

The Loss of the American Ideal in Regards to Early California Land Policy

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To Whom It May Concern:

Please accept the following paper, "The Loss of the American Ideal in Regards to Early California Land Policy" for the 2001 Santa Clara County Historical Essay Contest. I submit this on behalf of my student, Thuy Nguyen, whom I taught this last semester in California History.

I trust that you will give her paper the consideration it deserves. If you need anything further, please contact me via Presentation High School.

Sincerely,

Paul A. Phillips
History Instructor

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Preface

The assimilation of California by the United States is often depicted through the anecdotes and personal histories of the settlers who came to California. Little is told, however, of the impact upon the residents when an influx of strangers swarmed into their land. Not only was the land of the *californios*, the current Californians, stripped away, but also an entire way of life was disrupted and soon forgotten. Those who were once in control of their own lives were forced to the bottom of both the social and economic ladder. The ultimate cause for this shift in societal power was the enactment of the Land Act of 1851. Through this legislative act, a promise was broken on behalf of the United States, who had pledged to secure the rights of those already residing in California as citizens of the United States.

American pride is based upon the notion that the United States was the first nation to officially declare and bestow upon its citizens the civil liberties and respect due to all human beings. In addition, the promise of opportunity for success was available to all without regards to race, religion or ethnical background. However, this guarantee was only an initial effort on behalf of the United States. For it is clear that in the following generations the United States began to fall short of its original ideal. The idea of an unfair and cruel United States is usually viewed in context of the treatment of the African American population during the period of enslavement. However, often overlooked was the prejudiced and discriminatory treatment of the United States towards *californios* in California in the 1850s.

Upon the completion and resolution of the war with Mexico, the United States formed a pact with Mexico known as the Treaty of Guadalupe Hidalgo. Within Article VIII of the Treaty was the following condition:

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States... In the said territories, property of every kind, now belonging to Mexicans established there, shall be inviolably respected. The present owners, the heirs of these and all Mexicans who may hereafter acquire said property by contract shall enjoy ample as if the same belonged to citizens of the United States.¹

However, during the early years of California's history, the United States government failed to uphold ^{this} the _{its} in the Treaty of Guadalupe Hidalgo in their treatment of the *californios* and their claim to California land.

One of the reasons for reneging on this promise was that the land system of the *californios* was vastly different from the American conception of public land and its

¹ Crisostomo N. Perez, Land Grants in Alta California (Rancho Cordova: Landmark Enterprise, 1996), 6.

usage. The system was a sound and valid one, suited to the needs and wants of the *californios* of the state. They were *rancheros*, people who raised and lived off the profits of their vast herds. In this type of economy, where a dozen acres of grassland was needed in order to nourish a single animal through the long and dry summer, vast grants in land were the norm, for they were deemed necessary.² Also, because their economy was dependent upon the animals they raised, *rancheros* saw little or no need to develop the land into an agricultural-type business. In addition the *californio* population during this time was relatively small; the population, without the inclusion of the native Indians, was around eight thousand people.³ There was no fierce competition for land ownership as in the American rush to dominate the rest of the country. Unlike the Americans, there was no hesitation by the Mexican government in handing out land. To them, the grants benefited to the state by supplying a home to a new citizen and to colonists, thereby strengthening their claim to the land. As far as the application process, it was relatively simple. If the individual could prove that others were not using the land, he could easily receive a grant for several thousand acres. All he had to promise in return was to make the ranch his home, build a house on it, and place a herd of cattle upon it.⁴ From the time the first Spanish explorers set foot in California in the late 1700s until Mexico won its independence in 1820, there were only about 20 private land grants from the Spanish government. In contrast, the Mexican government under

² James J. Rawls and Walton Bean, Eds., California: An Interpretive History, (Boston: McGraw-Hill Companies, 1998), 61.

³ David Lavender, California: A Bicentennial History, (New York: W.W. Norton & Company, Inc., 1976), 15.

⁴ John S. Hittell, "Mexican Land-Claims in California," Hutchings' Illustrated California Magazine (1857-1858), 442-443.

their governors, such as Alvarado and Micheltorena, bestowed over 500 grants in order to facilitate the secularization of the Spanish mission system.⁵

Later conflicts between the *californios* and the Americans arose not only from the difference in the understanding of land use, but also in the way Mexicans handled the land grants within their government. To them, the idea of clearly marked boundaries was rendered unnecessary because of the size of the grants. The land grants given to each individual were of immense proportions for “under the liberal Mexican colonization provision of 1824 and 1828, the maximum legal limit for a private rancho grant in California was 11 square leagues—about 50,000 acres, or 76 square miles. Not even this generous limit was always applied, because in many cases several different grants were made to the same individuals.”⁶ In Santa Clara County, Rancho Quito covered 13,309.85 acres of the Saratoga-Campbell-Cupertino area.⁷ Consequently, border crossings were common and the likelihood of the owner noticing such a thing was improbable. If in rare cases the borders did exist, they were not well recorded. Such boundaries were laid out without the use of surveying tools and the methods of measuring distance varied from pure guesswork to laying out ^{the} length of a lasso from the back of a horse.⁸ Such records were in reality vague statements of descriptions of where the border might be, such as “by the tree” or “next to the river.” Although Mexican law at the time did state that all petitions for land were to be preserved and records were to be taken for all land granted, the opposite occurred. The Mexican government was careless in its affairs, and some instances the same grant was given to

⁵ Rawls and Bean, 61.

⁶ Ibid.

⁷ Clyde Arbuckle, Santa Clara Co. Ranchos, (San Jose: The Rosicrucian Press, Ltd., 1968), 36.

⁸ Rawls and Bean, 61.

two different people. In cases where a particular person had been in control of a title for twenty years, considered an undoubted claim, there might be register of it. In conclusion the Mexican government made little surveys of the large territories given away and kept no archival evidence of such cases.⁹

Compared to this, the American view differed greatly. The agrarian values of America were dependent upon the notion that “moderately large farms, well tilled, constitute the true glory and security of a nation or state.”¹⁰ Americans believed that their excellence was founded upon this type of agriculture, in which there were manageable farms. Thus, the monopoly of soil or the holding of more land than can be properly managed, as in the case of the *californios*, went against the ideology of the American people. In fact, in a letter from Charles B. Sterling to Thomas O. Larkin, a wealthy and influential man in California during this time, he wrote: “they [the squatters] laugh at the idea of one man holding more than 160 acres of land.”¹¹ The Americans that were coming from the East were accustomed to the traditional 160-acre public land grants, that, in addition to being accurately recorded, were well-farmed and clearly marked. In fact, the idea of land surveying is an American tradition stemming from the Land Act of 1796 in order to determine the sale of land in the area of Ohio and Kentucky.¹² The American squatters who came into California could hardly believe “a few hundred Mexican grantees would be permitted to monopolize some 13 million acres of land, little of it visibly improved and much of it entirely unoccupied.”¹³ Thus, when

⁹ Hittell, 443.

¹⁰ “John F. Morse Supports Traditional Agrarian Values, 1865,” Major Problems in California History, Sucheng Chan and Spencer Olin, Eds., (Boston: Houghton Mifflin Company, 1997), 117.

¹¹ Letter, “Charles Bolivar Sterling to Thomas Oliver Larkin,” The Larkin Papers, George P. Hammond, Ed., (Berkeley: University of California Press, 1963), 83.

¹² Perez, 9.

¹³ Rawls and Bean, 131.

they arrived and saw that the *californios* were not making “proper” use of the land, they often squatted on what to them was vacant land. Due to the vast amount of land, the *californios* would sometimes not even take notice of such squatters until years later. By then, many squatters would have already developed complete farms.

This trespassing began the land conflict in California between the Americans and the *californios*; the American settlers did not want to have all their work for the last couple of years wasted because they were going to be kicked off the property they had developed. Furthermore a feeling of supremacy over the Mexicans pervaded the attitude of the American settlers. The war against Mexico had just been waged and won. Thus, many of the Americans determined that their long overdue reward for fighting was the territory that was once poorly maintained by Mexico. The energy of the American pioneer spirit was dependent upon open land to maintain its vision of liberty and uniqueness.¹⁴

One of the first pieces of legislation that was enacted by the federal government when California became a state was the Land Act of 1851, also known as the Gwin Act. This statute created a judicial committee composed of three commissioners, who were to be appointed by the President of the United States. Their purpose was to determine the legitimacy of each Mexican claim. In regards to the claims, it was the *californios* who were forced to prove their legitimate ownership of the property as it had been granted to them whether it was under the Spanish or the Mexican government. In addition to the Committee, the law forced all claimants to bring forth their case within three years of its creation or suffer the loss of their lands regardless of their legitimacy.

¹⁴ Douglas Monroy, “Land and the Conflict of Legal Cultures,” Major Problems in California History, Sucheng Chan and Spencer Olin, Eds., (Boston: Houghton Mifflin Company, 1997), 130.

It also allowed for an appeal to take place from the judgements of the committee to the U.S. District Court and all the way up to the Supreme Court.¹⁵

The Land Act was intended to confirm the *californios'* title to land but instead it contributed to the collapse of Mexican influence in California. It highlighted the disadvantages the *rancheros* had to face in their struggle to maintain possession of their lands. The legal drawbacks were many. The Preemption Policy of the United States was one of the more influential case laws. The basic theory behind this policy meant that any settler who saw land that was both empty and unused was allowed to begin improving it. However, should it be discovered that the land was in actuality owned by someone and if he or she decided to sell, the settler who made improvements must be granted the first right to purchase the land. In addition to the Preemption Policy, there was also in existence the Rights to Improvement Policy. This law stated that if a squatter made improvements to a piece of land not belonging to him and was evicted from the land by the owner, the owner was forced to pay the squatter for their improvements.¹⁶ These two policies were in existence because they encouraged the exploration of the American frontier. By promising land, or, at least, reimbursements for improvements, the government provided some means of protection for the settlers who moved out west. However, these laws were often used in the court cases as American justifications against the *californio* landowners.

Less obvious than the legal disadvantages were the forced situations imposed upon the *californios*. Owners of land under grants from Mexico were required to travel

¹⁵ "An Act to Ascertain and Settle Private Land Claims in the State of California," Land Grants in Alta California. (Rancho Cordova: Landmark Enterprises, 1996), 21-23.

¹⁶ Paul W. Gates, "California's Embattled Settlers," California Controversies: Major Issues in the History of the State, Leonard Pitt, Ed., (Illinois: Scott, Foresman & Company, 1968), 97.

to San Francisco in order for their case to take place. At this time, the expenses of traveling and living in San Francisco were extremely high. These were not the only expenses that the Mexicans had to pay. The claimants had to hire lawyers, interpreters and had to bring their witnesses to the trial at their own expense. Prosecution of the suits required a study of Mexican laws in regard to the disposition of the public lands; clients also had to pay for these. Because the *rancheros* were in San Francisco, and not on their ranchos, they were unable to make money at this time. The landowner could not use his land and yet he was forced to pay taxes. Trials often took years and in that time, many ran out of money. In order to keep up with their expenses, the Mexicans slowly sold off pieces of their land. Thus, at the end, even if *rancheros* were allowed to keep their land grant from Mexico most of the land was reduced in size because it became necessary to sell off land for money.¹⁷ The cases were not conducted overnight; the time spent within the courthouses to prove legitimate claim was an average of 17 years from the time the claim was submitted.¹⁸

This was a distinct injustice because, on the other side, the United States federal government paid for all squatter expenses, including lawyers and, most likely, travel expenses. Other disadvantages included the fact that the claimant was automatically assumed to have no claim over his or her land whatsoever in every case. Therefore, the claimant had to provide evidence that he or she did have legal and rightful possession of the land. The burden of proof was on the claimant of the land, not the squatter. Unfortunately the Mexican government rarely took good records, if any were taken at all, of the public land grants given during their control of California. If the

¹⁷ Hittell, 444-445.

¹⁸ Rawls and Bean, 133.

californios lost their case, they could have an appeal if they wished. However, they were forced to pay for more expenses if they chose that course of action. Even if the *californios* did win the trial, an appeal up to the level of the Supreme Court, which was located 3000 miles away, was forced upon them, in which they also had to pay for more expenses. It was the United States' policy to automatically appeal all cases in which the *californios* legally won their right to the land. Ultimately, 209 cases were rejected, involving some 4 million acres of land.¹⁹ In the end, the Land Act deprived the *californios* of approximately 40 percent of their lands held before 1846.²⁰

Californio landowners throughout the state lost their lands, including those dwelling within Santa Clara County. In the case of District Court Land Case No. 382 the dispute was over the Berreyesa land grant. Also known as Rancho Cañada de Capay, this grant was awarded to Francisco Berreyesa, one of three brothers, in 1846 and the extent of the grant was approximately nine leagues, or 40,000 acres. This was a fight over the legitimacy of the Berreyesa claim over the land when an American, Jasper O'Farrell, claimed to have bought the title to the land. During the case, the Land Commissioners discovered that during the conquest of California by Frémont, the legal grantees of the grant were illegally incarcerated. In addition, the duration of their captivity was marked with additional tragedy as their father and their cousins were brutally murdered. As a result of their imprisonment, the "unlawful seizure of the Cañada de Capay was finalized."²¹ This took place at the hands of O'Farrell who was "taking advantage of the imprisonment of the Berreyesa brothers and the pillaging of

¹⁹ Ibid.

²⁰ Monroy, 132-133.

²¹ Eftimeos Salonites, Berreyesa – The Rape of the Mexican Land Grant, Rancho Cañada de Capay, (Capay: Mission Bell Marketing, 1991), 77.

their ranchos."²² However, despite the evidence, "the Commissions confirmed 7.5 leagues of the Capay grant to Jasper O'Farrell."²³ In the end, the Berreyesa brothers not only lost their land, but were faced with violence and even, death, in their struggle to regain their rightful claim to the land.

With the rush of greedy American settlers moving into California, even claims already validated were brought to trial. In this case, it was the land belonging to Antonio Chabolla, which covered all the territory bounded by Coyote Creek, the Evergreen Hills and the present day Tully and Metcalf Roads. This rancho was more commonly known as Rancho Yerba Buena. In 1833, Governor Figueroa granted the land to Chabolla, and later in 1859, the United States issued a patent for 24,342.64 acres.²⁴ However, at the time, squatters had been living upon the rancho with permission. They had no intention of leaving the land they had worked upon. They brought their claim to court and were turned down. Believing that they were still upon public land, the squatters had "armed themselves and sought the armed aid of others. "²⁵ This started what is now known as the Settlers War of 1861. The local sheriff did not stop the squatters for he himself was sympathetic towards the cause. The case of Chabolla illustrates that all claimants, whether or not they had patent claims, were forced to trial; thus, coercing them to pay immense of money for the expenses of each trial. Specifically, Chabolla's case also points out that the United States government failed to treat the *californios* with the dignity and respect promised in the Treaty.

²² Eftimeos, 94.

²³ Eftimeos, 77.

²⁴ Arbuckle, 36 – 37.

²⁵ Eugene T. Sawyer, History of Santa Clara County, (Los Angeles: Historic Record Company, 1922), 68.

The extremities of the American imposition upon the *californios* went far beyond what was required or necessary. For example, the land grant of Maria Antonia Mesa claiming half a league of land, approximately 2230 acres, in Santa Clara County was brought to trial despite the sufficient evidence and testimonies that legitimize her claim. The Board rejected her case for lack of description of the granted land upon the grant or upon accompanying maps. Mesa appealed her case and in the second hearing, she won her case, based upon the testimony of Aaron Van Dorn, a Deputy United States Surveyor, in which he stated that the natural objects used to define the boundary of the grant are well-defined and well-known. Thus, within the second hearing of the case the U.S. District Court agrees "that no ground remains for the rejection of this claim for want of definiteness."²⁶ Also "the genuineness of the grant is not disputed, and the grantee appears to have fully complied with the conditions."²⁷ It is significant, though, that the testimony of the U.S. Surveyor was not taken until the second court case, which must have meant additional costs and expenses forced to be paid by the claimant.

The outcomes of the actions following the creation of the Land Act of 1851 were many. It was the beginning of the decline of the Mexican ranchos and *californios* as they lost their land, money and influence. This was due to the fact that some of the claimants lost in their court cases. However, the major factor that contributed to this was the forced selling of Mexican land. During the years of trial, *rancheros* had to slowly sell off their land in order to maintain the expenses they spent in San Francisco.

²⁶ Ogden Hoffman, Hoffman's Land Cases. (San Francisco: Numa Hubert, Publisher, 1862), 66-68.

²⁷ Hoffman, 68.

The novel The Squatter and the Don portrays the feeling of deception and loss experienced by one *ranchera* by the name of María Amparo Ruiz Burton. “ ‘Land is not considered private property until the title to it is confirmed and patented,’ she wrote. ‘As the proceedings to obtain a patent might consume years, almost a lifetime, the result is that the [grantees] are virtually despoiled of their lands...’ ”²⁸ In addition, the years of trial deterred settlers from purchasing property for homes or farms and precluded the operation of the Preemption Act and similar policies. The squatters were unsure if they would be able to keep the land, and thus, did not want to have wasted efforts on land they would not be able to own. Had it not been for the Land Act, it is estimated that one million potential settlers would have resided within California. Most of these had been deterred from coming to California due to the uncertainties involving the land titles.²⁹ In addition, because the ownership of land shifted to the settlers, the stage was set for the state’s emphasis on agribusiness rather than family farming.

Not only did the United States federal government adopt an injurious and unjust system in dealing with the Mexican land claims, it did so in full knowledge of the promise it was breaking. The pledge founded in the Treaty of Guadalupe Hidalgo was obviously forgotten as the American government created the Land Act and enforced it with little regard to the Treaty. As Douglas Monroy sums it up, “The massive alienation of Californio lands, and their transfer to others obviously fell outside the letter and the spirit of the treaty and American respect for private property.”³⁰

²⁸ Rawls and Bean, 133.

²⁹ Rawls and Bean, 134.

³⁰ Monroy, 133.

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