, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>, 4.

*California 1850*, 1856, Rosenstock 90.253.15172, The Autry Library

Fraudulent Land Claims F862.1 E9. Bancroft Library. The University of California Berkeley.

*Guerra y Noriega, Jose de la, 1779-1858, Claimant, Conejo grant: [Ventura and Los Angeles counties, Calif.] : Jose de la Guerra Y Noriega, claimant: case no. 107, Southern District, 1852 – 1857*, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>.

Gwin, William, *Memoirs on the History of the United States, Mexico, and California of Ex-Senator William Gwin, Dictated by Himself for the Bancroft Library, 1878*, C-D 96, The Bancroft Library, University of California Berkeley.

Halleck Peachy Billings Papers, Folio 1, The Huntington Library, Pasadena, California.

Halleck, Peachy & Billings Correspondence, Box 3, Bancroft Library, University of California Berkeley.

Memorandum of Mexican Colonization, Wm Gwin Papers, Bancroft Library, CB 378 Box 1.

Near Gabriel, Bancroft MSS Land Files 47 SD. Bancroft Library.

Olivera de Cota, Maria Jesus., Claimant, *Santa Rosa grant [Santa Barbara County] : Maria Jesus Olivera de Cota et al, claimant : case no. 294, Southern District, 1836-1863*, Online Archive of California, The University of California at Berkeley, <http://www.oac.cdlib.org/ark:/13030/hb900009rj/?brand=oac4>, 2.

Providencia MSS Land Files 30 SD, Bancroft Library.

San Bernardino MSS Land Files 12 SD. Bancroft Library.

San Lucas MSS Land Files 34 SD, Bancroft Library.

*The Gwin Episode*, Wm. Gwin Papers, The Bancroft Library, C-B 378, Box 1.

*The Private Land Claims of California* (A report to Congress by the Attorney General), F862.1 V4, The Bancroft Library, Berkeley California,

The Treaty of Guadeloupe Hidalgo, 929. The Library of Congress, <https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=009/llsl009.db&recNum=975>

### Primary Sources

Calhoun and Wilson, John C. and Clyde N., *The Papers of John C. Calhoun Volume 17*. Columbia: University of South Carolina Press. 1959.

Charles River Bridge v. Warren River Bridge, 36 U.S. 420 (1837).

Chew v. Barnett, 1824 WL 2392 (1824).

Miller, Greg. *New Map Reveals Ships Buried Beneath San Francisco*. National Geographic Online, June 2, 2017 <https://news.nationalgeographic.com/2017/05/map-ships-buried-san-francisco/>

Plaque, Adobe Plaza, 27645 Jefferson Avenue, Temecula California, 92590.

The Cherokee Nation v. The State of Georgia, 30 U.S. 1 (1831)

Willard v. Tayloe, 75 U.S. 577 (1869).

Worcester v. Georgia, 31 U.S. 515 (1832)

### Secondary Sources

Alexander, Gregory. *Commodity & Property; Competing Visions of Property in American Legal Thought*. Chicago: University of Chicago Press, 1997.

Bancroft, Hubert Howe, *The History of California Volume VI 1848-1859*, San Francisco: The History Company. 1888.accessed via <https://archive.org/details/worksofhuberthow23bancrich/page/n5>

Banner, Stuart. *American Property; A History of How Why and What We Own*, Cambridge: Harvard University Press. 2011.

Beard, Charles, *An Economic Interpretation of the Constitution of the United States*, 1913 Read online at: [http://en.wikisource.org/wiki/An\\_Economic\\_Interpretation\\_of\\_the\\_Constitution\\_of\\_the\\_United\\_States](http://en.wikisource.org/wiki/An_Economic_Interpretation_of_the_Constitution_of_the_United_States).

Bethell, Leslie. *Mexico Since Independence*. London: Cambridge UP. 1992.

- Brown, Steven R. *1494; How A Family Feud in Medieval Spain Divided the World in Half*. New York: Thomas Dunne Books. 2011.
- Castillo, Elias. *Cross of Thorns; The Enslavement of California's Indians by the Spanish Missions*, Fresno: Linden Publishing. 2017.
- Chevalier, Francois. *Land and Society in Colonial Mexico: The Great Hacienda*, Berkeley: The University of California Press. 1963.
- Chipman and Joseph, Harriet and Donald. *Spanish Texas, 1521-1821*. Austin: University of Texas Press. 2010.
- Clay, Karen B. "Property Rights and Political Institutions: Congress and the California Land Act of 1851," *The Journal of Economic History*, v.59, n.1, March 1999.
- Cogliano, Francis D. *Emperor of Liberty; Thomas Jefferson's Foreign Policy*. Yale: New Haven. 2014.
- Collins, Kristin A. "A Considerable Surgical Operation" *Article III, Equity, and Judge Made Law in the Federal Courts*. Durham: Duke Law Journal, v. 60, no. 2, November 2010.
- Cooper, James Fennimore. *The Last of the Mohicans; A Narrative of 1757*. New York: H.C. Carey & I. Lea. 1826.
- Curtis, Christopher Michael. *Jefferson's Freeholders and the Politics of Ownership in the Old Dominion*. London: Cambridge UP: London. 2012.
- Dana, Richard Henry. *Two Years Before the Mast*, Project Gutenberg: eBook. 2000.
- Davis, William C. *Lone Star Rising*. New York: Simon & Schuster. 2017.
- Dawdy, Shannon Lee. *Building the Devils Empire; French Colonial New Orleans*. Chicago: U of Chicago Press. 2008.
- De la Teja, Jesus F. *San Antonio de Bexar; a Community on New Spain's Northern Frontier*, Albuquerque: UNM Press. 1996.
- Dean, Adam Wesley. *An Agrarian Republic: Farming, Anti-Slavery Politics, and Nature Parks in the Civil War Era*, Chapel Hill: UNC Press. 2015.
- Doak and Resendez, and Augustin and Robin Santos. *California 1542-1850*. New York: National Geographic Society, 2006.
- Eifler, Mark A. *The California Gold Rush: The Stampede that Changed the World*. New York: Routledge. 2017.
- Elliot, John Huxtable. *Empires of the Atlantic World; Britain and Spain in America, 1492-1830*, New Haven: Yale UP. 2007.

- Ellison, William Henry. *A Self Governing Dominion, California, 1849-1860*. Berkeley: UC Press. 1978.
- Ely, James W. *The Guardian of Every Other Right; A Constitutional History of Property Rights*. New York: Oxford University Press. 1992.
- Fisher, John. *The Economic Aspects of Spanish Imperialism in America 1492-1810* London: Oxford Press. 1992.
- Fowler, Will. *Santa Ana of Mexico*. Lincoln: University of Nebraska. 2009.
- Gates, Paul. "The California Land Act of 1851" *California Historical Quarterly*, vol.50, no.4, December 1971.
- Gomez, Laura. *Manifest Destinies; The Making of the American Race*. New York: NYU Press, 2018.
- Greenberg, Amy S. *Manifest Manhood and the Antebellum American Empire*, Cambridge: Cambridge 2005.
- Greenburg, Amy S. *A Wicked War; Polk, Clay, Lincoln and the Invasion of Mexico*. New York: Random House. 2012.
- Griswold del Castillo, Richard. *The Treaty of Guadeloupe Hidalgo; A Legacy of Conflict*. Norman: University Oklahoma Press 1990.
- Heidenreich, Linda "This Land Was Mexican Once" *Stories of Resistance in Northern California*, Austin: University of Texas Press, 2007.
- Henderson, Timothy J. *The Mexican Wars for Independence*, New York: Hill and Wang. 2009.
- Hietala, Thomas R. *Manifest Design; Anxious Aggrandizement in Late Jacksonian America*. Ithaca: Cornell UP. 1985.
- Hixson, Walter. *American Settler Colonialism*, New York: Palgrave Macmillan. 2013.
- Hoff, Derek S. *The State and the Stork; Population Debates in U.S. History*. Chicago: University of Chicago Press.
- Hornbeck, David. "The Patenting of California's Private Land Claims, 1851-1885" *Geographical Review*, v.69, no.4, October 1979.
- Horwitz, Morton. *The Transformation of American Law 1780-1860*, Cambridge: Harvard UP, 1979.
- Howe, Daniel Walker. *What Hath God Wrought; The Transformation of America*, London: Oxford. 2007.

- Hurst, James Willard. *Law and the Conditions of Freedom in the Nineteenth-Century United States*. Madison: University of Wisconsin Press, 1956.
- Jackson, Helen Hunt. *Ramona*, New York: Signet. 2002.
- Johnson, Paul. *A Shopkeepers Millennium*, New York: Hill & Wang, 1978.
- Kelsey, Harry. *Juan Rodriguez de Cabrillo*. Pasadena: Huntington Library. 1998.
- Kroeber, Theodora, *Ishi in Two Worlds*, Berkeley: University of California Press, 1961.
- Kutler, Stanley I. *Privilege and Creative Destruction; The Charles River Bridge Case*, Baltimore: Johns Hopkins UP, 1990.
- Lowe, John. *Louisiana Culture from the Colonial Era to Katrina*, Baton Rouge: LSU Press. 2008.
- Madley, Benjamin. *An American Genocide; The United States and the California Indian Catastrophe*, New Haven: Yale. 2016.
- Magrath, C. Peter. *Yazoo: Law and Politics in the New Republic, The Case of Fletcher v. Peck*. Providence: Brown University Press, 1966.
- McGuiness, Aims. *Path of Empire: Panama and the California Gold Rush*. NY: Cornell. 2009.
- Monroe, Elizabeth Brand. *The Wheeling Bridge Case; Its significance in American Law and Technology*, Boston: Northeastern University Press. 1992.
- Morrison, Michael. *Slavery and the American West; The Eclipse of Manifest Destiny*. Chapel Hill: University of North Carolina Press, 2000.
- Nugent, Walter. *Habits of Empire; A History of American Expansion*. New York: Vintage. 2008.
- Onuf, Peter S. *Jefferson's Empire: The Language of American Nationhood*. Charlottesville: University of Virginia Press. 2000.
- Organization, Acts and regulations of the US land commissioners for California*, Mason, Whitton, and Co.: San Francisco, 1852.
- Pitt, Leonard. *The Decline of the Californios; A Social History of the Spanish Speaking Californians, 1846-1890*. Berkeley: University of California Press 1988 (2<sup>nd</sup> Edition).
- Quinn, Arthur. *The Rivals; William Gwinn, David Broderick and the Birth of California*, Lincoln: U. of Nebraska Press. 1997.
- Richards, Leonard L. *The California Gold Rush and the Coming of the Civil War*. New York: Knopf. 2007.
- Robert, David. *A Newer World; Kit Carson, John Charles Fremont, and the Claiming of the American West*. New York: Simon and Schuster. 2002.

- Rodriguez O, Jaime E. *"We Are Now The True Spaniards;" Sovereignty, Revolution, Independence, and the Emergence of the Federal Republic of Mexico, 1808-1824*, Stanford: Stanford UP. 2012.
- Rothman, Joshua D. *Flush Times and Fevered Dreams; A Story of Capitalism and Slavery in the Age of Jackson*, Athens: U. of Georgia Press. 2012.
- Saxton, Alexander, *The Rise and Fall of the White Republic*. New York: Verso, 1990. Horsman, Reginald. *Race and Manifest Destiny; The Origins of American Racial Anglo-Saxonism*. Cambridge: Harvard UP.1981.
- Sellers, Charles. *The Market Revolution*. New York: Oxford, 1991.
- Shawcross, Edward. *France, Mexico and Informal Empire in Latin America, 1820-1867*. Cham Suisse: Springer. 2018, pg.62.
- Soward, Adam M. *The United States West Coast; An Environmental History*, Oxford UK:ABC-CLIO. 2007.
- St. John, Rachel. "The Unpredictable America of William Gwin," *Journal of the Civil War Era*, Vol.6, No.1 [March 2016]
- Starr, Kevin. *Americans and The California Dream, 1850-1915*, London: Oxford, 1973.
- Starr, Kevin. *Inventing the Dream*. London: Oxford UP. 1986.
- Stephanson, Anders. *Manifest Destiny; American Expansion and the Empire of Right*, New York: McMillian 1996.
- Stephanson, Anders. *Manifest Destiny; American Expansion and the Empire of Right*. New York: Hill and Wang. 1995.
- Stites, Francis N. *Private Interest and Public Gain: The Dartmouth College Case, 1819*. Amherst: Univ. of Massachusetts Press, 1972.
- Taylor, Quintard. *In Search of the Racial Frontier, African Americans in the American West: 1528-1990*. New York: WW Norton & Co. 1998.
- The University of California Agricultural and Natural Resources Publication 3419, *Wine Grape Varieties in California*, (Oakland: UCANRCS) 2003, pp.3, 171.
- Torgot, Anthony. *Seeds of Empire: Cotton, Slavery, and the Transformation of Texas*, Chapel Hill: UNC. 2015.
- Truett, Samuel. *Continental Crossroads; Remapping the US Mexico Borderlands History*. Durham: Duke UP, 2004.
- Turner, Frederick Jackson. *The Frontier in American History*, Charlottesville: University of Virginia: eBook. Summer 1996. <http://xroads.virginia.edu/~HYPER/TURNER/>

- Vaught, David. *After the Gold Rush: Tarnished Dreams in the Sacramento Valley*, Baltimore: John's Hopkins UP, 2009.
- Weber, David Weber. *The Spanish Frontier in North America*, New Haven: Yale UP. 1992
- Weber, David. *The Mexican Frontier*. Albuquerque: University of New Mexico Press. 1982.
- Weeks, William Earl, *Building the Continental Empire; American Expansion from the Revolution to the Civil War*, New York; Ivar R Dee, 1997.
- Wood, Gordon. *Empire of Liberty; A History of the Early Republic*. London: Oxford UP. 2009.
- Wynne, Ben. *The Man Who Punched Jefferson Davis; The Political Life of Henry S. Foote*. Baton Rouge: LSU Press. 2018.
- Zinn, Howard. *A People's History of the United States: 1492-Present*. New York: Routledge. 2009.