

PETER H. BURNETT AND THE FORMATION
OF STATE GOVERNMENT IN CALIFORNIA

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When California's first governor wrote his memoirs, he titled them Peter Burnett: An Old California Pioneer. The title was appropriate, for Peter Burnett was a pioneer all his life, not only in California, but in Oregon and Missouri as well. He spent much of his life experimenting in the political, economic and social spheres. Trained as a lawyer, he took an active part in government wherever he lived, and held numerous offices and appointments during his lifetime. But always he was trying something new, working to establish laws where none existed, organizing trips no one had previously attempted, writing and using his ability as a speaker to enlist support and excite the opinions of others. Never satisfied, this pioneer was first in many of the things he attempted.

Peter Burnett's life as a pioneer began in Nashville, Tennessee in 1807. The state was far from settled, and in 1807 was the subject of a plot by Aaron Burr to form an Independent western empire. The plot failed but is typical of the unstable, unsettled area and time into which Peter Burnett was born. His family soon moved on to Clark County, Missouri, where Burnett was to live for many years.

In Clark County, and during a brief return to Tennessee, Burnett practised law, ran a newspaper and was a partner in several mercantile businesses. By 1843 he had acquired a wife, six children, and \$15,000 in debts.¹ It was at this point that his pioneering spirit began to exert itself. He saw a handbill telling of available homestead land in Oregon. He decided to organize a group of prospective settlers and go to Oregon with a wagon train. In 1843,

¹ Peter H. Burnett, An Old California Pioneer (Oakland: Biobooks Co., 1946), pp. 59-60.

no one had ever done this before, but Burnett organized his group and headed for Oregon. He was elected leader of the train, but soon resigned, tired of the bickering among the wagoners.² This was the first overt sign of what was later to become a pattern. He seemed to enjoy initiating ideas and organizing people to do new things, but did not have the same interest or talent for managing affairs once groups were established.

When he left for Oregon, Burnett cited three reasons for the move: he wanted to help establish America on the West Coast; he wanted to cure his wife's failing health, and he wanted to earn enough money to pay off his creditors.³ The wagon trip across the plains cured his wife's ill health, and he soon set about establishing American control in Oregon. In 1843, the area was very sparsely populated, and both the United States and England claimed the land. Settlers of both nationalities lived there, although the Americans outnumbered the British. As more immigrants arrived in 1844, it became apparent that laws were needed. Burnett was one of the leaders in establishing a constitution and organizing a government.⁴ This experience was to serve him well in California. As was his custom, Burnett and the others did not wait for Oregon to be formally acquired by the United States and a territory established. He advocated immediate action. He was to follow a similar course in California.

Although having accomplished two of his goals, Burnett was making no progress towards paying off his creditors in Missouri. He had no experience as a farmer, and although he learned quickly and was making enough to support his family, little was left over. When word of the gold discovery in California reached Oregon, there was little doubt that Peter Burnett would head for the gold fields.

In typical fashion, he did not go to California on a horse as did most of his contemporaries. Although a wagon train had never

² ibid., pp. 62-63.

³ ibid., p. 152.

⁴ ibid., pp. 121-26.

gone from Oregon to the Sacramento Valley, Burnett thought that it could be done and set about organizing a group of people. Leaving his wife and children behind, the future governor headed for California with the first wagons to attempt the journey. The trip was made successfully and in October, 1848, Peter Burnett was mining gold at Long's Bar on the Yuba River.⁵

However, he was not mining enough gold to pay off his debts, so Burnett, the pioneer, determined to go to San Francisco, although he knew very little about the town, and establish a law practise.⁶ On his way to San Francisco, Burnett and his companions stopped at Sutter's Fort in Sacramento, and here the lawyer's fortunes took a permanent turn for the better. Young John Sutter Jr. had recently assumed title to much of his father's land, and needed someone to manage it. With his legal training, Burnett was a logical choice, and he immediately embarked upon this new venture.⁷

Burnett divided the property into town lots and began to sell them to the new arrivals. He took his salary in property, acquiring some of the choicest lots in the town. He brought his family to San Francisco, and when John Sutter Sr. reassumed control of the property in August, 1849, Burnett left for San Francisco to join his family. He was well on the way to solving his financial problems.

While in Sacramento Burnett, true to his pioneering instincts, had become active in state politics. California political affairs were very confused in 1849. The United States had won control of the area in 1846, and in 1848, Mexico formally ceded the territory in the Treaty of Guadalupe-Hidalgo. Normally, Congress would have organized a territorial government, but slavery intervened. Not only was there a dispute over slavery or non-slavery, but Congress was so occupied with the question as it applied to North-South relations

⁵Ibid., pp. 153-62.

⁶Ibid., p. 171.

⁷William E. Franklin, Jr., "A Forgotten Chapter in California History: Peter H. Burnett and John A. Sutter's Fortune." California Historical Society Quarterly, XVI (December, 1962), 319-24.

that they had little time for solving California's problem. Consequently, California, in 1849, was still ruled by the military government that assumed control in 1846. The influx of people following the discovery of gold had created a greater need for good government, and although there was no widespread dissatisfaction with the military government, people began to feel that they should have a voice in public affairs. This was the situation when Peter Burnett arrived in Sacramento in December, 1848. By January 6, 1849, he had been elected President of a Sacramento town meeting which passed a resolution favoring a constitutional convention and ultimate representative government.⁸ Here was a new movement for Burnett to join, and with his experience in Oregon, he quickly became "a leader of popular opinion."⁹

Although still working for Sutter in Sacramento, Burnett moved to San Francisco early in 1849, and became active in politics there. The city formed a government of its own, and Burnett was elected to the Legislative Assembly.¹⁰ His chief role soon became that of chief spokesman for those favoring representative government. The situation of a military government ruling because of the failure of Congress to act was a new one, and from March through June, 1849, the debate between the military government and those favoring popular government raged.

Senator Thomas Hart Benton became the first outspoken participant, writing a letter which reached California in January, 1849. He wrote:

The temporary civil and military government established over you as a right of war is at an end....The laws of California are still what they were, and are sufficient for your present protection, with some slight additions derived from your voluntary support, and administered by officers of your own choosing.¹¹

On March 5, a letter from Secretary of State James Buchanan

⁸Daily Alta California, (San Francisco), January 25, 1849.

⁹Joseph Ellison, "The Struggle for Civil Government in California, 1846-50," California Historical Society Quarterly, X (March, 1931) pp. 144-45.

¹⁰Ibid., p. 130.

¹¹Daily Alta California, op. cit., January 11, 1849.

was printed in the Daily Alta California, stating the official administration case.

The termination of the war left an existing government, a government de facto, in full operation; and this will continue, with presumed consent of the people, until Congress shall provide for them a Territorial Government. The great law of necessity justifies this conclusion. The consent of the people is irresistably inferred, from the fact that no civilized community could possibly desire to abrogate an existing government, when the alternative presented would be to place themselves in a state of anarchy beyond the protection of all laws, and reduce them to the unhappy necessity of submitting to the dominion of the strongest.¹²

On April 26, a reply to Buchanan's letter was published in the paper. Signed "P", it was from Peter Burnett.

He (the President) advised not ordered the inhabitants to submit. The law commands and does not advise. Had the President believed that he had the lawful authority to continue the de facto government against our consent, it would have been his duty to speak as one having authority, and not merely to give advice.¹³

Burnett closed his argument by citing the rights which all Americans had won in the Revolution, protecting them against arbitrary rule and government without representation.

The situation became even more deplorable to advocates of popular government when, in May, it became known that Congress had passed a law extending the revenue laws of the United States to cover California.¹⁴ Peter Burnett, writing for the San Francisco Legislative Assembly, replied to the law for the representative government advocates.

The state of our government is...unprecedented and alarming. We are in fact without government -- a commercial, civilized, and wealthy people, without law, order, or system, to protect and secure them in the peaceful enjoyment of those rights and

¹² Ibid., March 5, 1849.

¹³ Ibid., April 26, 1849.

¹⁴ Ibid., May 24, 1849.

privileges inestimable, bestowed upon them by their Creator, and holden, by the fundamental principles of our country, to be inalienable and absolute....The United States...have assumed the right, not only to tax us without representation, but to tax us without giving us any government at all -- thus making us feel, endure, and bear all the BURDENS of government, without giving us even a distant glimpse of its BENEFITS.¹⁵

In the same issue of the Alta appeared a proclamation from Governor Bennet Riley, claiming that the San Francisco Assembly had "usurped powers vested only in the Congress of the United States."¹⁶ In August, Burnett, again writing for the San Francisco Legislative Assembly, answered Riley's charges, claiming that the San Francisco government was representative and that it was Riley's power that was unjust.¹⁷

However, the battle was almost over. On June 3, 1849, Governor Riley called for a constitutional convention to meet in Monterey on September 1 of that year. Those advocating the new government, although "not recognizing the least power... (of) General Riley to 'appoint' a time and place for...the assembling of the convention," agreed to the date and place.¹⁸ The controversy was over, and Peter Burnett had played a leading role in organizing public opinion behind the new system of government. He had helped form a firm body of opinion among a diverse and preoccupied group of men in the new California society.

The Constitutional Convention met as scheduled in Monterey, and although not a delegate, Burnett had been appointed a judge to the Superior Tribunal by Governor Riley and was in Monterey at the time. As soon as it became apparent that the constitution would pass, he declared himself a candidate for governor.¹⁹

Burnett travelled through the gold fields addressing groups

¹⁵ibid., June 14, 1849.

¹⁶ibid.

¹⁷ibid., August 19, 1849 and August 26, 1849.

¹⁸Burnett, op. cit., p. 195.

¹⁹Hubert Howe Bancroft, History of California, Vol. VI, (San Francisco: The History Company, 1888), p. 305.

of miners, and then ended his campaign with a speech in Portsmouth Square in San Francisco. He endured bad roads and a great deal of rain in the gold country, and escaped a near calamity in San Francisco.

In the midst of my address, the platform gave way and fell to the ground, except a small portion where I was standing. I paused only for a moment, and then went on with my speech, remarking that, though others might fall, I would be sure to stand.²⁰

Burnett won the election easily, attracting 6,716 votes with his closest opponent receiving only 3,188.²¹ Governor Riley immediately approved the new constitution and resigned in favor of Burnett.²² Peter Burnett's pioneering spirit had lead him to the peak of his career.

At the Monterey convention, the two delegates from San Jose had offered the guarantee of a building to house the legislature, and had won the contest for the site of the State Capitol. When the legislators began to arrive in December, 1849, they found that the building turned out to be a two story, forty by sixty foot structure which was unfinished. Furthermore, there were few lodging places for the new arrivals. Consequently, there was a great deal of discontent among the legislators. Until the building was completed, the legislature met at the home of a private citizen.²³

San Jose was, in those days, a new and a raw town. The streets quickly turned to mud with the winter rains, and travellers arriving by water faced a slow journey from the port of Alviso to San Jose. Life in the town itself was filled with action and excitement. Prize fights and bull fights were common and, after losing a doorkeeper to a prize fight, the legislature earnestly debated the question of outlawing such contests. The motion failed, however, and the following weekend, many legislators were present in the crowd

²⁰Burnett, op. cit., p. 208.

²¹Daily Alta California, op. cit., December 6, 1849.

²²Burnett, op. cit., p. 215.

²³Bancroft, op. cit., p. 309.

observing the contests.²⁴

Many problems faced the Governor and the legislators as they gathered in San Jose. The state had no laws, no judicial system, and most importantly, no sources of revenue. Furthermore, California was not officially a state, and any actions the government took depended upon the ultimate acceptance of the state by Congress.

On December 20, 1849, Peter H. Burnett was sworn in as Governor of California, and on the twenty-first he delivered his inaugural address. In his inaugural, Governor Burnett pointed out that the primary question facing the legislature concerned California's status as a state, and he concluded that although not officially a member of the Union, California should proceed without waiting for formal acceptance. He then proposed a combination of English law and the laws of the State of Louisiana as being the best combination possible, and recommended that they be adopted insofar as they did not conflict with the United States or California Constitutions. The Governor stressed the need for revenue measures and declared that he opposed any debt, and favored a direct tax, preferably a poll tax. He emphasized the need for the rapid adoption of a judiciary system and for the necessity of providing for county and city organizations. He closed the message with a statement of confidence in the future of the state.²⁵

The message was not well received, and Hubert Howe Bancroft later summed it up as, "A verbose document, characterized by no special ability."²⁶ This was, perhaps, to be indicative of Burnett's tenure as Governor. He was not popular, and although the legislature was praised on occasion, little is said about the Governor. In his memoirs, Peter Burnett entirely omits this period of his life, although he goes into great detail on the events leading up to the Constitutional Convention -- events in which he played a leading and

²⁴Daily Alta California, op. cit., January 9, 1850.

²⁵State of California, Journal of the Senate in the State of California at their First Session. San Jose: J. Winchester, State Printer, 1850, pp. 31-41.

²⁶Bancroft, op. cit. p. 312.

popular role. It is only natural that a man would not dwell upon unpleasant aspects of his career, and this almost complete omission of his Governorship in his memoirs is perhaps the best evidence that Peter Burnett was neither a popular nor contented executive. If this is true, it fits a pattern which Burnett had established early in his career.

Burnett had been very successful when organizing people to attempt new endeavors. He gathered people to form the wagon train to Oregon, and again for a wagon train to California. He was very active in the formation of the first governments of both Oregon and California. He was successful as John Sutter Jr.'s agent in Sacramento, as he established town lots and began to sell them to settlers. But whenever Burnett was forced to settle down and put a project into full operation, he seems to have lacked either the will or the talent to accomplish the task. In Missouri, he could not earn a living as a lawyer, and was a complete failure as a business man. When placed in charge of the wagon train to California, he soon tired of the petty squabbles which he was called upon to settle, and resigned within two weeks. In Oregon he barely made a living as a farmer, and in California quickly tired of gold mining. Burnett was eager, talented and able when confronted with a new situation and given a chance to organize and move people in a new direction. When forced to settle down and stick to a set task, he either failed or soon tired of the activity.

It is not surprising, then, that Peter Burnett was not a good Governor, and that he resigned as soon as the second legislative session started in January, 1851. During the previous session, he had been notable principally for introducing items upon which the legislature refused to act. He had received a proposal from the Mormons in Deseret who wanted to join with California. The letter and accompanying message from Burnett were quickly laid aside by the legislature.²⁷ One of Burnett's favorite proposals, in both Oregon and California, was the exclusion of all Negroes, slave or free. He concluded that

²⁷ Bancroft, op. cit., p. 325.

slavery was evil, but that if free Negroes were allowed in the state, it would only be to their detriment, and thus the detriment of both races. The answer was to exclude all Negroes. This proposal, also, was not acted upon by the legislature.

Burnett also favored the exclusion of all Chinese except those engaged in commerce, although the justification differed somewhat from the case of Negroes. Burnett disclaimed any racial prejudice, but felt that if the Chinese were allowed free access to California, they would soon take over the state. They were able to live more cheaply and would soon dominate. Furthermore, Californians were not entitled to free access to China, and thus were not obligated to admit Chinese to their state. He concludes by saying, "Nothing is more probable than that China within the next century will fully learn and use her mighty power."²⁸ In general, Burnett was in favor of native Americans being able to garner the fruits of California.

In 1850, Burnett proposed a measure forbidding the San Francisco Justice of the Peace to sell municipal property. The comment of the Daily Alta California was perhaps indicative of local sentiment concerning the Governor.

We are at a loss to conjecture at what instigation this Proclamation was made -- how it was expected to meet the difficulty it undertakes to regulate, after it was made -- and finally, why it was made at all.²⁹

The newspaper makes no favorable comment upon the actions of the Governor until he tendered his resignation. This came at the beginning of the second session. Commenting upon the address itself, the newspaper said:

The larger portion (of the legislators) have remained faithfully at the capital....We have had in the main good men....We can but applaud the spirit that induced his Excellency (the Governor) to give that attention to the interests of the State at last, which, in our humble opinion, he has utterly failed to do during

²⁸Burnett, op. cit. pp. 212-14.

²⁹Daily Alta California, op. cit., February 14, 1849

the period of his official service.³⁰

The comments grew more critical as the newspaper commented upon the tenure of Peter Burnett as Governor.

At the risk of appearing somewhat ungenerous, we must fain acknowledge that the resignation of Governor Burnett affords us the most unqualified satisfaction. We believe it will be a popular measure throughout the State and the most popular act of the late Executive. It is not to be denied that the people were most shamefully deceived and egregiously disappointed in their selection for the head of the State Government, that officer having entirely neglected to pay that attention to the interests of the young State to which she was so justly entitled from her first Executive officer....The power existed but the will was wanting....His own private affairs have claimed almost all his attention....During the session of the last Legislature it would seem that he confined himself to the simple task of signing bills....Since he was determined that the administration of the State Government should not interfere with his private affairs we are glad he has resigned.³¹

This judgement was perhaps harsh, but seems to coincide with Burnett's own reasons for resigning and with his past performance. His official notice to the Legislature read:

Circumstances entirely unexpected and unforeseen by me, and over which I could have no control, render it indispensable that I should devote all my time and attention to my private affairs. I therefore tender to both Houses of the Legislature, my resignation as Governor of the State.³²

In his memoirs, the Governor gives no further explanation, so it would appear that he had just become tired of the job. His private affairs had not prevented him from being active during 1849, and the only difference between 1849 and 1851 would be that he was tired of his job.

After retiring from the Governorship, Burnett turned to a more inactive life. He served as a State Supreme Court Justice for several years, and spent his last years as a banker. Perhaps he

³⁰*Ibid.*, March 15, 1850 and January 11, 1851.

³¹*Ibid.*, January 12, 1851.

³²State of California, *op. cit.* 1851, p. 43.

had run out of frontiers.

For Peter Burnett was truly a pioneer, a man who attempted what others had not yet dared. His greatest forte was organizing people and stimulating them to action. But when it came to actually staying with a task and making the details work, Peter Burnett lacked the will. The first Governor of California was an initiator and, consequently, his greatest contribution to the state came when he organized popular opinion prior to the Constitutional Convention, not when he was Governor.

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