WOMAN LAWYER:
The Trials of Clara Foltz

BARBARA BABCOCK

Stanford: Stanford University Press, 2011
392 pp., ills.

REVIEW ESSAY BY MARY JANE MOSSMAN*

> In trying to sort out the reasons for professional women's successes or failures, it is far too facile to say that there were prejudices against women that they had to overcome. The ways in which the prejudice manifested itself were extremely complex and insidious. . . . As determined, aspiring professionals, women were not easily deterred. They found a variety of ways to respond to the discrimination they faced. . . .[1]

Although their study of late nineteenth and early twentieth century women professionals in the United States did not include a review of

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[1] Penina Migdal Glazer and Miriam Slater, Unequal Colleagues: The Entrance of Women into the Professions, 1890–1940 (New Brunswick and London: Rutgers University Press, 1987) at 12.

the first women who gained admission to the legal profession, Glazer and Slater's assessment of the experiences of women professionals (above) is equally appropriate to understanding the lives of "first" women lawyers, such as Clara Shortridge Foltz (1849–1934). Certainly, prejudices about Foltz were manifested in a variety of different ways. But, like other women who chose to become lawyers in the late nineteenth century, Foltz was not easily deterred — indeed, she was both astute and creative in finding ways to respond, and often to overcome, the discrimination she faced.

As Barbara Babcock's new biography reveals, Foltz had great ambitions: to be "an inspiring movement leader, a successful lawyer and legal reformer, a glamorous and socially prominent woman, an influential public thinker, and a good mother"; perhaps not surprisingly in this context, she suffered not a few setbacks in a life that was often "frantic and scattered."[2] Yet, as Babcock's careful scholarship demonstrates, the story of Foltz's life and contributions as one of America's first women lawyers offers important insights about the history of gender and professionalism in law. Moreover, Babcock's biography is particularly important for two reasons. First, it provides both a detailed "story" about Foltz and a sustained assessment of her accomplishments, rounding out many aspects of Babcock's earlier writing about Foltz.[3] Perhaps more significantly, the biography is also augmented by an online supplement with essays and bibliographic notes that extends the documentation in the printed book — part of Babcock's unique Women's Legal History Web site at Stanford Law School, which has become a primary source for scholars interested in the history of women in law, particularly in the United States.[4] This review focuses on the published biography, an authoritative and sensitive biographical interpretation of Foltz's life. Indeed, in answer to Babcock's

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2 Barbara Babcock, Woman Lawyer: The Trials of Clara Foltz (Stanford: Stanford University Press, 2011) at x [hereinafter Woman Lawyer].

3 Barbara Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz* (1989) Biography 5; reproduced in Susan Groag Bell and Marilyn Yalom, eds., Revealing Lives: Autobiography, Biography and Gender (Albany: State University of New York Press, 1990) 131; and Babcock, *Clara Shortridge Foltz: Constitution-Maker* (1991) 66 Indiana Law Journal 849.

4 *See* www.law.stanford.edu/library/womenslegalhistory.

RESISTING McCARTHYISM:
To Sign or Not to Sign California's Loyalty Oath

BOB BLAUNER

Stanford: Stanford University Press, 2009
328 pp.

REVIEW ESSAY BY GLEN GENDZEL*

Imagine the University of California, the nation's top public university system, mired in crisis. Its renowned faculty are demoralized and depleted by waves of layoffs, resignations, and forced retirements. Promising young scholars turn down UC job offers; established academic superstars depart for more hospitable employment elsewhere. So many classes are cancelled that already crowded classrooms get jammed beyond capacity and UC students are unable to finish their degrees on time. Politicians in Sacramento gleefully pander to the public by attacking UC professors as elitist, out of touch, and morally suspect. The university's prestige suffers, the value of a UC degree declines, and a miasma of mistrust poisons campus life. Things get so bad that the UC Academic Senate officially declares the university "a place unfit for scholars to inhabit" because it has embarked on "a tragic course toward bankruptcy" (p. 202).

Imagine this crisis happening to the University of California — not today, but in 1950. The crisis came not from budget cuts but from a self-inflicted wound: the so-called "loyalty oath." Starting in 1949, the UC Board of Regents, on its own initiative, required all UC employees to sign

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an oath declaring that they did not belong to the Communist Party. No UC professors were even accused of being communists, but the penalty for not signing the Regents' oath was automatic dismissal from the university regardless of rank, tenure, or job performance. Actual membership (or non-membership) in the Communist Party had no bearing on whether faculty could keep their jobs; what mattered was whether they signed the oath. UC professors objected to the loyalty oath because it was coercive, it violated academic freedom, it imposed a political test for employment, and perhaps worst of all, it abrogated tenure. Most faculty members eventually signed under extreme duress, but a substantial minority chose to fight the oath. The result was nearly two years of agitation, recrimination, controversy, moral anguish, bureaucratic wrangling, political grandstanding, financial hardship, interrupted careers, several heart attacks, and the firing of over thirty eminent scholars and teachers. Ultimately the issue was resolved by the intervention of the governor, an act of the state Legislature, and a ruling of the state Supreme Court — all of which left no one satisfied but everyone relieved that at least the ordeal was over.

There was nothing new about a mandatory oath of loyalty for UC faculty. Since 1942, all California state employees had been required to swear allegiance to the state and federal constitutions. But in 1949, as the Cold War intensified, as Communism spread across Europe and Asia, and as revelations of Soviet espionage in the United States began to emerge, UC employees were singled out for a special anti-communist oath. Strong opposition arose immediately, though the ranks of non-signing professors dwindled as it became clear that they really would lose their jobs. Non-signers insisted that Communist Party membership alone should not disqualify anyone from university employment. Only demonstrably disloyal professors who advocated violent overthrow of the United States government in their teaching or their scholarship should be subject to dismissal — and even then, they should only be disciplined by the faculty itself through its own self-governing committees after a proper evidentiary hearing, not by the administration. To dismiss a professor merely for presumed membership in the Communist Party, rather than for any actual act of disloyalty, constituted guilt by association and denial of due process. Even worse, the non-signers protested, it violated academic freedom

AFTER THE TAX REVOLT:
California's Proposition 13 Turns 30

JACK CITRIN AND ISAAC WILLIAM MARTIN, EDITORS

Berkeley: Institute of Governmental Studies, 2009
169 pp.

REVIEW ESSAY BY DANIEL H. LOWENSTEIN*

In my more than forty years of living in California, I have never seen the public as exercised as they were during the months leading up to the election on Proposition 13 in the June 1978 primary. I recall a lunch debate on Proposition 13 — I believe it was held by the Commonwealth Club in Sacramento — where I was seated at a table with several farmers. The image persists in my mind of the muscles in the neck of one of these men, strained to the limit by the emotions he was feeling. That image has been my personal emblem of how highly charged were the political passions in that season. I have never again seen their like.

As any reader of this journal must be aware, Proposition 13 was approved by a large majority and has had a major influence on California's subsequent history. To paint with a broad brush, the proposition limited property taxes to one percent of assessed value, rolled assessed values back to the levels of 1975–76 (a significant reduction in those inflationary days), limited subsequent assessment increases to two percent per year even if the market value increased by a much greater amount, and

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made it more difficult to raise taxes by requiring voter approval at the local level and requiring a two-thirds vote for tax increases in the state legislature.

No one doubts that Proposition 13 was one of the major events of the late twentieth century in California. Whether it was for good or bad or both continues to be a lively subject of public debate. In addition, a sophisticated corps of scholars has scrutinized Proposition 13 from almost every angle.

The Institute of Governmental Studies is ideally situated to contribute to the study of Proposition 13. Located at the University of California, Berkeley, it provides to its students and to the public a combination of academic work at the highest level and a close, hands-on association with practical government and politics that includes frequent participation by officials, journalists, activists, and just about anyone else with first-hand knowledge of government and politics, whether international, national, or California-oriented. Thus it is no surprise that the present director of IGS, Jack Citrin, together with sociologist Isaac William Martin, on the thirtieth anniversary of enactment (June 6, 2008), convened some of the best of the scholars who have studied Proposition 13, together with activists and other knowledgeable people, to assess the proposition's legacy. The resulting papers make up the book under review.

According to Martin, the participants' mandate "was a simple one: assess what we have learned about the political, economic, and fiscal consequences of Proposition 13 over the last 30 years." Some of the essays reflect original research and fresh thinking. However, the book's intended audience is not primarily the small group of specialists who are familiar with the scholarly literature on Proposition 13. Instead, the book is directed to a general audience, which can include but should not be limited to students in courses on California government or finance. It can be recommended to anyone seeking either balanced and broad information on Proposition 13 in one short volume or an introduction to the measure with references facilitating future research.

The book contains some annoying though minor flaws. It is short, and most of the contributions are concise, but still a general index would

RACIAL PROPOSITIONS:
Ballot Initiatives and the Making of Postwar California

DANIEL MARTINEZ HoSANG

Berkeley: University of California Press, 2010
372 pp.

REVIEW ESSAY BY ETHAN J. LEIB*

There are obviously many ways to write a history of the American struggle toward racial equality after World War II. Our battle against the Nazis and their most malignant form of racism set the stage for much that followed in the history of race relations in the U.S. Professor HoSang's innovative approach in writing this history in *Racial Propositions* is not to focus on the U.S. experience at large — but to focus on its most populous state: California. More innovative still, HoSang tries to understand political developments about race in the postwar period through the processes of direct democracy in California, where the people of the state get to issue relatively unmediated expressions of their preferences and affinities. What he is able to reveal is that the presumed bastion of progressivism hasn't been especially impressive at addressing racism in its territory; no longer can we only think of the South as racially retrograde in the postwar period. California often gets associated with a certain kind of liberalism (though it isn't nearly as univocally "Blue"

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in the postwar period as some might assume) — but Professor HoSang helpfully reminds us that California's direct democracy is a forum in which that liberalism facilitates racialized ballot measures that often hinder racial integration in the state. The measures and the campaigns surrounding them, HoSang argues, help redefine race and racial equality in the process.

Although his method can have limitations — the story of race in California cannot really be fully isolated from the nation's as a whole, and the politics of race in the state surely cannot be limited to direct democracy when so much else happens in legislatures, courts, and executive offices — HoSang reasonably tries to narrow his scope and pick a lens into this otherwise dauntingly large subject area. His methodological choices are always fully transparent and, ultimately, the historical narrative he tells in his book is a truly engaging, well-written, and provocative account of how certain liberal theories of racial equality produce an arsenal of arguments for the opponents of many efforts at achieving racial justice. Moreover, HoSang charts how reigning theories of racial equality actually can hamstring civil rights activists in how they make their cases in the courts of public opinion and elsewhere. In a way, the consensus commitment to racial equality can serve to limit what the champions of racial justice can realistically say and accomplish. This is a subtle and often underappreciated way to think about racial politics and how they play out before the electorate.

The book is organized as a set of careful case studies about how certain propositions got onto the ballot in California, how certain propositions failed to qualify, how certain propositions were defeated, and how certain propositions succeeded. The aim in each chapter is to focus on the rhetorical campaigns opponents and proponents waged, with the purpose of revealing which accounts of racial equality proved themselves to have swayed the populace. There are chapters on the failed Prop. 11 in 1946, which would have created a Fair Employment Practices Commission (chapter 2); the successful Prop. 14 in 1964, which exempted many real estate transactions from fair housing legislation (chapter 3); the successful Prop. 21 in 1972 and Prop. 1 in 1979, which took aim at mandatory desegregation orders in California school districts (chapter

THE GREAT DISSENTS OF THE "LONE DISSENTER":

Justice Jesse W. Carter's Twenty Tumultuous Years on the California Supreme Court

DAVID B. OPPENHEIMER AND ALLAN BROTSKY, EDITORS

Durham: Carolina Academic Press, 2010
lvi, 225 pp.

REVIEW ESSAY BY MICHAEL TRAYNOR*

"The thing that means more to me than anything else is being able to transmit to posterity through my decisions, both majority and dissenting, something that will be a guide to the future. . . . A decision that stands for all time means something. If a hundred years from now a lawyer gets up in court and says, 'This very lucid and illuminating decision was written by Mr. Justice Carter in 1955,' well, I won't be there to hear it, but it is the thought that a hundred years after I am dead and forgotten, men will be moving to the measure of my thoughts."[1] So spoke Jesse W. Carter, associate justice of the Supreme Court of California for twenty years (1939–1959), in his oral history, conducted by Corinne Lathrop Gilb.[2]

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1 Oral History of Jesse W. Carter, 4 California Legal History 298-299 (2009).

2 *See* Corinne Lathrop Gilb, *Justice Jesse W. Carter, An American Individualist*, 29 Pacific Historical Review 145, 157 (1960). Justice Carter's oral history was conducted in 1955.

In his essay on dissenting opinions,[3] Justice Carter stated, "The right to dissent is the essence of democracy — the will to dissent is an effective safeguard against judicial lethargy — the effect of a dissent is the essence of progress. . . . The majority opinion is, in form and substance, the collective, composed and edited view of the majority. In a dissenting opinion, however, the judge is on his own, and can express his personality, his philosophy and his uncensored convictions."[4]

Justice Carter was understandably proud of his opinions and their treatment in the Supreme Court of the United States, saying in his oral history that "I've had more of mine upheld than any other member of the Supreme Court of California. Not as many as I would like to have had upheld, but more than any of the rest of them."[5] He also furnished for his oral history a "List of Cases in which I Have Dissented Where the Supreme Court of the United States Has Agreed with My Dissent and Reversed the Supreme Court of California."[6]

In their new book, *The Great Dissents of the "Lone Dissenter": Justice Jesse W. Carter's Twenty Tumultuous Years on the California Supreme*

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3 Jesse W. Carter, *Dissenting Opinions*, 4 HASTINGS L.J. 118 (1952).

4 *Id.* at 118-119. His contemporary on the Supreme Court of Pennsylvania, Justice Michael A. Musmanno, also wrote an essay on dissenting opinions, stating, "Once it is proclaimed officially that a majority cannot err, you begin to encourage absolutism. And it has been demonstrated beyond all imagining of contradiction that when criticism is gagged, opposition suppressed, and constructive advice silenced, absolutism sprouts, for power feeds upon power, — and the tree of tyranny will soon bear its poisonous fruit of oppression." Michael A. Musmanno, *Dissenting Opinions*, 6 KAN. L. REV. 407, 416 (1958). *See also* Abraham E. Freedman, *The Dissenting Opinions of Justice Musmanno*, 30 TEMPLE L. Q. 253 (1957); Melvin M. Belli, *Book Review*, 4 U.C.L.A. L. REV. 164 (1956) (reviewing *Justice Musmanno Dissents, by Michael A. Musmanno, with introduction by Dean Roscoe Pound*, 1956).

5 Oral History, *supra* note 1, at 331.

6 The eight cases listed are Gospel Army v. City of Los Angeles, 331 U.S. 543 (1947); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948); Rochin v. California, 342 U.S. 165 (1952); Anderson v. Atchison, Topeka & S.F. Ry. Co., 333 U.S. 821 (1948); Garmon v. Building Trades Counsel [sic] [Council] of San Diego, 353 U.S. 26 (1957); California v. Taylor, 353 U.S. 553 (1957); Konigsberg v. State Bar of California, 353 U.S. 252 (1957); and Chessman v. Teets, 354 U.S. 156 (1957). He added, "In only one case has the Supreme Court of the United States reversed the Supreme Court of California where I prepared the majority opinion. This was *Richfield Oil Corp. v. St. Bd. Equalization*, 329 U.S. 69 (1946). . . ." Oral History, *supra* note 1, at 332-333.

A LEGAL HISTORY OF SANTA CRUZ COUNTY:

An Account of the Local Bench and Bar Through the End of the Twentieth Century

ALYCE E. PRUDDEN, EDITOR

Santa Cruz: The Museum of Art & History
@ the McPherson Center, 2006
xiv, 161 pp., ills.

REVIEW ESSAY BY LARRY E. BURGESS*

For those seeking a detailed account of Santa Cruz County's legal history from the Bear Flag Republic through 2006, they have no further to look than to the exhaustive work of eight authors consisting of five attorneys, two librarians, and one judge. Their combined efforts provide insights into the people, cases, court structure, legal environment, and social issues that took place in the county during 160 years.

Reflective of similar themes in California's original counties, the law as practiced before statehood was rooted in Spanish and Mexican tradition. With the onset of the Gold Rush, the legal traditions of Spain and Mexico — adapted over the years by the *Californios* — and the laws of the United States began to conflict. This continued until the time of the Civil War when Santa Cruz County, the authors note, experienced sweeping changes in the procedures and practice of law reflective of the imposition of American legal tradition. "Momentous change" was to follow in the second half of the twentieth century.

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In presenting their research about people, judicial structure, and major trials, the authors set the context of each chapter with a discussion of the social, economic, and political issues confronting America. Such a construct serves well to understand the local events in Santa Cruz County. Their usage of oral history from participants in the legal world provides testimony not otherwise obtainable. The authors began their book in mid-1998. They are quick to add that their effort must also be seen as a challenge to others in the legal community to encourage and create further documentation of the unfolding chapters in the legal history of Santa Cruz County.

A survey of the decades covered reveals a diverse picture of the law. Santa Cruz County harbored many pioneers of distinction who served as *alcalde*, the single most important civil officer in early California before statehood. The *alcalde* played a "critical role in the Mexican system of colonial government, carrying out executive, legislative, and judicial functions." A few qualifications were indispensible — honesty, ability, and literacy. Among those serving as *alcaldes* were Joaquín Castro in the 1830s (a member of the De Anza party in 1776); Walter Colton in 1846 (who introduced the jury system in the county and helped form the California Constitution); and José Antonio Bolcoff in the 1840s (a Russian who married one of Castro's daughters).

Noting the unsettled conditions in California during the aftermath of the war with Mexico, 1846–1848, and especially before statehood in 1850, the authors quote historian Sandy Lydon who wrote, "The Americans rode in on their law books and used their guns in the meantime."

An excellent illustration of justice in those times is that of Judge William Blackburn who found a young man guilty of cutting off a horse's tail. After consulting his law books to no avail, he decided to apply the old biblical law of "an eye for an eye" and ordered the man to have his head shaved, to the delight and cheers of an assembled crowd.

Local history is often personal history, embracing the great events and massive social upheavals of the times. It is in local history where frequently someone may be directly connected to a historical event or person. The authors navigate these waters well, not avoiding discussion of success and failure in the history of law in Santa Cruz County. They

HISTORY OF THE BENCH AND BAR OF CALIFORNIA:

Being Biographies of Many Remarkable Men, A Store of Humorous and Pathetic Recollections, Accounts of Important Legislation and Extraordinary Cases

OSCAR T. SHUCK, EDITOR

Los Angeles: Commercial Printing House, 1901
Clark, NJ: The Lawbook Exchange, Ltd., 2007
xxiv, 1152 pp., ills.

REVIEW ESSAY BY CHARLES J. McCLAIN*

I. PROLOGUE

Background to the Work

This year marks the hundred and tenth anniversary of the publication of Oscar T. Shuck's mammoth survey of the California legal profession at the dawn of the twentieth century and look back into its pioneer past. His book is once again available in print, and the full text is also available online via Google Books. Consisting of some 620 biographical sketches of California lawyers and judges, living and dead, and of essays on aspects of California legal history, his *History of the Bench and Bar of California*[1] runs to over 1100 pages, most double-columned,

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[1] Hereinafter, *History of the Bench and Bar.*

closely printed. Sprawling in structure, generally uncritical in tone (the sketches are almost all complimentary), the book, nonetheless, offers us abundant and valuable information on the California legal profession in its formative periods and as it moved into modernity.

Shuck was not the originator of the work nor its first editor. M.M. Miller, a San Francisco lawyer, conceived the idea in 1899, found a publisher and was well into the task of collecting material when he was called to Hawaii to, as Shuck puts it, "take part in the transformation of the Hawaiian Islands into a portion of the American Union."[2] Shuck was well suited to take over the project. A little over a decade earlier he had brought out a work entitled, *Bench and Bar of California: History, Anecdotes, Reminiscences,*[3] a compilation of sketches of prominent California lawyers and judges, published in three volumes between 1887 and 1889.

Works similar to Shuck's 1887–89 *Bench and Bar* had appeared before. New York led the way in 1870 with its *Bench and Bar of New York*.[4] Missouri weighed in with its own publication eight years later, followed by Mississippi (1881), Wisconsin (1882) and Texas (1885). The structure of all of these publications, Shuck's included, was similar. They consist of profiles of leading members of the bench and bar, compiled by the author/editor, or possibly with the assistance of the subjects themselves (Shuck's, however, were entirely his own work), recollections of famous cases, humorous anecdotes. The profiles are for the most part adulatory, intended, as the New York volume put it, to hold up the lives of those sketched "as examples to those in the upcoming generation of lawyers."[5] The project that

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[2] *Id.* Preface. Miller is otherwise unidentified, and his profile does not appear in the work, nor for that matter does Shuck's.

[3] Oscar T. Shuck, *Bench and Bar of California: History, Anecdotes, Reminiscences* (San Francisco: The Occident Printing House, 3 vols., 1887–89). Shuck is more accurately characterized as the author of the earlier work, the editor of the latter.

[4] L.B. Proctor, *The Bench and Bar of New York: Containing Biographical Sketches of Famous Men, Incidents of the Important Trials in Which They Were Engaged, and Anecdotes Connected with their Professional, Political and Judicial Careers* (New York: Diossy, 1870). The Mississippi publication dealt almost entirely with deceased lawyers. Tennessee, Michigan, Indiana and Ohio issued their own "Bench and Bar" volumes in the 1890s.

[5] *Id.,* 1.

BOOK REVIEWS

WOMEN WHO KILL MEN: California Courts, Gender, and the Press

GORDON MORRIS BAKKEN
AND BRENDA FARRINGTON

Lincoln: University of Nebraska Press, 2009
xi, 272 pp.

In *Women Who Kill Men*, the authors discuss the interesting cases of a number of women who went on trial for killing men in California, from the late nineteenth century until just before the 1960s. Laura Fair was the defendant in the first of these trials; she had shot Alexander Crittenden to death on a ferry boat in San Francisco Bay in 1870. The last in the series is the sensational case arising out of the death in 1958 of Johnny Stompanato, the thuggish boyfriend of Lana Turner, the movie star. Cheryl Crane, Lana's daughter, killed him, supposedly to protect her mother.

Each of the cases has its own fascination. The authors try to use these cases to examine changing gender roles and changing norms in society. And, indeed, trials of women for killing men do have a special interest. For one thing, they are comparatively rare. Most killers are men; and so are most of their victims. Women rarely kill; and they kill in ways and under circumstances that differentiate them sharply from men who commit homicide. Women, for example, do not kill in barroom brawls. They do not kill in the course of armed robbery. When they kill, they almost always do so in the context of intimate relationships. Some women do kill for money — but it is usually family money. Gertrude Gibbons was accused of poisoning her husband in 1918; according to the prosecution, she did the bloody deed in order to collect an insurance policy (and also to "get rid of an invalid," p. 72). A grand jury failed to indict her.

Gertrude Gibbons escaped trial. Others of the women defendants were acquitted; or, if convicted, won their case on appeal. Other studies, in other jurisdictions, have confirmed the impression that women defendants had a better chance at trial than men. These studies have shown that judges and juries were often quite sympathetic to women accused of murder in the late nineteenth and early twentieth centuries. Today, we hear a great deal about the battered woman syndrome. From a formal and doctrinal standpoint, this defense has emerged fairly recently. But some juries, long before the development of this doctrine, seemed willing to give a good deal of slack to women who killed abusive husbands or lovers. Bakken and Farrington point to a number of instances in which women "resorted to murder to defend themselves and family members," and in which juries "judged these defendants' actions as justifiable homicide" (p. 78).

The cases described in this book were chosen in part because they were quite sensational; they were the stuff of front page news. What is it that makes a crime and its punishment sensational?: There are, in fact, quite a few reasons. The simplest reason is that the public is attracted to the lurid, and cases that appeal to the rather prurient interests of the public are extremely likely to make headlines. The public, particularly in the last few generations, has an almost morbid curiosity about the lifestyles of the rich and famous. Trials become media events when they

seem to open a window into the world of prominent people — especially Hollywood stars — and which expose a world that is both glittering and morally repellent at once. This was true of the notorious trials of Roscoe ("Fatty") Arbuckle in the 1930s; and it was true in the case of Lana Turner and her daughter. The media, to be sure, play an important role in the process of creating sensational news; and in publicizing and magnifying headline trials. The newspapers, and later television, greatly expanded the salience of many of these trials. The swarms of reporters who infested the trials of Dr. Sam Sheppard and O. J. Simpson, certainly contributed to the notoriety of these cases. The O. J. Simpson case was televised, which brought it to the attention of millions of people. The media do not and cannot invent these headline cases and headline trials; but they are clearly responsible for inflating their importance.

Another factor may be particularly salient in trials of women for murder. Such trials sometimes tested norms and ideas about gender roles. Well into the twentieth century, the conventional picture of respectable women was completely inconsistent with any notion that such women could be murderers. Murder was not, supposedly, in their nature. If they killed, there must have been a good reason. Of course, prosecutors tended to take a quite different view; they tended to describe the women in much less glowing terms. In the trial of Laura Fair, the prosecution described her as "an immoral seductress, a money-hungry opportunist, and an exploiter of male weakness." The defense argued that Laura suffered "maniacal spells due to delayed menstruation"; that this "female complaint" led to an "irresistible impulse to kill" (p. 19). The jury found her guilty. She appealed, and won a new trial. At this second trial, in 1872, a jury found her "not guilty by reason of insanity" (p. 37).

Perhaps the most famous criminal trial (other than political trials) in American history was the trial of a woman: Lizzie Borden. This was the sensation of the 1890s. It has given rise to an enormous literature; not many criminal trials have provided the inspiration for an opera and a ballet. Lizzie Borden was accused of murdering her father and stepmother, quite brutally, with an axe. The Bordens were leading citizens of Fall River, Massachusetts. Lizzie was unmarried, in her 30s — the very picture of a respectable, upper middle-class, church-going woman. There

was considerable evidence against her. But the jury acquitted her. The twelve men in the box apparently could not imagine that a woman of her stamp could be in fact a savage killer, someone capable of bashing in her own father's head with an axe.

Arguably, then, in the trial of Lizzie Borden, it was not just one woman who was on trial, but well-to-do women in general, or, perhaps bourgeois society itself was on trial. The case would tap into quite different norms, concepts, and intuitions today; and the trial might have come out differently. Bakken and Farrington, as we said, try to use these cases as examples of the way norms and ideas (mostly about women and crime) have changed in California during the period they studied. No doubt these norms and ideas are still evolving.

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TESTIMONIOS: Early California through the Eyes of Women, 1815–1848

TRANSLATED WITH INTRODUCTION AND COMMENTARY BY ROSE MARIE BEEBE AND ROBERT M. SENKEWICZ

Berkeley: Heyday Books, 2006
xxxvii, 470 pp.

The authors translated interviews of thirteen women done in the nineteenth century that provide historians of California with a gendered window into Mexican society and law. The periodization is important because far too much of our knowledge of early California is burdened with class and culture. Further, the authors point out that the documents were "marred by actual mistranslations." In returning to the original transcripts of the interviews, the authors found "that sentences, even entire paragraphs, of the women's words have been left out of some English translations" (p. xxxi). The authors have translated from the original interviews and, most importantly, given readers a precise explanation of the methodology of the interviewers and their personal

histories. Clearly, cultural bias had infiltrated the process in the nineteenth century.

What was on the minds of these women? Crime was a significant aspect of life. Rosalía de Leese remembered on June 27, 1874, "Frémont and his ring of thieves were in Sonoma, robberies were very common" (p. 29). Teresa de la Guerra de Hartnell reflected on March 12, 1875 that the Americans were not the only enemy deviants; Mexican "governors and officials . . . were men of very bad principles . . . very bad individuals . . . cowards and bad people" (p. 62). Catarina Avila de Ríos remembered on June 20, 1877, "three or four Irishmen . . . murdered the children with the hatchet while they were sleeping . . . and killed a black man who worked as a cook" (pp. 90-1). Angustias de la Guerra told Thomas Savage in 1878 that around 1829 "a ship from Mexico arrived in Santa Bárbara with two hundred or more men. All of them were convicts and the majority of them had committed very serious crimes" (p. 213). She also thought Mexican "soldiers were consummate thieves who committed all sorts of crimes every day" (p. 259).

Women also reflected upon land titles. Dorotea Valdez of Monterey on June 27, 1874 looked to the future, saying that "as soon as the railroad begins to operate, many foreigners will come to settle here. Rest assured, that is when Señor Jacks will receive the punishment he deserves. All we want is for some clever lawyer to take the pueblo land away from him" (p. 38). The Mexicans of Monterey were convinced that David Jacks had stolen their pueblo lands from them. Valdez gave a reason: "This is land that nobody had the right to give away, because it rightfully belongs to every man, woman, and child who was born in our town" (p. 38). Jacks had constructed fences to keep Mexican cattle and horses off his land and was "a natural-born enemy" (p. 38). Linda Heidenreich's "*This Land Was Mexican Once*": *Histories of Resistance from Northern California* (2007) recounted similar tales of stolen lands, mostly in Napa. Rosaura Sanchez's *Telling Identities: The California Testimonios* (1995) gave the oral histories gendered, ideological, and protonational interpretations. As we know from Gordon Morris Bakken's *The Development of Law in Frontier California: Civil Law and Society, 1850–1890* (1985) David Jacks successfully defended his title and encroachments on his pueblo lands.

The bulk of remembrances regarding land focused on American lawyers, bankers, and squatters stealing Mexican land. Yet María Antonia Rodríguez saw it in a world history context. "[S]he replied that though the Americans had taken away from her nearly the whole of her lands, she had no grudge against them — for, she said, 'It is the law of nature that the poor should steal from the rich. We Californians in 1846 owned every inch of soil in this country, and our conquerors took away from us the greater part. The same thing, I suppose, has happened over and over again in every conquered nation'" (pp. 45-6). She was not a victim as so many others remembered themselves.

This volume is an outstanding contribution to California legal history, providing researchers with correctly translated oral histories. The authors must be commended for taking on such a daunting task.

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WATER AND THE WEST: The Colorado River Compact and the Politics of Water in the American West

NORRIS HUNDLEY, JR.

Berkeley: University of California Press, 2nd. ed., 2009
xv, 415 pp., bibl., index, maps, notes.

The most important stream in the American West, the Colorado River flows through or past parts of seven states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming), as well as a small portion of Mexico, before its depleted flows drain into the Gulf of California. The Colorado is not the largest river in the United States in terms of volume (it ranks sixth), but the Colorado provides life-giving water to much of the southwest quarter of the United States, sustaining a significant amount of the area's economy as well as generating hydroelectric power for the nation's energy grid. Thus, the Colorado River has

— and has had — an enormous impact on the United States that goes well beyond the river's regional geography.

Norris Hundley's *Water and the West* traces the history of that influence, particularly the struggles over the Colorado's water supplies — conflicts that continue to this day. This is the second edition of Hundley's book, the first having been published in 1975. Nonetheless, this book is still essential reading for water planners, lawyers, environmentalists, historians, and others concerned with water in the American West. Indeed, copies of the first edition of this book appear outside academic libraries on the shelves of countless attorneys and government officials throughout the entire American West.

And for good reason. Hundley's book surveys the history of the "Law of the River" — the legislation, regulations, court decisions, and administrative rulings that have shaped the uses of the Colorado River over the past century and a half — all of which clearly show that water allocation and control issues involving the Colorado were highly complex and involved multitudes of interested parties at all levels of government as well as in business and other aspects of society as a whole. Hundley begins with a review of late nineteenth- and early twentieth-century attempts to control the highly irregular and erratic flows of this stream to supply nascent irrigation communities and speculative land development schemes in southern California, and he carefully documents how what initially was a localized water question evolved into a regional contest of enormous consequences over how the Colorado River would be tamed and simultaneously allocated among the seven basin states. It is this part of the story that occupies most of Hundley's narrative. Here, he demonstrates how the newly formed Reclamation Service and growing demands for water supplies up and down the Colorado River, as well as increasing needs for hydroelectric power, laid the foundation for the negotiation of the Colorado River Compact of 1922 — the first such use of the Constitution's authorization for states to form agreements among themselves to solve any interstate water conflict. Hundley carries the narrative through the long and difficult attempts to have that accord ratified by the seven Colorado River Basin states, the 1928 Boulder Canyon Act (which authorized the construction of Hoover Dam), and the

interstate litigation between Arizona and California over the following few decades leading to the U.S. Supreme Court's landmark 1963 decision in *Arizona v. California*, which, according to the Court, established that Congress had intended to apportion the stream when the federal legislators had passed the Boulder Canyon Act.

For the second edition of *Water and the West*, Hundley has brought the Colorado River history down to the present by offering a lengthy epilogue on various issues now affecting the stream. These include: how modern water measurement techniques (notably tree-ring analysis) have shown that the original assumptions about the Colorado's flows were probably overestimated; how global warming and greenhouse gases are affecting (and will continue to affect) water use and control; how more recent water-conservation attitudes will play a role in future Colorado River planning; how concerns over wildlife have become more influential on water allocation; and how recognizing Native American interests in water and the environment will play a major role in future Colorado River planning.

Most notably, however, Hundley's book remains fundamentally the bedrock foundation to understanding the background to Colorado River water issues as well as the multitude of forces shaping water use and control. This is due to Hundley's thorough grasp of documentary sources relating to his topic as well as to his careful footnoting and attention to detail in organization and writing. This is an exceptional book. It should continue to be at the top of anyone's list who truly wants to grasp the complexities of water and the American West.

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