

# Racism, Birthers and the Rule of Law in Early California

BY MICHAEL L. STERN

THE YEAR 1863 marked an important turning point in California. After attaining statehood in 1850, the rush of gold-frenzied miners seeking to strike it rich had waned. A new wave of Yankees intent on building an economy based on agriculture and commerce was arriving.

The newcomers' entrepreneurial spirit was not shared by the native Spanish-speaking Californios, proud interrelated families with names like Alvarado, Sepulveda and Pico. Many held vast land grants conferred by the formerly ruling Mexican government. By the early 1860s, the Californios' grasp on their rancheros and well-being were threatened by a disastrous perfect storm of bad weather and changing demographics seemed to conspire against them.

Massive rains and flooding in 1861, followed by devastating droughts in 1862 and 1863, had killed off the vast cattle herds on the Californios' rancheros.<sup>1</sup> Title and boundary disputes, tax burdens, mortgage failures and free-wheeling squatters combined to endanger their legal rights and comfortable hacienda life, especially in Southern California.<sup>2</sup>

As their economic situation became more precarious, the Californios clung for protection to the lofty, but vague, pronouncements of civil and property rights afforded by the Treaty of Guadalupe Hidalgo of 1848 that had ended the war between Mexico and the United States.

The treaty established a general legal framework to resolve land disputes and procedures for Mexicans living in California to opt to become Americans. Mexicans who chose to remain in California could be accorded full dignity, privileges and rights of United States citizenship. For Mexicans, this meant the legal protections of the courts. But the treaty deferred until another day whether the property claims of the Californios were truly enforceable or merely words on paper.<sup>3</sup>

After American acquisition of California was decided by the treaty, the rapidly increasing Yankee majority had

been anxious to get on with governing. A convention was convened in 1849 in Monterey to enact a constitution and prepare for statehood.

The purpose was to adopt Anglo-American common law and legal institutions to replace the civil legal system with its Spanish and Mexican origins that had governed California before Yankee domination.<sup>4</sup> A new constitution defining the basic functions of three branches of government was drafted, drawing from provisions in existing state constitutions.

The Yankee delegates who dominated the Constitutional Convention (only eight of 48 delegates had Spanish-speaking roots) were superficially amiable to the former Mexicans. But it was clear that the Yankees would have their way and the Californios would be sidelined.<sup>5</sup>

Although the Californios had their backs to the wall as the outlines of a new state government was conceived, they obtained some concessions — such as instituting Mexican law community property laws and allowing the initial constitution and laws to be in Spanish and English. But maintaining voting rights and protections for Californios and other non-Caucasian peoples was problematic.

Fierce convention debates raged regarding voting eligibility, marked by contentious arguments concerning voting rights for males who were not lily-white, “half-breeds,” persons of African descent, Asians and Native Americans. Delegate Pablo de la Guerra argued that many Californios were dark-skinned, and that to disenfranchise them would be tantamount to denying citizenship as allowed by the Treaty of Guadalupe Hidalgo.<sup>6</sup> Although his pleas appeared to succeed, the racially based tensions about voting enfranchisement that boiled on the surface of convention debates were left to erupt again on another day.

As the new state government was formed, the Californios adapted to the new American system as best they could through civic participation and winning various statewide and local elected offices. Nonetheless, they were still viewed with derisive prejudice by some of the majority Yankees. For instance, in 1857, Manuel Dominguez, a Los Angeles County supervisor and signer of the California Constitution, was barred from testifying in a court proceeding based on his “Indian blood.”<sup>7</sup> In the following year, Pio Pico, the



Photo of Pablo de la Guerra, Salvador Vallejo and Andres Pico. Bancroft Portrait Collection, Guerra, Pablo de la--POR.1, The Bancroft Library, University of California, Berkeley.

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4. Myra K. Sanders, “California Legal History: The Constitution of 1849” (1998) 90 *Law Lib. J.* 450, 453–54.

5. Hubert Howe Bancroft, *History of California 1846–1859*, v. VI, San Francisco: Bancroft & Co., 1884, 255–58.

6. J. Ross Browne, *Report of the Debates in the Convention of California, on the Formation of the State Constitution, in September and October 1849*, Washington, DC: John T. Towers, 1850, 79.

7. Paul Bryan Gray, *Forster vs. Pico: The Struggle for the Rancho Santa Margarita*, Spokane, WA: Arthur H. Clark Co., 2002, 68.

1. William H. Brewer, *Up and Down California in 1860–1864: The Journal of William H. Brewer*, Francis P. Farquhar, ed., New Haven: Yale U. Press, 1930, 248.

2. Willoughby Rodman, *History of the Bench and Bar of California*, Los Angeles: William J. Porter Pub., 1909, 65–68.

3. Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict*, Norman, OK: U. of Oklahoma Press, 1990, 72–76.

last governor of Mexican Alta California, was unjustifiably hauled into court by a sheriff to testify in a civil matter, an indignity that no Yankee would have suffered.<sup>8</sup>

The racial prejudices felt by Californios jeopardizing their legal and personal rights and economic viability were further exacerbated by the outbreak of the Civil War in 1861. Although most Californians favored the Union, there was a strong anti-Mexican sentiment among those advocating secession. This was particularly true in Southern California, home to a substantial number of Confederate sympathizers who held the “mixed blood” Californios in low esteem.<sup>9</sup>

The most outspoken racist Yankees resented virtually every aspect of the Californios. From their prejudiced viewpoint, the Californios should be marginalized because they obstinately refused to adopt proper Yankee customs, had more land than they were entitled to and utilized it poorly, idly celebrated holidays and saints days with too many elaborate fiestas, possessed indolent work habits, dressed in “quaint” Mexican attire and, most obviously, spoke Spanish, not English.

The judicial elections of 1863 brought these racial prejudices against the Californios to a head in Southern California. For many former Mexicans, it was time to take a stand to show their solidarity and protect their precarious rights by electing one of their own to the judiciary.

They rallied their beleaguered forces behind an audacious effort promoting the judicial candidacy of Santa Barbara native Pablo de la Guerra to challenge incumbent Judge Benjamin Hayes, viewed as a racist sympathizer, to become judge of the immense First Judicial District, which covered virtually all Southern California from San Luis Obispo to San Diego.

De la Guerra was highly qualified for a judicial position. Born into a prominent Californio family in 1819, he was fluent in Spanish and English, had been an official and alcalde (mayor with judicial powers) under the Mexican regime, delegate to the Constitutional Convention in 1849, elected four times as a state senator and then as Senate leader, and had served as acting California lieutenant governor and U.S. marshal for the Southern District of California.<sup>10</sup>

Although known as even-tempered, de la Guerra had not cowered to Yankee affronts. In one of his rare Senate speeches, he had expressed his bitter outrage about the invidious insult to Manuel Dominguez when he was not permitted to testify in court because of his race.<sup>11</sup>

8. Leonard Pitt, *The Decline of the Californios: A Social History of the Spanish-Speaking Californios, 1846–1890*, Berkeley, CA: U. of California Press, 1971, 202.

9. Browne, *Report of the Debates in the Convention of California*, *supra* note 6, 79.

10. Harris Newmark, *Sixty Years in Southern California, 1853–1913, Containing the Reminiscences of Harris Newmark*, New York: The Knickerbocker Press, 1926, 48.

11. Gray, *Forster vs. Pico*, *supra* note 7, 68–69.

Despite the uphill odds, the Californios scoured every town, hamlet and rancho for votes. It was said that a lot of gold changed hands and whiskey flowed on both sides by election day on Sept. 23, 1863.<sup>12</sup> When the ballots were counted, de la Guerra had won a six-year term of office.<sup>13</sup>

Judge de la Guerra commanded substantial regard on the bench. One Yankee observer commented that he “displayed great ability, judgment and knowledge.”<sup>14</sup> Based on his demonstrated fairness, he was rewarded with a second term in 1869.

Regardless of such respect for Judge de la Guerra, some continued to contend that a Californio should not wear a judicial robe. Unable to fault de la Guerra’s rulings or demeanor, his detractors concocted a legal pretense to remove him from office. Like the bogus twenty-first century “birther” theory, their racially veiled argument was that de la Guerra was ineligible to serve as a district judge because he remained a Mexican citizen and had never possessed the required U.S. citizenship that qualified him for judicial office.

Soon after de la Guerra’s re-election in 1869, a handful of hatefilled men filed a lawsuit in the Santa Barbara court on behalf of the people of the State of California to have him declared ineligible for judicial office and removed. The novel legal contention was that California law required de la Guerra to be a U.S. citizen to be eligible for office; he remained a citizen of Mexico because he had never properly become a U.S. citizen; and he could not claim to have become a U.S. citizen under the Treaty of Guadalupe Hidalgo because Congress had not passed legislation conferring U.S. constitutional rights on Californios.<sup>15</sup> When these convoluted “birther” assertions were rejected by the trial court, they appealed.<sup>16</sup>

In *People v. de la Guerra*,<sup>17</sup> the California Supreme Court affirmed the trial court and upheld Judge de la Guerra’s United States citizenship and eligibility for judicial office.

First, the Court discussed the citizenship options available to Mexicans in California under the treaty: They could go to Mexico and remain Mexican citizens; remain in California as Mexican citizens; or remain in California and proclaim themselves as U.S. citizens.<sup>18</sup> De la Guerra had affirmatively chosen to become a U.S. citizen, so he was one.<sup>19</sup>

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12. Pitt, *The Decline of the Californios*, *supra* note 8, 237.

13. Jessie D. Mason, *History of Santa Barbara County, California with Illustrations and Biographical Sketches of its Prominent Men and Pioneers*, Oakland, CA: Thompson & West, 1883, 144.

14. *Id.* 145.

15. *People v. de La Guerra* (1870) 40 Cal. 311, 321–22.

16. *Id.* 339.

17. (1870) 40 Cal 311.

18. *Id.* 339–41.

19. *Id.* 344.

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Second, under the treaty, Mexicans who remained in California were to have the rights of citizens of the United States, until legislated by the United States Congress. The Court rejected the “birther” contention that pre-statehood Mexicans who decided to become U.S. citizens, such as de la Guerra, could not hold judicial office until Congress passed on their right to U.S. citizenship. The Court used strong language for this interpretation, calling it “strangely misconstrued.”<sup>20</sup>

Moreover, the Court disagreed with the strained argument that de la Guerra’s alleged disqualification for office could be based on a conflict between the then-existing California law granting only white males the right to hold office and the U.S. Constitution. As the Court explained, the state could enact its own laws about who could be an elector — and it had done so.<sup>21</sup>

This decision was vindication for Judge de la Guerra personally and for the legal rights of all Californios. By the time that the case was decided in 1870, however, he was unable to celebrate very long. Ill-health forced him to resign within a year and he died in 1874. The end of Judge de la Guerra’s judicial tenure foretold the future for Californios serving in the state’s judiciary and those attempting to protect their rights in the courts.

The only other former Mexican serving on the bench in Southern California at that time was Judge Ignacio

Sepúlveda, an experienced county judge who was elected as one of the first two Los Angeles Superior Court judges, beginning office in 1880. He did not last very long. By 1883, with increasing Yankee animosity against Californios in Los Angeles, Sepulveda saw the writing on the wall. He resigned before the end of his term and departed for Mexico City.<sup>22</sup> Not a single Mexican-American judge sat on the Los Angeles Superior Court until Judge Carlos Teran was appointed by Gov. Pat Brown in 1958.

The end of bilingual publication of California laws with enactment of the state’s updated Second Constitution in 1879 symbolized the Californios’ demise. By then, many had lost their rancheros and their economic and social standing was diminishing.<sup>23</sup> They were relics of a bygone era. The romantic rancho culture was fading into obscurity, never to be seen again.

The California Supreme Court decision in *People v. de la Guerra* remains as an historical tribute to the proud Californios who stood their ground against anti-Mexican racism to defend their rights as American citizens. ★

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22. Paul Bryant Gray, “Judge Ignacio Sepúlveda: A Life in Los Angeles and Mexico City: 1842–1916” (2013) 95 *S. Calif. Qtrly* 165–67.

23. Castillo, *The Treaty of Guadalupe*, *supra* note 3, 72–77.

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20. *Id.* 341.

21. *Id.* 343–44.