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Early California Laws and Policies Related to California Indians

By Kimberly Johnston-Dodds

Prepared at the request of Senator John L. Burton, President Pro Tempore

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Executive Summary

Did the State of California enact laws that prohibited California Indians from practicing their religion, speaking their languages or practicing traditional ceremonies and customs? Senator John L. Burton requested that the California Research Bureau research this question.[1]

The initial investigation and research contained in this report[2] led to a focus on four examples of early State of California laws and policies that significantly impacted the California Indians' way of life:

- The 1850 *Act for the Government and Protection of Indians* and related amendments;
- California militia policies and "Expeditions against the Indians" during 1851 to 1859;
- The State of California's official response to federal treaties negotiated with California Indians during 1851 to 1852; and
- Early and current state fish protection laws that exempt California Indians from related prohibitions.

The 1850 *Act for the Government and Protection of Indians* facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages, and cultures (1850 to 1865). This California law provided for "apprenticing" or indenturing Indian children and adults to Whites, and also punished "vagrant" Indians by "hiring" them out to the highest bidder at a public auction if the Indian could not provide sufficient bond or bail.

The California Legislature created the laws that controlled California Indians' land, lives and livelihoods, while enforcement and implementation occurred at the county and local township levels. Some examples include:

- County-level Courts of Sessions and local township Justices of the Peace determined which Indians and Indian children were "apprenticed" or indentured pursuant to the 1850 *Act for the Government and Protection of Indians*.
- Under the same act, Justices of the Peace, mayors or recorders of incorporated towns or cities, decided the status and punishment of "vagrant" Indians.
- Under the California Constitution and state militia laws, California governors ordered local sheriffs to organize the men to conduct the "Expeditions against the Indians."

From 1851 to 1859, the California Legislature passed twenty-seven laws that the State Comptroller relied upon in determining the total expenditures related to the Expeditions against the Indians. The total amount of claims submitted to the State of California Comptroller for these Expeditions against the Indians was $1,293,179.20.

The California Legislature was involved in influencing the U.S. Senate's ratification process of the 18 treaties negotiated with California Indians during 1851 to 1852. These treaties were never ratified, and kept secret from 1852 until 1905. Prior to the President submitting the treaties to the Senate, the California Legislature conducted considerable debate, made reports, drafted and passed resolutions that mostly opposed ratification of the treaties.

The California Legislature also enacted laws during the first fifteen years of statehood that accommodated Indian tribes' traditional fishing practices. California laws exist today that continue to protect fish and exempt California Indians from related prohibitions.

The First California Constitution, Suffrage and the California Indians

The creation of the first California Constitution and its governing framework set the stage for early laws related to California's justice system, and California Indians.

In late 1849, the delegates to the California Constitutional Convention met to form the first constitution of California. At the Convention, the delegates debated the issue of whether California Indians should have the right to vote. A minority advocated that the Indians should have the right to vote, as was recognized by the prior Mexican regime, especially if the Indians were going to be taxed. The minority delegates cited principles in the Declaration of Independence declaring that taxation and representation go together. However, other delegates in the majority argued that certain influential white persons who controlled Indians would "march hundreds [of wild Indians] up to the polls" to cast votes in compliance with such persons' wishes.[3]

In the end, the majority prevailed and the Convention agreed to the following constitutional provisions regarding suffrage and California Indians:

> Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months…shall be entitled to vote at all elections which are now or hereafter may be authorized by law:
>
> Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.[4]

The California Legislature never passed legislation that allowed California Indians to vote.

In 1870, Congress ratified the 15th Amendment of the U.S. Constitution affirming the right of all U.S. citizens to vote:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous conditions of servitude.

However, even after the 15th Amendment was ratified, most American Indians, including California Indians, did not have the right to vote until the federal Citizenship Act of 1924 was passed.[5]

1850: An Act for the Government and Protection of Indians

Soon after the creation of the California Constitution and before the U.S. Congress granted California statehood, the first California Legislature reviewed an important piece of Indian legislation: the first version failed to become law, the second version became law on the last day of the session.

The first California Legislature passed *An Act for the Government and Protection of Indians* on April 22, 1850. Initially introduced as Senate Bill No. 54 - *An Act relative to the protection, punishment and government of Indians* on March 16, 1850, by Senator Chamberlin, at the request of Senator Bidwell,[6] Senate Bill No. 54 was "laid on the table," on March 30, and went no further in the legislative process.[7]

On April 13, 1850, Assemblyman Brown introduced Assembly Bill No. 129, *An Act for the government and protection of Indians*. The Legislature passed the bill on April 19, after the Senate amended Section 16 to decrease the whipping punishment for Indians from 100 to 25 lashes. The Governor signed it into law on April 22,[8] four months before California became the 31st state in the Union (on September 9, 1850). The *Act for the Government and Protection of Indians* was not repealed in its entirety until 1937.[9]

LOSS OF LANDS AND CULTURES

The 1850 Act and subsequent amendments[10] facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages, and cultures (1850 to 1865), and indenturing Indian children and adults to Whites.[*]

The relevant sections provided that:

- White persons or proprietors could apply to the Justice of the Peace for the removal of Indians from lands in the white person's possession.

- Any person could go before a Justice of the Peace to obtain Indian children for indenture.[†] The Justice determined whether or not compulsory means were used to obtain the child. If the Justice was satisfied that no coercion occurred, the person obtained a certificate that

[*] All of the provisions contained in the initial Act of 1850 are described in Appendix 1, which also contains footnoted comparisons of the language contained in the enacted law and amendments, and original Assembly and Senate bill language that was not incorporated into the 1850 Act.

[†] *Webster's Dictionary* defines "indenture" as a contract by which a person is bound to service. It is well known that the Hispanic missions in California that governed before the United States and the State of California, used forced Indian labor to build the missions and work in the surrounding agricultural lands.

authorized him to have the care, custody, control and earnings of an Indian minor, until their age of majority (for males, eighteen years, and females, fifteen years).

- If a convicted Indian was punished by paying a fine, any white person, with the consent of the Justice, could give bond for the Indian's fine and costs. In return, the Indian was "compelled to work until his fine was discharged or cancelled." The person bailing was supposed to "treat the Indian humanely, and clothe and feed him properly." The Court decided "the allowance given for such labor."

ABSENCE OF LEGAL RIGHTS

In 1850 and 1851, the California Legislature enacted laws concerning crimes and punishments that prohibited Indians, or black or mulatto persons, from giving "evidence in favor of, or against, any white person."[11] The 1850 statute defined an Indian as having one-half Indian blood. The 1851 statute defined an Indian as "having one fourth or more of Indian blood."

Inequitable Due Process

The 1850 *Act for the Government and Protection of Indians* evidences further absence of legal rights for California Indians. The 1850 Act provided that:

- Justices of the Peace had jurisdiction in all cases of complaints related to Indians, without the ability of Indians to appeal at all, including to higher courts of record such as district courts or courts of sessions.

- While Indians or white persons could make complaints before a Justice of the Peace, "in no case [could] a white man be convicted of any offen[s]e upon the testimony of an Indian, or Indians."

- Justices of the Peace were to "instruct the Indians in their neighborhood in the laws which related to them." Any tribes or villages refusing or neglecting to obey the laws could be "reasonably chastised."[*]

- If an Indian committed "an unlawful offen[s]e against a white person," the person offended was not allowed to mete out the punishment. However, the offended white person could, without process, bring the Indian before the Justice of the Peace, and on conviction the Indian was punished.

[*] The term "reasonably chastised" became a basis of a state policy empowering and paying the militia to attack Indians, as discussed in the next section.

Justices of the Peace

The first California Constitution provided that the "Legislature shall determine the number of Justices of the Peace, to be elected in each county, city, town, and incorporated village of the State, and fix by law their powers, duties, and responsibilities."[12]

In 1850, the first California Legislature provided that the jurisdiction of Justices of the Peace was limited to the township where they were elected.[13] Some of the powers and responsibilities conferred upon the first Justices of the Peace

- authorized them to hear, try and determine civil cases when the amount claimed was $200 or less (later raised to $500 in 1853).
- required them to take an oath and give a bond "in the penalty of five thousand dollars, conditioned for the faithful performance of [their] duties."[14]
- empowered them to be a magistrate, an "officer having power to issue a warrant for the arrest of a person charged with a public offence."[15]

Throughout the period from 1850 into the 1860s, Justices of the Peace also presided over Justice Courts within their township jurisdictions. These courts were not courts of record, and had both civil and criminal jurisdiction to hear actions on

- contracts for payment of money,
- injuries to a person or taking or damaging personal property,
- statutory fines, penalties and forfeitures,
- mining claims within their jurisdiction,
- petty larceny, assault and battery (if not committed on a public officer), and
- breaches of the peace, riots, and all misdemeanors punishable by fine not exceeding $500 or imprisonment not exceeding three months, or both.[16]

The Justice Courts also held proceedings related to "vagrants and disorderly persons."[17]

Justices of the Peace for Indians

The first bill introduced related to the 1850 Act (Senate Bill No. 54) provided for Justices of the Peace for Indians, but it was not enacted. These Justices of the Peace were to be elected by the Indians directly, at the order and direction of the Court of Sessions.[*] The

[*] See Appendix 3 for discussion of the Court of Sessions.

bill provided that the Inspectors of Elections appointed by the Court "procure one or more interpreters to be at the polls during the election who shall ask every Indian who is entitled to vote, whom he prefers for Justice for the Indians the ensuing year, and his vote shall be recorded for the person he prefers."[18] This language that created Justices of the Peace for Indians was not contained in the companion bill proposed by the Assembly, nor the final law enacted in 1850. (As previously discussed in an earlier section, the first California Constitution excluded Indians from the right to vote.)

VAGRANCY AND PUNISHMENT UNDER "AN ACT FOR THE GOVERNMENT AND PROTECTION OF INDIANS"

Section 20 of the 1850 Act defined "vagrant" Indians and prescribed their punishment:

> Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant…he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months.[19]

Monies received from hiring such Indians, after deducting housing and clothing costs, were to be deposited into an "Indian fund" administered by the County Treasury (if he did not have a family). The "vagrant" Indian, after arrest but before judgment, could post a bond with a condition that for the next 12 months he would "conduct himself with good behavior, and betake some honest employment for support."[20]

AMENDMENTS TO "AN ACT FOR THE GOVERNMENT AND PROTECTION OF INDIANS"

In 1855, Section 6 of the 1850 Act was amended to read "Complaints may be made before a Justice of the Peace, by white men or Indians, and in all cases arising under this Act, Indians shall be competent witnesses, their credibility being left with the jury."[21] However, California legal treatises of the 1860s continued to cite the general civil procedure laws that excluded Indians from being witnesses at court as valid law.[22]

In 1860, the California Legislature amended Sections Three and Seven of the 1850 Act. These amendments granted broad powers to county and district judges to, when requested, execute articles of indenture of apprenticeship on behalf of Indians. The 1860

amendments to the Act also provided that male Indian children under fourteen years could be indentured until they were twenty-five, and females under fourteen until they were twenty-one years old. If they were over fourteen but under twenty, males were indentured until they were thirty, and females until they were twenty-five years. Indians over twenty years old could be indentured for an additional ten years.[23] Due in part to a decade of state-financed expeditions against the Indians, there were many young Indian children without parents.

In 1863, Section Three of the 1850 Act was repealed. However, historical accounts drawn from primary sources indicate that this system of Indian indentured servitude continued, even after Section Three was repealed (see page 11).

In 1865, the California Supreme Court ruled that the section of the 1850 Act related to whipping was unconstitutional because the punishment was cruel and unusual.[24]

HISTORICAL ACCOUNTS ABOUT INDENTURES, KIDNAPPING AND SELLING OF INDIANS

Articles of Indenture

I reviewed original indentures of Indians dated 1861, in the Sacramento County Archives.[25] The original text of one of the indentures follows:

> In the Matter of the Indenture of…the Indian boy Bill (aged 15 years or thereabouts) to William Moorhead
>
> To the Hon Robert Robinson County Judge of the City & County of Sacramento –
>
> William Moorhead of the City & County of Sacramento in the State of California respectfully shows that he has an Indian boy called "Bill" under his control and management & that he has faithfully provided for said boy Bill for the last five years or thereabouts. That he formerly belonged to a Tribe called "Cottonwood" tribe in Shasta County in said State that the said boys [sic] parents, as petitioner is informed, and believes, have been dead for several years, and that the said boy has been living with petitioner in the City of Sacramento & working about petitioners [sic] livery stable. Petitioner further shows that he has provided said boy with all the necessaries of life & rendered him happy & contented.
>
> Petitioner further shows that he has reason to believe & does believe that unless the said boy shall be apprenticed in accordance with the provisions of an act entitled "an act amendatory of an act entitled an act for the government and protection of Indians passed passed [sic] April 22, 1850" approved April 18, 1860 some persons will induce the said Indian boy to leave petitioner, & that he may become a vagrant, & addicted to dissolute habbits[sic].

> Petitioner therefore prays that Indentures may be made in accordance with said act and the said boy forthwith apprenticed to petitioner until he shall attain the age of thirty years.[26]

The County Judge, Robert Robinson, approved and signed the document with the notation: "Boy indentured as provided by law."[27]

In 1971, Robert Heizer and Alan Almquist published the findings of their review of 114 indentures dated from 1860 to 1863, located in old county court files in Eureka, California. In addition to publishing the name, probable age, period of indenture and/or age indentured to, Heizer and Almquist summarize the data:

> Ages of 110 persons indentured range from two to fifty, with a concentration of 49 persons between the ages of seven and twelve. Seven are listed as "taken in war" or prisoners of war"—this notation refers to children five, seven, nine, ten, and twelve years of age. Four children of ages eight, nine ten, and eleven are listed as "bought" or "given." Ten married couples were indentured, some of them with children. Three individuals seem almost too young to have been so treated—Perry, indentured in September 1860 at the age of three; George, indentured in January 1861 at the age of four; and Kitty (November 1861), also four years of age.[28]

Some of the indentures cited by Heizer and Almquist were made after the 1863 amendment that repealed Section 3 of the 1850 Act.[29]

Appendix 4 of this report is a copy of an article of indenture, located in the records of Humboldt County, published in the *Sacramento Daily Union* on February 4, 1861.

Accounts of Kidnapping and Selling of Indians

The following are accounts published in California newspapers as legal notices and articles from 1855 to 1864. These articles document incidents of kidnapping and selling of California Indian children.

> *Alta California* - 1855
>
> One of the most infamous practices known to modern times has been carried on for several months past against the aborigines of California. It has been the custom of certain disreputable persons to steal away young Indian boys and girls, and carry them off and sell them to white folks for whatever they could get. In order to do this, they are obliged in many cases to kill the parents, for low as they are on the scale of humanity, they [the Indians] have that instinctive love of their offspring which prompts them to defend them at the sacrifice of their lives.[30]

San Francisco Herald - 1856

In the Fourth District Court yesterday…for the hearing of the return to the writ of *habeas corpus* issued to produce the body of Shasta, the Indian girl claimed by Dr. Wozencraft, Charlotte Sophie Gomez appeared…and made the following return as to the cause of her inability to produce Shasta:

"That an Indian child by the name of Isabella, not about eight years of age, has lived in her family since the month of June, 1852, at her residence in the city of San Francisco. That during the last three years, or thereabouts, the said child has attended the public day school in said city. That…Isabella has resided with…Gomez until last Monday. On that day, about five o'clock in the afternoon, a person presented himself at her residence and told her that said Indian child belonged to him, and wanted to take her away. Of this fact she was told by a member of her family…Gomez says she has no knowledge of the person who took the child from her house, nor does she know where she now is, or has been, since taken away therefrom..."

…It is the belief of Dr. Wozencraft that the girl, Isabella…is the one that has been stolen from him. He is most anxious to recover Shasta and will use every legal means to recover possession of her.[31]

Alta California - 1862

The *Ukiah Herald*, published in Mendocino county, has a long article upon the practice of Indian stealing so extensively carried on in that section of the country, and says that one woodman has been caught with sixteen young Indians in his possession, being about to take them out of the county for sale. The *Herald* says:

"Here is well known there are a number of men in this county, who have for years made it their profession to capture and sell Indians, the price ranging from $30 to $150, according to quality. Some hard stories are told of those engaged in the trade, in regard to the manner of the capture of the children. It is even asserted that there are men engaged in it who do not hesitate, when they find a rancheria well stocked with young Indians, to murder in cold blood all the old ones, in order that they may safely possess themselves of all the offspring."[32]

The *Alta California* comments at the end of the 1862 article that the *Ukiah Herald* account "affords a key to the history of border Indian troubles."

The next account is found in the journal of William H. Brewer, one of the members of the original California Geological Survey mandated by the California Legislature in 1860.[33] Brewer traveled throughout California from 1860 to 1864, providing official reports under the survey.

> The Indian wars now going on, and those which have been for the last three years in the counties of Klamath, Humboldt, and Mendocino, have most of their origin in this. It has for years been a regular business to steal Indian children and bring them down to the civilized parts of the state, even to San Francisco, and sell them – not as slaves, but as servants to be kept as long as possible. Mendocino County has been the scene of many of these stealings, and it is said that some of the kidnappers would often get the consent of the parents by shooting them to prevent opposition.[34]

Early California Apprenticeship and Vagrancy Laws

Apprenticeship and vagrancy laws and policies related to the general population existed in California during the first two decades of statehood. However, they were enacted after the 1850 Act related to California Indians, and the penalties under these laws were less severe when applied to the non-Indian population.

An 1853 California legal treatise entitled *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, first mentions apprenticeship and minors when describing exceptions to the general rule that minors could not make a contract:

> [T]here are two exceptions to the general rule that minors cannot contract. The one case is contracts for apprenticeship. Minors can bind themselves as apprentices for seven years by deed, if the seven years are within their maturity. The other case is in contracts for necessaries. What are necessaries is frequently a question hard to resolve. What would be necessaries for one, would not be for another. Necessary boarding, clothing, and lodging, and medical attendance in sickness, tuition of necessary teachers – these are necessaries. The age and sex of the minor, the real station in society, property and business or vocation selected for life, all these things are necessarily involved in the question.[35]

1858 - An Act to Provide for Binding Minors as Apprentices, Clerks and Servants

The first apprenticeship law in California related to non-Indians, *An Act to provide for Binding Minors as Apprentices, Clerks and Servants*, was enacted in 1858, almost a decade after the 1850 Act. There were significant differences between the two laws. The 1858 Act excluded Indians (1/4 blood) from its provisions.[36] The 1858 Act mandated that

- the indenture state every sum of money paid or agreed for in relation to the apprenticeship.[37]
- the person to whom a child was bound send the child to school three months of each year of the period of the indenture to learn to read, write and the general rules of arithmetic.[38]

The 1858 Act also provided that an indenture of apprenticeship could be annulled and voided in the event that a county court found

- fraud in the contract of indenture.
- the contract was not made or signed pursuant to the law.
- willful nonfulfillment of the indenture provisions by the master.

- cruelty or maltreatment of the apprentice by the master, without cause or provocation.[39]

In 1865, Congress ratified the 13th Amendment of the U.S. Constitution. The states had to comply with the newly ratified amendment abolishing slavery and involuntary servitude:

> Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

1855 – An Act to Punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons

The first vagrancy law of California that applied to others was passed April 30, 1855. The penalties under the law were less severe than the penalties imposed against Indians under the 1850 Act. The 1855 Act provided that

> All persons except Digger Indians, who have no visible means of living, who in ten days do not seek employment, nor labor when employment is offered to them, all healthy beggars, who travel with written statements of their misfortunes, all persons who roam about from place to place without any lawful business, all lewd and dissolute persons who live in and about houses of Ill-Fame; all common prostitutes and common drunkards may be committed to jail and sentenced to hard labor for such time as the Court, before whom they are convicted shall think proper, not exceeding ninety days.[40]

The law did not define "Digger Indians." The Justice of the Peace enforced the vagrancy laws, and the county Board of Supervisors determined the type of labor the convicted person was to perform.[41]

In 1863, the California Legislature amended the law to exempt California Indians from the provisions of the 1855 Act.[42] The vagrancy provisions contained in the 1850 Act relating to the California Indians (previously described) were not repealed until 1937.

1850 - 1859: California Militia and "Expeditions Against the Indians"

> That a war of extermination will continue to be waged between the races, until the Indian race becomes extinct, must be expected. While we cannot anticipate this result but with painful regret, the inevitable destiny of the race is beyond the power or wisdom of man to avert.
>
> Governor Peter H. Burnett, January 7, 1851[43]

THE GOVERNORS AND THE MILITIA

Article VII of the first California Constitution gave the Governor the power "to call for the militia, to execute the laws of the State, to suppress insurrections, and repel invasions."[44] In his annual address to the California Legislature on January 7, 1851, Governor Burnett highlighted significant events that transpired during 1850, including "repeated calls…upon the Executive for the aid of the militia to resist and punish the attacks of the Indians upon the frontier."[45] During 1850, Governor Burnett called out the militia two times. The first order was prompted by incidents at the confluence of the Gila and Colorado rivers on April 23, 1850; in response, the Governor ordered the sheriffs of San Diego and Los Angeles to organize a total of 100 men to "pursue such energetic measures to punish the Indians, bring them to terms, and protect the emigrants on their way to California."[46] The second instance occurred in October 1850, when Governor Burnett ordered the sheriff of El Dorado County to muster 200 men. The commanders were instructed to "proceed to punish the Indians engaged in the late attacks in the vicinity of Ringgold, and along the emigrant trail leading from Salt Lake to California."[47]

Governor Burnett explained calling out the militia as follows:

> In these cases the [Indian] attacks were far more formidable, and made at point where the two great emigrant trails enter the State…occurred at a period when the emigrants were arriving across the plains with their jaded and broken down animals, and them destitute of provisions. Under these circumstances, I deemed it due to humanity, and to our brethren arriving among us in a condition so helpless, to afford them all the protection within the power of the State…
>
> Had it been once known to our fellow citizens east of the Rocky Mountains, that the Indians were most hostile and formidable on the latter and more difficult portion of the route…and that the State of California would render no assistance to parties so destitute, the emigration of families to the State across the plains would have been greatly interrupted and retarded.[48]

From 1997 to 1999, the Sacramento Genealogical Society researched and compiled an extensive index of the State Militia Muster Rolls located in the California State

Archives.[49] The California State Archives contain Muster Rolls or organizational documents for 303 units located in most California counties.[*] Seventy-one of the militias were located in San Francisco.[50] After exhaustive review and crosschecking of 70,000 registered names, the researchers determined that approximately 35,000 men were listed on the Muster Rolls (attendance records).[51]

From the state archival record, it is impossible to determine exactly the total number of units and men engaged in attacks against the California Indians. However, during the period of 1850 to 1859, the official record does verify that the governors of California called out the militia on "Expeditions against the Indians" on a number of occasions, and at considerable expense, as Tables 1 and 2 indicate.

Table 1

"General Recapitulation of the
Expenditures incurred by the State of California
For the Subsistence and Pay of the Troops, composing of the different Military Expeditions,
ordered out by the Governor, during the Years 1850, 1851 and 1852,
For the Protection of the Lives and Property of her Citizens, and for the
Suppression of Indian Hostilities within her Borders."

Expeditions Against the Indians	**Amount**
Mariposa and Monterey	$259, 372.31
First El Dorado	101,861.65
Second El Dorado	199,784.59
Los Angeles and Utah	96,184.60
Trinity, Klamath and Clear Lake	34,320.08
San Diego "Fitzgerald Volunteers"	22,581.00
Siskiyou "Volunteer Rangers"	14, 987.00
Gila "Colorado Volunteers"	113,482.25
Amount paid in War Bonds by Paymasters	1,000.00
Total Amount	**$843,573.48**

Source: Comptroller of the State of California, *Expenditures for Military Expeditions Against Indians, 1851-1859*, (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at "Roster" Comptroller No. 574, Vault, Bin 393.

[*] Muster Rolls may exist in other county or local archival repositories. The California State Archives does not have Muster Rolls for Colusa, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Lake, Madera, Mendocino, Merced, Modoc, Riverside, San Benito, and Ventura counties for the period 1851 to 1866.

THE CALIFORNIA LEGISLATURE AND THE MILITIA

In April 1850, the California Legislature enacted two laws: *An Act concerning Volunteer or Independent Companies*,[52] and *An Act concerning the organization of the Militia*.[53] The Volunteer Act provided that citizens of any one county could:

- organize into a volunteer or independent company;
- arm and equip themselves in the same manner as the army of the United States;
- prepare muster rolls (attendance records) twice a year; and
- render prompt assistance and full obedience when summoned or commanded under the law.[54]

The lengthy Militia Act established in great detail the organization, ranks, rules, duties and commutation fees (fees in lieu of service) that governed state military service. All "free, white, able-bodied male citizens, between the ages of eighteen and forty-five years, residing in [the] State" were subject to state-mandated military duty.[55] Important provisions relating to the delegation of authority to command and call out troops provided that:

- the Governor was the commander in chief of all the forces in the state;
- the Legislature elected four Major Generals, eight Brigadier Generals, one Adjutant General and Quarter Master General (with Brigadier General rank);
- the Governor commissioned all of the officers under the Act, who then took the oath of office prescribed by the California Constitution;
- the State Treasurer initially was the *ex officio* Pay Master; and
- upon the Governor's orders, the Sheriffs of each county were responsible to call the enrolled militia.[56]

In 1851, two laws set the rates of pay for the troops.[57] As shown in Table 2, Federal authorities considered the rates exorbitant in comparison to compensation to federal troops.[*]

[*] The 1850 Volunteer Act and Militia Act were repealed and replaced in 1855, and amended in 1856 and 1857. The National Guard replaced the California Militia in 1866. 1855 Cal. Stat. ch. 115; 1856 Cal. Stat. ch. 87; 1857 Cal. Stat. 344; 1866 Cal. Stat. ch. 541; Sacramento Geneaological Society, *California State Militia*, ii.

Table 2 details the State's expenditures for expeditions from 1854 to 1859.

Table 2

Expeditions Named in the Act of Appropriations by Congress made March 2, 1861				
Expedition	Year	Amount Allowed by California*	Amount Allowed by United States**	Amount Disallowed by United States
Shasta Expedition	1854	4,068.64	1,261.38	2,807.26
Siskiyou Expedition	1855	14, 036.36	6,146.60	7,889.76
Klamath & Humboldt Expedition	1855	99,096.65	61,537.48	37,559.17
San Bernardino Expedition	1855	817.03	419.99	397.04
Klamath Expedition	1856	6,190.07	2953.77	3,237.30
Modoc Expedition	1856	188,324.22	80,436.72	107,887.50
Tulare Expedition	1856	12,732.23	3,647.25	9,084.98
Klamath & Humboldt Expedition	1858 & 1859	52,184.45	31,823.94	20,360.51
Pitt River Expedition	1859	72,156.09	41,761.54	30,394.55
	Total	**$449,605.74**	**$229,987.67**	**$219,618.07**
Source: Comptroller of the State of California, *Expenditures for Military Expeditions Against Indians, 1851-1859*, (Sacramento: The Comptroller), Secretary of State, California State Archives, Located at "Roster" Comptroller No. 574, Vault, Bin 393.				

*****Amount submitted to the United States for reimbursement.

******Amount actually paid by the United States.

Table 3 sets forth the twenty-seven California laws that the State Comptroller relied upon in determining the total expenditures recapitulated in the official report. The total amount of claims submitted to State of California Comptroller for Expeditions against the Indians was $1,293,179.20.

Table 3

Laws and Joint Resolutions Passed Relative to the Indian Wars in the State of California 1851-1859			
Legislation	**Date**	**Page**	**Description of Act or Joint Resolution**
Statute	1851	489	Creating William Foster & William Rogers Pay Masters
Statute	1851	402	Creating James Burney Pay Master to pay Troops
Statute	1851	520	To negotiate a loan for the War Fund $500,000
Joint Resolution	1851	530	To Establish Forts on our Borders
Joint Resolution	1851	532	Directing Adjutant General to enter names on Muster Roll
Joint Resolution	1851	534	Reference to the payment of claims and informal transfers in writing
Joint Resolution	1851	535	Reference to the payment of certain claims in the Gila Expedition
Joint Resolution	1851	538	Authorizing the Pay Master of the Gila Expedition to pay claims
Joint Resolution	1851	539	For the Benefit of the Citizens of Los Angeles County
Statute	1852	59	Authorizing the Treasurer to issue Bonds for $600,000
Statute	1852	61	Authorizing and requiring Board of Examiners to settle with William Rogers
Statute	1852	250	For the relief of James S. Bolen
Statute	1852	261	For the relief of Jacob C. Kore
Statute	1852	262	For the relief of John G. Warrin
Statute	1853	79	For the relief of Thomas A. Wilton, M.D.
Statute	1853	95	To pay troops under Captain Wright S. McDermott $23,000
Statute	1853	97	For the relief of Beverly C. Sanders
Statute	1853	130	For the relief of John C. Johnson
Statute	1853	134	Additional War Fund $23,000
Statute	1853	154	For the relief of A.D. Blanchard and Samuel Stephens
Statute	1853	177	Secretary of State constituted one of the Board of Examiners
Statute	1853	177	Providing for the pay and compensation of Major James Burney
Statute	1853	200	For the relief of John Brown $1,150
Statute	1853	225	Payment of the Fitzgerald Volunteers
Statute	1853	268	For the relief of John W. Jackson
Joint Resolution	1853	310	General Statement of War Debt to be made out
Statute	1854	171	For the relief of Powell Weaver
Source: Comptroller of the State of California, *Expenditures for Military Expeditions Against Indians, 1851-1859*, (Sacramento: The Comptroller), Secretary of State, Califomia State Archives, Located at "Roster" Comptroller No. 574, Vault, Bin 393.			

1860: THE LEGISLATURE'S MAJORITY AND MINORITY REPORTS ON THE MENDOCINO WAR

In 1860, the California Legislature created a Joint Special Committee on the Mendocino Indian War to investigate incidents of Indian stealing and killing of settlers' stock, and alleged atrocities committed by whites against the Indians.*

The Joint Special Committee traveled throughout Mendocino County and adjacent locations taking depositions and testimony of prominent settlers in the region. This testimony is part of the official public record, along with the committee's majority and minority reports about the events.

The Majority Report of the Joint Special Committee

O'Farrell, Dickinson, Maxon and Phelps were authors of the Majority Report. The following are excerpts of the majority's findings, conclusions, and recommendations.

> In Mendocino County…the Indians have committed extensive depredations on the stock of the settlers…The result has been that the citizens, for the purpose of protection to their property, have pursued the tribes supposed to be guilty to their mountain retreats, and in most cases have punished them severely. Repeated stealing and killing of stock, and an occasional murder of a white man, has caused a repetition of the attacks upon the offenders with the same results. The conflict still exists; Indians continue to kill cattle as a means of subsistence, and the settlers in retaliation punish with death. Many of the most respectable citizens of Mendocino County have testified before your committee that they kill Indians, found in what they consider the hostile districts, whenever they lose cattle or horses; nor do they attempt to conceal or deny this fact. Those citizens do not admit, nor does it appear by the evidence, that it is or has been their practice or intention to kill women or children, although some have fallen in the indiscriminate attacks of the Indian rancherias. The testimony shows that in the recent authorized expedition against the Indians in said county, the women and children were taken to the reservations, and also establishes the fact that in the private expeditions this rule was not observed, but that in one instance, an expedition was marked by the most horrid atrocity; but in justice to the citizens of Mendocino County, your committee say that the mass of the settlers look upon such act with the utmost abhorrence…

---

* The Joint Special Committee was comprised of Jasper O'Farrell (Sonoma, Marin, Mendocino), and W.B. Dickinson (El Dorado), as the Senate Committee. Joseph B. Lamar (Mendocino, Sonoma), William B. Maxon (San Mateo) and Abner Phelps (San Francisco) comprised the House Committee. Don A. Allen, *Legislative Sourcebook: The California Legislature and Reapportionment, 1849-1965*, (Sacramento: Assembly of the State of California, 1965), 364, 374, 450, 456.

> Accounts are daily coming in from the counties on the Coast Range, of sickening atrocities and wholesale slaughters of great numbers of defenseless Indians in that region of country. Within the last four months, more Indians have been killed by our people than during the century of Spanish and Mexican domination. For an evil of this magnitude, some one is responsible. Either our government, or our citizens, or both, are to blame…
>
> The pre-existing laws and policy of Mexico, as to the *status* of the Indian, need not have interfered with the views to be taken by our government. Mexico protected the Indian, in her own way, much more effectually than we have done. The very land upon which the aborigines of this State have dwelt, as far back as traditions reach, has been allowed by our government to be occupied by settlers, who thus have the authority of law for a forced occupation of the Indian country. A natural, humane, and proper policy would have protected the Indian in his undeniable rights to the hunting grounds of his forefathers, and would have prevented our border men from entering into a conflict which has cost both lives and property…
>
> Your committee do [sic] not think that the wrongs committed upon the Indians of California are chargeable alone to the Federal Government. The evidence appended to this report, disclose facts, from the contemplation of which the mind of peaceful citizens recoil with horror, and prompts the inquiry, if such outrages upon the defenseless are permitted by the proper authorities to go unpunished?
>
> No provocation has been shown, if any could be, to justify such acts. We must admit that the wrong has been the portion of the Indian—the blame with his white brother.
>
> The question resolves itself to this: Shall the Indians be exterminated, or shall they be protected? If the latter, that protection must come from the Federal Government, in the form of adequate appropriations of money and land; and secondly, from this State, by strictly enforcing penal statutes for any infringement upon the rights of Indians.
>
> In relation to the recent difficulty between the whites and Indians in Mendocino County, your committee desire to say that no war, or a necessity for a war, has existed, or at the present time does exist. We are unwilling to attempt to dignify, by the term "war" as slaughter of beings, who at least possess human form, and who make no resistance, and make no attacks, either on the person or residence of the citizen.[58]

The authors of the Majority Report recommended that the California Legislature pass "a law for the better protection of the Indians of California."[59]

The Minority Report of the Special Joint Committee

Lamar authored the Minority Report and dissented fundamentally from the majority's view of the events, and their recommendations. Lamar stated, "the testimony will disclose the guilty parties, and from the just indignation of outraged humanity I have no desire to screen them; but for the mass of citizens engaged in this Indian warfare, I claim that they have acted from the strongest motives that govern human action—the defense of life and property."[60]

Lamar further stated that certain tribes living outside of reservations in the region were "domesticated Indians," a great number of whom were employed by settlers, receiving "liberal compensation for their labor."[61] Lamar proposed the following general Indian policy that the State should pursue.

> The General Government should first cede to the State of California the entire jurisdiction over Indians and Indian affairs within our borders, and make such donations of land and other property and appropriations of money as would be adequate to make proper provision for the necessities of a proper management.
>
> The State should, then, adopt a general system of peonage or apprenticeship, for the proper disposition and distribution of the Indians by families among responsible citizens. General laws should be passed regulating the relations between the master and servant, and providing for the punishment of any meddlesome interference on the part of third parties. In this manner the whites might be provided with profitable and convenient servants, and the Indians with the best protection and all the necessaries of life in permanent and comfortable homes.[62]

The Mendocino War Reports and the 1860 Amendment to "An Act for the Government and Protection of Indians"

On January 19, 1860, the first version of Assembly Bill No. 65, entitled "*An Act amendatory of an Act for the Government and Protection of Indians*" was introduced in the California Legislature.[63] Assembly Bill No. 65 proposed broader apprenticeship laws than those contained in the 1850 Act. Various amendments and substitute versions of the bill found in the California State Archives Original Bill File appear to reflect the degree of debate surrounding Indian prisoners of war from expeditions, Lamar's proposed Indian policies, and more expansive Indian apprenticeship laws. Transcriptions of the proposed versions of the bill, and the original enrolled version are contained in Appendix 2 of this report.

1851-1852: California's Response to Federal Treaties Negotiated with the Indians

> Among the more immediate causes that have precipitated this state of [frontier hostilities], may be mentioned the neglect of the General Government to make treaties with [the Indians] for their lands. We have suddenly spread ourselves over the country in every direction, and appropriated whatever portion of it we pleased to ourselves, without their consent, and without compensation.
>
> Governor Peter H. Burnett, January 7, 1851[64]

From 1851 through early 1852, the U.S. Indian Commissioners, acting on behalf of the United States, negotiated 18 treaties with California Indian tribes. A number of aspects surrounding the negotiations were fraught with problems and controversy, in large part due to the ambiguous scope of authority delegated to the Commissioners by the federal government, and inadequate appropriations provided to carry out their job.[65] The treaties negotiated by the Indian Commissioners reserved to the Indians approximately 11,700 square miles, or about 7.5 million acres of land. The total amount represented seven and a half percent of the State of California.[66]

At the beginning of the 1852 California legislative session, the Legislature recognized the value of the land represented in the treaties and appointed committees to prepare joint resolutions and committee reports to recommend how California's U.S. Senators should proceed regarding the ratification of the treaties.[67] The Special Committee on the Disposal of Public Land summed up the views opposing ratification of the treaties in its report on the public domain:

> Your memorialists feel assured, from all the facts which are daily transpiring, and the state of public feeling throughout the mines, that if those treaties are ratified, without any sufficient amendments to alter their permanent disposition of the public domain, it will be utterly impossible to prevent the continued collisions between the miners and the Indians. It will not be owing to any objection of the former to the mining of the Indians in the placers; but it will be caused by the exclusive privileges attempted to be secured for Indians, to the mines always heretofore open to the labors of the white man.[68]

Instead of the treaty provisions, the Special Committee proposed a system of missions for the Indians that included

> [A]nnuities to be paid in provisions and clothing…a parcel of land to be assigned…sufficient for them to cultivate, and with every laudable means to be used to induce them to do so. Their stock of every description should be protected by law, and have the same privileges of grazing with that of our own. To the Indians, should not be denied the right of hunting,

> nor that of digging peaceably in the mines, under the same regulations which we observe.
>
> The Indians who are now residing on private lands, with the consent of the owners, or engaged in cultivating their soil, should not be disturbed in their position.. They are already in the best school of civilization…The adoption of this plan would obviate the contemplated permanent disposal of a large portion of our mineral and arable land [to the Indians].[69]

In mid-March 1852, the California Assembly (35 to 6) and Senate (19 to 4) voted to submit resolutions opposing the ratification of the treaties to California's U.S. Senators.[70]

The President submitted the treaties to the U.S. Senate on June 1, 1852. On June 7, the Senate read the President's message, and referred the treaties to the Committee on Indian Affairs. The treaties were then considered and rejected by the U.S. Senate in secret session. The treaties did not reappear in the public record until January 18, 1905, after an injunction of secrecy was removed.[71]

Early and Current Fish Protection Laws and California Indians

In 1852, the California Legislature enacted *An Act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon*. The Act prohibited any weir, dam, fence, set or stop net or obstruction to the run of salmon in any river or stream in the State. The Act also provided an important exception for California Indian tribes:

> This Act shall not apply to any of the Indian tribes, so as in any manner to preclude them **from fishing in accordance with the custom heretofore practiced** by them.[72] [emphasis added]

The original bill, Senate Bill No. 80 was introduced by Senator Hubbs on March 13, read a first and second time and referred to the Committee on Commerce and Navigation.[73] The first version of the original bill made no reference to Indian tribes. However, the Committee recommended the amendment related to Indian tribes that became law.[74]

The following Table 4 lists some examples of California laws related to fish that have accommodated Indian tribes' practices in the past and today.

Table 4

California Laws Related to Fish and California Indians		
Date	Law	Title
1852	1852 Cal. Stat. ch. 62	*An act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon*
1854	1854 Cal. Stat. ch. 70	*Amendment to An act to prohibit the erection of Weirs, or other obstructions, to the run of Salmon*
1866	1866 Cal. Stat. ch. 404	*An Act for the preservation of trout in the Counties of San Mateo and Santa Clara*
1951	1951 Cal. Stat. ch. 1486	*An act to add Section 429.8 to the Fish and Game Code, relating to the taking of fish by members of the Yurok Indian Tribe*
1955	1955 Cal. Stat. ch. 389	*An act to add Section 1418 to the Fish and Game Code, relating to hunting and fishing rights of California Indians*
1961	1961 Cal. Stat. ch. 963	*An act to amend Section 12300 of the Fish and Game Code, relating to Indians*
2002	CAL FISH & GAME CODE §7155 (1994)	*Right of members of Yurok Indian tribe to take fish from Klamath River*
2002	CAL FISH & GAME CODE §123000 (1994)	*Application of code to California Indians*

California Fish & Game Code §123000 currently provides that:

> Irrespective of any other provision of law, the provisions of this code are not applicable to California Indians whose names are inscribed upon the tribal rolls, while on the reservation of such tribe and under those circumstances in this State where the code was not applicable to them immediately prior to the effective date of Public Law 280, Chapter 505, First Session, 1953, 83d of Congress of the United States. No such Indian shall be prosecuted for the violation of any provision of this code occurring in the places and under the circumstances hereinabove referred to. Nothing in this section, however, prohibits or restricts the prosecution of any Indian for the violation of any provision of this code prohibiting the sale of any bird, mammal, fish, or amphibia.

Appendix 1 – Original Bill Material Pertaining to California Statutes, 1850 Chapter 133

This Appendix is based on a review of the enacted laws published in the *Statutes of California, First Session of the Legislature, 1849-1850*, and the Original Bill File, Chapter 133, 1850, California Secretary of State, State Archives, Location E6553, Box 1. Copies of the original documents and the transcript of the contents of Original Bill File are on file with the California Research Bureau.

The following is a combined comparison of the provisions contained in California Statutes, Chapter 133, Entitled "An Act for the Government and Protection of Indians" and the proposed bills contained in the Original Bill File. The notable differences in enacted law and proposed bill language is described in the annotated footnotes.

- Section 1. Justices of the Peace had jurisdiction in all cases of complaints "by, for, or against Indians."[*]

- Section 2. Persons or proprietors of lands where Indians resided were to permit the Indians to peaceably and unmolested live "in the pursuit of their usual avocations for the maintenance of themselves and families." Provided:

    - White persons or proprietors could apply to the Justice of the Peace to "set off to such Indians a certain amount of land…a sufficient amount…for the necessary wants of such Indians, including the site of their village or residence, if they [the Indians] so prefer[red] it."
    - In no case was "such selection [of land to] be made to the prejudice of such Indians," nor were the Indians to "be forced to abandon their homes or villages where they…resided for a number of years."[†]

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[*] Senate Bill No. 54 introduced by Senator Chamberlin, at the request of Senator Bidwell, provided for Justices of the Peace for Indians. These Justices of the Peace were to be elected by the Indians directly, at the order and direction of the Court of Sessions. Pursuant to the language in the bill, the Court of Sessions provided Inspectors of Elections to discharge the same duties as county election inspectors. The bill also provided that the inspectors "procure one or more interpreters to be at the polls during the election who shall ask every Indian who is entitled to vote, whom he prefers for Justice for the Indians the ensuing year, and his vote shall be recorded for the person he prefers." This language was not contained in the bill proposed by the Assembly, nor the final law enacted in 1850.

[†] Sections 5 through 7 of Senate Bill 54 contained similar language but gave the issues in this section more comprehensive treatment than what appears in the enacted law. Bill No. 54: 1) permitted Indians "*and their descendents*" to reside on such lands; 2) defined "usual avocations" as "hunting, fishing, gathering seeds and acorns for the maintainance [sic] of themselves and families;" and 3) stated that "in no case shall [I]ndians be forced to abandon their village sites where they have lived *from time immemorial*." Emphasis added.

- Either party feeling aggrieved could appeal the Justice of the Peace's decision to the County Court.

- Section 3. "Any person having or hereafter obtaining a minor Indian, male or female, from the parents or relations of such Indian minor, and wishing to keep it…**shall go before a Justice of the Peace** in his Township, with the parents or friends of the child, and if **the Justice of the Peace becomes satisfied** that no compulsory means have been used to obtain the child from its parents or friends, **shall enter on record, in a book kept for that purpose**, the sex and probable age of the child, **and shall give to such person a certificate, authorizing** him or her to have **the care, custody, control and earnings of such minor**, until he or she obtain the age of majority. Every male Indian shall be deemed to have attained his majority at eighteen, and the female at fifteen years.[*] (Original text with emphasis added)

- Section 4. A person that neglected to "clothe or suitably feed…or inhumanly" treated a minor Indian in his care, could be fined not less than ten dollars, if convicted. The Justice of the Peace could place the minor Indian "in the care of some other person, giving him the same rights and liabilities that the former master…was entitled and subject to."[†]

- Section 5. "Any person wishing to hire an Indian [had to] go before the Justice of the Peace with the Indian and make such contract as the Justice may approve." The Justice filed the written contract in his office. The contract was binding between the parties; "but no contract between a white man and an Indian, for labor [was] otherwise…obligatory on the part of the Indian."[‡]

- Section 6. Indians or white persons could make complaints before a Justice of the Peace. However, "in no case [could] a white man be convicted of any offen[s]e upon the testimony of an Indian, or Indians."

- Section 7. Any person convicted of forcibly "conveying" an Indian from his home or compelling an Indian to work against his will, would be fined at least fifty dollars.

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[*] The original Assembly Bill 129 defined the age of majority for a male Indian at twenty years, and for a female at seventeen years, but was lined out and changed to the ages contained in Section 9 of Senate Bill 54. Also, Section 8 of Senate Bill 54 mandated that the "name (if any) given by the person taking the child" was also to be included in the Justice of the Peace's record book. This language is absent from any version of the Assembly bill or the law.

[†] Section 12 of Senate Bill 54 made the fine to be not less than 50 nor more than 200 hundred dollars. This section also provided that the minor Indian could "return to his or her parents or relatives," language absent from the enacted law.

[‡] This section is absent from Senate Bill 54.

- Sections 8 and 18. Justices of the Peace were required every six months to report all moneys and fines collected to the county Court of Sessions and pay them over to the Treasurer, who was to keep the monies in an "Indian fund."

- Sections 9. Justices of the Peace were to "instruct the Indians in their neighborhood in the laws which related to them." Any tribes or villages refusing or neglecting to obey the laws could be reasonably chastised.

- Section 10. Any person was subject to fine or punishment if they set the prairie on fire, or refused "to use proper exertions to extinguish the fire."*

- Sections 11 – 13. If an Indian committed "an unlawful offen[s]e against a white person," the person offended was not allowed to mete out the punishment. However, the offended white person could, without process, bring the Indian before the Justice of the Peace, and on conviction the Indian was punished according to provisions in the Act. Justices could require "chiefs and influential men of any village to apprehend and bring before them any Indian charged or suspected of an offen[s]e."

- Section 14. If a convicted Indian was punished by paying a fine, any white person, with the consent of the Justice, could give bond for the Indian's fine and costs. In return, the Indian was "compelled to work until his fine was discharged or cancelled. The person bailing was supposed to "treat the Indian humanely, and clothe and feed him properly." The Court decided "the allowance given for such labor."

- Section 15. Anyone convicted of providing intoxicating liquors to an Indian was fined not less than 20 dollars.

- Sections 16-17. An Indian convicted of stealing horse, mules, cattle or "any valuable thing," could receive 25 lashes with a whip or be fined up to 200 dollars. The punishment was at the discretion of the Court or a jury. The Justice could appoint a white man or an Indian to whip the Indian, but was not to permit "unnecessary cruelty" in executing the sentence.

- Section 19. If a white person made an application to a Justice of the Peace for confirmation of a "contract with or in relation to an Indian," had to pay two dollars per each contract determination.

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* The original language of this section was changed from "Indian" to "any person" in the final version of AB 129.

- Section 20. Any Indian able to work and support himself in some honest calling, not having wherewithal to maintain himself, who shall be found loitering and strolling about, or frequenting public places where liquors are sold, begging, or leading an immoral or profligate course of life, shall be liable to be arrested on the complaint of any resident citizen of the county, and brought before any Justice of the Peace of the proper county, Mayor or Recorder of any incorporated town or city, who shall examine said accused Indian, and hear the testimony in relation thereto, and if said Justice, Mayor, or Recorder shall be satisfied that he is a vagrant…he shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public notice given as he shall direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by the provisions of this Act, regulating guardians and minors, during the time which he has been so hired. The money received for his hire, shall, after deducting the costs, and the necessary expense for clothing for said Indian, which may have been purchased by his employer, be, if he be without a family, paid into the County Treasury, to the credit of the Indian fund. But if he have a family, the same shall be appropriated for their use and benefit: *Provided*, that any such vagrant, when arrested, and before judgment, may relieve himself by giving to such Justice, May, or Recorder, a bond, with good security, conditioned that he will, for the next twelve months, conduct himself with good behavior, and betake to some honest employment for support.

Appendix 2 - Original Bill Material Pertaining to California Statutes 1860, Chapter 231

This Appendix contains a verbatim transcription of the Original Bill Materials, located in the California State Archives, that are related to the 1860 amendment of the Act for the Government and Protection of Indians passed April 22, 1850. The first document is the initial Assembly Bill No. 65 introduced for consideration on January 19, 1860. The second document is a "substitute" Assembly Bill No. 65, introduced for consideration on February 17, 1860. The third document is the engrossed bill that was enrolled on April 6, 1860.

The first page of each transcribed document in this Appendix contains the legislative history of the bill. This information is handwritten and originally signed by each legislative officer on the front page of the original documents. The language originally contained in the proposed bills, but subsequently deleted from the text during the course of the legislative process is noted in brackets.

[First Document Transcription Begins Here]

Assembly Bill No. 65

An act amendatory of an act entitled an act for the Government and Protection of Indians passed April 22, 1850

In Assembly January 19, 1860
Read first & second time
Referred to Com. on Indian Affairs

Weston
Asst Clerk

February 11, 1860, Reported with amendt & passage
Recommended as amended

Weston
Asst Clk

Feb. 13, 1860
Taken from file
& referred to Jud[iciary] Com[mittee]

Weston
Asst Clk

Feb 17, 1860, Substitute reported & recommended

Weston
Asst Clk

Feb 27, 1860: Substituted adopted & ordered printed

Weston
Ass't Clk

An Act amendatory of an act entitled An Act for the Government and Protection of Indians passed April 22, 1850

The People of the State of California represented in Senate and Assembly do enact as follows:

Section 1st , Section third of said Act is hereby amended so as to read as follows

Section 3d Any person having or hereafter obtaining any Indian child or children male or female from the parents or relations of such child or children [stricken from text: with their] and wishing to domesticate said child or children and any person desiring to obtain any Indian or Indians either children or grown persons that may have been taken prisoner or prisoners [stricken from text: and wishing to domesticate either children or grown persons in any expedit] of war [stricken from text: in any] and wishing to domesticate said Indians, such person shall go before a Justice of the Peace of the County in which such Indians may [stricken from text: be] reside at the time and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the said child or children from its parents or friends or that the said child or children or other Indian or indians of either sex have been taken and are held as a prisoner or prisoners of war, he shall enter on record, in a book kept for that purpose the sex and probable age of the child or children or other indians, and shall give to such person a certificate authorizing him or her to have the care custody control and earnings of such child or children or other Indians, for and during the following term of years, such children as are under twelve years of age, until they attain the age of twenty five years, such children as are over twelve and under eighteen years of age until they attain the age of thirty years, and such indians as may be over the age of eighteen years, for and during the term of ten years then next following the date of said certificate, any person or persons [stricken: being] having any indian or indians in his or their possession as such prisoners shall have the preference to domesticate as many of such indians as he or they may desire for their own use, every indian either male or female in the possession or under the control of any person under the provisions of this act shall be taken and deemed to be a minor Indian, [stricken from text: for such]

Sec. 2nd Section seventh of said act is hereby amended so as to read as follows,

Sec 7. If any person shall forcibly convey any Indian from any place without this State to any place within this State, or from his or her home within this State, or compel him, or her, to work or perform any services against his or her will,

Except as provided in this act, he or they may be upon conviction fined in any sum not less than fifty dollars, nor more than five hundred dollars, at the discretion of the Court

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Substitute for Assembly Bill No. 65

An act amendatory of an act entitled An Act for the Government & Protection of Indians passed April 22, 1850

Feb 17, 1860. Reported as substitute for Assembly Bill No. 65 & passage recommended

Weston
Ass't Clk

Feb. 27, 1860, adopted & ordered printed.

Weston
Ass't Clk

Mch 10, 1860, amended, ___ suspended, considered engrossed read third time and passed

Weston
Asst Clk

Judiciary Committee

An Act amendatory of An Act Entitled "An Act for the Government and Protection of Indians passed April 22 1850

The People of the State of California represented in Senate and Assembly, do enact as follows:

Section 1st Section third of said Act is hereby amended so as to read as follows:

> Section 3: County and District Judges in the respective counties of this State shall by virtue of this Act have full power and authority, at the instance and request of any person having or hereafter obtaining any Indian child or children male or female under the age of fifteen years from the parents or person or persons having the care or charge of such child or children with the consent of such parents or person or persons having the care or charge of any such child or children, or at the instance and request of any person desirous of obtaining any indian or Indians whether children or grown persons that may be held as prisoners of war, or at the instance and request of any person desirous of obtaining any vagrant Indian or Indians as have no settled habitation or means of livelihood and have not placed themselves under the protection of any white person, to bind and put out such Indians as apprentices to trades --- husbandry or other employments as shall to them appear proper, and for this purpose shall execute duplicate Articles of Indenture of Apprenticeship on behalf of such Indians, which Indentures shall also be executed by the person to whom such Indian or Indians are to be indentured: one copy of which shall be filed by the County Judge [stricken from text: with the] in the Recorders Office of the County and one copy retained by the person to whom such Indian or Indians may be indentured; such Indenture shall authorise [sic] such person to have the care custody control and earnings of such Indian or Indians and shall require such person to clothe and suitably provide the necessaries of life, for such Indian or Indians for and during the term for which such Indian or Indians shall be apprenticed, and shall contain the sex name and probable age of such Indian or Indians, Such Indentures may be for the following terms of years, such children as are under fourteen years of age, if males until they attain the age of twenty five years; if females until they attain the age of twenty one years; such as are over fourteen and under twenty years of age if males until they attain the age of thirty years; if females until they attain the age of twenty five years; and such Indians as may be over the age of twenty years for and during the term of ten years then next following the date of such Indenture at the discretion of such Judge. Such Indians as may be indentured under the provisions of this section shall be deemed within such provisions of this act as are applicable to minor Indians

Section 2d Section seventh of said act is hereby amended so as to read as follows,

Section 7 If any person shall forcibly convey any Indian from any place without this State to any place within this State or from his or her home within this State, or compel him or her to work or perform any service against his or her will except as provided in

this Act he or they shall upon conviction thereof be fined in any sum not less than one hundred dollars nor more than five hundred dollars before any court having jurisdiction at the discretion of the Court, and the collection of such fine shall be enforced as provided by law in other criminal cases, one half to be paid to the prosecutor and one have [sic] to the County in which such conviction is had

[Second Document Transcription Ends Here]

[Third Document Transcription Begins Here]

Substitute for Assembly Bill No. 65

An act amendatory of an act entitled an act for the government & protection of Indians passed April 22, 1850

Feb 17, 1860 reported as substitute for assembly Bill No. 65 & passage recommended

Weston
Asst Clk

Feb 27, 1860, adopted and ordered printed

Weston
Asst. Clk

March 10, 1860 Amended rules suspended, considered
Engrossed read third time and passed

Weston
Asst Clk

E.W. Casey Engrossing Clerk
231 [in pencil]

Judiciary Committee

March 13th 1860
Read first and second times and refd to the Committee on Federal Relations

Williamson
Asst Secty

March 23rd 1860

Reported back and passage recommended & placed on file April 6th
Taken up read a third time & passed

Enrolled April 6th 1860
H.C. Kibbe
Enrolling Clerk

Chap 231 [in pencil]

An Act amendatory of an act Entitled "An Act for the Government and Protection of Indians passed April 22d 1850.

The People of the State of California represented in Senate and Assembly do enact as follows.

Section 1. Section third of said Act, is hereby amended so as to read as follows;

Section 3d. County and District Judges in the respective Counties of the State shall by virtue of this act have full power and authority, at the instance and request of any person having or hereafter obtaining any Indian child or children male or female under the age of fifteen years, from the parents or person or persons having the care or charge of such child or children with the consent of such parents or person or persons having the care or charge of any such child or children, or at the instance and request of any person desirous of obtaining any Indian or Indians, whether children or grown persons that may be held as prisoners of war, or at the instance and request of any person desirous of obtaining any vagrant Indian or Indians as have no settled habitation or means of livelihood, and have not placed themselves under the protection of any white person, to bind and put out such Indians as apprentices to trades husbandry or other employments as shall to them appear proper, and for this purpose shall execute duplicate Articles of Indenture of Apprenticeship on behalf of such Indians, which Indentures shall also be executed by the person to whom such Indian or Indians are to be Indentured; one copy of which shall be filed by the County Judge, in the Recorders office of the County, and one copy retained by the person to whom such Indian or Indians may be Indentured, such Indentures shall authorize such person to have the care custody control and earnings of such Indian or Indians and shall require such person to clothe and suitably provide the necessaries of life for such Indian or Indians, for and during the term for which such Indian or Indians shall be apprenticed, and shall contain the sex name and probable age of such Indian or Indians, such indentures may be for the following terms of years; such children as are under fourteen years of age, if males until they attain the age of twenty five years; if females until they attain the age of twenty one years; such as are over fourteen and under twenty years of age, if males until they attain the age of thirty years; if females until they attain the age of twenty five years, and such Indians as may be over the age of twenty years for and during the term of ten years thru next following the date of such indenture at the discretion of such Judge, such Indians as may be indentured under the provisions of this Section, shall be deemed within such provisions of this Act, as are applicable to minor Indians

Section 2. Section Seventh of said act is hereby amended so as to read as follows:

> Section 7. If any person shall forcibly convey any Indian from any place without this State, to any place within this State, or from his or her home within this State, or compel him or her to work or perform any service against his or her will except as provided in this act, he or they shall upon conviction thereof, be fined in any sum, not less than one hundred dollars nor more than five hundred dollars, before any Court having jurisdiction at the discretion of the Court, and the collection of such fine shall be enforced as provided by law in other criminal cases, on half to be paid to the prosecutor, and one half to the County in which such conviction is had.

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California Secretary of State, California State Archives
Original Bill File AB 65 1860
Location: E6562 Box 1

Transcribed July 29, 2002 by Kimberly Johnston Dodds, California Research Bureau

Appendix 3 - Court of Sessions

The Courts of Sessions were the earliest county-level courts of record* that adjudicated criminal offenses. The first Courts of Sessions in California were authorized by the state Constitution:

> There shall be elected in each of the organized counties of this State, one County Judge, who shall hold his office for four years…The County Judge, with two Justices of the Peace, to be designated according to law, shall hold Courts of Sessions with such criminal jurisdiction as the Legislature shall prescribe, and he shall perform such other duties as shall be required by law.[75]

The two Justices of the Peace (Associate Justices of the Courts of Sessions) were chosen by all of the Justices of the Peace from within the county.[76]

The Legislature conferred upon the Courts of Sessions jurisdiction over "all cases of assault, assault and battery, breach of the peace, riot, affray, and petit larceny, and over all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or both such fine and imprisonment."[77] The jurisdiction of the Courts of Sessions also extended to grand jury investigations of public offenses committed or triable in the their respective counties, except murder, manslaughter, arson and other crimes that were punished by death. These courts also heard and decided appeals from lower courts that were not courts of record -- the justices', recorders', and mayors' courts. The Courts of Sessions did not have jurisdiction to try indictments against justices of the peace.[78]

In counties that did not have a board of supervisors, the Courts of Sessions also had the following powers to:

- Make orders and decisions respecting county property, including care and preservation;
- Examine, settle and allow all accounts legally chargeable against the county;
- Direct assessing the value of real and personal property taxes;
- Examine and audit accounts of all county officers;
- Control and manage public roads, turnpikes, ferries, canals, and bridges within the county;

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* A court of record is a court whose proceedings are recorded in some manner of permanence at the same time that the proceedings take place. See *Cal Jur* vol. 16, part 1 3d ed. (San Francisco: Bancroft-Whitney Co. 1983, 2002 supp.) 300-301.

- Divide the county into townships, including changing township boundaries when required; and
- Establish and change election precincts.[79]

In 1863, the Legislature abolished the Courts of Sessions. The County Courts then maintained similar jurisdiction as the Courts of Sessions.[80]

Appendix 4 – 1861 Indian Article of Indenture

Feb 4, 1861

SACRAMENTO DAILY UNION, MONDAY,

O PRINTING.

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INDIAN SERVITUDE—WORK FOR THE NEW INDIAN AGENT.—The attention of the new Indian Agent, as well as that of the Legislature, is called to the communication in another part of this day's UNION, in which the beauties of the Indian apprenticeship system established by the Legislature of 1860 are exemplified in the transactions of one of the late Sub-Agents and his partner, on the lands adjoining the Nome Lackee Reservation. From a copy of an indenture there shown, and which purports to have been filed in the County Clerk's office of Tehama county in December last, it appears that Geiger & Titus, late Government agents or employes on the Reservation, have caused the County Judge, N. Hall, to bind out to them a considerable proportion of the best Indians, male and female, belonging to the Reserve. The process by which they effected this, as near as we can gather, was to apprentice them by virtue of their right as custodians of the Indians, causing the indentures to be made out to Messrs. Geiger & Titus, as private individuals, engaged in the ranching business.

The law of last year was passed under a high-lobby pressure, no doubt for the special accommodation of the numerous parties interested in Indian war claims and Indian subjugation, who besieged the Legislature. It allows County and District Judges to apprentice Indians, both children and adults, at the "instance and request" of parties having them in charge, or of parties desirous of taking up vagrant Indians, on the sole condition that they shall promise to suitably clothe and feed them during the term of their apprenticeship. The Act authorizes as complete a system of slavery, without any of the checks and wholesome restraints of slavery, as ever was devised. And Geiger & Titus appear to have availed themselves to the utmost extent of its provisions. They have a large ranch adjoining the Reservation, and they have selected, we are told, the likeliest workmen on the Government property for their servants, leaving the Federal authorities to

NEWSPAPERS IN THE LEGISLATURE.—It worth a passing moment to glance over t order-book of the Sergeant-at-Arms in eith branch of the Legislature, and observe how t newspaper preferences of the members inclin or at least how they distribute their patronag among the "five daily newspapers or the equivalent in weeklies," which the law allow them. Taking the list prepared by the Assem bly official, and enumerating the journals in th order of their circulation, we have the follow ing newspapers of which over five are taken b the members: Sacramento DAILY UNION (inde pendent), 89; Sacramento WEEKLY UNION, 95 San Francisco Spirit of the Times (sportin weekly), 51; San Francisco Bulletin (independ ent), 40; San Francisco Monitor (Catholi weekly), 35; Marysville Daily Express (secess sion), 27; Yreka Union (Douglas last year weekly), 26; San Francisco Herald (secession) 21; Shasta Courier (Douglas, weekly), 20; San Joaquin Republican (secession), 19; Marysville Democrat (Douglas), 18; Sierra Democrat (weekly, Douglas) 16; Mariposa Gazette (weekly, secession), 15; San Francisco Daily Alta California (independent), 15; San Francisco Daily Times (Republican), 14; Sonora Union Democrat (weekly, secession), 13; Marysville Daily Appeal (Republican), 13; Coloma Times (weekly, Douglas), 12; Mountain Democrat (weekly, secession), 12; Sacramento News (independent), 11; Pacific Methodist (weekly, Methodist Episcopal South), 10; Golden Era (weekly, literary), 10; California Farmer, 10; Nevada Journal (weekly, Republican), 10; Petaluma Argus (weekly, Republican), 8; Butte Record (weekly, Douglas), 8; Sacramento Daily Bee (independent), 7; Alameda Herald, weekly, (Republican), 7; San Andreas Independent, weekly (independent), 7; San José Mercury, weekly (Republican), 6; Napa Reporter, weekly (independent), 5; Placer Herald, weekly (secession), 5; San Francisco Call (independent), 5.

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as we can gather, was to apprentice them by virtue of their right as custodians of the Indians, causing the indentures to be made out to Messrs. Geiger & Titus, as private individuals, engaged in the ranching business.

The law of last year was passed under a high-lobby pressure, no doubt for the special accommodation of the numerous parties interested in Indian war claims and Indian subjugation, who besieged the Legislature. It allows County and District Judges to apprentice Indians, both children and adults, at the "instance and request" of parties having them in charge, or of parties desirous of taking up vagrant Indians, on the sole condition that they shall promise to suitably clothe and feed them during the term of their apprenticeship. The Act authorizes as complete a system of slavery, without any of the checks and wholesome restraints of slavery, as ever was devised. And Geiger & Titus appear to have availed themselves to the utmost extent of its provisions. They have a large ranch adjoining the Reservation, and they have selected, we are told, the likeliest workmen on the Government property for their servants, leaving the Federal authorities to take care of the infirm and crippled. The names of seventy-two males and females are given in the indentures, and Geiger & Co. do not appear to have been over careful in complying with the terms of the law, generous as its provisions have proved to them. The Indian women under the age of twenty are apprenticed for the full term of the men, which is contrary to the regulations contained within the Act of April, 1860.

The times are propitious for a change in this misnamed law "for the government and protection of Indians"—a change which shall deprive the parties in the above transaction, and others who have sought to obtain control of the persons of Indians under similar circumstances, of the unlimited power they hold under the Act of last year. The new Agent is now in his place, and the Legislature of 1861 differs materially in its composition from the one of the year preceding. At all events, let us have an investigation of the matter brought to notice in another column, and a little light, if light can be obtained, on the general operation of the law under which parties are seeking to establish a system of domestic servitude in our midst.

A Selfish Move.—A day or two since

weekly), 26; San Francisco Herald (secession) 21; Shasta Courier (Douglas, weekly), 20; San Joaquin Republican (secession), 19; Marysville Democrat (Douglas), 18; Sierra Democrat (weekly, Douglas) 16; Mariposa Gazette (weekly, secession), 15; San Francisco Daily Alta California (independent), 15; San Francisco Daily Times (Republican), 14; Sonora Union Democrat (weekly, secession), 13; Marysville Daily Appeal (Republican), 13; Coloma Times (weekly, Douglas), 12; Mountain Democrat (weekly, secession), 12; Sacramento News (independent), 11; Pacific Methodist (weekly, Methodist Episcopal South), 10; Golden Era (weekly, literary), 10; California Farmer, 10; Nevada Journal (weekly, Republican), 10; Petaluma Argus (weekly, Republican), 8; Butte Record (weekly, Douglas), 8; Sacramento Daily Bee (independent), 7; Alameda Herald, weekly, (Republican), 7; San Andreas Independent, weekly (independent), 7; San José Mercury, weekly (Republican), 6; Napa Reporter, weekly (independent), 5; Placer Herald, weekly (secession), 5; San Francisco Call (independent), 5. There are besides these the names of thirty-seven other papers which are ordered to the address of members singly, or which have only three or four subscribers on the Sergeant's roll. We have classed as secession papers those journals which either declare the right of a State to secede or else oppose coercion on the part of the Federal power. The times do not admit of hair-drawn distinctions in political newspaper nomenclature any more than in partisan professions.

In the Senate the newspapers of which over five are ordered, classified according to the above arrangement, are as follows: Sacramento Daily Union, 36; Weekly Union, 22; San Francisco Daily Herald, 22; Spirit of the Times, 22; Alta California, 16; San Francisco Bulletin, 16; Marysville Express, 14; San Francisco Monitor, 13; Pacific Methodist, 9; Butte Record, 6; Yreka Union, 6; National Democrat, 6; Democratic Signal (Douglas Democrat), 6; Mountain Democrat, 6; San Francisco Times, 5.

Speech of Z. Montgomery.—The Marysville *Express* publishes the speech of Z. Montgomery, made recently in the Assembly, on the subject of the Broderick expunging resolutions, and from the notes of the Union reporter. While

SACRAMENTO DAILY UNION, MONDAY, FEBRUARY 4, 1861.

INDENTURING INDIANS—A NIGER SYSTEM OF SLAVERY.

RED BLUFF, JANUARY 30, 1861.

EDITORS UNION: As the meaning and much, as well as the constitutionality of the Act passed last Winter in regard to indenturing Indians without their consent, or even apprising them of the fact, but by simply calling on the County or District Judge, with a list, and having him sign it officially—has been doubted by many, I send you a copy of an indenture, now on file in the Clerk's office in Tehama county. The Indians named therein are not prisoners of war, or vagrant Indians, but belong to the Nome Lackee tribe, that have been taught to work, at a cost to Government of about three hundred thousand dollars. And the persons to whom they are indentured have been receiving as salaries from Government, four hundred and seventy-five dollars per month, for nearly four years past.

It may be true that they were in their possession at that date, as they claimed to be in possession of the Reserve. They were most of them on the Reservation, and not ten per cent. of them have ever seen their humane (?) guardian that, "at the instance and request" of Titus and Geiger, made them slaves, without the semblance of a bond to clothe, feed and protect them.

I hope our representatives from this county will attend to this law, and have it either explained or repealed. W.

"This indenture, made this 29th day of December, 1860, witnesseth: that I, Newel Hall, Judge of the county of Tehama, State of California, under and by virtue of the provisions of the laws of the State of California conferring such power, have this day, on application of F. J. Titus and V. E. Geiger, partners in in ranching in the county and State aforesaid, and who now have charge of and who are in possession of certain Indians hereinafter named, and at their request and instance do hereby, by virtue of the authority in me vested as said County Judge, bind and apprentice to them the following named and described Indians, to wit:

Name.	Age.	Till When Bound.
Simon	17	30 years of age.
Big Jack	20	30 do do
Jackass	20	30 do do
Jack White	18	30 do do
Joe	15	30 do do
Elijah	18	30 do do
Judas	13	30 do do
Ben	17	30 do do
Tebalth	19	30 do do
Doc	13	30 do do
Peter	19	30 do do
Big Sam	13	30 do do
Number Two	17	30 do do
Big Abe	19	30 do do
Darly	18	30 do do
Tony	14	30 do do
Ambrose	16	30 do do
Bob	13	30 do do
Bony	16	30 do do
Henry	17	30 do do
Jordan	18	30 do do
Prince	18	30 do do
Yolo Bailey	15	30 do do
Little Sam	12	25 do do
Job	12	25 do do
Billy	12	25 do do
Nancy—(she)	15	30 do do
Susan	15	30 do do
Mary	18	30 do do
Laura	10	25 do do
Betsey	15	30 do do
Julia	17	30 do do

DANIEL WEBSTER'S FIRST CASE.—Ebenezer Webster, father of Daniel, was a farmer. The vegetables in his garden suffered considerably from the depredations of a woodchuck, whose hole and habitation was near the premises. Daniel, some ten or twelve years old, and his brother Ezekiel, had set a steel trap, and at last succeeded in capturing the transgressor. Ezekiel proposed to kill the animal and end all further trouble with him; but Daniel looked with compassion upon the meek, dumb captive, and offered to let him go. The boys could not agree, and each appealed to their father to decide the case.

"Well, my boys," said the old gentleman, "I will be judge. There is the prisoner," pointing to the woodchuck; "and you shall be the counsel, and plead the case for and against his life and liberty."

Ezekiel opened the case with a strong argument, urging the mischievious nature of the animal, the great harm he had already done—said that much time and labor had been spent in his capture, and now, if he was suffered to live and go at large he would renew his depredations, and be cunning enough not to suffer himself to be caught again, and that he ought now to be put to death; that his skin was of some value, and that, make the most of him they could, it would not repay half the damage he had already done. His argument was ready, practical, and to the point, and of much greater length than our limits will allow us to occupy in relating the story.

"Now, Daniel, it's your turn; I'll hear what you've got to say."

It was his first case. Daniel saw that the plea of his brother had sensibly affected his father, the judge; and as his large, brilliant black eyes looked upon the soft, timid expression of the animal, and as he saw it tremble with fear in its narrow prison house, his heart swelled with pity, and he appealed with eloquent words that the captive might again go free. God, he said, had made the woodchuck; he made him to live, to enjoy the brilliant sunshine, the pure air, the free fields and woods. God has not made him for anything in vain; the woodchuck has as much right as any other living thing; he was not a destructive animal, as the fox or wolf was; he simply ate a few common vegetables, of which they had plenty, and could well spare a part; he destroyed nothing, except the little food he needed to sustain his humble life; and that little food was as sweet to him, and as necessary to his existence, as was to them the food on their mother's table. God furnished their own food; he gave them all they possessed; and would they not spare a little for the dumb creature, who really had as much right to his small share of God's bounty, as they themselves had to their portion? Yes, more, the animal had never violated the laws of his nature or the laws of God, as man often did, but strictly followed the simple instincts he had received from the hands of the Creator of all things. Created by God's hands, he had a right from God to life, to food, to liberty; and then had no right to deprive him of either. He alluded to the mute but earnest pleadings of the animal for that life, as sweet, as dear to him as their

PRAYER MEETING IN A STO

BY BAYARD TAYLOR.

President Buchanan's last Proclamati

See Pres... the sou'-sou'-west,
A gale came up ... rather;
'Twas fierce November ... ...ebors,
But the ship had fell much a shore ...
And the planks still held together,
And thus, though the howling tempest shows
No signs of diminution,
The passengers said, "We'll trust our ship,
The stanuch old Constitution."

The captain stood on the quarter deck—
"The seas," he said, "they batter us
'Twas my watch below in the former gale—
I doubt if we'll weather Hatteras.
The wind on the one side blows me off,
The current sets me shoreward;
I'll just lay to between them both,
And seem to be going forward."

"Breakers ahead," cried the watch on the bo
"Hard up!" was the first mate's order;
"She feels the ground swell," the passengers
"And the seas already board her!"
The foresail split in the angry gust;
In the hold the ballast shifted;
And an old tar said, "If Jackson steered
We shouldn't thus have drifted!"

But the captain cried, "Let go your helm!"
And then he called to the bo'swain:
"Pipe all hands to the quarter deck,
And we'll save her by Devotion!"
The first mate hurled his trumpet down—
The old tars cursed together,
To see the good ship helpless roll
At the sport of wave and weather,

The tattered sails are all shock,
Yards crack, and masts are started;
And the captain weeps and says his prayers,
Till the hull be 'mid-ships parted;
But God's on the steersman's side—
The crew are in revolution;
The wave that washes the captain off
Will save the Constitution!

NEW YORK, Dec. 18, 1860.

A WARM BATH WAGER—THE QUESTION ENDURANCE TESTED.—Smith was a man ... never permitted himself to be outdone—he co... do whatever anybody else could. Smith ... Brown in a bath room, and Brown, knowing ... other's peculiar conceit, said that he (Bro... could endure a hotter bath than any living m... Thereat Smith fired up, and a bet was ma... Two bathing tubs were prepared with six inc... of cold water in each. The fellows stripp... and separated by a cloth partition, each got ... and let on the hot water at the word—the wa... being who should stay in the longest with ... hot water running. Smith drew up his feet ... far as possible from the boiling stream, wh... Brown pulled out the plug in the bottom of ... tub. After about half a minute quoth Smit...

"How is it, Brown—pretty warm?"

"Yes," says the other, "its getting almigh... hot, but I guess I can hold out a minute, yet."

"So can I," answered Smith. "Scis-s-s!—squash!—lightning!—it's awful!"

Fifteen seconds, equal to half an hour ... Smith's imaginary watch.

"I say, over there—how is it now!"

"O! it's nearly up to the bilin' pint—O! Christopher!" answered the diabolical villai... who was lying in the empty tub, while the b... water passed out of the escape pipe.

By this time Smith was splurging about lik... a boiled lobster, and called again:

"I s-a-y, over there—how's it now?"

"Hot as the devil!" replied Brown; "but—whew! scizz-s-s!—guess I can hold out anothe... minute!"

Little Sam	12	25	do
Job	13	25	do
Billy	12	25	do
Nancy—(she)	15	30	do
Schen	15	30	do
Mary	13	30	do
Laura	10	25	do
Betsey	15	30	do
Julia	17	30	do
Myra	13	30	do
Maggie	14	30	do
Polly	15	30	do
Venus	14	30	do
Sally	17	30	do
Long Betsey	16	30	do
Dido	15	30	do
Big Sally	15	30	do
Mary Ann	13	30	do
Fanny	12	25	do
Eliza	15	30	do
Adele	13	25	do
Annie	10	30	do
Rose	17	30	do
Bill	18	30	do
Vaoy Bay	17	30	do
Andrew	12	25	do
Trowbridge	12	25	do
Cooney	12	30	do
George	18	30	do

"The conditions of this indenture are, that the said F. J. Titus and V. E. Geiger shall clothe, feed, care for and protect each of the said Indians hereinbefore mentioned, and shall do all and everything prescribed by law in regard to the Indians so apprenticed under the laws of the State. And in consideration, they shall be and are hereby entitled to the care, control, custody and earnings of said Indians, for and during the term for which each is respectively so bound, under the provisions of said law. The intent and meaning of this indenture is this: The said Newel Hall, Judge of the County of Tehama, State of California, acting for and in behalf of the Indians under the authority of the laws of said State, has so apprenticed the above named Indians to said Titus and Geiger, to be used in ranching, farming and housework.

NEWEL HALL,
"Judge of the County of Tehama, State of California.

"Copy.

F. J. TITUS,
"V. E. GEIGER."

The following are indentured to V. E. Geiger in like manner, on the same day as the above, most of whom have been taken below by him:

Breckinridge, aged twelve, bound till twenty-five years of age.
Jeff Henley, aged twelve, bound till twenty-five years of age.
Roye Pinchy, aged eighteen, bound till thirty years of age.
Tom Ledon, aged twelve, bound till twenty-five years of age.
Geo. Balger, aged twelve, bound till twenty-five years of age.
Luke, aged twenty-five, bound till thirty-five years of age.
Nicholas, aged twenty-five, bound till thirty-five years of age.
Fanny (she), aged twelve, bound till twenty-five years of age.
Peggy (she), aged eight, bound till twenty-five years of age.
Mary Pike (she), aged seventeen, bound till thirty years of age.
Lucy (she), aged eighteen, bound till thirty years of age.

Also the following to J. W. Titus, on the same day as above:

Tony, aged seventeen, bound till thirty years of age.
Henry, aged eighteen, bound till thirty years of age.
San Wan, aged ten, bound till twenty-five years of age.
Charley, aged eleven, bound till twenty-five years of age.
Julia (she) aged fifteen, bound till thirty years of age.
Isabella (she), aged ten, bound till twenty-five years of age.
Lilly (she), aged eight, bound till twenty-five years of age.
Duke (he), aged four, bound till twenty-five years of age.
Jupiter, aged ten, bound till twenty-five years of age.

W.

THE PRESIDENT OF THE SENATE.—The intelli-

he had received from the hands of the Creator of all things. Created by God's hands, he had a right from God to life, to food, to liberty; and they had no right to deprive him of either. He alluded to the mute but earnest pleadings of the animal for that life, as sweet, as dear to him as their own was to them; and the first judgment they might expect, if in selfish cruelty and cold heartlessness they took the life they could not restore again.

During this appeal tears had started to the old man's eyes, and were fast running down his sunburnt cheeks. Every feeling of a father's heart was stirred within him; he saw the future greatness of his son before his eyes, and he felt that God had blessed him and his children beyound the lot of common men. His pity and sympathy were awakened by the eloquent words of compassion, and the strong appeal for mercy; and, forgetting the Judge in the man, and the father, he sprang from his chair (while Daniel was in the midst of his argument, without thinking that he had already won the case), and turning to his older son, dashing the tears from his eyes, he exclaimed:

"Zeke, Zeke, you let that woodchuck go!"

THE ATLANTIC TELEGRAPH.—Of all the projects which have originated in the United States, France or England, for the connection of the Old and New Worlds by a submarine telegraph, that of Colonel Shaffner is just now the most promising. Under the auspices of the British Government two steamers sailed to take soundings in the Northern Ocean—her Majesty's ship Bulldog leaving the north of Scotland on the 1st of July last, under the command of Captain McClintock; and the Fox, from Cowes Road, on the 29th of the same month. Having just returned to England, the results of the expedition are fully reported in London papers, occupying several columns. Colonel Shaffner, it will be remembered, is an American, and was one of the first to propose an Atlantic telegraph; but as a rival project rose rapidly into favor, he was temporarily displaced, although earnestly contending, from the outset, that the retardation of the electric current in submarine wires determined the impracticability of working them through long distances. Upon the failure of the attempt to run a cable direct between New Foundland and Ireland, Colonel Shaffner announced his purpose to survey a northern route over Greenland, Iceland, and the Faroe Isles, and on March 1st, 1859, petitioned Congress for the assistance of Government ships. But meeting with no favorable response, application was made to Lord Palmerston, who called a deputation of influential citizens in London, on the 14th day of last May, to invoke the aid of the Government of Great Britain. The results thus far are now known. A careful examination by Captain McClintock of the depth of the sea between the various stations on the proposed route, have proved, according to the report, "altogether more favorable for the laying of a cable than those on which the former American cable was successfully submerged, the water being four hundred fathoms less in its deepest parts." Of that part of the route between Iceland and Greenland, the remarkable fact was proved, that no ice exists where, according to the most eminent authority, the sea was impenetrably covered with it. Another interesting circumstance, in a scientific point of view, is the discovery that animal life exists at great depths in the ocean, thus setting at rest a long disputed question. Several star

By this time Smith was splurging al a boiled lobster, and called again:

"I s-s-y, over there—how's it now?

"Hot as the devil!" replied Brown; whew! sciss-s-s!—guess I can hold out minute!"

"The hell's fire you can!" shrieked boiling Smith, who rolled out and through the partition, expecting to other quite choked.

"You infernal rascal! why didn't yo plug in?"

"Why, I didn't agree to," said the im able joker; "why'n the thunder di leave your's out?"

LAST ADMONITIONS.—A late reveren man, who was as well known for his exc as his talents, one day sent his son, w notoriously lazy lad, of twelve years down to the meadow to catch his hor boy moved slowly off, muttering along asleep, with an ear of corn in one hand, bridle in the other, dragging the rel ground.

"Thomas!" said his father, calling a in a solemn tone of voice, "Comehere, I want to say a word to you before you That lad returned, and the parson pr

"You know, Thomas, I have taug great deal of good counsel. You have taught you, before closing your say,

"'Now I lay me down to sleep,' &c. besides a good many other things, th th exhortation and advice. But this is hapa, the last opportunity I shall ever speaking to you, and I couldn't let it p out giving you my parting advice—whi a good boy, Thomas, and always remem pretty prayer when you are going to fear that perhaps I may never see your a

As he uttered these words with a v and solemn aspect, the poor boy beg frightened, and burst into tears, exclai

"Never see me again, pa?"

"No—for I may be dead before you with that horse!"

This so quickened Thomas' idea tha and caught the horse in less time than ever suspected of being able to do it be

SERIOUS ACCIDENT.—We learn that guess, named Antonio, was yesterday injured while assisting to get the stea tons under way from Pacific street wh left foot got caught in a hawser which the steamer to the wharf, and was drawn to the chock, lacerating his heel rible manner.—*S. F. Herald, Feb. 2d.*

THE GOLDEN AGE.—This steamer w rived on Saturday, February 2d, bro passengers, 245 bags of mail matter, $ in treasure, and 1 bull, 1 cow, 2 horses, and 28 sheep.

MARRIED.

In San Francisco, Jan. 31st, EDWARD M. ANNE E. MCWATT.
In San Francisco, Jan. 31st, EDMUND MA REBECCA ROCK.
In San Francisco, Jan. 27th, B. H. ARNOLD E. LEFFERT.
In San Francisco, Jan. 31st, DANIEL HAFF MAGUIRE.
Near Yolo City, Jan. 30th, MORTON MCGRE BRENNEKER.
In Petaluma, Jan. 27th, JOHN S. VAN DORSE BARNES.
At Alabaster Cave, Jan. 19th, G. F. GEN

Endnotes

[1] To my knowledge, either scholars, or the State of California, have never published an exhaustive and complete review of primary sources or thorough compilation related to this subject.

[2] Given the scope of the research, a review of secondary historical sources was first conducted. Based upon this research, a number of primary and original State of California legislative and executive documents were analyzed, mainly from the period of 1850 to 1865. I also examined certain primary sources of federal documents related to California Indian Affairs during the same time period and contained in the same collections. The primary documents and sources reviewed for this report are located at the California State Archives, California State Library, Sacramento Archives and Museum Collection Center, and the Bancroft Library at the University of California, Berkeley. The secondary sources are located in the California State Library and University of California library collections.

[3] J. Ross Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution*, (Washington: John T. Tower, 1850), 70, 64-65.

[4] CAL. CONST. of 1850, Art. II, § 1.

[5] 43 U.S.C. 253. See generally, Felix S. Cohen's, *Handbook of Federal Indian Law*, (Albuquerque: University of New Mexico Press, 1971, reprint of the 1942 edition), 153-159; Chauncey S. Goodrich, "The Legal Status of the California Indian," *California Law Review* 14, no. 2 (January 1926) 83-84; N.D. Houghton, "The Legal Status of Indian Suffrage in the United States," *California Law Review* 19, no. 5 (July 1931), 507-520.

[6] Original Bill File, Chapter 133, 1850, California Secretary of State, State Archives, Location E6553, Box 1, (transcript of Original Bill File contents on file with the California Research Bureau); *Journal of the Senate of the State of California, at the First Session of the Legislature, 1849-1850*, (San José: J. Winchester, State Printer, 1850) 217, 224 (*Senate Journal – 1850*).

[7] Original Bill File Chapter 133, 1850.

[8] Original Assembly Bill No. 129, Original Bill File Chapter 133, 1850; *Senate Journal – 1850*, 367, 386-387.

[9] 1937 Cal. Stat. ch. 269; Cal. Welf. and Inst. Code §20,000.

[10] 1855 Cal. Stat. ch. 144; 1860 Cal. Stat. ch. 231; 1863 Cal. Stat. ch. 475; 1863 Cal. Stat. ch. 499.

[11] 1850 Cal. Stat. ch.99 § 14; 1851 Cal. Stat. ch. 5 § 394 3d.

[12] CAL. CONST. of 1850, Art. VI, § 14.

[13] 1850 Cal. Stat. ch. 73 §§ 1-3.

[14] Ibid.

[15] 1850 Cal. Stat. ch. 119, § 103.

[16] Henry J. Labatt, *The California Practice Act:…also "An Act concerning the Courts of Justice in this state, and Judicial Officers," passed May 19, 1853…*, 4th ed. (San Francisco: Kenny & Alexander, 1861), 323-326.

[17] 1853 Cal. Stat. ch. 1 § 89; 1863 Cal. Stat. ch. 260 § 48 (9); Labatt, *The California Practice Act*, 324.

[18] Original Bill File, Chapter 133, 1850.

[19] 1850 Cal. Stat. ch. 133 § 20.

[20] Ibid.

[21] 1855 Cal. Stat. ch. 144.

[22] Henry J. Labatt, *The California Practice Act*, citing ____§394.

[23] Original Bill File, Chapter 231, 1860, Secretary of State, California State Archives.

[24] 1850 Cal. Stat. ch. 133 §§ 16-17; *People v. Juan Antonio*, 27 Cal. 404 (1865).

[25] *In the Matter of The Indian Boy Frank, Petition of L. Harris for Apprenticeship*, filed January 28, 1862; *William Moorhead to Hon. Robert Robinson, Petition for Apprentice*, filed March 4, 1862, in the Sacramento Archives and Museum Collection Center, Sacramento County Archives, County Court: Indian Indentures, 80/132/20-21: 32:42. Copies of originals and related transcripts are on file with the California Research Bureau.

[26] *William Moorhead to Hon. Robert Robinson, Petition for Apprentice*, filed March 4, 1862, Sacramento County Archives, County Court: Indian Indentures, 80/132/20-21: 32:42.

[27] Ibid.

[28]Robert F. Heizer and Alan F. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico and the United States to 1920* (Berkeley: University of California Press, 1971), 53.

[29] Heizer and Almquist, 51-57.

[30] "Lo, the Poor Indian," *Alta California*, April 7, 1855, 2-1.

[31] *San Francisco Herald*, December 14, 1856, 4-1.

[32] "Indian Slavery," *Alta California*, April 14, 1862, 1.

[33] 1860 Cal. Stat. ch. 254.

[34] Francis P. Farquhar, ed. *Up and Down California in 1860-1864: The Journal of William H. Brewer* (Berkeley: University of California Press, 1966), 493.

[35] Jesse B. Hart, *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, (New York: Gould, Banks & Co., 1853), 108.

[36] 1858 Cal. Stat. ch. 182 § 13.

[37] 1858 Cal. Stat. ch. 182 § 8.

[38] 1858 Cal. Stat. ch. 182 § 9.

[39] 1858 Cal. Stat. ch. 182 § 14.

[40] 1855 Cal. Stat. ch 165 § 1.

[41] 1855 Cal. Stat. ch 175 §§ 3-5.

[42] 1863 Cal. Stat. ch. 525 § 1.

[43] Peter H. Burnett, "Governor's Annual Message to the Legislature, January 7, 1851," in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 15.

[44] CAL. CONST. of 1850, Art. VII, § 3.

[45] Peter H. Burnett, "Governor's Annual Message to the Legislature, January 7, 1851," in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 13.

[46] Ibid., 16-17.

[47] Ibid., 18.

[48] Ibid.

[49] ROOT CELLAR, Sacramento Geneaological Society, *California State Militia: Index to the Muster Rolls of 1851 to 1866* (Sacramento: The Society, 1999), ii, 1396-1465.

[50] Ibid., 1432-1446.

[51] Ibid., ii.

[52] 1850 Cal. Stat. ch. 54.

[53] 1850 Cal. Stat. ch. 76.

[54] 1850 Cal. Stat. ch. 54, §§ 1, 7, 17, 20.

[55] 1850 Cal. Stat. ch. 76, § 1.

[56] 1850 Cal. Stat. ch. 76, §§ 6, 8, 10, 45, 56, 57.

[57] 1851 Cal. Stat. ch. 91; 1851 Cal. Stat. ch. 125.

[58] "Majority Report of the Special Joint Committee on the Mendocino War," in *Appendix to Journals of the Senate, of the Eleventh Session of the Legislature of the State of California*, (Sacramento: C.T. Botts, State Printer, 1860), 4-6.

[59] Ibid., 7.

[60] "Minority Report of the Special Joint Committee on the Mendocino War," in *Appendix to Journals of the Senate, of the Eleventh Session of the Legislature of the State of California*, (Sacramento: C.T. Botts, State Printer, 1860), 10.

[61] Ibid.

[62] Ibid.

[63] *Journal of the House of Assembly of California at the Eleventh Session of the Legislature, 1860*, (Sacramento: C.T. Botts, State Printer, 1860), 196.

[64] Peter H. Burnett, "Governor's Annual Message to the Legislature, January 7, 1851," in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 15.

[65] A comprehensive analysis of this important aspect of California history is beyond the scope of this report. For a sample of further discussion from various viewpoints, see William Henry Ellison, *The Federal Indian Policy in California, 1846-1860*, Thesis, (Berkeley: University of California, 1913); reprinted in (Saratoga: R and E Research Associates, 1974) 170- 199; James J. Rawls, *Indians of California: The Changing Image* (Norman: University of Oklahoma Press, 1984) 141-170; and H. Kelsey, "The California Indian Treaty Myth," *Southern California Quarterly*, 15 no. 3 (1973), 225-235.

[66] Ellison, 186.

[67] *Journals of the Senate and Assembly of the State of California, at the Third Session of the Legislature, 1852*, (Sacramento: State Printing Office, 1852), 44-45.

[68] "Report of the Special Committee on the Disposal of the Public Lands of the United States in California," in *Journals of the Senate and Assembly of the State of California, at the Third Session of the Legislature, 1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 589.

[69] Ibid., 590-591.

[70] *Assembly Journal – 1852*, 270; *Senate Journal – 1852*, 195-198.

[71] Ellison, 193, citing *Congressional Globe*, 32 Cong., 1 Sess, Part III, 2103; and *Congressional Record*, 58 Cong., 3 Sess. Part I, 1021.

[72] 1852 Cal. Stat. ch. 62, § 7.

[73] Original Bill File, Chapter 62, 1852. California Secretary of State, State Archives, Location LP1:1502, (transcript of Original Bill File contents on file with the California Research Bureau); *Journal of the Senate of the State of California, at the Third Session of the Legislature, 1852*, (Sacramento: State Printing Office, 1852), 185-186 (*Senate Journals – 1852*).

[74] Original Bill File, Chapter 62, 1852.

[75] CAL. CONST. of 1850, Art. VI, § 8.

[76] 1850 Cal. Stats. ch. 86, § 2; 1851 Cal. Stat. ch. 1 § 64; 1853 Cal. Stat. ch. 180 § 50.

[77] 1850 Cal. Stat. ch. 86 § 5.

[78] Jesse B. Hart, *A Treatise on the Practice of the Courts of the State of California, Carefully Adapted to Existing Law*, (New York: Gould, Banks & Co., 1853) 7.

[79] Ibid.

[80] 1863 Cal. Stat. ch. 260 §§ 47-53, 89.