How California Was Won: Race, Citizenship, And The Colonial Roots Of California, 1846 – 1879

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Abstract
The construction of California as an American state was a colonial project premised upon Indigenous removal, state-supported land dispossession, the perpetuation of unfree labor systems and legal, race-based discrimination alongside successful Anglo-American settlement. This dissertation, entitled "How the West was Won: Race, Citizenship, and the Colonial Roots of California, 1849 - 1879" argues that the incorporation of California and its diverse peoples into the U.S. depended on processes of colonization that produced and justified an adaptable racial hierarchy that protected white privilege and supported a racially-exclusive conception of citizenship. In the first section, I trace how the California Constitution and federal and state legislation violated the Treaty of Guadalupe Hidalgo. This legal system empowered Anglo-American migrants seeking territorial, political, and economic control of the region by allowing for the dispossession of Californio and Indigenous communities and legal discrimination against Californio, Indigenous, Black, and Chinese persons. The second section of the dissertation focuses on the implementation and obstruction of a Free State status and the process of Reconstruction within the state. This project concludes with an exploration of the rewriting of the California Constitution in 1879. While the 1849 Constitution established American sovereignty by excluding Californios, Indigenous Peoples, and Black Americans from California society, the 1879 Constitution maintained the colonial project and protected white-only citizenship, by providing mechanisms to manage the "imported colonialism" created by the demand for cheap labor and a growing American empire.

In California, the construction of the American state depended on the racialization, dehumanization, and criminalization of Californio, Indigenous, Chinese and Black people that ultimately rendered them unworthy of inhabiting the land as citizens. The colonial process that transformed the frontier from a contested Mexican space into an American state, not only structured California society, but also shaped U.S. society, American imperialism in the Pacific World, and U.S. immigration policy in the late-nineteenth and twentieth centuries.

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For my Mother,

Gloria
Acknowledgment

The thinking, researching, and writing of a dissertation project is a solitary project that requires the support and encouragement of many. I am fortunate to have had the support of people from Philadelphia, France, and, yes, California. I take great pleasure in finally thanking all the people that made this dissertation project possible.

This dissertation is dedicated to my mother, Gloria Ramirez. It is impossible to put into words all that my mother has done for me, but I will attempt to give her the thanks she deserves. Since I was a young child, my mother encouraged me to quench my thirst for knowledge; she spent endless hours taking me to libraries, museums, and punk concerts. Thank you, Mom. She was the smart and strong example that made clear to me that I could pursue my dreams. My mother not only selflessly gives the love that sustains me, but also the encouragement that inspired me to be the first kid from our family to leave California and pursue an education at institutions that were not created with me in mind. As I added the finishing touches to this dissertation, I often thought back to the problematic California Missions project I was assigned in the fourth grade. It was my mother’s encouragement that inspired me to learn and understand the history of the San Gabriel Mission and create a Mission model that was accurate, well-researched, and told a story. Again, almost twenty years later, my mother’s support and love inspired me as I pursued and completed this California project. For everything, I am grateful.

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journey could have not been completed without her and was pursued with her in mind. I know you find History boring, but I hope this historian made you proud.

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ABSTRACT

HOW CALIFORNIA WAS WON: RACE, CITIZENSHIP, AND THE COLONIAL ROOTS OF CALIFORNIA, 1846 – 1879

Camille A. Suárez
Mary Frances Berry

The construction of California as an American state was a colonial project premised upon Indigenous removal, state-supported land dispossession, the perpetuation of unfree labor systems and legal, race-based discrimination alongside successful Anglo-American settlement. This dissertation, entitled “How the West was Won: Race, Citizenship, and the Colonial Roots of California, 1849 - 1879” argues that the incorporation of California and its diverse peoples into the U.S. depended on processes of colonization that produced and justified an adaptable racial hierarchy that protected white privilege and supported a racially-exclusive conception of citizenship. In the first section, I trace how the California Constitution and federal and state legislation violated the Treaty of Guadalupe Hidalgo. This legal system empowered Anglo-American migrants seeking territorial, political, and economic control of the region by allowing for the dispossession of Californio and Indigenous communities and legal discrimination against Californio, Indigenous, Black, and Chinese persons. The second section of the dissertation focuses on the implementation and obstruction of a Free State status and the process of Reconstruction within the state. This project concludes with an exploration of the rewriting of the California Constitution in 1879. While the 1849 Constitution established American sovereignty by excluding Californios, Indigenous Peoples,
Black Americans from California society, the 1879 Constitution maintained the colonial project and protected white-only citizenship, by providing mechanisms to manage the “imported colonialism” created by the demand for cheap labor and a growing American empire.

In California, the construction of the American state depended on the racialization, dehumanization, and criminalization of Californio, Indigenous, Chinese and Black people that ultimately rendered them unworthy of inhabiting the land as citizens. The colonial process that transformed the frontier from a contested Mexican space into an American state, not only structured California society, but also shaped U.S. society, American imperialism in the Pacific World, and U.S. immigration policy in the late-nineteenth and twentieth centuries.
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A Note on Terms

In this study, I will use the terms **Californio**, for men, and **Californiana**, for women, to describe the Mexican nationals who lived in the territory of Alta California as part of the Spanish, and then Mexican, efforts to colonize the region and its Indigenous inhabitants.\(^1\) Originally penned by Franciscan priests to describe the Christian Indian boys living in Baja California in the late 1700s, colonial settlers of Alta California appropriated the Californio term to express their regional identities.\(^2\) The two pillars of the Californio identity were colonial mastery and the notion of *gente de razón* (people with reason).\(^3\) *Gente de razón* only had meaning in opposition to *sin razón* (without reason), which Spanish and Mexican residents of Alta California constructed to describe Indians. While whiteness informed the Californio/ana identity, many Californios were of Spanish, Indigenous, and African ancestry. Scholars have mostly used the term ‘Californio’ to describe elite, rancho owning individuals and families, in this study, I use the term Californio to describe elite and non-elite inhabitants who migrated to and participated in the colonization of the region; after all, colonization is not just an elite venture. In part, I use this term to describe all non-elite and elite Californios, who had

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3. In colonial Spanish America and post-colonial Spanish America, the term was used to distinguish people who were culturally Hispanic from non-Christian Indigenous people and non-elite, mixed-race people. For an in-depth look at the construction of *gente de razón*, see: María Elena Martínez, *Genealogical Fictions: Limpieza de Sangre, Religion, and Gender in Colonial Mexico* (Stanford: Stanford University Press, 2008).
become American citizens under the Treaty of Guadalupe Hidalgo, from Mexican immigrants in California.

In this study, I use the terms Indian and Indigenous interchangeably to identify Indigenous individuals, Peoples, and polities. When possible, I refer to an Indigenous Peoples or person by their specific band or nation name. I use the term Indian when citing primary and secondary sources, in discussions of legal/constitutional matters, in discussions of rights and benefits provided according to the category of "Indian," and for historical accuracy. In all other instances, I will use the term Indigenous or Indigenous Peoples.
Introduction
LAYERS OF COLONIALISM IN CALIFORNIA

The history of California is a history of colonialisms. Beginning in the late-sixteenth century and continuing well into the nineteenth-century, European and American imperial powers, as well as individual actors, attempted to colonize the region. By the end of the nineteenth century, Anglo-American settlers managed to remove and exterminate a large portion of the Indigenous population, wrestled power out of the hands of elite Californios, and established a complex racial hierarchy that guaranteed white men mastery over land, labor, and bodies. In the mid-nineteenth century, however, the successful establishment of the American state of California was not a foregone conclusion. Prior to the start of the U.S.-Mexican War in 1846, Anglo-American settlers who migrated to Alta California assimilated to the culture and participated in the political system of the colonial ruling class.\(^1\) The American internalization of the Manifest Destiny ideology propelled expansion, not only in the form of settlement, but also in the form of

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an expansionist war. During the U.S.-Mexican War, Mexicans, Americans, and independent Indians polities violently remade the North American Southwest.

On May 30th, 1848, the U.S.-Mexican war ended with the ratification of the Treaty of Guadalupe Hidalgo. The treaty officially announced the imposition of American authority over 55% of the Republic of Mexico’s northern territory or, as it is now known, the American Southwest. Negotiated, signed, and ratified by American and Mexican diplomats and politicians, the treaty transformed over 200,000 Indigenous and Californio inhabitants into denizens of the United States and empowered Anglo-American agents of government and settlers who sought to forge the region into a space that illustrated their visions of territorial, political, and economic expansion.

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5 The lands ceded to the United States included lands claimed by multiple Indian nations, such as the Apache, Comanche, Utes, and Navajo. The Treaty of Guadalupe Hidalgo did not recognize Indigenous sovereignty or territorial claims in this region. Scholars have not firmly agreed on the boundaries of “the West” and the “American Southwest;” in part, because the boundaries of these regions have had different demarcations at different times. In this dissertation, I deploy the term “the West” to mean the region comprised of California, Oregon, Washington, Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, and Nevada. I deploy “American Southwest” in reference to the region comprised of California, Arizona, New Mexico, and Nevada. In this study, I consider California to be a part of both the American Southwest and the West.
This study seeks to understand the process by which the Mexican state of Alta California became the American state of California. How were groups of colonized peoples incorporated into California and the United States? What did this transformation look like at ground level? How did interstate regional differences shape local power structures? How did the imposition of U.S. authority over the territory and people in California shape American imperialist policy, the meaning of citizenship, and federal institutions throughout the nineteenth century?

This study asserts that colonialism made California. By colonialism, I mean the process “of bringing new territory into use by an expanding society including settlements for trade and agriculture” in conjunction with the “coercive incorporation of [people] into an expansionist state [with an] invidious distinction.” In California, legislation and violent settlement constituted the colonial process.

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Located at the peripheries of the U.S. Empire and far from the epicenter of federal authority, the federal government could not always dictate the colonization of California from the east. Anglo-American colonial entrepreneurs, who migrated to the state, improvised the social, political, and economic systems that colonized the region and its people. Elite Californios collaborated with Anglo-American colonial entrepreneurs in an effort to protect their position as a colonizer class until significant white settlement in the region rendered the alliance unnecessary to their American counterparts. Anglo-American colonial entrepreneurs erected a legal colonial framework that transformed difference into racial categories that justified the political, economic and social subjugation of Californios, Indigenous Peoples, black Americans, and Chinese immigrants. In California, the colonial process transformed non-white peoples into racialized, non-citizen subjects. At different moments, racialized and subjugated individuals grabbed the levers of the legal colonial framework in order to shape a system that granted greater inclusion.

A scholar of French colonialism, Georges Balandier, wrote: “every characteristic of ‘colonialism’ – colour bar, political and economic subordination, inadequate ‘social’ provision, […] is based upon a ‘series of rationalizations,’ that is to say the superiority of the white race, the native peoples’ incapacity for leadership [and] the inability of the indigenous people to exploit the natural resources of their countries.”

This dissertation

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7 By colonial entrepreneurs, I mean an Anglo-American settler that migrated to California in order to shape the state in a manner that accommodated their political ambitions and ideologies. In California, power was in flux and a colonial entrepreneur worked to shape institutions that would empower and enrich themselves and others like them. California’s position on the periphery, granted Anglo-American settlers the ability to shape and direct the colonial processes that transformed the land into colonial property and the people into subjugated colonial subjects.

analyzes the construction of the American state of California as a colonial process in order to understand the ‘series of rationalizations’ that propelled the land dispossession, labor subjugation, and political disfranchisement of colonized peoples. The maintenance of a colonial state requires a management in which “the administrative system becomes an integral part of colonized societies.” In the California case, such management came in the form of state and federal legislation that constructed property and citizenship rights around notions of race. I pay particular attention to the attempts of colonized peoples to disrupt such systems and the subsequent (re)fashioning of the colonial legal framework.

This project begins in 1849 with the first California Constitutional Convention and ends with the second California Constitutional Convention in 1879. The 1849 Constitution established a colonial legal framework that transformed land into property and Californios, Indigenous Peoples, and black Americans into non-citizen subjects. While the 1879 Constitution maintained the colonial project and white-only citizenship, by providing mechanisms to manage the “imported colonialism” created by the demand for cheap labor and a growing U.S. Empire. Unlike other scholarship on the first decades of California statehood, I examine multiple racialized groups at once, because the same colonial process shaped multiple racial identities.

The incorporation of California was very much a part of the national story. This study also reckons with California’s complicated role as a Free State and the state legislature’s rejection of federal Reconstruction legislation. While entering the Union as a

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10 By imported colonialism, I mean, the push and pull factors that resulted in the migration of U.S. colonial subjects to the United States mainland for the purpose of labor. I borrow this concept from Mae Ngai’s Impossible Subjects. For more on the concept, see: Mae Ngai, Impossible Subjects: Illegal Aliens and the Making of Modern America (Princeton: Princeton University Press, 2004), 94 – 171.
Free State, the California Constitution and state legislation upheld Indian slavery and protected race-based, chattel slavery because it contributed to the colonial process that differentiated bodies on the basis of race. The exploitation of labor, like land dispossession, contributed to the justification of legislation that excluded non-white people from citizenship rights. When the fog of the Civil War began to settle, California served as an example of how maintain a racial hierarchy that rationalized differentiated citizenship statuses in a nominally free society.

**Historiography**

Since the Census Bureau declared ‘the frontier closed’ in 1890, scholars have analyzed the process by which California, and the West, were integrated into the U.S. Three years after the frontier ‘closed,’ historian Frederick Jackson Turner published his famous “frontier thesis” essay, which stated that American democracy was formed by the American conquest of the frontier. Shrouded in imperialist presuppositions, Turner’s thesis set the analytical tone for Westward Expansion for a majority of the twentieth century.

This changed in 1987, when historian Patricia Limerick published the *Legacy of Conquest: The Unbroken Past of the American West*. In this seminal work, Limerick argued that conquest, like slavery in the American South, shaped the history of the West.

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contemporary American West. Limerick rejected the Turnerian idea that “the struggle with the wilderness turned Europeans into Americans.”

Limerick’s call for historical scholarship that analyzed the West as a place shaped by conquest and considered the role of race, class, gender, and environment coincided with the birth of New Western Studies. New Western Studies prioritized the experience of colonized peoples and analyzed the American West as a place and as a process of conquest. This body of work demonstrated that American sovereignty and power in the West was premised upon the exclusion of non-white and colonized communities.

Rather than fall into narratives of inevitability, scholars embraced the concept of borderlands, meaning the contested boundaries between colonial domains, where the differences in imperial character created political and border confusion. In the essay “From Borderlands to Borders: Empires, Nation States, and the Peoples in Between in North American History,” Jeremy Adelman and Stephen Aron demonstrated the substituting of “borderland” for all of North America's "frontiers" [has] enriched our

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understanding of the complexity and contingency of intercultural relations."¹⁷ However, this substitution resulted in scholarship that overlooked the struggles between emerging nation-states, polities, and empires. Adelman and Aron reserve the designation of borderlands for the contested boundaries between colonial domains in order to problematizes space and arrive at historical and political narratives in which Americans, Mexicans, and Indigenous Peoples reshaped the North American continent.¹⁸ In my work, I analyze California as a place and as a process of colonialism and rely on Adelman and Aron’s concept of borderlands to interrogate how the construction of nation-state borders hardened racial hierarchies and limited the autonomy of a variety of peoples. Overall, this project seeks to complicate the black-white racial dichotomy of American racial history by incorporating the causes and consequences of the racialization of all “non-white” groups in California into the nineteenth-century narrative of race and state making.¹⁹

Despite this rejuvenation, 19th-century histories of the American West remain disconnected from histories of the American South and North. In an attempt to integrate

these regional histories, scholars have recently interpreted the incorporation of California into the U.S. within a Greater Reconstruction framework. First suggested by historian Elliott West, in *The Last Indian War*, the framework proposes that our understanding of Reconstruction be temporally and geographically expanded to consider Westward Expansion and the destruction of Indian sovereignty alongside slave emancipation as integral factors in the 19th-century centralization of the U.S.\(^{20}\)

The canon of U.S. Civil War and Reconstruction History concedes that the conflict accelerated westward imperialist expansion. The incorporation of California into the Union in 1850 increased the strain on a nation plagued with sectional strife.\(^{21}\) Similar to the U.S. Civil War, the incorporation of the American West was a struggle over political sovereignty and a conflict between autonomous regional polities and a distant and expansionist federal authority. However, the U.S. Civil War was fought over slavery, Westward Expansion, while connected to slaveholders’ designs on the American Southwest, was not pursued for the same reason. Moreover, the goals and motives for incorporating freed people, Indigenous people, and conquered people in the post-war moments differed.\(^{22}\)

Scholars have widened the scope of the Civil War and Reconstruction eras to include Westward Expansion and have utilized the Greater Reconstruction framework to analyze the incorporation of California into the U.S.\(^{23}\) Historian Stacey Smith made the


\(^{23}\) Elliott West, “Reconstruction in the West,” *The Journal of the Civil War Era*, Volume 7, Number 1, March 2017, 16; Steven Hahn, “Slave Emancipation, Indian Peoples, and the Projects of a New American
most compelling argument for a ‘Greater Reconstruction’ in *Freedom’s Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction.*

Through an examination of California, Smith reframes Reconstruction as a North, South, and Southwest struggle over unfree labor systems. Smith’s work effectively convinces a reader to reconsider the role California performed in the national politics of emancipation and Reconstruction.

However, by lumping together Westward Expansion and Reconstruction in a framework of ‘Greater Reconstruction,’ we lose sight of the colonial processes that shaped California before, during, and after Reconstruction and the regional particularities central to the reorganization of political, economic, and social systems after the violent rupture of the U.S. Civil War. In the California context, we overlook how Westward

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Expansion and the incorporation of colonized peoples influenced the construction of second-class citizenship and how dispossession contributed to the invention of denigrated racial categories. In the national context, we run the risk of overlooking freed people’s influence upon Reconstruction and the uneven expansion and declension of citizenship rights and federal authority throughout the U.S. Rather than attempt to fit an analysis of Westward Expansion into the same conceptual box of Reconstruction, I consider the confluence of Reconstruction and post-1860 Westward Expansion as separate, but interconnected phenomena. A study of the colonial incorporation of California reveals how the differentiated incorporation of Californio and Indigenous people and the legal exclusion of black migrants and Asian immigrants influenced responses to radical Reconstruction policy, shaped American imperialism in the Pacific World, and presaged a racially exclusionary immigration policy at the federal level.

Essential to my examination are the analytical frameworks put forth by historians of colonialism and nation-state building in the African and Indian context. In _Citizenship Between Empire and Nation: Remaking France and French Africa, 1945 - 1960_, historian Frederick Cooper demonstrates that colonial administrations

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conceptualize and deploy a system of selective citizenship. Selective citizenship often results in legal distinctions encoded in racial, ethnic, and gendered differences. Informed by Cooper’s and other colonial studies scholarship, I interrogate the management of racial and ethnic diversity in California as a colonial process in which the state and colonial entrepreneurs fashioned a social system that resulted in the differentiated incorporation of conquered and immigrant groups.

In an attempt to bring these distinct, yet connected historiographies together, I examine the colonial incorporation of California into the United States within a framework that analyzes a regional episode within the context of a national story.28 As scholar Laura Gómez stated, “we cannot fully understand the second imperial moment of the 1890s without understanding what occurred in the first imperial moment in the 1840s, in what is today the American Southwest.”29 My analysis of the 1840s-to-1870s colonial moment that transformed the region now known as California, illuminates how the interconnected processes of race making and state building shaped the contours of citizenship and federal power throughout the United States and during the second half of the nineteenth century. This study ends in 1879 because the colonial process engineered to reorganize the labor, land, and political relations of California had come to an end. All colonial processes must come to an end. By 1879, Anglo-American settlers had institutionalized the subjugated status of racialized groups and successfully laid claim to

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the land. Given their success, colonial entrepreneurs revised the legal regime to insure the exclusion of members from not only non-white colonized groups, but also non-white immigrant groups. The colonization of the American West served as the laboratory and springboard for U.S. imperialism in the second half of the nineteenth and throughout the twentieth century.30

Chapter Outline

This project begins in wartime Alta California and ends with the second California Constitutional conference in 1879. I have organized the chapters thematically and according to a loose chronology. The first four chapters cover the time period before the U.S. Civil War and the fifth chapter looks at California during the first years of Reconstruction. I develop my argument around three cruxes. One, how federal and state policy contributed to the dispossession of Californios and Indigenous Peoples. Two, the denial of citizenship rights for people of color. Three, the maintenance of unfree labor systems. In ways that other scholars have not yet demonstrated, I argue that the

construction of a racial hierarchy that justified race-based exclusion and land
dispossession shaped the political, social, and economic systems of American California.

I am particularly interested in demonstrating how the colonial incorporation of
California was contingent upon the violation of legal agreements. In the first thirty years
of conquest, the American federal government and the Anglo settlers systematically
violated the Treaty of Guadalupe Hidalgo, the 18 Unratified Treaties that federal agents
made with hundreds of independent Indian polities in California, as well as various state
and federal legislation. I carry these themes throughout the project and consider the state
rejection of federal Reconstruction policy as a continuation of this colonial strategy.
These infringements not only transformed treaty citizens, freed people, and immigrants
into non-citizen subjects, but also delineated the racial parameters of citizenship
throughout the U.S.

Essential to my analysis is an examination of the connected racialization and
subjugation of Mexicans/Californios, Indigenous Peoples, black Americans, and the
Chinese. A comprehensive discussion of race in the nineteenth-century U.S. requires a
consideration of how racial formation in California occurred not only in the shadow of
the white/black, enslaved/slaveowner binary of the North and South, but also within the
political and social milieu of the American Southwest borderlands. Rather than treating
California as an isolated moment or as a tabula rasa environment, this dissertation
interrogates the United States’ colonization of California as a process in dialogue with the
Mexican and Spanish colonization of the regions and its inhabitants. This project
explores how the degradation and exclusion of racialized groups resulted in an
“organizing grammar of race” that buoyed nonequivalent and exploitative treatments of different racial and ethnic groups and their offspring.\textsuperscript{31}

At the center of this project, is the origin of the ‘Mexican’ racial identity within a U.S. context. I demonstrate that the racialization of Californios and Mexicans resulted in the racial construct of “unlawful occupier,” which served the colonial and settler ambitions of the Anglo-Americans that migrated to the state. During the debates over the ratification of the Treaty of Guadalupe Hidalgo, Senator John C. Calhoun of South Carolina, articulated his opinion on the people of Mexico and his stance on incorporating them into the Union. Calhoun said:

“Nor have we ever incorporated into the Union any but the Caucasian race. To incorporate Mexico, would be the first departure of the kind; for more than half of its population are pure Indians, and by far the larger portion of the residue mixed blood. I protest against the incorporation of such a people. Ours is the Government of the white man. The great misfortune of what was formerly Spanish America, is to be traced to the fatal error of placing the colored race on an equality with the white. That error destroyed the social arrangement which formed the basis of their society.”\textsuperscript{32}

Senator Calhoun was not alone in these sentiments; however, the U.S. and California government incorporated Mexican citizens, but not as full citizens. As this study will demonstrate, the U.S. Government required the cooperation of elite Californios to administer their authority in California and, in turn, incorporated them on a provisional basis. However, Anglo-American settlers worried that this collaboration could result in the softening of the colonizer-colonized distinction, so they worked at differentiating

\textsuperscript{31} Patrick Wolfe, “Settler Colonialism and the Elimination of the Native” \textit{Journal of Genocide Research} 8.4: 387

Californios on racial terms. Once Anglo-American settlers and colonial entrepreneurs entrenched federal authority and migration altered demographic patterns in the region, the distinction between Californio treaty citizens and Anglo-American settlers hardened around notions of race.\textsuperscript{33}

Californios, in their efforts to retain their elite status within a system that facilitated their colonization, became “colonized colonizers.” I borrow the “colonized colonizers” concept from \textit{A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan} by Eve Troutt Powell. Troutt Powell reconsiders the dualistic role Egyptians perform in simultaneously resisting British imperialism and attempting to colonize the Sudanese, demonstrating that the Egyptians become “colonized colonizers.” Thinking of Californios as “colonized colonizers” makes sense of the collaboration between Anglo-Americans and Californios – they found commonality in their colonial ambitions. Californios hoped to construct common colonial identities with Anglo-American colonial entrepreneurs as they tried to racially distance themselves from and exert colonial power over the Indigenous and ethnic, non-elite Californios. The colonial tools that Californios sought to protect would lead to their disempowerment and racialization under the American regime. I will analyze Californios as “colonized colonizers” in the following chapters.

This dissertation looks at the whole of California and devotes particular attention to the regional differences between Northern and Southern California. In 1850, the northern portion of the state had an Anglo-American majority population. The southern

\textsuperscript{33} I borrow the term ‘treaty citizen’ from: Rosina Lozano, \textit{An American Language: The History of Spanish in the United States} (Berkeley: University of California, 2018), 6 – 8.
part of the state remained largely Californio until the 1870s. Independent Indian polities asserted sovereignty unevenly throughout the state. Black migrants and Chinese immigrants mostly settled in the northern region of the state. These demographic patterns, in addition to geographical conditions, produced localized power, social, and economic systems, which I interrogate.

Beginning with the U.S. occupation of Alta California, chapter one explores the collaboration between elite Californio and Anglo-American colonial entrepreneurs in the making of the state of California. I examine the negotiations that ended the U.S.-Mexican War in Alta California and the 1849 California Constitutional Convention. In this chapter, I argue that a group of elite Californios and Anglo-American colonial entrepreneurs wrote a colonial constitution that weakened the citizenship provisions of the Treaty of Guadalupe Hidalgo and established racial restrictions on rights, which established a legal process that transformed Californios, Indigenous Peoples, black Americans into non-citizen subjects. The architects of California established a foundation of racial exclusion.

Chapter two interrogates the colonial transformation of land in California during the 1850s. Land policies, such as the 1851 Land Act, contributed to the construction of racial categories that undergirded the exclusion of Indigenous Peoples, Californios, black migrants, and Chinese immigrants from citizenship rights in California. Anglo-American settlers disregarded and occupied Indigenous and Californio land claims and employed legislation and violence to remove them. As Indigenous Peoples struggled to maintain their lands in the gold country of Northern California and the deserts of Southern California, the state and federal legislatures enacted policies that nullified their property
rights. Californios attempted to maintain their status as colonizers, but land dispossession greatly contributed to their transformation as colonized colonizers. In this chapter I look at a variety of Californio and Indigenous struggles to maintain land claims. Land dispossession would shape notions of race and citizenship – for all racialized groups – throughout the 19th-century U.S.

Chapter three argues that Indian slavery was a crucial aspect of the colonial process that shaped California. During the first two decades of American statehood, Californio and Anglo-American rancheros, farmers, and municipal governments held Indigenous men, women, and children in a variety of unfree labor arrangements. While one can draw parallels between the systems of Indian slavery in California and the U.S. institution of chattel slavery in the American South, the aforementioned was a Spanish and Mexican creation. Beginning in the eighteenth century, Spanish missionaries levied colonial power in the region through an unfree labor system that intended to religiously convert the Indigenous through forced labor. Under this system, missionaries attempted to bring “Mission Indians” under their control and management. I examine state and municipal legislation the allowed for Indian slavery and the people who kidnapped, trafficked, and enslaved Indigenous Peoples. In this chapter, I also read against the colonial archive grain and attempt to recover the silences experiences of enslaved Indigenous Peoples. Unlike other work on Indian slavery in California, this chapter argues that the legal protection of Indian slavery in California was inherent to the colonialism process in the state, because it created a legal means by which to transform Indian children and adult into wards of the state and it provided non-military means for the removal and dispossession of the Indigenous in California.
The fourth chapter in this study examines the varied ways black, Indigenous, Californio, and Chinese individuals and organizations demanded rights as Anglo-American settlers attempted to incorporate these groups as non-citizen subjects on the premise of racial difference. This chapter focuses on the right to testimony as a way to understand how colonial administrators codified the subjugation of racialized groups in California during the 1850s. I look at two things in this chapter. First, I examine how the racial restriction on testimony encouraged Anglo-American and some Californios to use violence against black and Indigenous persons as a way of exerting colonial mastery. Second, I examine how San Francisco judges constructed racial categories around “Indian-ness” and “black-ness” to justify the imposition of a non-citizen subject status on the Chinese and Californios. Alongside these two cruxes, I examine the efforts of organizations to extend the right of testimony to persons of color. This chapter demonstrates that the building of the colonial system in California required a legal system that could rationalize the subjugated status of racialized groups and that allowed Anglo-American settlers to employ colonial mastery over the colonized.

These four chapter demonstrate that before the U.S. Civil War, colonial entrepreneurs employed legislation that racialized Californio, Indigenous, blacks and Chinese people as unlawful occupiers. This construction justified not only the subjugation of racialized groups, but also the colonial process. Chapter five probes the confluence of Reconstruction and colonialism in California and the persistent deployment of the ‘unlawful occupier’ category to justify the racial restriction of citizenship rights for racialized groups. The federal expansion of citizenship threatened the racially-exclusive state of California. In this chapter, I interrogate how people of color made demands for
full citizenship and the legislative responses to these demands. In particular, I focus on the struggles over desegregation and the right to education. This chapter argues, that the rejection of Reconstruction policy by California governmental administrators was rooted in the colonialism that shaped the state. Despite Reconstruction, the colonial legal framework remained and continued to propel the colonization and exclusion of non-white peoples.

This study ends with the 1879 California Constitutional convention. The colonial constitution had done its work – Californios, Indigenous Peoples and black Americans had been incorporated into the state as non-citizen subjects. In 1879, Anglo-American settlers and colonial entrepreneurs attempted to legally exclude Chinese immigrants from the state. The second California constitution built on the colonial legal framework and established the foundation for the exclusion of persons incorporated into the U.S. by imperial forces.

The incorporation of California and its inhabitants into the U.S. shaped the political, economic, and social institutions of the larger American nation-state. I contend that we can better understand the genealogy of federal immigration policy, contemporary racial categories, and the organization of labor in the United States as well as the logic of imperialism in the Pacific World and the Caribbean, if we understand the means by which the Mexican State of Alta California became the American state of California. The successful imposition of federal authority in California came to depend upon a colonial process that incorporated Californios and Indigenous Peoples, black American migrants and Chinese immigrants as non-citizens. These exclusions resulted in the construction of
an “organizing grammar of race” that justified American expansion throughout the North American West and in the Pacific World.³⁴

Chapter One

**A COLONIAL CONSTITUTION: CITIZENSHIP AND STATE POWER IN EARLY STATEHOOD CALIFORNIA**

**From Conquest to Settler Colonialism**

On the morning of Friday, October 18, 1850, a large mail steamer, *The Oregon*, announced its arrival to the San Francisco Bay by firing its cannons thirty-one times. Hoisted alongside the usual maritime flags, a banner proclaimed: “California is Admitted.”¹ Supporters of California statehood gave a sigh of relief – the United States Congress had admitted California as a Free State in September 1850.² The incorporation of California into the U.S. not only meant the American administration over land and citizenship, but the end of military occupation and the beginning of civil, colonial governance.

In the decades before U.S. statehood, Anglo-American settlement in Alta California increased with the opening of the Overland California Trail. As migration to the region grew, Anglo-American settlers began to shape the course of American colonial land transformation in the region.³ In 1846, the federal government signaled its support for American settlement in the region with John C. Frémont’s topographical expedition

¹ *Daily Alta California*, Volume 1, Number 261, October 19, 1850; *Sacramento Transcript*, Volume 1, Number 147, October 21, 1850; *Marysville Daily Herald*, Number 23, October 22, 1850.
² The supporters of California statehood were aware of the national tension caused by the admittance of California into the Union as a Free State. In the nine months that followed the drafting of the California Constitution, politicians developed had negotiated the terms of the Compromise of 1850 in an attempt to prevent a confrontation between slave states and Free states and admit California with a constitution that banned slavery.
³ My thoughts on colonial land transformation have been greatly informed by Alan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2018).
of the North American West. In June 1846, with the covert assistance of Frémont, thirty-three Anglo-American men took up arms against the Mexican Government in Alta California as part of the Bear Flag Revolt. The men took up arms because the Mexican Government no longer allowed foreigners to rent or purchase land in the territory. In August 1846, the news of the U.S.-Mexican War arrived in Alta California, three months after the conflict started, when Commander John Sloat seized Monterey Bay and the American military occupation of Alta California had begun.

This chapter re-conceptualizes the U.S. military and political conquest of California as the first stage of a colonial process that resulted in the transformation of land from colonial possession to colonial property and conquered subjects to non-citizen subjects. Through treaties and a state constitution, Anglo-American settlers with the assistance of elite Californio landholders, incorporated California into the Union via a colonial process dependent upon the differentiation and subjugation of its non-white inhabitants. At the local level, non-elite Californios, Indigenous Peoples, black migrants, and Anglo-American settlers shaped the colonial process that remade the state.

In this chapter, I first reassess elite Californio actions during the U.S.-Mexican War to highlight the complicated role Californios performed in the American takeover of

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4 Frémont led five expeditions into the West. During his third expedition, which began in June 1845, Frémont planned to survey the central Rocky Mountains, the Great Salt Lake Region, and part of the Sierra Nevada Mountains. Before this expedition began, President James K. Polk the go-ahead to engage in military action if war broke out between Mexico and the U.S. Tom Chaffin, *Pathfinder: John C. Fremont and the Course of American Empire* (Norman: University of Oklahoma Press, 2004).
the region. When the fighting between Americans and Californios ended, elite Californios acted to preserve their political institutions and social practices under an American regime. This reassessment of the U.S.-Mexican War seeks to understand how elite Californios and American settlers came to collaborate in the American colonial project. Californios supported the laws and institutions of the conquering government because they aligned with their colonial aims in the region; however, this would result in their self-colonization.

I then examine the proceedings of the 1849 California Constitutional Convention and the resulting state Constitution. Drafted by forty-eight men – eight Californios and forty Anglo-Americans delegates – the California Constitution synthesized Mexican and American social practices, labor regimes, and political institutions into one ruling document. While formalizing American rule and California statehood, the constitution also provided the framework for a colonial regime that abrogated the protections provided by the Treaty of Guadalupe Hidalgo and preserved a concept of American citizenship premised upon the requisite of whiteness. The forty-eight men drafting the constitution denied citizenship to Indigenous Peoples, non-elite Californios, and free blacks because they were too far from whiteness and, therefore, not entitled to participate in the new California project as full citizens. This chapter argues that the crafting of the California Constitution was integral to the colonial process that transformed Alta California into the American state of California. The colonial constitution established a legal framework that allowed for the differentiated incorporation of non-white, colonized inhabitants as non-citizen subjects according to an “organizing grammar of race” that

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informed and reproduced unequal and opposing relationships around land dispossession, labor subjugation, and conquest.\(^8\)

**Conquest as Prelude to Statehood**

In 1841, the first group of American settlers – the Bidwell-Bartleson Party – successfully completed the Overland Trail from Missouri to California.\(^9\) The leader of the thirty-four member settler party, Anglo-American colonial entrepreneur John Bidwell, later claimed his intent for migrating to California was, “To take the country and annex it.”\(^10\) After settling in Sutter’s Mill, however, Bidwell expressed a change of heart. He felt

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\(^8\) The process of settler colonialism produces racial regimes that produce and inscribe unequal relationships between colonized populations and the colonizing population. Often, the colonized populations are racialized in opposing ways because the formation of the settler society results in different, and sometimes antithetical roles, for separate colonized populations. Patrick Wolfe, “Settler Colonialism and the Elimination of the Native” *Journal of Genocide Research* 8.4: 387.

Scholarship that deals with the colonization and racialization Mexicans and the colonization, extermination, or relocation of indigenous peoples has argued that white supremacy, in addition to other forces like economic transformation, have influenced the state treatment of these communities and the social and racial constructions attributed to these groups. See: Tomas Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley: University of California Press, 1994); Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997); Ned Blackhawk. *Violence Over the Land: Indians and Empires in the Early American West* (Cambridge: Harvard University Press, 2006).

\(^9\) Until the success of the Bidwell Party in 1841, Americans had migrated to Alta California individually or in small groups. Prior to the successful completion of the trail, Americans usually traveled to California by ships that went around South America. In 1841, many people moved into the Alta California department. Also, in 1841, the Russians had abandoned their Fort Ross, leaving Alta California trade open to the English Hudson’s Bay Company.

\(^10\) John Bidwell was born in New York in 1819 and grew up in Pennsylvania and Ohio. After arriving in Alta California, Bidwell found work with John Sutter, of the famous Sutter’s mill, as a manager. He became a Mexican citizen in 1844 and was soon granted Rancho Los Ulpinos by Governor Miguel Micheltorena. Micheltorena likely granted Bidwell the rancho because of the loyalty he expressed to his governorship during a Californio insurrection. During the U.S.-Mexican War, he fought on the side of the U.S., despite his Mexican citizenship. In 1840, he was elected to serve in the California Senate and continued to be involved in California state politics until the 1890s.

shame for wanting to kill and conquer “a people who have never done [him] any harm.”\(^{11}\)

This change of heart, however, did not prevent Bidwell from participating in the Bear Flag Revolt on the side of American insurgents.

As news of the success of the Bidwell Party spread, American emigration into the Mexican department increased. As Anglo-Americans rushed into the territory, Mexican government and military officials worried that the settlers would overrun Alta California and the department would become another Texas. On June 14, 1846, Mexican fears became realized when thirty-three American settlers attacked a Mexican outpost in Sonoma, Alta California, and raised the Bear Flag over the Sonoma Plaza.\(^{12}\)

Three weeks after the Bear Flag Revolt began, U.S. Navy Commodore John D. Sloat and his men set anchor in Monterey Bay in northern Alta California as part of the U.S.-Mexico War.

American forces quickly conquered the sparsely populated northern section of the Alta California department, but encountered resistance in the more-populous southern section. On August 11, 1836, in Los Angeles, Californio leaders held a council of war and decided that Alta California Governor Pío Pico and others would head to Sonora, Mexico, where they would plan their war efforts. Before the council of war met, Californio authorities had tried to negotiate a bloodless and mutually-beneficial surrender with the U.S. military. However, Commodore Robert Stockton chose not to recognize the authority of the Californios. Pico and the military officials fled, hoping to negotiate when they were better prepared.

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\(^{12}\) The U.S. declared war against Mexico on May 13, 1846. While the news of the declaration of war had not yet reached Alta California, General José Castro had issued a proclamation that unnaturalized foreigners could no longer claim land and subject to expulsion. American settlers in the Sacramento Valley, where Sutter’s Mill is located, organized to counter any possible Mexican military actions.
On August 13, 1846, Captain Archibald Gillespie entered Pueblo de Los Angeles with a force of fifty men. They met no organized military resistance. The marines promptly began the American occupation of Pueblo de Los Angeles. Gillespie imposed martial law and encouraged his men to rule with a brutal hand. The U.S. forces enforced a curfew, store closures, and a ban on social gatherings.\textsuperscript{13} Californios felt forced into a “position worse than that of slaves, [dictated by] despotic and arbitrary laws to by which [Gillespie and his men] charged [them] with fees and onerous taxes[.]”\textsuperscript{14} Further compounding ill will, non-elite Californios were resentful of the Alta California authorities who had allowed the easy takeover to occur in (and because of) their absence.

After a month of occupation, in the early hours of September 23, 1846, twenty men under the command of Servulio (sometime spelled Cerbulo by Americans) Varela fired at U.S. troops stationed at the Government House in Los Angeles. Varela and his men – non-elite Californios – ignited the inhabitants of the pueblo. The resistance effort known as the Siege of Los Angeles or the Battle of Los Angeles had begun. The militia forced Gillespie’s men to Fort Hill. Gillespie and his men were without water and surrendered the next day. Defeated, Gillespie and his men left Los Angeles on September 30, 1846.

Upon hearing about Varela and his actions José Maria Flores, José Antonio Carrillo and Andrés Pico, all propertied Californio politicians, commandeered the revolt. They formed their own militia with one-hundred-and-fifty Californio men that would

\textsuperscript{13} Gillespie soon became notorious for his penchant to humiliate and intimidate respectable California men and to conduct unwarranted house searches.

\textsuperscript{14} “Pronunciamiento de Varela y otras de California contra los Americanos,” 24 de septiembre, 1846, Bancroft Library, University of California.
serve under the leadership of Flores. By hijacking the rebellion, the elite Californios engineered a temporary confluence with the American military because they suppressed the efforts of non-elite Californios. Flores, Carrillo, and Pico hoped to dictate the terms of surrender in favor of elite Californios. They were not worried about the longevity of the Mexican Republic in Alta California; rather, they wanted to preserve their wealth and localized power.

José María Flores was born in Coahuila, Nuevo León, México in 1818. In 1842, he arrived in Alta California as a captain of Governor Miguel Micheltorena’s Battalion and served as the Governor’s secretary.¹⁵ Flores was not a Californio because he had neither participated in the colonization effort for an extended amount of time, nor did he own land in Alta California. Californios living in Alta California in the 1840s and 1850s conceived of their identity according to many aspects, such as religion, property ownership, patria chica (small fatherland), common experience, race and the notion of gente de razón.¹⁶ The Californio consciousness was premised upon the idea of a community of gente de razón (people of reason) that had colonized and civilized the land and inhabitants of their patria chica – Alta California. Because this frontier department existed on the periphery of Mexican power, many Californios saw themselves as

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¹⁶ The North American Spanish-speaking world did not conceptualize and construct race in the same way that American society had. Colonial Mexico was a mixed-race, or mestizo, society. Spanish ideas of limpieza de sangre (purity of blood), which developed because of and to justify the exclusion of Moorish and Jewish persons, attributed Christianity and notions of legitimacy to high social status. In Spanish America, the idea of limpieza de sangre transformed to deal with the mixing of Spaniards and native peoples. Notions of civilization and acculturation, along with the notion of limpieza de sangre formed the idea of gente de razón, which served as the basis for hierarchical categorization. In Mexico, race was closely connected to the concept of gente de razón, which measured one’s level of civilization.
Californios before they saw themselves as Mexicans. The Californio identity would have a significant impact on the outcome of the war in Alta California.

Flores and his militia prolonged the war for four more months but could not defeat the U.S. armed forces in the Alta California. During the four months, Flores’ Californio militia achieved little victories against the American forces in the Southern Alta California theatre. Most notably, they rid Chino and Santa Barbara of American sympathizers. The streak of Californio victories ended after the Battle of San Pasqual on December 7, 1846, where both sides declared victory. After this Pyrrhic victory, six-hundred men joined the Americans forces in California. The Californio militia was now outnumbered. Flores, realizing the severity of the Californio situation, wanted to spare his fellow countrymen from further harm. He asked Stockton for a truce until officials in Mexico City could declare the end of the war. Instead, Stockton requested an unconditional surrender, claiming he would provide amnesty to all except Flores. On January 10, 1847 Flores fled for Sonora; under no circumstances would he live under the American flag.

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18 San Pasqual is located in the northmost portion of modern-day San Diego.
20 Flores left his wife and three daughters under the care of his brother-in-law Henry Dalton, a London-born settler who had pledged loyalty to Californio forces during the war. According to Pio Pico, Flores later requested to return to California in order to retrieve his family, but his request was denied. I have yet to come across any record of him reuniting with his family before he died in April or May of 1866 in Mazatlan or Sinaloa.
Gregg J Layne, “Jose Maria Flores: California’s Great Mexico Patriot” Quarterly Publication (Historical Society of Southern California), Vol. 17, No. 1 (March 1935), 24 - 25.
On January 13, 1847, Californio forces capitulated to American forces with the signing of the Treaty of Cahuenga at Campo de Cahuenga. Andrés Pico, third-in-command, and American Lieutenant-Colonel John C. Frémont signed the treaty. Frémont accepted the conditions that Flores had presented to Stockton twice before. Pico and the others in charge were wary of Frémont’s intentions. It was rumored that Frémont was vying for the governorship, but they welcomed peace and signed the treaty.

José Antonio Carrillo, the second-in-command of the Los Angeles-based Californio militia, drafted the Treaty of Cahuenga intending to protect Californio rights and property.

Carrillo was born in Yerba Buena, Alta California in 1796 and moved to the southern portion of the department in 1812. In Los Angeles, Carrillo became involved in local politics. In the 1820s, he served as an alcalde in Los Angeles and as an assembly member of the Mexican Congress for multiple terms. A member of the Californio elite, Carrillo married two Pico sisters – Estefana Pico in 1823 and, after she passed, Jacinta Pico in 1842. In November and December of 1831, Carrillo participated as a leading instigator in the revolt against the newly-seated governor Manuel Victoria. Carrillo, like many of the Californio elite, such as Juan Bandini, Pío Pico, and Mariano Guadalupe Vallejo, viewed Victoria as an illegitimate governor because he was not a Californio and had been appointed by officials in Mexico City. In addition to being an outsider,

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21 Pico, Frémont, and the remaining signatories signed the treaty without approval of either national government. The national governments were not aware of the treaty, but later accepted the terms. The fact that the Californios signed the treaty without national government approval further indicates that they viewed their cause as separate from that of the Mexican Republic and acted to protect Californio property, rights, and livelihoods.
22 Leonardo Pitt, *Decline of the Californios*, 35.
23 Yerba Buena is now known as San Francisco.
Victoria had rescinded the order of secularization in Alta California, which greatly angered elite Californios hoping to claim ex-mission lands. During the Battle of Cahuenga Pass, Victoria was wounded and forced into exile.

After the successful revolt against Governor Victoria, Carrillo made many attempts to govern Alta California. Like many other Californios, he believed that Californios should govern the department, not an appointee from Mexico City. In 1845, Carrillo participated in the successful revolt against the Mexico City-appointed governor Manuel Micheltorena, from the state of Oaxaca. By the 1840s, northern and southern Californios had become regional rivals, but they came together to expel the outsider governor over his land grant policy.26 Micheltorena was the last outsider governor of Alta California. In the aftermath, Pío Pico became governor and served until U.S. occupation.

In the “Pronunciamiento de Varela y otras de California contra los Americanos” (The Pronouncement of Valera and other Californios against the Americans) and other writings, Flores made it very clear that he did not wish to see an American-ruled Alta California. Given his ambitions and the available evidence, it appears that during the U.S.-Mexican War, Carrillo drafted the Treaty of Cahuenga, also known as the Capitulation of Cahuenga, to protect the political power and interests of the elite Californios.

The Capitulation of Cahuenga did not declare peace or end war but adjudicated the terms of the American military occupation of Alta California. The capitulation of the

Californios rested upon the condition that Californio rights were upheld. Article I of the Capitulation of Cahuenga required the colonial collaboration between the American military and elite Californio authorities. It literally demanded Californio “assist[ance] and aid in placing the country in a state of peace and tranquility.”

Both the conquering Americans and elite Californios wanted to contain and suppress the threat independent Indian polities and non-elite Californios posed to their power. After all, in September it had been a group of non-elite Californios that initially retaliated against American forces in Pueblo de Los Angeles, not the men ratifying the treaty. In Alta California, independent Indian polities continuously countered against new and old settlers with raids and violence. Most notoriously for American forces, on May 10, 1946, a group of Klamath Indians attacked Frémont’s camp and killed three men.

By endorsing the treaty, elite Californios made strange bedfellows in an attempt to preserve their property and power in a borderlands space. It helped that Californios felt a solidarity with their Anglo-American conquerors based on ideas of governance, property, and race.

The terms of the capitulation also illuminate what elite Californios wanted to protect in exchange for an American-Californio alliance. Article II mandated the protection of all Californio life and property, regardless of one’s involvement in the war. Article V of the treaty extended the rights and privileges of United States citizens to the citizens of Alta California. During the war, the U.S. military had seized Californio property and imprisoned civilian men during the conflict. Carrillo made sure to protect Californio property, the basis of Californio power, from future American grabs.

27 Articles of Capitulation at Cahuenga: photocopies and other materials, 1847. (Collection Number: GC 1366) Seaver Center for Western History Research, Natural History Museum of Los Angeles County.
In addition to these protections, Article III of the treaty declared that “no Californian or other Mexican citizen shall be bound to take the oath of allegiance.”

Rather than categorize the inhabitants of Alta California as Mexican citizens, the treaty differentiated ‘Californians’ from Mexican Citizens. By acknowledging the regional identity of the signatories, this Article made clear that the Californios viewed themselves as separate from other Mexican citizens. Interestingly, Article VII limited the power of the treaty and declared that the capitulation was “intended to be no bar in effecting such arrangements as may In future be in justice required by both parties.” These were not the final terms of conquest; both the Californios and Americans hoped to rewrite the end-of-war terms to their liking when the time came.

The Capitulation of Cahuenga demonstrates that elite Californios and conquering Americans collaborated to protect a Mexican system of power premised upon land ownership on a provisional basis and to facilitate the U.S. conquest of the region. Carrillo, a man who benefitted from Alta California political institutions and who spent years employing the institutions to his benefit, knew that the U.S. military would need assistance to successfully occupy the region and insured elite Californio access to power by promising their collaboration, perhaps, without considering the possible ramifications that could come with the seemingly inevitable incorporation into the United States.

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29 Articles of Capitulation at Cahuenga: photocopies and other materials, 1847. (Collection Number: GC 1366) Seaver Center for Western History Research, Natural History Museum of Los Angeles County.

30 Ibid.
Californio Collaboration

The Treaty of Guadalupe-Hidalgo ended the U.S.-Mexican War on February 2, 1848.31 This treaty was not a document of peace, but a document of conquest. Under the treaty terms, the United States government now claimed authority not only over a massive territory (one-half of Mexico’s territory), but also over the 80,000 Mexican and 150,000 Indigenous inhabitants living on the land.32 The terms of the treaty did not require specific provisions for the incorporation of the Mexican and Indigenous inhabitants into the U.S. or to end military occupation. As a result, in California, a U.S. military government ruled with a heavy hand in order to legitimize American authority and to suppress opposition without a proposed end date.33

Article IX of the Treaty of Guadalupe Hidalgo required U.S. Congress to incorporate Mexican citizens into the nation, but not necessarily as citizens.34 The negotiators of the treaty left the issue of incorporating conquered peoples into the nation

31 After two years of fighting, Mexico and the U.S. entered peace talks. The collapsed government of Mexico negotiated as a conquered party having been outnumbered by American troops while facing multiple internal conflicts. Nicholas Trist, of the U.S. State Department, and a special commission consisting of José Bernardo Couto, Miguel de Atristain, and Luis Gonzaga Cuevas negotiated the treaty. The U.S. Senate met the treaty with hostility (there was resistance to incorporating a large number of non-white people into the Union as citizens) and demanded Article X of the Treaty be eliminated before ratification. Members of the Whig party were also opposed to this expansion. The U.S. Senate ratified the treaty with a 38 to 14 vote. The Mexican Senate approved the treaty with a 33 to 4 vote.

32 The treaty did not list the exact territories ceded; rather, the treaty established the Rio Grande as the new border between the two countries. In exchange for the land, the U.S. was required to pay the Mexican Government $15 million.


34 Article IX states “The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without; restriction.”
to U.S. Congress and state legislatures. As an occupied territory, the U.S. military
governed California. This arrangement displeased independent Indian polities,
Californios, and Anglo-Americans.

Under the military government, Californio men with significant wealth
recognized that they had to acquiesce to the American government or lose their property
and power. During the war, the U.S. military had regularly pillaged Californio property.
Californio Salvador Vallejo, the brother of Mariano Guadalupe Vallejo, an early and
public supporter of the U.S., had his rancho seized for “public service” while held as a
prisoner of war. After the end of the U.S.-Mexican War, the military government did
not return the property to Salvador Vallejo. The military claimed that because he “was
well provided with arms and equipment,” he had intended to fight against American
forces and, therefore, was no longer entitled to his property. Aware of Vallejo’s situation,
Californios, like Antonio Coronel and Agustín Olvera, swore loyalty to the American
military government, rather than lose their property. In an effort to protect their wealth,
elite Californios began to support institutions and policies that accelerated the process of
American colonization, but that did not contradict their self-conceptualizations as
colonizers.

35 Prior to the beginning of the U.S.-Mexican war, Mariano Guadalupe Vallejo publicly stated at a junta
that the Californios should consider the possibilities that would come with “annexation to the United
States.” During the Bear Flag revolt, Vallejo invited American insurgents to his house for brandy where he
expressed his support for the America-led revolt. But it seems that Mariano Vallejo miscalculated. In his
memoirs, Vallejo writes that he thought Captain John C. Fremont would free his brother and the other
Californio prisoners.

36 “Speech of Vallejo,” in Revere, Joseph Paul, A Tour of Duty in California; Including a Description of the
It must be noted that this speech was transcribed by Joseph Paul Revere, a U.S. Navy and Army career
officer. From my research, this quote accurately depicts Vallejo’s politics at the time.

36 Box 3, Item 18A, Archibald H. Gillespie Papers (Collection 133). Department of Special Collections,
Charles E. Young Research Library, University of California, Los Angeles.
Antonio Coronel, migrated with his family to Alta California as part of the Hijar-Padrés Colony at the age of fifteen in 1834. Agustín Olvera, Coronel’s cousin, also migrated to Los Angeles as part of the Hijar-Padrés Colony. Coronel’s father, Ygnacio Coronel, was a schoolmaster with considerable political influence. Since 1838, Antonio Coronel served in various public office positions. In 1843, Alta California Governor Manuel Micheltorena granted Ygnacio Coronel the land grant to La Cañada Atras de Rancho Los Verdugos. By 1843, the Coronel family had become members of the Californio elite in Pueblo de Los Angeles.

During the U.S.-Mexican War, Coronel served as a captain in the Mexican artillery. But despite having been a member of the Mexican colonizing class and fighting for the Mexican cause during the war, Coronel, like his cousin, Augustín Olvera, swore allegiance to the American military government. They collaborated with elite Anglo-

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37 In 1834, a group of two-hundred-and-thirty-nine Mexican citizens, known as the Hijar-Padrés Colony, traveled to Alta California for the purposes of colonizing the territory, which was sparsely inhabited by Mexican citizens. A year before, in 1833, the Mexican Congress ended the Mission system and called for the secularization of Mission lands. During the process of secularization, American, British, and indigenous incursions on Alta California threatened the Mexican claim over the territory, so the Mexican government promoted colonizing schemes in the territory. The Hijar-Padrés colony planned to colonize as far north as the San Francisco Bay area, which the Russians had made clear they wanted to acquire by building the Fort Ross in Bodega Bay. Liberal capitalists organized the Hijar-Padrés Colony to promote the secular colonization of the territory and to promote agriculture and manufacturing economic ventures; whereas other groups wanted to secularize the land in a way that benefitted the Indians who had lived under the exploitative mission system. Many Californios had ancestral connections to the Hijar-Padrés Colony. The Hijar-Padrés Colony performed an important role in the construction of the Californio identity. Rosaura Sánchez, Telling Identities: The Californio Testimonies (Minneapolis: University of Minnesota Press, 1995), 50 – 95; David Weber. The Mexican Frontier, 1821 – 1846: The American Southwest under Mexico (Albuquerque: University of New Mexico Press, 1982), 185 – 190; Kevin Starr, California: A History (New York: Modern Library, 2005), 46 – 49.


39 The offices Coronel held were as follows: The Assistant Secretary of the Tribunals of the Pueblo of Los Angeles, Judge of the First Instance, Captain of the Auxiliary Companies and Visitor of the Southern Missions; Representative to the General Congress of Towns, Member of the Body of Magistrates.

40 Box 3, Item 18A, Archibald H. Gillespie Papers (Collection 133). Department of Special Collections, Charles E. Young Research Library, University of California, Los Angeles.
American colonizers to retain their wealth and power. After all, the U.S. military did not pose the biggest threat to Californio power and property.

According to U.S. Census records, 300,000 U.S.-born and foreign-born individuals had migrated to the region by 1850.\textsuperscript{41} The discovery of gold on the American River in Sacramento resulted in the significant increase of Anglo-American migration and settlement that infringed upon Californio ranchos and Indigenous lands. A threat on its own, Anglo-American migration intensified Indigenous resistance against non-Indigenous land practices. While some independent Indian polities moved further inland into the Sierra Nevada Mountains, others raided American settlements or Californio ranchos. It is likely that Coronel, Olvera, and other Californios signed oaths of loyalty to protect their power and land claims not only from Anglo-American settlement, but also from Indigenous opposition. Californios viewed themselves as colonial masters and, therefore, considered the new colonial group – Anglo-American colonial entrepreneurs – as their natural collaborators to continue the subjugation of the Indigenous and suppression of non-elite land holders. Likewise, the American government relied on elite Californios in order to gain legitimacy and to placate resistance to American authority. The U.S. military kept trustworthy Californios, like Coronel, Olvera, and even Mariano G. Vallejo, in power in order to exert and legitimize their authority in the region.

Anglo-American settlers critiqued U.S. military occupation in the territory. Throughout the state, Anglo-American settlers found it frustrating to navigate and colonize a society ruled by a military government that enforced American and Mexican laws. As early as 1846, Anglo-American settlers had called for “the establishment of a

\textsuperscript{41} Census of California, For the Year 1850, United States. Census Office. 7th census, 1850.
colonial government in California.” In San Francisco, a city with a majority Anglo-American population, the settlers demanded the dissolution of the military government and the establishment of American civil governance. Still the U.S. Congress dragged its feet on changing the status of the territory of California because of the slavery issue.

Civil Governor Brigadier General Bennett Riley gave into Anglo-American settler demands for a colonial government. On June 3, 1849, Riley called for a state convention to draft a constitution for a state or territorial government, not the U.S. Congress. Riley’s proclamation officially began the transition from a military government to a U.S. civil government. In July and August, citizens, meaning only white men with land, voted for representatives in county elections. Elite Californios who had worked with Americans during the U.S. military occupation or who could make claims to whiteness voted in the elections.

In Los Angeles, a junta consisting of influential Californios, such as Agustín Olvera, Antonio Coronel, and Andrés Pico, and Americans, Abel Stearns, Benjamin David Wilson, and Stephen Clark Foster, selected the city’s delegates. In his memoir,

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43 In addition to the need to militarily suppress opposition to American rule, the U.S. government could not legally establish a new government in Alta California while the U.S.-Mexican war continued. In January 1847, the Polk Administration instructed military governor Commodore Robert Stockton on the nature of government in California. “The possession of portions of the enemy’s territory, acquired by justifiable acts of war, gives to us the right of government during the continuance of our possession, only such rights as the laws of nations recognize.” This meant the duty of the military government was to enforce Mexican laws until the territory was legally and formally able to join the United States. James K. Polk, “Message of the President of the United States, Communicating the Proceedings of the Court Martial in the Trial of Lieutenant Colonel Frémont.” S. Doc. No. 33, 30th Cong., 1st session, 56 - 58. John Mack Faragher, Eternity Street: Violence and Justice in Frontier Los Angeles (New York: WW Norton & Company, 2016), 186.
45 Originally born in Maine, Stephen Clark Foster migrated to Alta California as a soldier in the Mormon Battalion during the U.S.-Mexican War. Military Governor Richard Mason appointed Foster mayor of Los Angeles in 1848. He remained involved in Los Angeles politics throughout the 1850s.
American-born ranchero Benjamin Davis Wilson wrote that the pueblo held “a public meeting and selected the best men they could find.” In reality, the meeting was open only to powerful and wealthy men. An electorate of forty-eight people voted for the Los Angeles delegates. In 1849, the city of Los Angeles had a population of 1,610; not even one percent of the population participated in this electoral process. Three Anglo-American men — Abel Stearns, Stephen Foster, and Hugo Reid — were chosen because of their elite status and according to the rationale that their marriages to Californiana women meant they were aware and sympathetic to Californio concerns. The *junta* nominated two Californio men — Manuel Domínguez and Jose Antonio Carrillo — for credibility. Carrillo did not want to participate in the Convention because he was vehemently opposed to replacing Mexican institutions with American institutions. He did not want to cooperate in the overthrow of the system that had brought Californios to power. But the Californio members of the *junta*, who thought he would best protect and promote their interests at the convention, convinced Carrillo to serve as a Los Angeles delegate in the 1849 California Constitutional Convention.

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47 Stephen C. Foster, “Angeles from ’47 to ’49. As Seen by Stephen Clark Foster, Translator with Mormon Battalion, First Alcalde of Los Angeles under the U.S., Etc.,” Bancroft Library, University of California, Berkeley.
48 Census of the City and County of Los Angeles, California, For the Year 1850, United States. Census Office. 7th census, 1850.
Improvising Colonialism

In September 1849, forty-nine men met in Monterey, California, to draft a state Constitution. The creation of the 1849 California Constitution was a seminal moment in colonial building in the history of the United States. At the heart of the convention were the following questions: What did Anglo-American men think was legally and administratively necessary to conquer and settle California as an American state? What did elite Californios think their role was in relation to the new American government? When and how did American and Californio delegates perceive non-white, not-elite populations as collaborators or threats to the American settler colonial project?

The proceedings of the Convention and the resulting constitution reveal that Anglo-American and elite Californio delegates intentionally drafted a constitution that established hierarchies of difference that justified the categorization of members of non-white groups as non-citizen subjects. The majority of Anglo-Americans who supported California statehood advocated for a Free State, also sponsored laws that upheld white supremacy. Crucially, the constitution created a legal framework that allowed for the differentiated incorporation of racialized groups.

On the first day of the Convention, San Francisco delegate William Gwin, a slave owner and colonial entrepreneur, responded to the concern that there were too many American delegates present. Americans and Californio delegates represented majority Californio cities, like the Pueblo de Los Angeles and San Diego; whereas only American delegates represented mostly-American cities, like San Francisco. Gwin stated this was

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not an issue since, “It was not for the native Californians [they] were making this Constitution; it was for the great American population, comprising four-fifths of the population of the country.” The delegation dismissed the motion to include more Californio representatives.

The Californio men at the Convention, Mariano G. Vallejo (Sonoma), Manuel Domínguez (Los Angeles), Antonio Pico (San Jose), Jacinto Rodriguez (Monterey), Miguel de Pedrorena (San Diego), Pablo de la Guerra (Santa Barbara), Jose Covarrubias (San Luis Obispo), and especially Jose Antonio Carrillo (Los Angeles), attempted to draft a constitution that would protect Californio land and political power under U.S. authority. Serving as the Los Angeles delegate, Jose Antonio Carrillo was one of the most vocal advocates for the Californio population, even though he needed a translator. On the first day of the convention, Carrillo claimed that his constituents, Californios residing in Los Angeles, did not want an American system, and made a motion to maintain territory status. According to Carrillo, his constituents preferred the imperfect hybrid system, because:

“while the Americans assumed positions of power, Californios maintained many positions and the legal system remained, largely unaltered. Although they considered themselves Americans, they did not wish to live under another Constitution.”

The delegates rejected Carrillo’s motion to maintain territory status.

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54 Ibid.
The Californio delegates received little time to talk and their needs for translators were not always met.\textsuperscript{55} When given the chance to talk, Anglo-American delegates dismissed the comments of Californio delegates. In another attempt to thwart the imposition of a repressive American system on Californios, Carrillo suggested that the territory be divided into two states so that the American settlers in the north and the Californios in the south could have their preferred systems of government.\textsuperscript{56} The delegation also rejected this motion. Kimball Dimmick, an American-born delegate representing San Jose reasoned with the delegation and said, “The idea was prevalent that the native Californians were opposed to a State Government. This he did not conceive to be the case. [...] from the conversations he had had with them, that they were nearly unanimous in favor of a State Government.”\textsuperscript{57} Dimmick discounted Carrillo’s and claimed he knew what Californios wanted.\textsuperscript{58}

Throughout the convention, Carrillo continuously attempted to protect the interests of Californios. For example, when discussing state legislature representation, the delegation wanted to assign Los Angeles five delegates. Carrillo demanded that Los

\textsuperscript{55} Californio delegates often had to request recesses so that reports, which were only printed in English, could be translated into Spanish.

\textsuperscript{56} An American settler, Benjamin D Wilson wrote in his memoir that he and Americans living in the Los Angeles area also wanted to maintain a territorial government because the current system was beneficial to them. “Benjamin Davis Wilson’s Observations on Early Days in California and New Mexico,” 125 – 126.


\textsuperscript{58} Scholars have incorrectly assessed the Californio and Anglo-American efforts to split California, especially the 1859 referendum, as part of a Southern plan to introduce slavery into the American West. Scholars have even interpreted Californio participation in this effort as support for slavery and a southern political system in California. While this interpretation is partially true, white southern slave holders would have like to have the institution of slavery extended to the Pacific Coast, we must also view the 1850s Californio effort to split the state as a Californio effort to maintain political power and a challenge to the American political and territorial claim of California, as it is here. I will discuss this in greater detail in Chapter 2. Furthermore, the division of Alta California had been on the minds of Californios since the 1840s due to regional differences and governance difficulties. The desire to split the state in two, was an old, Californio idea.
Angeles, given its large Californio and Indian populations, which the Americans did not want to count, be granted seven delegates instead of five.\textsuperscript{59} The Anglo-American delegates did not want to incorporate the darker, non-elite Californios or Indigenous inhabitants of Los Angeles as full citizens or increase their representation in the state legislature because they did not meet the racial or property standard for democratic citizenship. Carrillo’s effort to insure a more democratic representation for those living in Los Angeles was an attempt to preserve Californio political power under an American system. The delegation refused to increase the number of state representatives for Los Angeles.

As the Convention trudged on, the Californio delegates attempted to hold the United States and its representatives accountable to the terms of the Treaty of Guadalupe Hidalgo. The Californio delegates were mostly concerned with one article, Article IX, which required the incorporation of Mexican nationals into the U.S. but did not list any citizenship requirements. The delegates’ discussions of citizenship reveal that not all inhabitants of the territory would be incorporated as citizens. In addition to figuring out how to incorporate Indigenous Peoples, American delegates struggled with how to incorporate Californios because of their European, Indigenous, and African ancestry. The formation of race in the United States had resulted in the interrelated construction of citizenship and whiteness.\textsuperscript{60} As constructed, American citizenship did not include people of African and Indigenous descent. The American-born drafters of the California


Constitution laid the foundation to legally categorize Californios as non-white and, thereby, began to differentiate Californio citizenship. The distinctions the delegates attempted to make between conquered groups established the foundation for the differentiated incorporation of conquered peoples.

San Francisco delegate Edward Gilbert, originally from New York, made a motion to allow every male citizen, not just every white male citizen, the right to suffrage. Gilbert read aloud Article VII and IX of the Treaty of Guadalupe Hidalgo, arguing that it did not confer the right to suffrage, but required the delegates to take constitutional action to insure this right to all male Mexican citizens, regardless of whiteness.\(^6^1\) Gilbert’s interpretation of the article did not sway the other delegates.

The American notion of whiteness perplexed the Californios. Pablo de la Guerra, the Californio delegate from Santa Barbara, who required a translator, spoke on the subject:

“that it should be perfectly understood in the first place, what is the true significance of the word ‘white’ [because] Many citizens of California have received from nature a very dark skin; nevertheless, there are among them men who have heretofore been allowed to vote, and not only that, but to fill the highest public offices. It would be very unjust to deprive them of the privilege of citizens merely because nature had not made them white. But if, by the word ‘white’ it was intended to exclude the African race, then it was correct and satisfactory.”\(^6^2\)

The Californios in attendance realized that under an American system, their material wealth would not ensure access to political power because their racial identity functioned differently in an American context. Under Mexican rule, citizenship was granted to


people with mixed ancestry and even Indians who were considered gente de razón. While racial identities were an integral part of Californio society and the Mexican nation-state, race did not entirely determine one’s position within society. Though many Indigenous Peoples and people of Indigenous descent were colonized, subjugated, and exploited by the Mexican state, men like Pío Pico, who was of Indian, African, and Spanish descent, not only made successful claims to citizenship, but also became governor of Alta California. De la Guerra’s comment that excluding “the African race” was “correct and satisfactory” demonstrates that like the Americans, Californios had constructed a racial logic that placed blackness at the bottom of the racial hierarchy. Despite the differences in the construction of whiteness, both the Californios and Americans subscribed to a racial logic that supported the colonial administration and subordination of people of African and Indigenous descent.

The delegation decided that if a man was a Mexican citizen and not black, then “they [were] entitled to the rights and privileges of American citizens.”63 Because many Californios were mestizo, their legal categorization and racialization required a specific racial logic that rationalized Indigenous extermination and the inclusion of assimilated people with Indigenous ancestry. Delegate Gwin, perhaps because throughout his life he was pro-white settlement on Indigenous lands and pro-slavery, asked the Californio delegates if people of Indian descent were excluded from some of the privileges of Mexican citizenship.64 De la Guerra informed Gwin that “according to Mexican law, no race of any kind is excluded from voting” and that under Mexican law, Indians were

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considered citizens.\textsuperscript{65} Again, the Anglo-American delegates ignored Californio comments.

When deciding how much Indian blood barred someone from citizenship, the delegates had a difficult time agreeing upon a blood quota. Delegate Stephen C. Foster argued that “very few of the Indian race should be admitted to the right of suffrage.”\textsuperscript{66} Foster, informed the delegation that according to Mexican law very few Indians could vote due to property and livelihood qualifications. Foster did not accept the \textit{gente de razón} standard de la Guerra had articulated earlier.

Delegate William Gwin recognized the room contained men with Indian blood and declared that the descendants of Indians should be included according to their level of civilization. He clarified, and stated: “Indians should be excluded, but not the descendants of Indians.”\textsuperscript{67} Gwin’s statement reveals a crucial goal of settler colonialism – the productive management of ethnic diversity.\textsuperscript{68} The assimilated Indian and Californio would not challenge the American state. Rather, they would consent to the American settler state and reproduce their colonized condition for the benefit of the state.

When discussing the status of the Indigenous Peoples, it became clear that the delegates would incorporate them as non-citizen subjects. Delegate Gilbert attempted to ensure the equal inclusion of people of Indigenous descent and uphold the relationship between the federal government and independent Indian polities. He declared that Indians were entitled to their rights because they could “not go beyond this treaty [of Guadalupe

Hidalgo], and disfranchise any man who is admitted under the treaty to the rights of citizenship."69 Gwin, in attempt to settle the issue, referred to the Louisiana Constitution because the state had a diverse population and had been attained and incorporated in a similar way. Gwin declared that the Louisiana Constitution included voting restrictions, therefore, the delegation could place restrictions on voting in this state.70

The delegation decided that all white male citizens – Mexican and American – could vote, and, in special cases, the legislature could grant the right of suffrage to Indians or descendants of Indians.71 In other words, a colonized person could vote and claim citizenship if they met the prerequisites of whiteness. Crucially, the delegates decided that state legislation, the Constitution included, would be printed in English and Spanish. This occurred for two reason. One, so that Californio treaty citizens would need to be aware of the new legal system. Two, so the elite Californios could officially collaborate with Anglo-American colonial entrepreneurs as administrators of the state. The California Constitution incorporated Indigenous individuals as non-citizen subjects and, thereby, established a racial hierarchy that placed the Indigenous at the bottom and justified the differentiated incorporation of persons who possessed certain “Indian” attributes. In contrast, when deciding the requirements of state citizenship for American

71 "Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper." California Constitution of 1849, Article II, Right of Suffrage, Sec. 1 in Report on the Debates in the Convention of California on the Formation of the State Constitution
migrants, the delegates decided that an Anglo-American man who had lived in the state for six months could claim the right to vote.\footnote{J. Ross Browne, \textit{Report on the Debates in the Convention of California}, 61.}

The delegates discussed the rights of women once. They uttered the issue of women’s rights in relation to the property rights of wives. As a state dependent upon the settlement of Anglo-American migrants, the delegates acted to ensure all white property claims in the state. The delegates were careful to not “fundamentally change the nature of marriage” and drafted a law that protected the property of married women.\footnote{J. Ross Browne, \textit{Report on the Debates in the Convention of California}, 259.} Article XI, Section 14 of the 1849 California Constitution allowed women to own property separate from her husband.\footnote{Article XI, Section 14, 1849 California Constitution.} Moreover, in order to not alter the institution of marriage, the delegates ordered that the legislature write laws that defined women’s rights as wives.\footnote{Ibid.}

The delegates made this decision, not as a progressive statement on women’s rights, but to facilitate and protect Anglo-American settlement in the region. As historian, Laurel Clark Shrine has demonstrated in her study of the Florida borderlands, the U.S. government depended on women to create families, homes, and communities to facilitate and rationalize territorial expansion.\footnote{Laurel Clark Shrine, \textit{The Threshold of Manifest Destiny: Gender and National Expansion in Florida} (Philadelphia: University of Pennsylvania Press, 2016).} The constitutional protection of women’s property rights served the colonial goals of the delegates.

The delegates spent many hours discussing the constitutional status of free blacks within the state. The discussions did not deal with the legality of slavery, all agreed, California was to be a Free State, but some delegates wanted to prohibit free blacks from residing or working in California. These delegates wanted to ensure that expansion and
settlement into the region was a white-only enterprise. In 1844, the provisional legislature of Oregon, led by Missourian Peter Burnett, who would become California’s first governor, approved the exclusion of free blacks from the state. The California delegates discussed writing a similar law because they worried that the availability of free black labor would degrade free white labor. Delegate Henry Teft, originally from Wisconsin, claimed he wanted a white-only California because, he was

“opposed to the introduction into this county of negroes, peons of Mexico, or any class of that kind; I care not whether they be free or bond. It is a well established fact, and the history of every state in the Union equally proves it, that negro labor, whether slave or free, when opposed to white labor, degrades it. That is the grounds upon which I oppose the introduction of this class of persons.”

Delegate O. M. Wozencraft, originally from Louisiana, stated, “If we don’t want slavery, then we cannot welcome Africans.” The concern about the dignity of free white labor reveals, that in the American West, the construction of a collective whiteness was entangled with the colonial construction of a white, working-class identity from the very beginning.

As a Free State, the delegates believed that an absence of slavery and the presence of free black migrants in California would not protect the project of white settlement or working-class whites from degradation. In the colonial state of California, there was no space for free black migrants. Free black migrants would undermine American racial claims to the territory and the power regime American delegates were attempting to erect

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in the state. In the eyes of the American delegates, free blacks, and even the Mexican peons Teft alluded to, threatened the colonial project.

Ultimately, the state constitution did not allow for black citizenship, but laid the legal foundation for the exclusion of free black migrants. Under the California Constitution, basic rights, such as the right to testify, were not extended to black persons. I will discuss this in-depth in Chapter Four. In 1852, the state legislature passed a fugitive slave act, which all but excluded free or refugee black persons from the state. The 1849 constitution laid the foundation for such an exclusion. The writers of the California Constitution created a colonial framework that allowed for the differentiated incorporation of racialized groups as non-citizen subjects.

**Conclusion: Precedents for Exclusion**

The California Constitution paved the way for ironies and tragedies. As this chapter has demonstrated, elite Californios and Anglo-American settlers cooperated to create a colonial system of law that would exclude non-white groups from full and permanent citizenship and ensure the success of white settlement and the force of U.S. authority in the region. The delegates rejected the incorporation of black, Californios, and Indigenous individuals and all women as full and permanent citizens. As a colonial constitution, the document established a legal framework that allowed for the legal incorporation of racialized groups as non-citizen subjects. By limiting who could claim citizenship in California, the delegates refashioned the dichotomy of colonized and colonizer as non-citizen subject and citizen. This dichotomy, as the following chapters

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80 The Dred Scott case would not be decided until 1857.
will demonstrate, propelled a colonial process that resulted in the dispossessing, subjugation, and racialization of colonized groups. The colonial constitution of California paved the way for Anglo-American settlement of the region and established racial perquisites for citizenship and inclusion in the state.

Despite the participation of Californios at the convention, the foundation for their colonization and racialization had been codified into the legal framework of the state. As the delegates’ discussion over citizenship revealed, Anglo-Americans would challenge their claims to such a status because of their racial ambiguity. Beginning with the Capitulation of Cahuenga, Californio cooperation with Anglo-American colonizers during the war and the constitutional convention contributed to their self-colonization. They had helped found a system dependent upon their political and economic subjugation. As the following chapters will demonstrate, Anglo-American colonizers would utilize the 1849 California Constitution to subjugate and racialize Californios in order to entrench Anglo-American and U.S. authority over the land and its inhabitants. The blatant prohibition on non-white citizenship meant that all Indigenous Peoples were non-citizen subjects of California. As non-citizen subjects, Indigenous Peoples could not formally claim citizenship rights or make demands on the state, which made them all the more vulnerable to the violence and exploitation of Anglo-American settlers.

In addition to arranging the ground work for the colonization of the Californios and Indigenous Peoples, the constitution established the framework for the exclusion of all non-white groups. While the delegates ultimately decided that banning free blacks from the state could result in Congress vetoing the California Constitution and statehood, the colonial entrepreneurs did not abandon the issue entirely. During the early years of
statehood, the California Legislature continued to pass laws that allowed for the
differentiated incorporation of racialized groups. In addition to the Fugitive Slave Law of
1850, the state legislature passed the California Fugitive Slave Act of 1852, which
offered greater protections for slave owners trafficking enslaved persons into the state.

Migration bans would not just target black migrants and refugees in California.
As Chinese immigration to the state increase, legislators created, and settlers enforced
laws that criminalized non-white bodies in California. In 1850 and 1852, the California
legislature passed laws that penalized Mexican and Chinese miners on the basis of race.
In addition to this tax, the state legislature attempted to impede non-white, but mostly
Chinese, immigration to the state with taxes and other legislation that aimed to exclude
non-white bodies from the colonial project of California.

While historians often ponder the ironies of the Compromise of 1850 – U.S.
Congress admitted California as a free state, while enacting a more stringent Fugitive
Slave Act – the ironies of the 1849 California Constitution have yet to be fully
considered. In this chapter, I have laid the groundwork for a thorough exploration of
these ironies. In drafting a colonial constitution, California delegates created a document
for democratic colonization on free soil.
Chapter Two

INVENTING NO ONE’S LAND: THE CONSTRUCTION OF RACE, LAND POLICY AND

COLONIAL MYTHS IN 1850S CALIFORNIA

““The American authorities sold land that did not belong to them in order to pay off their debts. This is land that nobody has the right to give away, because it rightfully belongs to every man, woman, and child who was born in our town.” – Dortea Valdez

Failures to Uphold Treaties

On November 28, 1853, three Anglo-American migrants travelled through Northern California, looking for a place to settle. As they made their way through the Clear Lake region, an Indigenous group, most likely comprised of Pomo men, attacked the troupe – killing two and capturing the third. The *Daily Alta California* reported on the incident, but did not condemn the group of Indians; rather, the newspaper explained and rationalized the actions they took. The article explained, “The cause of the attack was, that the Indians at Clear Lake, about 400 in number, were angry at the failure of the United States to observe the stipulations of their treaty, and at bad treatment from the whites.”

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3 A San Francisco newspaper, *The Daily Alta California* was the most sympathetic to California Indians. For more on this see, Brendan Lindsay, *Murder State: California's Native American Genocide, 1846-1873*, 165.
During the years of 1851 and 1852, the Pomo and an additional one-hundred-and-eighteen independent Indian polities signed eighteen treaties with U.S. Government representatives. The Indian signatories agreed to live within newly-established boundaries to avoid further violent confrontations with Anglo-American settlers. On July 8, 1852, the U.S. Senate chose not to ratify the treaties and deposited them into archival secrecy.

In addition to extending citizenship, the Treaty of Guadalupe Hidalgo assured property rights for treaty citizens. Article VII of the treaty explicitly required that the property of Mexican nationals transformed into American citizens be “inviolably respected.” Federal legislation, like the 1851 Land Act violated this article of the treaty by creating a Land Commission tasked with verifying private Mexican land grants. The process placed the burden of proof on the claimant. Californios, like Pío Pico, Salvador Vallejo, and Pablo de la Guerra, scrambled to preserve their land claims from the predacious U.S. Land Commission.

“Summary of the Week,” *Daily Alta California*, Volume 4, Number 318, 7 December 1853
https://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=DAC18531207.2.2&e=07-12-1853-08-12-1853--en--20-DAC-1- -txt-xml-indian------1


5 The eighteen treaties were not made public until 1905.

6 I borrow the term ‘treaty citizen’ from Rosina Lozano in *An American Language*. Lozano defines treaty citizen as the 56,000 Mexican nationals, living in the New Mexico Territory and California, who were transformed into American citizens, without out regard to race or language, with Article IX of the Treaty of Guadalupe Hidalgo.


7 Text of Article VIII: “Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.”
The rejection of these treaties transformed California into a *terra nullius* territory, which allowed for mass Anglo-American settlement.\(^8\) Anachronistically used by legal scholars of colonialism, *terra nullius* is an international legal principle that declares that land belongs to no one, thereby, opening the territory to non-indigenous occupation.\(^9\) In the Pacific World context, as historian Stuart Banner’s work demonstrates, *terra nullius* came to mean that Indians have no property rights unless granted by the colonial government.\(^10\) In the case of California, we ought to conceptualization *terra nullius* to include Californios because their property rights did not exist until affirmed by the federal government. Land policies abrogated the property rights of colonized people and provided a legal foundation for the exclusion of Indigenous Peoples and Californios in California.\(^11\) As I will demonstrate, Indian and Californio property rights existed only when affirmed by the colonial U.S. Government. I am not arguing for the conflation of state treatment toward Indigenous Peoples and Californios but do think we must consider both as separate parts of the same colonial process. Doing so will allow us to interrogate the continuity of state-supported land transfer from California to Hawaii.\(^12\)

This chapter demonstrates how an assortment of land policies, not only established and maintained a colonial system in California, but also contributed to the co-construction of whiteness and citizenship. In this chapter, I interrogate three moments.

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\(^{10}\) Stuart Banner, *Possessing the Pacific*, 224.

\(^{11}\) Amongst legal scholars, there is a debate as to whether or not European powers conceived of Americas territories as *terra nullius*. While that debate is important, the debate is not the purview of this chapter. Rather, this chapter uses the legal concept to explain and understand how the colonial land transformation occurred in California.

\(^{12}\) Stuart Banner. *Possessing the Pacific*, 3.
First, I explore the road to the creation of the 1851 Land Act. Anglo-American settlers had assumed that the California territory was entirely open to settlement, only to find the land inhabited. Anglo-American migrants and homesteaders hoping to settle California compelled state and federal legislatures to nullify the land provision of the Treaty of Guadalupe Hidalgo. By violating the Treaty of Guadalupe Hidalgo, the 1851 Land Act not only provided mechanisms for Anglo-American settlement in California, but also the foundation for a legal framework premised upon the deprivation of Californio property rights.

Second, I interrogate the refusal of the federal government to ratify the eighteen treaties with numerous independent Indian polities. In particular, I examine the negotiations between Indigenous leaders and federal Indian Agents. The rejection of the eighteen treaties meant that California Indians possessed no treaty rights. In the absence of treaty land claims and rights, the state and federal governments would support the genocidal destruction of the California Indigenous population.

14 The refusal to uphold treaty negotiations ignored precedent set by the British and upheld by the Americans in which Indian property rights were recognized to a certain extent and land transactions required treaties. By not ratifying the treaties, municipal governments, with the aid of the state government, were able to wage exterminatory war against California Indians throughout the state. The devastation wrought by these military campaigns greatly contributed to the decline of the Indigenous population and the opening of Indigenous lands for Anglo-American settlements in California.
15 At the beginning of the US-Mexican War, the California Indian population was about 150,000. By 1880, it was reduced to 16,277 – about 11% of the 1846 population. Sherburne Cook, Population of California Indians, 1769 – 1970 (Berkeley: University of California Press, 1976), 44.
In An American Genocide: The United States and the California Indian Catastrophe, 1846-1873, scholar Benjamin Madley argues that the military genocide of California Indians was funded by the California and federal governments in order to facilitate American settlement in the region.
For an analytical examination of the causes and effects of the state-supported genocide of the Indigenous of California, see: Benjamin Madley, An American Genocide: The United States and the California Indian Catastrophe, 1846-1873 (New Haven: Yale University Press, 2016); Albert Hurtado, Indian Survival on the California Frontier (New Haven: Yale University Press, 1988); Brendan Lindsey, Murder State: California's Native American Genocide, 1846-1873 (Lincoln: University of Nebraska Press, 2015); Robert Heizer, The Destruction of California Indians. (Lincoln: University of Nebraska Press, 1974); William
While Congress rejected the treaties, the U.S. Land Commission upheld the property rights of at least six Indigenous land holders in Southern California. In deciding these cases, Justices weaponized Indian property rights to challenge the legitimacy of Californio land claims. This contradictory action demonstrates that the federal and California government could acknowledge Indian land rights, but only did so when it contributed to the dispossession of Californios.

Third, I explore the Californio and Indigenous struggle to maintain landholdings under the Land Commission process. For many Californios, the ratification process was time and financially consuming. On average, Californios spent seventeen years embroiled in the approval process. In 1852, Congress instituted a mandatory appeal of all cases, which required more time and money from Mexican land grant claimants. This inherently parasitic process ultimately resulted in Californios selling their land after receiving their patents to pay off debt. It was not uncommon for lawyers to accept land as payment for their services. In addition to accelerating the dispossession of the Californios, the 1851 Land Act contributed to racialized myth making that cast Californios as illegal occupiers and that further linked whiteness with property rights. Such racialization contributed to the notion of only Anglo-American men and certain women, who could claim whiteness, as the only suitable settlers of the region. This is the first moment in which we can see


16 Michelle Morton and Marie Salta, with assistance from Dean C. Rowan and Randal Brandt. “Finding Aid to the Documents Pertaining to the Adjudication of Private Land Claims in California, circa 1852-1892,” 2. https://oac.cdlib.org/findaid/ark:/13030/hb109nb422/dsc/?query=%22mission%20san%20rafael%22;dsc.position=1#hitNum3
that state agents created and implemented land policy in order to produce preferred racial demographic patterns in California.\textsuperscript{17}

In the United States, the recognition of property rights fell along lines of race, gender, and class, but the colonial transformation of land in California also redefined and recategorized those differences. As many scholars, such as Patrick Wolfe and Laura Brace, have demonstrated, race and racism in American developed along different paths depending upon whether or not the locally denigrated race was ‘black’ or ‘Indian.’\textsuperscript{18} In United States, the category of ‘Indian’ was constructed in relation to land dispossession; whereas, the category of ‘black’ was constructed in relation to unfree labor.\textsuperscript{19} In the California context, Anglo-American settlers reconfigured racial categories around the removal of Indigenous Peoples and the dispossession of Californios, while allowing for the possibility of extorting non-white labor.

Land policy that justified Anglo-American settlement also supported the exclusion of non-white immigrants from the plunder of colonialism. In California, state and federal legislation disqualified people of African descent from assuming the role of a settler by prohibiting black land ownership. The efforts to prohibit black migration to California did not end when the Constitutional Convention tabled the prohibition of black migration to the state. Efforts to embargo black bodies – free and enslaved – continued

\textsuperscript{17} For more on how the federal government manufactured desired demographics in incorporating territories, see Paul Frymer, \textit{Building an American Empire: The Era of Territorial and Political Expansion} (Princeton: Princeton University Press, 2018), 1 – 32, 128 – 171.
\textsuperscript{18} Allan Greer, \textit{Property and Dispossession: Natives, Empires and Land in Early Modern North America} (New York: Cambridge University Press, 2018), 432.
with the implementation of legislation that made it difficult for free black persons to live in California.\textsuperscript{20}

Together, these moments resulted in colonial property formation.\textsuperscript{21} In the California context, colonial land transformation functioned as an organizing principle for a racial hierarchy that managed multiple racialized groups all the while maintaining the idea of white supremacy. As an integral facet of state formation, federal and state courts, legislators and squatters, Californios and Indians, fashioned a system of property relations that sustained a new, colonial government and incorporated subjects into a colonial system according to a racial hierarchy.

\textbf{American Ideas about Land}

Prior to delivering news of California statehood in 1850, the steamer known as the \textit{Oregon} docked in the Monterey Bay just as the California Constitutional Convention began in September 1849. An emissary of the federal government, William Carey Jones, disembarked. The Secretary of the Interior, Thomas Ewing, sent Jones to examine Mexican and Spanish land records and write a report on the status of land claims in order to determine federal policy.\textsuperscript{22} No longer serving as the Military Secretary of State, Henry

\begin{footnotesize}
\textsuperscript{20} For more on Black American migrants who migrated to California but then left the U.S. because of anti-black settlement laws and increasing unfreedom, see Stacey Smith, “\textit{Dred Scott on the Pacific: African Americans, Citizenship, and Subjecthood in the North American West},” \textit{Southern California Quarterly}, Vol. 100 No. 1, Spring 2018; 44 – 68.

\textsuperscript{21} By colonial transformation, I mean the creation of property for colonists and property for natives in a manner that effectively defined social, political and territorial boundaries. I borrow the idea of ‘colonial transformation’ as explained by Allan Greer in \textit{Property and Dispossession: Natives, Empires and Land in Early Modern North America}, especially pages, 1 – 26.

\textsuperscript{22} It is believed that Ewing probably sent Jones to California because he was the son-in-law of Missouri Senator Thomas Benton and because he knew Spanish.

Chris Perez, \textit{Land Grants In Alta California: A Compilation Of Spanish And Mexican Private Land Claims In The State Of California Giving Pertinent Data In Relation To The United States Of America's}
\end{footnotesize}
W. Halleck, was in Monterey serving as a delegate at the Constitutional Convention. Both men wrote reports on the Mexican land grant system. With their reports, Jones and Halleck would shape ideas and policy concerning Mexican land grants in California.

During the U.S.-Mexican War, Henry W. Halleck was in charge of fortifying U.S. bases throughout California and served as the Military Secretary of State of occupied California. One of the preeminent American legal military minds of the 19th century, Halleck was known as “Old Brains” because of his military studies expertise. As California Secretary of State, Halleck published the *Report on Land Titles in California* on April 13, 1849 at the request of Military Governor Richard Mason. Halleck’s report set the tone for mainstream American opinion on private Mexican land titles.

In the *Report on Land Titles in California*, Halleck chronicled the history of property law in Alta California under the Spanish Empire and Mexican Republic in great detail. Beginning with the founding of the San Diego colony, in his report, Halleck demonstrated that in Alta California, Spanish and Mexican law makers devised property law to abet the colonization of the region and its peoples. Initially, in the Northern Mexican states, a governor could only grant titles to members of the army. However, in 1824, the Mexican Constitutional Congress passed the Colonization Laws, which allowed...


24 During the U.S. Civil War, he served as senior commander for the Union Army in the Western Theatre, general in chief and chief of staff.


for contractors, *empresarios*, heads of families, and private persons to receive grants from the governor.²⁷

After detailing the genealogy of Mexican property law in Alta California, Halleck alleged widespread illegitimacy for Mexican land grants in California. Halleck decried Mexican titles for their lack of clear and documented boundaries. He refused to acknowledge that the *diseño* was a legitimate map of the Mexican property system.²⁸ Unlike American grant maps, *diseños* did not adhere to a grid system; rather, Spanish and Mexican cartographers based the *diseños* on geographical landmarks.

Figure 1. Diseño of Rancho San Leandro ²⁹

²⁷ Ibid.
²⁸ Ibid.
Although Halleck acknowledged that laws and regulations regarding land grants were “in force” as late July 8, 1846 – the eve of the American invasion – he offered a series of eleventh-hour private land grants made by Governor Pío Pico as evidence of widespread illegitimacy and corruption. In addition to alluding to the corrupt nature of Alta California officials, Halleck accused land claimants of forging antedated papers for unconfirmed and illegitimate titles. In his report, Halleck never made a suggestion for the assimilation of Mexican land grants into the American property system. Instead, he argued that the alleged illegitimate nature of the Mexican land grants would lead to problems if incorporated into the American system.

Jones published his report, *Land Titles in California: Report on the Subject of Land Titles in California, Made in Pursuance of Instructions from the Secretary of State and the Secretary of the Interior*, nearly a year after Halleck. The report declared most Mexican land grant titles valid. Moreover, according to Jones, the few fraudulent titles that existed were easy to detect. To prepare his report, Jones read Spanish and Mexican legislation; he even travelled to Mexico City to gather Mexican archival holdings on land grants. His report not only affirmed the legitimacy of Californio land titles, but also made clear that under Spanish and Mexican law, “Indians shall have a right to as much land as they need for their habitations, for tillage, and for pasturage.” Some Indigenous communities held land titles granted by the Mexican government. Jones’ *Land Titles in California* explicitly called for the upholding of Articles VIII and XI of the Treaty of

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30 Ibid.
Guadalupe-Hidalgo and the protection of private land titles granted by the Mexican government.\(^{32}\)

Unlike Jones’ report, Halleck’s report legitimated the outrage of Anglo-American settlers who found their idea of an empty, uncivilized frontier contradicted by the presence of Californios and Indigenous Peoples.\(^{33}\) Anglo-American migrants who arrived in California as part of the Gold Rush assumed squatting would secure vast land parcels under the Preemption Act of 1841.\(^{34}\) But when Anglo-Americans migrants arrived in the region, they soon learned that less than two-hundred families owned fourteen-million acres of land and that the Treaty of Guadalupe Hidalgo protected these claims.\(^{35}\)

Anglo-American settlers absorbed the conclusions of Halleck’s report and dismissed Mexican land grants as legitimate holdings and decried the whole Mexican land system in California as informal.\(^{36}\) In diaries, Anglo-American migrants expressed a mistrust of Mexican private land grants. Their mistrust was informed by Halleck’s report and racialized expansionist notions.\(^{37}\) An Illinois doctor, Israel Shipman Pelton Lord,

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\(^{32}\) Ibid.


\(^{34}\) The Preemption of 1841 allowed squatters living on federal-owned land to purchase, up to 160 acres, for $1.25 per acre before land was opened up to the public. Settlers in the Kansas and Nebraska purchased land through this act.

\(^{35}\) For examples of this see, Tamara Shelton’s *Squatters’ Republic*. Shelton provides evidence squatters, including future governor, Henry Haight, believed the grants to be overlapped and ill defined. Tamara Shelton. *Squatters’ Republic*, 37.

\(^{36}\) Some of these characterizations may be attributed to the fact that land was not often exchanged for specie. Alta California was not a cash-based economy and had yet to be fully incorporated into the U.S. specie-based trade and economic networks.


\(^{37}\) I rely on Reginald Horsman’s assessment of the mainstream American racial ideology in re to Westward Expansion, which he describes as: “By the 1850s it was generally believed in the United States that a superior American race was destined to shape the destiny of much of the world. It was also believed that in their outward thrust Americans were encountering a variety of inferior races incapable of sharing in America's republican system and doomed to permanent subordination or extinction.” Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge, Harvard University Press, 1986), 6.
who made his way to California during the Gold Rush in 1849, remarked in his diary that California was, “A most stupendous scheme of land monopoly” and it would be a travesty if the “government w[ould] recognize the [Mexican] titles.” Lord expressed disdain for the Treaty, even though he admitted that he had “never read the treaty in reference to that point.”

Lord went on to articulate how Californios were inept and improper landholders. If the Californios maintained their land claims, according to Lord, “the whole land will continue a wilderness of tangled briars and vines and shrubs and weeds and grass except where the fire and flood clean it off [.]”

In this diary entry, Lord expressed two beliefs widely held by Anglo-American settlers. One, they viewed California as a predestined opportunity of free land for aspiring small white landholders and farmers as part of the agrarian, democratic promise. Two, they regarded the West as the rightful dominion of Anglo-Americans because, both Indians and Mexicans had proved inherently incapable of civilizing the frontier. Lord declared, if a people could not “properly cultivate the land,” then the land did not belong to them. These racialized ideas about landholding justified the colonization of the American West, but the Californio land monopoly contradicted these beliefs and threatened the American colonization in the state. Anglo-American settlers would utilize legal processes and violent methods to extend an American property regime in California with the support of the U.S. government.

38 Figure out if treaty was reprinted in newspapers or a secondary source
A Powder Keg

The city of Sacramento is located at the foothill of the Sierra Nevada goldfields and on the confluence of the American and Sacramento rivers. Because Sacramento lies at the confluence of mineral-rich rivers, many Anglo-American men migrated to the city during the early years of the Gold Rush. The city of Sacramento began as Sutter’s Fort in 1839. John Sutter, a Swiss immigrant who had become a Mexican citizen, obtained a 50,000-acre land grant – New Helvetia – from the Mexican government. When Sutter arrived in Alta California, he immediately met with Californio Mariano Guadalupe Vallejo at Rancho Petaluma. He wanted to observe how Vallejo administered his Rancho, which boasted hordes of cattle grazing thousands of acres. Sutter modeled his Sacramento grant after Vallejo’s Rancho Petaluma and relied on unfree Indian labor to establish the rancho and his business enterprises. Like Vallejo and other Californios, Sutter premised his settler identity upon his assertion of dominance over Indians and the land.

In December of 1848, Sutter’s son, John Sutter Jr., began planning and building Sacramento City, just two miles from Sutter’s Fort with Samuel Brennan. As migrants arrived in Sacramento, hopeful squatters grew incensed at the fact that they could not claim land in the city because it belonged to Sutter under what they viewed as a dubious Mexican claim. Further exasperating the would-be settlers, land owners who had made lots available for purchase gouged the prices from $250 to $8,000 in the Sacramento

41 George Wright, Reproduction of Thompson and West’s History of Sacramento County, California (Oakland, Cal.: Thompson & West, 1880, 1960).
43 As founder of the California Star, the second English-language paper in California at the time, Brennan is considered to have helped spread word of the gold discovery.
In May 1849, Sutter posted a warning in the *Placer Times* - “All persons are hereby cautioned not to settle, without permission, on any land of mine in this Territory.”

Beginning in October 1849, Sutter faced significant challenges against his land grant. A logger named Z.M. Chapman, built a cabin on Sutter’s grant hoping to transform the property into public land by preemption. Two months later, Charles L. Robinson joined Chapman and built his own dwelling on the land. Together they founded the Sacramento City Settlers Organization and other squatters soon joined. Robinson would become the Sacramento squatters’ *de facto* leader and created the *Settlers and Miners Tribune* with James McClatchy. As a collective, the squatters wanted to obtain government recognition of squatters’ rights. In order to make this happen, they formed a Law and Order Association and a militia within the Settlers organization.

In May 1850, Sutter brought a charge of unlawful occupation against squatter John T. Madden. On August 8th, a newly-elected judge, E.J. Willis ruled against Madden. News spread among the squatters and a riot broke out on August 14th when a militia of forty to fifty men attempted to free Madden from the Grange, the Sacramento jail. In Downtown Sacramento, settlers began shooting when ordered to stand down by Sacramento mayor, Hardin Bigelow. Bigelow was gravely injured by the fusillade and was rushed to San Francisco to receive medical treatment. General Albert Maver Winn, head of the City Council, replaced Bigelow as mayor. Acting as Mayor, Winn organized

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46 *History of Sacramento County, California*, (Oakland, Cal.: Thompson & West, 1880), 56.
five-hundred militiamen and declared martial law until the matter was resolved. The violence dissipated when Robinson was placed in jail.48 However, the matter remained unresolved because the federal government upheld Sutter’s land grant and aspiring Anglo-American settlers still desired land.49 The Squatters’ Riot in Sacramento is just one instance of the discord between squatters promoting liberal agrarianism, capitalist land speculators, and supporters of the Mexican private land grant system throughout the state.

By the time the U.S. Senate admitted California into the Union, migration to California had resulted in tense relationships between Anglo-American settlers, independent Indian polities, and rancho-owning Californios. In addition to the riot that erupted in Sacramento, violence broke out between Indigenous Peoples and settlers and between Rancho owners and squatters throughout the state. Californio landholders, like Salvador Vallejo, struggled to keep Anglo-Americans from squatting on their ranchos.50 U.S. statehood empowered Anglo-American settlers with the ability to make demands on U.S. senators, which they made.

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48 Even though Charles Robinson was tried for murder, he remained popular among the Sacramento squatters. In 1851, he was elected to the California State Legislature while in prison. He later became the first governor of Kansas, serving from 1861 to 1863.

49 Josiah Royce, California, From the Conquest in 1846 to the Second Vigilance of San Francisco (Boston and New York: Houghton and Mifflin Co., 1886); Winfield Davis, An Illustrated History Of Sacramento County, California: Containing a history of Sacramento County from the earliest period of its occupancy to the present time, together with glimpses of its prospective future ... portraits of some of its most eminent men, and biographical mention of many of its pioneers and also prominent citizens of today (Chicago: Lewis Publishing Co., 1890); “The Sacramento Riot” Daily Alta California, 18 August 1850.

50 In Vallejo’s papers, there are numerous mentions of squatters. Sometimes his mentions of squatters are off-hand remarks, other times, he describes them as a nuisance in letters or explicates upon his efforts to combat the squatters. In the papers of other Californio land grant holders, there are similar remarks.
Competing Views of Colonialism

Settlers, who wished to undermine the Mexican land claims protected by international law, received the assistance of California’s first senator, William Gwin. At the end of 1850, Gwin, read aloud a letter penned by a squatter in Sacramento to the U.S. Senate. According to the letter, a settler had been ejected from a house, with “which his own hands ha[d] built upon what he believe[d] to be public domain” only to be charged with back rent and damages. Without immediate action in relation to the land titles, Gwin claimed, “great injustice will be done” against the inhabitants of California. By inhabitants, Gwin did not mean Indigenous or Californio inhabitants.

At the end of the speech, Gwin introduced the bill that would become the 1851 Land Act to the U.S. Senate. As mentioned in the previous chapter, Gwin was an American ‘colonial entrepreneur’ who migrated to California in order to forge the state in a manner that accommodated his political ambitions and ideologies. In California, his power was in flux. He worked to shape institutions that would empower and enrich himself and others like him. This bill fell in line with Gwin’s other efforts to colonize territory in North America.

Gwin’s bill would create a U.S. Land Commission with three commissioners tasked with approving Mexican and Spanish private land grants. The bill relied on the assertions made in Henry Halleck’s Report on Land Titles in California because it presupposed the illegitimacy of Mexican private land claims. If the bill became law, the

51 Congressional Globe, Senate, 31st Congress, 2nd Session, 116
53 Report on Land Titles in California, April 13, 1849, Box 8, Halleck, Peachy & Billings records, BANC MSS C-B 421, The Bancroft Library, University of California, Berkeley.
legislation would invalidate all Spanish and Mexican private land grants until approved by the Commission.\textsuperscript{54} Under the bill, all possible claimants would have to bring forth their case within two years or surrender their claim. Moreover, Gwin’s bill granted greater power to the federal government by placing the burden of proof on the claimants, extending the right to appeal decisions to the federal government, and by exempting land grants made by the U.S. military government during American occupation.\textsuperscript{55} In a vote of twenty-seven ‘yeas’ against sixteen ‘nays,’ the motion to take up the bill was granted.\textsuperscript{56}

Missouri Senator, Thomas H. Benton presented an alternative to Gwin’s bill.\textsuperscript{57} Benton was a colonial entrepreneur of a different ilk. A member of the Democrat Party and a slave owner, in the 1840s, Benton spoke out against the expansion of slavery because he envisioned Westward Expansion occurring through commerce and railroads, not settlement. For Benton, American expansion would culminate with the establishment of a white republic.\textsuperscript{58}

Senator Benton’s bill, unlike Gwin’s bill, would maintain the status quo and better uphold the Treaty of Guadalupe Hidalgo.\textsuperscript{59} Rather than establish a commission, the bill created an officer position, the Recorder, under the U.S. Attorney General. The Recorder

\textsuperscript{54} After acquiring the Louisiana Territory and France, U.S. Congress created a board to verify the private land titles granted by French and Spanish governments. With the incorporation of the Louisiana Territory, U.S. Congress created a precedent of dealing with the private land with a congressional commission. Tamara Shelton, \textit{A Squatters’ Republic}, 36; Paul Gates, \textit{Land and Law in California: Essays on Land Policies} (Ames: Iowa State University Press, 1991), 186.

\textsuperscript{55} Ibid.

\textsuperscript{56} Congressional Globe, Senate, 31st Congress, 2nd Session, 117

\textsuperscript{57} Senator Frémont presented a third bill, which established a weaker Land Commission. Frémont did not push for the Senate to consider his bill.


\textsuperscript{59} As Missouri’s senator, Thomas Benton became known as Old Bullion for his support of gold specie in the 1820s and known for his fierce support of Westward Expansion. Benton helped author one of the first Homestead Acts, was particularly involved in the administration of the Oregon Territory, supported the transcontinental railroad, and was an unwavering advocate of indigenous displacement.
would notarize land grants and verify any doubtful grants. Benton’s bill was not premised upon the conceit that all grants were invalid or fraudulent until proven otherwise, but still allowed for the possibility of Californio dispossession.

John C. Frémont, a hero of the U.S.-Mexican War, turned Mexican land-grant owner, served, as California’s second senator. Frémont did not champion Gwin’s bill; in fact, Frémont supported Benton’s bill. Frémont’s support for a bill that seemed likely to impede Anglo-American settlement and homesteading, earned him criticism when he unsuccessfully ran for reelection. As a claimant of a large, private Mexican grant – Rancho Las Mariposas – his support of a bill that better protected Spanish and Mexican private land grants, better aligned with his interests as a member of the small class of Americans with Mexican private land titles.

In addition to protecting personal land interests, Frémont and Benton probably supported upholding Mexican and Spanish land grants because of the vulnerability of

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60 Referred to as the Pathfinder for ‘opening up’ the American West to expansion, as a military officer, Frémont advanced the American colonization of the West with his survey expeditions. He was the first Republican candidate to run for president in 1856. During the U.S. Civil War, he served as the Commander of the Western Department.

61 Senator Thomas Benton was Frémont’s father-in-law. Jessie Benton Frémont, John C. Frémont’s wife, was the second child of Senator Benton. Benton adored and made sure to prepare Jessie for a life in politics, regardless of her gender. When John and Jessie announced their plans to marry, Benton opposed the engagement, because Jessie was still a teenager. Benton most likely pulled strings to have the War Department send John Frémont to explore the Des Moines River region, not for the benefit of Frémont’s career, but to keep him away from his daughter. Upon John C. Frémont’s return to Washington D.C., the two married. Senator Benton did not immediately approve of the marriage, but it seemed that they reached an understanding when Benton publicly supported John C. Frémont’s exploration of the West. This may have been because he experienced a change of heart or because he was an ardent supporter of American Westward Expansion. I do not think Benton wrote this legislation to protect Frémont’s land holdings, that may have been an unintended positive, since he did not support Frémont’s bid for the presidency in 1856. I think Benton wrote his land bill to protect the Democratic-Chivalry alliance with the landed Californios and to protect the settler colonial project.

62 In 1848, Sonoran miners discovered gold on the Las Mariposas land grant. Squatters and miners attempted to make claims to the land. Frémont commenced a legal battle against the squatters, and eventually won, becoming a rich man.

American authority in California. As Rosina Lozano demonstrates in *An American Language*, the federal government supported a bilingual government in New Mexico because the cooperation of Nuevomexicanos was necessary to successfully extend American authority into the region.\(^{63}\) The successful incorporation of California into the Union was not a foregone conclusion. Two situations, in particular, threatened American sovereignty in California. In Southern California, in addition to maintaining positions of power, the allegiances of elite and non-elite Californios were unknown. Two, independent Indian polities threatened American settlement throughout the state. Given the tenuousness of American power, the federal government required the support of conquered Californios to administer its authority in the region and over autonomous Indian polities and potentially rebellious Californios.

Benton alluded to this in his speech to the Senate. He described Gwin’s bill as “the most abominable attempt at legislation that has ever appeared in a civilized nation.”\(^{64}\) In his speech, Benton cited Jones’ land report to demonstrate that the grants were made in accordance to Mexican law and, therefore, legal; not inchoate as Halleck, Gwin, and others claimed. Benton made clear that such a bill would violate the treaties that explicitly protected the property of conquered people. He also gave a warning; some of the people who had helped Frémont conquer the Northern portion of California in the name of the U.S. would suffer because of the bill. \(^{65}\)

Senator Benton was not an advocate of Californio rights or conquered people. Known as “a champion of Manifest Destiny,” Benton had voted for expansionist

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\(^{63}\) Rosina Lozano, *An American Language*, 21 – 38.

\(^{64}\) *Congressional Globe*, 31st Cong., 2nd sess., 1850 – 1851.

\(^{65}\) *Congressional Globe*, Senate, 31st Congress, 2nd Session, 53
policies. In the case of California, Benton supported legislation that would better ensure the incorporation of California into the Union. Perhaps ignoring the racial ambiguity surrounding Californio identity, Benton understood that Californios were a necessary aspect of the nineteenth-century California landscape, but not necessarily part of the future of California.

In order to incorporate California into the U.S., the American government had to – if only temporarily – cooperate with Californios. For example, in New Mexico, Anglo-Americans cooperated with Nuevomexicanos because they feared that treaty citizens would migrate to the Mexican Republic and abandon a territory not yet freed of autonomous Indians. Anglo-American settlers relied on cooperation with Nuevomexicanos for a long time, because in New Mexico, Anglo-American settlement was slow.

Aware of this delicate balance, Benton warned, “All of California [would] be alarmed at such a terrible inquisition over property.” Benton conceded that, as a conquered people, the Californios must prove their land claims and that the process need

68 The American colonization of Texas differed greatly from the American colonization of New Mexico and California. In the state of Texas, Mexican land grants quickly changed hands, but not through a process created by legislation. Shortly after the founding of the Republic of Texas, Spanish and Mexican land grants were dismantled through the buying and reselling of headright land grants. Anglo-American speculators quickly bought land from Tejanos seeking to recover from the Texas Revolution. The loss of land meant the loss of power, and Tejanos were quickly excluded from the future administration of Texas. Raúl Ramos, Beyond the Alamo: Forging Mexican Ethnicity in San Antonio, 1821-1861 (Chapel Hill: University of North Carolina, 2008), 193 – 198.
Paul Frymer, Building an American Empire, 5, 204.
69 Congressional Globe, Senate, 31st Congress, 2nd Session, 52, 53.
not be easy, but Gwin’s bill would plant seeds of discontent. Benton issued a warning: “I say that no people, unless they are entirely too weak to fight, would submit to what we have proposed, and some who have been too weak to fight, have revolted under such circumstances.”\textsuperscript{70} For Benton, this legislation ran the risk of jeopardizing American authority in the state. Benton concluded his speech with a declamation:

“I eschew it all, and repeat what I said yesterday, that such a proceeding is a violation of the laws of the nations, a violation of the treaty with Mexico, [...] a violation of the capitulation of Cahuenga, and tantamount to a general confiscation of the landed property of this nation.”\textsuperscript{71}

On March 3, 1851, the Land Act of 1851 became law.\textsuperscript{72} Settlers had successfully undermined the Treaty of Guadalupe Hidalgo with the support of the federal government and began transforming California into a \textit{terra nullius} territory. As the legislation required, President Millard Fillmore appointed three commissioners – Joseph Ingersoll, Austin Hopkins, and James Harlan.\textsuperscript{73} The Land Commissioners were presidential political appointments, and all three men were lawyers and members of the Whig party.

President Fillmore did not send an individual note that announced his signing of the Land Act, but this action aligned with other attempts to assert authority in the North American West. In September 1850, President Fillmore signed the Donation Land Act, a federal law that encouraged white American homesteading in the Oregon Territory. According to the Act, white, male American settlers could claim up to 320 acres of free

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\textsuperscript{70} Congressional Globe, Senate, 31st Congress, 2nd Session, 158
\textsuperscript{71} Congressional Globe, Senate, 31st Congress, 2nd Session, 52
\textsuperscript{72} On March 3, 1851, the Speaker of US House of Representatives signed an enrolled bill to settle and ascertain private land claims in California. \textit{Congressional Globe}, Senate, 31\textsuperscript{st} Congress, Second Session, 816.
\textsuperscript{73} In 1853, President Franklin Pierce nominated three new land commissioners - Harry I. Thornton, James Wilson, and Hilland Hill.
land as long as they inhabited the land and improved the land through cultivation. If a settler was married, the woman would receive an additional 320 acres. This act increased the Anglo American population by three-hundred percent in the span of five years. President Fillmore approved both the Donation Land Act and the 1851 Land Act, which legislators wrote to increase white settlement in the West.

In July 1851, Eugene Cassidy, a land claims lawyer, wrote to Pablo de la Guerra, a powerful Californio politician from Santa Barbara who participated in the California Constitutional Convention and remained in political office until 1873, about the new land bill. Cassidy wrote: “I am led to fear that the law and the mode in which it is to be administered, will prove hardly less than a legal confiscation of the old estates in California [...] extort from their unsuspecting clients, the most monstrous fees, or… wrest them of their lands.” Before the Commission had begun it work, lawyers and land claimants had already realized the predacious nature of the Land Commission. Cassidy was a Cassandra. By calling into question Mexican land grants and the Californios that claimed them, the Land Commission would create a new property regime that prioritized the rights and claims of Anglo-Americans and denigrated the rights of treaty citizens.

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74 This portion of the bill was not a result of progressive gender politics. As see in Laurel Clark Shire’s study of Florida, women’s property rights were often expanded for the necessity and longevity of settlement in newly acquired territories, not gender equality.
76 Eugene Cassidy to Pablo de la Guerra, 28 July 1851, Guerra Family Collection.
Encounters with Indian Agents

The United States Senate also passed legislation intended to dispossess the Indigenous Peoples of California. Within the first week of serving as a California Senator, John C. Frémont introduced a bill that would extinguish Indian claims in the Sierra Nevada gold country by treaty.\(^7^7\) Senator Frémont wanted to dispossess independent Indian polities and establish *terra nullius* in accordance with legal precedent.\(^7^8\) In a speech given to Congress, Frémont stated that under Spanish and Mexican law, Indian property rights were recognized “not merely in possession, but extended even to that of alienation.”\(^7^9\) The U.S. Senate did not pass Frémont’s bill because many Senators believed that under the Mexican Government, Indigenous Peoples did not possess such rights.\(^8^0\)

While his original bill did not pass, the U.S. Senate eventually listened to Frémont and allocated $50,000 to the Department of the Interior to send Indian Agents into California Indian territory to obtain treaties.\(^8^1\) By agreeing to make treaties with the California Indigenous Peoples, the federal government acknowledged that they had some property rights. This contradicted the denigrated categories that colonial entrepreneurs in California were attempting to impose on Indians.

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\(^7^8\) By the time the US gained control of the territory, the government had a long history of purchasing land from small nonagricultural tribes. See: Patrick Banner, *Possessing the Pacific*, 168.


\(^8^0\) Congressional Globe, 31st Cong., 1st sess., 1816.

\(^8^1\) Stuart Banner, *Possessing the Pacific*, 186 – 187.
From May 1851 until January 1852, three Indian agents traveled up and down California in order to sign treaties with numerous independent Indian polities. President Mildred Fillmore appointed Redick McKee, George W. Barbor, and O.M. Wozencraft as Indian agents. As the three travelled across the state, they offered Indigenous leaders gifts of blankets, flour, and meat. In an effort to make sure the treaties ended violence between Indigenous Peoples and settlers in mining settlements, they also met with mining communities and relayed the terms of peaceful cohabitation as stipulated by the treaties. By the end of January 1852, the Indian agents had signed eighteen treaties with Indigenous leaders who represented hundreds of independent polities. Journals written by the three land agents reveal that Indigenous leaders attempted to negotiate deals that preserved their land claims and improved their living conditions.

In August 1851, Agent Reddick McKee set up camp in Camp Lupiyama in the Clear Lake region to meet with the leaders of the independent Indian polities in the region. The region is traditionally Pomo, Yuki, and Wappo territory. This was the first treaty effort McKee attempted on his own. As a group, the agents had obtained two treaties but decided to split up because of limited time. It is likely that McKee chose the

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82 President Fillmore delivered his nomination for Indian Agents on September 28, 1850. The Senate approved the three with unanimous consent. United States. Congress. Senate. (1852). *Journal of the executive proceedings of the Senate of the United States of America, Volume 8*.


Clear Lake region first because of the 1850 Bloody Island Massacre, in which Anglo-American settlers and the U.S. army murdered sixty to four-hundred Pomo Indians.\textsuperscript{85}

In 1847 two Anglo-American migrants, Andrew Kelsey, a member of the Bardwell Party, and Charles Stone settled in the region. They aspired to create a profitable cattle business. To begin this venture, Kelsey and Stone either purchased from Salvador Vallejo, kidnapped, or some combination thereof hundreds of Pomo Indians and forced them to labor as adobe builders and vaqueros under the false pretension of providing sustenance.

In 1849, Kelsey forced twenty-six Pomo Indians to labor for him in a gold mine. After a month, Kelsey let them return to Clear Lake and awarded them with “pair of overalls, a hickory shirt, and handkerchief” even though they had mined him a bag of gold as big as his arm.\textsuperscript{86} Later in 1849, Kelsey forced one-hundred unfree Pomo to mine gold. During this expedition, Kelsey did not provide food or proper shelter for the Pomo. As a result, only three returned to Clear Lake.\textsuperscript{87}

After years of abuse and unfreedom, two to five Pomo men killed Kelsey. Ben Kelsey, Andrew Kelsey’s, brother learned of the murder and called upon men in the region to retaliate. Armed settlers heeded the call and indiscriminately killed an unknown number of Indigenous persons. The U.S. Army eventually joined the revenge-seeking settlers. On May 15, an army company under the leadership of Captain Nathaniel Lyon

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\textsuperscript{85} Daily Alta California, Volume 1, Number 132, 1 June 1850
\end{flushright}
and Lieutenant J.W. Davidson murdered sixty to two-hundred Pomo on Badonnapoti
Island in Clear Lake.  

Hoping to end the violence in the region, Agent McKee and his company met
with eight Indigenous representatives on August 18, 1851. They communicated through
a Spanish translator. In recounting the initial introduction in his journal, McKee claims to
have acknowledged that he knew they “were the original owners of these lands.”
Whether or not he relayed this exact message to the leaders, by writing it in his journal, it
signifies that McKee understood that the Indigenous possessed some sort of claim to the
land and that the treaty would lawfully reconfigure, if not end, that arrangement. McKee
also informed them that the U.S. President had conquered the territory and hoped to end
the war between his “red children” and the whites.

According to McKee, two of the men, Julio and Prieto, inquired about the terms
of the treaty creating new land boundaries. McKee answered that they would all live on
one reservation and would have to welcome other Indians sent there. Representative Ku
Kee declared that he and his people desired to remain at the head of Clear Lake, not the
new reservation. Agent McKee, citing Indian relations in the East promised that if all of
the families lived together in one place, an agent would “settle all your difficulties and
prevent the Whites from injuring you,” punish all guilty Indians and whites equally, and
improve their condition. Upon hearing these terms, according to McKee, Chief Prieto

88 Daily Alta California, Volume 1, Number 133, 3 June 1850; Heizer, Robert F., The Collected Documents
on the Causes and Events in the Bloody Island Massacre of 1850, 30.
89 Reddick MeKee, “Talks and Minutes of Council Proceedings of the Commissioners Meeting with
California Indians” book 1, page 15.
90 Reddick MeKee, “Talks and Minutes of Council Proceedings of the Commissioners Meeting with
91 Reddick MeKee, “Talks and Minutes of Council Proceedings of the Commissioners Meeting with
spoke again, saying that they had been deceived many times, but would pledge himself and his people in “good faith today” if the whites also respected the new boundaries. Prieto’s condition that the white settlers uphold their part of the deal indicates that the Indigenous leaders attempted to arbitrate a deal that offered protection from the violence Anglo-American settlers had wrought since entering the region, while also maintaining a claim to the land. The eight chiefs, representing about 1,000 persons, signed the treaty on August 20th, 1851.92

The Treaty made at Camp Lupiyyuma resembled the other seventeen treaties made by the Indian agents, except for the specific territory provisions. The eight articles listed the obligations of the Indian polities and the U.S. Government. Article 1 of all eighteen treaties, placed the Indians “under the exclusive jurisdiction, authority, and protection of the United States, and hereby bind themselves to refrain hereafter from the commission of all acts of hostility and aggression towards the government or citizens thereof.”93 With this extension of American authority it is clear that the Indian agents attempted to prevent challenges to American authority. Article 3, which stated, “The said tribes or bands hereby jointly and severally relinquish, cede, and forever quit claim to the United States, all their right, title, claim, or interest of any kind, which they or either of them have to lands or soil in California” nullified all possible Indigenous claims to the land and made way for Anglo-American settlement.94

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93 Treaty Made And Concluded At Camp Lu-Pi-Yu-Ma, At Clear Lake, State Of California, August 20, 1851, Between Redick Mckee, Indian Agent On The Part Of The United States, And The Chiefs, Captains And Head Men Of The Ca-La-Na-Po, Ha-Bi-Na-Po, Etc., Etc., Tribes Of Indians in The Eighteen Unratified Treaties Of 1851-1852 Between The California Indians And The United States Government edited by Robert Heizer (Berkeley : Archaeological Research Facility, Dept. of Anthropology, University of California, 1972), 82.
94 Ibid.
Rejecting Treaties

As treaties with sovereign nations, the eighteen treaties needed to be approved by the U.S. Senate. In the winter of 1851 – 1852, settlers in Shasta County, California, expressed disdain toward the Commissioners who “had given the Indians large bodies of the finest farming and mineral lands in the state.”\(^{95}\) Settlers sent letters to Washington D.C. with complaints that their claims were located within the new treaty boundaries and the land they had improved and cultivated would be unjustly lost without compensation. They also expressed offense that the Indian Agents ignored the financial and labor costs they had undertaken to locate minerals for the purpose of new Indian reservations.\(^{96}\)

Both houses of the California Legislature had voted down the treaties.\(^{97}\) A majority report prepared by a Special Committee of the California Senate accused the three Indian Agents of allocating the best mineral and agricultural lands in the state to “Indian tribes wholly incapable, by habit or taste, of appreciating its value.”\(^{98}\) According to the report, the treaties not only compromised white settlement in the state, it compromised the Republic. In a clear statement of the racial ideology that fueled settlement in California, the committee claimed that as the important frontier of the Pacific “it is indispensable that this State should be wholly occupied by a homogenous population, all contributing, by their character and occupation, to its strength and independence.”\(^{99}\) The Special Committee suggested an alternative policy and advocated

\(^{95}\) Stuart Banner, *Possessing the Pacific*, 184
\(^{96}\) *California Correspondence*, 272, 274.
\(^{97}\) “Majority and Minority Reports of the Special Committee to Inquire into the Treaties made by the United States Indian Commissioners with the Indians in California, *Journal of the Third Session of the Legislature of the State of California* (1852), 597 – 598.
\(^{98}\) Ibid
\(^{99}\) Ibid
for the “remov[al] of all Indian tribes beyond the limits of the state” in order to open the land for white settlement. After extensive quoting of President Andrew Jackson’s Second Annual Address, the Special Committees claimed state rights to convince the federal government to take appropriate action. In addition to proposing an alternative policy, the committee instructed the two California Senators in Congress to vote against the treaties and convince others to do the same. A vote against the treaties would extinguish all Indian land titles. Indian dispossession was a central aspect of creating California.

The Department of the Interior presented the treaties to the U.S. Senate on July 8, 1852. California Senators William Gwin and John B. Weller opposed the treaties. Before the treaties reached the Senate, Commissioner of Indian Affairs, Luke Lea, wrote the Secretary of the Department of the Interior, Alexander H. Stuart, warning of discontent with the treaties. According to Lea: “It was known that the delegation in Congress from California were opposed to the treaties, and that there was violent opposition to them in the legislature of that state, where they were undergoing investigation.”

On July 8, 1852, the U.S. Senate resolved to neither advise, nor consent to the treaties made by the Indian Agents. Again, American settlers convinced the federal government to nullify treaties. There is no record of the debate and the Senate filed the

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100 Ibid.
101 “Majority and Minority Reports of the Special Committee to Inquire into the Treaties made by the Unites States Indian Commissioners with the Indians in California,” 599 – 600.
102 “Majority and Minority Reports of the Special Committee to Inquire into the Treaties made by the Unites States Indian Commissioners with the Indians in California,” 601.
treaties into secrecy. By refusing to ratify the treaties, the U.S. Senate established *terra nullius* in California. By establishing *terra nullius*, the U.S. Congress made a destructive decision. Rejecting the treaties destroyed the basis of Indigenous treaty rights in California. California Indians are the only Indians in the U.S. who do not possess any treaty rights.105 This meant that independent Indian polities could not call on the government to prevent white encroachment and persecution.106 As a result, municipal militias would wage exterminatory wars against independent Indian polities, with state support, well into the 1870s. American settlers did not accept Indians as part of their current landscape and did not envision them as part of the future landscape of California.

**Racializing Land Ownership**

In January 1852, Henry Halleck wrote Pablo de la Guerra about the daily business of the Land Commission in San Francisco.107 Halleck, who had authored the damning report on Mexican private land grants, had co-founded a law firm – Peachy, Billings, and Halleck – to aid Californios in their efforts to maintain their landholdings.108 Perhaps, Halleck had a change of heart or realized a good opportunity when he saw one.109 Nonetheless, he served as Pablo de la Guerra’s lawyer.

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107 For more on Pablo de la Guerra, see Louise Pubols, *Father of All: the de la Guerra Family, Power, and Patriarchy in Mexican California* (Oakland: University of California Press, 2009).
108 As the military Secretary of State, Halleck had used his position to help Frederick Billings and A.C. Peachy establish themselves in California. When Billings arrived in San Francisco, Halleck pulled strings to get Billings appointed as the San Francisco Recorder and, later, the California Attorney General. When Peachy arrived in San Francisco, Halleck helped him get the position of notary public.
109 For an in-depth analysis of Halleck’s decision to provide counsel to Californios hoping to maintain their land grants, see Beverly E. Bastian, “I Heartily Regret That I Ever Touched a Title in California”: Henry Wager Halleck, the Californios, and the Clash of Legal Cultures,” *California History*, Vol. 72, No. 4 (Winter, 1993/1994), 310-323
According to Halleck, the Commission met every day but made little progress and had yet to render a decision.\textsuperscript{110} In addition to the slow pace of the Land Commission, Halleck informed de la Guerra that the squatters continued their efforts to wrestle land away from the Californios; now, they were writing letters with direct threats to individual commissioners.\textsuperscript{111} Along with these insights, the correspondence between Halleck and de la Guerra reveals how the lethargic Land Commission drove Californios into debt and how ideas of about land ownership contributed to the racialization of Californios.

By spring of 1853, the Land Commission had yet to deliver any decisions in relation to de la Guerra’s land claims, but de la Guerra already owed Halleck, Peachy & Billings two-thousand dollars.\textsuperscript{112} While de la Guerra was able to pay, other Californios mired in the Land Commission approval process, could not. The services provided by Peachy, Billings, and Halleck ranged from $50 to $1,500 per case in a state where a pound of beef cost $.20 per pound.\textsuperscript{113} In letters, Halleck often complained about Californio claimants’ inability to pay and attributed their insolvency to an inherent inferiority, rather than his exorbitant fees.\textsuperscript{114} Additionally, Halleck often exploited his relationship with de la Guerra to collect payments from other Californios. In letters, he sometimes demanded that de la Guerra speak with other Californios about payments.

In addition to late payments, Halleck was particularly frustrated with the testimonies Californios provided to the Land Commission. In one letter, he condemned a Padre Jimeno for providing contradictory evidence. He seemed unmoved by the fact that

\textsuperscript{110} Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, January 29, 1852.
\textsuperscript{111} Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, January 29, 1852.
\textsuperscript{112} An 1852 fee of $2,000 would equal $64,405 today. Guerra Family, Box 11, Halleck, Peachy, & Billings, Receipt, May 27, 1853.
\textsuperscript{113} John Marszalek, \textit{Commander of All Lincoln’s Armies}, 78.
\textsuperscript{114} Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, May 28, 1853.
Commission hearings and evidence gathering occurred in English. By criticizing Californios use of Spanish, Halleck marked Californios as inferior on a cultural and linguistic basis.

In another letter, Halleck blamed de la Guerra for his unconfirmed grants. According to Halleck, the lack of confirmation was due to de la Guerra’s

“own “lazynous” [sic] first in not proceeding accordingly to your own laws in making their grants, and in the second place by making false and antedated papers, and then swearing to them. I know that there are numerous false and forged papers present to the commissioners and sworn to by some of the honorable ex-officials of the Mexican government in California.”

In this letter, by accusing Californios of laziness and corrupt behavior, Halleck marked Californios as inferior.

Months earlier, Halleck had presciently written to de la Guerra that Gwin’s bill was “nonsense” because every man who brought a claim to the Land Commission would “inevitably lose his land.” Yet in his letters, Halleck blamed Californios and their alleged incompetence for the outcomes. In this and many other letters between the two, Halleck often attributed the perceived shortcomings and growing debt of Californios to an inherent laziness, ineptitude, and corruption. Halleck’s accusations enforced notions of Californio racial incompetence, especially when it came to assuming the role of a landholder.

In April 1853, it seemed that de la Guerra would receive a decision for Rancho El Conejo and Rancho Simi, when according to Halleck, “the wheels [were] blocked again

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115 Emphasis original. Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, May 23, 1853
116 Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, March 15, 1853.
for 5 months at least!” Back in D.C., Senators William Gwin and John Weller, both representing California, called for the removal of the current commissioners and the nomination of new commissioners. Halleck wrote that Gwin called for new commissioners to “produce delay.” According to Halleck, the delay was part of a larger scheme to transform Southern California into a separate state that allowed for slavery and a different property regime. Gwin and other white Southerners, according to Halleck, wanted to change the constitution and create a land system that transformed ranchos into private property parcels available for settlement and purchase by Anglo-Americans who would establish slavery in the region. Halleck, perhaps aware that Californios like Pío Pico supported the split for different reasons, warned de la Guerra that the movement did not serve his interests. Halleck’s message was clear: “the squatters support the convention [and] a new constitution to support their squatter claims.”

In the last months of 1853, the new Land Commission rejected at least half of the petitions. In November, Halleck expressed surprise about the rejected claim of Rancho El Rincon – a grant that “met all the requisites.” De la Guerra appealed the decision, and many others. More than twenty years after filing petitions, de la Guerra received the patent to Rancho El Conejo and Rancho Simi. De la Guerra wrote to Halleck about the status of his remaining claims until his death in 1874. Halleck would often respond that de la Guerra’s incompetence caused the delay.

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117 Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, April, 1853.
118 Ibid.
119 Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, April 1853.
120 Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, August 23, 1853, October 19, 1853, October 26, 1853, November 19, 1853, November 22, 1853, December 4, 1853.
121 Guerra Family, Box 11, Henry Halleck to Pablo de la Guerra, November 22, 1853.

The family would eventually receive the patent to El Rincon in 1873, more than twenty years after filing the petition. Eventually, de la Guerra’s heirs would have to sell the Rancho during hard financial times.
The 1851 Land Act was a legislative tool of colonization. Even though the Act violated the Treaty of Guadalupe Hidalgo, it did not spark resistance from propertied treaty citizens. Because Californios wanted to protect the land that provided them with privileges and power, they submitted to the confirmation process. The U.S. government realized, if Californios abandoned their ranchos or revolted, especially in Southern California where Anglo-American migrants had yet to settle *en masse*, it would be difficult for the United States to maintain control of the territory. Without a legion of elite Californios to administer U.S. authority, the American claim meant nothing. As such, Californios were entrusted with local political positions, especially in Southern California. By entrapping Californios in an illegal, expensive process, that on average took seventeen years, the U.S. Government ensured the American administration of a territory not completely conquered. The Land Commission, in part, transformed Californios into “colonized colonizers” because the approval process forced Californios to actively self-colonize by facilitating their colonization while attempting to assert their role as colonizers in the region.122

Like Californio men, Californiana women were contemptuous of the U.S. conquest and attempted to find ways to avoid assimilation to the new regime. The Vallejo family exemplifies this defiance. In a letter written by Mariano Guadalupe Vallejo, the patriarch of the Vallejo family, to his daughter in 1878, he reflected on the Land Commission process. He wrote: “It requires a lot of work and money that I don’t have to locate [witnesses] and afterwards to pay for notarized affidavits and English translations

for each one.”

In a testimonio given in 1874, Rosalio Vallejo, sister of Vallejo, declared, “Since I have not wanted to have anything to do with them [the Americans], I have refused to learn their language.”

When non-elite Californianas talk about the transition to an American government, they all mention the loss of property. Dortea Valdez, a servant to the Vallejo family, lamented the seizure of communal land. According to Valdez:

“When the pueblo owned the land currently owned by David Jacks, people could just go out and gather the wood they needed. Our horses and cattle could graze everywhere and nobody every bothered them. Ever since this evil man obtained possession of our land, he has placed fences everywhere. [...] Señor Jacks is a natural-born enemy of everything related to our history.”

Valdez’s testimony gives us an important glimpse into non-elite Californiana associations with land. Like the elite Californios who used the land to sustain their livelihood and construct their power, non-elite Californios depended on pueblo land for sustenance. By transforming pueblo land into colonial private property, Americans destroyed the basis of Californio identity. This destruction had many repercussions. First, it moved people like Valdez into the free labor market – they could no longer rely on the land to provide the basics necessities of life and made it more difficult to live outside American society. Second, although Valdez did not personally own the pueblo land, she possessed a certain communal ownership over the land. This property relationship differentiated her from

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123 M.G. Vallejo to Maria, 21 February 1878, Vallejo Family Papers, Bancroft Library. Original text: “Me cuesta mucho trabajo, y dinero que no tengo, para buscarlos en todas partes; y después pagan los ‘affedevits’ al notario de cada uno de ellos, traducirlos, al inglés.”
125 Dortea Valdez testimonio taken on June 27, 1874 by Henry Cerati. Reprinted in Testimonios: Early California through the Eyes of Women, 1815 - 1848.

As María Montoya’s work on New Mexico demonstrates, “the U.S. federal government’s territorial system, through the executive, congressional, and judiciary branches, succeeded in eliminating most aspects of Mexico’s legal system and property regimes.”\footnote{127 María Montoya, \textit{Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840-1900}, (Berkeley: University of California Press, 2002), 4.} Like New Mexico, in California, the Mexican property regime and Indigenous land relations were subsumed by a developing U.S. property regime premised upon private property and public domain. Unlike New Mexico, in California, the Anglo-American land grab happened quickly because of the 1851 Land Act, mass migration, and state taxes.

The California legislature created a governing system that depended on taxes to implement laws and run the state government. State legislators designed a tax system that disrupted non-elite Californios claims to land, such as the 1850 Foreign Miners’ Tax. During the Gold Rush, Anglo-American miners were upset that ‘foreigners’ struck it rich in the mines. So again, legislators accommodated the settlers by instituting a monthly tax
that targeted immigrants from Mexico, Latin America, and China. The tax was enforced at the discretion of a tax collector. As a result, tax collectors targeted non-elite, mestizo Californios, despite their status as treaty citizens, and Chinese miners. The Foreign Miners Tax and Valdez’ testimony demonstrate that American legislators and settlers believed non-white persons were incapable of adequate land ownership and ineligible to extract sustenance or wealth from the land.

California legislatures created a state in which, the financial solvency and administrative success of the state depended upon transforming “wild regions” into taxable land, like agricultural or mining zones. In 1850, Governor John Bigler addressed the California Senate on the matter. According to Governor Bigler, the administration of the state would cost at least $500,000 a year and provided two possible options for funding – loans or taxation. Loans were out of the question, so Bigler proposed implementing poll and property taxes. In a speech, Bigler acknowledged that he understood that this tax policy would hurt Californios who held land claims, stating:

“That portion of our people resident in California before its session to the United States, have not been accustomed to a system of direct taxation; and being the principal owners of the landed property of the country, may not at first understand the justice or necessity of the revenue system[.]”

Bigler knew the policy would detrimentally affect Californios, but still defended the policy, stating that the Californios would eventually see that taxes as non-discriminatory and that they applied to property owners equally.

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128 “Governor’s Message,” Journal of the Senate of the State of California. (California Senate, 1850), 30 – 41.
129 “Governor’s Message,” 35.
Encounters with the Land Commission

The Anglo-American experience with the U.S. Land Commission differed greatly from that of the Californio experience. As mentioned earlier in the chapter, John C. Frémont held the grant to Rancho Las Mariposas, located in the foothills of the Sierra Nevada Mountains in central California. Originally granted to former governor Juan Alvarado, Frémont sent businessman Thomas Larkin (one of the signers of the 1849 California Constitution) to buy a rancho near Mission San José after the conclusion of the Bear Flag Revolt. For unknown reasons, Larkin bought Rancho Las Mariposas, which was located in an unsettled area of Alta California. For centuries, Indigenous Peoples prevented Spanish and Mexican colonization of this region with the continuous execution of raids on attempted settlements. Frémont tried to return the seemingly worthless land to no avail.

In 1848, gold was discovered in the Mariposa region, and the rancho became a huge payout for Frémont. The original Alvarado grant was a “floating grant,” meaning its boundaries were not clearly stated and would be determined by the grantee. Given the discovery of gold, Anglo-American squatters overran Las Mariposas hoping to make a fortune in the mines and under the assumption that as a Mexican land grant, Rancho Las Mariposas belonged to no one. Taking advantage of the floating provision of the grant, Frémont moved the boundaries to include the gold mine, which he leased out to Palmer,

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130 In this section, I use the California Land Cases Collection, which include all Mexican documents in their original Spanish and copies translated into English. I translated the Spanish documents, but at times legibility was an issue. When this occurred, I cross-referenced with the English documents. Although I do not list both Spanish and English documents in each citation, both were used to verify the content of each source.

Cook, and Company – a group of San Francisco bankers who organized the Mariposa County Mining Company.

As required by the 1851 Land Act, Frémont brought his grant to the Land Commission on January 21st, 1852.\footnote{His wife’s brother-in-law and author of the alternative land report, William Carey Jones, served as his lawyer.} Frémont used his connections and the Land Commission heard the Mariposas case first.\footnote{Paul Gates, \textit{Land and Law in California}, 75 - 76} On December 27th, 1852, the Commission confirmed the grant to an extent of ten leagues. The U.S. District Court soon reversed the ruling. Frémont’s lawyers immediately appealed. On September 23rd, 1853, the Attorney General announced that the U.S. would appeal the decision of the lower court. In 1854, the Supreme Court rendered a decision, written by Chief Justice Robert Taney, which affected all Mexican land grants in California. The decision added to a body of property law already established to resolve the issues of Spanish and French land grants in Florida and Louisiana.

As the first land claims case, the decision of \textit{Fremont v U.S.}, \textit{58 U.S. 542 (1854)} established precedent for determining the validity of private Mexican land claims under the Land Commission process. According to Taney’s opinion, the court first needed to determine if the decisions made in relation to land titles in Louisiana and Florida, applied to California land titles. In order to determine this, Taney detailed two questions that needed to be answered. One, did the grant vest present and immediate interest in the original grantee? And two, did the original grantee do anything or not do anything that divested them of interest? According to Taney, the original grantee, Juan B. Alvarado was given present and immediate interest in Rancho Las Mariposas when the Alta
California governor granted him the land for his military service, to provide for his family, and for the purpose of organizing colonization.

Taney then dealt with the issue of whether or not Frémont improved or and consecutively occupied the land in accordance with the 1824 Colonization Act. According to Taney, Alvarado did not falter when he did not permanently occupy the land or when he sold the grant to Frémont. Neither Alvarado, nor Frémont cultivated the land or built a house within a year of the grant being issued; in fact, the grant was not ‘settled’ until 1849. Given that the purpose of these grants was to colonize and settle the region, the court concluded that there was no government policy – Mexican or American – “would justify the court in declaring the land forfeited to the government, [if] no other person sought to appropriate them, and their performance had not been unreasonably delayed.”

Thus, the court needed to determine, was there a reasonable reason for a delay in meeting the conditions of the grant?

In the petition to the commission, Frémont asserted the validity of the floating claim on the premise that Governor Miguel Micheltorena did not list the exact boundaries for the rancho because it was located on “land lying in a wilderness country, on the confines of the wild Indians.” Given the proximity to independent Indian polities, Alvarado and Frémont practiced a reasonable delay in meeting the conditions of the grant. As such, the governor did not expect the grantee to take full possession of the land “until the state of the country would permit it to be done with some degree of safety.”

According to Taney, under Mexican rule the region was so consumed by political

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134 *Fremont v. United States*, 58 U.S. 542 (1854)
135 John C. Frémont, Las Mariposas (Mariposas Co.), California Land Cases Collection, The Huntington Library, San Marino, California.
136 Ibid.
turbulence that it was not until the American conquest that a grantee could take possession of the land. In explaining how the American conquest brought peace to the region, Taney bolstered the ideas that only Americans could civilize the frontier. Taney implied, Californios were not capable colonizers. On these grounds, the U.S. Supreme Court affirmed the grant.

Frémont received his land patent on February 10, 1856, just four years after he petitioned the Land Commission. Upon receiving his patent, Frémont evicted the squatters on Las Mariposas without any compensation for the work they had completed for mining infrastructure on the rancho. The Frémont case altered the U.S. property regime by maintaining aspects of the Mexican property regime – the floating grant – in order to protect the group of Anglo-American settlements that contributed to the removal of autonomous Indian polities. Frémont’s possession of this grant not only removed the Indigenous from the land, but also bolstered the myth the Californios were inadequate stewards of the land because, unlike Americans, they had been unable to transform the land into taxable and profitable property.

Californio and treaty citizen Pío Pico, who served as the last Governor of Alta California, brought many claims to the Land Commission, however, his experience differed from that of Frémont’s. As a member of the Californio elite, Pico’s landholdings shaped his Californio power and identity. His legal struggle to maintain Rancho Santa Margarita reveals how the legal process of the Land Commission contributed to the establishment of terra nullius.

137 Fremont v. United States.
138 Tamara Venit Shelton, A Squatters’ Republic, 46 – 47.
As the last governor of Alta California, Pío Pico had fled to Baja California in the wake of the U.S.-Mexican War to ask the Mexican Congress to send more troops to Alta California. Pico returned to Alta California in 1848, when the U.S. military briefly arrested him as a traitor to the U.S. government. Under American rule, Pico continued to seek political power, to pursue his business endeavors, and maintain his elite status in Southern California where Californios remained in positions of power. In Los Angeles, Californios and Anglo-Americans knew him as an advocate for Californio property rights and a socialite who threw magnificent parties.

In the 1850s, Anglo-Americans in Southern California gladly attended his large social fêtes but found his apparent ‘Africanness’ in combination with his wealth and power problematic. They interrogated and critiqued his practice of power whenever the opportunity presented itself. During the U.S.-Mexican War, a U.S. Colonel, J.D. Stevenson, described Pico as “about five feet seven inches, corpulent, very dark, with strongly marked African features” in a correspondence to Military Governor Richard B. Mason. After the war, American officials tended to accuse him of being illiterate.

Similar to accusations made against Pablo de la Guerra, these accusations of illiteracy contributed to the racialization of Californios as inept and uncivilized according to an assumed non-mastery of the English language. In Pico’s case, the accusation of illiteracy served to debunk his ability to serve as a competent land owner and as a capable governor that could have issued legitimate land grants. A San Francisco land claim lawyer, Isaac Hartman called Pico a “corrupt, non-English speaking, negroid, dwarfist”

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139 Ibid.
when Pico had spoken out against a San Francisco court stripping the right to testify from Californios.\textsuperscript{141} As governor of Alta California, Pico issued one-hundred-and-forty-six land grants. Altogether, the grants consisted of 2.54 million acres of land. However, Pico granted less acreage overall than previous governors.\textsuperscript{142} Nonetheless, the Land Commission viewed the Pico-issued grants with great suspicion and as last-ditch attempts to thwart American land ownership.

On March 2, 1853, Pío Pico filed a petition requesting a patent for the land grant known as Rancho Santa Margarita with the U.S. Land Commission.\textsuperscript{143} While the U.S. Supreme Court confirmed the grant to Pico on July 25\textsuperscript{th} 1867, fourteen years after filing, the court proceedings reveal the colonial logic inherent to the Land Commission process. According to the commissioners, in order to provide a patent, they needed to determine whether or not Pico stole the land from the San Luis Rey Mission Indians. According to my research, the community of Indians referred to as San Luis Rey Mission Indians were the Temecula Band of Luiseño Indians; while archival sources identify them by their Mission affiliation, I will refer to them as the Luiseño.

According to the petition prepared by lawyer Eugene Cassidy, in 1841, Governor Juan B. Alvarado, approved a request from Pío Pico requesting the lands known as Rancho San Onofre y Santa Margarita. Governor Alvarado approved the request. Three years later, Pico acquired by purchase, Los Flores, a pueblo within the Rancho. The

\textsuperscript{141} I discuss this episode at length in depth in chapter four and the racialization of the Spanish language in chapter five and the conclusion.


\textsuperscript{143} Pio Pico and et al, Santa Margarita y las Flores (San Diego Co.), California Land Cases Collection, The Huntington Library, San Marino, California.
petition does not name the sellers from whom Pico purchased the land but proclaims that records can be found in the archive.

During the initial presentation of witness testimony, Mr. Greenway, the U.S. law agent, attempted to prove the grant fraudulent in two ways. One, that Pico did not improve or consecutively occupy the land in accordance with the 1824 Colonization Act. Two, that he unlawfully stole the land from the Luiseño. As in most land claims cases, the U.S. law agents rejected the petition on the basis that the petitioner, Pico, had not improved or occupied the land, as mandated by the Colonization Act. This strategy contributed to the idea that Californios had been unable to colonize the region. The strategy of proving that Pico had stolen the land from the Luiseño is surprising considering the status of Indigenous land rights throughout the history of California and the United States.

In an effort to prove the legitimacy of his claim, Pico had many witnesses – J.J. Warner, John Clark Forester, Brijido Morilla, Santiago Argüello, and Juan B. Alvarado – offer testimony. J.J. Warner served as the first witness. Mr. Greenway asked Warner about Indian residents on the Rancho. According to Warner the Rancho “belong[ed] to the Mission San Luis Rey and was occupied by Indians belonging to the Mission.” Around 1834, the Luiseño Indians separated from the Mission and received livestock, farming tools, and ex-mission lands from the government. According to Warner, they

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144 Warner migrated to Alta California from Connecticut by way of St. Louis, Missouri. In Alta California, Warner became a naturalized Mexican citizen after marrying Anita Gale, a Mexican citizen, and changed his name from Jonathan Trumbell Warner to Juan José Warner. In 1844, Warner received the Rancho San Jose del Valle from Governor Manuel Micheltorena. Warner is known for establishing Warner’s Ranch, an important stop for emigrants on the Southern Emigrant Trail, the southern immigration trail into California.

145 Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection, 8.
continued to occupy the lands.”

Warner then clarified that the Indians did not belong to Pico and that they had sold all their interest in the property, but some remained living in a village on Rancho Santa Margarita.

When Senator Gwin presented the Land Act to the Senate, he deceitfully stated that the Mexican Republic did not respect Indian land rights in order to rationalize the fact that his 1851 Land Act bill ignored the possibility of Indigenous land ownership under the grant system. Under the Mexican system, Indians could legally claim land; some Indians owned Ranchos on which Indigenous communities lived. Research that Henry Halleck conducted as a lawyer representing land grant petitioners confirmed this. Perhaps because of Senator Gwin’s denial or because of their conceptions of legitimate property owners, the land commissioners did not understand the process by which an Indigenous person could receive a land grant.

Santiago Argüello, a soldier who served in Mexican Presidios throughout Alta California and as the sub-prefect of San Diego in 1844, testified in order to clarify the terms of sale between Pico and band of the Luiseño Indians. According to Argüello, in 1844 Pico purchased the land that lie east of the Rancho from the Indians. When pressed for details, he clarified:

“[Pico] purchased the land from the Indians under the Authority of the Alcalde of Los Angeles and consent of the Governor Micheltorena on the 8th of October in the year of 1844, those lands at the time of

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146 Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection, 8 – 9.
147 Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection, 9 – 10.
148 Congressional Globe, 31st Cong., 1st sess., 1816
150 Congressional Globe, 31st Cong., 1st sess., 1816
purchase [were] a pueblo occupied by the Indians of the Mission San Luis Rey.”

As a sub prefect of San Diego, he had approved the papers and terms of the property transaction. The U.S. Law Agent asked for clarification, “What kind of title could an Indian have?” According to Argüello, the Indians had no title, but Governor José Figueroa founded the Pueblo of Los Flores for the distinguished and industrious families of the Mission Indians of San Luis Rey during the secularization period on the condition that they improve the land and keep possession of the land for at least three to four years. To which the Law Agent asked, “Was it normal for Indians to possess land titles and to sell such land titles in Alta California?” Argüello said “yes,” and that in this particular case, the Indians were satisfied. According to Argüello, Pico had acted in the utmost accordance of the law and in the interest of both parties.

In reality, the transfer of land between the Luiseño did not uphold their land rights. Around 1835, Pío Pico became the administrator of Mission San Luis Rey. As an administrator, he used his power to claim ex-Mission lands occupied by the Luiseño. In 1841, Pico received a provisional grant to Rancho Temecula. In protest, the Luiseño sent a delegation to Los Angeles under the leadership of Pablo Apis. Despite the protests, Pico received the land grant from Governor Miguel Micheltorena. The Alta California government did not recognize the rights of the Luiseño when they did not serve the interests of Californio colonial entrepreneurs.

151 Testimony of Santiago Argüello, Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection.
152 Testimony of Santiago Argüello in Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection.
In 1843, Mission San Luis Rey came under the administration of Father Jose Maria Zalvidea who granted Pablo Apis, the leader of the Luiseño in Temecula, a land grant known as Rancho Santa Margarita, which included the Temecula village within its boundaries. As Pico attempted to improve and occupy the land of his land grant, the Luiseño made it difficult for his cattle to graze. Confronted with resistance, Pico proposed to the Government of Alta California that the two parties exchange their Ranchos because the “Indians will be better suited to Temecula” and that he was better suited to improve the lands of Rancho Santa Margarita.

Pico met with representatives of the Temecula Pueblo and San Diego and Los Angeles alcaldes. The Los Angeles alcalde, Juan Sepúlveda approved the terms of a trade. By order of the government, the land was surveyed in 1841, and it was determined that in addition to trading Ranchos, Pico would pay the Luiseños $3,300 in cattle for the improvements they had made to the Temecula Pueblo, which housed thirty-two family dwellings and had access to drinking water. Upon receiving the approval of Sepúlveda, Pico paid the Luiseño in cattle and the transaction was complete.

Both counsel teams never collected the testimony of the Luiseño living in the pueblo or on Rancho Temecula. Henry Hancock, an Anglo-American lawyer who surveyed Ranchos for the U.S. Government, reveals that two men, Andreas Fermín and Ravicito, acted as representatives of the Indians during the time of the land transaction. The Land Commission did not solicit their testimony, even though Hancock stated that

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154 Ibid.
155 Exhibit No. 2, in Pío Pico and et al, Santa Margarita y las Flores, California Land Cases Collection.
they still lived in the village.\textsuperscript{156} While it was against California law for Indians to testify against a white man in court, the absence of evidence provided by Luiseño landowners demonstrates that the U.S. government was not preoccupied with the land rights of the Indigenous.\textsuperscript{157}

Although Pico obtained the land patent in 1867, this process contributed to the establishment of \textit{terra nullius} because Pico’s land title did not gain legal legitimacy until approved by the Commission. Unlike Frémont’s case, Pico’s case languished in the approval process for years. By challenging Californio claims to the lands they had colonized, the U.S. Land Commission also dealt a blow to an essential aspect of the Californio identity – that of a colonizer – and perpetuated the idea that Californios were unlawful occupiers and incompetent stewards of the land. All the while, the federal and state governments relied on Californios to occupy the territory and to administer American authority.\textsuperscript{158}

As demonstrated in the Rancho Santa Margarita case, it was not an unusual or uncommon occurrence for an Indigenous person to receive a land title in Alta California. On October 8, 1852, Californio, Vicente de la Osa, and Tongva Indians, Aquila, Francisco, and Rita, filed a petition prepared by Scott Granger for Rancho Los Encinos with the U.S. Land Commission.\textsuperscript{159} According to the original land grant, Roman and Francisco, Tongva Indians from the San Fernando Mission, and Roque, a Tongva Indian

\begin{itemize}
\item[\textsuperscript{156}] In the testimony of Juan Forester, implies that the Indians who approved the agreement and who knew of the deal were living in the pueblo or on Rancho Temecula.
\item[\textsuperscript{157}] \textit{Statutes of California} 1850, ch. 133, “An Act for the Government and Protection of Indians,” passed April 22, 1850.
\item[\textsuperscript{158}] For a different take on this, see Rosina Lozano, \textit{American Language}, 39
\item[\textsuperscript{159}] Vicente de la Osa, et al., Rancho Los Encinos (Los Angeles Co.), California Land Cases Collection, Huntington Library, 2.
\end{itemize}
from the Santa Barbara Mission petitioned Governor Pío Pico for the lands known as “Encino” for the benefit of their families in 1845.\textsuperscript{160} Prior to petitioning Governor Pico, the three men had occupied the land according to a verbal agreement made with authorities of the San Fernando Mission and the Los Angeles Alcalde, Juan Sepúlveda. Sepúlveda approved the grant and nominated Guillermo Navarro and Jose Marea Dominguez as guardians of the men and their title.\textsuperscript{161} Guardianship was one of the ways an Indigenous person could lawfully claim land in Alta California. Governor Pío Pico confirmed the grant on July 24, 1845 because the petitioners had improved the land and met the requirements of judicial guardianship\textsuperscript{162} In 1849, Vicente de la Osa bought Roman’s one-third share of the property. It appears that de la Osa and Roman, Francisco, and their families coexisted on the Rancho.

Much like the Rancho Santa Margarita Case, the U.S. Law Agent asked questions about the legality and process of Indian land ownership under the Mexican Republic. Californios, like Agústin Olvera, Saturnino Reyes, and J. J. Warner provided testimony in this case. In his deposition, Saturnino Reyes, a vaquero or ‘horseman,’ clarified how the three men obtained a land title for the U.S. Law Agent.\textsuperscript{163} Around 1840, Tiburcio, a Tongva Indian occupied the land that belonged to the San Fernando Mission. Reyes declared that Tiburcio “lived on [the Rancho] & cultivated the ground and had forty or

\textsuperscript{160} Vicente de la Osa, et al., Rancho Los Encinos, 15.
\textsuperscript{161} John Kielbasa, \textit{Historic Adobes of Los Angeles County} (Pittsburgh, PA: Dorrance Pub, 1997,) 34.
\textsuperscript{162} Ibid.
\textsuperscript{163} Year: 1860; Census Place: \textit{Los Angeles, Los Angeles, California}; Roll: \textit{M653_59}; Page: 369; Family History Library Film: 803059.
fifty head of cattle.”

Romano, Francisco, Roque and their families lived with Tiburcio on the Rancho until and after his death.

In an effort to deny the confirmation of the land grant patent, the U.S. law agents attempted to prove non-compliance with legal procedure. In 1854, the Commission asked Juan Sepúlveda to confirm the legitimacy of the title because the lack of grantee signatures. Sepúlveda explained, according to Mexican Colonization law, Indians could not sign legal documents and that the appointed guardians, Guillermo Navarro and Jose Morea Dominguez, approved the title as was the normal procedure.

Given that the claimants and the law officials involved adhered to appropriate procedure, the Rancho was a complete and lawful grant according to Mexican colonization law. On March 20, 1855, the Land Commission approved the petition on three points. One, Pío Pico granted Roman, Francisco, and Roque the title to Rancho Los Encinos. Two, judicial guardianship was met. Three, the grantees cultivated the land.

Despite granting a land patent to two Tongva persons, the Land Commission was not concerned with honoring Indigenous land rights. In Los Angeles County, non-elite Californios and Indigenous laborers demonstrated anti-American sentiment. Anglo-American migrants from Southern States dreamed of splitting California in two and establishing a Southern California Territory that allowed for slavery. Elite Californios also dreamed of splitting the state into two; however, they hoped a Southern California Territory would mean less interference by the federal government and the preservation of

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164 Vicente de la Osa, et al., Rancho Los Encinos, 7.
165 Ibid., 33.
the institutions that were the basis of their power. As such, this confirmation contributed to American control of the territory by ensuring the allegiance of a treaty citizen to a colonial system that slowly chipped away at the protections guaranteed by the Treaty of Guadalupe Hidalgo. However, in order to do this, the Commission ignored the prohibition on Indigenous claims, which empowered the Tongva petitioners to steer the Land Commission process in their favor.

Although the U.S. Government honored Indigenous land rights in this instance, the nature by which they were upheld did not contradict expansionist ideas or the racialization of California Indians. The Mexican and U.S. governments approved the title because the Indigenous petitioners had sufficiently assimilated to the colonial culture—they ‘cultivated and improved’ the land and did not outwardly challenge colonial authority. Furthermore, the requirement of a guardian perpetuated the myth of racial inferiority and upheld the denial of full citizenship rights.

In Alta California, women could own land, despite the existence of a patriarchal society, because the legal system of coverture did not exist in the Mexican Republic as it did in the U.S. A woman could own, sell, lease and bequeath property without her husband’s approval.167 The ability for women to own property was especially important to the colonization of Alta California – when men died, the occupation of a rancho became the purview of women. Section 14 of the California Constitution protected the property rights of married women, because it contributed to the colonial project.168

168 The text of Section 14 of the 1849 California Constitution reads as follows: “All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the
When Californianas brought land claims cases to the Commission, the U.S. questioned their aptitude as colonizers on the basis of race and gender. One such Californiana was Ysabel Yorba. Yorba came from a family with a deep colonial history in California. Her father José Antonio Yorba, originally from Spain, helped colonize the region before settling in San Diego, where Ysabel Yorba was born. In 1805, Ysabel Yorba married José Joaquín Maitorena, a Lieutenant in the Spanish Army. Maitorena died while on duty in another Mexican state. Yorba submitted a land grant petition to Governor Mariano Chico as recompense for her husband’s military service. On July 5th, 1836, Governor Chico granted Yorba Rancho Guadalasca, located just beyond the Santa Barbara Mission. In 1837, Governor Alvarado confirmed the grant.

On February 9, 1852, Ysabel Yorba brought her claim to Rancho Guadalasca to the Land Commission with the legal assistance of Halleck, Peachy, and Billings. The petition argued that a land grant received as compensation for a husband’s military service was legitimate. As proof that Yorba had adequately colonized the land in addition to receiving a valid land grant, Halleck, Peachy, and Billings included her petition to Governor Chico. The petition explained her need for land. It read: “That being the owner of 500 head of cattle, and 40 head of broken horses, and some mares, and having no place for said stock…”

In the initial case, Yorba had two witnesses – Pablo de la Guerra and Andres Pico. Pablo de la Guerra served as Yorba’s first witness. In addition to confirming the signature

170 Ysabel Yorba, Guadalasca Rancho (Santa Barbara Co.) Case 31., California Land Cases Collection, Huntington Library.
171 California State Archives, Expediente Diseno April 14, 1836.
of Governor Alvarado, de la Guerra confirmed that Yorba had used the land for cattle grazing and that she had occupied the land for as long as he could remember. De la Guerra also confirmed that the land lay ten leagues from the sea. The next witness, Andres Pico, confirmed that Yorba had occupied the land since 1836 – the same year Yorba received the grant – and when he visited in 1840, a house existed on the property.

On April 25, 1854, the Land Commission delivered its opinion. The commissioners denied the claim on two points. One, that Yorba did not cultivate the land until 1840. The Commissioners wrote that there was neither evidence of a house, nor evidence of land cultivation. The Commissioners’ ignored or did not believe Andres Pico’s statement that, “she [Yorba] first occupied it in 1836 with Cattle and horses; she did not have a house on it then, but when I was there again in 1840 she had a house on it. She still occupies it.” When compared to the Frémont, Pico, and de la Osa cases, the claims of cultivation were not questioned in the same manner. Was it because of their gendered conceptions of land cultivation? The second reason, according to the Commissioners, was the “absence of all proof defining its boundaries, or giving it a location and limits.” The delineation of boundaries provided by a grant map did not satisfy the Commissioners because it did not provide the identity of the notary. A notary had drawn the map according to American practices. It was not a diseño and, still, the

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172 Ysabel Yorba. Guadalasca Rancho.
173 Ibid.
174 There were the commissioners that Senator William Gwin installed in 1852. According to Halleck, they denied claims despite being a complete grant.
175 Southern District Court Number 177, Commission Case Number (Hoffman): 31 Land grants: Guadalasca (Santa Barbara Co.), Claimant: Isabel (Yorba) [Maitorena], California Land Cases Collection, The Huntington Library, San Marino, California.
Commission did not accept it as evidence. While the Commission accepted the non-boundaries of a floating grant in the Frémont case, in this case, they did not accept a map drawn with distinct boundaries by an American notary.

Yorba appealed her case to the U.S. District Court. The U.S. District Court heard her appeal two years later. In her appeal, Halleck introduced new testimony of Bernardino Lugo, a rancho worker, and Ignacio del Valle. According to Lugo the rancho had “been occupied by the claimant Dona Ysabel since the 29th of the year 1836 [...] with House, Corral, horses and about 300 head of cattle.”177 During cross-examination, the U.S. law agents questioned Lugo’s memory – How could he know the exact date? To which Lugo replied that he remembered because Yorba employed him to organize the grazing of cattle on the property.

On September 27, 1856, the U.S. District Court ruled that an “appeal will not be presented by the United States” and “the claimant is therefore entitled to a confirmation and a decree will be entered accordingly.”178 Yorba did not receive her patent until 1873. Once granted the patent, Yorba sold the land to William Richard Broome for $28,000 in gold coin. Given that Pablo de la Guerra incurred $2,000 in fees the span of three months, Yorba’s fees must have been in the tens of thousands. After a two-decades-long fight, like many other Californios, Yorba sold her rancho to pay off the debt she incurred attempting to maintain it.

What should we make of Yorba’s encounter with the Land Commission? The case file proves that the commissioners had a harder time believing that Yorba cultivated the

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177 Guadalasca Rancho (Santa Barbara Co.) Case 31. Halleck, Peachy & Billings Records, The Huntington Library, San Marino, California, 44.
178 Ibid.
land. Was this because of gender? When we look at the four cases together, Yorba had to provide the most proof of cultivation. Of the four, John C. Frémont was the only claimant that navigated the process with ease.

The Land Commission slowly drove Californios into debt. In addition to nullifying the provisions of the Treaty of Guadalupe Hidalgo, the 1851 Land began to transform California into a *terra nullius* space because it invalidated the property rights of treaty citizens as guaranteed by Article IX of the Treaty of Guadalupe Hidalgo, unless affirmed by the U.S. government. Additionally, the act contributed to the racialization of Californios by perpetuating the myth that they were insufficient colonizers and illegal occupiers. These ideas had social, political, and economic repercussions, which I will discuss in-depth in subsequent chapters.

**Attempts to Obstruct U.S. Colonialization**

Those seeking to transform California into an American space not only had to contend with and discredit Indigenous and Mexican property relations, but also with the Indigenous and Californio resistance against the American property regime. The Resistance continued throughout the 1850s because American governance of the state was not a forgone conclusion. The Pomo attack on the Anglo-American settlers in November 1853 mentioned at the beginning of this chapter was not the only instance of armed resistance against a system that had stripped Indians of their land and rights.

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179 In my research, I came across multiple cases in which Californio women had an unofficial higher stand of proof for land cultivation. One such case was María Jesús Cota, Santa Rosa (Santa Barbara Co.), California Land Cases Collection, The Huntington Library, San Marino, California.
In 1855, elite Californios of Los Angeles organized to protect their land claims and to uphold the treaty of Guadalupe Hidalgo. A group led by Abel Stearns, an American who had lived in Alta California since 1829 and had married into a prominent Californio family, created a *Suscripción* (Subscription) to fund lawyers working for near-bankrupt Californio land claimants. Although born in Massachusetts, Stearns saw himself as a Californio. Having been a member of Californio society for over twenty years, he thought of the Californio struggle to maintain land as his own and of his community. Stearns donated $500 to the fund. Among the other donors were: Pío Pico, J. J. Workman, Juan Clark Forester, Manuel Dominguez, Jose Sepúlveda, Jose Antonio Aguirre, Juan Avila, Ricardo Bojar, Enrique (known as Henry when speaking to English-speakers) Dalton, Ignacio Del Valle, Agustín Olvera, and Benito (known as Benjamin to the U.S. government) Wilson.

This *Suscripción* demonstrates that Californios attempted to ease the effects of colonization, instead of directly challenging American authority. While hesitating to directly challenge American Authority, the ‘Suscripción,’ written entirely in Spanish, cited the Treaty of Guadalupe as the reason for creating the fund.\(^{180}\) By citing the treaty, the Californios asserted their Californio identity and condemned the U.S. government for violating international law. The *Suscripción* proclaims:

> “Whereas the unfortunate litigation unjustly promoted by the Federal Government against all landowners in California, in violation of the Treaty of Guadalupe Hidalgo and the law of nations, and when year after year it becomes more expensive and intolerable. Whereas, the repeated falsehoods and slander circulated by the public press against the validity of our titles and the lack of justice of the long litigation, as well as the courts of justice, which actions damage our character and

\(^{180}\) ‘Suscripción,’ Box 13, Abel Stearns Papers, The Huntington Library, San Marino, California
our most valuable rights: - Whereas our collective injustices have tried our patience in suffering and our silent defense:

WE, THE SIGNED LANDOWNERS OF THE COUNTY[.] 

[...] by mutual contract, agree to assist, support and favor one another FOR ALL THE LEGAL MEANS, as the free men that we are, to resist all the forces that oppose us and intend to affect a general confiscation of our properties”

In contrast to the Anglo-American settlers who ignored or were unaware of the provisions of the treaty, these Californio landowners knew that the Land Commission had violated their rights as treaty citizens. Furthermore, the landowners observed that the Land Commission had perpetuated derogatory myths about Californios that inspired mistreatment and discrimination. The ‘Suscripción’ makes clear that the federal government not only impinged on Californio rights, but also caused them great suffering.

Non-elite, mestizo Californios resisted American colonization by different means. In 1856, they attacked Anglo-American settlers in Los Angeles.182 In a letter written by Benjamin Wilson, on July 21, 1856, Anglo-Americans in Los Angeles worried about an impending “Mexican” attack.183 According to the letter, on July 20th three-hundred “Mexicans” gathered on a hill, presumably modern-day Bunker Hill, and shot their refiles.

181 Ibid.

Original text: “En vista del litigio funesto injustamente promovido por el Gobierno General contra todos los propietarios de terrenos en California, en contravención del Tratado de Guadalupe Hidalgo y del derecho de gentes, y que año por año llega a hacerse mas dispendioso é intolerable. EN vista de las reiteradas falsedades y calumnias circuladas por la prensa publica contra la validación de nuestros título y la justicia que nos asiste en este litigio interminable, y que igualmente conmoven a los tribunales de justicia y perjudican nuestro carácter y nuestros mas caros derechos: - En vista de las injusticas que se acumulan sobre nosotros por causa de nuestra paciencia en padecer y nuestro silencio en defendeos: NOSOTROS, LOS ABAJO FIRMADOS PROPIETARIOS DE TERRENOS EN EL CONDADO”

182 Letter of August 2, 1852, Box 10, Benjamin Davis Wilson collection, The Huntington Library, San Marino, California.

183 In the letter, Wilson describes the men as “Mexicans,” but in all likelihood, the men who gathered on Bunker Hill were most likely non-elite, mestizo Californios and Indigenous laborers. It is possible that some of the men, may have migrated to Los Angeles from Mexico and were ‘Mexicans.’ Most importantly, there is no way to determine that a person is a Mexican national just by looking at them. Wilson’s application of Mexican demonstrates the early racialization of non-elite, mestizo laborers as “Mexican.”
After firing their weapons, the “Mexicans” marched to the plaza and dispersed. After this incident, Anglo-Americans kept guard for two nights and fortified a jail. Most interestingly, Pío Pico welcomed Anglo-American women to take refuge in his house.184 Having assumed the identity of the colonized colonizer, Pico was invested in the government that granted him political and social power, so he assisted the Anglo-Americans in Los Angeles without directly taking up arms against the “Mexicans.” While newspapers allude to mistreatment as the reason for the uprising, we do not have sources that document the experiences and thoughts that led to these moments of insurrection.185

As a California Senator, Pablo de la Guerra attempted to protect Californio interests. De la Guerra rarely made speeches on the senate floor, but in 1857, de la Guerra lambasted the Land Commission. He first called out the Anglo-American men for their violation of law and justice: “The action demanded of Congress by this Resolution is an exercise of the politics of power invoked by every consideration of International justice & Equity and even of technical law.”186 De la Guerra then explained what he thought the Land Commission was really doing. He made clear that he viewed, “The Conquest while it operated to confine the claimants to a status in quo, so far as proceedings to perfect their claims are concerned, does not operate to cause their status to be repealed as [in] regard to their continued enjoyment of possessing rights.”187 With this speech, de la Guerra called out the unfair treatment and implied that it was rooted in racial prejudice. It

184 Ibid.
186 Emphasis original.
“Pablo de la Guerra’s speech in re a resolution concerning California Land Titles,” 2. Guerra Family Collection, The Huntington Library, San Marino, California
187 “Pablo de la Guerra’s speech in re a resolution concerning California Land Titles,” 3.
was clear to de la Guerra, that Anglo-Americans employed the Land Commission to undermine property rights protected by international law.

In 1859, as a member of the California Assembly, Andres Pico introduced the California Senate Joint Assembly Resolution No. 22, sometimes referred to as the Pico Act, which called for the splitting of California into a Northern state and a Southern Territory. In letters written to Abel Stearns, Pico revealed why he supported this political measure, which is often described as an attempt to transform the free state of California into a free northern state and a slave-holding southern territory. While the Southern migrants who supported this measure supported the measure as an effort to extend slavery, Pico – like other Californios – supported the resolution because he viewed territory status as a way to limit American authority over Californios and to pause the land process that had stripped him and his countrymen of wealth and power. In a letter written to Abel Stearns on February 9, 1859, Pico writes that he is counting on Stearns and others to help pass the resolution, which will bring the “salvation of our properties and our happiness.” The bill received overwhelming support; however, the start of the Civil War meant U.S. Congress tabled the bill.

**Extending Exclusion**

How did the abrogation of Californio and Indian property rights affect other persons of color in California? Agents of the state actively excluded people of African descent from assuming the role of settler colonizers by prohibiting black land ownership

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188 Facsimile of Joint Assembly Resolution No. 22 Introduced by Mr. Pico on Feb. 5, 1859. Box 18. Abel Stearns Papers, The Huntington Library, San Marino, California.
in numerous ways. In 1857, in the *Dred Scott v Sanford* case, Chief Justice Robert Taney made clear that people descended from Africans brought to the U.S. as slaves could not be citizens. This decision created federal protection for California legislation that excluded all persons of African descent from living in California. After the *Dred Scott* decision, federal agents explicitly incorporated Taney’s decision into land policy.

Later in 1857, the Commissioner of the U.S. General Land Office, Thomas A. Hendricks, made it clear that “colored persons not beings citizens of the United States, as decided, they are not entitled to the right of preemption, that privilege being restricted by positive law to citizens of the United States[.]”\(^{190}\) While this policy was delivered in response to preemption laws in Illinois, the policy applied to the whole of the United States. In October of 1858, A.C. Bradford, Register of the Land Office at Stockton, California, also decided “that, by the laws of the United States, colored men are not entitled to the right of preemption.”\(^{191}\)

In policy and practice, black Americans were excluded from the California project in conjunction with the process that dispossessed Californios and Indians. Although the state constitution did not ban people of African descent from the state, the California Fugitive Slave law made it all but illegal for a free Black person to reside in the state. The development of legislation prohibiting black landownership and settlement demonstrates, in addition to anti-black racism, that only Anglo-Americans could proclaim whiteness and assume the role of settler and successfully claim land.

\(^{190}\) Annual report of the American Anti-Slavery Society. (1848), 130 – 131.
\(^{191}\) “Not Entitled to Pre-Empt” *Sacramento Daily Union*, Volume 16, Number 2344, 1 October 1858
On March 30, 1858, the California legislature voted on a bill to “‘An act to restrict and prevent the immigration of negroes and mulattoes into the state.” The bill would make it illegal for a black person to move into the state, and required all blacks living in the state to register or be charged a fine. Later in March, the *Daily Alta California* reported that State Senator Curtis, introduced “an amendment to include Chinese persons in the ‘Negro Bill’ [but] was not included after a “hard fight.”” State Senator Curtis’ attempt to penalize those “who were not eligible for citizenship” followed the logic of dispossession – those who could not claim whiteness, could not lawfully occupy the state.

**Conclusion**

In the first decade of American rule, elite Californio men attempted to maintain the power they created under the Mexican flag by creating damned alliances with Anglo-American politicians. The 1851 Land Act exploited this alliance and created a process in which elite Californios self-colonized and transformed themselves into colonized colonizers. Through land dispossession sanctioned by the U.S. Land Commission, Anglo-American agents of government affirmed the notions of inferiority that settlers employed to justify their colonization.

On January 1, 1863, President Abraham Lincoln signed the Homestead Act. The Act opened millions of acres west of the Mississippi River to Anglo-American settlement. Any settler or head of family could claim one-hundred-and-sixty-two acres of

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192 *Sacramento Daily Union*, March 30, 1858.
193 Ibid.
194 *Daily Alta California*, Volume 10, Number 85, 27 March 1858.
land as long as they were a U.S. citizen or intended to become one and had never taken up arms the federal government. In order to receive a land claim, an aspiring homesteader simply needed to pay a filing fee and cultivate the land for five years. The Act greatly contributed to the dispossession of Indigenous Peoples throughout the North American continent. Moreover, the Act further linked whiteness, citizenship, and property rights to processes of colonization. When evaluated alongside the consequences of 1851 Land Act, it becomes clear that the federal government enforced legislation that dispossessed peoples and promoted colonization along racial lines.

As this chapter has demonstrated, in California, assumptions about the racial inferiority of Indigenous Peoples and Californios made colonial property transformation possible. Notions of racial inferiority justified the state and federal dishonoring of the Treaty of Guadalupe Hidalgo and the rejection of the eighteen treaties signed with hundreds of Indigenous polities. As a result, the California and federal governments organized a legal regime and racial hierarchy that supported a settler colonial process. This process transformed the political, economic, and social boundaries of the land and resulted in the construction of a racial myth that transformed Anglo-American settlers into the lawful occupiers of the state.

Californios were not only guaranteed rights by Treaty of Guadalupe Hidalgo, but also by state and federal law. The promise of rights allowed for Californios to call on the California, U.S., and, even Mexican governments for the protection of these rights. I discuss how the Californian and U.S. governments ignored these calls in Chapter Four. As an institution, the Land Commission provided a rationale to undermine those rights and protections. Together, these moments contributed to the establishment of terra
nullius in California. As an integral facet of state formation in California, the U.S., federal and state courts, legislators and squatters created a system of property relations that sustained a new, colonial government that incorporated conquered people as non-citizen subjects.
Chapter Three

“The Children Were All Taken South and Never Heard Of Again”: Unfree Labor Systems in Nineteenth-Century California

The history of Indian slavery in California is long and defies the temporal boundaries U.S. historians have placed on institutions of bondage. During the first twenty years of U.S. statehood, systems of unfree labor coexisted and contradicted constitutional and federal prohibitions in California. State politicians, almost immediately, conceded to the demands of Californio rancheros and Anglo-American settlers and passed laws that protected systems of unfree Indian labor. Consequently,


2 Articulating a precise definition of Indian slavery is difficult because in the North American Southwest an assortment of people created a variety of unfree labor arrangements, such as debt peonage, convict leasing, and repartimientos, to circumvent Spanish, Mexican, and American laws that banned involuntary servitude in the region. I consider systems of unfree labor arrangements that targeted Indigenous people as slavery by another name according to the following criteria. One, the forced removal of a laborer from one place to another. Two, the prohibition on leaving a labor site. Three, compulsory and violently coerced labor. Four, little or no pay. Unlike, chattel slavery, Indian slavery was not a permanent condition and not a status that was inherited; Indigenous persons could enter alternative labor arrangements and could become free members of the society. Moreover, while one can draw parallels between the systems of Indian slavery in California and the U.S. institution of chattel slavery in the American South, as David Blackman has illustrated, debt peonage, convict leasing, apprenticeships and indentures were applied to black Americans by and white men and municipal officials after emancipation to entrap black men and women in a condition of involuntary servitude, which was slavery by another name. Unlike other work on Indian slavery in California, this chapter argues that the legal protection of Indian slavery in California was inherent to the colonialism process in the state. In California, the enslavement of Indigenous men, women, and children occurred on a spectrum of coercion, captivity, and violence. I will refer to specific systems as unfree Indian labor and I will refer to the conglomeration of unfree Indian labor systems as Indian slavery. When a distinction can be made, I will refer to a labor arrangement as slavery, peonage, guardianship, etc.


agricultural entrepreneurs, settlers, and municipal governments relied on a variety of unfree Indian labor arrangements well into the 1870s.

The other chapters in this dissertation examine how state and federal legislation transformed Indigenous Peoples into racialized, non-citizen subjects of California. This chapter argues that systems of unfree labor that targeted the Indigenous also functioned as a crucial mechanism of colonialism. In California, Anglo-Americans maintained the Mexican system of Indian slavery, in large part, as a response to the absence of enslaved black labor, but also as a means of incorporating Indigenous Peoples as racialized, non-citizen subjects. Anglo-American colonial entrepreneurs and settlers depended upon Indian slavery to not only transform the land, but also to construct visions of white power \textit{vis a vis} the colonial conquest and differentiated incorporation of Indigenous Peoples.\footnote{3} While land policy destroyed Indigenous claims to sovereignty and citizenship at the polity level, legislation that allowed for unfree labor arrangements annulled such claims at the individual level. Colonial legislation, like the 1850 Act for the Government and Protection of Indians, allowed Anglo-American and elite Californio men and families to exert colonial power over autonomous Indigenous individuals at the intimate level and in a manner that reinforced ideas of racialized and gendered power.

In this chapter, I first interrogate the laws that established the framework for Indian slavery in California. Second, I examine the guardianship system, which transformed Indigenous children into unfree wards and placed them in Anglo-American households. Guardianship rested upon the premise that Indigenous adults had no parental rights over their children on the basis of race. The guardianship system must be recognized as an effort to impose American colonial power over Indigenous families at the intimate level as well as a state-sanctioned unfree labor arrangement. Third, I examine the use of debt peonage in agricultural enterprises. Anglo-American and Californio men used debt peonage to bind Indigenous men and women to ranchos and farms as unfree laborers.

This chapter does two things. One, it assesses guardianship and debt peonage, not only as racialized systems of unfree labor, but also as integral to the colonial construction of power and labor subjugation in California. Two, in my assessment of guardianship and debt peonage, I have attempted to read the sources in a manner that reveals the experience of unfree Indian laborers. In reading these sources, I have employed a methodology that seeks to provide alternative meanings to the silences inherent to the colonial archive.4

The practice of Indian slavery occurred within the context of exterminatory Indian Wars, which settlers executed by forming volunteer militias funded by the California state government. From the 1850s to the 1870s, Anglo-American settlers initially waged wars against independent Indian polities to remove them from the land.5 Subsequently,

5 See: Brendan Lindsay, Murder State: California’s Native American Genocide, 1846-1873 (Lincoln: University of Nebraska, 2012); Frank H. Baumgardner, Killing for Land in Early California - Indian Blood at Round Valley (New York, Algora Publishing, 2006); Benjamin Madley, An American Genocide: The
settlers fought these wars in order to facilitate the capture and enslavement of Indigenous women and children.\textsuperscript{6}

In California, the struggle of Californio and Anglo-American men to exert power and mastery over Indigenous individuals and families is emblematic of their efforts to manage racialized and differentiated groups within a colonial structure. The state laws and labor arrangements that bound Indigenous persons violated federal authority established by the case of \textit{Worcester v. Georgia}.\textsuperscript{7} The violation of federal authority allowed Anglo-American settlers and Californios to uphold systems of unfree labor, that allowed for the state regulation and removal of autonomous Indigenous individuals.

I have placed this chapter in the middle of the dissertation because an analysis of unfree labor arrangements provides an analysis of colonialism at the intimate level. While the other chapters in this dissertation examine the imposition and opposition of colonial power at the state level, this chapter analyzes unfree labor arrangements as a mechanism of colonialism at the intimate level and centers the experiences of colonized people. In its examination of Indian slavery, this chapter attempts to analytical (and literally) center the experiences of colonized people and demonstrate the central role unfree and conquered people performed in the work of colonialism and the construction of white, male colonial power.

\textsuperscript{6} For more on how California newspapers and Indian Bureau officials viewed the organized kidnapping of Indian women and children as the main cause of the Indian Wars, see Robert Heizer, \textit{The Other Californians}, 44 – 48.

Legislating Indian Unfreedom in a Free State

When the American occupation of Alta California began, Californio rancheros and Mexican legislators had already institutionalized systems of unfree Indian labor. Despite the end of slavery in the Mexican Republic in 1829, in Alta California, the mission system and the regional economy continued to rely on the unfree labor of missionized Indians. In 1833, when the Mexican government mandated the secularization of the mission system, elite Californios appropriated the mission model of unfree labor to meet the needs of the nascent rancho system and the budding cattle and agricultural enterprises. When American troops arrived in Alta California in 1846, the Californio enslavement of Indigenous persons was ubiquitous.

On July 16th, 1846, just days after the U.S. Navy occupied the San Francisco Bay, Captain, John B. Montgomery sent men to explore the general conditions in the Sonoma region. As American soldiers explored the county, they became aware of the extent of Indian slavery on ranchos, especially on Mariano Guadalupe Vallejo’s Rancho Petaluma. In San Diego, invading American forces also observed a variety of unfree labor arrangements on Ranchos. Army Lieutenant William H. Emory, who arrived in the Southern portion of Alta California in 1846, encountered a Cupeño community living at Agua Caliente, modern-day Palm Springs, and a Luiseño community, living at Mission San Luis Rey, in modern-day Oceanside as unfree laborers. At Agua Caliente, the Cupeño lived under the bondage of Juan José Warner, who owned Warner’s Ranch, one

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of the most successful rancheros in the area.\textsuperscript{10} Described as living in “great poverty,” Emory labeled the Cupeño’s condition as one of “serfdom.”\textsuperscript{11} At the Mission San Luis Rey, according to Emory, the Luiseño were whipped if they refused to work or performed tasks poorly.\textsuperscript{12} Emory categorized the condition of the Luiseño as one of slavery, and wrote that “nothing can exceed their present degradation.”\textsuperscript{13} Rather than propose ending the enslavement of the Cupeño and Luiseño, Emory used the existence of Indian slavery to characterize Californios as corrupt and uncivilized landholders.\textsuperscript{14}

As the American occupation began to take shape in Northern California, Captain Montgomery, as the commanding officer of the San Francisco District, issued proclamations that imposed an American code of law on Californio and Indigenous inhabitants. In light of the exploration of the Sonoma region, Captain Montgomery issued a Proclamation that condemned and prohibited Indian slavery.\textsuperscript{15} However, Montgomery’s 1846 Proclamation, despite its rebukes, established the foundation for systems of unfree Indian labor and non-citizenship under American governance. While the first paragraph of the 1846 Proclamation prohibited Indian slavery, the proclamation created legal loopholes for a variety of unfree labor arrangements. For example, in the first paragraph of the 1846 Proclamation, Montgomery ordered all persons “holding or detaining

\textsuperscript{10} When Emory visited Warner’s Ranch, the Americans were holding Warner as a prisoner of war in the nearby town of San Diego.  
William Emory, \textit{Notes of a Military Reconnaissance, from Fort Leavenworth, MI to San Diego, CA}, (Washington: Wendall and Van Benthuyse, 1848), 05.
\textsuperscript{11} Ibid.
\textsuperscript{12} William Emory, \textit{Notes of a Military Reconnaissance}, 116 – 117.
\textsuperscript{13} William Emory, \textit{Notes of a Military Reconnaissance}, 116.
\textsuperscript{14} William Emory, \textit{Notes of a Military Reconnaissance}, 117.
Indians” to release them and “to permit them to return to their own homes” if, and only if, a Judge ruled that a labor contract between two parties was disagreeable.16

Next, the Proclamation declared that the “Indian population must not be regarded in the light of slaves,” but required that all Indians be employed by the “masters” and “employers” of their choice.17 Once bound by a labor contract, according to the Proclamation, an Indian must abide by their choice and could only conclude an arrangement if they obtained written permission to leave. This provision encouraged the creation of bonded and unfree labor arrangements by requiring all Indians to work for a “master” for a set period of time and by forcing them to stay.

The final sentence of the 1846 Proclamation states:

“All Indians must be required to obtain service, and not be permitted to wander about the country in idle and dissolute manner; if found doing so they will be liable to arrest and punishment by labor on the Public Works at the direction of the Magistrate.”18

This provision reinforced the criminalization of autonomous Indigenous individuals in white spaces and established the precedent of leasing out ‘vagrant Indians’ for the benefit of Anglo-American settlement.

In addition to criminalizing Indigenous bodies in newly occupied American spaces, the Proclamation denied them the right to free movement. Similar to the legal structures of the American South, the occupying American government imposed a pass system on Indigenous persons within American zones of occupation.19 One must take

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16 Ibid.
17 Ibid.
18 Ibid.
19 Later in 1847, General Henry Halleck issued criteria for a pass system. Again, Halleck performed as a colonial entrepreneur by creating a system that laid an American foundation for Indian peonage.
into consideration that the criminalization of autonomous Indians occurred while
Californios, the other conquered group in Alta California, did not experience as harsh
restrictions on their rights during U.S. occupation; they were not required to obtain labor
arrangements or undergo constant surveillance. This Proclamation denounced, while
preserving, the Mexican system of Indian slavery.

The 1846 Proclamation foreshadowed legislation, like the 1850 Act for the
Government and Protection of Indians, that would provide a legal framework for Indian
slavery in California. From the very beginning, in California, Anglo-American settlers
and colonial entrepreneurs attempted to construct a state that fulfilled their visions of
power. They accomplished this, in part, by appropriating the Californio system of Indian
slavery as an American colonial system of racialized labor subjugation.

As early as 1847, Alta California, English-language newspapers printed articles
that supported the assimilation of the Mexican system of unfree Indian labor into the
American legal system. The editors of the *California Star*, in 1847, wrote that because of
the 1846 Proclamation, Northern California rancheros and farmers could not “retain their
Indian laborers, even by the best and most conciliatory treatment, since [the] current
Government did not protect masters from theft and desertion, and afford[ed] no obstacles

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For more on the pass system, see: Andrés Reséndez, *The Other Slavery*, 263 – 264; Alberto Hurtado,

20 Under American military occupation, Californios were subject to a curfew and the seizure of private
property, but possessed the freedom of movement, if not arrested on accounts of insurrection. Furthermore,
they were not required “to be employed.”
to a dissolute mode of life[.]”
The writer recommended that the new government enact “stable and reliable laws” to address the problem created by forbidding Indian slavery.

About a month later, a writer by the nom de plume of “Pacific” decried the American changes to the Mexican system of Indian Slavery. “Pacific” recommended that an “Indian Code” be implemented with the following requirements: the establishment of a labor system that bound Indians to white masters for a set period of time by written contract, a pass system that limited and surveilled Indian movement, and an apprenticeship system that allowed white men to legally own and control the labor of Indians.

Given the anonymity of ‘Pacific,’ we cannot determine their knowledge of the 1846 Proclamation or the Mexican laws and customs that already allowed for the exploitation of unfree Indian labor. It is clear, however, that Anglo-American settlers in Alta California wanted the occupying government to enact legislation that provided for a legal system of cheap and unfree Indian labor.

Anglo-American and Californio legislators quickly codified Indian slavery. First, in 1849, the Anglo-American and Californio drafters of the California Constitution established the foundation for unfree labor systems by prohibiting Indian citizenship. Second, during the first session of the California Legislature, Californio and Anglo-American congressmen passed the 1850 Act for the Government and Protection of Indians, which allowed for a variety of Indian bondage systems.

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21 California Star, Dec 11, 1847. Orrin E. Smith started the California Star newspaper in 1846. Smith migrated, as a member of a Mormon colony, from Illinois to Yerba Buena (modern-day San Francisco). The California Star was one of the more conservative newspapers in the region. In 1849, Robert Semple bought the paper and changed the title of the paper to the Daily Alta California.
22 Ibid.
23 California Star, Jan 15, 1848.
24 Ibid.
25 Act for the Government and Protection of Indians, Statutes of California, April 22, 1850, Chapter 133.
Vallejo and John Bidwell, both of whom relied on unfree Indian labor to make their fortunes in Alta California, drafted the bill. When state congressmen approved the bill, they assimilated a Mexican system of Indian slavery into an American legal framework.

With the 1850 Act, Californio and Anglo-American men cooperated to create a legal framework that allowed for the enslavement of Indigenous men, women, and children. The cooperation between Californios and Anglo-American men not only resulted in the American maintenance of a Mexican system of Indian slavery, but also contributed to race making that benefitted their visions of power. With the codification of Indian involuntary servitude, elite Californios and Anglo-Americans constructed their identities around the notion of white colonial mastery and an Indian identity around racialized labor subjugation.

The 1850 Act contained multiple mechanisms by which to transform an Indigenous woman, man, or child into a bonded, unfree laborer. Section three of the act allowed Anglo-American and Californio men to petition for the guardianship of Indigenous children, and sometimes women. As an essential element of the colonial legal framework in California, guardianship dissolved familial relationships and transformed children into wards on the basis of race. While the law required the consent of a child’s parent or adult, justices of the peace rarely upheld this section of the law when granting the guardianship over Indigenous children. Many Anglo-American and

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27 Section Three, Act for the Government and Protection of Indians, Statutes of California, April 22, 1850, Chapter 133.

28 See Chapter 4, p. 173 – 176.
Californio families brought Indigenous children into their homes for the purpose of unfree domestic service. As such, the guardianship system was involuntary servitude by another name. In addition to using the guardianship system to bind Indigenous children to households, Anglo-American families also used the system to bind black children. I will discuss this later in the chapter.

The 1850 Act did not explicitly allow for the enslavement of Indigenous people in California, but it did contain several legal loopholes that allowed for Indian slavery. Section Six of the Act prohibited Indian testimony in cases brought against white men. The prohibition on Indian testimony made the likelihood of charging a white man with enslaving or committing a crime against an Indigenous person improbable. Under this legal structure, a white man could kidnap, cause bodily harm, and hold captive an Indigenous person with near impunity. Section Fourteen of the Act allowed for the convict leasing of Indigenous men. If convicted of a crime, an Indigenous person could be bonded to “any white man” until they worked off their fine.

The final section of the 1850 Act criminalized Indian ‘vagrancy.’ If convicted of being “a vagrant,” a justice, mayor, or recorder could “hire out such vagrant within twenty-four hours to the highest bidder, […] for the highest price that can be had, for any term not exceeding four months.”

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29 The 1849 California Constitution stated: “Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state.” The 1850 Act created a loophole by establishing convict labor and “voluntary” labor as legal exceptions of unfree servitude. For more on this, see Michael Magliari, “Free Soil, Unfree Labor: Cave Johnson Couts and the Binding of Indian Workers in California, 1850–1867,” Pacific Historical Review, Vol. 73, No. 3, 351 and fn 3.

30 Section Six, Act for the Government and Protection of Indians, Statutes of California, April 22, 1850, Chapter 133.

31 Section Fourteen, Act for the Government and Protection of Indians, Statutes of California, April 22, 1850, Chapter 133.

32 Section Twenty, Act for the Government and Protection of Indians, Statutes of California, April 22, 1850, Chapter 133.
Proclamation, California legislators continued to criminalize autonomous Indigenous individuals in white spaces. The law further incentivized convict leasing for Anglo-American settlers by requiring that all profit made from leased labor be “paid into the County Treasury.”

In 1855, the California State Legislature passed An Act to Punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons, also known as the ‘Greaser Act.’ The act targeted unemployed men who fit the category of ‘greaser,’ which the act defines as a person “with Spanish or Indian blood.” This law targeted and denigrated non-elite, mestizo Californios. The law allowed for any “creditable person” to report “greaser vagrants, vagabonds, and dangerous and suspicious persons” to the authorities, so that they could be arrested. Like legislation that criminalized Indigenous bodies in white, public spaces, this law marked non-elite, ethnic Californio bodies in white, public spaces as inferior and unlawful. Once a justice of the peace convicted a person of being a “greaser, vagrants, vagabonds, and dangerous [or] suspicious persons[,]” a county sheriff and the Board of Supervisors could “employ them at any kind of labor.” This law expanded the convict-lease system to include non-elite, mestizo Californios who did not work in the wage labor economy and transformed them into unlawful occupiers. These laws empowered local law enforcement agents with the ability to mark Indigenous and Californio men as slaves of the state.

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33 Ibid.
34 Greaser was derogatory slur used to identify Mexicans and Californios. The term denotes uncleanliness.
35 *The Statutes of California, Sixth Session* (1855), (Sacramento: B.B. Reading, State Printer, 1855), 217 – 218.
36 Ibid.
Throughout the 1850s and 1860s, city governments strengthened local systems of Indian slavery. For example, in 1855, the Los Angeles municipal government established a county chain gang, to be filled with Indigenous bodies, for the building and maintaining of “streets, alleys, and other places, either public or private, in the city as he [the mayor] deem[ed] proper.”37 The city of Los Angeles used chain gang labor to maintain roads well into the 1860s and 1870s.38 As late as 1873, the Los Angeles City Council ordered the “chain gang” to expand Fort Street, which is modern-day Broadway street, a major thoroughfare in central Los Angeles.39 This Los Angeles City government depended on the convict leasing of Indian labor to facilitate and expand Anglo-American settlement in the greater-Los Angeles area.40

In 1860, the Los Angeles City Council approved an ordinance that transformed the section of the 1850 Act that allowed for convict leasing into a mechanism that legalized a slave market in Los Angeles.41 The ordinance stated:

“When the city has no work in which to employ the chain gang, the Recorder shall […] notify the public that such a number of prisoners

38 The sources and contemporary scholars refer to the groups made by convict lease labor as chain gangs.
41 The members of the 1860 Los Angeles City Council were Abel Stearns, William H. Peterson, Damien Marchesseault, Vincent Hoover, Wallace Woodworth, Elijah Moulton, and David Anderson. Data retrieved from: http://cityclerk.lacity.org/chronola/index.cfm?fuseaction=app.Faculties&organizationid=85&OfficeID=120&ElectionID=12
by auctioned off to the highest bidder for private service, and […] they shall be disposed of for a sum which shall not be less than the amount of their fine for double the time they were to serve hard labor.”

This ordinance legally formalized a long-held practice of holding a slave market in the downtown area by Los Angeles law enforcement. For example, in an 1852 letter, Charles Brinley, the overseer of Abel Stearns’ Rancho Los Alamitos, requested that “someone attend the auction that usually takes place at the Los Angeles prison on Mondays and buy five or six Indians.” Stearns served as a member of the City Council at this time. As a council member, he used his political power to codify a system of bondage that his business interests relied on and that allowed him to exert colonial mastery over Indigenous bodies.

Every Monday during the 1850s and 1860s, the Los Angeles County Jail auctioned off Indigenous men who had been arrested on allegations of vagrancy and public drunkenness. On Saturday evenings the Los Angeles County Marshal would patrol the streets and arrest Indigenous men on charges of vagrancy and drunkenness. On the following Monday, the captive men were tied to a wood beam in front of the jail where interested parties could inspect and purchase the men as bound laborers for up to four weeks. Sometimes, on Sundays, the marshal would bypass the market and lease out captive men for up to a week. Indigenous men did not accept their capture, commodification, and labor subjugation. In one recorded instance, on a rainy evening in

43 Brinley to Stearns, Aug. 30, 1852, Box 11, Abel Stearns Papers, The Huntington Library, San Marino, California.
March 1853, Indigenous men held in the Los Angeles jail broke through the rain-weakened adobe wall of their cell and escaped.\textsuperscript{45}

The practice of exploiting Indigenous labor for the purpose of Anglo-American settlement occurred throughout California, not just in Los Angeles. Throughout Southern California, Anglo-American settlers and the government also relied on unfree Indian labor. In 1853, the Army Corps of Engineers attempted to divert the San Diego River to False Bay, now known as Mission Bay, by building what is now known as the Derby Dike.\textsuperscript{46} During the first half of the nineteenth century, the San Diego River flooded during heavy and infrequent rains and threatened the settlements in modern-day Old Town San Diego.

To complete the Derby Dike project, the government leased ninety-seven Luiseño laborers.\textsuperscript{47} Manuel Cota, the Anglo-American appointed leader of the Luiseño, forced ninety-seven Luiseño to the work site with threats of whipping.\textsuperscript{48} The Indigenous laborers were supposed to receive $15 a month for their forced labor, while their Anglo-American counterparts, mostly recent migrants from Texas, received $60 per month.\textsuperscript{49} From archival sources, it is difficult to determine whether or not the government or Cota paid the Luiseño; however, the sources indicate that the Luiseño did not receive free food rations like their Anglo-American counterparts.\textsuperscript{50} In Northern California, municipal

\textsuperscript{45}“Broken Jail,” \textit{Los Angeles Star}, March 1, 1853.
\textsuperscript{46}Derby Dike is located in modern-day Presidio Park in San Diego, California.
\textsuperscript{47}“Arrivals and News of the Week,” \textit{San Diego Herald}, October 1, 1853, https://cdnc.ucr.edu/?a=d&amp;d=SDH18531001.2.6&amp;e=-----en--20-EL-21-byDA-txt-txIN-constitutional+amendment------1.
\textsuperscript{48}John Harrington Field Notes quoted in Richard Carrico, \textit{Strangers in a Stolen Land}, (San Diego: Sunbelt Publications, 2\textsuperscript{nd} ed., 2008), 78.
\textsuperscript{49}San Diego Herald, October 8, 1853, https://cdnc.ucr.edu/?a=d&amp;d=SDH18531008.2.11.3&amp;e=-----en--20-EL-21-byDA-txt-txIN-constitutional+amendment------1
\textsuperscript{50}John Harrington Field Notes quoted in Richard Carrico, 78.
governments also participated in the Indian-lease market. In Central California, the Fresno County Prison sold Indigenous men accused of public intoxication for $1.25 each.51

While some Anglo-American and Californio settlers relied on municipal convict-lease markets to meet their unfree labor desires, others, especially those living in the Northern California counties of Humboldt and Mendocino, capitalized on the aftermath of the exterminatory Indian Wars to create an illicit Indian slave market. In 1853, Ramon Briones and three other men kidnapped over a hundred women and children in the mountains near the Clear Lake Valley Region. The Pomo that lived in this region had signed treaties with Federal Indian Agents, which the U.S. Senate refused to ratify.52 The lack of ratification allowed Anglo-American settlers to ignore Pomo territory claims and raise county militias, subsidized by state financial support, to violently remove independent Indian polities from the land. This was not an isolated incident. Anglo-American settlers led post-conflict raids against the numerous independent Indian polities that had signed treaties with Indian agents throughout the state.

According to a letter written by the district attorney of Contra Costa County to Edward Beale, the superintendent of Indian Affairs in California, Briones and his crew kidnapped one-hundred-and-thirty-six Indians and sold them to persons who held them in “servitude adverse to their will.”53 According to the district attorney, Briones led the organized company that sold kidnapped Indians. There was a case pending against the

52 See Chapter 2.
Indian slave raiders, but the District Attorney lamented the reality that “the statutes of the State afford no adequate protection against cruel treatment of Indians.”

In 1859, Anglo-American settlers in Mendocino County waged a war of removal against the Yuki. Modern-day Mendocino County is the traditional homeland of the Yuki. Like the Pomo, the Yuki had signed treaties with Indian Agents. A local militia, led by Walter S. Jarboe, raided Yuki communities in order to remove them from their traditional homelands and to traffic captured Yuki women and children to the Nome Cult Farm, an agricultural camp that was a part of the Mendocino Reservation. By the end of the Mendocino War, the *Daily Alta California* reported that Jarboe and his men had killed more than 400 Yuki and held 600 persons in captivity.

In 1860, after the Mendocino War, a special Senate joint committee on the Mendocino War assembled a report for the California Legislature. The report suggested to amend the 1850 Act, to not discourage wars, and to further protect Indian slavery and the burgeoning Indian slave market. Headed by the California senator of Mendocino County, John Lamar, the committee issued a report that discussed the removal and domestication of Indians. The report suggested that:

“the Federal Government should first cede to the State of California the entire jurisdiction over Indians and Indian affairs within our borders and make such donations of land and other property and appropriations of money as would be adequate to make proper provision for the necessities of proper management. […] The State should, then, adopt a general system of peonage or apprenticeship, for the proper disposition and distribution of the Indians by families among responsible citizens. General laws should

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54 Ibid.
56 The Reservation was created in 1854 and discontinued in 1866.
be passed regulating the relations between the master and servant, and providing for the punishment of any meddlesome interference on the part of third parties. In this manner the whites might be provided with profitable and convenient servants, and the Indians with the best protection and all the necessaries of life in permanent and comfortable homes."

Upon recommendation of the “Majority and Minority Reports of the Special Joint Committee on the Mendocino War,” in 1860, the California Legislature amended the 1850 Act for the Government and Protection of Indians in a manner that expanded Indian slavery. Lewis Burson, the state senator from Humboldt County, authored the amendments. Both senators, Lamar and Burson, represented counties and Anglo-American settlers that waged destructive wars against independent Indian polities and that benefited from the kidnapping and enslavement of Indigenous women and children.

The 1860 amendments strengthened the legal framework that protected and maintained the systems of unfree Indian labor. An amended section three created additional legal opportunities to bond Indigenous children and adults to white men. First, section three no longer included the requirement that a parent or any adult give consent to guardianship.\(^{59}\) While judges rarely or poorly enforced this requirement, the removal of this requirement indicates that the state legislature, in their bid to expand and protect Indian slavery, formally and completely stripped Indigenous parents of their right to claim their children in an effort to assert colonial mastery over Indigenous families. Second, the amended section also made clear that any “Indian or Indians, whether

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\(^{58}\) “Majority and Minority Reports of the Special Joint Committee on the Mendocino War,” by California State Legislature, Special Joint Committee on the Mendocino War (Sacramento: State Printer, 1860), 9 – 12.

children or grown persons, that may be held as prisoners of war, or at the instance and request," could be bonded to any white person under the articles of apprenticeship. This further encouraged the kidnapping of women and children after skirmishes between Anglo-American militias and independent Indian polities. Third, the revised section also expanded the duration of indentures and age of indenture. Indigenous children could be legally bonded well into adulthood. According to the new law, Indigenous children under the age of fourteen, could be held until the age of twenty-five if male and twenty-one if female. The amended section also allowed for the bondage of adults. Indigenous adults aged twenty and older could be held up to ten years. These adjustments to Section Three of the act bolstered the system of Indian slavery in the state and contributed to the transformation of Indigenous children and adults into unfree, non-citizen subjects.

Senator Burson rewrote section seven in a manner that attempted to appease opponents of Indian slavery in California. Section seven still maintained the meaningless provision that a guardian or indenture holder could not compel an Indian to work against their will. Most significantly, the revised section, forbade the forced conveyance of Indians from their “home.” These changes to the 1850 Act appear to end the most criticized aspects of Indian slavery – the illicit slave market and the use of enslaved, coerced Indian labor. But these changes did not effectively limit the system because section three still provided a legal framework to transform Indians into unfree wards. The 1860 Act produced a fallout that greatly harmed the Indigenous Peoples of

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60 Ibid.
61 Ibid.
62 Ibid.
63 Ibid.
California. From 1860 to 1862 a “slave-raiding boom” occurred in California.64 Throughout Northern California, Anglo-American raiders kidnapped and sold thousands of Indigenous children to Anglo-American families for the purpose of subjugated domestic and agricultural labor in many counties, such as the Sacramento, Mendocino, Eureka, and Humboldt Counties.65

Transforming Children and Women into Unfree, Right-less Subjects

Anglo-American settlers used the guardianship system to reinforce American colonial rule in California. When local courts made men guardians, they invested them with colonial power because guardianship was a patriarchal, coerced, and unfree arrangement disguised as a familial relationship.66 Additionally, by appointing white men as the colonial patriarchs of Indigenous children, judges reinforced notions of Indian savagery and inferiority that justified the destruction of families – a white guardian was the only competent master capable of rearing a “civilized” child. Sometimes, Anglo-American men utilized guardianship to enslave black children within the parameters of the California legal framework. In addition to manipulating loopholes to bind black children, Anglo-American and Californio men bound Indigenous women to their households via the guardianship system. As unfree wards, Indigenous women often

64 Benjamin Madley, An American Genocide, 293.
66 My thoughts on how guardianship replicated engendered ideas and claims to mastery has been greatly informed by Stacey Smith’s Freedom’s Frontier, especially pages 109 – 112.
experienced labor and sexual exploitation. As a colonial system of unfree labor, guardianship undergirded the construction of a racial hierarchy that placed white men at the top and people of color at the bottom.  

Unlike the convict-lease system that hinged on the imprisonment of Indigenous men, guardianship depended upon raiding. In early statehood California, Anglo-American men conducted raids against independent Indian polities and kidnapped women and children. Anglo-American raids continued Spanish and Mexican practices in the region. During Spanish and Mexican rule, soldiers often kidnapped Indigenous women and informally bound them to missions and households throughout the North American Southwest. Anglo-American colonial entrepreneurs continued this practice by illicitly selling Indigenous women to families desperate for servants. By 1862, in the northwestern counties of California, nearly one in four white families held an Indigenous child. In Ukiah, a newspaper writer reported that most families had “one to three Indian children.”

The Los Angeles Court saw many guardianship cases during the 1850s. The Probate Court petitions that bound Indigenous children to American and Californio patriarchs provide details about how justices of the peace transformed Indigenous children into invisible, unfree wards and Anglo-American and Californio men into

69 Stacey Smith, Freedom’s Frontier, 149.
70 Benjamin Madley, An American Genocide, 304.
The petitions contain little information about the children forced into guardianship. However, these silences reveal ways in which colonial power and notions of race and gender shaped the guardianship system.

For example, in February 1858, Herman Cardwell petitioned the court for the guardianship of Carlota Valenciano, an eight-year-old girl. It is possible that Cardwell kidnapped her or purchased her from an Indian slave raider. He may have even paid her parents fifty dollars under the premise that she would work as a servant and would be free to return to her parents once she upheld her end of the labor agreement. Cardwell’s petition is a single page and does not reveal how he came to possess Valenciano. The petition does not include the consent of a parent or any other adult. Nonetheless, the Los Angeles County Probate Court approved the petition for guardianship for an unspecified amount of time. In doing so, the court affirmed that Cardwell could serve as the guardian of Valenciano indefinitely. This case violated the law on two points: an adult did not consent to this guardianship and the court did not place a time limit on the arrangement.

Later in June 1858, John Reed applied for the guardianship of Santiago Barton. According to the petition, Barton was six years old. From my research, I believe he was the illegitimate son of Los Angeles County Sheriff, James R. Barton and an unidentified Indigenous woman. The court records do not name Barton’s mother and, as such, render

71 I rely on Stacey Smith’s analysis of guardianship as an arrangement that rendered Indigenous children as “invisible wards.” For more on how guardianship transformed Indigenous children into invisible wards, see Stacey Smith, Freedom’s Frontier, 11, 109 – 140.
72 Probate Case #92, Los Angeles County Probate Court: First Series, Los Angeles Area Court Records, The Huntington Library, San Marino, California.
73 Probate Case #101, Los Angeles County Probate Court: First Series, Los Angeles Area Court Records, The Huntington Library, San Marino, California.
her invisible and reinforce the idea that as an Indigenous woman, she could not claim
parental rights on the basis of race and gender.

In January 1857, James Barton and three deputies chased Californios Juan Flores
and Pancho Daniel, leaders of the Las Manillas gang.74 While scholars have characterized
the group as a gang of bandits, we ought to consider Las Manillas as a paramilitary group
or volunteer militia that led raids on Anglo-American homesteaders and settlers in order
to sabotage American settlement and colonization in the region. Just outside Los Angeles,
members of Las Manillas killed Barton and the three deputies in a skirmish.75 After
James Barton died, Santiago was not allowed to live with his mother, even though he
lived with her prior to that point. The absence of Santiago’s mother from the court
records, suggests that the court did not obtain her consent.

Reed’s petition declared that Barton could not live with his mother because as an
Indian woman she was an incompetent guardian for the child, especially since he had
inherited property. For the Los Angeles County Judge, this was sufficient evidence, and
Reed became Santiago Barton’s guardian. This case demonstrates the limited power
Indigenous women had in claiming their children when white men wanted to turn them
into wards. By rendering Santiago’s mother and Valenciano’s parents invisible in their
guardianship petitions, the petitioners and the legal system contributed to the destruction
of Indigenous parental rights on the basis of race.

74 John Mack Faragher, Eternity Street: Violence and Justice in Frontier Los Angeles (New York: W.W.
75 John Mack Faragher, Eternity Street: Violence and Justice in Frontier Los Angeles (New York: W.W.
Norton & Co., 296), 340 – 349; Harris Newmark, Sixty Years in Southern California, 1853–1913,
containing the reminiscences of Harris Newmark. (New York: The Knickerbocker Press, 1916), 204 – 207;
John Boessnecker, Gold Dust and Gunsmoke: Tales of Gold Rush Outlaws, Gunfighters, Lawmen, and
Anglo-American men twisted the guardianship system to bind black children to their households. Benjamin Wilson, an Anglo-American emigrant, a prominent politician and one of the wealthiest landowners in Los Angeles, and his wife Margaret Hereford Wilson, struggled for years to find unfree and cheap domestic service. Wilson had served as the Southern California Indian Commissioner in 1852 and used his knowledge of the guardianship system to bind two black girls to his household. In 1857, Margaret Wilson brought two enslaved girls – Emily and Maria – from St. Louis to California for the purpose of domestic labor. Under the 1850 Act, the girls were bonded to the Wilsons until they were twenty-one years old. Wilson appropriated legislation meant to facilitate the bondage of the Indigenous to incorporate two black children into California society as unfree wards. The Wilsons’ actions upheld colonial legislation designed to exclude people of African descent by supporting the notion that black children could not exist in California as free, citizen subjects.

However, the guardianship system did not always succeed in granting Anglo-American men the custody over Indigenous children to whom they possessed no relation to. Sometimes, Indigenous women could manipulate the guardianship system to preserve their families and resist the imposition of colonial power. A month after the court transformed Santiago Barton into a ward, the court awarded an Indigenous woman, Cristobal Aguilar, the guardianship of her brother Agustin Aguilar, an Indigenous boy. Aguilar was awarded guardianship of her brother on the grounds that their parents were

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76 Benjamin Wilson to Margaret Wilson, July 13, 1856; Benjamin Davis Wilson Collection, The Huntington Library, San Marino, California.
77 Probate Case #66 Los Angeles County Probate Court: First Series, Los Angeles Area Court Records, The Huntington Library, San Marino, California.
78 Probate Case #110, Los Angeles County Probate Court: First Series, Los Angeles Area Court Records, The Huntington Library, San Marino, California.
dead and that she was the closest living adult relative. Unlike the other cases mentioned in this chapter, the court did not entertain questions of competency. The facts of the case lead one to wonder if someone had challenged her claim to guardianship, like in the Barton case, would Aguilar still have been granted guardianship? The outcome of Aguilar’s case demonstrates that sometimes Indigenous women could manipulate the levers of the colonial system in their favor and halt the destruction of their families and the imposition of white, male colonial rule over their lives.79

Californio families also appropriated the guardianship system to preserve their families and protect vulnerable godchildren.80 For example, in January 1854, Californio Agustín Olvera applied for the guardianship of Jose Ygnacio and Concepcion del Valle, two Californio children.81 It is likely that Olvera was the godfather of the two del Valle children and petitioned the court for guardianship so that he could protect the interests of his parentless godchildren. The children held a significant amount of cattle and land and in recently conquered California, maintaining Californio property was paramount.

The Los Angeles Probate Court awarded Olvera guardianship because as an elite, landed Californio, he could adequately raise the children and manage their property until they reached the age of adulthood. However, the court required that Olvera obtain court...


80 In Alta California, godparents not only served as the spiritual guide of their godchildren, they also served as a co-parent. If a child’s biological parent died, a godparent would raise them. Historian Erika Pérez argues that Californios used the guardianship system to protect power and landholdings and to integrate Californio cultural practices into the American legal system. For more, see: Erika Pérez, *Colonial Intimacies: Kinship, Sexuality, and Marriage in Southern California, 1769 – 1185* (Norman: University of Oklahoma Press, 2018), 192 – 210.

81 Probate Case #1, Los Angeles County Probate Court: First Series, Los Angeles Area Court Records, The Huntington Library, San Marino, California.
approval before selling the del Valle’s cattle or land. With this requirement of supervision, the court differentiated Olvera’s power from that of the white men who also served as guardians. As a member of the colonized colonizer class, Olvera’s power was not absolute, but dependent upon the whims of colonial administrators. Until the del Valle children reached the age of adulthood, Olvera managed, sold and purchased cattle and land in their name. Olvera, like other Californios, used the guardianship system to protect Californio power and land holdings.

After the ratification of the 1860 Amendments to the Act for the Government and Protection of Indians, local justices of the peace approved myriad petitions to bond Indigenous women and children to white and Californio men as unfree, non-citizen subjects. For example, from 1860 to 1863, in Humboldt County, one-hundred-and-eight-one persons, mostly children, were transformed into indentured, unfree laborers in the Eureka courthouse under the 1860 Act. Ages of the persons held in bondage ranged from two- to fifty-years-old; forty-nine of the bonded individuals were aged seven to twelve. In Eureka, and throughout the state, petitioners and judges expanded the guardianship system to entrap Indigenous adults in systems of bondage.

In 1861, in Tehama County in Northern California, sixty men, women, and children were bound to ranchers, F. J. Titus and V. E. Geiger. The Sacramento Daily Union documented these indentures in an article entitled, “Indenturing Indians — A Nice

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82 Ibid.
83 For more on how Californio and Indigenous people used the guardianship system to resist the imposition of colonial power on families, see: Erika Pérez, *Colonial Intimacies: Kinship, Sexuality, and Marriage in Southern California, 1769 – 1185* (Norman: University of Oklahoma Press, 2018), 192 – 210.
84 Robert Heizer, *The Other Californians*, 52.
85 Robert Heizer, *The Other Californians*, 53.
System Of Slavery.” As the title indicates, the editors celebrated the outcome of the 1860 Amendments, which protected and expanded the system of Indian slavery to the benefit of their community. The title of this article also indicates that Anglo-American settlers viewed the system as one of slavery; even though they petitioned the court for guardianship or a temporary indenture, they viewed their Indigenous wards as enslaved persons.

Prior to this case, Anglo-American settlers wondered about the constitutionality of the indenture system and the intent and meaning of the 1860 Amendments. The sixty Nomlaki men, women, and children Titus and Geiger purchased for periods of five to eighteen years were not ‘prisoners of war’ or ‘vagrants,’ rather they had lived on the government-run Nome Lackee Reservation. The government leased the sixty Nomlaki held captive on the reservation to Titus and Geiger in order to ease the financial burden of the reservation. The California government not only protected systems of Indian slavery, but also created legal mechanisms for government institutions to utilize systems of unfree labor for profit and for the benefit of Anglo-American settlement.

Anglo-American and Californio legislators and settlers created a guardianship system to impose colonial rule at the intimate level. By creating a procedure to transform the Indigenous into unfree wards, the state established another means by which to incorporate them as racialized, unfree, non-citizen subjects. Furthermore, the very logic of guardianship was premised upon notions of Indigenous racial inferiority. Anglo-


87 Ibid.
American men deployed the guardianship system to assert their white, male colonial power over racialized peoples and the land.

**The End of Indian Slavery?**

In 1861, President Abraham Lincoln appointed George M. Hanson, a Republican from Illinois and a vehement opponent of Indian slavery, as the superintendent of Indian Affairs in Northern California. Hanson publicly declared that the apprenticeship law violated the California constitutional ban on slavery and federal authority over Indian affairs. In 1862, Hanson entrusted Assemblymen Caleb Fey and Charles Maclay to repeal the apprenticeship laws according to his recommendations. On March 7, 1862, Fey and Maclay presented two bills. The first bill abolished the guardianship system created by the 1860 Amendments and the second bill prohibited the leasing out of Indian convicts. The bills died in the Committee on Indian Affairs where they met resistance from Northern California Democrats.

California Republicans did not drop the issue of Indian slavery. In 1862, emboldened California Republicans began to publicly criticize the ‘apprenticeship’ system. This discussion occurred in a political climate shaped by the U.S. Civil War – Southern Secession had greatly discredited Democrats and the talk of emancipation motivated California Republicans to reconsider the state laws that shaped systems of involuntary servitude.

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88 Stacey Smith, *Freedom’s Frontier*, 186.
90 Stacey Smith, *Freedom’s Frontier*, 189.
At its core, however, the movement to end or reform the guardianship system was a reaction to the violence inherent to the Indian slave trade, not a call for Indian citizenship or an articulation of radical Republicanism. For years, California newspapers had reported on the violent deaths of Indigenous children at the hands of their guardians.91 This outraged people who believed solutions to the “Indian Problem” were not extermination campaigns, but assimilation projects. It is important to note that opponents of Indian slavery believed that Indigenous individuals needed to perform physical labor in order to become civilized and productive laborers in American society, very much, in the model of Jeffersonian Agrarianism. More often than not, opponents of the system, supported policies of removal to reservations where Indians could be assimilated into white American society.

In April 1863, on the heels of the Emancipation Proclamation and a Republican takeover of the California Legislature, the Assembly and Senate repealed the 1860 Amendments to the Act for the Government and Protection of Indians.92 Republicans and free-soil Democrats voted for watered-down versions of the 1862 bills initially proposed by Fey and Maclay. The 1863 bills repealed the sections of the Act that allowed for the systems of guardianship and convict leasing. The repeal, however, did not revoke the provision that allowed for indenture as punishment for vagrancy. Despite the 1863 repeals, California law still required Indigenous individuals to have “visible employment,” or be subject to charges of vagrancy. Further yet, county jails could still

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91 For more on how the violent treatment of indentured Indigenous children inspired criticism and calls of ending the system, see: Stacey Smith, *Freedom’s Frontier*, 182 – 185.
lease out Indigenous adults charged with vagrancy for up to four months. By upholding the vagrancy provision of the Act, the California legal system continued to criminalize autonomous Indigenous bodies in white spaces.

Most crucially, the 1863 Act did not dissolve the indentures and apprenticeships that already bound thousands of Indigenous children and adults to Anglo-American and Californio families, houses, and agricultural farms throughout California. Perhaps this was done in an effort to appease Northern California Democrats. Nonetheless this meant, that after the legislative repeal of An Act to Provide for the Government and Protection of Indian and the federal abolition of slavery, in California, Indigenous men, women, and children legally remained in various degrees of unfreedom. In 1865, the California superintendent of public instruction counted almost six-thousand indigenous children bonded to white men or households under the guardianship system. Despite the California Republican attempt to eliminate Indian slavery in the state, systems of unfree Indian labor lingered.

Debt Peonage in Southern California

In Southern California, Californio rancheros fashioned systems of bonded servitude that ensnared Indigenous men and women through debt peonage. In this section, I interrogate Henry Dalton’s use of Indian debt peonage on Rancho Azusa during

93 Stacey Smith, *Freedom’s Frontier*, 190.
94 Data collected by Brendan Lindsay in *Murder State*, 267 – 268.
95 In the late 1860s and throughout the 1870s, Indigenous persons kept on Reservations in California were forced to labor. This was done as part of the ‘civilizing’ efforts conducted on the reservations. For more on this, see: William Bauer, *We Were all Like Migrant Workers: Work, Community, and Memory on California’s Round Valley Reservation, 1850-1941* (Chapel Hill: University of North Carolina Press, 2009), 30 – 79; George Hardwood Phillips, *Indians and Indian Agents: The Origins of the Reservation System in California, 1849-1852* (Norman: University of Oklahoma Press, 1997); Frank Baumgardner, *Killing for Land in Early California - Indian Blood at Round Valley* (New York: Algora Publishing, 2006).
the 1850s and 1860s. I have chosen Rancho Azusa because Dalton was one of the few rancheros that kept extensive records of debt peonage and journals that describe unfree Indigenous labor. Dalton is also emblematic of the colonized colonizer – he helped exert American colonial rule in the region, only to lose his land, the source of his wealth and power, to American land policy. In the early years of California statehood, Dalton was recognized as a successful agricultural entrepreneur because Rancho Azusa contained a profitable vineyard, cattle business, citrus grove, distillery, winery, granary flour mill, and smokehouse. Unfree Indian labor and the exploitation of Indigenous knowledge made his agricultural success possible.

Years before Dalton utilized debt peonage on Rancho Azusa, Spanish missionaries planted the seeds for the system. In 1771, Spanish Franciscans established the Mission San Gabriel Arcángel in modern-day San Gabriel, located in the Los Angeles Basin. The Los Angeles Basin is the traditional homeland of the Tongva. The establishment of the mission disrupted the cultural and land use practices of the Tongva in the region. As part of the colonization project and efforts to colonize the Tongva, the Franciscan missionaries enforced labor requirements on the Tongva people living near the mission. Initially, the Spanish missionaries conceived of forced labor as essential to religious conversion, but as the economy of Alta California transformed, coerced labor became essential to the cattle farming and agricultural enterprises of the mission system.

Scholar Michael Magliari examined how Cave Couts, the owner of Rancho Guajome in San Diego County, manipulated the law to use unfree Indian labor. See: Michael Magliari, “Free Soil, Unfree Labor: Cave Johnson Couts and the Binding of Indian Workers in California, 1850 –1867,” *Pacific Historical Review*, 73(3), 349 – 390.

From the archival sources, I cannot determine if child labor was on Rancho Azusa. However, I do believe that Dalton used forced entire families into debt and used family members to replenish his labor force on the Rancho. It is possible that Dalton forced children to perform agricultural labor once they were old enough to perform such labor adequately.
Due to the use of unfree Tongva labor, the Mission San Gabriel grew wealthy and influential in the region.\textsuperscript{98}

In 1833, the Secularization Act opened up mission lands to eager Mexican colonizers in the region.\textsuperscript{99} Originally, the act required ex-mission lands to be rewarded to Mission Indians, but well-connected Californios received many of the land grants. As a result, secularization became a private enterprise of Mexican colonization. Elite landed Californios repurposed the Mission labor system and used unfree Indian labor on their ranchos to colonize the land, to plant vineyards, and graze cattle. Like the missionaries before them, Californios relied upon unfree Indian labor to create wealth and power in Alta California.\textsuperscript{100} Elite Californios like Mariano Guadalupe Vallejo, Pablo de la Guerra, and Pío Pico, all depended upon Indian slavery to sustain their ranchos and to create their wealth and power. Furthermore, their Californio identities were premised upon the conquest and subjugation of the indigenous.


For other works that explore the role of the Mission and Spanish missionaries performed in the colonization of other regions and peoples in the larger American Southwest, see: Ramón Gutiérrez, \textit{When Jesus Came, the Corn Mother Went Away: Marriage, Sexuality, and power in New Mexico, 1500 – 1846} (Stanford: Stanford University Press, 1991), 55 – 108.

\textsuperscript{99} The Secularization Act contained a provision in which Mission Indians were to receive plots of land, tools, seed, and cattle. However, wealthy and well-connected Californios received most of the land grants in Alta California. For more, see: Louise Pubols, \textit{Father of All: The de la Guerra Family, Power, and Patriarchy in Mexican California} (Berkeley: The Huntington E. Library and University of California Press, 2009), 149 – 196.

\textsuperscript{100} For more on this see: Yvette J. Saavedra, \textit{Pasadena Before the Roses}; Louise Pubols, \textit{Father of All}, 164 – 194.
In 1841, Alta California Governor Juan Alvarado issued the grant, Rancho El Susa, to Luis Arenas. The Rancho El Susa grant was located thirteen miles from the Mission San Gabriel Arcángel. In 1844, Arenas sold the grant to Henry Dalton in 1844. Dalton renamed the grant as Rancho Azusa de Dalton. The Rancho is located in modern-day Azusa, a city in northeast Los Angeles County.

Dalton was born in London, England in 1804. At the age of fourteen, he began his apprenticeship as a sea merchant and eventually became a successful sea merchant in the Americas. After spending time in various Latin American countries, Dalton settled in Alta California in 1843. Swiftly, Dalton became an assimilated member of Californio society. He already spoke Spanish and elite Californios, who affectionately called him Enrique, welcomed him into their society. His acceptance within Californio culture solidified when he married Maria Guadalupe Zamorano, the daughter of a prominent Californio who had helped colonize the region as a soldier of the Mexican Army. Within a year of arriving in Los Angeles, he had acquired property in Los Angeles and San Pedro. After Dalton purchased Rancho El Susa in 1844, he devoted himself solely to agriculture. By 1851, Dalton owned 45,280 acres of land, making him the largest landowner in the San Gabriel Valley.

101 Luis Arenas most likely came to Alta California in 1834 as part of a colonist group. In 1838, he served as the alcalde of Los Angeles.
102 I also think that Dalton considered himself to be a Californio. In addition to his acculturation, Dalton was a product of the Californio system of land, wealth, and power. During the U.S.-Mexican War, Dalton was so dedicated to the Mexican cause, he gave money and supplies to the Mexican Governor of Alta California to aid the Alta California cause. Dalton was also one of the land owners that signed the Suscripcion mentioned in chapter two. See: Chapter 2, p. 103.
103 Zamorano was the daughter of Agustin Vicente Zamorano, who was a soldier of and the provisional Comandante General in the north of Alta California.
104 Biographical information gathered from Henry Dalton Papers: Finding Aid. https://oac.cdlib.org/findaid/ark:/13030/tf5d5nb0qt/admin/?query=henry%20dalton#did-1.2.1
105 In 1845, Pio Pico extended the acreage of Rancho Azusa twice. The additional lands formerly belonged to Mission San Gabriel.
Like other Californio and Anglo-American rancheros, Dalton relied on unfree Indian labor, in the form of debt peonage, to make Rancho Azusa a profitable agricultural enterprise. Henry Dalton rarely performed hard labor on the Rancho; the extent of his labor was examining vines or managing unfree laborers. The documentation of debt peonage on Rancho Azusa is incomplete and purposely obscures the existence of Indigenous men and women. This lack of documentation reflects that members of California’s agricultural society viewed Indigenous Peoples as degraded, unfree peons.

Account books entitled, “Indians Books,” and rancho journals entitled, “Daily Occurrences,” provide slivers of information on the use and experience of debt peonage on Rancho Azusa. From close readings of the documents, it appears that Dalton and an unnamed mayordomo produce these books.106 I will refer to the authors of the books as ‘the writers.’ The writers of the “Indian Books” and “Daily Occurrences” switch from Spanish to English as they document debt, labor, and the daily happenings on Rancho Azusa. The “Indian Books” and the “Daily Occurrences” indicate that from 1854 to 1879, Dalton relied upon unfree Indian labor to run Rancho Azusa. Dalton employed Anglo-American wage laborers; however, unfree Indian laborers comprised a significant portion of the labor force on the rancho.

The manner in which the writers document the Indigenous people on Rancho Azusa reveals plenty about the debt peonage system, racial hierarchy, and the work of colonialism on the Rancho Azusa and in California at large. In the archive, unfree Indian laborers are described in a manner that reflected and maintained their racialized labor

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106 Mayordomo is a Spanish word that describes a person in charge of a group of people, like a manager, usually on a hacienda or rancho.
subjugation on Rancho Azusa. As studies of the colonial archive have demonstrated, the un-naming of an enslaved or colonized person denied them “personhood” in their own time and within the archive. Only in the account books is an Indigenous person that provided unfree labor always documented by name; otherwise the writers referred to as “Indian” or “peon.” The writers likely did this to justify the unfree condition of the laborer and because they did not see them as human; they were mere cogs of the Rancho machine.

However, in the “Daily Occurrences” journals, the writers refer to a few Indigenous men by name. The men documented by name provided labor to the rancho that Dalton, the mayordomos, and the writers deemed ‘valuable’ or ‘civilized.’ When an Indigenous person provided ‘valuable’ or ‘civilized’ labor, they ascended the status of ‘Indian’ and obtained a status of limited humanity. This sort of demarcation demonstrates that in California the type of labor one performed greatly influenced one’s racial identity. When an Indigenous person was forced to do ‘invaluable’ or ‘uncivilized’ labor, they usually performed the hard labor that kept the farm profitable, such as the plowing or clearings of land, the building of houses, or the damming and redirecting of water sources. Much like the leased men accused of vagrancy and the indentured wards, the unidentified peons bound to Rancho Azusa performed the essential labor that supported the colonial transformation of the land and the economy.

From 1856 to 1866, the labor unfree Indian laborer performed on Rancho Azusa remained more or less the same; therefore, I will focus on those years. On Rancho Azusa, Dalton required unfree Indian laborers to work six days a week, every week. Work ceased only on Sundays. On Sundays, unfree Indian laborers remained on the Rancho or went to the Azusa pueblo. It does not seem that they could travel beyond the borders of the Azusa Township. Sometimes, they traveled under supervision to Los Angeles or other nearby cities to deliver products or acquire materials for Dalton. Depending on the season, unfree Indian labors were tasked with clearing fields, planting and harvesting fruit, corn and wheat, chopping and gathering firewood, grazing cattle, or pruning or picking the vineyards. As squatters threatened Dalton’s claim to the land, Dalton even tasked the unfree Indian laborers with building fences and diverting water to Rancho Azusa in order to protect his claim. Dalton not only relied on unfree Indian labor to run his Rancho, he also relied on their labor to protect his claim from Anglo-American settlers.

In the “Daily Occurrences” books, ten Indigenous men are described by their names. I will focus on two men: Pío Serrano and Martin Duarte. The visibility of these men in the archives intensifies the historical invisibility of the other unidentified, unfree Indian laborers on Rancho Azusa. From the sources, we know little about how they became unfree labors on Rancho Azusa. During the second half of the nineteenth century, on Southern California, autonomous Indigenous adults wandered from rancho to rancho in search of labor in order obtain basic necessities and avoid arrest.108

108 Richard Carrico, Strangers in a Stolen Land, 79.
As a vintner, Pío Serrano provided invaluable and important labor to Dalton. On most days, Serrano could be found “distilling liquor,” maintaining and “pruning” vines, “crushing grapes and making wine” and directing the labor of other “Indians” in the vineyards. The descriptions of Serrano’s labor indicates that despite his status as an unfree laborer, he had knowledge that granted him power on the Rancho. Dalton depended on Serrano’s Indigenous knowledge to maintain his rancho and to operate a winery. Serrano’s possession of specialized knowledge and the ability to perform highly skilled labor did not free him from Dalton’s mastery, but it did empower him to direct the labor of other unfree Indians.

Serrano was one of the highest paid peons at Rancho Azusa, he received $28 a month for his labor. This amount, however, was not enough for him to pay off the debt he accrued, which reached hundreds of dollars, from buying basic necessities like shirts and shoes. According to the debt books, a shirt could cost $30 to $35 dollars and shoes could cost $16 to $22. Dalton had designed the Rancho’s wage system to entrap Indigenous workers as debt peons. Those who provided general labor on Rancho Azusa, received eleven to thirty-three cents per day; at this wage, they would make less than $10 a month.

In multiple instances, Serrano worked with other unfree labors. In those instances, the writers named Serrano while they described the others with generic terms. For

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110 According to the “Indian Books,” Pío was a debt peon. For the recorded time that he was on Rancho Azusa, Pío’s debt never reached $0.
112 Indian Volume Hardcover, 1 – 2, Henry Dalton Papers, The Huntington Library, San Marino, California.
example, on January 8th 1857, Serrano pruned vines while “peons” cleaned up the waste.\textsuperscript{113} In another instance, he cleaned the vines with “two.”\textsuperscript{114} This documentation indicates that on ranchos, those in positions of power used the type of labor one performed to shape the racial identities and status of debt peons. These archival glimpses demonstrate that the rancho world of Southern California depended upon the exploitation of Indigenous knowledge, as much as it depended on Indigenous labor.

Martin Duarte worked on Rancho Azusa for many years. In contrast to Serrano, Duarte does not appear to have specialized knowledge. Duarte cleared fields, pruned vines, dried meat; he even tracked down horse thieves, but he did so as a manager of the unidentified, unfree Indians on Rancho Azusa.\textsuperscript{115} For example, on December 29, 1858, he directed “Indians clearing off sunflowers.”\textsuperscript{116} On February 15\textsuperscript{th}, 1859, Duarte supervised “five Indians at work in vineyards.”\textsuperscript{117} His monthly wage of $10 indicates that he performed labor slightly more skilled than the general, degraded labor of the unidentified Indians. Duarte and Serrano demonstrate how Dalton utilized debt peonage to bind a variety of Indigenous laborers to the Rancho.

From the “Daily Occurrences” books, it is impossible to determine exactly how many Indigenous men and women labored on Rancho Azusa on a daily basis. In some instances, the writers describe the unfree laborers in very imprecise terms. Like this May 15\textsuperscript{th}, 1862 entry: “the other Indians hosing out water ditches in new vines[.]”\textsuperscript{118} One is

\textsuperscript{113} Original text: “Pio podando en peons [sic] limpiando la vine,” in Enero 14, 1857
\textsuperscript{114} “Pio con dos en la vina.” Junio 10, 1857
\textsuperscript{115} Dec 29, 30, 1858; Jan 3, 6, 8, 22, 1859; Feb 7, 18, 1859
\textsuperscript{118} May. 15, 1862, Daily Occurrences, Vol. IV, Henry Dalton Papers, The Huntington Library, San Marino, California.
left to wonder, how many people were assigned to this arduous and essential task? In another instance, the labor of the unnamed is described in more precise terms. For example, an entry made on February 15th, 1858, simply states: “five Indians at work in vineyard.” While this entry does not identify the laborers, it does indicate that an unspecified task in the vineyards required five people.

While the “Daily Occurrences” books do not provide individualized portraits of the men and women bound by debt peonage, they do provide a broad picture of life as an unfree Indian laborer on Rancho Azusa. Life was grueling and the environment was harsh. One had to work six day a week at the base of a dusty canyon where most days out of the year, water was scarce, the wind warm, and the soil dry. Dalton and the mayordomo ceased labor operations only when it rained heavily. In this area of California, where winter and spring were short, these days were few.

The men and women bound to Rancho Azusa found ways to shorten their work weeks. On many Sundays the unnamed, unfree Indian laborers drank until the point of excess. During the 1850s, many Sundays are described with short phrases, like: “Everybody drunk” and “Indians drunk.” After these Sundays, the unnamed, unfree Indian were “sick” and “not at work.” While alcoholism may have plagued this community, it does appear that the unnamed, unfree Indian laborers drank so heavily that

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120 This description is based on archival sources and personal experience. Nearly every entry in the Daily Occurrences books begins with a brief description of the day’s weather. Additionally, my grandparents live in a house in the city of Azusa, and through research, I believe their house rests on the laurels of the vineyard or the orange groves. Having spent much time in this area, I also used my own knowledge of the weather in Azusa to supplement the archival descriptions.
they did not have to work six days out of the week. By drinking to the point of intoxication, the unfree Indian laborers dictated the terms of their labor. Drinking was a way to “slow down” labor on the Rancho. However, by September 1859, Dalton and the mayordomo stopped selling liquor to laborers on Rancho Azusa. Soon after this decision, the unidentified, unfree Indian laborers are described as “roaming about quite uneasy wanting whiskey.” While this may have been a symptom of alcohol withdrawal, one wonders if they were also desperate to shorten their work week. During this hot and dry month of September, the unnamed, unfree Indian laborers had built a house and a large swath of fences, dug irrigation ditches, and performed agricultural labor. The nameless, unfree Indian laborers may have very well wanted to slow down production on the rancho.

In addition to slowing down work on the rancho, unidentified, unfree Indian laborers ran away. The documentation of running away provides more insight into the power structures of Rancho Azusa. There are very few mentions of runaways in the “Daily Occurrences” books, and these entries do not provide any biographical information. Even when unnamed, unfree Indian labors defied the debt peonage system, they remained nameless in these books. For example, on June 13th 1858, the recorder described an escape from the Rancho as “three ran away.” The writer attempted to render resistance invisible in order to maintain the power structures that subjugated and differentiated the unfree Indigenous laborers as subjects, rather than actors, on the Rancho and in the larger colonial system.

124 September 1859 entries, Daily Occurrences, Vol. II, HD
125 June 15, 1859, Daily Occurrences, Vol. II, HD
126 My analysis here is heavily influenced by Michel-Rolph Trouillot, Silencing the Past, 1 – 30.
In the “Indian Books,” which documented debt, runaways were described by their name. In fact, when it came to debt, the writers referred to every single unfree Indian labor by their name. The front page of the “Indian Book” for the years of 1856 – 1859 documents the unfree Indian labors who liberated themselves from debt peonage. According to the record keeping, in December 1856, at least twenty-six “Indians fled owing.”\(^{127}\) (See Figure 2) While Dalton attempted to indefinitely bind Indigenous workers to the Rancho, some held captive by their debt wrestled the handles of the colonial power structure and liberated themselves from debt peonage. Forty-eight Indigenous debt peons are listed as working on Rancho Azusa from 1856 to 1859. This number provides a clearer, but not complete, picture of the amount of people Dalton entrapped with debt peonage in order to keep Rancho Azusa in operation.

\(^{127}\) Original text: “Indios que han huido doreindo” in Indian Hardcover, HD
Figure 2. List of “Indians who have fled owing”

<table>
<thead>
<tr>
<th>Name</th>
<th>Debt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ignacio Ochoa</td>
<td>71</td>
</tr>
<tr>
<td>Juan Ochoa</td>
<td>76</td>
</tr>
<tr>
<td>José Antonio</td>
<td>22</td>
</tr>
<tr>
<td>Tomas Chapo</td>
<td>24</td>
</tr>
<tr>
<td>Andrés</td>
<td>6 ½</td>
</tr>
<tr>
<td>José Chico</td>
<td>70</td>
</tr>
<tr>
<td>Refugió Ciganreno</td>
<td>51</td>
</tr>
<tr>
<td>Julián Rosalero</td>
<td>30</td>
</tr>
<tr>
<td>Ignacio</td>
<td>4</td>
</tr>
<tr>
<td>Felipe Sordo</td>
<td>6</td>
</tr>
<tr>
<td>José Chapo</td>
<td>43</td>
</tr>
<tr>
<td>Vicente Bermúdez</td>
<td>522</td>
</tr>
<tr>
<td>Catalina Cook</td>
<td>221</td>
</tr>
<tr>
<td>Mariana Peloa</td>
<td>16</td>
</tr>
<tr>
<td>José de flora</td>
<td>56</td>
</tr>
<tr>
<td>Ramón</td>
<td>204</td>
</tr>
<tr>
<td>Juan Viejo</td>
<td>6</td>
</tr>
<tr>
<td>Machado</td>
<td>70</td>
</tr>
<tr>
<td>Robert</td>
<td>78</td>
</tr>
<tr>
<td>Ramon</td>
<td>86</td>
</tr>
<tr>
<td>Illegible</td>
<td>87</td>
</tr>
<tr>
<td>Vial</td>
<td>40</td>
</tr>
<tr>
<td>Lebrikie</td>
<td>66</td>
</tr>
<tr>
<td>A Duarte</td>
<td>47</td>
</tr>
<tr>
<td>J M Alvarez</td>
<td>49</td>
</tr>
<tr>
<td>A Duarte</td>
<td>62</td>
</tr>
</tbody>
</table>
While Dalton did not use the guardianship system, he took advantage of the loopholes that allowed for Indian slavery in the Act for the Government and Protection of Indians to his economic advantage. The 1860 Census entry for Rancho Azusa exemplifies this. According to the schedule for Free Inhabitants, three-hundred-and-thirty-seven individuals resided in the Azusa Township. Eighty-one people, about twenty-two percent of the population, lived on Rancho Azusa according to Census records. At this time, Henry Dalton and his wife Maria had six children living with them. This means seventy-five men and women lived on the Rancho specifically to provide labor. The census taker categorized thirty-eight of the laborers as ‘Indian.’ He characterized the remaining thirty-seven as ‘white.’ According to the debt books, from 1856 to 1859, there were at least forty-eight unfree Indian laborers on Rancho Azusa. (See Figure 3) Given this conflicting data, the census taker most likely undercounted the Indian laborers attached to Rancho Azusa.

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128 Historically, Census records have undercounted Indigenous and black inhabitants. That being the case, I do not consider the numbers provided by the 1860 Census as complete, especially in relation to the Indigenous population. However, I have used them in order to create a more complete assessment of the Indigenous population on the rancho. For more on the history of the Census and the undercount of certain populations, see: Margo Anderson *Who Counts?: the Politics of Census-Taking in Contemporary America* (New York: Russel Sage Foundation, 1999), 1 – 76.

129 Rolled Photocopy of Census of Free Inhabitants, Azusa, Calif. 1860, HD
Figure 3. List of known unfree Indian Laborers at Rancho Azusa, 1856 – 1859

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Debt</th>
<th>Payement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Juan Duran</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Juan Largo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Martin Duarte (starts with debt of $334)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Pio Serrano (paid $28 a month, starts with debt of $427)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>A Seigle, carpenter (starts with debt of $137.5)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Francisco Ortega (paid $10 a month)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Cochero Garlacio (?)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Felipe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Crispin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Bartelo (paid $12 a month)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Ramoncito</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Martin (started with a debt of $47)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Ignacio Paldvero</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Francisco ‘chico’ Ortega (paid $12 a month)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Jose Viejo (started with debt of $66)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Jose Luis, cocinero (started with debt of $357)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Mariano Viejo (started with debt $45 ½)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Juan Pablo (started with debt of $73)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Mariano Riejo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Francisco Alcalde (starts with debt of $152)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Pedro Quintana (starts with debt of $62)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Andres</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Francisco Chino (starts with debt of $62)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Miguel Silvas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Ignacio Ochoa</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Jose Antonino Largo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Pedro Carpintero (died on rancho)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Jesus Dias</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Tomas Chap</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Bautista</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Jose Manuel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Crispin (starts with debt of $11)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Julian Posolero</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Ansrona (unsure of spelling)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Coyote</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Feliz</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Julian Pozolero</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Jose Fuerte</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>Jose Flores</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Ignacio</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Tamaris (starts with debt of $.70)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Jose Ignacio</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Bruni Cojo</td>
<td></td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Ramon Huertero (starts with debt of $20.40)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Jose Antonio, ‘hermano a Flores’ (starts with debt of $56)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Garrocha</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Mariano</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Ireanto Flores</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

130 Data assembled from Indian Books by author.
The Census data does reveal that Indigenous men and women were the only laborers bound to the Rancho through debt peonage. The thirty-seven laborers categorized as ‘white’ were either from Mexico, Alta California, or American states. Unlike the unfree Indian laborers on the Rancho, free white labors received wages that did not entrap them in debt peonage. Merrick Woodworth from Pennsylvania worked as a day laborer on the Rancho. Unlike the unfree Indian laborers on the Rancho, Woodworth possessed $1,100 in personal property. Burnett Mendoza, who also worked as a day laborer, from Mexico held $150 in personal property. According to the census, eleven white, male laborers claimed personal property of at least $30. Given the accumulation of their personal property, Dalton must have paid these day laborers more than $.11 a day or $10 a month. None of the thirty-eight laborers marked as Indians held any personal property.\textsuperscript{131} The Census data, when read alongside the “Indian Books” and “Daily Occurrences” reveals that Dalton paid laborers according to a racial and gender hierarchy. White day laborers received higher wages than Indigenous men and women. This stratification of labor reflects a racial hierarchy shaped by the imposition of colonial power.

Dalton entrapped Indigenous men and women as unfree laborers through an exploitative system of debt peonage. Furthermore, the 1860 Census uncovers that agents of the federal government did not protest or order an end to the practice. Rather, Census takers considered the unfree Indian laborers as “free inhabitants.” On Ranchos, like Rancho Azusa, the use of unfree Indian labor contributed to the construction of Indigenous people as unfree, non-citizen subjects, while the labor they provided

\textsuperscript{131} Ibid.
facilitated the colonial transformation of the land. Ultimately, the differentiation of Indigenous labor enforced the subjugation of racialized, non-citizen subjects within the larger colonial process. As late as 1879, Dalton bound at least forty Indigenous men and women to Rancho Azusa through debt peonage.\textsuperscript{132}

**Conclusions**

This chapter has demonstrated that despite the Free State status of California, Anglo-American and Californio legislators and settlers constructed a legal framework for a system of Indian slavery that facilitated not only the legal enslavement of Indigenous Peoples, but also the imposition of colonial rule over the land and conquered peoples. The 1850 and 1860 Act for the Government and Protection of Indians resulted in the enslavement of innumerable Indigenous men, women, and children and the devastation of the Indigenous population throughout California. In this chapter, I have demonstrated how legislation that transformed Indigenous individuals into unfree laborers was part and parcel of the colonial process in California. The implementation of legislation that allowed for Indian slavery, despite state and federal prohibitions, indicates that unfree labor systems were crucial to the construction of racialized and engendered power structures that justified the dispossesson, exploitation, and the exclusion of conquered people and empowered the imposition of white, male colonial power in the American state of California.

Two decades of colonial dispossession and forced removal resulted in the incorporation of Indigenous people as racialized, non-citizen subjects and the

\textsuperscript{132} Indian Books, four volumes, HD
construction of Indians as native landless aliens. The forced removal to reservations was the next chapter in this process. As Anglo-American capitalists and businessmen moved away from unfree Indian labor, they began to rely on cheap Chinese immigrant labor. The labor arrangements between Chinese laborers and Anglo-American employers were lopsided relationships in which white employers wielded a preponderance of power. Anglo-American colonial entrepreneurs also utilized Chinese labor to facilitate the colonization of the American West. Chinese laborers built the railroads and performed the agricultural labor that transformed the landscape.133 Forced to compete with the devalued labor of Chinese immigrants, Anglo-American wage laborers began to racialize Chinese laborers in relation to the ‘Indian’ category. The rise of the Workingman’s Party, a white-working class political group founded on anti-Chinese racism, in California exemplifies this.134 As a result, Anglo-American wage laborers, settlers, and legislators, revised the colonial arguments that justified the subjugation of Indigenous laborers and applied the same logic to exclude Chinese laborers from the California project. Later in the nineteenth-century, Anglo-American legislators, businessmen, and settlers in California, appropriated and revised the unfree and exploitative labor systems that enslaved Indigenous people, to construct a labor system that would incorporate

Chinese immigrant laborers as racialized, non-citizen subjects in California and the larger United States.
Racializing Testimony

In 1853, a San Francisco court convicted George Hall, a white man, of murdering Ling Sing, a Chinese miner. Hall and two other white men attempted to rob Sing and three other Chinese miners. During the robbery, Hall killed Sing and the other three Chinese miners escaped with injuries. In Gold Rush California, Anglo-American miners often robbed and assaulted Chinese miners, whom they viewed as unlawful occupiers. The Court convicted Hall on the basis of the other Chinese miners’ testimony.

A year later in October 1854, Hall appealed to the California Supreme Court, which reversed his conviction. The Court reversed not because of Hall’s innocence, but because, as California Supreme Court Justice Hugh Murray explained, “Chinese testimony was inadmissible” according to a state law that provided “no Black or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a white man.” Justice Murray noted that this law applied to Chinese people because their “racial identifiers” proved that Indians had migrated from Asia; therefore, all Asians were Indians. Murray continued: “By the use of the term “Black” in this connection, we understand it to mean the opposite of "white," and that it should be taken as

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1 People v Hall, Appellant, 4 Cal. 399, 1854 Cal. LEXIS 137 (Supreme Court of California October 1854). Retrieved from https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SHB-P8R0-001B-819T-00000-00&context=1516831.
2 People v Hall.
contradistinguished from all white persons.”

For Murray, “Black” was an all-encompassing word for non-white.

In his opinion, Murray does three things. One, he categorized the Chinese as non-white and, therefore, as racially inferior. Murray accomplished this by applying the pseudo-science of the day. Two, by labelling the Chinese as non-white, Murray expanded the legal definition of non-whiteness to include people of Asian descent. Three, by classifying the racial difference of Chinese immigrants, Murray’s opinion allowed for the colonial incorporation of Chinese immigrants into California as non-citizens subjects.

The Hall decision aligned with contemporary racial ideology. In 1855, a year after Murray’s opinion, California Assemblyman J.E. Clayton proclaimed that the Chinese were “worse than worthless” in a speech entitled the ‘Chinese Question.’ According to Clayton, “The lowest digger Indian looks upon them with utter scorn and looks forward to the time [when] he can exterminate these far away Indians.” In 1850s California, the use of the term ‘digger Indian’ meant “the worst of a degradeless and godless race, ranking “lowest among the aborigines.” Clayton’s and Murray’s words demonstrate that some Anglo-American colonial administrators in California had placed Chinese immigrants at the bottom of the racial hierarchy. In the span of four years, California law

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3 Ibid.
5 Ibid.
7 Ibid.
makers had expanded the state’s legal framework to allow for the incorporation of racialized, immigrant groups, like the Chinese, as non-citizen subjects.

As the *Hall* case demonstrates, the parameters of race, labor, and citizenship in the new, colonial state of California remained in flux. The California Constitution established a legal framework that allowed for the exclusion of conquered, and eventually immigrant, groups from citizenship according to a racial hierarchy that privileged whiteness. In the years that followed the ratification of the constitution, lawmakers crafted legislation that further excluded black, Indigenous, Californio, and Chinese persons from citizenship. Within a Free State context, such legislation allowed for the association of non-whiteness and non-citizen subject status. These associations rationalized the incorporation of non-white conquered and immigrant individuals as non-citizen subjects.

**Creating a Politics of Difference**

This chapter focuses on the legislative prohibition on black, Indigenous, Chinese, and Californio testimony in California courts. The racial restriction on testimony was premised upon an ideology of white supremacy that justified American colonization in a space where racial categories and power were in flux.9 In doing so, this chapter argues that the right to testimony became the battleground for the expansion of citizenship.10

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dissolving the ability to call or make claims on the state, anti-testimony laws contributed to the co-construction of whiteness and citizenship.\textsuperscript{11} Colonial legislation, such as racially restrictive testimony laws, transformed bodies into racialized, non-citizen subjects.\textsuperscript{12}

As scholars of colonialism in the African and Indian context have demonstrated, colonialism is the sorting out of the “politics of difference.”\textsuperscript{13} In California, both the colonizer and the colonized contested the meanings of difference. Those in charge of legally delineating the terms of incorporation and belonging, codified difference in a manner that empowered those who could claim whiteness.\textsuperscript{14} In California, Anglo-American settlers familiar with the racialized power and unfree labor relations of a slaveholding nation, worked to create a racial hierarchy informed not only by slavery, but also by conquest and colonization.\textsuperscript{15}

U.S. Congress admitted California to the Union as a Free State under the Compromise of 1850 to avoid the territorial issues surrounding the institution of


\textsuperscript{12}In their book, \textit{Racial Formation in the United States}, Michael Omi and Howard Winant discuss “the centrality of race in the organization of political life in the United States.” In \textit{Racial Formation in the United States}, they develop a conceptual framework in which race serves as a key category of analysis by which to understand inequality, individual and collective identity formation and agency, and (dis)empowerment. An important aspect of this framework, and my interrogation of racial formation in nineteenth-century California, is the acknowledgment that racial meanings are not stable or consistent and that “concepts and ideologies of race and racism evolve, transform, and shift over historical time.” Michael Omi, Howard Winant, \textit{Racial Formation in the United States} (New York: Routledge, 1986, 2015), 2, 3.


\textsuperscript{14}My thoughts on the “work” of colonialism have been influenced by Frederick Cooper, \textit{Colonialism in Question: Theory, Knowledge, and History} (Berkeley: University of California Press, 2005).

slavery. But a Free State status did not guarantee or promise citizenship to all inhabitants. In the new state, lawmakers worked to restrict citizenship and defined belonging around notions of race.

The layered nature of colonialism in California, further complicated the articulation of difference. The American colonial government required the cooperation of elite Californios in order to exert its authority in the region, and as a result expanded the bounds of incorporation. As demonstrated in chapter two, the federal government, at the behest of Anglo-American settlers, implemented legislation that violated the Treaty of Guadalupe Hidalgo. Again, in the case of testimony, the state legislature and people on the ground worked to nullify Article IX of the treaty, which extended citizenship to Mexican nationals. As this chapter will demonstrate, racial restrictions on testimony targeted Californios and slowly differentiated their status as treaty citizens. The state treatment of Californios coincided and upheld discriminatory treatment of other racialized groups.

However, Colonized groups resisted insidious racialization by appealing to notions of civilization and staking claims to white settler identities. For example, elite Californios, in an attempt to be included in the construction of whiteness, highlighted

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17 Text of Article IX: The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States. and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without; restriction.
their Spanish heritage and their role as colonizers of the Mexican Republic. Some Chinese immigrants and black Americans employed a different strategy. They adopted Christianity as a means of demonstrating their willingness and ability to assimilate into whiteness. The racial restriction of testimony in California provided a blueprint for how to deny citizenship and confer a status of non-citizen subject to members of racialized groups in a Free State; this blueprint would become useful during Reconstruction.

The Non-Right to Remain Silent for People of African Descent

The legislative engineers of California fashioned a legal system that integrated American and Mexican racial ideologies. The Anglo-Americans who settled in California had lived in a society in which institutionalized racial categories supported unequal power relations. They brought these notions to California and attempted to transform the political, social, and economic landscape into something they recognized and in which they could wield power over racialized bodies.

In 1850, during the first legislative session, Californian congressional members enacted two statutes, An Act Concerning Crime and Punishment and An Act for the Government and Protection of Indians, which placed racial restrictions on testimony. The Act Concerning Crime forbade any “black or mulatto person, or Indian” from giving testimony in favor of or against any white person in any criminal case. An Act for the

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20 The law also codifies racial status. Statutes of California 1850, Ch. 99, “An Act concerning Crimes and Punishment,” Sec. 14. “No black or mulatto person, or Indian, shall be permitted to give evidence in favor
Government and Protection of Indians was a wide-reaching piece of colonial legislation that contributed to the extermination and destruction of Indigenous Peoples in California by codifying their status as non-citizen subjects and subjecting them to systems of unfree labor.21 In addition to providing for unfree labor systems, Section Six of the Act made clear that “in no case shall a white man be convicted of any offense upon the testimony of an Indian, or Indians.”22

In 1851, the California Legislature prohibited black and Indigenous testimony in civil cases.23 A year later, in 1852 the California Legislature passed, “An Act Respecting Fugitives from Labor and Slaves brought to this state prior to her admission into the Union,” which nullified the anti-slavery clause in the state constitution. In addition to undermining California’s Free State status, the Act prohibited the testimony of black refugees in cases pertaining to their freedom. Section One of the Act states: “In no trial or hearing under this Act shall the testimony of such alleged fugitive be admitted in evidence [.]”24 By prohibiting black testimony in fugitive slave cases, legislators limited the possibilities for the incorporation of black refugees as free people in California.

In cities like San Francisco, Anglo-American men frequently assaulted black men and women. Newspapers of the day documented the routineness by which persons of color were attacked by white aggressors.25 Even if the attack occurred in public,

\[\text{\textsuperscript{21}}\text{ See Chapter 3.}\]
\[\text{\textsuperscript{22}}\text{ Section 6, Statutes of California 1850, ch. 133, “An Act for the Government and Protection of Indians,” passed April 22, 1850.}\]
\[\text{\textsuperscript{23}}\text{ Statutes of California 1851, ch. 5, “An Act concerning Civil Cases in the Courts of Justice in the State,” title 11, section 1, 51.}\]
\[\text{\textsuperscript{24}}\text{ Statutes of California 1852, ch. 33, “An Act Respecting Fugitives from Labor and Slaves brought to this state prior to her admission into the Union,” 67 – 69.}\]
convictions for Anglo-American assailants were rare because black testimony was impermissible in the court of law.

During the year of 1852, on a dusky evening in San Francisco, a young black woman, Ms. Chase was closing up the millinery store she worked at when a white man entered the business and stole the cash from the store register. She ran after him in the streets, shouting, “Stop, thief!” She did not catch him, and no one intervened. The next morning the thief went into a barbershop where Gordon Chase, Ms. Chase’s brother worked, and ordered him to force his sister to take back the accusation of “thief.” Chase replied that he had nothing to do with the issue. Enraged by Chase’s response, the thief began beating Gordon and shot him. Upon being shot, Chase ran outside, shouting, “Murderer!” He collapsed on the sidewalk, and the thief shot Chase again and beat him with his pistol until Chase was dead.

The case went to court. It just so happened that Robert Cowles, a black man, was in the barbershop at the time of the assault. Cowles, in an effort to hold the white assailant accountable, volunteered to provide testimony because he had a light complexion. However, at the bequest of the defense, the court ordered an examination of Cowles by physicians to determine his race. Upon examination, the physicians concluded, that “his hair had one-sixteenth of a drop of Negro blood.”26 Given the results of the pseudo-scientific examination, Cowles could not give testimony. Fortunately, a white hotel proprietor, Mr. Fink witnessed the murder and gave testimony, which could not be disputed, and the assailant was charged with murder. The San Francisco Court

only accounted for crimes committed against black men and women when a white male
citizen supported such action.

The racial restriction on testimony not only left black men and women vulnerable
to racist violence, it also compromised their ability to claim freedom in a Free State. In
1851, Bridget “Biddy” Mason arrived in San Bernardino, California, as an enslaved
woman. Robert Smith, a white man who claimed Mason as his property, trafficked
Mason and her children, Ellen, Ann, and Harriet, to California. Smith migrated with a
group of Mormons who had left Salt Lake City, Utah, to establish a Latter-Day-Saints
colony on more fruitful and profitable land.

The California Constitution of 1850 did not permit slavery. However, in addition
to creating legislation that allowed for the practice of Indian slavery, the California State
Legislature, in April 1852, passed An Act Respecting Fugitives from Labor, and Slaves
brought to this State prior to her Admission into the Union. The act, commonly known
as the California Fugitive Slave Law, weakened the anti-slavery clause of the California
constitution by protecting the property rights of slaveholders who entered the state and
obstructed possible paths to freedom for enslaved people. Under this law, an enslaved
person could not run away to their freedom, because a slaveholder could call on local law
officials to re-seize their ‘property.’ Smith was one of several hundred Southerners who
trafficked enslaved people to California with the intention of earning wealth from their

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27 Sources indicate that Biddy Mason was most likely born into slavery in 1818, in Hancock County,
Georgia. Since her birth, she had been forced to migrate from Missouri, to Utah, and, now, to California at
the behest of her owner.
28 Some sources indicate that Smith had a falling out with Mormons in Salt Lake City and that this is the
primary reason why he migrated to California.
brought to this State prior to her Admission into the Union,” 15 April 1852.
30 Sec. 1, “An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission
into the Union,” Journal of the California State Assembly, 15 April 1852.
exploited labor.\textsuperscript{31} In cities throughout California, Black antislavery activists challenged the fugitive slave law throughout the 1850s.\textsuperscript{32} In the case of Biddy Mason and her three children, a network of Black antislavery activists in Los Angeles would challenge Smith’s claim.

During the three years that Mason had lived in California, she worked as a midwife and often worked without the direct supervision of Smith. Mason made friends with many of the free blacks living in the Los Angeles area. She became friends with Elizabeth Rowan, a free black woman, and Robert and Minnie Owens, who had bought their freedom in Texas and moved to California, black owners of a successful cattle business.\textsuperscript{33}

In California, Smith made good money in the cattle business, having secured bountiful land sixty miles outside of Los Angeles. After three years of success, Smith experienced a falling out with the local Mormon leadership and lost his land and cattle in a legal suit. Facing poverty, Smith decided he would migrate to Texas and make another fortune there. Again, he planned to traffic Mason and her three daughters to Texas.\textsuperscript{34}

Upon becoming aware of Smith’s plans to kidnap Mason and her three children, Elizabeth Rowan brought Smith’s plan to the attention of Los Angeles County Sheriff Frank Dewitt.\textsuperscript{35} Dewitt chose to act on behalf of Biddy Mason’s rights in a Free State, not Smith’s property rights. Dewitt solicited the assistance of Robert Owens and they

\begin{itemize}
  \item \textsuperscript{31} Stacey Smith, \textit{Freedom’s Frontier}, 8.
  \item \textsuperscript{33} Douglass Flemming, \textit{African Americans in the West}, 23.
  \item \textsuperscript{35} Cecilia Rasmussen, “In Key Court Case, Slave Tested State's Commitment to Freedom,” \textit{Los Angeles Times}, 27 January 2002.
\end{itemize}
travelled to a canyon in modern-day Santa Monica where Smith was holding Mason and her children. Dewitt served Smith a writ of *habeas corpus* and ordered him to stay in California and appear in court on charges of “persuading and enticing and seducing persons of color to go out of the state of California.”36 Owens and Dewitt escorted Mason and her children to a Los Angeles jail where they were kept under the supervision of Los Angeles deputies for months.

On January 19, 1856, Judge Benjamin Hayes, the Los Angeles District Court judge, heard Biddy Mason’s case. Hayes ruled in favor of Mason and her children, declaring that they were forever free. According to a principle dating from Lord Mansfield’s opinion in the Somerset case, by virtue of setting foot in California, Biddy Mason and her children were “entitled to their freedom and are free forever.”37 In his decision, Hayes prioritized the California Constitution, not the Fugitive Slave Act.38 With his decision, Hayes prioritized the colonial government’s authority, rather than Smith’s authority, over black bodies.

During the official court proceedings, Mason was not allowed to give testimony. However, Hayes met privately with Mason in his chambers. He solicited Abel Stearns and Dr. J. B. Winston to serve as uninterested witness. Hayes’ choice of witnesses is interesting. He chose two men with Californio connections – Abel Stearns who lived in Alta California since the 1830s and Dr. J. B. Winston, a Virginia native, who had married a Bandini daughter. The Bandinis were, perhaps, the most powerful and well-known...

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36 The petition also included thirteen other enslaved people, including Mason’s three children.
38 Article 1, Section 18
Californio family in the San Diego area. The decision to interview the Masons under the supervision of Californios was an assertion of Californio power over white settler power.

When Hayes asked if she wanted to travel to Texas, Mason stated, "I have always done what I have been told to do; I always feared this trip to Texas, since I first heard of it. Mr. Smith told me I would be just as free in Texas as here." Without compromising her safety – after all Mason was not sure that the Court would rule in favor of her freedom – she demonstrated that despite geographical location, Smith had always treated her as her as his property; therefore, he had violated California law. Furthermore, in her statement, she made clear that she knew moving to Texas would compromise the independence she had nurtured as a midwife in Los Angeles. Mason’s daughter, Ann, also used the rare opportunity to speak on the behalf of her freedom in a manner that convinced Hayes of Smith’s intentions. She asked, “If I go back to Texas, will I be as free as here?” Both women made clear to Hayes that Smith intended to traffic them to Texas as slaves without jeopardizing their safety.

For Hayes, Biddy’s and Ann’s testimony indicated that Smith intended to take them to Texas against their free will. In explaining his ruling, Hayes wrote that the "speaking silence of the petitioner” indicated that Smith had threatened her to remain silent in his chambers. Mason had answered Hayes in a way that protected her from Smith’s possible retaliation, while advocating for the protection of the relative freedom she had attained in California. Despite Biddy and Ann’s assertions that they were aware of their rights within a Free State, Hayes assumed they were ignorant of the law. According to

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40 Ibid.
41 Ibid.
Hayes, the evidence that Smith planned to “entice and seduce” Mason and her children, demonstrated their ignorance and vulnerability. Hayes’ paternalistic interpretation of Biddy’s and Ann’s testimony compelled him to protect their status as vulnerable, ignorant women of color, so he prioritized the unofficial testimony of the Masons.

By providing testimony, Mason defied state law and convinced Hayes to uphold the Free State promise to people of color. Biddy and Ann Mason challenged white mastery and domination in a contested colonial space that had yet to establish firm racial, gender, and class restrictions on citizenship. Mason’s case demonstrates how crucial racial restrictions on testimony were to the maintenance of white dominance and the differentiation of black citizens in a nominally Free State.

On the Friday morning after Hayes delivered his opinion, Smith packed his wagons for Texas and sent two men, Hartwell Cottrell and Willy Smith, to the Owens’ house where Mason and her children were staying under court order.42 The two men begged Mason’s children, Ann and Ellen, to accompany them on their trip; their mother was not home. Once Hayes became aware of the attempt to kidnap Mason and her children, he issued an order and they were taken to the Los Angeles County Jail where they were kept safe under the watch of Sheriff Alexander. Again, Cottrell and Willy Smith attempted to kidnap the Masons; they had even brought a bottle of whiskey to facilitate the attempt. This was their last-ditch effort and it failed. Faced with an arrest warrant, Smith left Los Angeles for Texas without Mason and her children.43 The challenges to Mason and her family’s freedom faltered.

42 Ibid.
Although they were entitled to their freedom, Hayes appointed Los Angeles County Sheriff, David W. Alexander, as the special guardian of Mason and her young children for their protection. By imposing guardianship upon Mason, Hayes transformed Mason into a ward of Alexander on the basis of race and gender. Hayes’ appointment of guardianship demonstrates that as a black woman, Mason could not be incorporated as a free citizen. Despite living in a Free State and winning her freedom, the court differentiated Mason’s citizenship status in relation to the white men who practiced authority over her. Nevertheless, Mason lived in Los Angeles with her children, where she worked for John Strother Griffin as a nurse and made a small fortune.

The Mason and Chase cases demonstrate how racial restrictions on testimony left people of African descent not only vulnerable to violence, but also powerless vis a vis the state and white man. When white men exerted control over black bodies, there was a small chance of state interference, especially, in a system that bestowed more discursive capital and power to white men. However, in these two instances, black petitioners forced the state to recognize their rights, albeit limited rights, as a free person. Regardless of the outcomes of these cases, the colonial framework continued to incorporate a majority of black migrants, refugees, and slaves into the state as non-citizen subjects.

The free Black community in San Francisco was dismayed by the Chase case and founded the Franchise League to remove the statute that prohibited Black testimony by lobbying the California Legislature. On March 22, 1852, their petition was introduced

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by Assembly Member, Patrick Canny of Placer County, with a simple request, “the Free Negroes of San Francisco prayed for a change in the laws to authorize them to give testimony against white men.” The Assembly rejected the resolution by a vote of forty-seven to one.46

A year later, assembly member W.C. Meredith of Tuolumne County presented another Franchise League petition demanding the repeal of the testimony statute. Again, the legislature rejected the petition. After the vote, Assemblyman George Carhart claimed he “did not want the [Assembly] Journal tarnished with such an infamous document” and ordered the clerk to not file the petition.47 Throughout the 1850s, the Franchise League of San Francisco continued to send petitions to the California Assembly where they always met opposition.

Faced with the failure of the petitions sent to the California Assembly, a group of middle-class Black men, led by Mifflin W. Gibbs, began to organize a state-wide association.48 Gibbs was born in Pennsylvania and migrated to California during the Gold Rush. Dismayed by the discrimination he experienced in the gold mines, Gibbs moved to San Francisco where he began a successful shoe store business.49 In San Francisco, he started the “Alta California” – the only Black newspaper in the state at the time.50

In an effort to expand their campaign, Gibbs and local Black leaders, J.H. Townsend, Peter Anderson, W.H. Newsby, and James Carter, planned a statewide

46 Journal of the Assembly, 1852, March 22, 1852, 395.
49 Black miners were treated similarly to Chinese miners in the sense that Anglo-American miners viewed Black men as unlawful occupiers and unentitled to the wealth in the mines.
Colored Convention. In their call for participants, they declared that a convention was needed to conduct "careful inquiries into our social, moral, religious, intellectual, and financial condition." After considering the many issues that affected their communities, the leaders of the convention decided that the goal of the convention was to secure the right to testimony for black people in California.

They would hold the first California Colored Convention on November 20, 1855 in Sacramento. The announcement of the convention was a call to arms for the free people of color living in the state. The call declared:

“Brethren – your state and condition in California is one of social and political degradation; one that is unbecoming a free and enlightened people. Since you have left your friends and peaceful homes in the Atlantic States, and migrated to the shores of the Pacific, with hopes of bettering your condition, you have met with one continuous series of outrages, injustices, and unmitigated wrongs [.]. Then in view of the wrongs which are so unjustly imposed upon us, and in the progress of the enlightened spirit of the age in which we live, and the great duty that we owe ourselves and the generations yet to come, we call upon you to lay aside your various vocations, and assemble yourselves together on Tuesday, the 20th of November A.D. 1855, in the city of Sacramento, at 10 o’clock a.m., for the purpose of devising the most judicious and effectual ways and means to obtain our inalienable rights and privileges in California.”

The call to convention indicates that the organizers understood that the California legal system not only degraded black people, but it also left them vulnerable to wanton violence and mistreatment. They had called a meeting to reform the contradictions of the ‘Free State.’

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54 Pacific Appeal, 12 April 1862
The black activists held the first California Colored Convention in Sacramento, California as planned. For the first time in the state’s history, the leading black activists in gathered in one place. There were representatives from ten counties, mostly gold-mining counties in the Northern California. The president of the Convention, William H. Yates, was an ex-slave who assisted fugitive slaves on the Underground Railroad in Pennsylvania. Upon moving to California in 1851, he quickly became a leading activist in San Francisco. The secretary of the convention, Reverend Jeremiah B. Sanderson, was a leader of the abolitionist movement in Massachusetts and after arriving in California in 1854, began organizing for public education in the state.

The minutes of the Convention indicate that many of the delegates had adopted moderate liberation politics and the day’s racist pseudo-science. In his opening remarks, William Yates as the Colored Convention Persistent, conceded the inferiority of blacks, stating: “that in appearance and education, the African cannot compete with the Caucasian race.” He then reflected upon the situation stating, “If there are feelings of liberty within the breasts of those present, who but the Caucasian taught them to us?” Yates’ comments demonstrate that he was thankful for the racial superiority of whites, because they had gifted white civilization – an ideal which he and the members of the convention aspired to achieve. The delegates did not reject the racial stereotypes imposed upon them and used this rhetoric in order to make appeals to the white folks they were trying to get to support their cause.

58 Ibid.
When first drafting their report, there was a motion to include the following:

“That we regret and reprobate the apathy and timidity of a portion of our people, in refusing to take part in any public demonstration having for its object the removal of political and other disabilities, by judicious and conservative action.”60 The delegates’ desire to apologize for the inaction of those not present at the convention demonstrates that they hoped to appeal to white opinions of black people and, perhaps, present themselves in a better light. Later, when debating whether or not they should include such apologist language, delegate D. Stokes exclaimed:

“Are the means of intellectual advancement nothing to us, that we lie thus supinely on our backs, with folded hands, without one effort to elevate our moral, social and political condition? Let us begin by improving our position as laborers[.] We must exert ourselves to accomplish something here.”61

These comments demonstrate that the delegates believed that performing an appearance of respectability was required to obtain rights.

The Convention concluded and published its resolution and a letter to the people of California. The Resolution declared the testimony ban unjust and asked for a repeal of the laws that placed racial restrictions on testimony because the black community in California had demonstrated that they “compare favorably with any class in the community.”62 To help accomplish this, the Convention would continue to send petitions to the state legislature. In doing so, they replicated the tactics of abolitionist groups in the 1830s and 1840s. 63

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60 Proceedings of the First State Convention of the Colored Citizens of the State of California, 10.
63 D. Michael Bottoms, An Aristocracy of Color, 30.
The “Address to the People of California” attempted to convince Anglo-Americans in California that the testimony ban was “an injury to the white man as well as to ourselves [people of color].”\textsuperscript{64} The Address goes on to provide evidence that the black denizens of California deserved the right to give testimony because they had provided profitable labor to the state. The 6,000 black migrants in California had accumulated nearly $3,000,000 in capital. Additionally, they had “acquired most of the [Anglo-American’s] manners and customs.”\textsuperscript{65} They had proved themselves worthy of citizenship rights more than once. Because of the conciliatory tone of the resolutions and the omission of the Abolitionist movement, Frederick Douglass refused to publish an account of the Convention in his paper, \textit{the North Star}.\textsuperscript{66}

A year later, the State Executive Committee held a second Colored Convention. The Convention grew to include seventeen counties. Through newspaper advertisements, the Executive Committee achieved its goal of increased participation. In the time between the two meetings, editors of the paper publicized cases where white men committed crimes against a black person but did not suffer legal consequences. Most notably, they published an article about a case of murder at sea in which a white sailor murdered a black seaman.\textsuperscript{67} The only witness was a black deckhand. United States Circuit Judge McCallister ruled that the testimony of the black sailor would not be permitted given the laws of the California court, despite being at sea.\textsuperscript{68} Many black people were outraged that

\textsuperscript{65} “Address to the People of California,” reprinted in Herbert Aptheker, ed., \textit{A Documentary History of the Negro People in the United States}, 374 – 376.
\textsuperscript{66} William Lloyd Garrison also refused to publish the resolution and minutes in \textit{The Liberator}. Herbert Aptheker, ed, \textit{A Documentary History of the Negro People in the United States}, 373
\textsuperscript{67} Given the sources, I cannot deduce whether the black men provided their labor to the ship freely or if their labor was coerced or unfree.
the racially restrictive laws of California affected the rights of black men beyond state borders.

At the Second Convention, the delegates clamped down on the strategy to reject insidious racialization. In order to do this, the Convention founded a new newspaper, *Mirror of the Times*. A team of writers and editors would lead a newspaper campaign that promoted the movement to end the racial restriction of testimony. Additionally, the editors of the *Mirror of the Times* continued to reject their racialization and printed articles that emphasized the inferiority and foreignness of the Irish and highlighted the nativity of black people. An August 1857 issue stated: “We want no laws in this State that decide the character of a man by the color of his skin and we want no man who is unable to read and write his own name to dictate in the Councils of State what position we shall occupy on the soil of our nativity.”

Despite the organization and activism, the California Legislature did not amend the laws to allow for black testimony.

In 1857, when the U.S. Supreme Court delivered its landmark decision in the case of *Dred Scott v Sanford*, the court empowered the ongoing efforts of California legislators and Anglo-American settlers to bar free people of color, from citizenship rights and the bounty of colonization in California. As such, the battle over testimony in California halted. Scholars have studied the social and political ramifications of the *Dred Scott* decision in Northern and Southern contexts. In California, the *Dred Scott* decision affirmed the legality of the racial restriction on testimony in a Free State.

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69 *Mirror of the Times*, August 22, 1857.
70 In the case of *Dred Scott v Sanford*, the U.S. Supreme Court, under the direction of Chief Justice Robert Taney that U.S. Constitution did not intend to extend citizenship to people of African descent and, therefore, the rights of citizenship could never apply to them. The decision brought the nation closer to war.
The Non-Right to Remain Silent for the Indigenous

The racial restriction on testimony not only made Indigenous Peoples vulnerable to violence, but also contributed to their transformation as unfree, non-citizen subjects.\textsuperscript{72} As demonstrated in the previous chapter, An Act for the Government and Protection of Indians established a guardianship system that allowed white and Californio families to bring in an Indigenous child into their home for the purpose of labor. While the law required the consent of a child’s parent or “friend,” justices of the peace did not uphold this section of the law when awarding men guardianship over Indian children.\textsuperscript{73} In this chapter, I will focus on how the Act was enforced in a manner that further limited Indigenous individuals’ right to testimony and further excluded them from citizenship.

In 1852, the elite Californio Ranchero, Mariano Guadalupe Vallejo, bound a ten-year-old Indian girl, Timotea, until she was fifteen. During the days of the Mexican Republic, Vallejo relied on bonded labor to maintain his ranchos. Under the Act for the Government and Protection of Indians, Vallejo continued to rely on bonded Indian labor. In fact, Vallejo co-drafted the Act.\textsuperscript{74} According to court records, Timotea’s parents were not present at the Sonoma County court during the petition hearing. Instead, Vallejo provided the court with a vague note in which the child’s mother permitted her daughter to assent to such an arrangement. According to the records, Timotea’s mother gave her


\textsuperscript{73} Section Three of the 1850 “Bill to Provide Government and Protection of Indians” which created the guardianship system, reads: “Any person having or hereafter obtaining a minor Indian, male or female, from the parents of relations of such Indian minor, and wishing to keep it, such person shall go before a Justice of the Peace in his township, with parents or friends of the child, and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the child from its parents or friends, [...] and shall give to such person a certificate, authorizing him or her to have custody, control, and earnings of such minor, until he or she obtain the age of majority.”

\textsuperscript{74} See Chapter 3, p. 118.
approval in the form of an ‘x’ on the note. Despite these dubious circumstances, the judge approved Vallejo’s guardianship of Timotea until she was twenty years old.⁷⁵

Timotea’s guardianship case demonstrates how the racial restrictions on testimony created a hierarchy of discursive capital. Rather than seek the consent of Timotea’s parents, a judge relied only on Vallejo’s meager evidence. This attitude toward Indigenous testimony limited the authority Indigenous parents could claim over their children. Furthermore, the restrictions placed on Indigenous testimony contributed to their incorporation as non-citizen subjects. In the purposeful absence testimony, judges transformed Indigenous individuals into wards at the request of Anglo-American and Californio men.

In June of 1858, a man named Gabriel Allen applied for the guardianship of Geneva Rojas in the Los Angeles County Court.⁷⁶ Allen was an Anglo-American emigrant and had been in Los Angeles since at least 1853. He was a member of the Los Angeles Rangers, a volunteer militia comprised of men who relied heavily on extralegal home rule to suppress and manage the Californio and Indigenous populations in Los Angeles at the time. Allen was notorious for being pleasant when sober, and “warlike” when drunk.⁷⁷

Given the nature of the archive, we know less about Geneva Rojas who was ten years old in 1858. It appears, that Rojas did not belong to an Indigenous community in Los Angeles; rather, she had migrated from another Mexican state. She most likely

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⁷⁵ Indenture of Timotea, n.d. filed in the case of M.G. Vallejo v. Nicholas Kerreger, June 22, 1852, Case #199 (civil), Sonoma County Justice Records, California State Archives.
⁷⁶ “In the Matter of the Guardianship of Geneva Rojas,” Filed June 5, 1858, Los Angeles Probate Cases, Series 1, #102, Huntington Library Archives.
migrated to Alta California with her parents in search of labor. It is likely that Rojas was *mestizo* and regardless of her status in Mexico, the California legal and social system categorized her as an Indian. Therefore, Allen could petition for the guardianship of Rojas.

In his petition Allen used an “unfit parent” argument to justify his request to serve as the guardian of Geneva Rojas. According to Allen, her mother was dead and although her father was alive, he was “cruel” and “not competent to provide care for Geneva.” Without the consent of any adult related to Rojas, or any other adult, the Los Angeles court awarded Allen was guardianship.

A little over a month later, on July 29, 1858, Rojas’ father Guadalupe Rojas filed for a writ of *habeas corpus*. According to the petition, Allen had kidnapped Rojas and applied for guardianship without her father’s consent. Guadalupe Rojas explained that he had allowed his daughter to work at Allen’s house in February of 1858, but under the understanding that she was still under his control and protection. Sometime in May 1858, Allen brought a charge of assault and battery against Guadalupe Rojas. The documents do not say who Rojas assaulted – it could have been a member of the Allen family or his daughter or no one. On the evidence of Allen’s testimony, Guadalupe was convicted and incarcerated. While imprisoned, the courts granted Allen guardianship of Geneva Rojas.

Upon being released from prison, Rojas applied for guardianship. Rojas was granted guardianship of his daughter, but under the supervision of John Weber. Guadalupe Rojas’ effort to regain custody of his daughter challenged the colonial system. As a result, the

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78 “In the Matter of the Guardianship of Geneva Rojas,” Filed June 5, 1858, Los Angeles Probate Cases, Series 1, #102, Huntington Library Archives.
79 Ibid.
court placed his parenting under supervision, in order to reinforce the notion of racial inferiority for Mexican persons.

The Rojas case is an exceptional case in the sense that I have been able to reconstruct a narrative of what happened. The majority of cases that I have come across contain less detail – most petitions are one page and contain little information about the children and no testimony from parents. The courts, by not collecting or allowing Indigenous testimony, rendered such voices invisible at the time and in the archives. The Rojas case demonstrates how the judiciary contributed to the racialization of Mexican citizens by essentializing their proximity to ‘Indian-ness’ in order to arrange for exploitative labor practices. By essentializing the mestizo ancestry of Mexican people, Anglo-Americans and elite Californios, could impose unequal power relations over Mexican migrants in the same manner as Indigenous children.

These cases demonstrate how the restriction on Indigenous testimony functioned as the backbone of a guardianship system that forcibly removed Indigenous children from their families and place them in households that exploited their labor and displaced an entire generation. Moreover, these cases demonstrate that the restriction of testimony was enforced by justices of the peace and men hoping to assert mastery over racialized bodies.

The Non-Right to Remain Silent for the Chinese

The California system integrated American and Mexican legal systems that categorized and disempowered people of African and Indigenous descent. Initially, the California legal regime was not written to exclude non-European immigrant groups like
the Chinese. On April 23, 1852, Governor John Bigler, an ardent and vocal anti-Chinese politician, addressed the Senate and Assembly of California to comment on the ‘Chinese Question.’ During his tenure as governor, Bigler called for the reenactment of the 1850 Foreign Miners Tax, which the legislature repealed in 1851 due to protests. Bigler’s call resulted in the enactment of the 1852 Foreign Miners’ Tax, which, in its second iteration, specifically targeted Chinese miners and imposed a monthly three-dollar tax. In addition to the Miners’ tax, he supported anti-immigration legislation. For example, he supported a law that imposed a fifty-dollar entry fee on Chinese immigrants that had to be paid within three days of arrival.

In his 1852 address to the California Congress, Bigler exclaimed:

“A question around which there has been thrown some doubt, is whether Asiatics could, with safety, be admitted to the enjoyments of all the rights of citizens in our Courts of Justice. If they are ignorant of the solemn character of the oath or affirmation, in the form prescribed by the Constitution and Statutes, or if they are indifferent to the solemn obligation which an oath imposes to speak the truth, it would be unwise to receive them as jurors or permit them to testify in courts of law, more especially in cases affecting the rights of others than Asiatics.”

Bigler’s speech reflects a mainstream idea held by white inhabitants of California – the amorphous legal status of Chinese immigrants had to be rectified in order to reflect their racial identity. Land policy contributed to the racialized exclusion of the Chinese from the colonial project in California as legitimate settlers, Anglo-American settlers sought to impose legislation that transformed Chinese immigrants into not only unlawful occupiers, but also non-citizen subjects.

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80 See Chapter 2, p. 177.
81 Journal of the Proceedings of the Assembly 1852, 373.
The editors of multiple California newspapers compared the Chinese to other racialized groups in order to demonstrate their racial inferiority. Newspapers of the day, described Chinese immigrants as “negroes” and “digger Indians.” In an 1853 *Daily Alta California* editorial, the editors asserted that the Chinese were “mentally inferior to whites.” According to the editors, Chinese immigrants displayed “most of the vices and few of the virtues of the negro.” The Chinese were “more dangerous” and unlike “the negro, less fit to become menials or servants.” For Bigler and the *Daily Alta* editors, it was clear, legislators need to amend the legal regime in order to properly accommodate the racial inferiority of the Chinese.

In March 1854, the California Legislature heeded Governor Bigler’s call and attempted to ban Chinese testimony with a bill. The *Daily Alta* reported on the bill, announcing that an “enlightened and Christian gentleman” most likely introduced the legislation. Although, the editors of the paper printed damning editorials on Chinese immigrants, they called the bill an injustice because even though a majority of Chinese were unreliable witnesses, there was a chance that a few could be reliable witnesses and help the courts deliver justice to white citizens. In light of these contradictions, the editors of the *Daily Alta* wrote that they thought that the restriction on Chinese and black testimony contributed to the unjust outcome of cases involving white parties and to a culture of fraud and crime. The editors at *Daily Alta* condemned legislation that hurt

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82 It is interesting to note that the editors of *Daily Alta California* published articles that contributed to the racialization of the Chinese because the paper was the most sympathetic to Indigenous people in the California press.
83 “Saturday Morning, June 4, 1853,” *Daily Alta California*, 4 June 1853.
84 Ibid.
85 *Daily Alta California*, March 26, 1854.
white men and weakened the privileges the California system of law afforded them. The legislative attempt to ban Chinese testimony failed.

As mentioned earlier in this chapter, in 1854, the California Supreme Court ruled in the People v Hall case that Chinese testimony was not permissible on the basis of racial inferiority. The courts, rather than the legislature, responded to the demands of Anglo-American settlers to create racially restrictive laws that targeted the Chinese. Once news of this verdict in the Hall case spread, Chinese immigrants contested the Hall ruling and the racial categorization imposed upon them.

A Chinese merchant living in San Francisco, Lai Chun-Chuen, openly published a message, “Remarks of the Chinese Merchants of San Francisco upon Governor Bigler's Message, and Some Common Objections,” on behalf of the Chinese Merchant Exchange. The sixteen-page message is a direct response to the anti-Chinese rhetoric exemplified by Bigler’s 1852 speech and the 1854 Hall decision. First, the message addressed the common perception that all Chinese immigrants were coolies. Coolies were not a racial category, rather, they were an aggregation of racial imaginings that produced an image of Chinese immigrants as racialized, coerced, and unfree laborers. Chun-Chuen assured the reader:

“we do not believe that there are any Chinese coolies in this country [.]. The Chinese in this country are not serfs or slaves of any description but are working for themselves.”

86 Ibid.
88 For more on the meanings and construction of the coolie, see Moon-Ho Jung, Coolies and Cane: Race, Labor, and Sugar in the Age of Emancipation (Baltimore: Johns Hopkins University Press, 2006).
Next, Chun-Chuen distanced the Chinese from “Indians and Negroes.” Aware that the racial construction of Chinese people was premised upon the ‘similarity’ to inferior races, Chun-Chuen attempted to demonstrate that they possessed more in common with whites and, therefore, deserved the right to give testimony. Chun-Chuen, declaimed:

“But of late days your honorable people have established a new practice. They have concluded that we Chinese are the same as Indians and Negroes, and your courts will not allow us to bear witness. [...] When we reflect upon the honorable position that China has maintained for many thousands of years; upon the wisdom transmitted by her philosophers; upon her array of civil and of military powers; upon the fame of her civilization; upon the wealth and the populousness of her possessions; upon the cordial tenderness with which successive dynasties of Emperors have treated strangers [...] can it be possible that we are classed as equals with this uncivilized race of men? ”

Chun-Chuen attempted to distance the Chinese from racial inferiority by making appeals to Anglo-American notions of civilization. For example, Chun-Chuen made clear that unlike the Indians, the Chinese wore shoes and clothes. Moreover, the Chinese immigrants belonged to a thousand-year-old empire that boasted great military, intellectual, and political power. He also attacked the notion of white civilization and implied that the Chinese were more civilized than the Americans because, in China, natives and foreigners were treated justly; they would never debase or differentiate a foreigner by comparing them to or treating them like an Indian. Appealing to the imperialist and colonizer sentiments of the Anglo-Americans, Chun-Chuen accused Americans of unsuitable behavior given their level of civilization. The “Remarks of a Chinese Merchant,” like the reports of the California Colored Convention demonstrate that in nineteenth-century California, in order to reject racialization, individuals and

90 Ibid.
organizations made appeals to whiteness by distancing themselves from other groups associated with racial inferiority.\textsuperscript{91}

In 1857, Reverend William Speer who had served as a missionary in China, wrote, “An answer to the common objections to Chinese testimony: and an earnest appeal to the Legislature of California, for their protection by our law.”\textsuperscript{92} After a year in China, Speer migrated to California in 1852 at the behest of the Presbyterian Board of Foreign Mission to assist the Chinese living in California.\textsuperscript{93} His pamphlet argues for the racial proximity, not equality, between the Chinese and Anglo-Americans. Speer asserts that the categorization of the Chinese as “either Indians or negroes” was a violation of all nature.\textsuperscript{94} According to Speer, the Chinese were as far removed from black and Indigenous persons as Anglo-Americans were. Hoping to convince his reader, Speer claimed that “If the Chinese are Indians, the \textit{we} are Indians; if the Chinese are negroes, then \textit{we} are negroes.”\textsuperscript{95}

Speer also attempted to assuage the worries of the anxious Anglo-American settlers and made clear that granting the Chinese the right to testimony would not lead to full citizenship for Chinese people. He reasoned:

“In the lowest view, the Chinese may claim under the law of the United States certain attributes of citizenship. The objection is made that the admission of the Chinaman to the privilege of bearing witness in cases where whites are parties is a \textit{virtual grant of all our rights of citizenship}; to vote at the polls, control elections, and hold office. But this is not true.”

\textsuperscript{91} For more on this process in California, see: Tomas Almaguer, \textit{Racial Fault Lines}; D. Michael Bottoms, \textit{An Aristocracy of Race}; Micahel Omi and Howard Winant, \textit{Racial Formation in the United States}.
\textsuperscript{92} William Speer, “An answer to the common objections to Chinese testimony: and an earnest appeal to the Legislature of California, for their protection by our law” (San Francisco: Chinese Mission House, 1857)
\textsuperscript{94} Ibid.
\textsuperscript{95} Ibid.
According to Speer, there is no situation in which a Chinese person could claim citizenship. Speer argued that he was advocating for appropriate state treatment – the right to give testimony in the court of law – for a racialized group that has presented more superiority than other racialized groups. Furthermore, granting the Chinese the ability to testify in cases, according to Speer, would demonstrate the civilized nature of the California government. Speer’s pamphlet echoed some of the sentiments found in Chun-Cheun’s pamphlet. He questioned the Christianity of the people of California. Speer warned that the “question of our [the American] national character was involved. The people of California are, to all the vast coasts of the Pacific Ocean, the representatives of Western Civilization – of the results of Christianity.”

He made an appeal to Californians, in order to maintain the identity of white, civilized, Christians, they had to grant the Chinese the right to testimony.

Speer understood that in order to improve the treatment of Chinese immigrants, he needed to convince Anglo-Americans of their proximity to whiteness and their ability to assimilate. Most importantly, he attempted to convince the reader that the Chinese would not disrupt or sabotage the colonial process underway in California. Unlike the Californio and the California Indian, as immigrants, they could not make an ancestral claim to the land. The nature of these varied appeals demonstrates that in California, the legislative production of racial categories created a society where Anglo-Americans practiced power over racialized bodies in order to justify the colonial regime under construction in California.

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96 Ibid.
Legislating Racial Difference in a Free State

In 1857, Black communities from seven different counties delivered petitions to the California Legislature, only to have them thrown out. This was the last effort to change the testimony laws until after the U.S. Civil War, when the California Colored Convention met for a third time in 1865. The *Dred Scott* decision had caused black activists in California to rethink their strategy. The US Supreme Court decision did what California legislation could never completely do – unequivocally transform people descended from African slaves into non-citizen subjects.

The *Dred Scott* decision transformed all people of African descent into stateless people, even in a Free State. In California, the decision provided constitutional backing for colonial legislation that articulated racial difference as a justification for the partial incorporated of people of color as non-citizen subjects. Months after the *Dred Scott* decision, rather than become right-less, non-citizen subjects, as many as eight-hundred black Californians migrated to the British colonies of Vancouver Island and British Columbia in search of gold, permanent freedom, and citizenship in another colonial project. 97

On a national level, the *Dred Scott* decision legitimated the demands of the slaveholding South by limiting the federal government’s authority to make laws concerning slavery and citizenship. In California, the *Dred Scott* decision clarified that a

person of African descent could not make demands on the California government. The decision justified laws of exclusion in California and reinvigorated colonial entrepreneur’s efforts to exert colonial power and subjugate all people of color, like Californios. Given that the Dred Scott decision denied citizenship to one subjugated, racialized group, could citizenship be denied to all such groups? In California, the Dred Scott decision emboldened the attempts of Anglo-American colonial entrepreneurs and administrators to disenfranchise a diversity of racialized bodies in California.

In 1857, Manuel Domínguez, a Californio who had participated in the California Constitutional Convention, was denied the right to give testimony because of his “Indian blood” in a San Francisco Court. Domínguez was owner of a vast land grant, Rancho San Pedro. At the time, he was entangled in a Land Commissions case to maintain his grant. While categorized as Indian in the largest city in Northern California, in Los Angeles, Domínguez served as a County Supervisor.

The challenge made against Domínguez’ citizenship is emblematic of the differences between the racial landscapes of an Anglo-American dominated Northern California and Californio dominated Southern California. By 1860, in Los Angeles County, Californios comprised 40.1% of the population and Anglo-American settlers made 15.6% of the population. In San Francisco, Anglo-Americans comprised a majority of the population. In Southern California, where U.S. authority was fragile, Anglo-American colonial administrators extended enough privilege and power to

99 Today, the Pacific Coast cities of San Pedro, Torrance, Redondo Beach, Hermosa Beach, and Manhattan are located where the boundaries of the rancho.
100 The rest of the Los Angeles County population was comprised of 15.1% Mexican nationals and 29.1% of people from ‘elsewhere. Of the Anglo-American population, U.S. Southerners made up 8.1% of the population and U.S. Northern made up 7.6% of the population.
Californios so that they would promote and not challenge the colonialization of the region. In Northern California, Anglo-American colonial administrators did not extend power and privileges to Californios; rather, they worked to redraw the line between colonizers and the colonized.

Before Domínguez could take the stand in San Francisco, the lawyer for the plaintiff made a motion to prohibit Domínguez from giving testimony against his client on the grounds that Domínguez’ “Indian blood” rendered him an incompetent witness. In this case, unlike the case of Gordon Chase, the judge did not require a pseudo-science race test. He simply agreed with the lawyer and dismissed Domínguez on the grounds that he had “Indian blood.”101 This ruling, which stripped Domínguez’ of a citizenship right, demonstrates that in Northern California, Anglo-American settlers, colonial entrepreneurs, and colonial administrators had begun to racialize Californios and legally strip treaty citizens of rights guaranteed by international law.

Meanwhile in Southern California, Domínguez was treated as a successful and powerful Los Angeles politician. He had even served as one of the Californio delegates at the 1849 California Constitutional Convention. As a delegate he approved a Constitution that denied citizenship and rights to Indians.102 In an attempt to maintain his colonizer identity, Domínguez approved legislation that imposed racial restrictions on citizenship

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for Indigenous Peoples and helped establish a legal regime that justified his colonization and his categorization as a non-white, non-citizen subject.

Figure 4. Portrait of Miguel Domínguez

This picture was taken of Miguel Domínguez in 1854, the same year the San Francisco Court denied him the right to give testimony. As the picture indicates, Dominguez is dressed in the conventional American/European style of dress of the day and appears to be of European descent. The San Francisco Court accused him of having “Indian blood” in order to denigrate his status as a Californio and to solidify the distinction between colonizer and the colonized.

"Manuel Domínguez," (rsp_71), Rancho San Pedro Collection, CSUDH

Pablo de la Guerra, the state senator from Santa Barbara, after learning of the San Francisco court’s treatment of Domínguez delivered protesting the actions. His speech objected to the treatment of Domínguez and all Californios living under the American regime.103 Advocating for Domínguez, De la Guerra, stated:

“Remember also that while we accepted the American rule with all candor and single heartedness, we are treated as a conquered and inferior race. Our civility was questioned because we spoke Spanish [and] a disgraceful distinction between white testimony and ours was indelicately imposed.”104

103 Leonard Pitt, *The Decline of the Californios*, 202
104 “Draft of Speech” Guerra Family Collection, The Huntington Library, San Marino, California.
De la Guerra’s comment on testimony reveals much about the racialization of Californios at the time. First, de la Guerra states that because the Californios chose to ally with the Anglo-American settlers, they were fellow colonizers and ought to assume similar positions within the colonial system. De la Guerra’s comment about the Spanish language reveals that Anglo-American colonial entrepreneurs had begun to connect Spanish fluency with racial inferiority.  

Later in the speech, de la Guerra reminded the Anglo-American senate members that even in their “veins there ran some drops of Indian and Negro blood and that the epoch and the bluebloods, if it ever existed, had now passed.” With this statement, de la Guerra criticized the Anglo-Americans’ measure for whiteness and insinuated that, like Californios, they were of mixed blood. If they could still claim whiteness, why not Californios?  

De la Guerra was not the only Californio outraged and worried by the treatment of Domínguez. Two Spanish-language newspapers, *El Clamor Publicó* and *El Eco del Pacifico*, described the San Francisco Court’s treatment of Domínguez as “anti-republican and anti-liberal.” Given the racial restrictions Anglo-American colonial administrators imposed on the citizenship rights of Californios, both papers encouraged its readership to be vigilant.  

The *El Clamor Publicó* and *El Eco del Pacifico* warnings were prescient. In 1859, former Alta California governor Pío Pico, was apprehended by a constable and dragged

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106 *El Clamor Publicó* (Los Angeles), April 25, 1857

107 Ibid.
to a San Francisco Court, where Judge Ogden Hoffman ordered him to give testimony. In contrast to Domínguez’ case, Pico was ordered to give testimony. In Southern California, Pico had retained his political influence and remained a member of the social elite. According to the reporting in *El Clamor Publicó*, Pico did not know why he was apprehended until he arrived in the courtroom. This was a blatant violation of *habeas corpus*. He was not freed until a writ of *habeas corpus* was filed by Lancaster Brent and approved by Judge Benjamin Hayes. Hayes was the judge that had ruled in favor of Biddy Mason in her petition for freedom. Judge Ogden Hoffman oversaw the many land claims cases Californios brought to the Land Commission; perhaps, his work with the Land Commission process influenced his attempt to unjustly seize Pico. These two events demonstrate that the men of the San Francisco Court system refused to observe Californio rights because in Northern California, Anglo-American colonial entrepreneurs did not require Californio collaboration in order to project power. In light of Pico’s treatment, the newspaper again ordered its readers to remain diligent of their rights. For if this could happen to Pío Pico, it could happen to any Californio.

The San Francisco Court’s treatment of Pico demonstrates that by the end of the 1850s in the northern portion of the state, due to mass immigration, Anglo-American colonial entrepreneurs began to construct Californios as racially ineligible for full citizenship. Californio cooperation was no longer crucial to the success of American colonial rule in the region. Given that the Californio identity was constructed as a

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108 Judge Ogden Hoffman decided many of the Land Claims cases in the Northern District of California.
110 “Cronica Local,” *El Clamor Publicó* (Los Angeles), July 30, 1859.
colonizer identity, Anglo-Americans began to denigrate their Indigenous ancestry and the Spanish language in order to mark Californios as inferior. As elite Californios encountered more restrictions on their rights, it became clearer to men like Pablo de la Guerra and Pío Pico that their claims to whiteness were less viable and secure. In the realm of citizenship rights, Californios became colonized colonizers because they had helped draft laws that allowed for the colonization of the Indigenous, non-elite Californios, and themselves.

This treatment of elite Californios complimented the colonial management of non-elite Californios. Like Chinese immigrant miners, Anglo-Americans settlers targeted Californio miners, who they deemed as undesirable foreigners in the mines, with violence that intended to remove them from the land. Diplomatic correspondence between the Mexican Minister of the U.S., Manuel Larraianzar, and the U.S. State Department reveals that as early as 1853, the federal and state governments denied non-elite Californios their citizenship rights.

In December 1853, Larraianzar wrote to the State department on behalf of Californios stating, “[they] do not receive that protection in their persons and property which is promised to them by the Treaties between the two governments.” In the letter, Larraianzar listed four specific instances in which thirty Mexican miners were violently forced to leave their mining claims in the Calaveras and Mariposa Counties. According to

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111 This process of racialization did not detract from the efforts of Anglo-American colonial entrepreneurs to differentiate Californios in relation to land dispossession; in fact, it strengthened the racialization.


113 William L. Marcy, Sec of State of the US, to Manuel Larraianzar, Mexican Minister to the US, Washington, May 25, 1853, Diplomatic Correspondence of the United States, Inter-American Affairs 1831 - 1880, Vol IX
the letters, throughout the state, Mexican miners had abandoned their claims due to threats of violence.\textsuperscript{114}

Larraianzar demanded that the courts and law enforcement protect the rights of these miners as treaty citizens. The U.S. government never attempted to fulfill Larraianzar’s request. Even if a trial had happened, the Mexican miners would not have been able to give testimony according to the California law. At all levels of government, administrators refused to acknowledge the citizenship rights of Californios. Despite the Treaty of Guadalupe Hidalgo, colonial administrators worked to racialized Californios in order to incorporate them as non-citizen subjects.

**Conclusions**

In California, the racial restrictions state politicians and judges, local law enforcement, Anglo-American settlers and Californios placed on testimony resulted in the racialization of difference that undergirded the colonial process in California. Anglo-American colonial entrepreneurs wielded the law to justify the exclusion of not only colonized groups, but also immigrant groups. Anglo-American colonial entrepreneurs shaped their identities and citizenship in opposition to the denial of citizenship to all racialized groups.

The racial restriction of testimony allowed Anglo-American settlers to have the loudest voice in the sorting out of difference and belonging. Given these circumstances, black, Indigenous, Chinese, and Californio individuals made the right to testimony in the

\textsuperscript{114} Minister Larraianzar sent this letter in April 1853, Secretary Marcy did not respond until December 1854. Manuel Larraianzar, Mexican Minister to the US, to William L. Marcy, Sec of State of the US, Washington, April 14, 1853, Diplomatic Correspondence of the United States, Inter-American Affairs 1831 - 1880, Vol IX.
court of law the battle over the expansion of citizenship and the parameters of colonial power. As this chapter has demonstrated, the restriction on testimony not only empowered the colonial government to subjugate racialized groups, it also endowed colonial entrepreneurs and administrators with the ability to exert colonial mastery over non-white bodies. The racial restriction on testimony contributed to the colonial co-construction of whiteness and citizenship.

Through restricting testimony, the judicial branch of California constructed racial identities that linked Chinese immigrants and Californios to Indian-ness and Blackness, which justified their exclusion from citizenship and from laying claim to the colonial project. The racial restriction of testimony further entrenched notions of racial inferiority established by land dispossession and labor subjugation. The legislatively informed notions of racial inferiority transformed Californios, blacks, Indigenous Peoples, and the Chinese into non-citizen subject of California. As non-citizens subject, they were unable to call on the state for justice and unable to participate in the colonial project as full-fledged members.
Chapter Five

THE CONFLUENCE OF COLONIALISM AND RECONSTRUCTION IN CALIFORNIA

A Greater Reconstruction?

On July 9th, 1868, twenty-eight states ratified the Fourteenth Amendment of the U.S. Constitution. After receiving the amendment in June 1866 from Secretary of State, William Seward, Anglo-American members of the California Congress, condemned and refused to vote on the proposed legislation.

Two years later, on February 3rd, 1870, twenty-eight states ratified the Fifteenth Amendment of the U.S. Constitution. Twenty-eight states initially voted for the ratification of the Amendment. Again, the California Legislature refused to vote on the amendment. After lengthy debates in the California State Congress in January 1879, both the Assembly and Senate refused to take action on the amendment.

At the end of the U.S. Civil War, the colonial project in California was still inchoate. Racial categories and systems of power remained in flux. In 1865, Californios were still mired in their struggle to maintain their ranchos, political power, and their

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1 The initial twenty-eight states that ratified the Fourteenth Amendment are as follows: Connecticut, New Hampshire, Tennessee, Vermont, New York, Ohio, Illinois, West Virginia, Michigan, Minnesota, Kansas, Maine, Nevada, Indiana, Missouri, Pennsylvania, Rhode Island, Wisconsin, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama. Initially, Oregon and New Jersey ratified the amendment, but the state legislatures rescinded their ratification of the amendment, sparking great controversy. The amendment was still ratified because more states continued to ratify the amendment, despite the actions of New Jersey and Oregon.

2 The initial twenty-eight states that ratified the Fifteenth Amendment are as follows: Nevada, West Virginia, North Carolina, Illinois, Louisiana, Michigan, Wisconsin, Maine, Massachusetts, Arkansas, South Carolina, Pennsylvania, Indiana, Connecticut, Florida, New Hampshire, Virginia, Vermont, Alabama, Missouri, Minnesota, Mississippi, Rhode Island, Kansas, Ohio, Georgia, Iowa. New York rescinded ratification and re-ratified March 1870, which meant it was still one of the initial twenty-eight states to ratify the amendment.

3 California was one of two formerly free states not to vote for ratification. Oregon was the other free state. The Anglo-American settlers and legislators who settled in the territory had a history of being fiercely anti-black, in 1844, the territorial government passed a Black Exclusion Law.
claim to whiteness. Indigenous communities continued to resist and accommodate enclosure, exterminatory violence, and forced assimilation. Black Americans who had migrated to California still fought to own their labor and receive full citizenship rights. Chinese immigrants resisted the imposition of racialized identities. Anglo-American settlers who had constructed their whiteness around notions of conquest and domination, wondered how a liberalization of citizenship would affect the privileges of whiteness in a colonial space.

Radical architects of Reconstruction policy intended to reorganize labor, expand citizenship, and manage former rebels and freed people in the American South. In California, it was unclear how these policies would alter the nascent colonial state and the racial hierarchy that emerged from the dispossession, labor exploitation, and differentiated incorporation of racialized groups. The constitutional end of slavery threatened the unfree Indigenous labor systems municipal governments, households, and agriculture depended on. The fears surrounding the dignity and valuation of free white labor were compounded by the degradation and racialization of Coolie labor and free black labor. The federal effort to squash all claims of sovereignty had not only ignited the Indian Wars in the Great Plains, but also wars of Indian removal throughout California.  

4 After the U.S. Civil War, the occurrence of these exterminatory wars in California diminished, but they did not end. Most notably in 1872, the U.S. Army fought a war against the Modoc in northeastern California and southeastern Oregon. The war ended with the execution of the Modoc leaders and the exiling of the Modoc people to the Oklahoma Territory. For more on the Indian Wars in the Great Plains, see: Elliott West, The Last Indian War: the Nez Pearce Story (New York: Oxford University Press, 2009). For more on the Indian Wars in California, see: Brendan Lindsey, Murder State: California’s Native American Genocide (Lincoln: University of Nebraska Press, 2012), p. 231 – 334; Richard White, The Republic for which It Stands: The United States during Reconstruction and the Gilded Age, 1865-1896 (New York: Oxford University Press), 103 – 120.
However, most foreboding to Anglo-American settlers in California, was the extension of citizenship to black Americans. While extending citizenship rights to freed people, the Civil Rights Act of 1866 did not overturn the *Dred Scott* ruling; a constitutional amendment was necessary to make black citizenship possible.\(^5\) In California, proponents of a racial hierarchy that privileged whiteness and subjugated multiple racialized groups worried that the Fourteenth Amendment meant all people of color would be granted citizenship. Federal Reconstruction policy threatened to destroy the very foundation of the state – colonialism.

Since the Greater Reconstruction turn in the history of the 19\(^{th}\)-century U.S., historians have considered how federal policies incorporated California and its people into the Union after the U.S. Civil War. In this chapter, I interrogate what Reconstruction came to mean in California. Opponents of Reconstruction in California inferred that federal policies would extend full citizenship to all people of color and, therefore, undermine the 1849 California Constitution and state legislation, which excluded people of color from citizenship and allowed Anglo-American colonial entrepreneurs to create a legal framework that accommodated their racist and expansionist visions of power.

The California Legislature’s rejection of the Fourteenth and Fifteenth Amendments was, in part, a rejection of the expanding federal state. While Anglo-American settlers and legislators in California were willing to (and had called) on the federal government to aid in the suppression and extermination of independent Indian polities and in the violation of the Article IX of the Treaty of Guadalupe Hidalgo, they

\(^5\) The Civil Rights Act of 1866 seemed to make black citizenship possible, but many worried that the Supreme Court would overturn the law on the grounds that the U.S. Congress assumed powers not granted to the body by the U.S. Constitution. The issue was settled when the Fourteenth Amendment became law and affirmed black citizenship.
did not desire an expanded federal state that would interfere in the race-based allocation of citizenship and civil rights in the state. The emancipation of enslaved people and the federal liberalization of citizenship presented an existential threat for the racially exclusionary government of California.

In addition to refusing to ratify the Fourteenth and Fifteenth Amendments, the California legislature and Anglo-American settlers continued to dispute the citizenship claims of treaty citizens. As demonstrated in previous chapters, the construction of California depended upon the violation of formal negotiations that ended international conflict (i.e. Treaty of Guadalupe Hidalgo and the 18 Unratified Treaties). In the wake of the U.S. Civil War, colonial administrators and entrepreneurs constructing the California state, continued to embrace this strategy, especially when it came to the rights of Californios.

Before the U.S. Civil War, the processes of racialization in California depended upon land dispossession, disenfranchisement, and unfree labor systems. After the American Civil War and emboldened by the federal Civil Rights Act of 1866 and the Reconstruction Amendments, people of color demanded citizenship rights. In response, Anglo-American colonial administrators and entrepreneurs rejected these claims with legislation that championed the racial ideology that had rationalized the settlement of the region and the subjugation of non-white peoples.

During the 1850s, federal power in the American West was fragile. In California, the territorial claims depended upon the cooperation of elite Californios and the
successful settlement of Anglo-American families. Substantial Anglo-American settlement in the state resulted in the extension of American influence and power. From 1850 to 1860, the population in California grew from about 92,000 to 379,994; this growth was mostly a result of Anglo-American migration. This demographic transformation of the state diminished Californio power because the U.S. government no longer required Californios to legitimize and exert American authority. Land policy, like the 1851 Land Act and the 1862 Homestead Act, manufactured preferential demographic patterns in California that, as scholar Paul Frymer has demonstrated, “enabled the nation to simultaneously claim fidelity to democratic principles while maintaining racial hierarchies that promoted white supremacy.” During the Reconstruction Era, the colonization of elite Californios concludes with the declension of their political power and land ownership and the passing of select elite Californio families into whiteness, alongside the racialization and foreignization of most Californios as Mexicans.

In order to understand how the process of Reconstruction transformed California and its inhabitants, I examine the citizenship claims made by people of color and the resistance to these claims. First, I examine the initial black American response to Reconstruction in California. Continuing the tradition of the Colored Convention in California, black activists quickly organized to shape the parameters of black citizenship in California. Second, I look at how the California Legislature came to formally reject the Fourteenth and Fifteenth Amendments. By exploring the path to the rejection of the

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7 Data retrieved from 1850 US Census, 1860 US Census, accessed at socialexplorer.com
Amendments, we can see that the racial ideologies that bolstered the colonization of California undergirded the repudiation of liberal citizenship and Reconstruction. Third, I examine the Grand Registers that county governments created to formalize the voting registration process in the state. A close reading of these sources demonstrates how racial scripts functioned differently between Northern and Southern California and how government officials, while adhering to Reconstruction policy, laid a foundation by which to justify and codify second-class citizenship. Fourth, I look at renewed challenges made on elite Californios’ claims to U.S. citizenship. While unsuccessful, these challenges further differentiated Californio citizenship and contributed to their categorization as ‘unlawful occupiers.’ Fifth, I examine desegregation efforts in San Francisco. The efforts of black activists to expand black citizenship in transportation and public education demonstrate the limits of Reconstruction policy in California and how legislators, settlers, and judges were able to preserve a racial hierarchy that privileged whiteness and a colonial legal regime that codified second-class citizenships. This chapter will demonstrate how the policies of Reconstruction challenged the legal regime of California and the varied responses to that challenge.

**Defining Black Citizenship in California**

On June 30th, 1865, the Executive Committee of the California Colored Convention printed the first issue of *The Elevator*, the organization’s new official newspaper. The newspaper’s editors printed a mission statement, which stated that *The Elevator* was not the only black newspaper in California. *The Pacific Appeal*, printed in San Francisco, was the other black newspaper in California. Both editors of the newspapers considered their paper “the official voice of Colored people in California.”
Elevator would “advocate the largest political and civil liberties to all American citizens, irrespective of creed or color.”\(^\text{10}\) Additionally, the paper’s primary mission was to obtain the “civil and political enfranchisement of the Colored people – not as a distinct and separate race, but as American citizens.”\(^\text{11}\) Given that the American Civil War had just ended, the editors devoted the first issue of the Elevator to conceptualizing what black citizenship would look like. In addition to printing thought pieces, the Executive Committee printed a call for the fourth California Colored Convention in order to shape black citizenship in California.

The fourth California Colored Convention took place in Sacramento from October 25\(^{\text{th}}\) to 28\(^{\text{th}}\) in 1865. Thirty-five black men from Northern California counties participated in the convention.\(^\text{12}\) The Southern California counties of Los Angeles, San Diego, San Bernardino, San Luis Obispo, and Santa Barbara did not send delegates.\(^\text{13}\) While the Executive Committee understood that the black population was small in those districts, they had hoped to host at least one delegate from every single black community in the state. For example, Yolo County, which had a black population of eighteen, sent a delegate. Limited newspaper distribution in a white-southern dominated region could have been the reason for the absence of delegates from the southern counties, but the Committee did not take any action to address this issue.

\(^\text{10}\) Elevator, Volume 1, Number 13, 30 June 1865, 1. https://cdnc.ucr.edu/?a=d&d=EL18650630&e=-------en--20--1--txt-txIN--------1
\(^\text{11}\) Ibid.
\(^\text{12}\) Counties present: Sacramento County, San Francisco County, Yolo, Colusa, and Tehama Counties, El Dorado County, Santa Clara County, Sonoma County, Napa County, Merced County, and Mariposa County. While not a county, the City of Marysville sent a delegate. Proceedings of the California State Convention of Colored Citizens (San Francisco: The Elevator Office, 1866), 84 – 86.
\(^\text{13}\) Proceedings of the California State Convention of Colored Citizens (San Francisco: The Elevator Office, 1866), 86.
Whereas the first three Colored Conventions met in order to secure the right to testimony for black Californians, the fourth convention met for the “purpose of obtaining JUSTICE, [and] the right of the elective franchise.”\textsuperscript{14} In 1863, four months after the Emancipation Proclamation went into effect, a majority Republican California Legislature voted to remove the restrictions on black testimony in civil and criminal cases.\textsuperscript{15}

When the California Legislature debated amending testimony laws, Democrats argued against black testimony on the grounds that the extension of the right to black men would lead to the expansion of privileges for the Chinese and then the Indians. They inferred that the expansion of rights to all people of color would result in the demise of the California government. The colonialization of California rested upon the premise that racialized groups were not capable of self-governance. Given this foundation, the legislators removed the restrictions on black testimony, but maintained the restriction on Indian testimony and added restrictions on Chinese testimony. The 1863 law stated that no “Indian, Mongolian, or Chinese” could give “evidence in favor or against a white person.”\textsuperscript{16} Early on in the Reconstruction process, the administrators of the California government signaled they would not extend full citizenship to people of color.

In light of the national and regional developments, the organizers of the 1865 Colored Convention were devoted to obtaining “Equality before the law.”\textsuperscript{17} According to

\textsuperscript{14} Proceedings of the California State Convention of Colored Citizens, 76.
\textsuperscript{15} Proceedings of the California State Convention of Colored Citizens, 293.
\textsuperscript{17} Proceedings of the California State Convention of Colored Citizens, 80.
the delegates, the enfranchisement of black men, accessible public education for black children, and economic freedom were the first necessary steps to achieve “equality before the law.” Before debating and voting on resolutions that made demands on the state legislature, the delegates approved a series of resolutions designed to prove to the California public that black men, women, and children were worthy of citizenship and its most valuable rights – the elective franchise and public education. First, the delegates passed a resolution that pronounced the fealty black people had toward the U.S. government. This resolution was one of the many ways the delegates attempted to demonstrate to white Californians that they were unconditionally devoted to democracy and the United States. Given their devotion, the resolutions implied that black suffrage would only help the nation progress, not destroy it.

Like the resolutions passed by the previous California Colored Conventions, the delegates of the 1856 meeting made appeals to Christianity and whiteness. One resolution declared that the entire “brethren in the State […] aim to develop the highest state of Christian moral[.]”\(^{18}\) The message was clear: as Christians, they were entitled to citizenship rights. Then, the delegates passed a resolution that questioned the superiority and civility of the California government. The resolution declared that “no Christian nation […] could ask a class of people to assist in saving the Government from destruction […]; to then deny them of the common rights that nature had endowed them with.”\(^{19}\) Again, the message was clear: black people had earned citizenship rights and a just, Christian government would not obstruct the attainment of such rights. With these two resolutions, the delegates demonstrated that black people had earned their rights,

\(^{18}\) *Proceedings of the California State Convention of Colored Citizens*, 80, 81.

\(^{19}\) Ibid.
while critiquing the Christian values of the legislators. After establishing that they were suitable and worthy of citizenship rights, the delegates then passed a resolution that requested that the state law be amended to give every child of color the privileges and benefits of education “in common with others.”

The delegates then discussed the elective franchise. Delegate William Hall from San Francisco delivered a riveting speech in support of black suffrage. Hall began with a condemnation of the writers of the California Constitution. He reprimanded the men who had established California as a Free State but did not grant black men the right to self-government. He criticized the delegates who had not “recognize[d] the negro as a man[.]” Hall then asked the delegation to demand that the California Legislature formally transform all black men into “equals before the law” because “simple justice” required that all citizens have a voice. Hall declared that if the legislators do not enfranchise black men, they would jeopardize the reputation of California as a “free and progressive” state. Hall’s strategy was not to prove the humanity and dignity of black men to the state legislature; rather, he focused on illuminating the shortcomings of white legislators and the state of California as progressive patrons of civilization.

Hall then called into question the contradictory action of a state that quickly granted Irish immigrants citizenship, but not black men who, through their servitude, had “reared a nationality” equivalent with the American people. Hall’s reference to Irish immigrants was not on accident.

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20 *Proceedings of the California State Convention of Colored Citizens*, 78.
23 Ibid.
24 The delegates were split on whether or not to advocate for the citizenship rights of the Irish, Chinese, and Indians. Delegate William Hall accused politicians of “prejudicing the Irishman against the black man.” While Delegate Hubbard considered the Irish the most “deceitful of all nations.” Delegate Hoyt responded to this division by stating “the Chinese and Indians in our very midst stand in need of our sympathy and encouragement.” Towards the end of the Convention, the delegates passed a resolution that declared unity.
immigrants demonstrates that in California, and the rest of the nation, that the construction of the “American people” did not include black men, but that legislators had expanded the notion to include Irish immigrants. Hall’s logic was clear: if the Irish could claim whiteness, why not black Americans?

Delegate Reverend Moore spoke after Hall. He echoed Hall’s demand for suffrage, but his strategy differed. Moore demanded action from the legislators on the basis of their shared Christianity. Moore declared that the legislature needed to pass a law that granted black suffrage because of one basic principle: “Do unto others as you would have them do unto you.” A failure to do so was not only a flagrant wrong, but also hypocritical and antithetical to Christianity. Moore, like Hall, concluded his speech by also contrasting the incorporation of the Irish to the current status of black Americans. He declared, given that they had been born and had fought and bled for American soil, they ought to have the right to vote. All delegates agreed, black people had toiled for the U.S. for years and they not only deserved, but also had earned citizenship rights as Christians and consummate patriots.

with the oppressed people of Poland, Hungary, and Ireland. It is interesting to note, that the delegates never voted on or passed a resolution declaring unity with the Chinese or Indians in California. Rather, the peoples they declare unity with were in closer proximity to whiteness. See: Proceedings of the California State Convention of Colored Citizens, 74, 88, 89, & 95.


26 Proceedings of the California State Convention of Colored Citizens, 90

27 Ibid.


29 For more on Christianity and Whiteness see: Joshua Paddison, American Heathens: Religion, Race, and Reconstruction in California (San Marino: Huntington Library Press, 2012).
After discussing the elective franchise, the delegates discussed economic freedom. The first resolution demanded that the California government extend the right to “purchase homesteads” to black men. This demand is not surprising given the associations of land, citizenship, and self-governance and the explicit denial of homesteading to free black men in California. This request signifies that the delegates embraced the land holding aspect of whiteness and citizenship and wanted to participate as colonial entrepreneurs in the colonization of California. In addition to land, the resolution demanded employment in the construction of the transcontinental railroads. This request is interesting given the racial tensions surrounding Chinese railroad workers; were the delegates offering black labor as a solution to the Chinese Question? While on the subject of the transcontinental railroad, the delegates promoted the employment of black railroad workers because it would lead to the effective settlement of lands assaulted by “hostile Indian.” Again, the delegates made a claim on the colonialization of the American West. The demands to legitimately participate in the colonization of California demonstrates that ability to settle the American West was a privilege of full citizenship. Moreover, these demands demonstrate that the delegates hoped to achieve equality by not only distancing themselves from other racialized groups, but by constructing their status in opposition to other racialized groups. In a colonial space, power was achieved through the performance of mastery over the land and its inhabitants.

Once the Convention was over, the Executive Committee printed two public addresses, “An Address to the People of California” and “An Address to the Colored People of California,” for the public. The address to the people of California, demanded that the California Constitution be amended to account for the Emancipation Proclamation and the Thirteenth Amendment. The address declared that since black men were citizens, they were entitled to the rights of citizenship and the California Congress needed to legislate accordingly. In addition to demanding rights, this address assured the Anglo-Americans residents of California that people of color would maintain “the Christian spirit of forgiveness” and a “peace-loving” attitude. The delegates wanted to assuage any fears about vindictive or rebellious black Americans.

In contrast, the “Address to the Colored People of California” included the legislative demands made by the convention and special requests for the black denizens of California. First, the delegates asked for their support in their campaign to obtain public education for all black children. Second, the delegates asked black Californians to not settle for mediocrity but strive for excellence. While the first address assured Anglo-Americans in California that black Americans would not wreak havoc on the state, the second address encouraged the adoption of respectability politics among the black communities in California. The delegates knew of the political and violent rejections of Reconstruction in the American South, so they made appeals they hoped would insure political progress and the safety for all black Americans in the state.

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34 Ibid.
Rejecting Reconstruction

During the U.S. Civil War, California Governors Leland Stanford and Frederick Low, both Republicans, led the state in its support of the Union cause.\(^{35}\) Once it became clear that Reconstruction policy would enfranchise black Americans, white support for the process of reconstituting the nation and an empowered federal government in California waned. The enfranchisement of black men threatened the racialized power structures throughout the nation and in California. Anglo-Americans in California deduced that if the vote was extended to black Americans, the vote would then be extended to the Chinese and then the Indian; in their minds, this could destroy the state and the nation.

In the December 1865, California Assembly member William Holden introduced a resolution that required state senators to “vote and oppose” all measures that extended the franchise to black men.\(^ {36}\) The resolution passed with a 41 to 38 vote and was referred to the Federal Relations Committee where it died. Five additional policies were presented that echoed similar sentiments; all of which died in the Federal Relations Committee.\(^ {37}\)

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\(^{35}\) Despite the official support of the Union, there were groups of pro-Confederate supporters in California. For example, William Gwin supported the Confederate cause and hoped his Chivalry Party could incite a Pacific secessionist movement. Joseph Lancaster Brent, a Maryland native who migrated from New Orleans to California who established a successful law firm in Los Angeles that served mostly Californios clients, left the state to fight for the Confederacy. For more on pro-Confederate activity in California, see W. Robinson, *Los Angeles in Civil War Days, 1860-1865* (1977; r.p., Norman: University of Oklahoma Press, 2013); Daniel Lynch, *Southern California Chivalry: The Convergence of Southerners and Californios in the Far Southwest, 1846 – 1866*. 2016, University of California, Los Angeles, PhD Dissertation, especially pgs. 142 – 164.

\(^{36}\) William Holden, born in Kentucky, settled in Stanislaus County in 1850. Holden served three terms in the California Assembly, two terms in the California Senate, and one term as the Lieutenant Governor of California. *Journal of the California Senate*, Session 16 (1865 – 1866). (Sacramento: State Printer, 1866), 534.

\(^{37}\) For example, W.S. Green, a Democrat, presented a resolution that declared freed people “incapable of self-government” and that the enfranchisement of freed people in the South was “unconstitutional and void.”
Newspapers throughout California condemned Radical Reconstruction. The editors of the *Daily Alta California* warned of the perils of expanding the electoral franchise:

“There are in this state at least 60,000 persons of the inferior races. These are all computed in the basis of representation, and very nearly give us one member of Congress. If they are to be deducted hereafter, our political power in the council of the Nation, will be diminished accordingly; and we will have to suffer the diminution or engage in the hazardous experiment of putting ballots in the hands of persons who have no just conception in their value, force or effect.”

From the west looking east, it seemed that the policies of Reconstruction threatened the very essence of the American colonial project in California and the white monopoly on governance.

After the Fourteenth Amendment received a two-thirds majority vote in the U.S. House and Senate, the amendment was sent to state governors for ratification. California Governor Frederick Low faced a conundrum – the California Legislature had gone on recess. He considered calling a special session, but worried of the national embarrassment that would follow if the state legislature refused to ratify the amendment. To Low, this seemed possible given the political climate in California. Before his term ended, Low delivered a message to the California Senate, asking for a favorable consideration of the amendment and for legislators not to “mar the loyal record” of the state by “rejecting them,” but did not transmit the bill to the State Legislature for a vote. Rather, Low

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38 “The Manner in Which we are being Reconstructed” *Daily Alta California*, Volume 18, Number 5808, 3 February 1866. [https://cdnc.ucr.edu/?a=d&d=DAC18660203.2.18&srpos=3&x=1866-en--20-DAC-1--txt-txin-inferior-races+---1866---1](https://cdnc.ucr.edu/?a=d&d=DAC18660203.2.18&srpos=3&x=1866-en--20-DAC-1--txt-txin-inferior-races+---1866---1)

39 Message from Governor Frederick Low. *Journal of the Senate of the State of California*, Session 17 (1867-1868), (Sacramento: State Printer, 1868), 49.
decided to let the electorate decide what to do and left the Amendment on the desk for the next governor.\textsuperscript{40}

The 1867 California gubernatorial election demonstrated the state’s shift in support for the Republican Party and Reconstruction. In April 1867, the California Democrats, which had been run by the Union Party during the U.S. Civil War, held a convention in San Francisco. On April 20\textsuperscript{th}, the Committee issued a set of resolutions. The resolutions condemned the Reconstruction measures, describing them as “harsh, illiberal, and oppressive.” The resolution also claimed state’s right to promote and pass restrictive immigration policy. On the topic of immigration, the resolution stated:


d{\textquoteleft\textquoteleft}That we believe it impracticable to maintain republican institutions based upon the suffrages of negroes, Chinese, and Indians, and the doctrines avowed by the radical leaders of indiscriminate suffrage, regardless of race, color, or qualification, if carried into practice, would end in the degradation of the white race and the speedy destruction of the government.\textquoteright\textquoteright\textsuperscript{41}

Like the Anglo-American settlers and colonial entrepreneurs who demanded that the government protect white land ownership in California during the 1850s, they demanded that the state and federal governments restrict citizenship rights to white men during Reconstruction.

In addition to passing these resolutions, the party selected Henry Haight – a Republican turned Democrat who publicly condemned congressional Reconstruction policy, black suffrage, and Chinese immigration – for their gubernatorial nominee. In 1856, Haight was an ardent Free Soil-er and he had supported John C. Frémont for U.S.

\textsuperscript{40} Eugene H. Berwanger, \textit{The West and Reconstruction} (Urbana: University of Illinois Press, 1981), 120.
\textsuperscript{41} Winfield Davis, \textit{History of Political Conventions in California, 1849 - 1892} (Sacramento: California State Library, 1893), 265.
president in 1856. His racial-anxiety-induced transformation in 1867, reflects the fear that many Anglo-Americans felt over the unstable connection, complicated by the end of slavery, between labor, citizenship, and race. During the campaign, Haight delivered many speeches that fed on the racial fears of Anglo-American voters in the cities of Sacramento and San Francisco.

In a speech Haight delivered on July 9, 1867 in San Francisco, he demonstrated how Anglo-Americans conceived of Reconstruction as creating a multi-racial problem. In his speech, Haight inferred that the radicals in Congress were attempting to override the States’ right to manage suffrage in order to transfer power to black men at the expense of white men. He argued that the extension of suffrage to one racialized group would result in the eventual deterioration of Californian society because black suffrage created the possibility for Chinese suffrage, et cetera, et cetera. Haight declaimed black suffrage, stating:

“In my judgement it is a short-sighted and selfish policy which, for a little present gain, consents to curse our children and our children’s children with a swarm of Asiatics, whose presence will be a moral leprosy, and who, by the eternal distinctions of color and qualities can never become a constituent part of our society.”

Black suffrage would upset the racial order the California Constitution, state legislation, and Anglo-American settlement had created. In other speeches delivered that day, many

44 Ibid.
Democrat candidates and supporters lamented the federal treatment of white southerners and warned of the detrimental effects of extending full citizenship to people of color.\textsuperscript{45} Anglo-American settlers in California deduced that the Fourteenth Amendment threatened the very foundation of Californian society.

Haight and the other Democratic speakers focused on exploiting the racial fears of two cities with majority Anglo-American populations. Would Haight’s speeches have done as well in the Californio strongholds of Los Angeles or San Barbara? Where did Californios and Mexicans fit in a racial hierarchy in which black Americans and the Chinese were racialized and demonized? How would the process of Reconstruction affect their racial identity?

During the 1860s, the Democrat Party made significant gestures to the elite Californio population, especially in Los Angeles, Santa Barbara, and San Diego. In 1863, the Union Party faction of the Democrat Party printed election literature in Spanish for enfranchised Californios. For example, they printed a broadside entitled, “A Los Votantes Californios y Mexicanos.”\textsuperscript{46} (To the Californian and Mexican Voters) The broadside encouraged Spanish-speakers eligible to vote for the Democrat Party. The pamphlet begged Californio voters to elect democratic candidates and warned:

"Much depends on the men who represent you in the Legislature, and who form the laws of your Government – they can completely destroy the welfare of the country. […] This truth becomes more apparent during the present crisis than at any other time in the history of our State. […] The next session of the Legislature will decide to enact laws against the cancer that gnaws at the heart of the community."

\textsuperscript{45} See the remarks of Judge Axtell, Mr. Ryland, and J. D. Hamilton also delivered remarks that day.
\textsuperscript{46} Translated by author. “A Los Votantes Californios y Mexicanos (49),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County, Museum of Natural History
Much was at stake, and in Southern California, where Californios still possessed power. As a final word, the pamphlet informed voting Californios it was their obligation to vote for candidates that would bring “happiness” to their community.\textsuperscript{47}

Throughout the 1860s, Antonio Coronel, a Californio who lived in Los Angeles, delivered many speeches, in Spanish, on the behalf of Democrats. During the election of 1867, Coronel also ran for State Treasurer as the Democrat Party candidate.\textsuperscript{48} Aware of the place-specific racial tensions in the state, he ran for the position only after being assured that he would receive the support of the northern counties.\textsuperscript{49} Coronel’s need of an assurance of northern support indicates how differently race operated for Californios throughout the state. During the campaign season, Coronel delivered a speech in support of Henry Haight and articulated his stance on the ‘Chinese Question.’ First Coronel critiqued the treaties between the U.S. and China, stating: "The Radicals have made a reciprocal treaty with the Chinese Government. The Chinese have the right to come to this country and enjoy […] all the benefits […] of the city."\textsuperscript{50} Coronel accused the Chinese of being criminals and then criticized those who imported the Chinese. He suggested that the employers should just hire Indians. He ended his speech by encouraging the audience to vote for the Democratic Party candidate, Henry H. Haight. Coronel declared that his support for Haight was based on his Chinese immigration stance and encouraged Californios to vote as he planned to.

\textsuperscript{47} Ibid.
\textsuperscript{48} “1867 June 26, Thos. N. Cazneau to Antonio F. Coronel (50),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County.
\textsuperscript{49} “1867 Junio 21, Juan Luco a Antonio Coronel (117),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County. Translated by author.
\textsuperscript{50} “Coronel Speech,” (247), Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County. Translated by author.
The California Democrats greatly appreciated Coronel’s campaigning. In a letter from 1867, a fellow Democrat praised Coronel’s speeches in Santa Barbara.\textsuperscript{51} Cornel held such a prominence with the state Democrats that he also won the election for State Treasurer as the Democrat candidate.\textsuperscript{52} However, in October 1867, Coronel received a letter from James Alex Forbes, the former British Consul under the Mexican Republic. The letter informed Coronel that there was a rumor going around Santa Clara County that he would resign from the position of treasurer because “his English [wa]s not equal to the importance of his post.”\textsuperscript{53}

The racial ambiguity associated with Californios caused some Anglo-Americans in Northern California to equate the Spanish language with racial inferiority and non-citizenship. In contrast, in Southern California where Californios still possessed legitimate power and claims to whiteness, the Democrat Party hosted a “Junta Democratica” in Pomona (a neighborhood in Los Angeles County) in October 1867; the same month the rumor was floating around. At the “Junta,” Antonio F. Coronel, Wm. R. Rowland, J. G. Estudillo led discussions in Spanish.\textsuperscript{54} In contrast, in Northern California, where Forbes lived, Anglo-American residents racialized the political aptitude (or ineptitude) of Californios in relation to Spanish.

During the Reconstruction Era, speaking Spanish would become more closely associated with foreignness and inferiority because the demographic changes in

\textsuperscript{51} “1867 Augusto 22, J Jenssens a Antonio F. Coronel (97),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County; “1867 Septembre 16, Romualdo Pacheco a Antonio F. Coronel (99),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County. Translated by author.
\textsuperscript{52} “1867 Octubre 9, Juan Luco a Antonio Coronel (65),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County. Translated by Author.
\textsuperscript{53} “22 Octubre 1867, James Alex Forbes a Don Antonio F. Coronel (333),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County.
\textsuperscript{54} Ibid.
California meant Anglo-American settlers no longer required the Californios support. The process of land dispossession in Santa Clara compounded with significant Anglo-American settlement contributed to the racialization of Californios and transformed them into unlawful occupiers in the locale. This accusation made against Coronel was not the only allegation of racial inferiority made against a Californio holding public office during the Reconstruction Era. But in the immediate postwar moment, Democrats continued to make appeals to the elite Californio population in Southern California because the successful rejection of Reconstruction depended on it.

In addition to encouraging elite Californios to deliver supportive speeches for the Democratic candidates, during the 1867 election, election propaganda was printed in Spanish. Haight printed a speech entitled, *Alocución Que Dirije a Los Hijos Del Pais,* which translates to ‘a speech addressing the children of the country.’55 Samuel Axtell, who was running for the US House of Representatives, published a speech for his Spanish-speaking voters worried about their position on the California racial hierarchy. Axtell assured the Californios who had successfully laid claim to whiteness and stated: “I positively oppose the creation of a community of equality between the Chinese, negro and Indian.”56 The fact that Axtell and Haight printed speeches in Spanish indicates that in Southern California, Californios still possessed power and a legitimate claim to whiteness. The titles of Haight’s and Axtell’s speech demonstrates that he was willing to acknowledge the colonizer aspect of the Californio identity. He encouraged elite Californios to claim their superiority by setting themselves in opposition to inferior

56 Samuel B. Axtell, "Alocución de S. B. Axtell," 1867 August 8th (122),” Antonio F. Coronel Papers, Seaver Center for Western History Research, Los Angeles County.
groups with their votes. Axtell declared that he viewed Californios as his equal, which indicated that Californios could still lay claim to whiteness if they contributed to the process of colonization. The California Democrat party made their stance clear: if elite Californios wished to continue to lay claim to whiteness, they had to distance themselves from and support the subjugation of racialized groups.

In September 1867, the voting citizens of California elected Henry Haight for governor. Haight’s Inaugural Address provides insight into the state political climate and how ideologies of racial exclusion lead to his ascendancy as Governor and the eventual California rejection of the Fourteenth Amendment. Haight opened his speech making clear that he, like his constituents, supported the Union and the Federal Constitution. He, then, condemned the U.S. Congress because, in his view, the radical members had warped the meaning of the U.S. Civil War. He exclaimed: “The late war was waged on our part to enforce the authority of the Federal Government in the Southern States and to prevent the disruption of the Union, and not to destroy the liberties of any portion of the people, or create a negro empire on our southern border.”

According to Haight, by legislating Reconstruction, Congress had encroached upon the rights of states and disrupted political systems premised upon white supremacy.

Haight then criticized the U.S. Congress’ efforts to liberalize citizenship for the benefit of black Americans. Haight denounced the Fourteenth Amendment, saying: “The policy or propriety of admitting the blacks to the right of suffrage belongs to each State to

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57 Henry Haight won with 49,895 votes. The Republican, George Gorham, received 40,359 votes, and Caleb Fay, an Independent Republican, received 2,088 votes.


59 Ibid.
determine for itself. Had Congress been able to control this subject, both negro and Chinese suffrage would probably have been forced upon the people of California against the will of the vast majority.”

Haight and his voters wanted to prevent Reconstruction policy from altering the 1849 California Constitution, which only extended full citizenship and rights to white men. Haight then articulated a white-only vision of California and inferred how Reconstruction, namely the Fourteenth Amendment, threatened this. He explained:

“So far as California is concerned, the people of this State have expressed their opposition both to negro and Chinese suffrage. [...] A portion of those persons in this State who favor negro suffrage hesitate to advocate Chinese suffrage, but the congressional policy makes no distinction.

On the contrary, that policy proposes to ignore all discrimination in political privileges, founded on race or color. Indeed, there is no line that can be drawn, unless suffrage is confined to the white population. [...] If justice requires the ballot to be given to the negro, then it equally requires the ballot to be given to the Chinaman. [...] There is however, no truth in either statement. No principle of justice is involved any more than in the case of females or minors, or foreigners not naturalized. Nor does the negro need the ballot to protect himself any more than either of the other classes referred to; on the contrary, it is for the good of both of those races that the elective franchise should be confined to the whites.”

For Haight and the fifty-four percent of the voting electorate, extending the right to vote to black men would disrupt the political power white men held and, eventually, disrupt the monopoly white men had on positions of power. For Haight and his supporters, non-whiteness reflected one’s inability to self-govern. Therefore, if black and Chinese men were granted the right to vote, all lines of distinction would dissolve and women, Indians, Indians,

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60 Ibid.
61 Ibid.
and foreigners could also claim the right to vote. Such a chain of events, according to Haight, would ruin the government of California and, eventually, the Union. The colonial project of California was premised upon the idea that whiteness had endowed Anglo-American men with the ability and entitlement to the region and to govern over the land and its inhabitants. If the right to self-government was granted to people of color, the very foundation of California could be contradicted, contested, and dismantled.

Aware of the labor needs of the new state, Haight assured his constituents that technology and European immigration would solve their problems. He encouraged employers to hire European immigrants and white American migrants, rather than hire cheap Chinese labor, which would place “a curse upon posterity for all time.” The encouragement of Chinese immigration to California threatened the colonial project. Haight informed his constituents about what was at stake. If they chose Chinese labor to build the Pacific Railroad, the nation would then be stuck with a large Chinese population. The solution was to hire white men from the East and European immigrants, so that the “permanent population of [California would be one of] white men, who w[ould] make this State their home, bring up families here, and meet the responsibilities and discharge the duties of freemen.”

Haight’s point was clear, Anglo-American colonial entrepreneurs had designed California for the benefit and posterity of white men. The building of railroads created a new opportunity to encourage more white settlement of the state. But Haight warned: hiring Chinese immigrant laborers jeopardized the colonial project. The colonization of

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63 Henry Haight, “Inaugural Address,” December 5, 1867.
California was not yet complete, and the current inhabitants of California needed to encourage more white migration to discourage racialized groups from staking a claim to citizenship rights or the spoils of the colonial project.

When Haight assumed the governorship, he did not send the amendment to the California Legislature because the electorate had spoken by electing a Democrat governor and a Democrat majority. During the 1867 – 1868 session, members of the California Assembly and Senate offered multiple resolutions that condemned Reconstruction and the possibilities it created for expanding suffrage and empowering people of color. On March 3, 1867, assembly member, E. C. Tully, offered the last Joint Resolution that rejected the proposed amendment to the U.S. Constitution. The state of California would not ratify the Fourteenth Amendment until 1959.

In California, the Fifteenth Amendment faced a similar fate. Once the bill was delivered to the state legislature, Governor Haight and members of Congress spoke out against the proposed constitutional amendment. In an eight-page Executive Department report delivered to the senate, Haight claimed that the issue at hand was not “what classes ought or ought not to be intrusted [sic] with the elective franchise” but “whether the Federal Constitution ought to be amended” to extend such rights. According to Haight, it was a matter of States’ Rights. Haight revealed his true opinions to the Amendment in a speech delivered to the state congress. Again, he employed racist mongering tactics and

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64 D. Michael Bottoms, An Aristocracy of Color, 86.
stated: “If the [fifteenth] amendment is adopted, the most degraded Digger Indian within our borders becomes at once an elector, and so far, a ruler. His vote would count for as much as that of the most intelligent white man in the State.”

For Haight, and his supporters, it was problematic for people of color to have the same electoral power as white men. Haight concluded his report with a request, that the California Legislature “formally reject” the amendment.

On January 6th, 1870, Senator William Gwin, Jr., son of colonial entrepreneur, William Gwin, issued a resolution that alleged the illegality of the Fifteenth Amendment. The resolution, first insinuated that under the U.S. Constitution, Congress had no power to present such an amendment to the states and that the states had no power to ratify an amendment that concerned powers conferred by the U.S. Constitution to states. Then the resolution implied that upon being admitted to the Union, the state of California was solely “invested with the right to declare what persons should be entitled to vote within her boundaries, and until she, by her volunteer act, surrenders that right, the Congress of the United States has no authority to exercise such power[.]”

According to Gwin Jr., the proposed legislation deserved no further attention.

On January 7th, the Senate voted to “recede from the amendment” and the Assembly voted to refuse to accede the amendment. The state of California would not ratify the Fourteenth Amendment until 1962. In the years following the national ratification of the Fourteenth and Fifteenth Amendments, the inhabitants of California

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71 Ibid.
either tried to limit or expand the reach of the laws. In doing so, they drafted a blueprint for racial exclusion and second-class citizenship during Reconstruction.

Demarcating Difference in Citizenships

The editors of The Elevator criticized Democrat and state rejections of the Reconstruction Amendments but remained optimistic about the possibilities of black citizenship. They praised the twenty-eight states that first voted in favor of ratification of the Fourteenth Amendment. After the ratification, the editors of The Elevator mused:

“What effect this amendment will have on the political status of the colored citizens of the loyal States, we are not prepared to say, whether it will take immediate effect, or will be prospective in its operations; but the 5th section of the amended article gives Congress the “power to enforce by appropriate legislation the provisions thereof.””

The outcome of Reconstruction was unknown, but the writers of The Elevator assured its readership that the U.S. Congress had been empowered to legislate and protect black citizenship, even if the California legislature did not. How would the California government and residents uphold or evade federal Reconstruction policies?

The federal removal of racial restrictions on the elective franchise and citizenship rattled the racial hierarchy in California. The Fourteenth and Fifteenth Amendments did

73 Special criticism was reserved for Ohio and New Jersey, which voted to ratify the amendment and then rescinded their ratification.
74 Elevator, Volume IV, Number 44, 5 February 1869; https://cdnc.ucr.edu/?a=d&d=EL18690205.2.7&spos=27&e=-------en--20-EL-21-byDA-txt-txIN-constitutional+amendment-------1
not alter the citizenship status of Indigenous. In light of the new Amendments and the expansion of citizenship, Californian city officials continued to racialize citizens by demarcating difference when registering people to vote while technically upholding the Fifteenth Amendment and the Article VIII of the Treaty of Guadalupe Hidalgo.

In 1866 the California Legislature passed the Registry Act, which called for the “the registration of the citizens of the State, and for the enrollment in the several election districts of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise.” The claims to prevent voter fraud were likely attempts to disenfranchise and differentiate the new, non-white voters in the state. One must consider how, in California, a majority of the persons empowered to govern, believed that the franchise belonged solely to white men. Since the inception of the state, men in power had barred certain Californios, all black Americans, Indigenous Peoples, and women from the right to vote. Given that the institution of slavery was destroyed, and Radical Reconstruction had just begun, this law should also be viewed as an attempt to limit the rights of black Americans at a moment when the rights and parameters of citizenship were in flux. In 1872, two years after the ratification of the Fifteenth Amendment, the state legislature amended the Registry Act and required counties to publish an index of registered voters every two years.

The Great Registers of California provide the age, occupation, nativity, and naturalization information (if applicable) of every man registered to vote. Depending on the county, the registers provide information about a voter’s naturalization process. City officials marked difference and perpetuated the construction of differentiated citizenship.

75 “An Act to Provide for the registration of citizens of this State, and for the enrollment in the several election districts.” *The Statutes of California, 1866*. (Sacramento: State Printer, 1863), 289
For example, from the Registry we can see that Levi Strauss (the creator of the famous Levi’s Jean) was registered to vote San Francisco in 1867. According to the record, Strauss was born in Germany and became a citizen in 1847 in a New York court. Every entry provided this information.

In 1867, the County Clerk of San Francisco, William Loewy, approved the first Great Register of San Francisco. In total, 16,550 men were registered to vote. Of the 16,550 men registered to vote, 9,441 were natives of the United States and 7,109 were foreign born. All but thirty-five of foreign-born registered voters were from Western Europe. There are no demarcations of race because, according to the law, only white men could vote.

The 1872 San Francisco Great Register does not change its format; besides each registered voter’s name is their age, place of birth, occupation, address, and when and where they were naturalized (if applicable). According to the 1870 US Census, San Francisco was 91% white, 7.8% Chinese, and .8% African American. According to these numbers, about 1,330 black American men could vote, but from the Great Register alone, it is impossible to discern if they successfully registered to vote. In the 1872 Register, Phillip Bell and William Hall, members of the Executive Committee of the Colored Convention and contributors to *The Elevator*, were listed as registered voters.

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*76 Ibid.*


*78 Total San Francisco Population = 149,473; white population = 136,059; Chinese population = 11,728; African-American population = 1,330; other population; other = 356*

Their names were not differentiated in any way. This is remarkable because Southern California County Clerks documented difference in their Great Registers.

The County Clerk of Los Angeles County assembled a Grand Register in 1866. The Los Angeles Grand Register differs from the 1867 San Francisco Register in significant ways. Unlike the San Francisco Register, the Los Angeles Register has a significant amount of Californio, and Mexican men registered to vote. Unlike the San Francisco Register, according to the 1866 Los Angeles Register, some registered voters born in Mexico or Alta California were allowed to vote because their naturalization occurred “by the Treaty of Guadalupe Hidalgo.” While, in the San Francisco Great Register, voters born in Mexico or Alta California have no notes in the naturalization section of their registration. Does this mean they did not have to prove their citizenship? There is no visible pattern to explain why voters were marked or not marked as treaty citizens. From the Register, one’s place of birth or age does not seem to have any bearing on those allowed to register to vote. A visible pattern does not emerge when accounting for well-known Californios who were treaty citizens. Pío Pico, Manuel Domínguez, are not marked at treaty citizens, while Antonio Coronel, who was serving on the Los Angeles Common Council in 1867, was marked as a treaty citizen. Was Coronel marked as a treaty citizen because he still asserted himself as an administrator of the colonial government?

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80 I have not found a way to discern if Mexico could also mean Alta California. In terms of self-identification, it is possible that some men who identified as being born in Mexico, may have been born in Alta California. I also interpreted born in California to mean born in Alta California if a registrant was born before 1848.

81 In 1867, Pico was not in government and mostly remained in Los Angeles where he pursued his business ventures. In 1868, he began building Pico House, a lavish hotel, in Downtown Los Angeles.
In Los Angeles County, the differentiation of citizenship continued well into the 1870s. In the 1873 Grand Register assembled after the ratification of the Reconstruction Amendments, the County Clerk not only differentiated voters as treaty citizens, but also differentiated voters enfranchised by the Fifteenth Amendment. According to the 1873 Grand Register, in Los Angeles, fifteen black men registered to vote “under the Fifteenth Amendment” and one-hundred-and-twenty-eight men could vote “by Treaty of Guadalupe Hidalgo.” (See Appendix 1, page 273) The seemingly haphazard marking of citizenship for black, Californio, or Mexican men indicates, that despite the Fifteenth Amendment and the Treaty of Guadalupe Hidalgo, their citizenship was contested and not deemed as legitimate by municipal officials in a space where persons of color still challenged American authority. Los Angeles is the only county in which the County Clerks marked the difference of black voters. This is not to say that other counties did not prohibit or impeded a black man’s right to register or to vote. But in Los Angeles, city officials documented black men as differentiated voters in the Great Registers. The County Clerks of Santa Barbara and San Diego also differentiated the citizenship of Californio and Mexican men in their County Grand Registers. In the 1875 Grand Register of Santa Barbara County, fifteen men were considered eligible to vote “by treaty of 1848.” (See Appendix Two, page 277) The men of the de la Guerra family (Pablo de la

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83 While this study focuses at the Grand Registers of the Los Angeles, San Francisco, Santa Barbara, and San Diego Counties, I have examined other Norther California county registers and they do not differentiate black citizenship from the years of 1866 to 1879.

Guerra had passed away by 1873) did not receive differentiating comments on their naturalization status. In the San Diego Register of 1872, only three men were marked as eligible for voting “by acquisition of California by US.”

(See Appendix Three, page 278) Two of the three men eligible “by acquisition of California” were born in England meaning that the two men had been thoroughly assimilated into Californio society that claimed citizenship status under the Treaty of Guadalupe Hidalgo.

In Northern California, county clerks did not demarcate the naturalization status of Californios or black Americans. For example, Romualdo Pacheco, who resided in San Luis Obispo County, and served as the first and last Californio Governor of California during the year of 1875, did not have notes that differentiated his citizenship. Mariano Guadalupe Vallejo, who lived in Monterey County, also did not have notes that differentiated his citizenship. I have not found evidence of such notes in San Luis Obispo, Monterey, or any Northern County.

The inconsistency of County Clerks differentiating the citizenship status of Californio voters is the product of the confluence of colonialism and Reconstruction. By the end of the U.S. Civil War, Northern California was socially and politically dominated by Anglo-American settlers and American authority (disagreements about States’ Rights and federal power aside) had successfully squashed Californio claims to political power in Northern California. Also, in Northern California, the perceived “racial scourge” were Chinese immigrants and black Americans. In the northern counties, Anglo-American...
municipal agents did not need to differentiate Californios because colonization had transformed Californios into colonized colonizers – they did not pose a threat to white settlement and governance. The Southern counties of California were still contested spaces; thus, the County clerks marked the difference of black and Californios voters. The entries in the Grand Registers indicate this contestation over power and belonging. In the Southern Counties of California, city officials immediately laid the groundwork to differentiate the citizenship claims of Californios and black Americans.

**Another Rejection of the Treaty of Guadalupe Hidalgo**

In 1869 Pablo De la Guerra ran for the re-election of the Santa Barbara district judge. He had served as a district judge since 1863. Since serving as a Constitutional Delegate in 1849, de la Guerra continuously held public office in the state of California. He served as state senator for ten years, acting lieutenant governor for one year before, and as a district judge. During the 1869 election, he was not at risk of losing the judgeship. After the election and before the final count was reported, the *Sacramento Daily Union* commented on de la Guerra’s race, stating “he [de la Guerra] is a man of over-whelming personality, and has doubtlessly beaten Walter Murray [the Republican candidate].” But in November 1869, de la Guerra’s election had been contested on the

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grounds that he was not a U.S. citizen. In December 1869, Santa Barbara Judge Maguire dismissed the case against de la Guerra and Governor Henry Height commissioned him as district judge of the first district.

Despite being commissioned as district judge, de la Guerra’s political opponents continued to challenge his election on the premise that he was not an U.S. citizen. Martin Kimberly, born in Connecticut and migrated to Santa Barbara where he raised sheep, brought the case on behalf of the people to the California Supreme Court. Eugene Lies, the Santa Barbara representative in the California State Assembly at the time gave the argument on behalf of Kimberly. A Santa Barbara assembly member presented the argument against de la Guerra; this was an attack on Californio power in Santa Barbara – a Californio stronghold. Archibald Peachy, formerly of Peachy, Billings and Halleck served on behalf of Pablo de la Guerra.

According to Lies, when the California Legislature passed the Act of April 20, 1863, section 19, which stated, "no person shall be eligible to the office of District Judge who shall not have been a citizen of the United States and a resident of this State for two

90 Martin Kimberly, Year: 1870; Census Place: Township 2, Santa Barbara, California; Roll: M593_87; Page: 467A; Family History Library Film: 545586. Accessed on Ancestry.com.
91 There is little information about Eugene Lies. He was born in New York and moved to Santa Barbara in 1850. As a lawyer he argued many cases; in some instances, he even served as a translator. There is little know about the relationship between Lies and de la Guerra, but they had sixteen recorded instances of communication from 1853 – 1869.
92 “Supreme Court,” Marysville Daily Appeal, Volume XXI, Number 132, 8 June 1870. https://cdnc.ucr.edu/?a=d&d=MDA18700608.2.20&srpos=2&e=01-09-1869-31-10-1870--en--20--1--txt-txIN-Kimberly--------1
years and of the District one year, next preceding his election,” Pablo de la Guerra was no longer eligible for the position of district judge. Lies claimed that U.S. Congress had not acted in accordance to Articles VIII and IX of the Treaty of Guadalupe Hidalgo, because: “Congress has not yet seen fit to declare that, in its judgment, the "proper time" had come to provide for his admission [as a citizen].”

According to Lies, U.S. Congress had not taken action to naturalize the conquered Mexican citizens. By making this claim, Lies’ asserted that a treaty does not have the power of naturalization, even when ratified by Congress.

The argument Lies then presented to the California Supreme Court was rife with the racializing and colonial rhetoric that had targeted Californios since the beginning of American occupation. According to Lies, as a conquered people and racially inferior people, and despite a Mexican treaty, the Californios could not become a U.S. citizen. He incorrectly cited People v Naglee, to argue that because the case established that it was constitutional to tax foreigners who wished to mine public lands, and that some of the taxed foreigners were Mexican citizens; therefore, all Californios, irrespective of their treaty citizens status, were also non-U.S. citizens. Lies employed racialized notions of foreignness to categorize Californios as non-US citizens. He even quoted the racializing language Senator John C. Calhoun used in his infamous “War with Mexico” speech, which Lies described the speech as a great white-man-government speech, to protest the incorporation of Mexican citizens during the U.S.-Mexican War to prove that Californios

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93 People ex rel. Kimberly v. De La Guerra, 40 Cal. 311, 339, 1870 Cal. LEXIS 196, *2 (Cal. October 1, 1870)
could never be U.S. citizens. In closing his argument, Lies condemned de la Guerra’s for his acquiescence to conquest, stating: “he [de la Guerra] joined, by virtue of his silence, that class of Mexicans who are deemed to have elected to become citizens of the United States, but he is not and never was a citizen.” Lies’ argument reflects the ideas many Anglo-American settlers held – Californios could never claim citizenship because they did not meet the racial criteria.

De la Guerra’s lawyer Archibald Peachy, made an argument on three points. The first being that the act of conquest dissolves the relationship between a people and a former sovereign and transforms conquered people into the subjects of the new power. As such, the act of conquest and occupation transformed Californios into U.S. citizens. Peachy’s second point was that the ratification of Treaty of Guadalupe Hidalgo also transformed Mexican citizens into U.S. citizens. And the third point Peachy made, was that the admission of California into the Union also conferred U.S. citizenship conquered Mexican citizens. According to Peachy, Pablo de la Guerra did not become a U.S. citizen just once, he became a U.S. citizen three times.

After both arguments were delivered, Justice Jackson Temple delivered his decision in October 1870. Justice Temple concurred that as “a white male citizen of Mexico,” de la Guerra became a citizen with the signing of the Treaty of Guadalupe Hidalgo. De la Guerra’s whiteness is important. Lies, in part, argued that de la Guerra’s racial inferiority excluded him from citizenship. For Temple, de la Guerra’s claim to

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95 People ex rel. Kimberly v. De La Guerra.
96 Ibid.
97 Ibid.
98 Ibid.
whiteness was legitimate and, therefore, on the basis of race, de la Guerra was qualified for citizenship.

Justice Temple then responded to Lies’ argument that the California Constitution violated article IV of the Treaty of Guadalupe Hidalgo because it does not extend the right of citizenship to all male citizens of Mexico; it only extended citizenship to white, male Mexican citizens. According to Justice Temple, when Congress admitted California into the Union it bestowed upon California “the right to prescribe the qualifications of electors, and it is no violation of the treaty that these qualifications were such as to exclude some of the inhabitants from certain political rights. They were excluded in accordance with the principles of the Constitution.”99 According to Justice Temple, the government of California had every right to exclude certain groups from certain rights according to certain “qualifications.”

The decision in the People v. de la Guerra protected de la Guerra’s citizenship, and made clear that that the government of California had the power to exclude certain groups of people from claiming political rights because Temple’s decision declared that the state could confer certain rights according to certain characteristics. Accordingly, the Treaty of Guadalupe Hidalgo did confer citizenship, but it did not guarantee the equal and complete citizenship to all treaty citizens; the allocation of rights and citizenship was purview of the state government. Justice Temple delivered the decision just as the federal government attempted to extend citizenship to racialized groups and, in doing so, he assured that the judicial system of California protected the state’s right to exclude people of color from full citizenship.

99 Ibid.
Constructing Second-Class Citizenship for Black Americans

While the California Legislature removed the racial restriction on testimony in 1863 and federal legislators amended the U.S. Constitution to guarantee citizenship and the elective franchise for black men, Anglo-American settlers worked to exclude racialized groups as they had done in 1850s California and as the governments of Southern and Northern states would. One of the first battles over racial exclusion was fought over the railroad cars in San Francisco. Hoping to expand the privileges of citizenship, black activists in San Francisco attempted to reform municipal laws and business practices that subjugated the black community. Again, in California, Anglo-American settlers attempted to limit the effects of Reconstruction and encouraged legislators to write and pass legislation that maintained policies of exclusion for racialized groups.

Months after the Emancipation Proclamation went into effect, black men and women challenged racial restrictions on railroad cars. Sometime during the 1860s, transit companies adopted policies that excluded black passengers from their cars. A newspaper article titled, “The Rights of Colored Men to Ride in the Cars,” covered a railroad car case brought by a William Bowen, a black man. In June of 1863, a North Beach and Mission Road Company railcar operator ejected Bowen from the car in San Francisco.101

101 “The Rights of Colored Men to Ride in the Cars,” (author, print date, and paper unknown) Folder 7, Box 5, RR Co Miriam Matthews papers (Collection 1804), UCLA Library Special Collections, Charles E. Young Research Library, UCLA; “Colored Test Case,” Sacramento Daily Union, Volume 25, Number 3808, 5 June 1863, https://cdnc.ucr.edu/?a=d&d=SDU18630605.2.17.1&srpos=3&e=-------186-en--20--1-byDA-txt-txIN-%22william+bowen%22-------1
As the case made its way to court, the California press considered this a test case on whether or not black Americans had the right to ride railroad cars.\textsuperscript{102}

According to Bowen, on the evening of Tuesday, May 16, 183, he attempted to board a railroad car with a small bundle he needed to deliver to the Mission for his employer. The conductor immediately seized him and stated, “We don’t carry niggers.”\textsuperscript{103} To which Bowen responded that he be let on because he was running a business errand and intended to pay his fare. The conductor responded by enlisting the driver to aid in the violent removal of Bowen. After Bowen delivered his testimony, a witness also testified that they heard Bowen offer to pay his fare and the conductor refused it. Another witness testified that they saw a passerby rap Bowen’s knuckles with his cane in an effort to help remove him from the car. According to one newspaper, in this case, the judge did not allow the testimony of white witnesses who refused to ride in cars with black passengers.\textsuperscript{104} When asked to explain his initial decision to ride the car, Bowen declared that he had ridden the cars before, and had “never consulted any one regarding his right to ride.”\textsuperscript{105}


\textsuperscript{103} “Colored People in the Cars,” \textit{Marysville Daily Appeal}, Volume VII, Number 134, 7 June 1863; https://cdnc.ucr.edu/?a=d&d=MDA18630607.2.12&srpos=4&e=-----186-en--20--1-byDA-txt-txIN-%22william+bowen%22------1.

\textsuperscript{104} Ibid.

The counsel for the defendant argued that the railroad car company had every right to enact a policy that declared who could ride or not because it was private property and that the conductor was simply following company policy. Moreover, the state had no laws barring companies from creating such policies. The defense closed their argument with a warning to the jury: if they ruled in favor with the plaintiff, black Americans would become “so aggressive and indolent that they would thrust themselves” in not only railroad cars, but also in personal carriages and their houses. The defense’s argument was emblematic of the racial mongering white supremacist employed to prevent the extension of citizenship rights to people of color and to promote segregation, especially during Reconstruction.

The counsel for the plaintiff, in a very interesting strategy, argued that allowing black passengers to board railroad cars did not create social equality, so one should not fear sharing a railroad car with a black passenger. The lawyer then asserted that it was ridiculous to exclude black passengers while allowing secessionists and Copperheads to ride the cars. The point being that unlike secessionist and Copperheads, Bowen was not harming the community. The judge asked the jury only to consider if the conductor was guilty of assault and battery, not if public places should be integrated. The jury decided in favor of William Bowen, but the issue of racial exclusion on railroad cars was far from settled.

After the end of the U.S. Civil War, the fight over the railroad cars continued. Mary E. Pleasant, a black woman successfully sued the San Francisco North Beach and

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106 The lawyer compared sharing a car with a black passenger to sharing a car with a piece of mutton, arguing that if a white passenger rides a car with a piece of mutton, that does not mean that the mutton has the same social equality. Quoted in “The Rights of Colored Men to Ride in the Cars.”
Mission Railroad Company in 1866 and as a result banned racial segregation on transit in the city of San Francisco. Pleasant was known as the “Mother of Civil Rights in California.” It was rumored that in 1859, she donated a significant amount of money to fund the John Brown’s Raid on Harper’s Ferry. Pleasant’s place of birth is unknown, but she was taken to Massachusetts around 1827 as a slave. She eventually worked enough to pay for her freedom. After purchasing her freedom, she married James Smith, a white man, and began working on the Underground Railroad. After Smith’s death, Pleasant re-married to a John James Pleasant, a white man, and continued her work for the Underground Railroad. Pleasant and her husband decided to move to San Francisco for the business opportunities. In San Francisco, she passed as white and opened a restaurant for businessmen while participating in the black activist networks focused on aiding fugitive slaves achieve their freedom. While Pleasant passed as white, it seems that she did not conceal her race from other black Americans living in San Francisco.

After the Civil War, however, Pleasant began identifying as ‘black’ to state officials. During the 1860s, Pleasant took two civil rights cases to the courts. In 1866, Pleasant sued the North Beach and Mission Railroad Company for their policy of racial discrimination. The California State Supreme Court heard the case Pleasant v the North Beach & Mission Railroad Company. According to Pleasant’s testimony, on

107 The record is not straight on how much money Pleasant donated to the raid at Harper’s Ferry or if she donated money at all. Other primary and secondary stories claim that Pleasant served as a sort of jockey warning enslaved persons of the raid. What is clear, however, is that she had a role in John Brown’s raid on Harper’s Ferry.


109 The other case was Pleasant v Omnibus Co., which was thrown out because the company settled.

110 Pleasant v North Beach and Mission Railroad Co. “Box 14, Folder 1, Miriam Matthews papers (Collection 1804). UCLA Library Special Collections, Charles E. Young Research Library, UCLA.
September 17, 1866, she attempted to ride Car No. 21 of the North Beach and Mission Railroad Company to the Plaza. She hailed the railroad car, but the conductor and driver refused to let Pleasant ride the car and left her on the street. In their testimonies, both Pleasant and the conductor agreed that she had tickets to ride in her possession and the car was not full. Both agreed, there were no extenuating circumstances for not letting her board. According to testimony given by L. M. de Beusche, the conductor, he did not let Pleasant board because he had followed company instructions to refuse people of color or people of African descent from riding in the railroad cars.111

The jury ruled in favor of Pleasant and awarded her $500 for the suffering she entailed. The verdict resulted in a ban of racial discrimination on railroad cars in San Francisco. Pleasant’s case was heard before the ratification of the Fourteenth and Fifteenth Amendments and although the verdict in this case prohibited racial discrimination on San Francisco transit, the case did not apply to other spheres and other cities throughout California. After Pleasant’s case, the battle over segregation in San Francisco moved to the public schools.

At the 1865 Colored Convention, the delegates stressed accessibility to public education almost as much as the right to vote. During Reconstruction, black activists in San Francisco fought a fierce battle against racial exclusion in public schools. While this is not particular to California, it is important to understand how policies of exclusion were a continuation of the colonial regime of 1850s California. Given the success of the railroad car case in San Francisco, black activists and families attempted to redefine the terms of black citizenship and the meaning of Reconstruction in the state by attempting to

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secure access to public education for their children. The demand for public education was a demand for inclusion and full citizenship.

A public-school system was established by the 1849 California Constitution. According to California law, the actual building of schools and the distribution of school funds were at the discretion of municipal governments. On April 8, 1850, San Francisco established the first free public school in the state. In 1855, the California Legislature amended the School Law and, for the first time, linked whiteness and funding. This change in the law meant that local districts were now monetarily encouraged to exclude black children from their schools.

In 1865, the State Superintendent of California schools made a recommendation for the “legal establishment of separate schools for children other than white children.” This legislative recommendation not only reflected the racist sentiments of Anglo-American settlers, but also provided a glimpse into the role public schools performed in colonizing the new state. Much like the building of cities, the construction of railroads, and the cultivation and resource extraction of the land, public schools transformed land and society in California. Those in charge of governing the state did not want to allocate funds for children they did not deem as possessing the qualities of future citizens.

In the 1860s, Anglo-American legislators and politicians viewed the public school as an engine of civilization, especially for children of color. The racialization of

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112 1849 California Constitution, Article IX
113 California Statues 1855.
114 D. Michael Bottoms, Aristocracy of Color, 104
115 John Swett, History of the Public School System of California (San Francisco: Bancroft and Company, 1876), 49.
116 Emblematic of this idea are Indian boarding schools. Federal agents removed Indian children from their families and communities and sent them to federal boarding schools where they were expected to forsake their native culture and values accept the knowledge and values of white American culture. Much has been
Californios resulted in the notion that Californio children were more inclined to acts of savagery. The Los Angeles County Superintendent, John Shore, described Californio children as possessing the necessary qualities to become the “worst banditti in the world.” Shore went on to explain, in a metaphor that rings of settler colonial imagery, that out of school, Californio children were “a rich soil left to thorns and thistles.” Shore’s comments demonstrate that many thought Californio children inferior to white children in terms of self-control and virtue, but given their proximity to whiteness, they could be assimilated into Californian society. The civilizing project was at the core of public schools. In accordance with California law, a portion of every school day was devoted to moral instruction. The expectation was that public schools would produce ‘good’ citizens who contributed to an orderly and virtuous society.

The 1855 state law that excluded black children from public schools, also excluded Chinese and Indigenous children. The paternalistic impulse to civilize Chinese immigrants meant that many Chinese children were educated in missionary schools where they received English-language and Christian instruction. In the 1880s, Chinese parents and activists would tackle the issue of segregated schools. Indigenous children in California were either engaged in resisting the exterminatory Indian wars or had been kidnapped and forced into guardianship or sent to federal reservations. In 1860, the state law was amended to allow for the admittance of Indigenous children who lived with


118 Ibid.


white families under the guardianship system. The logic being that these children were more likely to be assimilated than other Indigenous children. As demonstrated by the *People v Hall* case and the reactions to the *Dred Scott* decision, in California the construction of a racial hierarchy depended upon the linking of blackness, Chinese-ness, and Indian-ness.

Efforts to constrain black citizenship increased when Democrats seized control of the California Senate in 1868. Throughout cities in California, Democrats acted to restrain the legislative promises of Reconstruction at the local level. In 1868, the San Francisco Board of Education voted to close the Broadway school to “colored children;” it would remain open for white children. Before the 1868 decision, about one-hundred black children attended the Broadway school; now, they were without a school. It soon became clear that the school board intended to open a separate school for black children. The San Francisco School Board’s actions compelled the writers of *The Elevator* to condemn the decision to deprive children of their right to an education. On May 17th, 1868, community leaders met at the San Francisco Bethel Church and decided to send a petition to the School Board. This and subsequent petitions were met with no response.

In April of 1870, the California Legislature passed “The School Law of California,” which explicitly called for the segregation of public schools. Section 56 of the law established separate schools: “The education of children of African descent, and Indian children, shall be provided for in separate schools.” Aware of the equality

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provision in the Fourteenth Amendment, legislators included Section 57, which stated:

“The same laws, rules and regulations, which apply to schools for white children, shall apply to schools for colored.”

In the fall of 1868, the school board re-opened a closed school for black students in North Beach, a neighborhood in San Francisco. According to the Elevator, children were likely to be harassed in the neighborhood and catch a cold or worse in the dilapidated building. This was not a proper school. The parents of the children who had been excluded from their residential school were outraged that their children had been sent to a school deemed unfit for white children. Parents refused to send their children there and demanded a suitable school for their children. In the summer of 1869, a separate school was built; however, the classes available were not graded, meaning the black children would not be able to continue their education in a high school or receive a degree.

In November 1871, an Education Convention was held in Stockton, California. In an address printed in the Pacific Appeal, the delegates declared that the Fifteenth Amendment of U.S. Constitution and the Civil Rights Bill gave black citizens “full educational privileges.” The delegation requested that the California Senate take action to remedy the school situation or they would take their cause to the courts where they were sure to win. They made a special appeal to the Republicans who held a majority in

127 “Our Schools,” Elevator, Volume IV, Number 32, 13 November 1868. https://cdnc.ucr.edu/?a=d&d=EL18681113.2.7&e=--1866---1879--en--20--61-byDA-txt-txIN-mary+e+pleasant+-------1
the Assembly and the governorship. In response to the appeals, Assemblyman J. F. Cowdery introduced a bill to open all schools to black children in California. However, in Washington D.C., Senator Charles Sumner had introduced a new civil rights bill that would include a national mandate for school desegregation. His rhetoric and the bill angered Democrats and white supremacist and the bill died before a vote was taken. The anti-black racism in California was compounded by events in D.C., and the California bill also died.

Dismayed and frustrated by the failed legislative attempts, Peter Bell, editor of the *Elevator*, called a meeting at the Bethel Church. At the meeting it was declared that, since they had exhausted all efforts of petitioning the state legislature to repeal sections 56 and 57 of the California School Law, they ought to “contest the rights of our children to admission to the public schools through the courts.” After agreeing to this course of action, the committee prepared a public denunciation for the state senators from Amador, El Dorado and Siskiyou County for their efforts to keep schools segregated and all the supporters of the current policies. The delegation criticized the legislators’ efforts at self-government and warned the white population: “Sir, no white citizen is safe, so long as any citizen is despoiled of his rights. The habit of tyranny engenders corruption, weakens the sense of justice and dries up the very fountains of liberty.” The delegation then made a plan for obtaining and paying for legal counsel. The unofficial leader of the

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129 Ibid.
130 D. Michael Bottoms, *An Aristocracy of Color*, 120
131 “Educational Public Meeting at Bethel Church,” *Elevator*, Volume VIII, Number 4, 27 April 1872. [https://cdnc.ucr.edu/?a=d&d=EL18720427.2.9&c=--1866--1879--en--20--61-byDA-txt-txIN-mary+e+pleasant+-------1](https://cdnc.ucr.edu/?a=d&d=EL18720427.2.9&c=--1866--1879--en--20--61-byDA-txt-txIN-mary+e+pleasant+-------1)
132 Ibid.
133 Ibid.
meeting, William Hall, who had served in the 1865 Colored Convention, requested a team of women to raise the money within six months.

The Educational Committee of the Colored Convention soon found their test case. On July 1, 1872, Harriet Ward attempted to enroll her daughter, Mary Frances Ward at the Broadway School. The principal, Noah Flood, denied her enrollment because “she was black and there was a special school for black children.”

The Committee brought the case to the California Supreme Court.

In 1872, the California Supreme Court heard the case of Ward v Flood. John W. Dwinelle, counsel for the plaintiff argued that these sections 56 and 57 of the California School Law violated the Civil Rights Act of 1866 and the Thirteenth and Fourteenth Amendments. Dwinelle argued:

“Before the adoption of the Thirteenth and Fourteenth Amendments to the Constitution of the United States, […] the Constitution of the State of California, […] denied to colored children any political status whatsoever. But since those amendments have given the political status of citizens to such children, when either native born or naturalized [and] Under the decision in 24 Iowa, therefore, no child who is a citizen of California can be excluded, by reason of color or race, from any of the common or public schools of the State.”

Dwinelle argued that the California law violated rights guaranteed by the U.S. Constitution.

Williams and Thornton, counsel for the defendant, employed a strategy that called for a narrow reading of the Fourteenth and Fifteenth Amendments. They did not disagree

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134 Noah Flood quoted in An Aristocracy of Color, p. 96.
136 Ward v Flood.
with the fact that the Fourteenth Amendment conferred citizenship to black Americans, 
but argued instead, that the amendment did not “confer upon the citizen no new 
privileges or immunities.” The right to a public education was a new privilege because 
the U.S. Constitution did not say anything about education and that “public schools are 
wholly the creation of our own State Constitution and State laws.” According to Williams 
and Thornton, the right to an education was not a right guaranteed by federal citizenship 
and the state of California was working within its legitimate realms of power by creating 
separate schools. 

Next Williams and Thornton argued in favor of a ‘separate but equal’ policy. 
They reasoned that since the school policy did not exclude black children from public 
schools and that 

“separate schools are provided for them, conducted under the same 
rules and regulations as those for the white, and in which they enjoy 
equal, and in some respects superior educational advantages. So far as 
they are concerned, no rule of equality is violated--for while they are 
excluded from the schools for the white, the white are excluded from 
the school provided for the negro.”

According to Williams and Thornton, the government of California solely possessed the 
authority to create and confer the “right to public education” because federal citizenship 
did not include the right to public education. 

After two years of stalling, Associate Justice, William Wallace, delivered the 
opinion for Wood v Flood. According to Wallace, the Court remained unconvinced that 
the California School Law violated the Thirteenth and Fourteenth Amendments because 
the separate school policy did not result in slavery, involuntary servitude, or in the denial

137 Ibid. 
138 Ibid. 

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of citizenship. Wallace then dismissed the argument that the right to a public education was a privilege of federal citizenship, writing:

“It will indeed be readily conceded that the privilege accorded to the youth of the State, by the law of the State, of attending the public schools maintained at the expense of the State, is not a privilege or immunity appertaining to a citizen of the United States as such; and it necessarily follows, therefore, that no person can lawfully demand admission as a pupil in any such school because of the mere status of citizenship.”139

Then Wallace established the principle of “separate but equal” years before the U.S. Supreme Court would establish the principle in the *Plessy v Ferguson* decision. Because the California Legislature provided a system of education for black students, the state did not deny Ward or any other child the equal protection of the laws as guaranteed by the U.S. Constitution. According to Wallace, the only way this could have occurred was if the Legislature denied education to black children. Wallace concluded:

“In short, the policy of separation of the races for educational purposes is adopted by the legislative department […] in whatever motive it originated, denies to the petitioner, in a constitutional sense, the equal protection of the laws; and in the circumstances that the races are separated in the public schools, there is certainly to be found no violation of the constitutional rights of the one race more than of the other, and we see none of either, for each, though separated from the other, is to be educated upon equal terms with that other, and both at the common public expense.”140

Twenty-two years before the US Supreme Court ruled in the case of *Plessy v Ferguson*, the California Supreme Court established the principle of “separate but equal” as constitutional.141

139 Ibid.
140 *Ward v. Flood*.
141 *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, 1896 U.S. LEXIS 3390 (Supreme Court of the United States May 18, 1896).
There was a silver lining in the ruling. Justice Wallace was only able to defend segregation by acknowledging the equal protection clause of the Fourteenth Amendment. As a result of this portion of the ruling, black Californians pressured the San Francisco and Sacramento School Boards to open more schools and allocate more funds for black children.\textsuperscript{142}

The justices, legislators, and white citizens of California refused to accept the expanded definition of citizenship that black Americans demanded. Despite the imposition of federal Reconstruction Policy, the government of California had created legal mechanisms by which to exclude citizens and non-citizens of color from the privileges of citizenship in California. The rejection of integrated education symbolized the sentiment that, in California, advocates of white supremacy did not want black children to receive the same civic training as white children, or even Californio children, because it would lead to greater equality under the law and integration of the public and political sphere.

In the 1850s and 1860s, the colonial engineers of California had created a state that allowed for the legal, differentiated incorporation of racialized groups. The decision by the California Supreme Court was not only a continuation of this process, but also a state rejection of federal Reconstruction policy. Settlers, legislators, and judges had found a way to accommodate Reconstruction, all the while still maintaining the colonial logic of the California project.

\textsuperscript{142}D. Michael Bottoms, \textit{An Aristocracy of Color}, 125
Conclusions

In this chapter, I have demonstrated how at the local and state levels white legislators and bureaucrats challenged the citizenship claims made by non-white people during Reconstruction. The process of Reconstruction destabilized the colonial state of California because of the expansion of citizenship in regard to race. Again, in California, Anglo-American colonial entrepreneurs convinced the state government to pursue policies of racial exclusion. In spite of these exclusions, black and Californio individuals claimed citizenship rights and contested their treatment.

Despite the resistance to Reconstruction, black Americans in California acted to expand freedom and citizenship in the state. The failed attempt to integrate public schools demonstrates that colonial administrators in California, while loosely upholding citizenship rights, continued to exclude black children from the colonial project. The continued attacks on Californio citizenship demonstrates two things. One, that Anglo-American colonial entrepreneurs continued to racialize Californios in order to remove them from positions of power and subjugate their citizenship status. However, in certain spaces, black and Californio men could wield significant power because colonialism was an uneven process. Two, in California, racial scripts were still in flux and colonial entrepreneurs continued to shape political and social power in relation to the subjugation and racialization of other groups. But the sustained attacks on Californios had turned them into colonized colonizers. The participation of Californio men in the Democrat Party exemplifies this.

Reconstruction policy destabilized the colonial project in California by nullifying legislation and weakening the mechanisms that transformed colonized and immigrant
peoples into non-citizen subjects. However, the racialized construct of ‘unlawful occupier’ remained and Anglo-American colonial entrepreneurs and administrators continued to draft legislation and employ violence that upheld not only the legal colonial framework, but also justified the political subjugation of Californios, Indigenous Peoples, black Americans, and the Chinese. The challenge made to de la Guerra’s citizenship and the racial segregation of public schools exemplifies this. Throughout the Reconstruction Era, colonial entrepreneurs continued to create and enforce legislation that successfully subjugated and excluded racialized groups as full-fledged members of California.
Epilogue

RECONSTITUTING COLONIALISM

The Process Must Come To An End

On May 7, 1879, the California electorate, with a vote of 77,959 to 67,134, approved a new state constitution.¹ Nearly a year earlier in March 1878, one-hundred-and-thirty-nine delegates met in Sacramento to draft a constitution that would fix the perceived shortcomings of the 1849 Constitution in relation to property, taxes, and immigration.² In the span of thirty years, Anglo-American settlers and colonial entrepreneurs had utilized a colonial legal framework, anchored by the 1849 California Constitution, to incorporate conquered peoples into American society as non-citizen subjects. In the eyes of some, this framework could not adequately reckon with a growing Chinese immigrant population and maintain white settler dominance in the state.

By 1878, Anglo-American colonial entrepreneurs had successfully institutionalized American authority and colonial mastery in California. Anglo-American settlers had constructed political dominance, which normalized Anglo-American colonial strategies of settlement, through the differentiation and subordination of Californios and Indigenous Peoples. By 1878, Californios and Indigenous Peoples no longer posed an existential or significant threat to Anglo-American colonial rule. Non-European immigration now posed a threat.

One of the many legacies of American colonialism in California was the production of an organizing grammar of race that rationalized westward colonial expansion and the non-citizen status of Indigenous and persons of Mexican descent. This “organizing grammar of race” would propel and justify overseas colonialism and imperialism in the Pacific World. Moreover, the colonialization Californios and Indigenous Peoples served as a blueprint for the management of non-European immigrant groups. Rather than incorporate non-white immigrants as citizens, the 1879 constitutional delegates created a legal framework that would incorporate them as non-citizen subjects in a manner that evaded the equal protection clause of the Fourteenth Amendment.

**A Colonized People**

This study has demonstrated that the colonial legal framework allowed Anglo-American colonial entrepreneurs to strip Californios and Indigenous Peoples of their land, labor, and citizenship rights. As demonstrated in chapter two, the federal establishment of *terra nullius* was essential to the colonization of Californios and Indigenous Peoples. By 1878, most Californios had lost their lands. Through the constant challenges made to their citizenship and the linking of inferiority with the Spanish language, Anglo-American colonial entrepreneurs had successfully colonized the colonizer. The process of colonization was so successful that the Californio identity all but disappeared.

In 1873, Pio Pico lost the title to his largest grant, Santa Margarita. Pico fell into debt in his attempt to save this and other properties. His brother-in-law, John Forester,

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3 This is the grant mentioned in chapter two. See Chapter Two, p. 89 – 95.
offered to assist him by paying off the mortgage Rancho Santa Margarita, for which he owed $42,000. Forester wrote up a contract that transferred all of the rancho property to him. When he gave it to Pico to sign, he translated it unfaithfully. Despite evidence of fraud, a San Diego jury awarded the Rancho Santa Margarita to Forester. After this loss, Pico remained in litigation trying to save other properties until his death in 1894. When Pico died, he left nothing to his children. The land possessions and colonial power that had informed the Californio identity had changed hands.

In addition to the construction of *terra nullius*, the perpetuation of the Mexican system of Indian slavery contributed to the colonial destruction of California Indigenous Peoples for the purpose of Anglo-American settlement. By 1878, the U.S. and California governments had moved away from a policy of extermination and toward a policy of incarceration and forced assimilation on federal reservations. Emblematic of this development was the Modoc War. In 1870, one-hundred-and-fifty Modoc people left the Klamath Reservation in Northern California and returned to their ancestral lands. They left because the U.S. government forced them to live on a reservation with their historical enemies, the Klamath. In 1872, the U.S. Commissioner of Indian Affairs ordered the Oregon Indian Affairs superintendent to return the Modoc people to the reservation and, if necessary, to use force. U.S. cavalrymen started the Modoc War in an attempt to carry out this order. Kintpuash, led the Modoc resistance, and successfully held off the American forces for over one-hundred days. After months of fighting, U.S. troops

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7 Born around 1837, Kintpuash was a child when an Anglo-American California militiaman Ben Right killed his father during an attempt to make peace during the Indian Wars. This experience caused him to mistrust the U.S. Army and influence his tactics during the Modoc War.
captured Kintpuash and five other Modoc men. After a farce of a trial, in which the Modoc defendants served as their own lawyers and their appointed translators testified against them, the U.S. Attorney General found them guilty and sentenced them to death. On October 22nd, 1873, U.S. soldiers executed Kintpuash and three other men, John Schonchim, Boston Charley, and Black Jim. President Ulysses Grant granted executive clemency to the two youngest men at the request of Indian advocates. Later in October 1873, the federal government removed one-hundred-and-fifty-three Modoc to the Oklahoma Quapaw Agency. As the last armed conflict between California Indigenous Peoples and Anglo-American settlers, the forced removal of the remaining Modoc People marked the end of state-supported colonial violence and the embracement of Grant’s Peace policy, which promised to assimilate Indians on federal reservations, and the process of misremembering.

**The Road to a New Constitution**

With the creation of the 1879 California Constitution, Anglo-American settlers created a document that consolidated and protected the power they had acquired through colonization. By rewriting the California Constriction, Anglo-American settlers and colonial entrepreneurs attempted to control non-European immigration to the state. The attempt to manage non-European immigrant populations, like the Chinese, was an effort to rationalize and maintain the racial hierarchy that justified Anglo-American claims to the land and the bounty of colonization.

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8 Benjamin Madley, *An American Genocide*, 336 – 337
The initial push to rewrite the California Constitution came from the People’s Independent Party in 1873. As part of the larger, national Granger movement, Anglo-American Californian farmers organized the party as a means to end corporate monopolies and business and government corruption. The party advocated for legislative reform that would guarantee the protection of the individual, especially individual farmers, rather than capitalist interests. Despite the significant support of California farmers, the People’s Independent Party failed to effect massive reforms in California. In 1875, votes for the People’s Independent Party nominee for Governor split the Republican vote and, much to the dismay of both parties, the Democratic candidate for governor, William Irwin, won the race. After the 1875 election, the People’s Independent Party lost many of its members; most would find a new home in 1877.

The Long Depression hit laborers hard in San Francisco and all throughout California. After a sandlot labor rally organized to protest wage cuts announced by the Central Pacific Railroad Company in July 1877, the socialist Workingman’s Party of the United States held a meeting. Initially, the party organized around labor issues, such as an eight-hour workday and the nationalization of railroads. Despite the initial flurry of political activity, the Workingman’s Party of the United States did not gain a strong following in San Francisco.

In the fall of 1877, Denis Kearney, an Irish immigrant, founded the Workingman’s Party of California. Although Kearney borrowed the name, he did not establish the Workingman’s Party of California upon Socialist ideas. Instead, Kearney

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founded his Workingman’s Party on the idea that “The Chinese Must Go!” Since the 1850s, anti-Chinese sentiment in California had festered. Initially, anti-Chinese violence was centered around mining districts. As demonstrated in chapters two and four, Anglo-American settlers did not believe that Chinese immigrants met the racial requirements to extract wealth from California mines. However, they tolerated Chinese laborers when they filled the role of domestic workers in Northern California cities, all the while constructing the Chinese as morally and racially degraded beings. As railroad construction began, labor competition between Chinese and Anglo-American laborers produced fervent anti-Chinese racism in California and throughout the American West.

A colonial entrepreneur in his own right, Kearny used anti-Chinese politics to promote his Workingman’s Party. During the 1878 election, Workingman’s Party candidates for state congress campaigned on an anti-monopolist and anti-Chinese platform. The party performed well in Northern California and picked up all thirty senatorial seats in San Francisco and twenty-one seats throughout the state. The Workingman’s Party won control over the California Legislature and soon called for the rewriting of the California Constitution with the intention of producing a governing document that reformed the tax, legislative, gubernatorial, and land systems and excluded the Chinese. The 1849 Constitution, which had transformed Californios and Indigenous

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Peoples into colonized subjects and excluded black Americans, no longer served their needs.

By rewriting the California Constitution, the Workingman’s Party accomplished four major political goals. First, they enacted a Granger program in California.\textsuperscript{12} Two, they created a legal framework for Chinese exclusion. Three, they constitutionally ended the official use of the Spanish language. Four, they reformed legislative and gubernatorial power. I will discuss points three and two in this epilogue.

\textbf{An English Only State}

Unlike the 1849 Constitutional Convention held in Monterey, not a single Californio delegate was present at the 1879 meeting. On Friday, October 4\textsuperscript{th}, 1878, delegate Joseph Brown, made a motion to welcome a Spanish-speaking delegate to the convention.\textsuperscript{13} He nominated José R. Pico, son of Antonio Pico, a Californio delegate of the 1849 convention. Brown believed that the Californio population deserved representation at the convention. Aware of the racial sentiments of his fellow delegates, he implored the delegation to let Pico represent “the Spanish and Mexican Population [that] amounts to twenty-three thousand.”\textsuperscript{14} In his final remarks on the matter, Brown made an appeal that highlighted the colonial legacy of the Pico family. He pleaded:

“it does appear to me that in all justice and fair dealing, that a family that has done so much for this State, […] should be recognized, and that one of the family should at least occupy a position on this floor […] I am fully convinced that we should give this office to this honorable gentleman. He is a gentleman of ability and learning.”\textsuperscript{15}

\textsuperscript{12} Alexander Saxton, \textit{The Indispensable Enemy}, 128.
\textsuperscript{13} California, \textit{Debates and Proceedings of the Constitutional Convention, vol. 1}, 50.
\textsuperscript{14} Ibid.
\textsuperscript{15} Ibid.
In addition to highlighting the colonial legacy of Pico’s family, Brown commented on Pico’s level of social refinement – he was a gentleman of learning. Brown attempted to contradict the racist ideas the other delegates held about Pico. The delegation did not welcome Pico.

In addition to denying the Californio population representation at the convention, the delegates attempted to disenfranchise Californios by establishing an English-Only state. As this study has demonstrated, during the 1850s through 1870s, Spanish-language speakers were marked as inferior in the colonized American West. As historian Rosina Lozano has demonstrated, “Language in this case served as the primary discriminatory indicator, rather than an individual’s physical characteristics.” Given the Anglo-American construction of a white colonial identity and the role Californios performed in the colonization of California, Anglo-American colonial entrepreneurs, marked fluency in the Spanish language as an indicator of inferiority.

Delegates from the Southern California counties protested the English-only amendment because their constituents and their legal system relied on the Spanish language. However, their objections reveal that they did not consider Californios full-fledged members of Californian society. Delegate Eli Blackmer of San Diego defended the use of Spanish in the courtroom. In San Diego, court proceedings occurred in

18 California, Debates and proceedings of the Constitutional Convention of the State of California Convened at the City of Sacramento, Saturday, September 28, 1878, vol. 2 (Sacramento: State Printer, 1880), 801.
Spanish, and according to Blackmer, by competent and intelligent Californio judges. He went on to condemn the amendment, all the while implying that Californios were foreigners in the state. He declared, “it seems to me, for this Convention to prevent these people from transacting their local business in their own language. It does no harm to Americans, and I think they should be permitted to do so.”19 (emphasis by author)

Despite Blackmer’s and others’ complaints, the delegation approved Article IV of the 1879 California Constitution, which read: “all laws of the State of California, and all official writing, and the executive, legislative, and judicial proceedings, shall be conducted, preserved, and published in the English language.”20

By excluding Californios from the convention and imposing legislative restrictions on the Spanish language, the 1879 California Constitution marked Californios as inferior and foreign. The ‘English Only’ provision meant that only English speakers could receive full citizenship rights and govern in California. The need for Californio cooperation disappeared, and the delegates began to chip away at their rights in order to confirm that only Anglo-American men were entitled to full citizenship and to govern.

**Chinese Exclusion**

The delegates of the 1849 California Constitutional Convention desired to exclude all black persons from the state. They chose not to include black exclusion in the 1849 Constitution because they worried the U.S. Congress would cite the amendment as a reason to reject statehood. As the previous chapters have demonstrated, Anglo-American settlers excluded black Americans in practice and policy. Given the implementation of

19 Ibid.
20 1879 California Constitution, Article IV.
the Reconstruction Amendments, the delegates embraced black citizenship and equal protection of the law in the 1879 California Constitution.

In 1879, the constitutional delegates implicitly excluded the Chinese with legislation that allowed the state legislature to manage the Chinese population and discourage further Chinese immigration. Article XIX of the 1879 California Constitution deals solely with the Chinese. On the seventy-third day of the Convention, the Committee on Chinese presented their report to the whole convention.21 After reading the section that would grant the Legislature the power to write laws that would exorcise California of “dangerous and detrimental” Chinese persons, delegate Jno. [sic] F Miller of the Committee on Chinese gave a speech. According to Miller, “All agreed that Chinese immigration was an evil, and that if possible, the further influx of Chinese to this country should be stopped. But we differed in the measures which were to be adopted for remedying this evil.”22 Given the situation, they agreed to adhere to the recommendations of the majority of the committee. The committee decided that since the state did not have the power to legislate immigration, so they would treat the Chinese as “part of the population of the state.”23 In other words, they would treat the Chinese as a colonized population. After much discussion, the delegates approved four sections that targeted the Chinese population.

Adhering to the tradition of racial exclusion set by the 1849 California Constitution, Section 1 of Article XIX empowers the Legislature to:

“prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants,

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22 Ibid.
23 Ibid.
paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State[.]

This section of the 1879 Constitution criminalizes and racializes the Chinese. Similar to the criminalization of Indigenous Peoples in white spaces, this law criminalized the Chinese in the entire state of California. Moreover, the section used the idea of public health to racialize the Chinese and not only place them at the bottom of the racial hierarchy, but also construct them as diseased bodies that need to be excluded.

Sections 2 and 3 forbade corporations and state, county, and municipal governments from employing the Chinese in any capacity. This section of the law placates the root of Anglo-American racial anxiety over the Chinese – labor competition. However, Section 3 allows for the employment of Chinese in the case of “punishment for crime.” This allowed for county and municipal governments to exploit the labor of Chinese persons in a manner that did not threaten white labor. Moreover, as demonstrated in chapter three, the use of convict lease labor would contribute to the racialization of the Chinese and projects that benefitted Anglo-American settlement.

Rather than infringe on the federal government’s authority to legislate and regulate immigration, the delegates wrote Section 4 as a list of policy recommendations. The Section begins:

“The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. […] All companies or corporations, whether formed in this country or any foreign country, for the importation of such

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24 1879 California Constitution, Article XIX, Section 1.
26 1879 California Constitution, Article XIX, Section 3.
labor, shall be subject to such penalties as the Legislature may
prescribe. The Legislature shall delegate all necessary power to the
incorporated cities and towns of this State for the removal of Chinese
[…] and it shall also provide the necessary legislation to prohibit the
introduction into this State of Chinese after the adoption of this
Constitution.”

While they did not enact a policy of outright exclusion, the delegates empowered the
California Legislature to discourage Chinese immigration within the means of its
delegated power. Vague instructions left a variety of possibilities to discourage
immigration, such as taxation and imprisonment. This section also empowered municipal
government to utilize local law enforcement to remove Chinese persons from their cities.
By treating the Chinese as a member of the state populace, while simultaneously
codifying their exclusion, the delegates transformed all Chinese persons into non-citizen
subjects.

The End

The 1879 California Constitution marked the end of the colonial process that
transformed Alta California into California. Anglo-American colonial entrepreneurs
accomplished this through the destruction of the California Indigenous Peoples, the
dispossession of the Californios, and the near exclusion of black Americans. Whereas the
1849 Constitution excluded Indigenous Peoples as full citizens, the 1879 Constitution
mentioned Indians only once. In Article III, which deals with taxation and revue, the
delegates accounted for Indians only to say that the Legislature could not impose taxes on
Indigenous Peoples classified as “Indians not taxed.” The absence of Indians in the

27 1879 California Constitution, Article XIX, Section 4.
28 1879 California Constitution, Article III, Section 12.
1879 Constitution and the absence of Californios from the 1878 Constitutional Convention indicates that the colonial process had sufficiently mollified the challenges they made to American authority and they no longer threatened the colonial state.

By 1879, international and domestic migration hinted at the possible reconfiguration of the political and racial landscape of California and the United States. Confronted with the labor demands of territorial expansion and capitalistic enterprise, non-European immigration and, to a lesser extent, black American migration, Anglo-American colonial entrepreneurs in California created a new constitution that allowed for the construction of racialized foreign labor, which would circumvent the equality requirements of the Fourteenth Amendment. The 1879 Constitution created new mechanisms for Anglo-Americans to ensconce their power through the subjugation and degradation of non-European immigrant persons, without negating the institutionalized colonization of Californios and Indigenous Peoples. These new mechanisms insured that the bounty of colonization in California remained in white hands.

The production of race in California justified American colonization of the North American Continent and would justify imperial expansion into the Pacific World. By drafting a constitution that legalized Chinese exclusion, the Anglo-American delegates created a blueprint for racially exclusionary immigration policy. The 1879 California Constitution would echo in the 1882 Chinese Exclusion Act and the 1924 Immigration Act. This constitution did not erase the colonial process that occurred from 1846 to 1879; rather, it created a new framework to maintain and to continuously build and rebuild the colonial project.
Appendix One

LIST OF REGISTERED VOTERS ENTERED WITH CITIZENSHIP JUSTIFICATION IN LOS ANGELES GRAND REGISTER, 1873

“Under the Fifteenth Amendment”
(Name, occupation, place of birth)

1. Brown, William, Hunter, Washington DC,
2. Ballard, Johnson, Farmer, Kentucky,
3. Chism, Andrew, Barber, Kentucky,
4. Holmes, Joseph, Cook, Virginia,
5. Hamilton, Jesse, Minister, Tennessee,
6. Jones, Samuel, Barber, Virginia,
7. King, George, Farmer, New York,
8. Neal, William, Waiter, Washington DC,
9. Peppers, Emanuel, Teamster, Illinois,
10. Pearson, Phillip, Cook, South Carolina
11. Smoley, Nelson, Cook, South Carolina
12. Rusmore, Polydore, Cook, New York
13. Redding, Jeremiah, Cook, New York
14. Rowen, Chase Harry, Barber, Maryland
15. Rogers, Jesse, laborer, Arkansas
16. Smart, Joshua, farmer, Rhode Island
17. Smith, George, Teamster, DC,

“Naturalized by Treaty of 1848”
(Name, occupation, place of birth)

1. Abril, Manuel, Laborer, Mexico,
2. Analla, Juan, Laborer, Mexico,
3. Acebedo, Jose, Laborer, Mexico,
4. Areia, Roque, Laborer, Mexico,
5. Armenta, Ramon, Laborer, Mexico,
6. Apodaco, Francisco, Laborer, Mexico,
7. Armentes, Juan, Laborer, Mexico,
8. Armentes, Domingo, Laborer, Mexico,
9. Aranjo, Francisco, Laborer, Mexico,
10. Buelna, Leandro, Laborer, Mexico,
11. Bildarrain, Andres, Laborer, Mexico,
12. Bermudez, Antonio, Laborer, Mexico,
13. Buetivas, Simon, Laborer, Mexico,
14. Correa, Francisco, Laborer, Mexico,
15. Carrera, Ygnacio, Laborer, Mexico,
16. Castro, Lorenzo, Laborer, Mexico,
17. Cabanis, Lewis, Laborer, Mexico,
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Occupation</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.</td>
<td>Carrillo, Eusebio</td>
<td>Laborer</td>
<td>Mexico</td>
</tr>
<tr>
<td>19.</td>
<td>Escalante, Ygnacio</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>20.</td>
<td>Flores, Roberto</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>21.</td>
<td>Granillo, Manuel</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>22.</td>
<td>Granillo, Santiago</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>23.</td>
<td>Gomez, Enrique</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>24.</td>
<td>Gallego, Gregorio</td>
<td>Laborer</td>
<td>Mexico</td>
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<td>25.</td>
<td>Lopez, Elentario</td>
<td>Laborer</td>
<td>Mexico</td>
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<td>26.</td>
<td>Martinez, Lazaro</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>27.</td>
<td>Maron, Ramon</td>
<td>Laborer</td>
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<tr>
<td>28.</td>
<td>Maron, Juan Jose</td>
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<tr>
<td>29.</td>
<td>Maron, Ygnacio</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>30.</td>
<td>Montana, Jose Maria</td>
<td>Laborer</td>
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<tr>
<td>31.</td>
<td>Mendoza, Jesus</td>
<td>Laborer</td>
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<td>32.</td>
<td>Monroy, Antonio</td>
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<td>33.</td>
<td>Manjares, Juan</td>
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<td>34.</td>
<td>Mesquita, Luis</td>
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<td>35.</td>
<td>Millanes, Simon</td>
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<td>36.</td>
<td>Martinez, Dolores</td>
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<td>37.</td>
<td>Montes, Crecenzo</td>
<td>Laborer</td>
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<td>38.</td>
<td>Marquez, Sacramento</td>
<td>Laborer</td>
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<td>39.</td>
<td>Ochoa, Juan</td>
<td>Laborer</td>
<td>Mexico</td>
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<tr>
<td>40.</td>
<td>Ocana, Pedro</td>
<td>Laborer</td>
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<tr>
<td>41.</td>
<td>Ocana, Ygnacio</td>
<td>Laborer</td>
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<td>42.</td>
<td>Olquin, Juan</td>
<td>Laborer</td>
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<td>43.</td>
<td>Ochoa, Anastacio</td>
<td>Laborer</td>
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<td>44.</td>
<td>Ochoa, Ygnacio</td>
<td>Laborer</td>
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<td>45.</td>
<td>Ochoa, Manuel</td>
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<td>Mexico</td>
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<td>46.</td>
<td>Ochoa, Delores</td>
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<td>47.</td>
<td>Ortega, Gabriel</td>
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<td>Pena, Fredrico</td>
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<td>49.</td>
<td>Preciado, Elario</td>
<td>Laborer</td>
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<td>50.</td>
<td>Perciado, Antonio</td>
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<td>51.</td>
<td>Perlata, Guadalupe</td>
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<td>52.</td>
<td>Robles, Sebastian</td>
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<td>53.</td>
<td>Romitos, Pomeceno</td>
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<td>54.</td>
<td>Sanchez, Ignacio</td>
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<tr>
<td>55.</td>
<td>Salgado, Antonio</td>
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<td>56.</td>
<td>Sotel, Teofilio</td>
<td>Laborer</td>
<td>Mexico</td>
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<td>57.</td>
<td>Salazar, Juan</td>
<td>Laborer</td>
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<td>58.</td>
<td>Selaya, Pedro</td>
<td>Laborer</td>
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<td>59.</td>
<td>Torés, Urbano</td>
<td>Laborer</td>
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<tr>
<td>60.</td>
<td>Tapia, Tranquilino</td>
<td>Laborer</td>
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<td>61.</td>
<td>Velardes, Tomas</td>
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<td>62.</td>
<td>Yslar, Francisco</td>
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<tr>
<td>63.</td>
<td>Coronel, Manuel</td>
<td>Farmer</td>
<td>Mexico</td>
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</tbody>
</table>
64. Lisagarra, Martin, Farmer, Mexico,
65. Martinez, Louis, Farmer, Mexico,
66. Molina, Angel, Farmer, Mexico,
67. Mandible Trinidad, Farmer, Mexico,
68. Manzanera, Vicente, Farmer, Mexico,
69. Ollos, Jesus, Farmer, Mexico,
70. Ramirez, Apapito, Farmer, Mexico,
71. Ruis, Jose, Farmer, Mexico,
72. Romero, Antonio, Farmer, Mexico,
73. Rios, Agustine, Farmer, Mexico,
74. Saez, Juan, Bautista, Farmer, Mexico,
75. Valencia, Jesus, Farmer, Mexico,
76. Valencia, Jose Maria, Farmer, Mexico,
77. Workman, Joseph, Farmer, Mexico,
78. Botello, Narcisso, Clerk, Mexico,
79. Moreno, Jesus Maria, Clerk, Mexico,
80. Moreno, Juan Jose, Clerk, Mexico,
81. González, Fermin, Baker, Mexico,
82. Lucas, Simon Baker, Mexico,
83. Gusman, Victor, Saddler, Mexico,
84. Lopez, Seledonio, Saddler, Mexico,
85. Leba, Theophilus, Saddler, Mexico,
86. Lamure, Luis, Laborer, New Mexico,
87. Martinez, Jose, Laborer, New Mexico,
88. Montana, Jose, Laborer, New Mexico,
89. Sepulveda, Ramon, Laborer, New Mexico,
90. Martinez, Juan, Vaquero, Mexico,
91. Aleso, Melendrez, Vaquero, Mexico,
92. Jose Domingo, Vaquero, Mexico,
93. Morales, Antonio, Laborer, Arizona,
94. Mendibles, Theodore, Laborer, Arizona,
95. Osejo, Liborino, Laborer, Arizona,
96. Peralata, Cayetano, Laborer, Arizona,
97. Reyes, Andres, Laborer, Arizona,
98. Salsido, Antonio, Laborer, Arizona,
99. Martinez, Jose D, Farmer, New Mexico,
100. Martinez, Juan Andres, Farmer, New Mexico,
101. Veita, Gabriel, Farmer, New Mexico,
102. Ocano, Gregorio, Laborer, California,
103. Benitez, Onofre, Blacksmith, Mexico,
104. Buelna, Jose Antonio, Cigarillo, Mexico,
105. Balenzan, Dario, Mason, Mexico,
106. Barrios, Jose Moreno, Stockraiser, Mexico,
107. Coronel, Antonio, Vintre, Mexico,
108. Gonzalez, Jose, Railor, Mexico
109. Gozales, Genaro, Carpenter, Mexico
110. Moreno, Ramon, Shoemaker, Mexico
111. Manriquez, Felipe, Boragero (sheep herder), Mexico
112. Mata, Juan, Shoemaker, Mexico
113. Moreno, Jose Jesus, Ranchero, Mexico
114. Morales, Victornio, Bricklayer, Mexico
115. Ricco, Cayetano, hatmaker, Mexico
116. Rios, Fernando, Woodchopper, Mexico
117. Sandoral, Antonio, Barkeeper, Mexico
118. Valdez, Pansion, Tailor, Mexico
119. Valenzuela, Dolores, Comerciante, Mexico
120. Valenzuela, Jose D, Miner, Mexico
121. Bildarrain, Jesus, Druggist, Lower California
122. Blanco, Pedro, Merchant, Peru
123. Belou, Agustin, Waiter, France
124. Lopez, Vito, Vaquero, New Mexico
125. Maron, Jose, Saddler, Baja California
126. White, Michael, Farmer, England
127. Workman, William, Ranchero, England

128. Apablasa, Cayentano, Wheelwright, California, by birth and naturalized by Treaty of 1848
Appendix Two

SANTA BARBARA GREAT REGISTER, 1875

“By Treaty of 1848”
(Name, occupation, place of birth)

1. Avila, Ramon, Laborer, Mexico,
2. Burke, James Walter, Gentleman, Ireland,
3. Cardon, Elijio, Laborer, Mexico,
4. Cardon, Elijio, Laborer, Mexico,
5. Martinez, Leandro, Cook, Mexico,
6. Martinez, Luis, Farmer, New Mexico,
7. Reyes, Matías, Ranchero, Mexico,
8. Valenzuela, Jesus, Laborer, Mexico,
9. Valenzuela, Agustin, Laborer, Mexico,

“Proof made”
(Name, occupation, place of birth)

10. Corrales, Jesus, Laborer, Mexico
Appendix Three

SAN DIEGO GREAT REGISTER, 1872

“by acquisition of California by US”
(Name, occupation, place of birth)

1. Andrews, Johnson, Farmer, England,
2. Castinero, Fernando, Farmer, Mexico,
3. John Forester, Ranchero, England,
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Miriam Matthews Papers
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Benjamin Davis Wilson Collection

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Southern District

Northern District

Cave Johnson Couts Papers

Guerra Family Collection

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