"Ten Cents the Fifty Vara Lot": *Hart v. Burnett* and the Origins of the Public Trust Doctrine in California

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Twentieth century California jurists and lawyers have come to think of the public trust doctrine primarily in its contemporary contexts: facilitating public beach access for recreational purposes[1] or mediating between competing claims of ecological preservation and provision of municipal water supply.[2] Yet the doctrine in California law originates in the state Supreme Court's painstaking effort to untangle twisted Spanish, Mexican, and U.S. claims to valuable urban parcels in nineteenth century San Francisco. The court rendered one of the most definitive—and earliest—statements of this doctrine in *Hart v. Burnett, Beideman, et al.*[3] The case arose from the tumultuous economic development at mid-century, a period during which city dwellers were plagued by problems sadly familiar to their twentieth century counterparts, including municipal debt, exploding population growth, and homelessness.

The significance of *Hart v. Burnett* stems not only from the vast amount of land, the huge sums of money, and the thousands of people touched by Supreme Court Justice Joseph G. Baldwin's opinion. The case is a touchstone for subsequent public trust adjudication, assimilating the doctrine into California and American jurisprudence as an instrument for resource allocation, and yet at the same time, confirming the state's power to alienate that property in the service of economic development.

The dispute that brought Messrs. Hart, Burnett, and Beideman before the California Supreme Court in 1860 concerned the title to several parcels of San Francisco real estate. Disposition of this land turned on the court's interpretation of Spanish and Mexican pueblo land titles. Spanish law originally granted title to four square leagues of land (approximately 12 square miles) to San Francisco—as with all California pueblos—upon its founding in 1834. Pueblo law typically reserved a portion of these lands as commons to be used collectively by pueblo inhabitants.

Peter H. Burnett (1807-1895)
Courtesy: The Bancroft Library

The terms of the treaty with Mexico[4] transferring authority over California stipulated that American law would honor land grants made under Mexican law. But San Francisco's explosive growth following its occupation by American troops in 1846 caused city officials to ignore their obligations as pueblo titleholders. Population jumped 200 percent in the two years preceding the gold rush; that growth brought feverish real estate subdivision and speculation to what had been a jumble of crude shanties, tents, and hastily built houses. The city's effort to serve new citizens prompted it to undertake a program of civic improvements; the city built a new jail, organized a police force, and planked and graded the main streets. But by early 1851, San Francisco was one million dollars in debt. The absence of adequate health facilities combined with rough conditions and primitive municipal sanitation facilities led to frequent outbreaks of virulent diseases. Since the city was without funds for such necessary facilities as a hospital or bulkhead along the harbor, it contracted with local doctors for indigent care and with construction contractors. To reimburse these individuals, the city issued script that it repaid by selling land at execution sales. Contrary to Mexican practice of individually granting lots by petition burdened with pueblo restrictions on title and use, during the early 1850s the city auctioned off large blocks to the highest bidder.

San Francisco's growing homeless problem further clouded title to much of the property within city limits. Many who emigrated simply squatted on vacant city land in the hope of acquiring title by surveying, improving, and registering the parcel. In 1850, George C. Potter and Daniel S. Roberts surveyed and recorded an unoccupied tract of 160 acres bounded by Larkin, McAllister, Sutter, and Laguna Streets. They fenced the lot, built a home on it and, in 1853, after Congress provided for pre-emption on California lands, they sold it to Jacob C. Beideman, a merchant and real estate speculator.[5] Yet most of this same parcel was also claimed by Jesse D. Carr and William Hart. By virtue of an 1851 execution sale the city held to discharge outstanding municipal warrants and script, J. P. Hill acquired title to the 18-block central city tract; he bought one of those blocks, containing 480 fifty vara lots, for just $50 or 10 1/2 cents per lot. Title to this tract quickly turned over several times and by 1852 ended up in Carr's possession.

By 1959, according to one account, nearly four-fifths of San Francisco real estate—between 9,000 and 10,000 acres worth millions of

dollars—was held under similarly contested titles.[6] The situation was such an alarming threat to San Francisco's economic future that in 1855 the city council passed the Van Ness Ordinance by which it relinquished its right and claim to a huge chunk of land to those in actual possession of the land.[7] This ordinance confirmed Beideman's title to the property contested by Hart and Carr.

Despite the Van Ness Ordinance, Hart and Carr proceeded with an ejectment suit against Beideman and co-defendants. The San Francisco Superior Court held trial in the matter of *Hart v. Burnett* in early 1857. A jury deliberated for one hour before finding in favor of plaintiff Hart. He had contended that the original Mexican pueblos grants conveyed absolute title to the successor city of San Francisco. Since the city had unrestricted power of disposition over the lands it held for its general and corporate purposes, title passed by an execution sale, in the form of a sheriff's deed, was a perfect legal title. Defendants appealed, alleging errors had been committed at trial.

The California Supreme Court heard arguments in late 1859. The appellants claimed that the city of San Francisco never had any title to the lands within its limits. Prior to American occupation, title resided in the Mexican government; since then in the United States. Even if the city was vested with title to the former pueblo common lands within its corporate limits, such lands were held for public purposes and were not subject to sale under execution. Respondent argued that San Francisco held unburdened title to her pueblo lands and that successor cities could sell those lands under execution.

Justice Baldwin's opinion for the court, released on June 22, 1860, reversed the superior court's judgment for the plaintiff. Baldwin reportedly journeyed to Mexico City prior to writing in order to trace the origins of pueblo titles and rights to "a conclusion in which there would be no flaw."[8] His opinion is heavily documented with Spanish and Mexican authorities as well as with American precedents, many of which were cited by neither side in the reported arguments. Re-affirming the principle that "property may be dedicated to the public use without vesting the legal title," Baldwin concluded that under Spanish law, the California pueblos did not have the full right of disposition over all categories of pueblo land. The pueblo common lands were "in the sense of endowments, to be held in trust for the purposes and objects specified in the laws or in the particular grant . . . but not in absolute ownership

with the full right of disposition." Neither the king nor any of his officers could grant away these lands, and municipal officers could not do so without "superior authority."[9]

Under American law, however, Baldwin concluded, the state legislature, as a sovereign power, could significantly abridge or even abrogate the trust with which these lands were clothed. These lands "became a fund for the support of local government, with a trust to be administered for that object," and could be disposed of "so as to promote the growth of the city and the comfort and convenience of the inhabitants." He therefore upheld the validity of San Francisco's Van Ness Ordinance, transferring the city's title to this trust property to actual possessors—including Burnett and Beideman. Baldwin wholeheartedly approved of the purposes for which the ordinance was passed, i.e., to quiet title to a large amount of city land.[10] Therefore, while *Hart v. Burnett* was the most developed statement of the public trust doctrine in American law in 1860, it was also a clear assertion of legislative supremacy over trust property.

Despite the city and state's ability to abridge or abrogate the trust with which the pueblo common lands were endowed, Baldwin denied that the city had any right to subject that trust property execution sale to satisfy the debts of the trustee. The property in this case, he wrote, came from the "Government stamped with the will of the Government. . . . It was not part of the intention of the grantor that this property should be sacrificed at public forced sale; the contrary *was* the intent." Alienation of this trust property at execution sale, according to Baldwin, would not "promote the growth of the city and the comfort and convenience of the inhabitants."[11]

> When a public trust is so directly connected with property as that taking the property destroys the trust, the property cannot be sold under execution . . . any more than the trust could be sold, or repudiated by the grantees. The trust is directly and indissolubly associated with the property, and the coercive sale of the last is equivalent to a destruction of the first.[12]

Why did Baldwin finally rest his opinion in *Hart* on the ability of the legislature to dispose of trust properties? Historians have traditionally depicted the nineteenth century legal system as having facilitated the privatization of resources and as scrupulously protecting vested property rights. Yet the whole notion of a public trust—the notion that the state

could indefinitely hold resources for common use—is fundamentally antithetical to that view. Indeed, in recent decades, a growing number of scholars have convincingly demonstrated that nineteenth century state governments frequently "expropriated" private property. These "takings" were justified as encouraging "the release of creative energy" and thereby promoting rapid economic growth.[13] A judicial determination that the state held inalienable trust resources, on the other hand, effectively removed those resources from the arena of economic development. But by defining the state's trust responsibilities over the pueblo lands so as to permit the disposition of that land to promote municipal development, Baldwin was able to reconcile the prevailing entrepreneurial ethos with the Spanish trust dedication. His decision also highlights the need for a new paradigm through which to interpret western legal and economic development, one that views such instrumentalist decisions as *Hart* as less anomalous than the norm.

NOTES

[1]See, for example, *Gion v. Santa Cruz*, 2 Cal.3d 29 (1970) and *Sea Ranch Assn. v. California Coastal Commission*, 102 S.Ct. 622 (1981).

[2]See, for example, *National Audubon Society v. Superior Court of Alpine County, Department of Water and Power of the City of Los Angeles*, 33 Cal.3d 419 (1983).

[3]15 Cal. 530 (1860).

[4]Treaty of Guadalupe Hidalgo, signed February 2, 1848.

[5]On the history of this tract, see Supreme Court of California, *Testimony Showing the Time of Possession, etc. of the Beideman Tract, and the Decision of the Supreme Court of California Thereon* (San Francisco, 1861).

[6]*San Francisco Daily Herald*, April 29, 1855. 150,000 acres were similarly contested in San Jose and 20,000 to 30,000 acres in Monterey. See Thornton, Williams, and Thornton, *in the Supreme Court of California, Burnett, Beideman, et al., Appellants v. William Hart, Respondent. Brief of Thornton, Williams and Thornton, Counsel for the Appellants* (San Francisco, 1859).

[7]W. A. Piper, James Van Ness, and Henry Haight, *The City's Relinquishment of City Titles* (San Francisco, 1858).

[8]Goodwin, *As I Remember Them* (Salt Lake City, 1913), 19.

[9]15 Cal. 530, 560, 568-569.

[10]15 Cal. 530, 593, 614.

[11]15 Cal. 530, 579.

[12]15 Cal. 530, 592. The initial popular reaction to the *Hart* decision was jubilant. Gun and cannon salutes were fired in celebration throughout the city. A "jubilee," attended by more than 5,000, followed within days. "San Francisco is free!!," proclaimed the *Daily Alta California* of June 27. "The sun of prosperity now beams in glorious effulgence. . . . Justice is triumphant! Let us meet together to hail the dawn of a new day, and to render honor to our country and its great tribunals!"

[13]See, for example, the work of Willard Hurst, Harry Scheiber, Lawrence Friedman, and Joseph Sax.