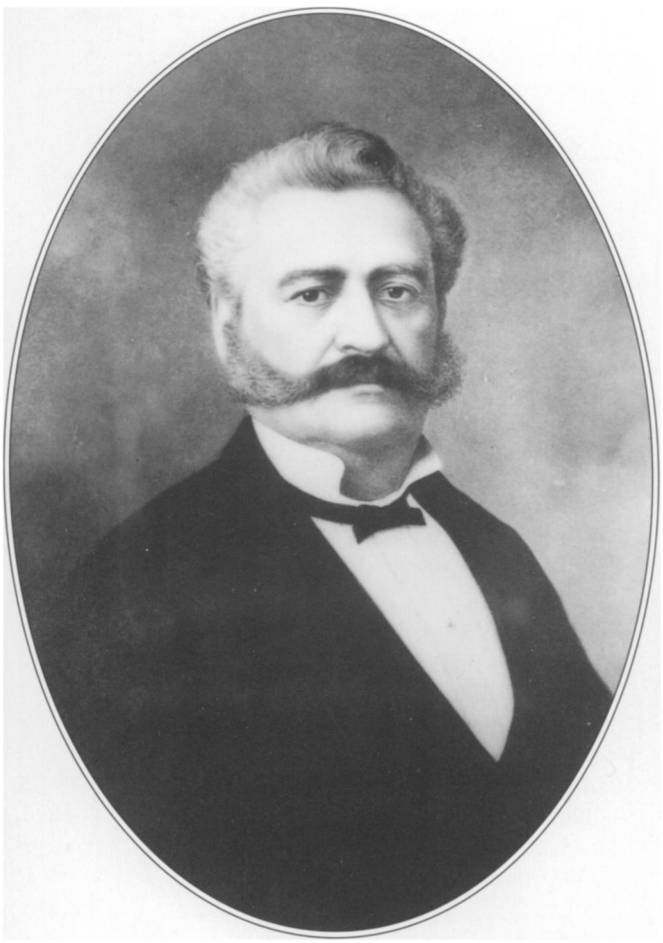
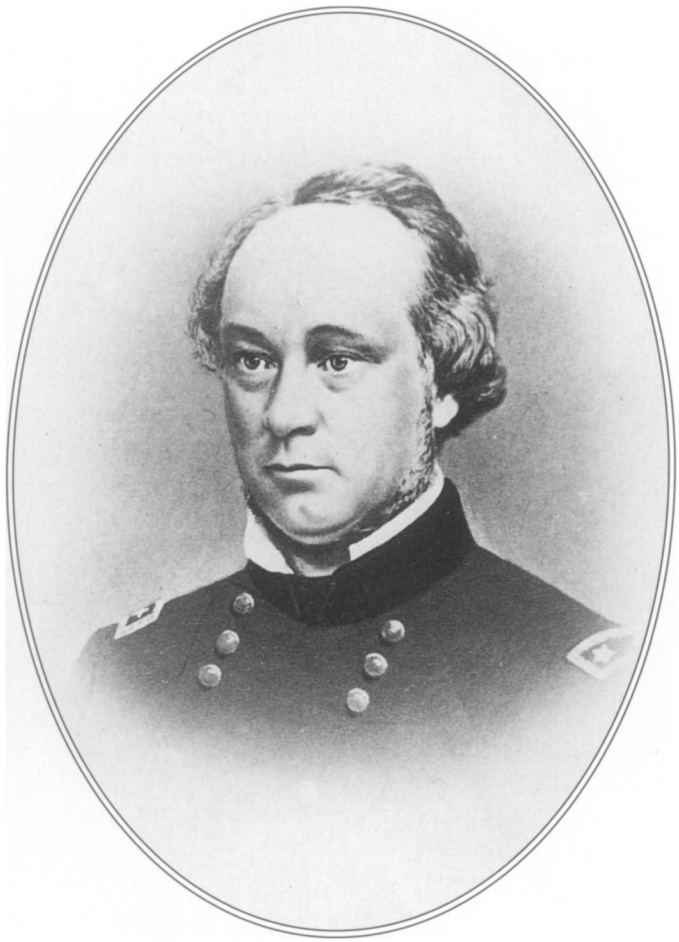




Pablo de la Guerra, left, was a prominent citizen of Mexican California. During the early 1850s, he served in both the California State Assembly and Senate. To protect his family's vast land holdings in response to the Land Law of 1851, the bicultural and bilingual de la Guerra turned to his friend Henry Wager Halleck for legal representation. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.* Halleck (right) had arrived in California in 1847 with the U.S. military. Shortly thereafter he became a civilian attorney. As one of the state's first land-grant lawyers, he won both prestige and wealth, which enabled him to establish California's largest legal firm in San Francisco. It was there that in 1853 he bought property and built the Montgomery Block. *Courtesy Huntington Library.*

"I Heartily Regret That I Ever Touched a Title in California"

Henry Wager Halleck, The *Californios*, and the Clash of Legal Cultures

by Beverly E. Bastian

Under the 1848 Treaty of Guadalupe Hidalgo, which ended the Mexican War, the United States was obligated to respect the personal and real property of the Mexican citizens of the ceded territory in what would become the states of Texas, New Mexico, Arizona, and California.[1] The subsequent Gold Rush in California, however, created a situation that rendered this obligation problematical. By 1850, when large numbers of American Forty-niners, disillusioned with the dream of striking it rich in the gold fields, turned to their alternative dream of farming, they found that little desirable public land was available because holders of Mexican land grants claimed most of the readily arable land in the state. Occupied in a time when there was little population pressure on the land, the Mexican claims were poorly defined on maps and poorly marked on the ground, leaving not only *their* boundaries in great uncertainty but also, consequently, those of the public domain. To their congressmen, Anglo-Californians clamored for redress of a situation that, in their perception, unjustly kept them from being able to buy or preempt land and settle in the state.

The Mexican grantees, most of them *californios*—Mexican-heritage citizens of pre-conquest Alta California—were few in number, but often their grants were immense: a Mexican grant of maximum size being eleven square leagues, or about forty-nine thousand acres. In all, some eight hundred grants laid claim to over twelve million acres of such excellent and reasonably well-watered land as that in the Los Angeles basin and the central coastal plain, as well as the choice valley lands in all the coastal counties northward through the San Francisco Bay area, extending even to large tracts along the Sacramento and San Joaquin rivers.

As if the pleas of large numbers of land-hungry American immigrants and the provocative scale of the acreage tied up in claims were not sufficiently sharp spurs to congressional action, the California land grant situation was exacerbated by the serious possibility that some of the Mexican grants were fraudulent, made without proper authority in the last days of the Mexican administration. The possibility of fraud provided Congress with a way to begin to solve the California land-grant problem, for while bound by the Treaty of Guadalupe Hidalgo to respect the real property of the *californios*, Congress could legitimately refuse to extend the guarantees of the treaty to lands held on the basis of fraudulent or invalid grants. Thus Congress passed a law entitled "To Ascertain and Settle the Private Land Claims in the State of

California. . . ." Better known as the Land Law of 1851, it required holders of Mexican grants to prove the validity of their land titles under pre-conquest Mexican law before the United States would recognize them as valid and thus protected under the Treaty of Guadalupe Hidalgo.

The Land Law created a three-member board—which came to be known as the U.S. Land Commission—that would convene in California and examine the Mexican grants. Grantees had two years in which to present and prove their claims before this board or forfeit their lands to the public domain. The Land Law gave both grantees and the U.S. government's representatives the right to appeal Land Commission decisions, with the result that most land-grant cases were appealed, first to the federal district court, and then to the U.S. Supreme Court. While the Land Commission hearings went on for only four years, subsequent appeals greatly prolonged the grant validation process. It took seventeen years, on the average, from the filing of the grantees' petitions to the Land Commission until they received a U.S. patent to the granted land. Although the courts finally approved over five hundred claims to nearly nine million acres, the duration and cost of the adjudication process to the land-rich, but cash-poor, *californios* left many in debt to their lawyers, to moneylenders, or to the tax assessor, with the result that many lost their lands anyway.[2]

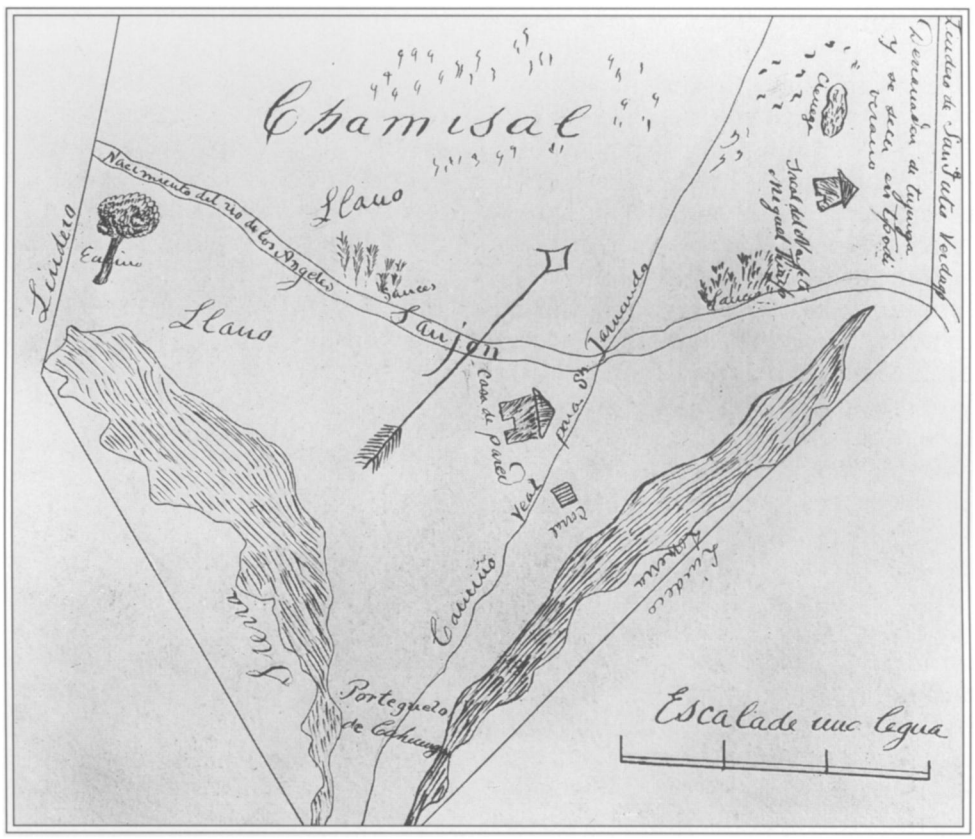
For most *californios*, the land-grant adjudication process was their first encounter with the American legal system, which differed strikingly from their former system in concept, principle, structure, practice, and intent. The *californios* found the complexities and values of the American legal system very confusing. In the adjudication process, they frequently found themselves at the mercy of often-unscrupulous Anglo lawyers and other self-appointed advisers. As much, however, as the *forms* and *agents* of the American legal system were alien, more fundamentally, the *culture* of the American legal system baffled the *californios*.

The use of legal culture as a category of historical analysis derives from the "law and society" school of American legal historiography identified with scholars James Willard Hurst and Lawrence M. Friedman. According to this view, the law is a dynamic, rather than static, response, primarily to economic change, a "rational instrument that could be seized by members of the dominant middle class to achieve consensual economic goals."[3] This view, however, limits analysis to the formal aspects of law—the rules and the institutions. A more inclusive perspective, that of Kermit Hall, builds on Hurst and Friedman by "acknowledging the existence of distinctively legal values and customs as well as formal rules and institutions."[4] This view expands the focus to "include social issues like race and gender and address[es] the ideological and symbolic uses of law."[5]

In contrast to Hurst, Friedman, and Hall, a countervailing and controversial view of the law, and consequently of legal culture, has issued from what is termed the Critical Legal Studies movement (CLS). Its advocates argue that law historically "was, and is, politics by other means, an instrument of repression and hegemony in which inevitably conflicting legal principles were manipulated to the advantage of dominant groups."[6] With respect to historical treatments of legal culture, then, such scholars assert that more conventional historians of law "restrict their view of what law is to a bunch of discrete events that occur within certain specialized state agencies . . . and . . . assume that the only question for a social history of law is the relation between the output of these agencies and social change." Critical Legal Studies scholars challenge legal historians who use this conventional perspective "to characterize all the innumerable rights, duties, privileges, and immunities that people commonly recognize and enforce without officials anywhere nearby."[7]

For the purposes of this article, the most inclusive concept of legal culture is the most useful, because in this case the intended analysis is *comparative*—Mexican, specifically *californio*, legal culture compared to American legal culture—and because the entities being compared differ greatly in degree of formality of process and complexity of structure. The more pertinent aspects of the contrasting legal cultures, however, are the informal, day-to-day legal usages invoked by CLS historians—rights, duties, privileges, and immunities people recognize and live by almost unconsciously. The broader CLS conceptualization of legal culture is useful and pertinent for this study and, as a means of addressing informal aspects of legal culture, will be joined to the Hurst-Friedman-Hall ideas of formal law as a mirror of society.

To contrast Mexican *californio* legal culture with



A hand-drawn, original map of Rancho Campo de la Cahuenga, northwest of the pueblo of Los Angeles. On January 13, 1847, Andrés Pico and John C. Frémont met at the *rancho* and signed the Cahuenga Capitulation Treaty, ending the Mexico War in California. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.*

American legal culture, analogous aspects of each must be closely studied and compared. While such analysis is beyond the scope of this article, legal scholar David J. Langum has made the results of such a study available in his treatment of the Mexican legal system in California from the perspective of those Americans who immigrated there and lived under that system.[8] Although he touches on criminal law, Langum focuses primarily on civil law as playing a greater role in the lives of expatriate Americans, in the areas of contracts, credit formation, debt collection, dispute resolution, and domestic relations.

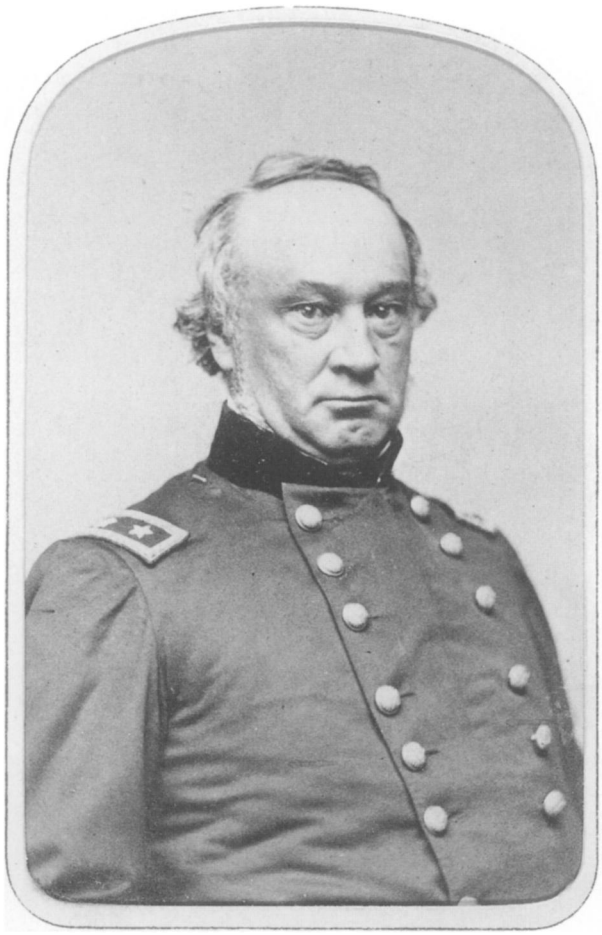
As Langum portrays it, the central legal agency in nineteenth-century Mexican California was the office of the *alcalde*, which dated to medieval Spain. This village or town official, a combination of mayor, justice of the peace, and godfather, heard all complaints and passed judgment according to traditional local social and religious mores. His own prestige, backed by community acceptance of his judgments, enforced his rulings.[9] There were no written records. *Alcalde* justice was paternalistic and informal; his word was law. There were no lawyers and the *alcalde* was not expected to know formal law, which for conflict resolution was either absent or ignored. *Alcalde* justice offered local control and easy access. It was free of formality and technicality. It was swift and, in Langum's judgment, usually fair, because the *alcalde* was deeply rooted and

respected in the community. This, at any rate, was the ideal.

According to Langum, a formal legal system deriving from that of Spain served all of New Spain, including Alta California, once the earliest civilian settlements were made there in the 1770s. After the Republic of Mexico won its independence from Spain in 1821, it twice altered its national legal system, both times technically changing the formal legal system of Alta California. But because for much of the Mexican period the territory of Alta California, not being a state, was under the direct control of the central government (legally, if not in reality), and because it was so remote from the seat of that government, itself preoccupied with considerable political turmoil, the formal Mexican legal system designed for Alta California was never put into place. So the *alcalde* system remained the functional legal system of Alta California from the 1770s until American martial law and later state systems were imposed.[10]

Langum examines the legal culture clash experienced by expatriate Americans living in pre-conquest Alta California by analyzing their complaints about the unfairness or illogic of *alcalde* justice. He finds that these Americans, steeped in the English common law, experienced considerable "cognitive dissonance" in dealing with Mexican California law because the two systems were at odds in some very fundamental aspects of legal culture. English common law supported individualistic endeavors and goals. It was *adversarial*, such that someone won and someone else lost. *Alcalde* justice, in contrast, supported harmony in the community. Reconciliation and consensus were its aims, such that, ideally, nobody lost. Langum finds this key contrast at the heart of every complaint of the expatriate Americans regarding Mexican California law, expressed in all of the areas of law that he studied—contracts, debts, marriage, and crime. Americans in Alta California in the 1830s and 1840s dealt with this frustrating situation by avoiding the Mexican California legal system when at all possible and settling contested matters privately among the parties concerned.[11]

After the American conquest of California, in the 1850s and 1860s the *californios*, now in the minority and fighting for recognition of their land grants in the new American courts, had no choice about their participation in this process. Their struggle to retain possession of their lands in a fundamentally different legal system provides an opportunity to look at the conflict of legal cultures. Key observers of this conflict were the American lawyers who argued for the *californio* grantees and the opposing American lawyers, whose job it was, in the name of the United States government, to disprove the Mexican-derived land claims (thereby increasing the public land available for American settlers) by cross-examining *californio* witnesses and discrediting their testimony.



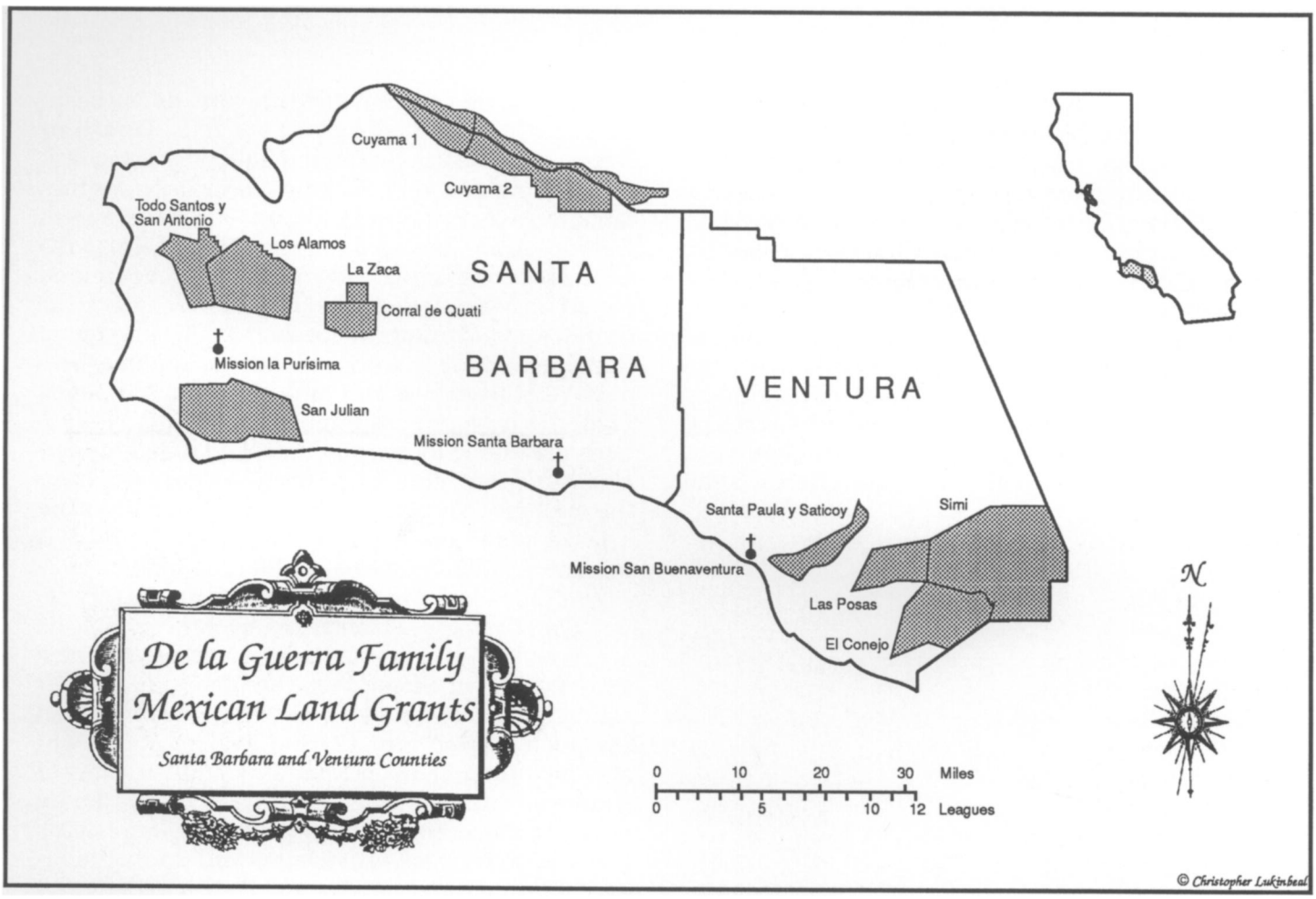
Henry W. Halleck (1816–1872), shown here in a *carte de visite* photograph taken during the Civil War, when he served as President Lincoln's chief of staff. *Courtesy Huntington Library.*

American lawyer Henry Wager Halleck was one such observer, and the conflict of Mexican and American legal cultures is reflected particularly in the correspondence between Halleck and *californio* grantee Pablo de la Guerra of Santa Barbara. Later Lincoln's Army chief-of-staff during the Civil War, Halleck was originally from New York. Along with fellow West Pointers William T. Sherman and E.O.C. Ord, he had come out to California with the U.S. Army in early 1847. He served as secretary of state under two military governors of territorial California and was secretary to the first California constitutional convention in the fall of 1849. Earlier that year, as it debated the proper course of action with regard to Mexican-granted land in California, the U.S. House of Representatives gave to bilingual Halleck the task of studying and reporting on Mexican land-grant laws, the extent, nature, and status of land grants in California, and the need for examining them. In the process of completing his report, Halleck became an expert on Mexican land and mining law and on the California land grants themselves.[12] His subsequent decision to act as lawyer for *californio* grantees was a move both logical and opportunistic. Moreover, Halleck's own politics might have inclined him to be sympathetic to the plight of the landed, upper-class, *californio* elite, appearing, as they might to the strongly Whiggish Halleck, to be embattled by a Jacksonian American rabble seizing lands and fomenting anarchy in the land tenure system.

José Antonio Julián de la Guerra y Noriego (1779–1858), head of the wealthy and prominent Santa Barbara family. The Spanish-born aristocrat arrived in California in 1801. Three years later he married María Antonia Carrillo. Comandant of the Santa Barbara presidio for many years, de la Guerra lived to see California move through several political transformations. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.*

One of Halleck's most prominent *californio* clients was Don Pablo de la Guerra, scion of the notable de la Guerra family of Santa Barbara, whose members were holders of fifteen Mexican land grants. Their claims amounted to 445,533 acres, most of them spread from San Luis Obispo to Simi Valley, but also including areas in Monterey and Sacramento counties. Prior to the American conquest, the de la Guerras had been *rancheros*, grazing large herds of cattle on their extensive lands and trading hides and tallow to the American and British traders who visited California's ports. They were wealthy relative to other *californios* and enjoyed high status and respect in the Santa Barbara community. The family patriarch, Don José, had been the *comandante* of the Santa Barbara presidio between 1817 and 1842. A native of Spain and very devout in his religious beliefs, Don José had also closely involved himself with the affairs of Mission Santa Barbara. He and his wife had six sons and four daughters. Three of their daughters married high status foreigners (an American, an Englishman, and a Frenchman) who became naturalized Mexican citizens. Don José himself held four grants to large ranchos, and his sons, daughters, or sons-in-law held the others.

Don Pablo was bilingual in Spanish and English and apparently had considerable familiarity with American law, perhaps as a result of his service in the 1850s in both the California State Assembly and Senate. His fellow *californios* considered him their representative in state government, and he was both much esteemed and highly influential among them.[13] Because of his prominence, he natu-



This map illustrates the sizeable *rancho* grants made to various members of the de la Guerra family in what are now Santa Barbara and Ventura counties. Their lands represented here exceed four hundred thousand acres. Family members also owned several town lots in Santa Barbara pueblo, and *ranchos* in San Luis Obispo, Monterey, Marin, and Sacramento counties, roughly totaling another ninety thousand acres. *Map by Christopher Lukinbeal.*

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rally assumed the responsibility for guiding family land grants through the adjudication process. An existing warm friendship between Halleck and de la Guerra, as well as Halleck's legal expertise with land cases, probably inspired the *ranchero* to choose the San Francisco law firm of Halleck, Peachy, and Billings to prepare and present the family's cases to the U.S. Land Commission when it held hearings in San Francisco between January 1852 and March 1856.

The correspondence between Henry Wager Halleck and Pablo de la Guerra contains a wealth of information regarding the legal culture conflicts experienced by *californios*.[14] Interestingly, it is not de la Guerra's legal culture adjustment problems that are revealed in this correspondence, for, indeed, this sophisticated, bicultural man apparently had none. Rather, these correspondents discussed with some regularity other *californios*, their cases, their relationships with Halleck as their lawyer, and their performance as witnesses before the land commissioners. It is this discussion that so well illuminates *californio* legal culture conflicts. What occasioned Halleck and de la Guerra to discuss Halleck's other *californio* clients is not detailed in their letters, but it appears that they had an arrangement whereby de la Guerra received a commission, or perhaps a discount on legal services, for

obtaining clients for Halleck's firm. Letters from de la Guerra to Halleck early in their correspondence made frequent mention of "our firm," as though de la Guerra had some interest in it. Later, Halleck asked de la Guerra to collect fees owed him by *californios*. Throughout, Halleck relayed information to *californio* clients of the firm by means of de la Guerra.

In the correspondence, Halleck's attitude toward his work runs a course from great enthusiasm about representing *californios* to great frustration and disillusionment. After the passage of the Land Law of 1851, Halleck and his law partners, Archibald Peachy and Frederick Billings, believed that the presentation of *californio* land grants before the land commissioners would be a golden opportunity in a rich, new state. Their strategy for making a profit in this line was to take on "a large number of titles." Thus Halleck exhorted Pablo de la Guerra to assist the firm in recruiting clients in the Santa Barbara area.[15]

Halleck, Peachy, and Billings faced tough competition from other lawyers in recruiting *californio* clients. The state in the early and mid-1850s presented many opportunities for lawyers and would-be lawyers, who swarmed to the new state to handle the numerous volatile cases arising out of mining claims, land-grant adjudication, and admiralty cases. Thus, de la Guerra's influence among *californios* may have provided an important competitive edge for the firm, as it ultimately handled at least 120 of the 800 or so land-grant cases.[16] Early in their correspondence, Halleck complained to de la Guerra that some of his *californio* clients, after Halleck had already incurred expenses on their behalf, were being "humbugged" and seduced away by other lawyers claiming to be better able to pursue their claims successfully. He commented on what he perceived as the *californios'* ignorance: "You know as well as I do that many of the Californians are so ignorant of these matters that they allow themselves to be imposed upon by the first one who talks with them, and thus leave their true friends in the lurch for any trouble or expense they have made for them."[17] Certainly ignorance played a role in the *californios'* gullible acceptance of proffered legal advice, whatever the source, but clearly this judgment problem was also an expression of legal culture differences. Under the *alcalde* system, since there were no legal experts, anyone's advice on a contested matter was potentially useful. Experience with *alcalde* justice did not prepare *californios* for rapacious and unscrupulous lawyers who misrepresented to them both the American legal process and the requirements of the Land Commission, as well as, worst of all, misrepresenting themselves and their competence.

María Theresa de la Guerra, daughter of José Antonio. During the Mexican era, it was not unusual for young *californio* women to meet and marry men from other cultural backgrounds. About 1830, for example, María wed William Edward Petty Hartnell, an Englishman who had made his way to California in the 1820s and who became a hide trader, produce merchant, and customs agent. Hartnell and his wife had twenty-five children, a brood that undoubtedly inspired their founding of a school. In the twentieth century, a Salinas community college was named in his honor. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.*

As Halleck proceeded with preparing the cases of his *californio* clients, he encountered unexpected problems, many arising out of legal culture differences regarding scheduling. Halleck believed that the earlier he could present his cases to the Land Commission, the better their chances of confirmation. In part this belief came from his awareness that fraudulent claims were being made, which, if presented first, could disadvantage later authentic ones: "New and strange claims to lands in Los Angeles, Santa Barbara, & San Luis Obispo are daily presented here—titles never before heard of, signed, or pretended to be signed by Pio Pico and Alvarado, and it is by no means improbable that those who have no agents here to watch over their interests may find their lands confirmed to some body else under a forged title."[18]

Halleck's sense of urgency was compounded by his carefully conceived strategy for handling the land cases before the commissioners. He planned to present authenticated and translated copies of the claimants' grant papers, then to supplement the papers with oral testimony intended to fill any holes left by inadequate documentation. To work effectively, however, this strategy depended entirely on Halleck's receiving clients' papers as the starting point of his case preparation. Translation, authentication, and finding and preparing witnesses all took time, which made Halleck all the more anxious to have clients' grant papers as early as possible.

Halleck was probably more knowledgeable about the problem of California land-grant documentation than any other lawyer in California except William Carey Jones, for both had independently prepared reports for Congress on Mexican land grants in California prior to the passage of the Land Law of 1851, and both had thoroughly probed the provincial archives in compiling data for their reports.[19] Nonetheless, although Halleck may have been realistic in his expectations of his clients' abilities to produce grant documentation, he was surprised and then frustrated by their lack of cooperation in conveying their papers to him and in otherwise working with him in a timely way. Halleck often complained to de la Guerra about *californios'* neglecting their cases.[20] Apart from the possible relevance of the alleged *mañana* attitude imputed to Mexican culture in general, certainly the previous Alta California legal system had made no scheduling demands on the *californios. Alcalde* justice required no documentation, no docketing, no lawyerly strategies, no episodic attention to a protracted procedure. How could people accustomed to such a legal system be expected to grasp the urgencies and intricacies of Halleck's carefully scheduled strategy?

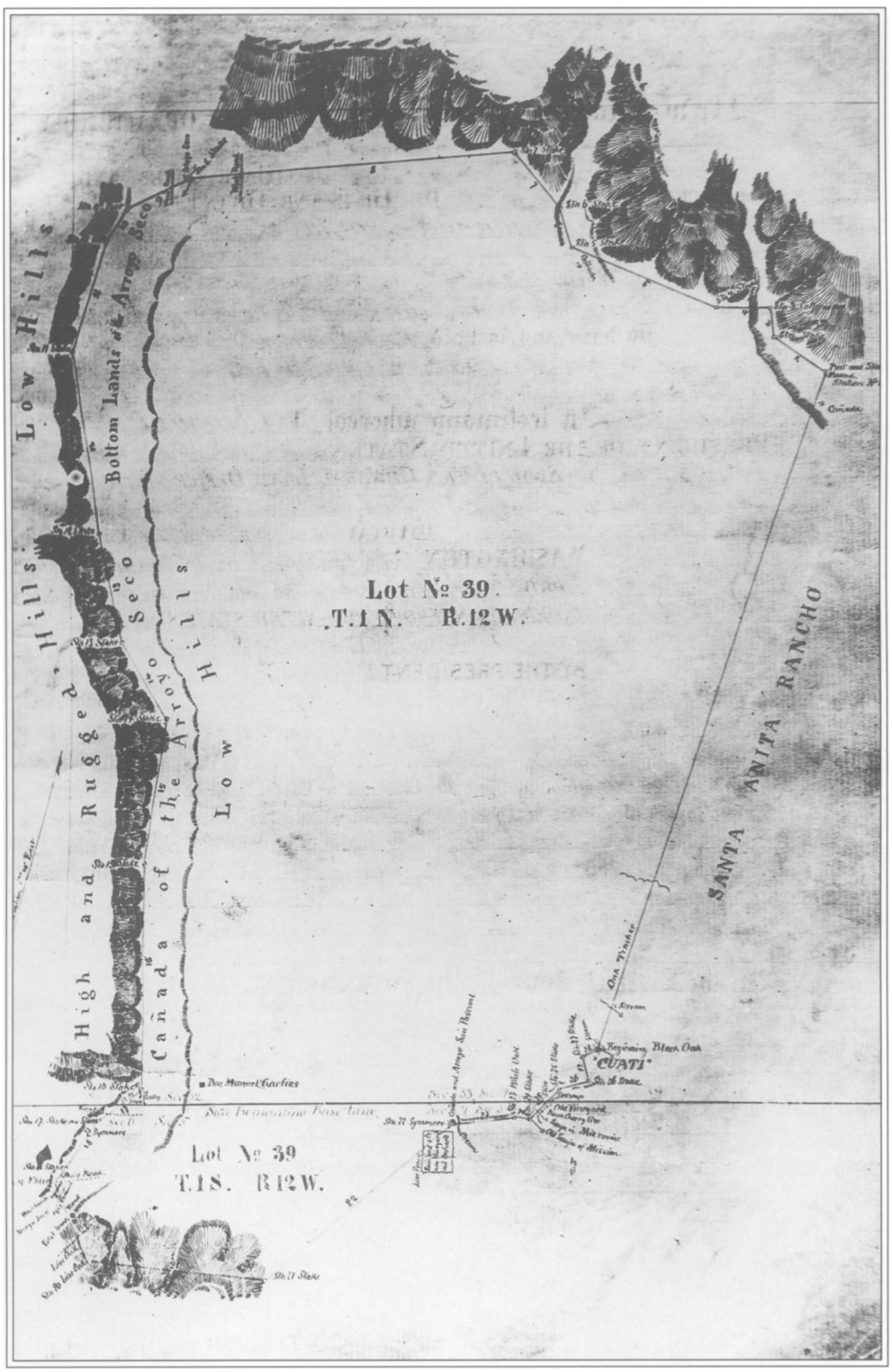
Other *californio* behavior also frustrated Halleck, especially the erratic performance of witnesses. Legal culture differences disadvantaged *californios* in presenting themselves in court as credible witnesses, greatly undermining Halleck's strategy. Despite his extensive pre-hearing preparation of *californio* witnesses, Halleck reported to de la Guerra his anger and despair at their performance: "I never formed any conception of the amount of labor that would be required in this matter, in taking testimony. The Californians are the worst witnesses I ever saw, and when crossed [sic] examined by the government attorney, unless watched with the utmost care, they say something to completely destroy their testimony."[21]

One of the government attorneys, Robert Greenhow, had occasion to gloat about the poor performance of *californio* witnesses. In a private letter to Attorney General Caleb Cushing, Greenhow, the assistant law agent for the Land Commission in San Francisco, remarked:

> My time is employed exclusively in taking testimony, in which I am engaged from morning until night and it would I think be difficult to devise a less agreeable occupation than this of listening to the attempts of attorneys, to elicit through the medium of an interpreter, evidence favorable to their cases, from these poor Californian rancheros, who until the occupation of California by the United States, had never thought of anything nor had they ever heard of any event which could make a landmark in their memory; while from those possessing any greater degree of intelligence the truth can rarely be expected, on matters on which it would be impossible to detect falsehood.[22]

While showing even less tolerance or understanding of cultural differences than did Halleck, Greenhow's remarks, coming from the other side of the courtroom, corroborate Halleck's own reports of problems.

Late in 1853, in the especially-difficult Santa Barbara County cases of *ranchos* Zaca and Alamo Pintado (claimed by de la Guerra's sister, María



Survey map of San Pasqual Rancho, prepared in August 1858. Following confirmation of a land title under the California Land Act, the federal government ordered a survey of the boundaries. This map, prepared by Henry Hancock, shows *rancho* land that was ultimately subdivided and developed as present-day Pasadena. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.*

Antonia de la Guerra de Lataillade), de la Guerra pressed Halleck to use the critically important testimony of Padre José Jimeno and of Don Joaquin Carrillo, despite Halleck's prior bad experiences with other *californio* witnesses.[23] In a February 1854 letter, Halleck explained what happened when he put Padre Jimeno, a priest at Mission Santa Barbara and de la Guerra's brother-in-law, on the stand to supply oral verification of the facts of the granting and occupation of these ranchos, whose formal documentation was missing:

> We have been all day long taking the testimony of Padre Jimeno in "Zaca" & "Alamo Pintado." Either from utter stupidity or a desire to injure these claims his testimony has done more harm than good and was different in every respect from what he told me in the office yesterday.
>
> On the cross examination by the Law Agent he would not remember anything—did not know he had ever seen Antonio's title; could not say when he first occupied it, nor when he died, nor what became of the title, if he ever had any; nor when his son & grand son [sic] died, nor when "Ana" married Cordero—in fact he would not remember anything.
>
> In "Alamo Pintado," [he] did not know when the title was given, what land it was for, when a house was built, what land was given in the juridical possession, what were the boundaries, nor even if the house built by Marulino was within the boundaries of the land asked for, or the boundaries as fixed by the juridical possession. He did not remember that he ever designated this particular land for Marulino, or asked Carrillo to give him the possession of it.
>
> In fine—his whole testimony was worse than nothing. He would remember nothing in favor of the claim & appeared either more stupid than the most ignorant Ranchero in California, or else had a secret desire to injure the claim.
>
> Padre Jimeno made such a miserable blundering mess in the other two [rancho cases] that I did not ask him about Las Huertas [another de la Guerra case].[24]

Halleck's alternating explanations for Padre Jimeno's poor performance as a witness—stupidity or duplicity—do not take into account legal culture differences, which must have played a role and which, moreover, provide an explanation better and richer for its sensitivity to cultural complexity. Halleck's *californio* witnesses could not meet his expectations because they had no previous frame of reference that would help them comprehend how, under the American legal system, a case had to be logically constructed; how oral testimony fitted into the construction of a case; how two opposing attorneys, in questioning a witness, would try to elicit conflicting answers and construe similar answers in opposite ways; how any inconsistency in sworn testimony would be interpreted as lying; and how any hesitancy or vagueness would be interpreted as evasion. Add to this a lack of comprehension of the purpose and gamesmanship of testifying, a language barrier and an intimidating setting where a witness is the focal point of many powerful people's rapt attention. Considering the high stakes involved, Padre Jimeno's behavior is understandable.

Judge Joaquin Carrillo. *California Historical Society/ Title Insurance and Trust Photo Collection, University of Southern California.*

Fear of the courtroom and its activities, arising out of ignorance of an alien legal culture and anxieties over possible injury to personal pride and

honor, may well also have been significant factors in the resistance among *californios* to appearing as witnesses, a situation that de la Guerra's letters document.[25] De la Guerra on two occasions discussed with Halleck the reluctance of Padre Jimeno and Joaquin Carrillo, both of whom would only testify if forced. To ensure that these witnesses would appear if Halleck needed them, de la Guerra asked Halleck to have the summonses sent to him so that he could use his influence to persuade them to give testimony. De la Guerra reported that Joaquin Carrillo believed that the Land Commission could not compel him to testify because he (Carrillo) was a district court judge. De la Guerra asked Halleck to advise him whether or not this was true and whether or not he (de la Guerra), as marshal, had the power to make Carrillo and Jimeno go to San Francisco to testify.[26]

Ultimately, the *californios* failed Halleck in one final regard. All too frequently, even when he won confirmation of their titles, they failed to pay him for his services or procrastinated in paying him, to the point where he had to sue to get his fees. It was about this that Halleck was most bitter. He felt he had gone to great lengths to achieve confirmations for *californio* land grants and that his fees were reasonable, just, and well earned. When the first round of Land Commission hearings was coming to an end, Halleck wrote to de la Guerra several times complaining about this problem: "We have done everything in our power to defend the interests of the old Californians & we must expect some liberality on their part in return."[27] Not long thereafter, he wrote,

> I begin to feel almost disgusted with the Californians. While no American has disputed our bills or refused payment, not a Californian, except yourself and Doña Carmen has paid us anything for our services. They make promises but never keep them. . . . I feel strongly disposed to drop the whole business before the land Commission and let the titles go to the Devil. We can make more money without half the trouble, anxiety, and expense. I heartily regret that I ever touched a title in California.[28]

When his *californio* clients could not or did not pay, Halleck, on behalf of his firm, could be lenient and forgiving, as in the case of Doña Joaquina Alvarado: "When we sent our account to [A. F.] Hinchman [a collection agent] we directed him not to require her to pay it, if as we understood, she was unable to do so. . . . If she is too poor to pay us anything we shall not molest her or sell her land. On this point she may rest content."[29] But Halleck could be righteously vindictive when he believed he was being taken advantage of, as in the case of Joaquin Carrillo. Halleck, Peachy, and Billings brought suit to

> secure the debt against an attempt on the part of Carrillo to cheat us out of it, by a pretended transfer of all his property to Andres Pico. . . . When Carrillo will act fair, and give us the proper security, he will find us indulgent as we always have been; but an attempt to cheat us out of a just debt by concealing the very property which has been saved to him by our industry & labor deserves punishment, and if he goes on in this way, I think he will get it sufficiently in the end.[30]

Both Carrillo and another southern *californio*, Octaviano Gutierrez, communicated to Halleck, through de la Guerra, their explanations of their failure to pay his legal fees. Halleck, Peachy, and Billings had threatened both with lawsuits, and, in fear of losing their land, they cited expenses such as large families and the care of invalids and motherless children, their lack of any assets other than cattle and land, and the poor market for cattle at that time.[31]

Their reasons for not paying Halleck, however, perhaps went beyond the purely economic and derived from their different concept of the obligations attendant on verbal contracts arising in a different legal culture. When faced with court action for their debts, in the manner of many traditional culture-bearers, both Carrillo and Gutierrez first begged indulgence for personal afflictions and, then, in horse-trader fashion, sought to bargain. Independently they made offers to Halleck, proposing, first, that he decrease the amount that he was claiming they owed him and, second, that he negotiate with them the details of a payment plan, in exchange for which they would pay a high rate of interest. These proposals were consistent with the kind of debt arbitration that occurred under *alcalde* justice, the legal culture with which Carrillo and Gutierrez were familiar and comfortable. Halleck, more flexible (or pragmatic, perhaps) regarding this aspect of legal culture conflict, eventually worked out an arrangement with both men.[32]

In retaliation against some errant clients, how-

The de la Guerra family, ca. 1930. Photographed during a gathering in Santa Barbara, the prominent de la Guerra family continued its strong cultural and aristocratic traditions while all around them most aspects of California life were changing. *California Historical Society/Title Insurance and Trust Photo Collection, University of Southern California.*

ever, Halleck even threatened to help defeat the title cases of those who abused his trust. "The heirs of Don Carlos behave very shabbily in not paying us for 'Sespe,'" he wrote to de la Guerra. "We worked like dogs in that case & saved it by the skin of our teeth. I know enough about that title to cause its rejection, and if they treat us so meanly as to refuse to pay our bill, I *will* [sic] defeat it. That they may rely on."[33]

The essence of the legal culture conflict experienced by the *californios*, who were struggling with the alien American legal system that would arrogate their lands, mirrors perfectly the difficulties Langum found among expatriate Americans living under the previous Mexican California legal system. The black-or-white, win-or-lose absolutist principles of the Anglo-American common law ill-prepared Americans for the relativistic, give-and-take of *alcalde* justice. Reciprocally, the conciliatory, harmony-preserving principles of the informal, personalized, local Mexican legal system put *californios* at a great disadvantage in dealing with the formal, impersonal, national American legal system.

In addition to the cognitive dissonance the *californios* experienced as unwilling participants in a new legal culture under a new legal system, other psychological factors probably influenced their response to the situation. Fearing the outcome of the court proceedings, they may have feared the court itself. Also fearing the outcome, they may have consciously or unconsciously resisted participation by refusing or delaying cooperation with their attorneys. The latter response might also have been a form of denial of or resistance to the conquest.

Despite the legal culture difficulties that the adjudication of the Mexican land grants in the American courts presented to those accustomed to *alcalde* justice, in the local courts of southern California for some twenty years after the conquest they could still expect to receive the kind of justice with which they were most familiar. In the southern counties, where their numbers still accorded them political influence until the land and population boom of the 1880s, *californios* elected local judges who had been *alcaldes* in the Mexican era, and these judges, among them Pablo de la Guerra, continued to serve in the old personalized way that emphasized informality, harmony, and fairness to all. Charles E. Huse, an American lawyer who practiced in Santa Barbara during its early American years, on the occasion of writing a history of Santa Barbara for the celebration of the centennial of the nation, wrote of Judge Joaquin Carrillo (the same man whom Henry Wager Halleck was prepared to sue to obtain his fees and who was Santa Barbara's first county judge): "Very few appeals were taken from his decisions. He based them upon broad principles of equity rather than law."[34] *Alcalde* justice still lived on in California, at least in the south, although its bearers had had to learn legal biculturalism the hard way. CHS

See notes beginning on page 387.

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