

HOW BAJA CALIFORNIA REMAINED PART OF MEXICO AFTER THE MEXICAN-AMERICAN WAR

By John S. Caragozian

When the Mexican-American War's military battles ended in September 1847, the United States had routed the Mexican army and occupied Mexico's capital, Mexico City. The U.S. wanted to annex from Mexico all of California, including Baja, but the eventual treaty ending the war left Baja California as part of Mexico.

Mexico's success in keeping Baja — despite the U.S.'s overwhelming military dominance — resulted from a variety of factors, including the U.S. negotiator's ethical quandaries that may resonate with modern-day lawyers.

Seeds of the Mexican-American War began in the 1820s and '30s, as thousands of Americans migrated into the Mexican territory of Texas. These new Texans resisted Mexico's rule, including Mexico's anti-slavery laws. The Texans rebelled and, in 1836, established an independent republic.

Texas wished to have the U.S. annex it as a state, but two obstacles appeared. First, Mexico refused to recognize Texas' independence and opposed U.S. annexation. Second, many Americans opposed admitting Texas as a slave state.

In the 1844 presidential election, incumbent Martin Van Buren, a Democrat, opposed annexation, and the Democrats refused to re-nominate him. Instead, they nominated James Polk, an outspoken annexation proponent who won the election.

After the election, but before Polk took office, the U.S. Congress admitted Texas as a state. Mexico, however, refused to recognize the annexation, especially with the U.S. proposing that the boundary be as far south as the Rio Grande, which would take from Mexico and add to Texas thousands of square miles.

Polk attempted to negotiate with Mexico. In 1845, he sent a U.S. State Department official to Mexico City to offer \$25 million in exchange for Mexico's (a) recognition of the Texas annexation with the Rio Grande as the boundary, and (b) sale of then-Mexican California and the New Mexico territory (consisting of the present states of Arizona, New Mexico and parts of Colorado, Nevada, Utah and Wyoming). Unfortunately, Mexico's government was then in turmoil and denied the U.S. official an audience.

In April 1846, Mexico fired on and killed U.S. troops that were north of the Rio Grande but south of the border claimed by Mexico.

While Mexico viewed these deaths as self-defense, Polk termed them an unjustified attack. He requested a declaration of war against Mexico, and the U.S. Congress obliged him in May 1846.

The ensuing war mostly involved two theaters: mainland Mexico and California, which was divided into Alta (or Upper) California — the present American state — and Baja (or Lower) California. The January 1847 Treaty of Cahuenga ended military conflict in Alta California, with

Mexicans disarming and recognizing U.S. authority pending a comprehensive treaty. In Baja California, the U.S. Navy blockaded, besieged and occupied port cities from Ensenada in the north to San Jose del Cabo in the south. *See, e.g.,* Pablo Martinez, "A History of Lower California," 352-66 (1960).

Polk hoped that the outbreak of war would cause Mexico to negotiate promptly with the U.S., and he appointed Nicholas Trist as the U.S. negotiator. Trist was a politically connected lawyer who had married one of ex-president Thomas Jefferson's granddaughters and been president Andrew Jackson's White House secretary. In 1847, Trist was the number two official in the U.S. State Department under Secretary of State (and future president) James Buchanan. Wallace Ohrt, "Defiant Peacemaker: Nicholas Trist in the Mexican War," 44, 69, 98 (1997).

Polk's written instructions to Trist included non-negotiable terms: Mexico must cede all of Texas north of the Rio Grande, all of the New Mexico territory, and "Upper California"; in exchange, Polk authorized Trist to pay Mexico \$20 to \$25 million. Polk's negotiable wish list included Mexico ceding Baja California and a strip across southern Mexico for future construction of a U.S.-owned canal linking the Gulf of Mexico and the Pacific Ocean; in exchange, Trist was authorized to increase the U.S. payment to \$30 million, plus cancellation of U.S. citizens' claims against Mexico. *See id.* at 104.

Armed with these instructions, plus two pistols, Trist arrived in the U.S.-occupied mainland Mexican port of Veracruz in May 1847. Polk's hopes for prompt negotiations, though, were dashed. The U.S. invasion strengthened Mexico's intransigence and, simultaneously, further weakened Mexico's government, such that it was unclear who had authority to negotiate on Mexico's behalf.

Trist eventually arrived in Mexico City in September 1847 with the occupying U.S. Army. There, he faced myriad problems. U.S. commanding general Winfield Scott initially resisted Trist's role, claiming that he (Scott) had the authority to negotiate a treaty on behalf of the U.S.

Scott later relented, but Trist then encountered U.S. generals squabbling over leadership and divided U.S. opinion over fundamental terms of a treaty. For example, some U.S. leaders were part of an "All Mexico" movement, urging the annexation of the entirety of Mexico. Even some Mexicans agreed, hoping that the U.S. could impose order on the war-born chaos. Other Americans urged that no annexation beyond Texas occur, lest it (1) be morally condemned as European-style conquest and (2) intensify the ongoing slavery debate regarding additional territory.

Trist was finally able to begin negotiations with Mexicans (sometimes using a British diplomat as a go-between). Trist, perhaps as a tactic, may have considered the possibility of setting the Texas boundary north of the Rio Grande. In any event, negotiations slowed, at least in part owing to the deep disorder within the Mexican government.

President Polk grew angry with delays and with Trist's apparent disregard of instructions that the Rio Grande boundary was non-negotiable. Accordingly, in October 1847, Secretary of State

Buchanan recalled Trist to Washington, D.C. and ordered him to discontinue negotiations. Trist notified the Mexicans of his recall but delayed his actual departure until a replacement arrived and a military escort could accompany him back to Veracruz. *See id.* at 134-38.

Although Trist initially agreed to leave, he changed his mind and decided to resume negotiations, writing a 61-page explanatory letter to Buchanan. Trist thought that he could negotiate a treaty comporting with Polk's instructions and that the U.S. Senate, faced with a *fait accompli*, would have little choice but to ratify the treaty.

Trist's strategy depended on speed because the arrival of a replacement U.S. negotiator would undo progress and might reignite war. His Mexican counterparts shared his concerns, and secret negotiations began in January 1848, in the Mexico City suburb of Guadalupe Hidalgo.

Upon learning of Trist's defiance, Polk ordered Trist to leave Mexico immediately and cut off all Trist's compensation, including expenses. Once again, Trist refused to heed his superiors' instructions. In continuing negotiations, Trist had no help; he alone took notes, filed documents, wrote letters, and tracked draft language.

Trist proposed annexing Baja California, but Mexico demurred, arguing that Baja's loss would embarrass Mexico, especially because mainland Mexicans would be constantly reminded of the conquest by looking across the Gulf of California at the U.S. conquest (namely, Baja California). Given the negotiation pressures and Baja's minimal importance to the U.S., Trist acquiesced to Baja staying Mexican. *See Pablo Martinez, supra*, at 369-70.

On February 2, 1848, Trist and the Mexicans agreed to the Treaty of Guadalupe Hidalgo. It included all of Polk's non-negotiable terms: setting the Texas boundary at the Rio Grande and Mexico's ceding Upper California and the New Mexico territory to the U.S. Mexico even agreed to a \$15 million payment, less than the \$20 to \$25 million originally authorized by Polk.

Trist's strategy proved correct: The U.S. Senate — sensing Americans' growing discontent with the war that had lasted longer and cost more lives than anticipated — ratified the treaty with minor changes, all of which were approved by Mexico. The war formally ended, Mexico lost over half of its territory, and the U.S. gained over 520,000 square miles, all from a treaty that Trist lacked authority to negotiate or sign.

Polk remained angry and refused to compensate Trist, who was forced to seek employment as a railroad clerk. Later, Trist became postmaster of Alexandria, Virginia. The Senate finally paid his back salary and expenses in 1870. With interest.

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