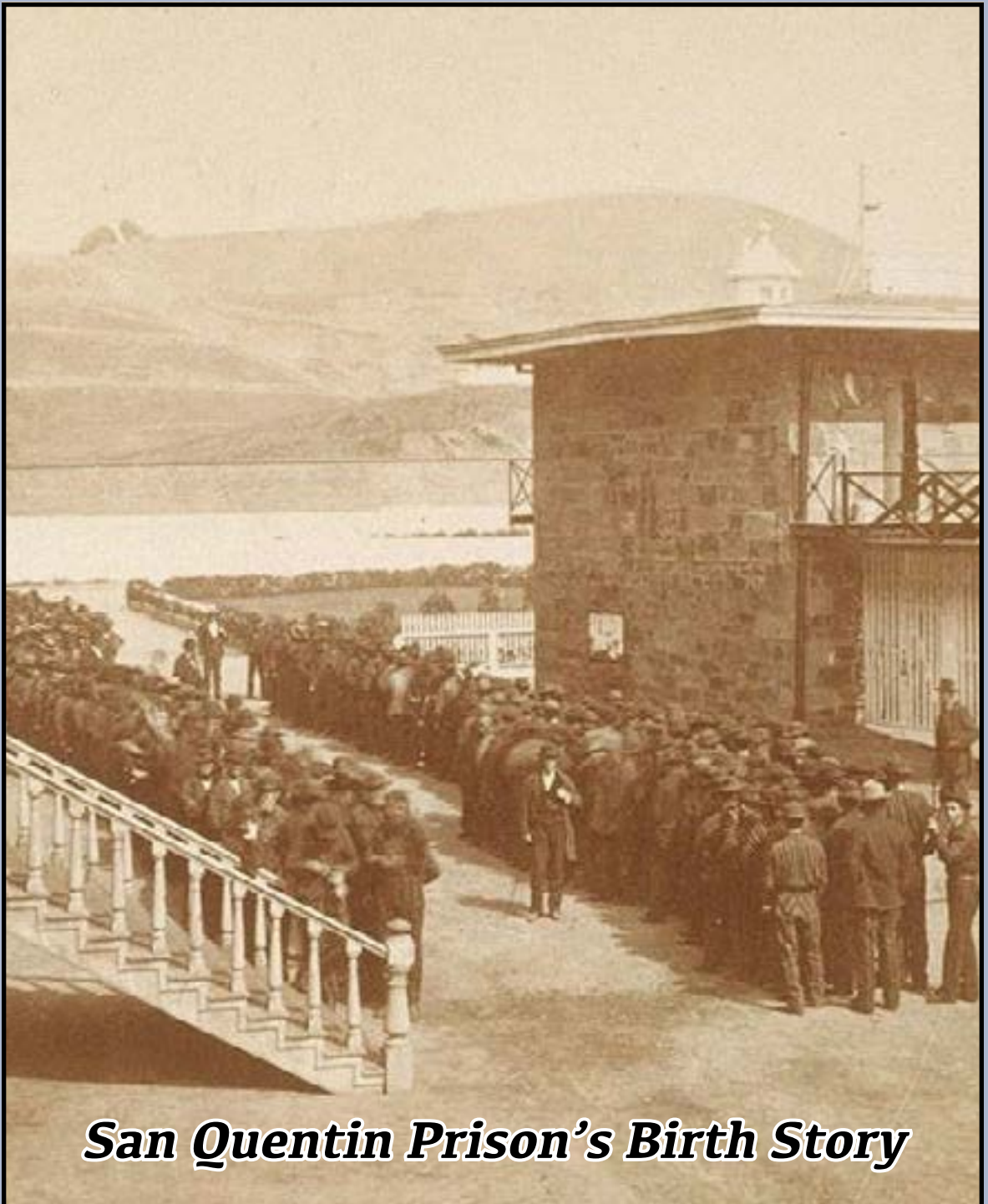




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San Quentin Prison's Birth Story

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BY J. CLARK KELSO



Sketch of San Quentin as it was in the 1870s. Photo: California Department of Corrections and Rehabilitation.

SAN QUENTIN STATE Prison is iconic. The first and oldest prison in California, the home of the nation's largest death row for decades, appearing in countless books, radio broadcasts, television, and movies. Located on the northwest side of San Francisco Bay, the prison sits on property currently worth more than \$2 billion.

Although San Quentin State Prison is now almost 175 years old, and its aging and dangerous buildings might suggest it should be a target for closure and conversion to a museum (à la Alcatraz) or expensive condominiums, Gov. Gavin Newsom announced in 2023 its rebirth as the "San Quentin Rehabilitation Center" along with a substantial commitment of funds for capital development to support that new mission.¹ It seems that San Quentin still has plenty of life left in her and will be undertaking a renaissance.

With San Quentin's rebirth already underway (as of this writing, one of the older buildings has been demolished and new construction is progressing), it is useful and appropriate to retell San Quentin's history. Such birth stories often reveal fundamental characteristics, both of people and of institutions and organizations. Where you begin is often where you spend your

life and where you end. A person's birth story can "get to the heart of something important about who they've become."²

San Quentin's birth story reaffirms some of James Madison's most memorable lines from *The Federalist* No. 51:

But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.³

San Quentin's story exemplifies both aspects of Madison's warning. People are certainly not angels, and controls on government are necessary because government itself consists of people, not angels. As will be shown, the California Supreme Court played an important role in San Quentin's early years by exercising the necessary

1. Press Release, "Governor Newsom Announces Historic Transformation of San Quentin State Prison," Mar. 17, 2023, accessed at <https://www.gov.ca.gov/2023/03/17/san-quentin-transformation/> [as of June 4, 2024].

2. Caroline "Cai" Eddy Emmons, "The Power of Birth Stories," <https://caiemmonsauthor.com/the-power-of-birth-stories/> [as of May 29, 2024].

3. James Madison, *The Federalist*, No. 51 (1787), Norwalk, CT: The Easton Press, 1979, 348.

and appropriate control over the other branches of government.

New State, New State Prison

California comes before San Quentin, but just barely. California's statehood was proclaimed on September 9, 1850, before the state was really ready to govern itself. From day one, California was playing catch-up, trying to create from scratch all the necessary pieces of state and local government. Establishing a state prison was an urgent priority.

To be clear, however, it was not statehood that created the urgency. Just four years prior, what we know today as California was sparsely populated and only loosely governed as part of Mexico. San Francisco had only a couple hundred residents, and in central California, Monterey was the center of activity with a Mexican population of around 1,900. Crimes were committed, but with the population so low, local jails handled the demand. The demand was low in any event because under Mexican law serious crimes were usually punished by death, and less serious crimes were generally handled by sentences of public works, fines, or corporal punishment.⁴ A large prison was not necessary. Two events changed everything:

First, the two-year Mexican-American War began in 1846 when President Polk ordered 80 soldiers across disputed territory in Texas to the Rio Grande.⁵ Mexican forces counterattacked, forcing the American troops back. President Polk then convinced Congress to declare war. Over the next year, United States armed forces occupied Santa Fe, in what is now New Mexico, and all major ports along the West Coast, in what was then known as Alta California. In September 1847, the U.S. Army occupied Mexico City, the capital of Mexico. On February 2, 1848, the Treaty of Guadalupe Hidalgo ended hostilities.

Second and contemporaneously, on January 24, 1848, James W. Marshall discovered gold at Sutter's Mill in Coloma, northeast of Sacramento. Over the next seven years, California absorbed some 300,000 people from the rest of the United States and abroad. San Francisco alone saw its population jump from a few hundred to more than 40,000 by 1849 — with an estimated 4,000 additional persons arriving every month.⁶

Many of the gold rushers were ultimately disappointed that they didn't immediately strike it rich, and some of those turned to crime. Others no doubt were

criminals before coming to California and perhaps saw the gold rush as a target-rich opportunity for criminal activity. Whatever the reasons, there was a dramatic surge in crime. So it was the gold rush and the resulting crime wave that created the urgency for building a state prison.⁷

In 1849, one solution was proposed by a San Francisco city councilman, Sam Brannan, who had purchased and then retrofitted a ship in the harbor to serve as a jail. He was of course hoping to make a profit from charging for housing prisoners.⁸ A more permanent solution was for the county to build a proper county jail. But in San Francisco, the county jail project ran out of money.⁹

The Legislature realized that the absence of a state prison was a problem. Yet an even bigger problem was that the state had no money and was just getting organized. Its initial solution was to declare that all county jails were also state prisons and therefore could house felons,¹⁰ a very early form of what today we might call "realignment." Leave it to the counties.

Many of the gold rushers were ultimately disappointed that they didn't immediately strike it rich, and some of those turned to crime.

7. It seems appropriate at this point to observe that when it comes to pursuing and owning gold, people are most certainly not angels, and government is then necessary to maintain order. An additional factor in the urgency for a state prison was that the criminal code enacted by the California Legislature in its first session reserved capital punishment for murder and only a few other crimes, while property crimes were punished by a term of years in the state prison. Cal. Stats. 1850, ch. 99. This dramatically changed the sentencing policies that had prevailed under Mexican rule, which focused primarily upon capital punishment, corporal punishment, and fines. The new policies required having a place to hold the growing number of convicts.

8. Secrest, *supra* n. 4, at 4. Sam Brannan is known for a series of firsts in California: first newspaper in San Francisco, first to publicize the discovery of gold, and California's first millionaire. He was a shrewd businessman who made money by supplying miners and would-be miners. He then bought up huge tracts of land in California and Hawaii. Nevertheless, he died virtually penniless because a divorce from his wife forced him to liquidate his real estate holdings. See "Samuel Brannan," Wikipedia, at https://en.wikipedia.org/wiki/Samuel_Brannan [as of June 4, 2024].

9. Governments running out of money for planned projects is nothing new, of course.

10. Cal. Stats. 1950, ch. 99, § 144 ("Until a State Prison is provided, the County Jail of each county shall be deemed the State Prison"). The Legislature had already provided that "The Court of Sessions of each County of this State shall cause a County Jail to be erected at the Seat of Justice for their County, or procure some suitable place for the safe keeping of prisoners, and to be kept in good condition and repair." Cal. Stats. 1950, ch. 44, § 1.

4. William B. Secrest, *Behind San Quentin's Walls: The History of California's Legendary Prison and Its Inmates 1851–1900*, Fresno, CA: Craven Street Books, 2015, 4.

5. Britannica, "Mexican-American War — Mexico-United States [1846–1848]," <https://www.britannica.com/event/Mexican-American-War/Invasion-and-war> [as of June 11, 2024].

6. "A History of UCSF — 1868–1898. The Origins of the University of California and Affiliated Colleges," https://history.library.ucsf.edu/1868_goldrush.html [as of May 29, 2024].



Gen. Mariano Guadalupe Vallejo
Photo: Sonoma County Library



Assemblyman James M. Estell
Photo: Public domain.

This wasn't just a cram down on the counties, however, because by virtue of being a state prison, the county jails could then lawfully force prisoners to provide labor for public works projects.¹¹ This type of tradeoff between the state Legislature and local governments is a common feature of California governance even today. Unfortunately, the counties weren't much better off than state government; they were also just getting organized, and county jails were overcrowded and not very secure in any event. Escapes were common.

The Legislature Dances with Vallejo and Estell

In 1851, the Legislature was approached by Gen. Mariano Guadalupe Vallejo and James M. Estell with an offer that was too good to be true. A brief introduction to these two central characters is appropriate.

Gen. Mariano Guadalupe Vallejo is aptly characterized as a charismatic leader who lived by the motto "Doing well by doing good."¹² Vallejo was a lifelong resident of what would become the state of California. Born in Monterey, he rose through the ranks of the Mexican army, and in 1830 became the military commandant of the San Francisco Presidio.¹³ Within a decade, he was promoted to Commandant General and military governor of the Free State of Alta California. Along with these promotions, Vallejo was granted large tracts of land in what is now Sonoma County, and became wealthy

through productive management of his lands and stores that served the miners. Vallejo was generally open to American immigration before the Mexican-American War and seemed to understand that California ultimately would become part of the United States. He managed to withdraw from politics and remained essentially neutral during the Mexican-American War. Because of his wealth and character, he was warmly accepted as part of California's initial leadership. He was a signatory to the California Constitution of 1849 and was elected to the California Senate.

James M. Estell is aptly characterized as an opportunistic politician-salesman-charlatan who lived by the motto "Doing well." He was a gold rush immigrant to California, moving from Missouri to San Francisco in 1849. In 1852, he was elected state senator for a two-year

term representing Napa and Solano. In 1857, he was elected to the Assembly from Marin County. Vallejo and Estell had business dealings apart from the state prison. For example, Estell had negotiated a deal to purchase all of Vallejo's wild cattle for slaughtering and sale in San Francisco. Estell's obituary, published in Sacramento's *The Daily Bee* on April 27, 1859, summarized his life as follows: "He was a prominent public man in California, a politician by nature, and always managed to make his politics pay. . . . No man has received one tenth the money from the State that General Estill [sic] did; and no man made greater profit on what he received."¹⁴

Estell and Vallejo proposed having California lease to Estell and Vallejo state prison grounds and require counties to deliver to Estell and Vallejo all state prisoners. In return, the state would authorize Estell and Vallejo to use all convict labor for their own personal benefit and profit. Estell and Vallejo would take the problem of running a state prison off of the state's hands. A privately run prison for free. This deal probably would have gone nowhere except for the fact that the state was desperate, and Estell and Vallejo were two of the most influential, effective politicians in California at the time. The 10-year deal provided that Vallejo and Estell would become lessees of the prison, which was to be located on land in Solano County, and they would become responsible for all persons sentenced to confinement in the state's prison.¹⁵ After posting a \$100,000 bond to guarantee

11. Cal. Stats. 1950, ch. 135, § 1. Article I, section 18 of the California Constitution of 1849 provided that "Neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."

12. Often attributed to Benjamin Franklin.

13. Peter Meyerhof, "General Vallejo," <https://www.sonomacity.org/general-vallejo/> [as of June 4, 2024].

14. Sean Ryan, "Obit. For General James M. Estill," <https://www.genealogy.com/forum/surnames/topics/estill/106/> [as of May 29, 2024]. The statutes dealing with the state prison referred to "Estell," but according to the obituary, he sometimes spelled his name as "Estill."

15. Cal. Stats. 1951, ch. 114.

their performance, Vallejo and Estell were to construct temporary buildings on the grounds (or procure prison ships) until the state built permanent facilities, and they agreed to bear the costs of operating the prison, which included staffing it and caring for all of the prisoners.

But that was not all. The state was struggling to decide upon the permanent location for the seat of government. The Legislature met in San Jose for its first session, but there was a consensus to move away from San Jose. The Vallejo/Estell deal also included a promise by Vallejo to donate \$135,000 to the state if the state agreed to move its capital from San Jose to a city yet to be built in Solano County that would be named Vallejo.¹⁶ Who could resist such munificence? From the Legislature's perspective, this deal solved two difficult problems in one stroke without any immediate expenditures: what to do about the state prison, and what to do about the location of the state capital.

Estell now had state prisoners, but no prison. Estell kept his prisoners in a dungeon on a ship anchored near Angel Island, and prisoners were put to work quarrying stone on land leased by Estell. The stone would be used to build the first cellblock.

Meanwhile, things did not turn out so well for Vallejo, either the city or the general. The Legislature quickly decided the city of Vallejo was not suitable for its needs when it tried to move to Vallejo and discovered that no buildings had been erected. Vallejo then lobbied to have the capital moved to a nearby city, Benicia, which was named after Vallejo's wife.¹⁷ After another year without adequate facilities, the Legislature left Benicia for Sacramento. By this time, Gen. Vallejo had lost interest in the prison project, leaving his partner, James Estell, to push on without him.¹⁸

In 1852, the state found a permanent site for a prison, and the Legislature authorized payment of up to \$10,000 to buy 20 empty acres on the southern shore of a place called Punta de Quentin.¹⁹ It was renamed San Quentin.

Preparations for permanent construction began in earnest once the site had been selected and purchased. Estell put his prisoners to work constructing temporary quarters at San Quentin. He also established a brick manufacturing operation there and started producing large quantities of brick, both for construction at San Quentin and for sale in San Francisco.

16. Lest readers think that Vallejo was just a self-centered narcissist, it is believed that he asked for new city to be named Eureka. Even if this is true, the more important point is that Vallejo owned 175,000 acres in Sonoma County, Estell owned several thousand acres in Sonoma County, and both stood to benefit greatly if the new city became the state capital.

17. Cal. Stats. 1853, ch. 11, § 1.

18. Cal. Stats. 1852, ch. 60, § 2 (providing for Vallejo's release from the \$100,000 bond, requiring Estell to post a new \$100,000 bond, and providing that Estell would become the sole lessee of the prison).

19. Cal. Stats. 1852, ch. 59, § 3.



San Quentin Prison guns. *Security Pacific National Bank Photo Collection, Los Angeles Public Library.*

In 1853, the Legislature appropriated \$135,000 to hire a contractor to build a prison to accommodate up to 250 inmates.²⁰ Unbeknownst to state officials at the time, Estell was in partnership with the low bidder, and the low bidder's low price was based on the use of free convict labor.²¹ So Estell benefited substantially from the \$135,000 construction contract. Estell's economic interest was in building as cheaply as possible while maximizing the number of inmates whose forced labor was the basis for more profits to him. As a result, prison conditions were predictably terrible, and the prison was immediately overcrowded.²² It was also still not very secure. The prison had no outer wall, inmates had to be walked several hundred yards three times a day just to eat, and they often traveled beyond the prison grounds to perform work. Escapes were common, as were riots.²³ Within just a few years, the state became dissatisfied with its contract with Estell.

In 1855, the state and Estell agreed to end his lease, and the state established a prison Board of Directors to control and manage its prison. During the next eleven months, the board spent over \$475,000 on improvements. Although many of these projects were clearly

20. Cal. Stats. 1853, ch. 111, §§ 3 & 5.

21. Secrest, *supra* n. 4, at 21.

22. By the end of the 1850s, the prison was designed to hold around 350 inmates. It was overcrowded almost from the start, and at the end of the decade was holding 582 prisoners. "Annual Report of the State Prison Directors for the Year 1859," at <https://babel.hathitrust.org/cgi/pt?id=nyp.33433008713681&seq=402>, 16 [as of July 28, 2024]. Overcrowding in California's prisons has been a recurring problem. See *Brown v. Plata* (2011) 563 U.S. 493 (affirming decision by three-judge panel to place a cap on the population of California's prison system).

23. From 1851 to 1859, San Quentin received 1,919 prisoners and reported 385 escapes (i.e., 20 percent of the prisoners escaped). Report of Joint Standing Committees on State Prison, 1859, <https://babel.hathitrust.org/cgi/pt?id=nyp.33433008713681&seq=418>, 12 [as of July 28, 2024].

necessary (e.g., a wall around the prison grounds), the Legislature simply couldn't stomach spending that much money on convicts, and in a stunning reversal, in 1856 the state entered into a new five-year contract with Estell to resume his control of the prison in return for a monthly \$10,000 payment to Estell.

Not surprisingly, Estell's performance did not improve. Even with the new wall, riots and escapes continued, and prison conditions remained intolerable. The state quickly became dissatisfied again with its contract with Estell, and by the end of 1857, relations between Estell and the state essentially collapsed. The state stopped making its \$10,000 monthly payments to Estell, and desperately sought ways out of its contract without having to buy him out for a second time.

The state tried several alternatives: First, in February 1858, the Legislature authorized and directed the governor to take immediate control of the prison, and the statute simply declared the lease agreement to be illegal. One week after its passage, Gov. Weller personally entered San Quentin and, with the assistance of his armed guards, secured the keys to the prison and evicted Estell's successor in interest, John McCauley.²⁴ Second, a few months later, the Legislature passed another statute declaring the lease contract to be void. Third, the state passed a statute that purported to condemn the contract (although this statute was never enforced because of doubts about its constitutionality and effectiveness).

The Supreme Court Controls

McCauley, Estell's successor in interest, did not want to give up his status as lessee of the state prison without a fight, and the fight resulted in several Supreme Court opinions.

During the chaotic first years of a newly formed government, one might think that the courts would give the governor and Legislature some extra flexibility to get organized; the courts might cut those two branches some slack.



Gov. John B. Weller, date unknown, Painting: Public domain.

Yet that would be a terrible way to form a government committed to principles of liberal constitutionalism. A government committed to respect for the rule of law needs to demonstrate that respect from the very beginning. The executive and legislative branches must be held to account from the start. Fortunately for us, the California Supreme Court was up to the task.

The first opinion proved that, in California, no one — not even the governor acting pursuant to a statute — is above the law. The second opinion reaffirmed the bedrock principle that the state must perform its contracts and cannot simply declare itself to be free from contractual obligations. Both issues remain salient today.

No One Is Above the Law

McCauley filed an action of forcible entry and detainer against Gov. Weller personally and several of the officers who had joined him in ousting McCauley by forcibly confiscating the keys to San Quentin. The County Court of Marin found in favor of McCauley, ordered restitution of the state prison to McCauley and imposed a money judgment against the governor of \$12,249.93 plus \$282 in costs. Gov. Weller appealed to the Supreme Court.²⁵

At that time, the Supreme Court consisted of three justices, and the statutes provided that a quorum for court action was two of those justices. So long as those two justices concurred, cases could be resolved without requiring participation by the third justice. In *McCauley v. Weller*, the two justices assigned were Chief Justice David S. Terry and Associate Justice Stephen Johnson Field. Two more colorful characters could not be imagined.

David Smith Terry was born in Kentucky in 1823. When he was 8 years old, his family moved to Brazoria County, Texas, where Stephen F. Austin had already established the spirit of independence that would later lead to the Texas Revolution. Terry studied law in his uncle's office and was admitted to the bar in Galveston, Texas, in 1845. He served in the army in the Mexican-American War and fought in the 1846 Battle of Monterrey, one of the early victories in the army's invasion of Mexico. In 1847, he lost his bid to be elected as the district attorney of Galveston, and in 1849 he joined the gold rush to California. He established a successful law practice in Stockton and became active in politics with the Democratic Party. In 1855, he was nominated

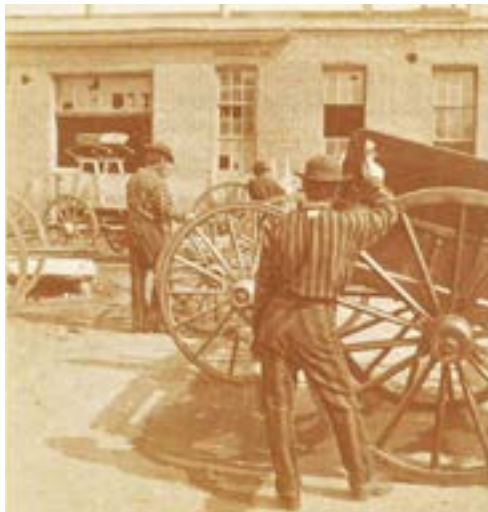
24. The scene was quite dramatic. It appears that McCauley, having learned about the legislation and Gov. Weller's imminent arrival, was on his way to San Quentin with the sheriff and a judge who McCauley hoped would grant an injunction barring the governor's eviction of him. But McCauley wasn't quick enough. The governor arrived 30 minutes ahead of McCauley, and when confronted with the governor holding the keys to San Quentin and the governor's armed guards, McCauley backed down. Secrest, *supra* n. 4, at 67–68.

25. *McCauley v. Weller* (1859) 12 Cal. 500, 503.

for and won a seat on the California Supreme Court. He became the fourth Chief Justice in 1857. Terry, who was a big man at 6 feet tall and 250 pounds, was famous in part for his temper and his skill in wielding a Bowie knife that he apparently carried under his coat wherever he went.²⁶

Stephen Johnson Field was born on the East Coast in Haddam, Connecticut, in 1816. He read for the law first in Albany and then in New York City with his older brother, the equally famous David Dudley Field II (of “Field Code” fame). In 1848, at the age of 32, Field traveled to California as a gold rush immigrant. In the event, however, he was a better lawyer than a prospector. Almost immediately after his arrival in Marysville, Field was elected alcade, the mayor and justice of the peace of the city. Two years later, voters sent him to the Assembly to represent Yuba County. After losing a campaign for the state Senate, Field successfully ran for a seat on the California Supreme Court, where he served from 1857 to 1863, when President Lincoln appointed him to the U.S. Supreme Court, where he served for 34 years, retiring in 1897.

On the bench and in their private lives the two frequently disagreed — and indeed, later in their careers, these two justices remained highly acrimonious, culminating in Field, during his term on the United States high court, being arrested and charged with the murder of Terry.²⁷ But in this early case the two justices were in sync, finding that an action for forcible entry and detainer was a summary proceeding at which the defendant could not raise issues of title or the lawfulness of the plaintiff’s peaceful possession. Terry and Field thus rejected the governor’s defense that his actions were specifically authorized by a statute enacted by the Legislature, which directed him to take over possession of San Quentin prison. The justices reasoned that under the applicable law, no one — not even the governor acting pursuant to a statute — can forcefully take property in the peaceful



Manufacturing wagons at San Quentin, 1870s. Photo: California Department of Corrections and Rehabilitation.

possession of another without court action, and that is exactly what the governor did. Moreover, the justices held, the statute did not constitutionally condemn or take the leasehold interest because the statute did not provide for compensation for any such taking.

Control over San Quentin was returned to McCauley.

The State Must Perform Its Contracts

The second lawsuit was filed by the state seeking to cancel the lease and compel the surrender of the prison to the State.²⁸ The state made six challenges to the lease: (1) that it created an unconstitutional debt exceeding

the limit imposed by the California Constitution; (2) that it unconstitutionally transferred state convicts to private individuals; (3) that the state’s prison commissioners lacked authority to make the contract; (4) that the contract was not properly executed because the commissioners signed the contract in their individual names, and not in the name of the state; (5) that the lease had been forfeited when Estell assigned it to McCauley; and (6) that the lessee had failed to perform its obligations under the contract.²⁹

By this time, Stephen Field, still on the California high court, had been promoted to the position of chief justice, and he wrote a relatively brief opinion that easily disposed of the state’s make-weight contentions, with Justice Warner Walter Cope concurring.³⁰

28. *State of California v. McCauley & Tevis* (1860) 15 Cal. 429.
29. *Id.* at p. 454.

30. Cope had been nominated for a position on the California Supreme Court by the California Democratic Party in lieu of renominating the then-sitting chief justice, David Terry. Terry believed that U.S. Senator David Broderick, a fellow Democrat, had conspired to keep Terry from being nominated for re-election. After Terry made inflammatory comments about Broderick at a state convention, the two agreed to a duel. On Sept. 12, 1859, Terry resigned as chief justice, and the following day, he shot Broderick at the duel just outside San Francisco city limits. Terry was charged with murder but was acquitted when, suspiciously, none of the prosecution witnesses appeared in court when the judge called for the prosecution’s case. “Judge Terry’s Trial in Marin County — Verdict of Not Guilty — Singular Proceedings,” *Sacramento Daily Union*, July 7, 1860, <https://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=SDU18600707.2.8.2&srpos=1&e=-----186-en--20--1-txt-txIN-%22david+s.+terry%22---1860---1> [as if Aug. 14, 2024]. Terry was not so lucky 28 years later when he attacked then U.S. Supreme Court Justice Stephen Field at the Lathrop train station because Field, after recently presiding over a California

26. U.S. Marshal’s Service, “In the Matter of David Neagle,” <https://www.usmarshals.gov/who-we-are/history/historical-reading-room/matter-of-david-neagle> [as of June 4, 2024].

27. The story is told with flair in Milton S. Gould, *A Cast of Hawks: A Rowdy Tale of Scandal and Power Politics in Early San Francisco*, Copley Books, 1985. See especially chs. 34–37, at pp. 299–325, concerning the arrests and release of Field and his federal bodyguard, U.S. Marshall David Neagle. See also *post*, n. 30.

The Legislature Takes Over

After the Supreme Court opinions, it was clear the state had no choice but to wait for the five-year contract to terminate in 1861, or to buy out the contract early. The dissatisfaction with McCauley was so great that the Legislature decided to pay him off and take immediate control, which was accomplished on August 11, 1860.³¹

The sanitary conditions of the prisons have definitely improved from the surgeon's report of 1875, but the basic architecture largely remains where it was 150 years ago.

So ends San Quentin's birth story. Lessons we can learn:

1. Madison was right — people are not angels, so we need government. Government, which consists of people, can suffer from the same weaknesses.

2. Fortunately, there are honest public servants devoted to the rule of law. Those individuals, and there are many of them, make all the difference between a healthy, functioning democracy, and government-by-power

alone. But maintaining that balance takes courage and commitment.

3. Prisons perform a necessary public function — i.e., separating criminals from society — but historically there has been little political interest in providing anything more than the barest of resources to fulfill that role. Hence prisons around the country still suffer from overcrowding, crumbling infrastructure, inadequate budgets, and harsh conditions.

Epilogue

State management did not mean much of a change in conditions at San Quentin. The prison was overpopulated when the state assumed control in 1860. That did not change. The Legislature still wanted to spend as little as possible to incarcerate its inmates. Conditions did not improve. An 1875 report by the prison's surgeon to the directors of San Quentin painted a dismal picture of the prison:

[W]e have four rooms with forty-five men in each, with all the others equally crowded, and one-half, if not more of them, afflicted with maladies, and locked up for thirteen or fourteen hours out of the twenty-four, sleeping and existing in a fetid and poorly ventilated atmosphere, made absolutely poisonous by the exhalations from diseased lungs, and to a great extent unwashed surfaces, and the

federal trial as circuit judge, had ruled against Terry's client in a will contest. Field's federal bodyguard, U.S. Marshall David Neagle, shot Terry dead. The story is told in detail in *In re Neagle* (1890) 135 U.S. 1, which was in turn the impetus for Milton Gould's *A Cast of Hawks*, *supra* n. 27. See also Richard H. Rahm, "Justice David H. Terry and Federalism. A Life and Doctrine in Three Acts" (2020) 15 *Calif. Leg. Hist.* 9.

31. *Secrest*, *supra* n. 4, at 100.

effluvia arising from the accumulation of excrementious matter deposited in a common receptacle during all these hours.³²

The report helped drive the Legislature to construct a second state prison where, hopefully, lessons from San Quentin's birth would be learned and San Quentin's difficulties could be averted. The new prison was located in Folsom, near Sacramento, where it stands to this day. Another prison would not be built in California for the next 60 years.

Today, California has 33 adult institutions housing its prison population.³³ Overcrowding has been a persistent problem since at least the 1980s and was alleviated only by virtue of a federal court order limiting the total population to 137.5 percent of the state prisons' design capacity.³⁴ The sanitary conditions of the prisons have definitely improved from the surgeon's report of 1875, but the basic architecture largely remains where it was 150 years ago: buildings of long concrete corridors with small, confined cells, or larger dorm rooms, surrounded by lethal, electrified fences and distinctive guard towers placed to ensure easy line-of-sight to the prisons' open spaces.

Efforts are now underway to create a more humanistic environment in California's prisons based upon a successful model of corrections reform undertaken by prisons in Norway. As explained by Gov. Gavin Newsom, the "California Model" will pursue "true rehabilitation, justice, and safer communities" by reimagining prison programs better to promote successful reentry of inmates into their communities upon release from prison.³⁵

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32. "Biennial Report of the Directors of the State Prison," *Appendix to Journals of the Senate and Assembly of the Twenty-First Session of the Legislature of the State of California* (1875), 1, 40–50.

33. <https://www.cdcr.ca.gov/adult-operations/list-of-adult-institutions/> [as of Aug. 12, 2024].

34. *Brown v. Plata* (2011) 563 U.S. 493.

35. Calif. Dept. of Corrections and Rehabilitation, "Governor Newsom Announces Historic Transformation of San Quentin State Prison," Mar. 17, 2023, <https://www.gov.ca.gov/2023/03/17/san-quentin-transformation/> [as of Aug. 12, 2024]. See also "The California Model," <https://www.cdcr.ca.gov/the-california-model/> [as of Aug. 12, 2024].