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THE SAN LUIS REY RIVER RESERVATIONS AND THE
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LINES ON THE LAND:
THE SAN LUIS REY RIVER RESERVATIONS AND THE
ORIGINS OF THE MISSION INDIAN FEDERATION, 1850-1934

A DISSERTATION APPROVED FOR THE
DEPARTMENT OF HISTORY

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ABSTRACT

This dissertation explores the environmental and legal context of political activism among southern California Indians between 1850 and 1934. Specifically, it tracks the rise of the Mission Indian Federation in the early part of the twentieth century as one example of the ways Indians reacted to the creation of federal reservations, regional water development, and the agricultural models of “civilization” the Indian Office sought to implement. Across the region, Indians turned toward the courts and the newly-formed political institutions of the reservations to carve out indigenous political power and sovereignty for themselves. They articulated a vision of Indian sovereignty under the motto “Human Rights and Home Rule,” and used it to challenge the power of the federal government.

INTRODUCTION

Lines Along a River

This project began as a study of the effects of environmental change on racial identity and political activism among the Indians of southern California between 1870 and 1934. However, with seven major ethnic groups and nearly thirty reservations in San Bernardino, Riverside, Imperial and San Diego counties, scholarship on the Indians in the region requires careful attention to categorical definitions. I initially focused on San Diego County because of the various reclamation projects and changes in land-use, and the corresponding rise in Indian political activism in the area. However, as the initial research progressed, I found that county lines cut arbitrarily through different ethnic and cultural groups and changed when Riverside and Imperial Counties were formed in 1893 and 1907, respectively.¹ Jurisdictional boundaries within the Indian Office, which organized many of the sources the study used, were even less rational or stable than county lines. The Indian Office created and altered these boundaries for administrative convenience rather than sensitivity to the conditions on the ground. Given the interaction between Indian communities as well as with non-Indian society around them, limiting the study to a specific village or cultural group took Indians out of the world they would have known at the time.

In an effort to clarify my understanding of the topography of the area, I ordered a number of United States Geological Survey 7.5-minute maps, quilted

¹ Elmer Wallace Holmes, et. al., *History of Riverside County, with Biographical Sketches of The Leading Men and Women of the County Who Have Been Identified with Its Growth and Development From the Early Days to the Present* (Los Angeles: Historic Record Company, 1912), 134-36; F. C. Farr, ed., *History of Imperial County* (Berkeley: Elms and Franks, 1918), 18-19.

them together and papered the walls of my offices with them. As I highlighted the routes of the creeks, rivers, canals and ditches; traced the boundaries of reservations and individual allotments; and plotted the historical maps I located in the archives, it became clear to me that the 550-square mile drainage basin of the San Luis Rey River was a natural region that encompassed the relationships that were critical to the study. (see maps no. 1 and 2, appendix). The river cut across maps, Indian Office jurisdictions, state and federal administrative units and ran through the Indian villages of La Jolla, Rincon, Pauma and Pala. The drainage area encompasses Warner's Ranch, Rancho Cuca, the Pauma and Pala Valleys; the villages of Kupa, Wilakal, Mesa Grande, Puerta La Cruz, San Felipe, San Ysidro, San Jose and the cities of Fallbrook, Bonsall and Oceanside.² The San Luis Rey River served as an area of articulation. It siphoned development and settlement inland into Indian communities and into conflict with Indian practices and federal policies.

In the first twenty years after California statehood, Indian efforts to protect their land by appealing to state or federal action were largely ineffective. The eventual establishment of federal reservations in the region in 1870 did not stop further dispossession. Within a few years, a loose cadre of evangelical human rights activists associated primarily with eastern reform groups such as the Indian Rights Association and the Lake Mohonk Conference began to bring the conditions of southern California Indians to national attention. Indians tenta-

² On the role of watersheds in demarcating Indian territory, see Robert Heizer, *Languages, Territories, and Names of California Indian Tribes* (Berkeley: University of California Press, 1966), 6-8; and Theodore Steinberg, *Nature Incorporated: Industrialization and the Waters of New England* (New York: Cambridge University Press, 1991), 24-25.

tively cooperated with some elements of their reform agenda, which stressed human rights, social justice, protection of Indian land all under the general goal of assimilation. The tenuous alliance of Indian resistance and evangelical reform eventually prompted legislative action by the federal government.³

The emphasis on allotting Indian land and developing the water necessary to make that land “productive” according to the prevailing agricultural model dominated Indian Office policies.⁴ The federal government surveyed the external boundaries of southern California’s pre-existing Spanish and Mexican grants leaving them stranded like islands within the rational and allotable cadastral grid. But there the simile collapses. The public land in the San Luis Rey watershed was not flat. Converting it into productive agricultural land required drawing more lines representing pipelines, canals, ditches and flumes meant to transport the water from where it was to the areas deemed suitable for agriculture. Those lines were meant to defeat nature, but were not always successful.

While southern California Indians and their friends were generally successful in securing and retaining title to their land between 1875 and 1901, the United States Supreme Court ruling in the so-called “Mission Indian cases” in May of that year, which denied Cupeño claims to their ancestral villages on Warner’s Ranch, largely discredited the friends’ efforts and greatly weakened their ability to pursue similar cases in the future. It also infuriated Indian com-

³ Richard Carrico, *Strangers in a Stolen Land: American Indians in San Diego, 1850-1880* (Sacramento: Sierra Oaks Publishing, 1987), 66-68.

⁴ Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 2001); Francis Paul Prucha, *The Great Father: The United States Government and the American Indian*, v. II (Lincoln: University of Nebraska Press, 1984), 609-758.

munities and provided an opening for a new group of non-Indian activists to get involved in regional Indian affairs. Epitomized by Charles Fletcher Lummis, the western progressives associated with the Landmarks Club and Sequoia League in particular may have valued Indian traditions and ethnic difference more than their eastern predecessors, but the resulting Indian eviction and relocation to Pala two years later suggests that they did so as part of an attempt to salvage their vision of California's distinctive history, freezing Indians in time as examples of local color, not because they valued Indian self-determination in its own right.⁵

At Pala, the Indian Office's agricultural model of "civilization" concentrated Indians into larger communities and increased their dependence upon the San Luis Rey River. Unlike the creeks and springs that watered their villages, the larger flow of the San Luis Rey knitted Indians into the regional economy, bringing them into conflict with others working to control the river and its resources. The imposition of the Indian Office's assimilation program inevitably pitted the various plans of the federal government against the expectations of

⁵ Obviously, grouping the various individuals and groups that have worked on Indians' behalf is as problematic as grouping American Indians. There were a variety of distinct motivations and goals that animated Indian reform, but in a general sense, I build on the distinction made by Hoxie and Prucha between eastern reformers who spearheaded the drive for assimilation and citizenship in the late nineteenth century, and a more practical progressive reform movement that emerged in the early twentieth century and was focused in the American West and generally less committed to full Indian assimilation into American life. For the purposes of this project, the former will be referred to as the friends of the Indians, and includes the Bureau of Indian Commissioners, the attendees at the annual Lake Mohonk conferences, the Indian Rights Association, the Women's National Indian Association and the Northern California Indian Association. The latter group, which I refer to as western progressives, narrowly focused on southern California, includes those associated with the Sequoia League, the Southwest Club of the Southwest Museum, the and the Landmark's Club. See Prucha, *The Great Father*, vol. II, 763-789; Sherry L. Smith, *Reimagining Indians: Native Americans Through Anglo Eyes, 1880-1940* (New York: Oxford University Press, 2000), 137-38, 146-47; William T. Hagan, *Theodore Roosevelt and Six Friends of the Indian* (Norman: University of Oklahoma Press, 1997).

existing Indian communities, the regional growth machine and the state government and courts.⁶ In this case, history favored the bold, as the Indian Office's cautious, bureaucratic and ideologically contorted attempts to secure land and water for the Indians of southern California were anemic compared to the efforts of both the non-Indian developers and later, the legal and political challenges launched by the Indians themselves.⁷ The tenuous and uncoordinated actions of the Indian Office created a strong discrepancy between federal plans for the region and actual accomplishments on the ground. The clarity of the linear reservation boundaries did not translate into effective Indian Office authority within them.

⁶ I use the term "growth machine" to refer to a loose, often internally competitive group of real estate, water, tourism, municipal and infrastructure interests ranging from San Francisco businessman William Griffith Henshaw to local real estate developer Ed Fletcher and other important names in San Diego and southern California history, such as Jesse and Ulysses S. Grant, Jr., Howard Huntington, William Kerckhoff and others. See Harvey Molotch, "The City as a Growth Machine," *The American Journal of Sociology* 82, no. 2 (1976): 309-322; John Logan and Harvey Molotch, *Urban Fortunes: The Political Economy of Place*, (Berkeley: University of California Press, 1987); and Andrew E. G. Jonas and David Wilson, *The Urban Growth Machine: Critical Perspectives, Two Decades Later*, (Albany: State University of New York Press, 1999). On the growth machine in San Diego County, see Emily L. Rader, "So We Only Took 120 Acres': Land, Labor and White Supremacy in the Settlement of Southern California, 1800 - 1925," (Ph.D. dissertation, University of Southern California, 1998). On Ed Fletcher particularly, see Ed Fletcher, *Memoirs of Ed Fletcher* (San Diego: Pioneer Printers, 1953); Carl Joseph Courtemanche, "The Utilization of Water in the City of San Diego From 1890 to 1940: A Cultural Analysis," (M.A. Thesis, San Diego State University, 1982); and Theodore Strathman, "Land, Water, and Real Estate: Ed Fletcher and the Cuyamaca Water Company, 1910 - 1926," *Journal of San Diego History* 50, nos. 3 and 4 (Summer/Fall 2004): 124-144.

⁷ Although scholars have questioned the coherency of the Progressive movement, its basic inclination toward efficiency and scientific problem solving was ascendant in the Interior Department at the turn of the century. See Peter Filene, "An Obituary for the Progressive Movement," *American Quarterly* 22 (1970): 22-34; Russel Lawrence Barsh, "Progressive-Era Bureaucrats and the Unity of Twentieth-Century Indian Policy," *American Indian Quarterly* 15, no. 1 (1991): 1-17; Hoxie, *A Final Promise*, 83-113; Lucy Maddox, *Citizen Indians: Native American Intellectuals, Race, and Reform* (Ithaca: Cornell University Press, 2006), 126-165; Donald J. Pisani, "Irrigation, Water Rights, and the Betrayal of Indian Allotments," in *Water, Land, and Law in the West: The Limits of Public Policy, 1850-1920* (Lawrence: University Press of Kansas, 1996), 164-79.

Further complicating the situation was California Indians' tenuous legal situation and Indian efforts to clarify it. In the first few decades of the twentieth century, Indians across the region joined the Mission Indian Federation which emerged to fill the vacuum formed by off-reservation economic pressure, ineffective federal Indian policy on reservations, and a Byzantine system of federal Indian law. They drew from shared Indian pasts of rituals, fiestas, agricultural practices, land use patterns and political organizations which were already dynamic hybrids of Indian, Spanish and Mexican influence. But they also turned to the broad ideological goals of the evangelical assimilationists, the cultural relativism of the progressive reformers, and the legal experience of decades spent fighting dispossession in the courts. They wound all of this around the demand for Indian sovereignty, economic independence, political self-determination, and legal rights. Beginning with the American period, this dissertation contextualizes the words and actions of a variety of the historical actors who were instrumental in that process — members of state and federal courts, policymakers in the Indian Office, the growth machine, evangelical Christian reformers, southwestern boosters, and the Indians whose lives and stories sit at the center. As such it addresses several themes: citizenship, racial identity formation, sovereignty, and pan-Indianism.

Indian citizenship was, and remains, a complicated issue. This project utilizes some of the insights of recent scholarship on cultural citizenship — the collection of social practices and beliefs that function at the personal level rather

than as a conferred legal or juridical status.⁸ It asks what citizenship meant, and how it might have been differentially conceptualized by those who fell outside the prevailing definition of the term. Most scholars working in the tradition of cultural citizenship study immigrant communities. Some have emphasized the agency of marginalized peoples in asserting cultural difference and rights which accrue to United States citizens. Focusing primarily on Latino immigrants, they point to the ways demands for rights expand the definition of citizenship.⁹ Other scholars, most notably Aihwa Ong, approach the subject with much greater attention to the structures of power, emphasizing the various strategies which marginalized people employ as they negotiate belonging within a national polity and culture. Ong refers to this as a dual process of “self-making and being-made.”¹⁰

These works and the debate they have occasioned have greatly expanded our understanding of citizenship. But applying their insights to Indians provides a unique perspective on the topic for three reasons: Indians possessed a stronger claim to Americanness than immigrants did. But their denial of citizenship prior to 1924 in the face of naturalization procedures that increasingly accommodated white immigrants points to the clear ways in which racial-

⁸ Lok Siu, “Diasporic Cultural Citizenship: Chineseness and Belonging in Central America and Panama,” *Social Text* 69, v. 19, no. 4 (Winter 2001), 8-10; Thomas Biolsi expands on Aihwa Ong’s notion of ‘graduated sovereignty,’ in Biolsi, “Imagined Geographies,” 240-41; and Renato Rosaldo, “Cultural Citizenship, Inequality, and Multiculturalism,” in William Flores and Rita Benmayor, *Latino Cultural Citizenship* (Boston: Beacon Press, 1997), 27-38.

⁹ William V. Flores and Rita Benmayor, “Constructing Cultural Citizenship,” in Flores and Benmayor, *Latino Cultural Citizenship*, 1-23.

¹⁰ Aihwa Ong, “Cultural Citizenship as Subject-Making: Immigrants Negotiate Racial and Cultural Boundaries in the United States,” *Current Anthropology* 37, no. 5 (Dec., 1996), 738.

ized notions of assimilability undergirded federal policies. Secondly, the role the federal Indian Office played in Indian lives distinguishes their experiences from those of immigrants. Finally, the unique legal status of Indians and the property and treaty rights that entailed differentiates Indians' status as citizens from "ethnic" or immigrant groups. Racism precluded full citizenship for many marginalized peoples. But wardship coupled with racism precluded full citizenship for Indians, and sovereignty complicated questions of allegiance and jurisdiction. This project tracks Indians as they actively engaged in taking specific positions in various uneven fields of social, economic, political, ecological or legal power.

At the same time, this dissertation benefits from the work of scholars who have theorized the process of racial identity formation. Scholars have pointed to the process of "othering," that is, securing privilege for oneself by highlighting markers of social difference and thus stigmatizing the "other." Sociologists Michael Omi and Howard Winant have described this process in racial terms as "racial formation" — the "process by which social, economic, and political forces determine the content and importance of racial categories, and by which they are in turn shaped by racial meanings." Further, they describe "racialization" as the "extension of racial meaning to a previously racially unclassified relation-

ship, social practice or group.”¹¹ Applying these insights to California, Tomás Almaguer argues that it was the simultaneous interaction of ideology (prejudice) and material forces (economic structures) that shaped the trajectory of racial hierarchies in California in the first few decades of the twentieth century. Racializing discourses and practices created, extended, reinforced and preserved social position and privilege during the time that white supremacy was being institutionalized and racial and class hierarchies were mutually constitutive.¹²

In much the same way that white supremacy emerged out of contact with non-whites in Almaguer’s analysis, Indians in southern California forged a public, political racial identity and consciousness through contact with non-Indian society, politics and legal traditions. It did not supplant other, more internal or local forms of identity, but functioned as a mask worn for non-Indians. It should come as no shock, then, that Indians responding to and actively defending against dispossession, economic dislocation, cultural conquest and the imposition of an increasingly rigid racial hierarchy did so by donning a mask which de-

¹¹ Michael Omi and Howard Winant, *Racial Formation in the United States: from the 1960s to the 1980s* (New York: Routledge, 1986), 61-62. My thinking on Indian racial identity has been influenced by Fredrik Barth, particularly his attention to the peripheral spaces in ethnic communities where identity is defined and defended. See “Ethnic Groups and Boundaries,” in *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (Long Grove, IL: Waveland Press, Inc., 1998 [originally 1969]); Fredrik Barth, “Enduring and Emerging Issues in the Analysis of Ethnicity,” in Hans Vermeulen and Cora Govers, *The Anthropology of Ethnicity: Beyond ‘Ethnic Groups and Boundaries’* (Amsterdam: Het Spinhuis, 1994), 11-32; Morris Foster, *Being Comanche: A Social History of an American Indian Community* (Tucson: University of Arizona Press, 1991), 9-14; Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkeley: University of California Press, 1998), 5-10; Joann Nagel, “American Indian Ethnic Renewal: Politics and the Resurgence of Identity,” *American Sociological Review* 60, no. 6 (1995): 947-65; and Marcus Banks, *Ethnicity: Anthropological Constructions* (New York: Routledge, 1996), 12-17.

¹² Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley and Los Angeles: Univ. of California Press, 1994), 1-4.

picted land tenure, economic independence, cultural resistance and racial identity.¹³

Over the timeframe of study here, historian Mae Ngai has pointed to the ways that “unlike Euro-Americans, whose ethnic and racial identities became uncoupled during the 1920s, Asians’ and Mexicans’ ethnic and racial identities remained conjoined,” resulting in the production of “alien citizens” who while born in the United States and possessing formal American citizenship “remained alien in the eyes of the nation.”¹⁴ Indians underwent a similar process as Indian ethnicity became fused with Indian racial identity. As a result, I use the term race and racial identity fully aware its socially constructed nature and often blurry boundary with ethnic identity.

For the Indians of southern California, “Mission Indian” functioned as an intermediate conceptual space between racial Indianness and ethnic identity, in which the two modes of thinking and sets of practices interacted and were mediated. Their Indianness connected Mission Indians to other Indian spaces across southern California and the Southwest, and the legacy of the missions connected them to an increasingly important component of the mythology of California. Despite the fact that it was primarily a legal and political category, to be “Mission Indian” in the twentieth century, when the term had lost its salience as a referent to those born in the missions, required a new definition of the mis-

¹³ Alexandra Harmon, “Lines in the Sand: Shifting Boundaries between Indian and non-Indians in the Puget Sound Region,” *Western Historical Quarterly*, 26, 4 (1995), 430-31; Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkeley: University of California Press, 1998), 4-5.

¹⁴ Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 8-9.

sions. And Indians availed themselves of the cultural trope of California's mission and Spanish past to provide a ready-made way for non-Indians to understand their legal, political and spatial claims.

This study contributes to the way we understand how cultural and racial identity are intricately wrapped up in the intimate landscapes that inform culture. It builds off of scholarship in political ecology, cultural geography and sociology that seeks to understand the ways that existing power structures are mapped onto the landscapes we inhabit, and the variety of ways that political actors have challenged and negotiated those relationships — or, as cultural geographer David Harvey argues, the various ways that the “reorganization of space is ... a reorganization of the framework through which social power is expressed.”¹⁵ My work adds to this understanding by grounding the emergence of a public, political racial Indian identity that was still situated in local issues of land tenure and economic opportunity, and tracing it as it left the reservations and engaged in economic, legal and political debates with non-Indian society.

The dissertation also engages the question of sovereignty in two important ways. First, by exploring political activism and self-determination during the

¹⁵ Keith Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache* (Albuquerque: University of New Mexico Press, 1996), particularly 71-77; David Harvey, *The Condition of Postmodernity: An Enquiry Into the Origins of Cultural Change* (Cambridge, Mass.: Wiley-Blackwell, 1991), 255; Chris Wilson and Paul Groth, eds. *Everyday America: Cultural Landscape Studies after J.B. Jackson* (Berkeley and Los Angeles: University of California Press, 2003); On landscapes, see William McClung's useful distinction between arcadian and utopian visions of Los Angeles. William Alexander McClung, *Landscapes of Desire: Anglo Mythologies of Los Angeles* (Berkeley and Los Angeles: University of California Press, 2000); Bean, et. al, *Cahuilla Landscape*; Sheila McManus, *The Line Which Separates: Race, Gender and the Making of the Alberta-Montana Borderlands* (Lincoln: University of Nebraska Press, 2005), 1-36; Laura Woodworth-Ney, *Mapping Identity: The Creation of the Couer d'Alene Indian Reservation, 1805-1902* (Boulder: University Press of Colorado, 2004).

allotment era, a time in which Indian political power was at its weakest point, the study helps to counter the tendency to see sovereignty as something which Indians “lost” in the late nineteenth century, and “found” again after the Second World War. Secondly, examining Indian demands for sovereignty before the legal framework was fully erected shifts the focus to the rhetoric and provides opportunities to unpack what people meant by their claims at that time.¹⁶ But sovereignty must be asserted, and the Mission Indian Federation did so by demanding home rule, by which they meant Indian control over Indian affairs within Indian spaces. At the same time, they pushed the federal and state governments to honor their legal and economic responsibilities to Indians. In this, their rhetoric plays an important but undervalued transitional part in the demands for Indian sovereignty, demanding full citizenship as Indians in order to defend against the guardianship of the federal government.

Lastly, the dissertation adds to our understanding of early twentieth century pan-Indian movements — a field of study still dominated by the work of Hazel Hertzberg — by providing a case study of an incipient pan-Indian movement. In Hertzberg’s study, pan-Indianism emerged along either political lines among detribalized Indians, or along religious lines among those who still identified tribally.¹⁷ The former is best exemplified by the so-called “Red Progres-

¹⁶ This is an important step to begin to address the indigenous theoretical critiques such as that by Taiaiake Alfred, who argues that sovereignty forces Indians to subjectify themselves to a non-Indian and oppressive, assimilative political ideology., Taiaiake Alfred, “Sovereignty,” in Philip J. Deloria and Neil Salisbury, eds., *A Companion to American Indian History*, (Malden, MA: Blackwell Publishing Ltd., 2002), 460-473.

¹⁷ Hazel Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971), particularly 25-27.

sives” in the Society of the American Indian, most of whom were the products of boarding schools, generally alienated from the reservations and tribal political structure, and deeply embedded in the progressive drive for assimilation.¹⁸ The latter was represented by the Ghost Dance movement of the last decade of the nineteenth century, and the Native American Church of the early twentieth century, both of which urged Indians to withdraw from mainstream non-Indian society.¹⁹ In much of this historical narrative, public, political pan-Indianism travels from Washington D.C. to the reservations progressive anti-modernists such as John Collier and his Indian colleagues. There, it simmered and percolated through the Indian New Deal, termination, relocation campaigns and eventually reemerged as the National Congress of the American Indian, the National Indian Youth Council and the Red Power movement between the 1940s and 1960s.

My work on the MIF describes the emergence of pan-Indian sensibilities that functioned at the village, band, “tribal,” state and racial levels. The Mission Indian Federation articulated a broad vision of Indian policy and racial identity that provided a variety of bands, language groups and peoples of the region a way to respond to legal and political challenges to dispossession and economic dislocation. In so doing, it joins the work of other scholars who have studied political and legal organization and racial identity formation in Indian

¹⁸ Hertzberg, 31-58; Maddox, *Citizen Indians*, 126-165; Drew Lopenzina, “‘Good Indian’: Charles Eastman and the Warrior as Civil Servant,” *American Indian Quarterly*, 27 no. 3/4 (Summer-Autumn, 2003): 727-57; David J. Carlson, “Indian For a While: Charles Eastman’s Indian Boyhood and the Discourse of Allotment,” *American Indian Quarterly* 25, no. 4 (Fall 2001): 604-615.

¹⁹ Gregory E. Smoak, *Ghost Dances and Identity: Prophetic Religion and American Indian Ethnogenesis in the Nineteenth Century* (Berkeley: University of California Press, 2006).

communities.²⁰

In the pages of its sporadically published magazine, *The Indian*, and in the testimony in the legal actions the organization instigated, the federation articulated a coherent and aggressive vision of Indian-driven, Indian-centered Indian policy that rested on both government legal and economic responsibility to Indians, and the destruction of the Bureau of Indian Affairs in favor of Indian sovereignty. In a complex way, the federation and other similar organizations with which they tenuously cooperated, offered an important alternative to both the policy of allotment as a road to assimilation, and to the government-imposed autonomy of the Indian New Deal. Recognizing allotment as a dead end, and portraying the New Deal as government-sponsored communism, the federation sought to put Indians in control of Indian economic assimilation by retaining political and cultural control over Indian spaces, many of which had been created by non-Indian forces.²¹

The federation polarized southern California — a fact that has been reflected in the assessments of the few scholars who have seriously studied it.²² As a result, interpretations of their motivations and actions have varied greatly. Rupert Costo (Cahuilla), historian at the University of California, Riverside and

²⁰ Andrew H. Fisher, “They Mean to Be Indians Always: The Origins of Columbia River Indian Identity, 1860-1885,” *Western Historical Quarterly* 32, no. 4 (Winter, 2001): 468-92; Christian McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven: Yale University Press, 2007).

²¹ On the charges of communism, see Tanis Thorne, “On the Fault Line: Political Violence at Campo Fiesta and National Reform in Indian Policy,” *Journal of California and Great Basin Anthropology*, 21, no. 2 (1999): 208-10.

²² Strong complained that the intense partisanship among the Cahuilla, Cupeño and Luiseño complicated his 1924-25 field work. Strong, “Aboriginal Society in Southern California,” 2.

publisher of the *Indian Historian*, characterized the federation as malfeasant, a view that was likely fostered by his own family's opposition to the federation earlier in the century.²³ His view is supported by the general tenor of the existing document collections in the records of the Bureau of Indian Affairs, many of which were collected as part of the Indian Office's attempt to destroy the federation. Work which drew uncritically off those records has perpetuated the image of the federation, dominated by non-Indian leaders such as Jonathan Tibbet and his successor Purl Willis, and populated by duplicitous Indian co-conspirators and passive Indian victims.²⁴

A countervailing tendency in popular culture sees the federation as ethnic agents resisting Anglo culture.²⁵ This tendency finds its fullest scholarly treatment in historian Lisbeth Haas' study of racial identity among the Californio, Mexican and Indian populations of San Juan Capistrano. While not the direct subject of her study, she casts the federation as appealing to youthful Indians whose connections with village life were tenuous and who banded together as defenders of tribal integrity against the last stages of the Anglo conquest of California. Her conclusions hold true for Indians living off reservation in San Juan Capistrano, for whom the federation helped to articulate an Indian identity they

²³ Rupert Costo and Jeannette Henry Costo, *Natives of the Golden State: The California Indians* (San Francisco: Indian Historian Press, 1995), 285.

²⁴ Walter Robert Baggs. "An Unfortunate Kind of Leadership: Jonathan Tibbet and the Mission Indian Federation," (M.A. Thesis, University of California, Riverside, 1978). Tibbet was succeeded by Purl Willis, whose continued efforts to challenge the Indian Office resulted in federation documents being filed in the Indian Office's central classified files under the heading, "Pests" alongside efforts at exterminating rodents and agricultural blights.

²⁵ See, for example, Mission Indian Federation website, <http://missionindianfederation.com>.

had partly lost. But their experiences only represent one side of a multifaceted story.²⁶ The dramatic rhetoric the federation used strengthens the popular appeal of this interpretation. Recent scholarship has focused on the federation's use of violence, interpreting the organization fighting along ethnic lines.²⁷

Historian Edward Castillo has presented the federation as a transitional organization which, in pushing for land, water rights, citizenship and self-determination, spanned the period between the early reform movements and the pan-Indian movements of the heady 1950s and 1960s. While certainly correct in pointing out the transitional importance of the federation, his brief accounts of the movement broadly generalized the federation's forty-year period of operation. The federation became much more ideologically coherent between 1937 and its decline in the 1960s as it leveled strident critiques against the Indian New Deal and Termination. But the federation's trajectory was not fixed from the outset. By focusing on its early years, my work explains how and why it emerged in the first place.²⁸

In his recent award-winning book, legal historian Christian McMillen posits that the federation played an influential role in the politicization of Fred Mahone (Hualapai). After a brief stint in college and the army, Mahone found him-

²⁶ Haas, *Conquests and Historical Identities*, 126-29; 132; 244, n79.

²⁷ Eric Bernard, "Fighting the Conspiracy: The Mission Indian Federation's Justifiable Use of Violence, 1905-1934," (M.A. Thesis, California State University, Long Beach, 2006).

²⁸ Edward D. Castillo, "Twentieth-Century Secular Movements," in in *Handbook of North American Indian*, ed. William C. Sturtevant, vol. 8, *California*, ed. Robert F. Heizer, (Washington, D.C.: Smithsonian Institution, 1978), 715; Edward D. Castillo, "Mission Indian Federation," in *Native America in the Twentieth Century: An Encyclopedia*, ed. Mary B. Davis, (New York: Garland, 1994), 345-46.

self in Riverside, California, where he became involved in early federation activities and eventually formed the “American Wallapai and Supai Indian Association” in 1921. He went on to lead a legal campaigns to protect Hualapai land that McMillen argues was instrumental in the scholarly turn to ethnohistory and, through the involvement of Felix Cohen, the creation of American Indian law.²⁹ Much more work needs to be done to connect the various Indian political and legal movements underway across the west in the early twentieth century. This project contributes to that effort.

By far, the most sophisticated scholarly treatment of the Mission Indian Federation has come from an article by historian Tanis Thorne on the federation’s role in a violent confrontation with the Indian Office police at the Campo Indian fiesta in 1927.³⁰ In it, she presents the federation as actively testing jurisdictional boundaries and asserting their rights to control the reservations and the political and social practices which took place on them. She attributes the federation’s popularity to their advocacy for Indian self-government and the heightened ethnic identification among Indians as a consequence of the legal fight in the late 1920s for compensation over the eighteen unratified treaties signed between the U.S. government and California Indians in the 1850s.³¹

The federation was indeed all of these things. As a loose federation with a diversity of opinions, it did provide a platform for hucksters, thugs and ethnic

²⁹ Christian McMillen, *Making Indian Law*, 22-23.

³⁰ Thorne, “On the Fault Line;” and Thorne, “The Death of Superintendent Stanley and the Cahuilla Uprising of 1907-12,” *Journal of California and Great Basin Anthropology*, 24, no.2 (2004): 233-58.

³¹ Thorne, “On the Fault Line,” 191-93.

warriors. But it also energized and politicized substantive and insightful political actors. It appealed to a broad cross-section of the Indian population of the region, and as such functions as a window into Indian communities at a pivotal point in their histories.

The first five chapters of the dissertation build the legal, ideological, economic and environmental contexts out of which the Mission Indian Federation emerged. Chapter one provides ethnographical background on the Indians of the San Luis Rey River basin, and a historical overview of the pre-American period. Chapter two seeks to answer a few simple questions: When did Indians in southern California become citizens, and what did that mean to them in political or practical terms? Particularly, it argues that allotment policy, legislation and court decisions undermined full citizenship for California Indians by creating a category of racialized citizen-ward which indirectly and unintentionally privileged racial over ethnic identity and galvanized nascent reservation-based self-defense movements into legal action.

Chapter three uses the lengthy court battle and concomitant public debate over the removal of the Cupeño, Luiseño and Kumeyaay residents of five small Indian villages on Warner's Ranch to the Pala Indian reservation in 1903 as a lens to examine the contradictory visions that various actors attempted to impose on the landscape of the San Diego backcountry. The late nineteenth century was a period of intense economic growth and demographic change in southern California, as the region was brought into the national economy and

polity through the extension of the railroad and intense urban development in San Diego and Los Angeles. Extensive metropolitan growth along the coast was predicated on the appropriation of inland water supplies. That, and the real estate speculation that accompanied it, put tremendous pressure on the region's existing Indian communities. Nonetheless, Indians carved out economic autonomy on the margins of non-Indian society. Assimilationists working with the Indian Rights Association sought to protect that autonomy and the land it required as a way to integrate Indians into American culture. Eviction discredited them and presented Indians to the public as examples of the stereotyped vanishing race, situated safely on the margins of non-Indian society. At the same time, it empowered progressive reformers and Indians themselves.³²

The fourth chapter explores how Indians participated in making reservations along the San Luis Rey River into meaningful Indian spaces by insisting on adequate living and working conditions, community integrity and land tenure which comported with Indian practices. Collectively, they sought to restore the economic autonomy they had previously been able to deploy and to transform reservations into a Mission Indian homeland. The fifth chapter responds by examining how the government's efforts to make reservations productive floundered on specific examples of bureaucratic ineptitude. The ideological attachment of the Indian Office to allotment and civilization, and the encroachment of the regional growth machine, created a vacuum which Indians organized to fill. At Pala, that meant the tepid support of allotment, but Indian efforts to control

³² Brian Dippie, *Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, CT: Wesleyan University Press, 1984).

economic development. At La Jolla and Rincon, it translated to open resistance to allotment plans. In both cases, the emergent Mission Indian Federation reinvigorated existing village political structures and sought to supplant federal authority.

The final two chapters examine the Mission Indian Federation explicitly as emerging out of the tensions described in the previous chapters. Chapter six examines the biographies of a number of early members of the federation as a way to understand the motivations that contributed to its growth. The federation was a complex organization, nimble enough to provide meaning to its members for a variety of reasons, but coordinated enough to enable them to collectively exert power. Chapter seven looks specifically at the rhetoric of the federation in its early years. Focusing on the slogan, “human rights and home rule,” which I read as a general framing device for an Indian approach to Indian policy, the chapter presents the federation’s rhetoric and actions as deploying full citizenship in order to demand sovereignty as Indians and rights as people.

This dissertation tracks the federation through its formative years as it navigated between the Indian Office, the American legal system, regional developers, Indian politics and the land and environment which all sought to control. It takes Indian political rhetoric seriously. That is not to say that it takes that rhetoric at face value. There were any number of reasons why leaders of the federation or their opponents may have said or done what they did. And there were plenty of times when rhetoric did not match actions. But only by suspending incredulity, at least momentarily, can we begin to see what the situation may

have looked like to the Indians on the ground at that time. If the demand for human rights strikes us today as a hopelessly idealistic goal for Indians in southern California in 1920, it is perhaps because we have failed to recognize the depth of Indian desperation at that time. And if demands for home rule strike us as equally futile, we would be well advised to look to how far Indian claims of sovereignty have come since then.³³

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³³ See Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton, 2005); Loretta Fowler, *Tribal Sovereignty and the Historical Imagination* (Lincoln: University of Nebraska Press, 2002); Daniel M. Cobb and Loretta Fowler, eds., *Beyond Red Power: American Indian Politics and Activism since 1900* (Santa Fe: School for Advanced Research Press, 2007).

CHAPTER ONE

INDIAN SUBJECTS

Indian Peoples of the San Luis Rey River Basin, and the Mission System

California Indians have a distinct history. For each of the four main cultural groups living in the San Luis Rey River basin — the Cupeño, Cahuilla, Luiseño (Quechlam) and Diegueño (Kumeyaay or Ipai / Tipai) — life centered on the village, with each village representing a “clan triblet,” led by a hereditary leader.¹ While there was some sense of supravillage identity among all of them, especially the Luiseño and Cahuilla, scattered small villages (or *rancherías* as the Spaniards called them) meant that most political power existed at the local level.²

The Luiseño, Cupeño and Cahuilla share broad cultural similarities beginning with language. All three speak Takic languages, part of the Uto-Aztecan family. This distinguishes them from the Kumeyaay who speak a Yuman lan-

¹ In keeping with naming conventions elsewhere, Indian cultural groups in southern California were labeled by non-Indians, in this case Spanish, usually through the mission to which they were attached. Thus, the Acâgchemem at the Mission San Juan Capistrano were called the Juaneños, the Quechnajuichom around the Mission San Luis Rey became the Luiseños, and the Kumeyaay living in the vicinity of what became the Mission San Diego de Alcalá were called Diegueños. Kumeyaay itself is a collective term, encompassing both the Ipai and the Tipai — the northern and southern components of the Kumeyaay nation, respectively. Katherine Luomala, “Ipai-Tipai,” in *Handbook of North American Indian*, ed. William C. Sturtevant, vol. 8, *California*, ed. Robert F. Heizer, (Washington, D.C.: Smithsonian Institution, 1978), 592-609; Lowell John Bean and Florence Shippek, “Luiseño,” in *Handbook of North American Indian*, ed. William C. Sturtevant, vol. 8, *California*, ed. Robert F. Heizer, (Washington, D.C.: Smithsonian Institution, 1978), 550; the hereditary clan leader was called the *net*.

² Bean and Shippek, “Luiseño,” in *Handbook of North American Indian*, 550-563; Raymond White, “Luiseño Social Organization,” *University of California Publications in American Archaeology and Ethnology* 48, no. 2 (1962); and Rader, 39-51.

guage of the Hokan family.³ Among the Takic groups, the Cupeño and Cahuilla are culturally the closest. Scholars have recognized three subgroups within the Cahuilla: Mountain, Desert and Pass Cahuilla, referencing their place of residence and thus the specific subsistence routines each required.⁴ In order to integrate autonomous villages over the vast expanse of the territory they controlled, the Cahuilla maintained an exogamous political structure, in which captains were elected from outside the villages they represented. This, along with military and trading alliances, contributed to a more pronounced sense of ethnic identity than that found among the Luiseño and Cupeño. Unity and remoteness from Spanish settlement enabled them to resist the direct influence of the Spanish and Mexican missions.⁵ Cupeño society was also organized around moieties and shared with the Cahuilla the cosmology of twin creator gods.⁶ But Cupeño culture also reflects its unique geographical position — as the smallest cultural group of the four and nestled between the Mountain Cahuilla on the

³ William F. Shipley, "Native Languages of California," in *Handbook of North American Indian*, 86-87.

⁴ William Duncan Strong, "Aboriginal Society in Southern California," *University of California Publications in American Archaeology and Ethnology* 26, no. 1, (1929): 36-182.

⁵ Heizer, *Languages, Territories, and Names*, 45-48; Edward Winslow Gifford, "Clans and Moieties in Southern California," *University of California Publications in American Archaeology and Ethnology* 14, no. 2, (1918): 155-219; Strong, "Aboriginal Society in Southern California," 183-328; Florence Shippek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986*, (Lincoln: University of Nebraska Press, 1987), 189; Lowell John Bean, Sylvia Brakke Vane and Jackson Young, *The Cahuilla Landscape: The Santa Rosa and San Jacinto Mountains* (Ramona, Calif: Ballena Press, 1974); Lowell John Bean, *Mukat's People: The Cahuilla Indians of Southern California*, (Berkeley: University of California Press, 1972).

⁶ Jane Hill and Rosinda Nolasquez, *MULU'WETAM: The First People, Cupeño Oral History and Language* (Banning, Calif: Malki Museum Press, 1973), i-iii; Gifford, "Clans and Moieties in Southern California," 188-92.

immediate east, the Luiseño on the west, and the Kumeyaay on the south. Its amalgamative culture reflects this relationship (see map no. 3, appendix).

The Cupeño played a pivotal role in the region, especially after the arrival of Europeans. They settled primarily in two villages, Kupa and Wilakal, on the northeastern edge of the broad plain now known as Warner's Valley, along Agua Caliente Creek and Buena Vista Creek, respectively. Culturally, linguistically and geographically, they intermediated Luiseño, Kumeyaay and Cahuilla influences. The Cupeño maintained the social organization and clan structure from the Cahuilla, and adapted the Chinigchinich religion from the Luiseño, as did the Ipai in the nearby villages of Mesa Grande and San Ysidro. Additionally, of the Cupeño's two moieties (Coyote and Wildcat), the latter was largely comprised of clans with Kumeyaay origins.⁷

The Luiseño controlled a massive territory encompassing approximately 1,500 square miles from the mouth of the San Luis Rey River into what is now southern Riverside County, east to the mountains bordering the desert, and south to Kumeyaay territory. They shared important cultural affinities with the Kumeyaay, namely the lack of moieties or supra-clan organization, and the Chinigchinich religion which centered on the *toloache* ritual, which involved the consumption of an infusion made from the *datura wrightii* plant, and spread southward from the Tongva and Gabrielino further north.⁸

⁷ The three wildcat clans with Kumeyaay origins were the *sivimūat*, *auliñawic* and *tcūtnikut*, all of which became prominent surnames in the twentieth century. See Strong, "Aboriginal Society," 215-19; 248. Hill and Nolasquez, *MULU'WETAM*, i; Bean and Smith, "Cupeño," in *Handbook of North American Indian*, v. 8, 589.

⁸ Bean and Shipek, "Luiseño," in *Handbook of North American Indian*, v. 8.

All cultural groups engaged in seasonal rounds, relying to varying degrees on acorns, small game, seeds, berries and fish.⁹ Specific gathering sites were often held individually according to lineage; while hunting and resource sites, such as springs, were often held in common at the clan level. Depending on size and scope of territory, distinct microecological niches contributed to the general diversity of the diet. The Luiseño had greater access to the coast and were therefore more reliant on fish caught with baskets. Cahuilla were more dependent on food supplies from the highlands, although that was only a portion of their territory. To supplement trade, hunting and gathering, all engaged in agricultural practices.¹⁰

The region's Indian villages were located near water which was crucial to survival in the arid / semi-arid climate. In addition to providing sustenance, the Indians used water to leech the bitterness from the acorns used to make mush (*wewish*), and to soak the grasses, reeds and tules they used for basketmaking. Water's centrality was evident by its presence in place and group names. Anthropologist Katherine Luomala pointed to the phrase used by the Ipai to refer to the Tipai, "people of other waters," as evidence of that centrality, but the term also indirectly references the use of drainage basins as boundary lines.¹¹

⁹ In addition, the Ipai-Tipai engaged in floodplain farming. Luomala, "Ipai-Tipai," in *Handbook of the North American Indian*, v. 8, 595; Philip S. Sparkman, "The Culture of the Luiseño Indians," *University of California Publications in American Archaeology and Ethnology* 8, no. 4 (1908), 187-234.

¹⁰ M. Kat Anderson, *Tending the Wild: Native American Knowledge and the Management of California's Natural Resources* (Berkeley and Los Angeles: Univ. of California Press, 2005), 135-37.

¹¹ Luomala, "Ipai-Tipai," 592.

The indigenous people of southern California shared a basic set of regional cultural patterns. Among them was the not-uncommon practice of polygyny, often sororal, the fairly widespread presence of shamans and a complex of funerary and initiation rituals. These similarities nonetheless did not prevent enmity between groups who were keenly aware of their cultural differences and competing political agendas, especially between Takic- and Yuman-speaking groups.¹²

Indians of the region numbered between 12,000 and 30,000 at contact, but dwindled to approximately 3,000 by the end of the nineteenth century.¹³ However, not all experienced decline to the same degree. Those closest to the coast and thus to the nodes of Spanish settlement such as the Luiseño and Kumeyaay declined much more severely than the Cahuilla and Cupeño further inland.

Initial contact with Europeans occurred at different times for each group. Because the Spanish moved into Alta California from the south and the coast, the Tipai had the earliest contact, and mounted the first coordinated resistance attacking the Mission San Diego in 1775 and burning it to the ground.¹⁴ The following year, the Mission San Juan Capistrano was completed sixty miles to the

¹² Hill and Nolasquez, *Mulu'wetam*, i.

¹³ Sherburne Cook, *The Population of the California Indians, 1769-1970* (Berkeley and Los Angeles: University of California Press, 1976), 20-43.

¹⁴ Steven Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769-1850* (Chapel Hill: Univ. of North Carolina Press / Omohundro Institute of Early American History and Culture, 2005), 258-61; Joel Hyer, *"We Are Not Savages": Native Americans in Southern California and the Pala Reservation, 1840-1920* (East Lansing: Michigan State University Press, 2001), 29.

north in territory controlled by the Agâgchemem. Over the course of the nineteenth century, most Agâgchemem, later referred to as Juaneños, relocated to Luiseño territory further south, causing scholars to argue that Juaneño culture all but disappeared into Luiseño culture.¹⁵

The process of gradual appropriation of Indian resources and infringement on Indian autonomy throughout the San Luis Rey watershed began in 1795 when the Spanish first entered valleys around the river's headwaters looking for a site upon which to build a mission. Juan Mariner passed through the broad, sloping valley below Kupa in August 1795 and remarked approvingly on its size, location, springs, flora, arable and irrigable land, and the large, "docile" Indian population of approximately 2,000 that resided there. Mariner recommended it as a site for both a mission and a presidio. The hot sulfur springs at Kupa were a natural site for settlement. Nestled among a granite outcrop on a sloping hill at the foot of Eagle's Peak, they provided a reliable supply of water for both domestic and agricultural use in an otherwise semi-arid climate, and offered a secure location with an expansive view of the valley below. From Kupa, Mariner's expedition traveled west following the river through the Pala Valley, a site he also viewed as suitable for a mission.¹⁶

The Spanish did not see the carefully managed landscape of the valley. Instead, they saw the Indians as nestled passively among the trees and living

¹⁵ Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley: University of California Press, 1995), 2-3.

¹⁶ The Diary of Fray Juan Mariner, 26 August 1795, as quoted in Joseph J. Hill, *The History of Warner's Ranch and Its Environs* (Los Angeles: Private Printing, 1927), 31; Florence Shippek, *Pushed into the Rocks*, 8-9.

off the bounty of the land. Anthropologist Florence Shipek and ethnobotanist M. Kat Anderson have described the ways in which, prior to the arrival of the Spanish, the Indians of Southern California engaged in active agricultural pursuits, including broadcasting grain-grass seeds in burned fields, transplanting bulbs, tubers and cactus cuttings, and clearing fields for domestic crops such as maize.¹⁷ Anderson describes California at the time of Anglo contact as a carefully tended garden in which Indians burned fields to increase the abundance and density of food and basket-making sources, pruned and coppiced trees to facilitate growth and the production of tools and building supplies, and sowed acorns to ensure long-term availability of food supplies. Her research on native Californian wildlife management blurs the distinction between hunting / gathering and agricultural societies.¹⁸

Despite Mariner's recommendations for an inland settlement, the Franciscan priests who spearheaded the expansion of the mission system along the Alta California coast eventually established Mission San Luis Rey de Francia on the south (left) bank of the river which now bears its name just five miles from

¹⁷ Shipek, *Pushed into the Rocks*, 174; M. Kat Anderson, *Tending the Wild: Native American Knowledge and the Management of California's Natural Resources* (Berkeley and Los Angeles: Univ. of California Press, 2005), 133-41.

¹⁸ Most Luiseño and Cupeño clans cultivated wild tobacco, or *toloache* [*Datura Wrightii*] which is now found clustered around village sites. Anderson, *Tending the Wild*, 125-27; 137-41; 154. See also Lowell John Bean and Florence Shipek, "Luiseño," in *Handbook of North American Indian*, ed. William C. Sturtevant, vol. 8, *California*, ed. Robert F. Heizer, (Washington, D.C.: Smithsonian Institution, 1978), 550-563; Edward Winslow Gifford, "Clans and Moieties in Southern California," *University of California Publications in American Archaeology and Ethnology* 14, no. 2, (March 1918): 196; Hill, *History of Warner's Ranch*, 6-8; George Wharton James, *Picturesque Pala: The Story of the Mission Chapel of San Antonio de Padua, connected with Mission San Luis Rey* (Pasadena: Radiant Life Press, 1916), 72.

the sea.¹⁹ Gradually thereafter, the Franciscans worked to extend authority and a new agricultural regime over the residents of the villages in the surrounding backcountry. Under the Spanish plan, power was to flow up the river.

The Mission San Luis Rey was distinguished by the size and number of its ranchos scattered throughout the hinterlands, where the approximately 2,000 neophytes lived and managed the mission's agriculture and livestock under the close supervision of *mayordomos* appointed by the Franciscan padres. Along with mission San Diego, San Luis Rey was distinctive in that it required neophytes to perform community work for the mission and to periodically attend religious services and training there, but not relocate to the missions themselves as was the custom elsewhere. In the minds of the Franciscans, inland Indians were subject to priestly authority but distance provided a modicum of autonomy that facilitated cultural adaptation.²⁰ Priests had chapels constructed to extend the influence of the mission into the countryside which they visited every few weeks. But the Indians remained in their own villages, loosely incorporated into a changing and thus flexible economy and polity, where they adopted cultural and agricultural practices from the Spanish and Mexicans, while retaining some

¹⁹ Lightfoot, *Indians, Missionaries and Merchants*, 53-55.

²⁰ Mission San Luis Rey, along with Mission San Gabriel was unique in this regard. On the Mission system see Haas, *Conquests and Historical Identities*, 13-43; Hackel, *Children of Coyote*, 267-71; George H. Phillips, *Indians and Intruders in Central California, 1769-1849* (Norman: University of Oklahoma Press, 1993), 83-107. On the distinctiveness of Mission San Luis Rey, see Kent G. Lightfoot, *Indians, Missionaries, and Merchants: The Legacy of Colonial Encounters on the California Frontier* (Berkeley: University of California Press, 2004), 65; James A. Sandos, *Converting California: Indians and Franciscans in the Missions* (New Haven: Yale University Press, 2004), 102; John Johnson and Dinah Crawford, "Contributions to Luiseño Ethnohistory Based on Mission Register Research," *Pacific Coast Archaeological Society Quarterly* 35, no. 4 (1999): 79 - 102.

control over their own spaces.²¹

The limited autonomy the various Luiseño, Cupeño, Kumeyaay and Cahuilla villages of the region enjoyed declined in 1816 when an *asistencia*, or sub-mission was built at Pala at the intersection of the main east-west road, and the northern route to Temecula. Situated between the Temecula Valley to the north, Pauma and San José Valley to the east and south, and the mission west toward the coast, Pala became a link between the various Indian rancherías under the nominal authority of the mission of San Luis Rey. Between 1827 and 1833, a small chapel near the hot springs in Warner's Valley extended the reach of the *asistencia* even further and facilitated the expansion of the mission's agricultural, cultural and economic systems.²²

In attempting to make sense of the interaction between colonial impulses and colonized peoples, scholars have articulated the notion of resistant adaptation. Recognizing that resistance is a dynamic process, as is culture, this approach emphasizes the ways in which resistance and adaptation contributed to each other.²³ In the early nineteenth century, the structure of power throughout the San Luis Rey River Valley allowed space for resistance and adaptation, and

²¹ Pablo Tac, "Indian Life and Customs at Mission San Luis Rey," *The Americas*, 9, no. 1 (July 1952): 87-106.

²² Hill, *The History of Warner's Ranch*, 38.

²³ On "resistant adaptation" see Steve J. Stern, *Peru's Indian Peoples and the Challenge of Spanish Conquest*, 2nd ed. (Madison: University of Wisconsin Press, 1992), 69-72; 137-39; Cynthia Radding, *Wandering Peoples: Colonialism, Ethnic Spaces, and Ecological Frontiers in Northwestern Mexico, 1700-1850* (Durham: Duke Univ. Press, 1997) 249-301. While Sarah Deutsch did not use the term, it is central to her argument that "the regional community permitted Hispanics to select and incorporate into village life only those aspects of Anglo culture, such as sewing machines, cars, and clothing, which most suited their own concept of their needs." *No Separate Refuge: Class, Culture and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford Univ. Press, 1987) 202.

the historical record finds evidence of both.

Pablo Tac, a Luiseño born at the mission in 1822, wrote about his experiences at the Mission San Luis Rey in approximately 1835. Tac, along with another Luiseño was taken to Europe by Fr. Antonio Peyri in 1832. The boys registered at the Urban College in Rome in 1834. Tac completed his education in 1841, but died that year before he could return to take up a position as a mission priest. His account was steeped in the religious training to which he had so diligently dedicated himself, and was directed to a non-Indian audience anxious to see Tac as an example of the “success” of their work.²⁴

In his account, he described the structure and functions of the mission, its agricultural production and the labor routine. He argued that the seven Indian alcaldes who served as captains exercised a similar kind of power as they did before the Spanish arrived, but, by acting as intermediaries between priests and Indian villagers they were able to expand their power.²⁵

While Tac’s account is suspect in its description of Indian labor practices — he described a daily routine full of “cheer” — two important tendencies emerge. Very few Spanish soldiers were stationed around San Luis Rey, and the overt militancy of conquest and occupation was fairly tenuous. Secondly, he described the persistence of Indian cultural practices. Formerly done for war or grief, under the Padres, Tac claimed the Indians continued their dances as

²⁴ Pablo Tac, [the document is called “The Conversion of the San Luiseños of Alta California”] but it was published as “Indian Life and Customs at Mission San Luis Rey,” translated by Minna Hewes and Gordon Hewes, *The Americas* 9, no. 1 (July 1952): 87-106.

²⁵ Tac, “Conversion of the San Luiseños,” 99.

Christians, “for ceremony.”²⁶ The two tendencies came together in an incident surrounding a ball game between the Luiseños and Juaneños, which resulted in violence. A dozen Spanish soldiers arrived to try to quiet the fracas, but faced seventy or eighty angry Luiseños. The leader of the Indians, according to Tac, resisted the Spanish by saying in Luiseño, “Raise your saber... and I will eat you,” to which the soldiers gave no response and the situation defused.²⁷ In the open resistance to Spanish military force, in the persistence of Indian cultural patterns amidst the tenuous overlay of Spanish missionary life, we see a rough outline of the Indian spaces of resistance and adaptation at San Luis Rey.

Adam Castillo (Cahuilla) recounted years later that, while Indians had initially been unable to resist the padres and were turned into virtual slaves working in the fields and vineyards, they still lived in their own villages and “elected their own head men, or chiefs, their captains, their judges.” In the nineteenth century, according to Castillo, the padres lost control over the Indians, who, under Mexican law were “regarded as citizens and held and cultivated their own lands, partly in their own fashion, and partly as the Padres had taught them.”²⁸ In terms of agricultural production and political organization, this pattern suggests a sympathy with the experiences that historian Steven Hackel has described — a generalized overlaying of mission authority onto existing

²⁶ Tac, “Conversion of the San Luiseños,” 101.

²⁷ Tac, “Conversion of the San Luiseños,” 106.

²⁸ Adam Castillo, “‘The Story of the Indian Federation,’ an address given by Adam Castillo at the La Jolla Reservation, 7 Feb 1932,” National Archives, Pacific Region (Laguna Niguel) (hereafter NARA-LN), Records of the Bureau of Indian Affairs (hereafter BIA), RG 75, “Mission Indian Agency / Central Classified Files,” (hereafter MIA/CCF) Box 16, Folder (3), [091].

structures of community power.²⁹

Mexican Independence from Spain in 1821 altered the status of Indians in southern California from subjects of the King of Spain (and *gente sin razon* in the dual Spanish political system) to citizens of a republic. During the Mexican revolution against Spanish rule, the radical *constitución de Apatzingán* (1814), written by revolutionary priest, José Maria Morelos y Pavón, declared all those born in “America” to be citizens of Mexico.³⁰ Subsequently, the 1821 *Plan de Iguala*, which established the Mexican empire of Agustín Iturbide, clarified citizenship requirements further: “all the inhabitants of New Spain, without distinction between Europeans, Africans or Indians, are citizens of this monarchy, with a right to hold office according to their merit and virtues.”³¹ While Iturbide’s empire lasted for only three years, the federal Constitution of 1824, which established the Republic of Mexico, did not explicitly alter citizenship requirements.³² In fact, neither the 1824 constitutions, nor the 1836 revisions to it, made any mention of Indians’ rights of citizenship. A brief spate of liberal anticlerical laws pushed through by acting president Valentín Gómez Farias in 1833 reduced the

²⁹ Hackel, *Children of Coyote*, 229-71.

³⁰ Robert Gargarella, “Towards a Typology of Latin American Constitutionalism, 1810-1860,” *Latin American Research Review* 39, 2 (2004), 146-48.

³¹ Article XII, *Plan de Iguala*, (1 Col. de Dec. 4), as quoted in *Suñol, et. al. v. Hepburn, et. al.*, 1 Cal 292 (1850).

³² For a discussion of the development and debate over the 1824 constitution, see Jaime E. Rodríguez O., “The Constitution of 1824 and the Formation of the Mexican State,” in Jaime E. Rodríguez O., ed., *The Origins of Mexican National Politics, 1808-1847* (Wilmington, Del.: Scholarly Resources, Inc., 1997), 65-84; “Federal Constitution of the Mexican United States (1824),” H. P. N. Gammel, comp., *The Laws of Texas, 1822-1897* (Austin: Gammel Book Co., 1989), I:59-93, available at The University of Texas School of Law / Jamail Center for Legal Research, Texas Constitution Digitization Project: <http://tarlton.law.utexas.edu/constitutions/text/1824index.html>, accessed 27 June 2008.

power of the Franciscans in Alta California. Beginning the following year, missions in Alta California were secularized and control over the land turned over to civil administrators.³³

Secularization promised greater autonomy for the Indians at San Luis Rey, but those promises went unfulfilled. According to historian Douglas Monroy, secularization transferred power from the padres to the rancheros, a situation he likened to foxes guarding the hen house.³⁴ Rather than transferring the land to the Indians themselves, cattle were slaughtered, neophytes became persons, and most of the land went to local ranchers as evidenced by the dramatic increase in rancho grants between secularization and the beginning of the war in 1846.³⁵

Pio Pico was appointed as prefect for southern Alta California in February 1839. Later that year, on an official inspection of the missions for the Mexican government, William Hartnell described Pico's rule as problematic and very unpopular. The neophyte population had declined by approximately 85% in seven years. In 1840, new rules issued by California governor Juan Alvarado abolished administrators and replaced them with mayordomos. The ensuing dispute between Pio and Andrés Pico and José Antonio Estudillo — the mayor-

³³ Robert H. Jackson and Edward Castillo, *Indians, Franciscans, and Spanish Colonization: The Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1995), 87-91.

³⁴ Douglas Monroy, *Thrown Among Strangers: The Making of Mexican Culture in Frontier California* (Berkeley: University of California Press, 1990), 127-29.

³⁵ David J. Weber, *The Mexican Frontier, 1821-1846* (Albuquerque: University of New Mexico Press, 1982), 195-210. There were examples of Indians receiving grants. See Leland Bibb, "Pablo Apis and Temecula," *Journal of San Diego History*, 37, no. 4 (Fall 1991), 257-71.

domo appointed by Hartnell — only worsened conditions for the Indians who remained under the mission’s care at Pala and Temecula.³⁶ Understandably, many Indians left the area, moving either further away or adding to the region’s growing urban Indian population in Los Angeles and San Diego. Many others turned toward more overt acts of resistance evinced by an increase in horse theft and raids.³⁷

Locally, Jonathan Trumbull Warner benefitted from the chaos and corruption of the time.³⁸ He came to California from Connecticut in 1831. After 1834, he lived in California permanently, clerking for important early Angeleños such as Abel Sterns. He became close with Pio and José Antonio Pico and in 1837 married Anita Gale, a British orphan whom the Pico family had raised. In 1844, partly through his friendship with the Pico family, he successfully petitioned the Mexican government for the San José del Valle grant of approximately 45,000 acres covering the northern half of the valley that now bears his name. Within two years, he had consolidated his control over the entire valley by acquiring the similarly-named Valle de San José grant that covered the southern half of the valley. Warner took up residence on the ranch approximately four miles

³⁶ Zephyrin Engelhardt, *The Missions and Missionaries of California*, vol. IV, part III (San Francisco, The James H. Barry Company, 1915), 122-23, 145-48, 163-69, 182; Felipa Osuna de Marrón, “Recollections of Doña Felipa Osuna de Marrón, Native of San Diego, Where She Currently Lives, with Various Original Documents from the Private Files of This Same Señora, Who Gave Them to the Bancroft Library, 1878,” in Rose Marie Beebe and Robert M. Senkewicz, eds., *Testimonios: Early California through the Eyes of Women, 1815-1848* (Berkeley: Heyday Books, 2006), 150-57.

³⁷ Monroy, *Thrown Among Strangers*, 128-34.

³⁸ Admittedly, “Anglo” is a problematic term and certainly not applicable to all those who are so labeled here. When possible, I have used more specific language, but when I have reverted to the Anglo, I mean it to refer to white European Americans in a generalized sense.

south of the springs and the Indian village of Kupa.³⁹

The original San José del Valle grant, given to Jose Antonio Pico in 1840, made explicit reference to the Indians' right to reside at Agua Caliente (Kupa). Pico abandoned that grant in 1842. While the *expediente* Warner submitted to acquire the San José del Valle grant claimed descent from the Pico grant of the same name, it asserted that the Pico rancho was unoccupied at that time.⁴⁰ This is clearly contradicted by the accounts of the ranch as it became a major stopping point on the overland trail, eventually as part of the Butterfield Overland Mail Company after 1858.⁴¹ The springs provided the first reliable source of fresh water along the Gila trail after the westward journey through the Colorado desert from the Yuma crossing of the Colorado River. William H. Emory, who traveled through the region as the engineer with S.W. Kearney's Army of the West, tasked with mapping the 1846 expedition to San Diego, described the Indians on Warner's ranch as "held in a sort of serfdom by the master of the ranchería, [and...] living in great poverty." He also claimed that they had recounted to him their comfort under the missions, but "since the good priests had been removed and the missions placed in the hands of the people of the coun-

³⁹ "Expediente, Presented by the naturalized citizen Don Juan Warner in petition for the place known as Valle de San José," 30 August 1844, reprinted in Hill, *History of Warner's Ranch*, 201. Lorrin Morrison, *Warner: The Man and the Ranch*, (Los Angeles: Private Printing, 1962), 10-18. Also, see *John G. Downey, et. al v. Alejandro Barker*, "Defendants' Brief," Superior Court of the County of San Diego, (1893), 24-31.

⁴⁰ Warner *expediente*, in Hill, *History of Warner's Ranch*, 201.

⁴¹ Morrison, *Warner*, 52-54.

try, they had been ill-treated.”⁴² Another member of the same party, Captain, A. R. Johnson likewise recorded his impressions of the labor on the ranch, that was “performed by California Indians [...] stimulated to work by three dollars a month and repeated floggings.”⁴³

Those accounts testify not only to the presence of Indians, but to the ubiquity of exploitative Indian labor practices in California. Like other large landholders, Warner sought to create a small fiefdom of his ranch. While never as violent, oppressive or as large as John Sutter’s “New Helvetia” in northern California, or Cave Cout’s in nearby Rancho Guajome, Warner’s Ranch was nonetheless predicated on coerced Indian labor. Mexican and U.S. law aided Warner and others who wished to employ Indians.⁴⁴

In order to receive the grant, Warner, like many American rancheros, became a Mexican citizen. The war with Mexico left Juan José Warner in a bind — A pro-American Mexican citizen in a rather isolated but strategic location. His loyalties were suspect on both sides. He was detained briefly by American soldiers, but with American political control in the aftermath of the war, Warner had

⁴² William H. Emory, *Notes of a military reconnoissance from Fort Leavenworth, in Missouri, to San Diego, in California, including parts of the Arkansas, Del Norte, and Gila rivers* (Washington, D.C.: Wendell and Van Benthuysen, 1848), 105-106. On Emory: L. David Norris, James Milligan and Odie Faulk, *William H. Emory: Soldier-Scientist* (Tucson: University of Arizona Press, 1998).

⁴³ A[braham]. R. Johnston, “Journal of Captain A. R. Johnston,” reprinted in Emory, *Notes of a military reconnoissance from Fort Leavenworth, in Missouri, to San Diego, in California, including parts of the Arkansas, Del Norte, and Gila rivers*, 30th Cong., 1st sess., 1848, H. Ex. Doc. 41, 614.

⁴⁴ Albert L. Hurtado, *Indian Survival on the California Frontier* (New Haven: Yale University Press, 1988), 55-71; Hurtado, *John Sutter: A Life on the North American Frontier* (Norman: Univ. of Oklahoma Press, 2006); Michael Magliari, “Free Soil, Unfree Labor: Cave Johnson Cout’s and the Binding of Indian Workers in California, 1850-1867,” *Pacific Historical Review*, 73, no. 3 (August 2004): 349-89.

little trouble re-adapting.⁴⁵

Once California was admitted to the Union, Warner made effective use of the notorious 1850 Law for the Government and Protection of the Indians to exploit Indian labor, but his oppressive practices extended beyond the boundaries of his own ranch. As a member of the State Senate representing San Diego, Warner was instrumental in urging the U.S. Senate's rejection of the eighteen treaties signed by representatives of various bands throughout the state in 1851 and 1852. Warner, along with other ranch owners, opposed the treaties because removing Indians from the region and providing them with federally subsidized cattle ranches in the area would deplete their labor pool.⁴⁶ Soon after the treaties were rejected, another proposal was introduced to remove the Indians from California to Indian Territory. To this plan, Warner responded by issuing his "minority report," which argued that the best solution was to allow the Indians to "remain on small homesites because they supplied an excellent, indeed the only, source of labor in Southern California."⁴⁷

Clearly, Warner's vision of the regional landscape included Indians, but

⁴⁵ Warner was arrested twice — held once in Los Angeles and again in San Diego. Joseph J. Hill, "Hill, Working Papers," Bancroft Library, University of California, Berkeley, MSS 90/159c (hereafter "Working Papers"), box 1, folder 17; and Hill, *History of Warner's Ranch*, 101-10.

⁴⁶ Hurtado, *Indian Survival*, 138.

⁴⁷ Juan José Warner, "Minority Report," as quoted in Florence Shipek, *Pushed into the Rocks*, 30. George Harwood Phillips, *Bringing them Under Subjection: California's Tejon Indian Reservation and Beyond, 1852-64* (Lincoln: University of Nebraska Press, 2004), 57-59; Richard Carrico and Florence Shipek, "Indian Labor in San Diego County, California, 1850-1900" in Martha C. Knack and Alice Littlefield, eds., *Native Americans and Wage Labor: Ethnohistorical Perspectives* (Norman: Univ. of Oklahoma Press, 1996): 198-217. Hill claims that Warner was unable to operate the ranch without Indian labor. Hill, *Warner's Ranch*, 136; see also Cave Coutts to Thomas Henley, 7 July 1856 in Benjamin D. Wilson, *Indians of Southern California in 1852: The B. D. Wilson Report and a Selection of Contemporary Comment*, edited by John Walton Caughey (Lincoln: University of Nebraska Press, 1995), 149.

marginalized and tractable as he imagined they had been during the Mission era. Warner appropriated the springs, orchards and vineyards which were legacies of former mission production, and sought to use forced Indian labor to keep them productive. His vision did not immediately translate into reality on the ground. In 1851, Antonio Garra led the Cupeños in a revolt against their new masters.⁴⁸ Garra, the captain of two Cupeño villages, resented the forced labor, as well as the imposition of taxes for grazing his cattle on public land. He first attempted to organize a broad Indian confederacy among the various bands around Kupa and Warner's Ranch. He was successful enough to lead a small band in open revolt, attacking the city of San Diego and Warner's Ranch between November 1851 and January 1852.⁴⁹ The revolt was put down harshly with help from the Cahuilla under the leadership of Juan Antonio, and the Luiseño who followed the U.S.-appointed captain, Manuel Cota. Garra went on trial in San Diego, where Warner served as both prosecution witness and interpreter for the defendant.⁵⁰ Garra, his father, and William Marshall, an Anglo employee of Warner's who had married a Cupeño, were executed as a result.⁵¹ Despite the revolt's failure to inspire a larger pan-Indian rebellion, it did effectively end Warner's residence on the ranch. Until 1855, he lived in San Diego, at which point he moved his family to Los Angeles. By 1861, he had lost control of

⁴⁸ George H. Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California*, (Berkeley and Los Angeles, 1975), 82-88; Steven M. Karr, "Pala: A Southern California Indian Community," (Ph.D. diss., Oklahoma State University, 2001) 50-54.

⁴⁹ Phillips, *Chiefs and Challengers*, 88-90.

⁵⁰ *San Diego Herald*, 17 January 1852, in Hill, "Working Papers," box 1, folder 12.

⁵¹ Marshall came from Rhode Island in 1844 and married the daughter of Jose Lacano. Quickly became Warner's most trusted employee. *Downey v. Barker*, "Defendants' Brief, 34.

the ranch, but by that time, he had become a member of the State Assembly and introduced the successful amendments to the 1850 Act which made it easier to extract forced labor from Indians.⁵² By 1863, political realities nationwide and the centrality of slavery in the Civil War, especially after the Emancipation Proclamation, brought about the gradual repeal of the 1850 Act.⁵³

Indian resistance paid dividends, but only briefly. While ownership of both grants changed hands, and the grants themselves were divided and challenged in court, Indians continued to live in their villages. This was not a withdrawal from Anglo society, but de facto sovereignty on its margins. The Cupeños and Luisenos were able to expand their production of wheat to meet the growing demands of an emerging market. They found employment in the nearby cattle ranches as vaqueros and seasonal employment as the primary labor force in sheep shearing.⁵⁴ So long as they were able to maintain some control over the ways in which the land was used, it provided subsistence, mobility, flexibility, a refuge from dependence on wage labor, and enabled southern California Indians to resist and adapt to Anglo culture. It was this vision of the landscape as a place that fostered Indian survival that undergirded subsequent efforts to defend their historic tenure and to assert sovereignty in the courts.

American political, economic, social and legal systems were different

⁵² On Warner's role in California Government, see Morrison, *Warner, the Man and the Ranch*, 59-78; and Hill, *Warner's Ranch*, 149. On the effects of the revised Act, see Magliari, "Free Soil, Unfree Labor," 354-55.

⁵³ Robert Heizer and Alan Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico and the United States to 1920* (Berkeley: University of California Press, 1971), 58.

⁵⁴ Carrico and Shippek, "Indian Labor," 210 - 12.

from those of previous colonial powers in that the United States was the first that believed itself to be capable of asserting the authority of the state in a uniform manner over all of California.⁵⁵ Neither the Indian communities, the Spanish, nor the Mexican governments had pretended to do that. Both Spain and Mexico asserted their territorial control over the entire region. But in both cases, this mapping of authority occurred on paper, not on the ground, where outside of the isolated frontier nodes of authority such as the missions, presidios, and pueblos, Indians held power. During the Mexican period, effective political control over Alta California was stymied by demographics, civil war and the burdens of protecting its newly-established independence.⁵⁶

By contrast, the U.S. acquired California during a period of phenomenal growth in economic, industrial and political power and at the height of its drive to incorporate the far flung reaches of the continent into the national polity and economy on those terms.⁵⁷ The Indians living in the San Luis Rey River basin in 1848 faced a superficially similar but structurally different world, as they faced a new legal regime which directly challenged their autonomy yet again.

⁵⁵ On the uniform power of state authority, see Thomas Biolsi, "Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle," *American Ethnologist*, 32, no. 2 (May 2005): 239-259.

⁵⁶ Weber, *The Mexican Frontier, 1821-1846*, 83-121.

⁵⁷ Reginald Horsman, *Race and Manifest Destiny: The Origins of American Racial Anglo-Saxonism* (Cambridge: Harvard University Press, 1981), particularly 187-248; Hurtado, *Indian Survival*, 73-85; Robert W. Johannsen, "America's Golden Midcentury," *Journal of Aesthetic Education*, 30, no. 2 (Summer 1996): 25-42; William Deverell, "The Unending Mexican War," from *Whitewashed Adobe: The Rise of Los Angeles and the Remaking of its Mexican Past*. (Berkeley and Los Angeles: University of California Press, 2004), 11-48; Paul Foss, *A Short Offhand Killing Affair: Soldiers and Social Conflict during the Mexican American War*, (Chapel Hill: University of North Carolina Press, 2002), 74-81; Patricia Nelson Limerick, *The Legacy of Conflict: The Unbroken Past of the American West* (New York: W. W. Norton & Co., 1987), 55-71.

...

CHAPTER TWO

MAKING INDIAN CITIZENS:

The Legal Construction of Racialized Citizenship in Southern California, 1848-1917

This chapter explores how efforts to “civilize,” assimilate and make citizens of Indians in southern California prior to 1917 ran aground on the racial and legal shoals of federal allotment policy. Specifically, it argues that allotment delayed citizenship and further entrenched federal guardianship over California Indians by creating a racialized category of citizen-ward. In so doing, the chapter explores the vagaries of citizenship itself. For in the first twenty years of the period at issue here, California Indian citizenship was indeterminate. Indians were deprived of the right to vote, own land and engage in real estate transactions, and their testimony in court was deemed inadmissible against whites. Despite these disabilities, citizenship appeared to be open to California Indians in theory. Allotment promised to secure it for them. But it also secured their status as wards of the government through the twenty-five year trust status that ostensibly protected their property. The coexistence of citizenship for some Indians and continued federal guardianship for most helped to create a distinctively ra-

cialized type of Indian citizen.¹ By the time of the 1917 California Supreme Court decision which granted citizenship to all non-tribal California Indians, Indians had to stress racial identity, not tribal relationship, in order to claim citizenship, a process which subjected Indians to an increasingly racialized guardianship by the federal government.

In southern California, western progressive reformers played a critical role in the process of limiting Indian citizenship, incorporating eastern assimilationists' drive for Indian protection, Indian desires for some modicum of self-determination and secure land tenure, and developers' demands for access to land and water. Rhetorically, if not ideologically, the progressives drew from their own (mis)understanding of the region's Mexican and Spanish past. The ambiguity of those images opened the door for Indians to assert their cultural citizenship — an expanded notion of citizenship, not just the legal status but the beliefs and practices of negotiating for inclusion in the predominant culture, polity and society, and using the courts to redress wrongs.²

¹ By racialized citizen-ward, I refer to a specific type or class of citizenship distinguished on the basis of one's racial identity, distinct from the normative, unmarked category by fewer or diminished access to the rights and privileges traditionally enjoyed by a citizen, and applied to all or most of the members of that racial identity group. This is similar to the arguments made by legal scholars for the existence of an "affective" citizenship based on a personal sense of national inclusion and which is distinct from one's "functional" citizenship which is largely contingent on the specific relationship between the individual and the state; as well as the arguments made by Aihwa Ong regarding "cultural citizenship" as a collection of practices of adaptive negotiation. See "The Functionality of Citizenship," *Harvard Law Review* 110, no. 8 (Jun 1997), 1815; Aihwa Ohn, "Cultural Citizenship as Subject-Making," 738.

² Rosaldo, "Cultural Citizenship, Inequality, and Multiculturalism;" in Flores and Benmayor, eds., *Latino Cultural Citizenship*, 27-38.

From the beginning of the American period in California, many Indians were confused over their legal relationship with both the federal and state governments. As the secretary of the interior described it years later, the Indian was “confused in his thought because we have been confused in ours,” having spent the nineteenth century being, “spun round like a blindfolded child in a game of blind man’s buff [sic].”³ At the center of that confusion was the question of citizenship, and California Indians’ unique history confounded easy answers.

Despite the wishes of a number of early California lawmakers, for the first fifteen years of the American period, California Indians appear to have been citizens. But similar in many ways to the proscribed and marginalized citizenship available to African Americans after Reconstruction, California Indians were citizens in name only. Legal scholar Chauncey Goodrich labeled it an “amorphous” citizenship that was malleable enough to deprive Indians of the protection citizenship was to provide. Many at the time and since have conflated citizenship and suffrage. But they are distinct, and in Indians’ case, the distinction was critical, as citizens could alienate their land, but voters had political power. What emerged in California was a duplicitous system that placed Indians in between.⁴

³ Franklin Lane, “Administrative Reports of the Department of the Interior for fiscal year ending 30 June 1914,” vol. 1, p4, (1915), as quoted in Chauncey Shafter Goodrich, “The Legal Status of the California Indian, (concluded)” *California Law Review*, 14, no. 3 (March 1926): 187 (hereafter Goodrich II).

⁴ Goodrich’s use of the term “amorphous” occurs in the following: “Of what avail is an amorphous citizenship, to a primitive race, or indeed to anyone, still haunted by so fundamental an insecurity and governed by a system but slightly improved” since the Civil War. Goodrich II, 186-87.

When Mexico and the United States signed the Treaty of Guadalupe Hidalgo in February 1848, the roughly 150,000 Indians living in what is now California occupied an anomalous place in the Mexican political system.⁵ Neophytes had been considered wards of the government with their land held in trust until they were formally emancipated. There had been three waves of emancipation in Alta California, the last of which occurred when Governor José Figueroa decreed the emancipation of the neophytes living in most of the southern missions. The Indians of southern California were new to a political system which had not welcomed them, nor honored their citizenship rights in practice. But they were citizens according to the prevailing Mexican constitution.⁶

As Mexican citizens, Indians presumably fell under the guarantees of the Treaty of Guadalupe Hidalgo, which protected the rights of Mexicans who remained in the ceded territory. They could opt to remain Mexican citizens, either by declaring their intent to do so or removing themselves to Mexico. If they did neither, they were to be:

incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment

⁵ On the treaty, see Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1990). However Griswold del Castillo's treatment of Indians rights under the treaty is clearly a secondary concern to his focus on the rights of Chicanos and Mexican Americans. For a brief discussion of the demography, see Hurtado, *Indian Survival*, 1.

⁶ Jackson and Castillo, *Indians, Franciscans, and Spanish Colonization*, 90-93.

of their liberty and property, and secured in the free exercise of their religion without restriction.⁷

Indians in California faced a difficult choice. By opting to remain citizens of Mexico, they faced discrimination as foreigners; but by electing to become citizens of the United States — that is, by not electing not to become citizens of the United States — they subjected themselves to a legal position in American society that was ripe for exploitation. Their choices were limited by both the federal government’s manifest unwillingness to actively manage California Indian affairs, and the unbridled determination of both settlers and the early state government to deal with the Indians in ways that directly contravened the protections the treaty offered.⁸

According to the records of the debate in the 1849 constitutional convention, it appears some delegates believed Indians not to be eligible for citizenship at all, while others believed that, according to the treaty, they were not citizens until some further action by Congress, presumably California’s admission as a

⁷ “Treaty of Guadalupe Hidalgo,” Article IX, 9 Stat. 922, as appended in Griswold del Castillo, 190.

⁸ John Sutter was reappointed federal Indian subagent, along with Adam Johnston, without any substantive elaboration of their duties under the military government. Hurtado, *Indian Survival*, 90-91, 127; Albert L. Hurtado, “Clouded Legacy: California Indians and the Gold Rush,” in Kenneth Owens, ed. *Riches for All: The California Gold Rush and the World* (Lincoln: University of Nebraska Press, 2003), 102.

state, conferred it upon them.⁹ In an attempt to resolve that dispute, San Luis Obispo delegate Henry Teffte proposed legislation that distinguished between the “savage” and “wild Indians” and those who “have become accustomed to habits of civilization.” His proposal was abandoned in favor of making no mention of the requirements of citizenship. Instead, the constitution outlined some of the rights afforded to citizens, and the requirements necessary for voting.¹⁰ Many Anglo immigrants to the state were reluctant to allow Indians the right to vote out of fear that Californio ranchers could easily manipulate the votes of their Indian laborers.¹¹ An amendment to grant the right to vote to the few Indians who had been property owning, tax-paying citizens of Mexico went down to defeat. Eventually, after much debate, the delegates approved the following set of qualifications:

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 Querétaro, 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 next preceding the election, and the county or district

⁹ *People v. de la Guerra*, 40 Cal. 311 (1870), 341, 342, particularly: “Having admitted into the Union a State, of which these inhabitants were constituent members, Congress could do no more. It has conferred upon them all the rights of citizens, or rather it has recognized these rights in the only mode provided by the Constitution which was applicable to them.” Griswold del Castillo, *The Treaty of Guadalupe-Hidalgo*, 67-69. See also Van Hastings Garner, “Treaty of Guadalupe Hidalgo and California Indians” *Indian Historian* 9, 1 (Winter 1976). On the theory of “self-executing treaties,” which Guadalupe Hidalgo was not, and therefore, the treaty itself was ruled to be subordinate to the legislation implementing the treaty, see Christine A. Klein, “Treaties of Conquest: Property Rights, Indian Treaties and the Treaty of Guadalupe Hidalgo,” *New Mexico Law Review* 26, (Spring 1996), 201-53, particularly, 201-04.

¹⁰ Report of the constitutional convention, as excerpted in Robert Heizer and Allan F. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico and the United States to 1920* (Berkeley: University of California Press, 1971), 103.

¹¹ Chauncey Shafter Goodrich, “The Legal Status of the California Indian,” *California Law Review*, 14, no. 2 (Jan. 1926): 90-91 (hereafter Goodrich I).

in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may authorized by law: Provided, 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 proportion of the legislative body may deem just and proper.¹²

Operating under the shadow of the Treaty of Guadalupe-Hidalgo, the state constitution sidestepped the issue of citizenship for Indians, leaving the questions for the legislature and courts.

In 1850, the California Supreme Court addressed Indians' citizenship under Mexican law. The question revolved around the ownership of part of the *rancho de los coches*, which James Hepburn entered and took possession of in November 1849 claiming it was part of the public domain. Antonio Suñol brought a possessory action against Hepburn, claiming that he owned the land on the basis of a title conveyed to him from its original grantee, an "emancipated Indian" named Roberto who had received the grant from Governor Micheltorena in 1844. The original grant had expressly prohibited Roberto from "selling, aliening, mortgaging, pledging, or encumbering or disposing of the land in any manner whatever." Based on that restriction, the San José district court

¹² California State Constitution of 1849, article II, section 1. For a discussion of the debate in the convention, see Heizer and Almquist, *The Other Californians*, 95-104, 115-117.

ruled that Roberto did not have the right to convey the land to Suñol, and therefore found in favor of Hepburn.¹³

In appealing to the state supreme court, the plaintiff argued that two decrees by the Mexican government, the *plan de Iguala*, and the 1836 and 1843 amendments to the 1824 constitution removed restrictions on Indian's right to alienation by elevating them to full equality as Mexican citizens. Thus, Roberto was within the law when he conveyed the land to Suñol to cover a debt. Justice Nathaniel Bennett's dismissed this argument. While agreeing that the Mexican constitution had made Indians citizens of Mexico, he argued that it did not eliminate restraints on alienation which Mexico had imposed upon Indians.¹⁴ Rather, contracts involving Indians were similar to those which limited "infants, idiots, lunatics, spendthrifts and married women," all of whom were citizens, but nonetheless required the "intervention of [a] tutor, curator, committee or guardian." To justify the distinction that, while citizens, Indians were legitimately subject to the "protection" of the law, Justice Bennett pointed to the fact that Roberto had transferred title for his land for far less than it was worth.¹⁵

¹³ The exact language: "No podra venderle, enagenarle, hipotecarle, ni imponer censo, vinculo, fianza, hipoteca, ni otro gravamen alguno." The translation taken from *Suñol v. Hepburn*, 1 Cal. 254, 256 (1850). See also, Deborah A. Rosen, "Colonization through Law: The Judicial Defense of State Indian Legislation, 1790-1880," *The American Journal of Legal History*, 46, 1 (Jan. 2004), 43. For a sense of the context, particularly the transition from civil law to common law in California, see David J. Langum, *Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821-1846* (Norman: Univ. of Oklahoma Press, 1987), particularly ch. 5; and Donald J. Pisani, "Squatter Law in California, 1850-1858," in *Water, Land & Law in the West: The Limits of Public Policy* (Lawrence: University Press of Kansas, 1996), 71-72.

¹⁴ *Suñol v. Hepburn*, 1 Cal. 254 (1850), 279, 280.

¹⁵ *Suñol v. Hepburn*, 1 Cal. 254 (1850), 279, 284-85. Pisani points to the figures themselves — the property was worth approximately \$100,000 but was transferred to cover a \$500 debt. Pisani, "Squatter Law in California," 71.

Four years later, the United States Supreme Court addressed the same issue, and, without mentioning the *Suñol* decision, essentially overruled the lower court.¹⁶ In January 1842, Mariano Guadalupe Vallejo, while serving as the *comandante general* of California's northern frontier assisted Francisco Solano, a captain of one of the Patwin communities who lived around Suisun Bay, to secure a grant from the governor to land he had occupied for approximately ten years. Five months later, Solano sold the land to Vallejo, who, eight years later, sold the land to Archibald Ritchie for fifty times the initial sale price.¹⁷ This sort of concern for the Indians of California soon won Vallejo an appointment as an Indian agent, and later a seat on the state senate select committee to reconcile competing versions of what became the infamous 1850 "Act for the Government and Protection of the Indians."¹⁸

Ritchie submitted the claim to the state Board of Land Commissioners, which had been created in March of 1851 in order to review and rule on the le-

¹⁶ *United States v. Ritchie*, 58 US 525 (1854). The authorities in both cases were largely the same, but the *Ritchie* decision accepted those authorities, while in *Suñol*, the state supreme court rejected those authorities. While both decisions allowed that Indians were citizens under Mexican law, the Supreme Court's decision refuted the principal outlined in *Suñol*. Later, the U.S. Supreme Court, citing both decisions, did claim that despite Indians' elevation to citizenship and civil rights, the question of "whether the prior tutelage and restrictions were wholly terminated has been the subject of differing opinions." *United States v. Sandoval*, 231 US 45 (1913).

¹⁷ *US v. Ritchie*, 537. The sales were denominated in Mexican dollars and US dollars, respectively, but at that time, the Mexican dollar was recognized as legal tender in the United States, and exchanged at parity. On the Mexican dollar, see A. Piatt Andrew, "The End of the Mexican Dollar," *The Quarterly Journal of Economics*, 18, 3 (May, 1904), particularly 326-329.

¹⁸ On Vallejo as Indian agent, see Hurtado, *Indian Survival*, 90-91; on Vallejo as member of the Senate committee, see James Rawls, *Indians of California: The Changing Image* (Norman: Univ. of Oklahoma Press, 1984), 89.

gitimacy of existing Spanish and Mexican grants.¹⁹ The Board confirmed his title in January 1853. As a matter of course, U.S. attorneys appealed that decision to the district court in San Francisco, which confirmed the Board's decision in November of that year. The attorney general appealed to the U.S. Supreme Court, claiming that Solano, as an Indian, was not competent to have originally received the grant.²⁰ Justice Nelson's decision, citing the same Mexican constitutional amendments and decrees that the California Supreme Court had rejected in *Suñol*, argued:

But as a race, we think it impossible to deny, that, under the constitution and laws of [Mexico], no distinction was made as to the rights of citizenship, and the privileges belonging to it, between this and the European or Spanish blood. Equality between them, as we have seen, has been repeatedly affirmed in the most solemn acts of the government. ... Our conclusion is, that [Solano] was one of the citizens of the Mexican government at the time of the grant to him, and that, as such, he was competent to take, hold, and convey real property, the same as any other citizen of the republic.²¹

The decision described him as “a civilized Indian... a principal chief of his race on the frontiers of California, [who] held a captain's commission in the Mexican army, and is spoken of by the witnesses as a brave and meritorious officer.” It is clear that his competency for citizenship at least partly derived from

¹⁹ On the 1851 Land Act, see Paul W. Gates, “The California Land Act of 1851,” in Gates, *Land and Law in California: Essays on Land Policies* (West Lafayette, Indiana: Purdue University Press, 2002), 24-63.

²⁰ *US v. Ritchie*, 537-538. My understanding draws off Paul W. Gates, “The Suscol Principle, Preemption, and California Latifundia,” *Pacific Historical Review*, 39, no. 4 (Nov. 1970): 453-71; Donald J. Pisani, “Land Monopoly in Nineteenth-Century California,” *Agricultural History*, 65, no. 4 (Autumn 1991): 15-37; David Vaught, “A Tale of Three Land Grants on the Northern California Borderlands,” *Agricultural History*, 78, no. 2 (Spring 2004): 140-54.

²¹ *US v. Ritchie*, 540.

his status. What remains unclear is the status of those Indians who lacked the ability to claim they were “civilized.”

Further, in neither the *Suñol* nor *Ritchie* decisions did the courts rule on the argument that Indians were citizens of the United States under the Treaty of Guadalupe Hidalgo. Rather, in both cases, but for different reasons and with different consequences, the courts ruled that Indians of California had indeed been citizens of Mexico, either unable, in Roberto’s case, or able in Solano’s case, to alienate their land — a legal distinction that seems to hew closer to the desires of the non-Indian claimants than to the legal logic of the cases.²² Both decisions were very narrow in scope and applied only to those Indians who were parties to the suit. But because they were predicated on Indians’ status in Mexico as determinative of rights in the United States, and both employed imprecise language at a time when the state’s legal system was desperate for cases to establish precedence, the impact of the cases was felt far beyond what the judges intended.

Six years after the treaty, the state and federal courts had done nothing explicitly to grant or deny California Indian citizenship within the state or nation. However, by this time, the state legislature had done a great deal to limit the rights and privileges that normally attached to citizens. If they were citizens of the state, Indians were citizens who for fifteen years after the Treaty of Guada-

²² *US v. Ritchie*, 538 - 539; see also Ferdinand Fernandez, “Except a California Indian: A Study in Discrimination,” *Southern California Quarterly* 50 (June 1968): 161-175, particularly 169.

lupe Hidalgo, faced enslavement, disenfranchisement and the denial of the right to testify against whites.²³

Two acts from 1850 prohibited Indians from testifying against whites.²⁴ Alone, this was a significant impediment to civil rights. But the “Act for the Protection and Government of the Indians,” passed by the California legislature in the spring of 1850, made the inability to testify against whites a matter of significant consequence. The act established a procedure for Indian indenture and thus maintained the Indians’ presence in the state as a labor force through codifying widespread debt peonage practices current in the state. Among other things, it provided for the concentration of extensive judicial power over Indian affairs into the hands of local officials. In particular, whites could obtain the “care, custody, control, and earnings” of an Indian minor by going before the Justice of the Peace with the minor’s parents or “friends.” That custody would continue until the Indians’ majority, which was set at eighteen years of age for boys and fifteen for girls.²⁵ Through later amendments that reduced the burden of proof on those wishing to secure custody, and extended the age of Indian mi-

²³ Goodrich I, 91-94.

²⁴ “394th section of the Act Concerning Civil Cases, provides that no Indian or Negro shall be allowed to testify as a witness in any action or proceeding in which a White person is a party. The 14th section of the Act of April 16th, 1850, regulating Criminal Proceedings, provides that ‘No black or mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a white man.’” *People v. Hall*, 4 Cal. 399 (1854).

²⁵ *An Act for the Government and Protection of the Indians*, 133 Statutes of California, 22 April 1850. For a very useful discussion of the use and abuse of the law, see Michael Magliari, “Free Soil, Unfree Labor: Cave Johnson Courts and the Binding of Indian Workers in California, 1850-1867,” *Pacific Historical Review*, 73, 3 (August 2004): 349-389. On the origins and debate over the law, see Hurtado, *Indian Survival*, 129-31.

nority to up to thirty years, the act encouraged the kidnapping and enslavement of as many as 20,000 Indians in the state.²⁶

In the fall of 1850, newly elected governor Peter Burnett pledged a “war of extermination” that would continue until the “Indian race becomes extinct.” Burnett inaugurated a campaign against California Indians that eventually resulted in the death of tens of thousands of Indians, and cost the state over \$900,000 — an expense which the state successfully petitioned for reimbursement from the federal government. The cumulative effects of the inability to vote or testify against whites, of laws that criminalized Indian unemployment and sanctioned indenture, and of a full scale extermination campaign, were severe. During the 1850s, California’s Indian population decreased by eighty percent.²⁷

The unclear relationship between Indians and the federal government further complicated the already anomalous legal position California Indians occupied. In September, 1850, Congress authorized a commission of three Indian agents for the state, but did not clarify their responsibilities nor provide salaries

²⁶ Hurtado, *Indian Survival*, 129-31; Rawls, *Indians of California*, 86-108. Later amendments only required that one demonstrate *consent* from parents or friends.

²⁷ On Burnett’s war of extermination, see “Message to the California State Legislature, 7 January 1851, *California State Senate Journal*, 1851, 15, as quoted in Hurtado, “Clouded Legacy,” 103; House, Committee on Military Affairs, *Refund Money to State of California for Suppressing Indian Aggressions*, 33d Cong., 1st sess., 1854, H. Rept. 137. The debate on demographics is large. The figure comes from Albert L. Hurtado, *Indian Survival*, 1. Sherburne Cook, *Conflict Between the California Indian and White Civilization* (Berkeley: University of California Press, 1976; original 1943). Clifford Trafzer and Joel Hyer have compiled a number of original documents relating to the extermination campaign. Trafzer and Hyer, *“Exterminate Them!”: Written Accounts of the Murder, Rape, and Enslavement of Native Americans during the California Gold Rush, 1848-1868* (East Lansing: Michigan State University Press, 1999); Rawls, *Indians of California*; Lightfoot, *Indians, Missionaries, and Merchants*; Robert Heizer, *The Destruction of California Indians* (Lincoln: University of Nebraska Press, 1993; originally 1973); and Robert H. Jackson and Edward Castillo, *Indians, Franciscans and Spanish Colonization: The Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1995), 41-58.

to pay them. Separately, Congress appropriated \$50,000 for securing treaties from California Indians, but not the commissioners needed to negotiate the treaties.²⁸ The commissioners began the work unclear whether they were authorized to negotiate treaties and uncertain over the funding should they try. Their uncertainty did not stop them from spending or contracting for more than \$700,000, perhaps as much as half of that going to beef contracts alone.²⁹ In their work, the three commissioners attempted to navigate between the local pressures for Indian dispossession or extermination, federal wishes to quiet Indian “depredations,” which they believed could best be accomplished through reservations, and heady speculation and malfeasance common to a frontier economy. Historians have, justifiably, been critical of their efforts.³⁰ By early 1852, the commissioners had negotiated eighteen treaties with Indians in the state, two of them with Indians of southern California. Unsurprisingly, given the immediate context in which they were negotiated, the treaties themselves were deeply flawed. “Treaty K,” which was signed 7 January 1852 at Temecula, took place immediately after the end of Antonio Garra’s uprising against local rancher Juan José Warner and concurrent with the hearings in San Diego that

²⁸ Harry Kelsey, “The California Indian Treaty Myth,” *Southern California Quarterly*, 55 (Fall 1973), 229.

²⁹ Edward Everett Dale, *The Indians of the Southwest: A Century of Development under the United States*, (Norman: Univ. of Oklahoma Press, 1949), 35.

³⁰ Dale, *Indians of the Southwest*, 30. George Harwood Phillips, *Indians and Indian Agents: The Origins of the Reservation System in California, 1849-1852* (Norman: University of Oklahoma Press, 1997), 12-14, 68-77; As Hurtado has pointed out, the lingering memory of federal unwillingness to “employ force against a sovereign state,” emboldened both California and the commissioners in their shoddy work. Hurtado, “Clouded Legacy,” 104.

resulted in his execution three days later.³¹ While the treaties weren't the result of the uprising, they were signed by both Juan Antonio, the leader of the Ca-huilla who helped put down Garra's rebellion, as well as Warner as a witness.³²

The treaties themselves were notoriously unclear over whether or not the signatories understood the terms or legitimately represented the "tribes" the agents deemed they did. Collectively, the treaties ceded the bulk of the land within the state to the federal government in return for a string of small reservations dotted along the state's central section and collectively comprising approximately 7% of its total land area.³³

The treaties were sent to the United States Senate for approval in June, 1852, along with the fierce opposition of much of the Anglo population of the state.³⁴ The opposition to the treaties clustered around four closely related points: California should not recognize Indian usufruct rights to land because Spain and Mexico had not; the proposed reservations monopolized potentially valuable agricultural and mineral land; the reservations gave Indians too much power in the labor market by making them less dependent on ranchers for their

³¹ See George H. Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California* (Berkeley: University of California Press, 1975), 173-75; Hyer, "We Are Not Savages" 61-67; Carrico, *Strangers in a Stolen Land*, 46-47; Shipek, *Pushed into the Rocks*, 30-31; and Karr, "Pala," 53-55.

³² "Treaty Made and Concluded at the Village of Temecula, State of California, January 7, 1852, between the United States Indian Agent, O. M. Wozencraft, and the Chiefs, Captains and Head men of the San Louis Rey, Kah-we-as, and the Co-com-cah-ras Tribes of Indians," included in "Indian Tribes of California," hearings before a subcommittee of the House Committee on Indian Affairs, 66th Cong., 2d. sess., (23 March 1920), 31-33.

³³ Robert Heizer, "Treaties," in *Handbook of North American Indians*, v. 8, 701-704; George H. Phillips, *Indians and Indian Agents*, 163-182; Rawls, *Indians of California*, 141-45.

³⁴ Kelsey, "California Indian Treaty Myth," 229.

livelihood; and that the commissioners themselves were not authorized to act due to the lack of clear congressional mandate.³⁵

The public debate over the fate of the treaties was intense, but brief, as the Senate rejected all eighteen treaties in executive session in July, and in their stead appropriated \$100,000 for California Indians stipulating that “nothing herein contained shall be so construed as to imply an obligation on the part of the United States to feed and support the Indians who have been dispossessed of their land in California.”³⁶ The injunction of secrecy was standard operating procedure for consideration of treaties and did not prevent the eventual rejection from becoming a matter of public record. In his December 1852 state of the union address, president Millard Fillmore pointed to the “very unsatisfactory condition” of the relations between the U.S. government and the Indians of California occasioned by the rejection of the treaties. Given that the U.S. had not recognized Indian rights to the land, Fillmore presciently described their legal condition as “mere tenants at sufferance... liable to be driven from place to place, at the pleasures of the whites.”³⁷

In September of that year, Edward F. Beale arrived in California as the state’s federal superintendent of Indian Affairs. In that capacity, he oversaw the creation of the state’s reservation system, based at least partly on the model of the Spanish and Mexican missions and authorized by the establishment of mili-

³⁵ Kelsey, “California Indian Treaty Myth,” 229.

³⁶ *Statutes at Large and Treaties of the United States of America, from December 1, 1851, to March 3, 1855*, vol. 10, 56, as quoted in Philips, *Indians and Indian Agents*, 182.

³⁷ Fillmore’s State of the Union address was reprinted in full in the *Daily Alta California*, no. 26, 7 January 1853, 1.

tary reservations in the state. Over the next fifteen years, Congress created and consolidated a number of reservations, leaving four by 1867: Hoopa Valley, Round Valley, Smith River and Tule River.³⁸ Over the subsequent two decades the president established approximately ten reservations by executive order throughout the state — the bulk of them north of the Tehachapi Mountains.³⁹ Indians were encouraged to relocate to them, both directly and indirectly, by the extermination campaigns, disease and malnutrition that decimated California Indian populations, and the state legislature's moves to claim Indian lands.⁴⁰

In March of 1853, the legislature also authorized preemption on all land previously reserved as part of a Mexican claim which had been declared invalid by the Board of Land Commissioners, and extended the public land system to California by declaring all unreserved public lands on which there were no other claims open to preemption.⁴¹ That act, and the 1851 Land Claims Act, effectively placed the onus on claimants to defend their title and put additional pressure on Indian land tenure.

³⁸ House Executive Document 76, 34th Cong., 3d session, (1857), 79, as quoted in Heizer and Almquist, 81. The report included a letter from Jefferson Davis, Secretary of War which stated that the Indian Appropriation Act of 3 March 1853 authorized the president to make five military reservations out of public domain, not exceeding 25,000 acres in California, or in the territories of Utah and New Mexico that border California, "with the view of removing the California Indians thereto for subsistence and protection." James J. Rawls, *The Indians of California: The Changing Image* (Norman: University of Oklahoma Press, 1984), 148-53.

³⁹ Rawls, *Indians of California*, 151-53.

⁴⁰ Rawls, *Indians of California*, 148.

⁴¹ Gates, "Suscol Principle." This was predicated on the Act of 3 March 1851, which declared all invalidated claims part of the public domain. See also Donald J. Pisani, "Land Monopoly in Nineteenth-Century California," *Agricultural History*, 65, 4 (Autumn, 1991), 20-21.

It is understandable that Indians surveying the situation circa 1853 might have assumed that the treaties signed in late 1851 and early 1852, the superintendencies formed in 1852, and the various reservations that were created in the following years were related. They were not.⁴² It is more likely that Indians of southern California, while very much aware of the changes going on around them, were not aware of the fine distinctions and complexities of federal Indian policy nor the shifting reasoning of the state and federal courts. But they found themselves in the midst of a series of complex networks that judged them citizens enough to alienate their land, but not citizens enough to receive the rights and protections incumbent to that status. Many non-Indians in the state viewed them as wards of the federal government. Without a federal treaty relationship, and with many Indians living off reservations, federal jurisdiction was unclear and tenuous. The result was a status that effectively exempted both the federal and state governments from the responsibilities of protecting their rights and ensuring their citizenship. The situation was ripe for exploitation, dispossession and abuse. As historian Michael Magliari has shown, in the 1850s and 1860s, Anglo landowners in southern California often used Indian office appointments as a sinecure to do just that.⁴³ In short, federal efforts to assert their authority over the Indians of the region lagged behind those of others who sought to dispossess Indians and control their labor.

⁴² Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, v. 4, pt. IV (Washington, D.C.: United States Government Printing Office, 1929), 1081-89.

⁴³ Magliari, "Free Soil, Unfree Labor," 379-80.

In the mid 1860s, the legal distinction between *tribal* and *racial* Indians grew in importance. In 1865, in a case involving the conviction of an Indian for grand larceny, the California Supreme Court addressed the scope of the California Indenture Act of 1850, which it inadvertently referred to as the “act for the protection and *punishment* of Indians.”⁴⁴ In the decision, Justice Rhodes argued that laws that provided separate jurisdiction for Indians were “obviously intended to be applied to Indians in tribes, or when living in separate communities or companies, and not to a case where an Indian has been living... for years among white men.”⁴⁵ This distinction between tribal Indians who were subject to separate jurisdictions, and racial Indians who had separated themselves from their Indian communities, but nonetheless remained Indians effectively promised two distinct strata of citizenship: one under the protection of the federal government and the other subject to California’s legal system.

With the ratification of the Fourteenth Amendment in 1868, there was hope among some that a federal definition of citizenship would extend to Indians.⁴⁶ But Justice Deady, writing for the Oregon District Court, found that “Indian tribes within the limits of the United States have always been held to be distinct and independent political communities, retaining the right of self-government, though subject to the protecting power of the United States.”⁴⁷

⁴⁴ *People v. Antonio*, 27 Cal. 405, (1865), emphasis added.

⁴⁵ *People v. Antonio*, 27 Cal. 405, (1865).

⁴⁶ Felix Cohen, *Handbook of Federal Indian Law* (Washington, D.C.: United States Government Printing Office, 1941), 155.

⁴⁷ *McKay v. Campbell*, 16 F. Cas 165, 166 (1871), as quoted in Cohen, *Handbook*, 155.

That distinction, according to the district court, meant that Indians were not born subject to the jurisdiction of the United States. The United States Supreme Court upheld this decision sixteen years later in the landmark *Elk v. Wilkins* decision.⁴⁸

But the question of Indian citizenship under Guadalupe Hidalgo had yet to receive its day in court. In 1869, it did in New Mexico, when the territorial supreme court issued its decision on the citizenship of the Pueblo Indians. At issue was the prosecution of Juan Jose Lucero for violation of the Indian Intercourse Act of 1834 when he settled on the land controlled by, and patented to the people of the Cochiti Pueblo. The court ruled that because at the time of the passage of the Intercourse Act, New Mexico was part of Mexico and the Pueblo Indians were living on lands that had been granted to them by the king of Spain and recognized by the Mexican republic, they were therefore Mexican citizens, and not Indians in the sense meant by the Intercourse Act. Further, the decision made a clear distinction between the Pueblo Indians, who Chief Justice Watts described as a “peaceful, quiet and industrious people, residing in villages for their protection against the wild Indians, and living by the cultivation of the soil,” and the “wicked and wild savages” who roamed the west. As such, the Pueblos were clearly citizens of Mexico, and therefore, the decision upheld the lower court’s decision that Lucero’s settlement on Pueblo land did not violate the fed-

⁴⁸ *Elk v. Wilkins*, 112 US 94 (1884). For a useful discussion over the *Elk* case, particularly the tension between subjectship and allegiance (e.g. consent), and the fact that *Elk* altered Indian law by appearing to adhere to precedent, see Russell Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980), 71-73.

eral government's exclusive monopoly in regulating intercourse with Indians. In short, the Pueblos were not Indians and therefore, theoretically, they were citizens of the United States.⁴⁹

While the distinction between tribal and racial Indianness was not necessary for the findings of the court, as the court accepted the title and occupancy of the Pueblos, the decision established Pueblo Indian citizenship in the United States based on the particular patterns of their settlement and tenure, their economic activity, and the longevity of their occupancy. These characteristics were sufficient to distinguish them from the category of Indians as meant by the Intercourse Act.⁵⁰ Five years later, the New Mexico territorial court upheld this decision in two separate cases. Two years later, on the appeal in one of those cases — *United States v. Joseph* — the United States Supreme Court affirmed the lower court decision, upholding the findings that Pueblo Indians were not Indians in the sense of the Intercourse Act and therefore not under the jurisdiction of the federal government, but the Court refused to rule on the question of Indian citizenship saying, “we leave that question until it shall be made in some case where the rights of citizenship are necessarily involved.”⁵¹

⁴⁹ Charles H. Gildersleeve, *Reports of Cases Argued and Determined in the Supreme Court of the Territory of New Mexico from January Term 1852 to January Term 1879, Inclusive*. (Chicago: Callaghan, 1881, 1911), 425-454.

⁵⁰ Gildersleeve, *Reports of Cases*, 427, 442. See also Michael A. Elliott, “Telling the Difference: Nineteenth-Century Legal Narratives of Racial Taxonomy,” *Law & Social Inquiry*, 24, no. 3 (Summer 1999): 611-636, for his penetrating analysis of the language used in *Lucero* and *Elk v. Wilkins*. My thanks to Amanda Taylor-Montoya for sharing her insights on the *Lucero* case.

⁵¹ *United States v. Santistevan*, 1 N.M. 583 (1874); *United States v. Joseph*, 1 N.M. 593 (1874), 94 US 618 (1876); Rosen, “Colonization through Law,” 32; Martha Menchaca, “Chicano Indianism: A Historical Account of Racial Repression in the United States,” *American Ethnologist*, 20, no. 3 (Aug. 1993): 583-603; and Menchaca, *Recovering History, Constructing Race: The Indian, Black and White Roots of Mexican Americans* (Austin: University of Texas Press, 2001) 218-27.

Despite the similarities between the Mission Indians of California and the Pueblos of New Mexico, the decisions appear to have had no legal traction in California.⁵² While both groups were largely sedentary agriculturalists who had long-standing relationships with the Catholic church, the Pueblos held clear title to their land, while the Mission Indians had, to a much greater degree than the Pueblo, been under the pupilage of the Franciscans. In California, the state supreme court came closest to addressing the issue at this time when, in 1870, it took up the case of Pablo de la Guerra. A Californio born in Santa Barbara in 1819, de la Guerra had been a member of the Constitutional Convention of 1849 and had held a number of elected offices after that. His 1869 election as a district judge was contested by his opponent on the grounds that he was not a citizen of the state due to his birth in Spanish territory. The court ruled that with the admission of California as a state, Congress “conferred upon them [i.e. “the inhabitants who were recognized as members of the community organized into a State”] all the rights of citizens.”⁵³

In framing the case, counsel for the plaintiff argued that the state constitution was in conflict with the provisions of the Treaty of Guadalupe Hidalgo by pointing to the former’s proscriptions against Indian voting and the latter’s race neutral language. By equating voting with citizenship, the plaintiff argued that those who could not vote were not citizens and in effect, asserted the suprem-

⁵² California Supreme Court Justice Patterson invoked the language in his decision in the 1887 *Byrne v. Alas* case, where he wrote, “the defendants — over twenty in number — are Mission or Pueblo Indians...” 74 Cal. 628.

⁵³ *People v. de la Guerra*, 40 Cal. 342 (1870). The bracketed text is drawn from the preceding paragraph and replaces the word “them.”

acy of the state constitution over an international treaty.⁵⁴ Rather than allowing that contradiction to invalidate de la Guerra's citizenship, Justice Temple, writing for the court majority argued that even if the people's claim that the Treaty and constitution were in conflict was valid, "it does not follow that the respondent is not a citizen of the United States, but that the elective franchise is denied to certain persons who had been entitled to its exercise under the laws of Mexico.

The possession of all political rights is not essential to citizenship."⁵⁵ Despite the fact that Indian citizenship was not a question before the court, Justice Temple, in the only mention of Indians in the entire decision, clarified that, while the state constitution enabled white male citizens of Mexico to vote, "all, without distinction of color, *including Indians*, were Mexican citizens, and entitled to vote by the laws of Mexico."⁵⁶ Given the context of the decision that ruled that suffrage was not a necessary component of citizenship, the implication of the unnecessary clause was that Indians were, like Mexicans, citizens of the United States. However, "all political rights" did not mean the right to vote, but rather the right to be disenfranchised according to state law.

At roughly the same time as the de la Guerra decision, growth in the number of reservations across southern California began to change Indians' legal status. In 1870, president U.S. Grant established two small reservations at

⁵⁴ Both Griswold del Castillo and Cynthia Klein argue that the initial period of judicial activism in which the treaty was generally respected by US courts ended around 1889 with the *Botiller* case. But here the court vacillates, refusing to do what it would do nineteen years later in *Botiller* — that is, allow U.S. law to trump the treaty. Griswold del Castillo, *Treaty of Guadalupe-Hidalgo*, 75-94; Cynthia Klein, "Treaties of Conquest," 208.

⁵⁵ *People v. de la Guerra* (40 Cal. 311, 343), emphasis added.

⁵⁶ *People v. de la Guerra*, (40 Cal. 311, 343), emphasis added.

Pala and San Pasqual that were intended to meet the needs of *all* of southern California. The reservations came at a critical time — both in terms of attempting to secure land for Indians, but also as the presence of reservations and more formalized tribal governments clarified the relationship Indians had with the federal government. But reservation boundaries were in flux. Due to non-Indian opposition the president rescinded the executive order establishing both of them in 1871. At the same time, through political appointments and sanction certain Indian elections, the federal government sought to assert greater control over Indians in the region. Within the span of a decade, the Indian Office created “tribes” where they hadn’t existed before, appointed Indian “generals,” chiefs in effect, to oversee them, set aside reservations on which they could live, and then broke those promises by opening the reservations to white settlement.

The notorious eviction of the Indians at Temecula in 1873 brought national attention to the condition of Mission Indians. Reformers, many of whom would soon coalesce into the core of the Lake Mohonk Friends of the Indians and the Indian Rights Associations, implored the federal government to “protect” the Indian from immediate destruction through securing their title to land, while they worked in the long run toward their eventual “civilization” and assimilation. Citizenship was one of their initial goals. John Ames, appointed in 1873 as special commissioner to the Mission Indians of southern California described their legal status:

No treaty has ever been made with them by which they could be recognized as *imperium in imperio*. They have never assumed a

hostile attitude toward the Government or the settlers, requiring the employment of force for their control. ... They maintain their tribal relationships and self-government only in a modified form, holding themselves amenable to the laws of the United States and of the State of California. Tribal bonds are becoming gradually weaker, and at no distant day it is probable they may be readily persuaded to dissolve this relationship altogether. It would not, in my view, be wise to attempt this dissolution at present. Nor would it be wise to admit them as a whole to the privileges of the franchise, unless justice requires this — unless it can be clearly shown that this right was guaranteed by the treaty of Guadalupe Hidalgo. It is very desirable, however, that they should be admitted to all the rights of citizenship as soon as practicable and that they should as far as possible be encouraged and helped to fit themselves for the intelligent exercise of these rights. There are a few who are already well qualified and ready to become citizens, and who are willing, if necessary to this end, to renounce all tribal jurisdiction.⁵⁷

He related the story of three Mission Indians who had recently attempted to register to vote as citizens in Los Angeles County, but were refused because they were Indians. The petition recording their request was transmitted to the district attorney at San Francisco, but nothing transpired. Ames regretted this chain of events, as he hoped that the three unnamed Indians, “and such as they” would readily be able to secure recognition as citizens, and move toward “their incorporation with the body-politic at the earliest practicable moment.”⁵⁸

In 1875, the combined efforts of Luiseño leader Olegario Calac and eastern friends were successful in pressuring President Grant to issue executive orders establishing nine reservations throughout southern California. Collectively, they were smaller than the two which had been set aside four years

⁵⁷ John G. Ames, “Report of Special Agent John G. Ames, in regard to the condition of the Mission Indians of California, with recommendations,” (28 October 1873), 11, reproduced in House Executive Document, no. 91, 43d Cong., 1st sess., 24 January 1874.

⁵⁸ Ames, “Report of Special Agent,” 11.

earlier.⁵⁹ Despite the size, Indians supported the establishment of the reservations, as they secured land that Indians already occupied and did not, for the most part, require removal or relocation.⁶⁰ However, the establishment of reservations put the goals of the friends at cross purposes. The establishment of reservations protected Indian land tenure, but expanded the acreage of non-taxable land on which Indians could be born not subject to the jurisdiction of the U.S. and therefore not citizens under the Fourteenth Amendment.⁶¹

As a people subject to a jurisdiction other than the United States, Indians could have, at least theoretically, sought citizenship through naturalization.⁶² However, to do so, they would have had to claim whiteness, as naturalization after 1870 was restricted to whites and people of “African descent.”⁶³ In 1880, the Oregon circuit court ruled that Indians were not white. In that case, Frank Camille, who was born in British Columbia, but migrated to Oregon when he was seventeen, sought to become a naturalized citizen. His father was white; his mother Indian. Citing the California district court decision, *In re Ah Yup*, Justice Deady argued that the term “white person” was not meant to extend to the

⁵⁹ *Executive Orders Relating to Indian Reservations from May 14, 1855 to July 1, 1912* (Washington, DC: Government Printing Office, 1912; reprint: Scholarly Resources, Inc., 1975), 43-46; Carrico, *Strangers in a Stolen Land*, 84.

⁶⁰ There were instances in which section lines did not exactly comport with existing Indian villages; and in at least one case, the township was recorded incorrectly, establishing a reservation for Indians a mile away from where they lived. C.C. Painter, *The Present Condition of the Mission Indians of California* (Philadelphia: Indian Rights Association, 1887), 13.

⁶¹ See Senate Report No. 268, 41st Cong., 3d sess (1870), 1-11.

⁶² Here, the process of subjectification outlined by Aihwa Ong is particularly resonant. Aihwa Ong, “Cultural Citizenship as Subject-Making: Immigrants negotiate Racial and Cultural Boundaries in the United States,” *Current Anthropology* 37, no. 5 (Dec., 1996), 737-38, 751.

⁶³ Section 7 of the Act of 14 July 1870, (16 Stat. 254), codified as 30 US Revised Stat. Section 2169.

“red race of America.” The justification was the precedence, outlined by Justice Sawyer in the previous decision, who argued that “white person” should not be taken literally, but rather in terms of the “well-settled meaning in common popular speech... [and] parlance... intend[ing] a person of the Caucasian race.”⁶⁴

Justice Deady was uncharacteristically candid about the courts reticence to extend whiteness to Indians. Unlike the recent revisions to naturalization laws that had taken place “under the pro-negro feeling, generated and inflamed by the war with the southern states,” and had caused Congress to tack to the “other extreme” of extending the rights of naturalization to descendants of Africans, extending whiteness to Indians would be problematic as Indians were “in our midst... and only too willing to assume the mantle of American sovereignty.”⁶⁵ Most relevant to the issue here is the question of what Camille’s racial category did for his citizenship. By being denied whiteness, he was denied citizenship:

the petitioner is not entitled to be considered a white man. As a matter of fact, he is as much an Indian as a white person, and might be classed with the one race as properly as the other. Strictly speaking, he belongs to neither.⁶⁶

⁶⁴ Justice Sawyer: “words in a statute ... should be taken in their ordinary sense. The words ‘white person,’ as well argued by petitioner’s counsel, taken in a strictly literal sense, constitute a very indefinite description of a class of persons, where none can be said to be literally white, and those called white may be found of every shade from the lightest blonde to the most swarthy brunette. But these words in this country, at least, have undoubtedly acquired a well-settled meaning in common popular speech, and they are constantly used in the literature of the country, as well as in common parlance. As ordinarily used everywhere in the United States, one would scarcely fail to understand that the party employing the words ‘white person’ would intend a person of the Caucasian race.” *In re Camille* (6 F. 256, 257). See also Ian Haney-Lopez, *White By Law: The Legal Construction of Race*, (New York: New York University Press, 1996), 241-42 for a discussion of the case and its larger context.

⁶⁵ *In Re Camille*, 6 F. 258 (1880).

⁶⁶ *In Re Camille*, 6 F. 258, (1880) 259.

Camille was not tribal, but an Indian by race, which precluded him from naturalization. But what exactly it meant to separate oneself from tribal authority in the context of southern California Indian communities was unclear as many had never effectively existed under a tribal authority in the sense the courts understood the term.

In 1884, the Supreme Court rendered its decision in the *Elk v. Wilkins* case, which involved an attempt by Omaha Indian John Elk to vote. The court defined Elk as clearly a “civilized” Indian, whose ties to the Omaha nation were weak. Despite his attempts to vote, and his claim that he had separated from the tribe, the court claimed that “the question whether any Indian tribes, or any members thereof have become so far advanced in civilization that they should be let out of the state of pupilage, and admitted to the privileges and responsibilities of citizenship, is a question to be decided by the nation whose wards they are and whose citizens they seek to become; and not by each Indian for himself.”⁶⁷

The court’s decision is important for two reasons. First, the decision explicitly presented citizenship as mutually exclusive to Indians’ status as wards. While this had long been implicit in the assumptions of policymakers, this was its clearest expression yet in the law. Secondly, the decision explicitly stated that Congress must decide when and how Indians would become citizens and that it had yet to do so. Contrary to the arguments of John Elk’s counsel, the court upheld the Oregon circuit court ruling in *McKay v. Campbell* that the Four-

⁶⁷ *Elk v. Wilkins*, 112 US 94 (1884), 101, as quoted in Hoxie, Final Promise, 75.

teenth Amendment was not that instrument, as Indians were not “subject to the jurisdiction” of the United States. The court reasoned that the Fourteenth Amendment “contemplated two sources of citizenship, and two sources only: birth and naturalization.”⁶⁸ Given the recent decision in *Camille*, this left Indians, according to legal scholar Nell Newton, “alien subjects of a federal power they had not chosen and could not escape.”⁶⁹ While Elk had clearly severed his tribal relations, the specifics of which astoundingly were not a critical part of the court’s decision, he remained an Indian.⁷⁰ As an Indian, he was thus a ward awaiting congressional action to liberate him.⁷¹

However, as Goodrich noted, “the ideal standard, framed long ago to fit independent and integrated tribes to the East, hangs loosely upon the primitive bands of California, scattered and peculiarly harassed by their experience of white men.”⁷² While recent scholarship has challenged the assumption that California Indians were more “primitive” than their eastern counterparts, the assumptions about tribalness forged in the east were an uncomfortable fit in California and contributed to the confusion over California Indians’ legal status. But *Elk* was clear — Indians were either citizens or wards of the government, and it was the government’s duty to decide which. Over the next five years Congress,

⁶⁸ *Elk v. Wilkins*, 112 US 94 (1884), 101.

⁶⁹ Nell Jessup Newton, “Federal Power Over Indians: Its Sources, Scope and Limitations,” *University of Pennsylvania Law Review* 132, no. 2, (January 1984), 225.

⁷⁰ There is no record in the printed opinion as to his tribal affiliation, and the decision admits that it was not at that time known.

⁷¹ *Elk v. Wilkins*, 112 US 94 (1884), 99.

⁷² Goodrich II, 160.

the courts and state legislatures struggled among themselves to assert increasing control over Indian wards. Operating under the citizen / ward binary, the expansion of guardianship was the effective denial of citizenship.⁷³

In 1886, the Supreme Court issued a landmark decision on Indian wardship in a California case. *United States v. Kagama* upheld the constitutionality of the 1885 Major Crimes Act, which had extended federal jurisdiction to certain crimes committed on Indian reservations by Indians against other Indians. The larger significance of the *Kagama* decision lay in its clear extension of congressional plenary power over Indians and their status as wards:

These Indian tribes are the wards of the nation. They are communities dependent on the United States, -dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power.⁷⁴

Ironically, the “weakness and helplessness” that Justice Miller deemed to have derived from Indians relationship with the federal government, particularly the promise of protection contained within treaties, justified the expansion of the federal government’s power. In the case of the Hoopa, the tribe to which the de-

⁷³ Cohen, *Handbook of Federal Indian Law*, 152-56, on the tendency of people to assume that binary, long after the relationship was much more complicated.

⁷⁴ *US v. Kagama*, 118 US 375 (1886)

fendant belonged, none of the treaties that had promised protection had been ratified.⁷⁵

Regardless of the absence of treaties establishing the relationship, and overlooking the complexity of California Indian society, the court ruled that California Indians were wards, and that their wardship derived from their *tribal* status. But the question wasn't settled by any means. The following year, the California Supreme Court issued a ruling in a case involving the ability of an Indian woman to testify against her Indian husband in a murder case, which California law deemed she was incompetent to do. At issue was the legal status of a marriage between Indians according to Indian custom. The court avoided answering that particular question by ruling that the defendant was not an Indian, as he was not a member of any tribe with a chief or tribal laws, that his ancestors were not recognized by the government, and that he had lived for years among whites.⁷⁶

The Dawes Act further muddied the legal distinction between tribal Indians, who were wards, and those who were not part of an existing tribal network and were therefore not subject to federal oversight as Indians. Many friends of the Indians supported the act as a way to protect Indian land while “civilizing”

⁷⁵ Two treaties had been negotiated with the Indians at Hoopa Valley. One in 1851, and another in 1864. Neither had been ratified. Instead, the reservation was established by executive orders: Act 8 April 1864 (13 Stat. 39); Executive Order, Grant, 23 June 1876; and Executive Order, Harrison, 16 Oct 1891, from *Executive Orders Relating to Indian Reservations from May 14, 1855 to July 1, 1912* (Washington, DC: Government Printing Office, 1912; reprint: Scholarly Resources, Inc., 1975).

⁷⁶ *People v. Ketchum*, 73 Cal. 635 (1887). See also Goodrich II, 163, n.82.

Indians as rapidly as possible. But the language in the act which provided for citizenship was ultimately unclear. Section six of the act provided that Indians

born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States ... whether said Indian has been or not, by birth or otherwise, a member of any tribe.⁷⁷

In short, Indians, whether they saw themselves as a tribal or race, who had received an allotment or adapted the habits of civilized life were citizens. This expansive grant of citizenship wasn't borne out by Indians' actual experiences.

At the end of the nineteenth century in southern California, it mattered less and less whether Indians were tribal or not; whether they wished allotment or not. They were, according to the law, wards of the government. And whatever protections the Treaty of Guadalupe Hidalgo had purported to provide were largely dismissed when the United States Supreme Court ruled in the *Botiller v. Dominguez* case that it had "no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation which the government of the United States, as a sovereign power, chooses to disregard."⁷⁸

Despite the ambiguity, the friends of the Indian pushed hard for allotment to come to California. Based in part on the activism of Helen Hunt Jackson and C.C. Painter, Congress passed the 1891 Act for the Relief of the Mission Indi-

⁷⁷ 24 Stat. 388

⁷⁸ *Dominguez v. Botiller*, 130 US 247 (1889). Richard Griswold del Castillo points to the *Botiller* decision as a watershed in the federal government's shift away from liberal interpretations of the protections provided by the treaty of Guadalupe Hidalgo. See *Guadalupe Hidalgo*, 75-77.

ans that established yet another special commission, headed by Lake Mohonk founder Albert K. Smiley.⁷⁹ The commission was charged with surveying and securing lands already occupied by Mission Indians in order to make way for their eventual allotment as the secretary of the interior saw fit.⁸⁰

The Act brought the full force of the government's assimilationist campaign to bear on the small reservations of southern California and was a high water mark for the friends' efforts in the state.⁸¹ But it was also an important turning point in California Indian policy. Allotment and the assimilationist initiative that began with Dawes was belated, internally inconsistent and floundered on the complexities and distinctiveness of California Indian communities.⁸² The commissioners found that there was insufficient land. Most of it was not highly desirable to Anglo settlers, often not feasible for rigid government cadastral survey and certainly useless for agriculture without irrigation. Indian resistance, bureaucratic delays, ineptitude and malfeasance contributed to undermining the difficult task, and according to anthropologist Florence Shipek, caused allotment to come to a halt across all of southern California by the mid 1890s.⁸³ But the effort to secure land where Indians lived, or alternatively, finding other land for

⁷⁹ Clyde A. Milner II, "Albert K. Smiley: Friend to Friends of the Indians," from Clyde A. Milner II and Floyd A. O'Neil, eds. *Churchmen and the Western Indians, 1820-1920* (Norman: University of Oklahoma Press, 1985), 143-175.

⁸⁰ Albert K. Smiley and William A. Jones, "Downey and the Indians," *Daily Times* (Los Angeles), (25 November 1901): 2, in Thomas Bard Collection, Huntington Library, box 9E, folder 2 "news clippings, 7."

⁸¹ Valerie Sherer Mathes, *Helen Hunt Jackson and Her Indian Reform Legacy* (Austin: University of Texas Press, 1990), 95-116.

⁸² Shipek, *Pushed into the Rocks*, 50.

⁸³ Shipek, *Pushed Into the Rocks*. 49-50.

them, directly involved the federal government in decisions over how much land Indians needed, and to what legitimate uses it would be put.

Stymied in their efforts to assimilate and civilize the Indians now under their charge, and facing growing rebuke for the conditions they were largely responsible for publicizing, the friends of the Indians gradually lost ground to a more pessimistic and practical group of progressive activists, many of whom came from the west and sought to prepare Indians for a marginal life circumscribed by their perceived racial shortcomings and the government “protection” which it necessitated. Allotment momentarily unified these two tendencies. But the prospect of citizenship separated the friends, who advocated eventual citizenship from the new pragmatic western reformers like Charles Lummis, who were even less sanguine about the prospects or benefits it provided.⁸⁴

Allotment was not only favored by reformers. Others supported it as well. Allotment settled title, and the ambiguities of citizenship held promise to Anglos of potential land sales, water rights and rights-of-way.⁸⁵ In short, allotment, for very different reasons, which will be explored in subsequent chapters, appealed to many non-Indians in southern California, and some Indians as well. But for those Indians who opposed allotment, the government had *Lone Wolf*.

⁸⁴ Hoxie, *Final Promise*, 100.

⁸⁵ As will be discussed later, the 1891 Act provided for rights-of-way across Indian land. Given the water and railroad development of the region, these were highly sought after.

The landmark 1903 Supreme Court case, *Lone Wolf v. Hitchcock*, solidified congressional plenary power over Indian affairs.⁸⁶ Despite rejection by the Kiowa, Comanche and Apache Indians, the allotment of their lands proceeded nonetheless.⁸⁷ In ruling that the consent of the Indians was unnecessary, the Supreme Court argued that “[i]n view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property [the failure to obtain Indian consent was] solely within the domain of the legislative authority and its action is conclusive upon the courts.”⁸⁸ Indians were, the court held, “in substantial effect the wards of the government,” and it must be presumed “that Congress acted in perfect good faith” in their dealings with them. While even the least cynical observers at the time could question the “perfect good faith” of Congress, the court ruled that regardless of how Congress acted, they had full authority to act as they saw fit.⁸⁹

Congressional power, counter-intuitively, was something that some southern California Indians and their friends argued for. In 1901, the United States Supreme Court, basing their decision on the precedent set by *Botiller v. Dominguez*, ruled that the Cupeño Indians residing at the hot springs at Kupa had no legal right to the land, despite their claim of protection under the Treaty of Guadalupe Hidalgo. In May of 1903, they were removed by force to a new

⁸⁶ *Lone Wolf v. Hitchcock*, 187 US 553 (1903); Blue Clark, *Lone Wolf v. Hitchcock: Treaty Rights and Indian Law at the End of the Nineteenth Century* (Lincoln: University of Nebraska Press, 1994).

⁸⁷ Senate Executive Document, No. 17, 52nd Cong., 2d Sess., Serial Set No. 3055, vol. I, 4 January 1893, 11-16.

⁸⁸ *Lone Wolf v. Hitchcock*, 187 US 553 (1903), 568.

⁸⁹ *Lone Wolf v. Hitchcock*, 187 US 553 (1903); Clark, *Lone Wolf*, 57-66, 94-106.

reservation at Pala. To many Indians and local residents aware of *Lone Wolf*, removal must have appeared as the application of the plenary power and ward status outlined four months prior by the Supreme Court. Arguments that Congress or the courts were unable to do anything further to help the Cupeños stay at Kupa must have rung hollow in the ears of those who perceived that the government claimed the power to step in when it benefited their interests.

While the Cupeños were being evicted, president Roosevelt toured California, dining with Charles Lummis and meeting with representatives of the Northern California Indian Association (NCIA), among them Clarence E. Kelsey. Kelsey and NCIA president Mary Edwards presented the president with a memorial invoking the rejected treaties and their detrimental effects on California Indians. Their memorial opposed the establishment of reservations, urging instead keeping Indians where they currently lived through small individual allotments. This would have required the federal government to purchase land for that purpose, as much of it had already passed to private hands. According to Kelsey, reservations, and he particularly pointed to the recently established reservation at Pala, meant “large and constant expense to the Government and no great or lasting good for the Indians.” Particularly troubling to the authors of the memorial, was that California Indians were neither citizens nor wards, and thus lacked recognizable legal status. Allotment, according to Kelsey, would end this confusion by making Indians citizens.⁹⁰

⁹⁰ Mary Edwards and Charles E. Kelsey, “Memorial of the Northern California Indian Association,” United States, Senate, 58th Cong., 2d. sess., Document no. 131, 14.

Despite Indian Commissioner William Jones' opposition to the proposals outlined by the NCIA memorial, it articulated a practical attention to efficiency that resonated with Jones' push for "self-sufficiency." His opposition centered on his sense that allotting lands, even in severalty, to Indians where they lived would effectively constitute new reservations that would undermine individual Indian character. He argued that "The Indian to whom things are given for nothing has no incentive to work and he is slow to give up a life of sloth and beggary for one of industry and independence."⁹¹ However, the NCIA's efforts received a more sympathetic response when Frances Leupp took office as commissioner in January 1905. Leupp, more than any other commissioner before him, brought the progressive reform effort, with its desire for both efficient management of Indian resources and, at least superficial Indian self-sufficiency, to the Indian Office.⁹² Despite working as an agent for the Indian Rights Association for two years, he was never entirely committed to their version of Indian reform, which, it was clear by 1905, was on the decline. Perhaps most importantly, he maintained a close relationship with President Roosevelt that Jones resented, claiming their relationship was such that Leupp would "practically have his own way in the conduct of affairs."⁹³ While an overstatement, Leupp offered a more sympathetic and coordinated implementation of president Roosevelt's policies than that which Jones had provided.

⁹¹ Edwards and Kelsey, "Memorial," 13.

⁹² Hoxie, *A Final Promise*, 160; William T. Hagan, *Theodore Roosevelt and Six Friends of the Indian* (Norman: University of Oklahoma Press, 1997), 178-88.

⁹³ W. A. Jones to J.S. Perkins, 28 December 1904, William A. Jones Papers, as quoted in Hagan, *Six Friends*, 178.

On 18 January 1905, following the confirmation of postmasters for cities in Arkansas, Indian Territory, Illinois and Minnesota, and as the last order of business before the Senate adjourned for the day, a brief note was read into the *Congressional Record*: “The injunction of secrecy was removed January 18, 1905, from the eighteen treaties with Indian tribes of California sent to the Senate by President Fillmore, June 1, 1852.”⁹⁴ Unlike the very public debate surrounding the initial deliberation on the treaties fifty-two years earlier, which occurred during the height of the Anglo conquest of California, this was a quiet, bureaucratic affair, registering only a brief mention in the annual report of the Commissioner of Indian Affairs for that year.⁹⁵ The eighteen treaties, while never “lost” or “hidden,” reemerged at a pivotal moment in American Indian policy — in the midst of a shift in the ways the federal government pursued Indian policy and in the ways Indians themselves articulated it. This brought public attention to California Indians’ anomalous situation and set in motion a series of bureaucratic initiatives that unintentionally nurtured grass-roots Indian mobilization. Furthermore, the treaties served as a usable past progressive western reformers could point to as documentary evidence of the federal government’s failure to protect California Indians.

Developments outside California also affected the status of Indians within the state. In 1905, the Supreme Court again took up the question of Indian guardianship with *In Re Heff*. Albert Heff had been convicted of selling beer to

⁹⁴ *Congressional Record* 39, pt. 1, (18 Jan 1905), 1021.

⁹⁵ Department of the Interior, Bureau of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* (hereafter, ARCIA), (1905), 5.

John Butler, an allotted Indian of the Kickapoo tribe in Kansas. Heff's appeal to the Supreme Court was based on his contention that Butler, as an allottee, had been granted his citizenship and was therefore no longer a ward. Therefore, the state of Kansas and the district court lacked jurisdiction to prosecute him for violation of an 1897 state law that forbade the sale of liquor to Indian allottees or wards.⁹⁶ The fundamental legal question at issue was the widespread assumption that during the twenty-five year trust period prescribed by the Dawes Act, Indians remained wards of the government. This was the argument put forth by Solicitor General Henry Hoyt. However, the Court, while recognizing that the authority of Congress to regulate Indian Affairs was beyond question, interpreted the Dawes Act differently, as part of a "new policy ... which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes, free from national guardianship and charged with all the rights and obligations of citizens of the United States." The power to implement that policy hinged on the fact that Congress was, in the words of Justice David Brewer, "under no constitutional obligation to perpetually continue the relationship of guardian and ward." Congress had, in short, not only the power to regulate Indian affairs, but the power to stop doing so as well.⁹⁷

Equally as important, the court found that Dawes "confers citizenship upon the allottee [recipient of an allotment in trust patent], and not upon the patentee [recipient of the patent in fee simple]."⁹⁸ By associating citizenship with

⁹⁶ *Matter of Heff*, 197 US 488 (1905)

⁹⁷ *Matter of Heff*, 197 US 488 (1905), 499; see Hoxie,, *Final Promise*, 219-20.

⁹⁸ *Matter of Heff*, 197 US 488 (1905), 503.

allotment and not to the patent, the court limited the ability of the federal government to act as guardian and upset nearly twenty years of assumptions about the relationship between allotment and citizenship.⁹⁹ Representative Charles Burke, who would soon add his name to the list of legislative landmarks in Indian policy, wrote of the decision: “[i]t has generally been supposed that where Indians had taken allotments under the general allotting law that they were still wards of the nation and subject to the jurisdiction only of the United States... but ... the Supreme Court of the United States decided otherwise.”¹⁰⁰

The legal situation created by the *Heff* decision — congressional plenary power over Indians only until they were allotted — greatly limited the ability of the new commissioner to enact his agenda. While Leupp later described the decision as “in a certain sense... a positive comfort,” that resulted primarily from the fact that the decision clarified the law and enabled the Office to “do something intelligently for the relief of the situation.”¹⁰¹ But he was harshly critical of what he described as the act’s conference of “premature citizenship,” pointing to its potential for corruption in voting and an increase in Indian exposure to alcohol.¹⁰²

Leupp sketched his approach to Indian affairs in “Outlines of an Indian Policy.” He brought a typically practical progressive bent to Indian affairs that

⁹⁹ It also undermined efforts such as the NCIA memorial that advocated allotment as a means toward the gradual assumption of citizenship.

¹⁰⁰ House, Committee on Indian Affairs, “Allotment of Lands in Severalty to Certain Indians,” Report 1558 (to accompany HR 11946), 59th Congress, 1st Session, (21 Feb 1906), 1.

¹⁰¹ Frances E. Leupp, *The Indian and His Problem* (New York: Charles Scribner’s Sons, 1910), 36-37.

¹⁰² Leupp, *The Indian and His Problem*, 36.

followed four basic thrusts: the recognition that Indians were racially distinct and unique and should be measured by their “own standards;” that Indian poverty was traceable to their dependence upon the federal government to provide for their needs; that children were the best way to get to the adults in promoting “self-sufficiency;” and the necessity of continued protection of Indians by the government. In sum, his approach neatly summarized the ambivalent nature of Indian policy at the time that ostensibly promoted long-term self-sufficiency and independence while restricting it in the short term in order to “protect” Indians.¹⁰³

Leupp argued Indians should learn only enough to “to discover whether the storekeeper is cheating him,” or “how to repair a broken harness, how to straighten a sprung tire on his wagon wheel, how to fasten a loose horseshoe without breaking the hoof, and how to do the hundred other bits of handy tinkering which are so necessary to the farmer who lives 30 miles from a town.”¹⁰⁴ Clearly, Leupp’s solution to the Indian “problem” was not assimilation into the mainstream of American society, but relegating Indians to marginal labor at the periphery of that society. Leupp’s vision differed from earlier assimilationist efforts as he argued that the Indian lacked “the imitative nature [which] aspires from within to be a white man.”¹⁰⁵ In Leupp’s conception, the difference was intrinsic, and the distinctiveness reduced the efficacy of market forces and private

¹⁰³ Frances E. Leupp, “Outlines of an Indian Policy,” *Outlook* 79, 15 April 1905, 946-50; reprinted in ARCIA, 1905, p1-7. Page references are to the latter.

¹⁰⁴ Leupp, “Outlines of an Indian Policy,” 5.

¹⁰⁵ Leupp, “Outline of an Indian Policy,” 5.

property in incorporating Indian populations into the American economy. Leupp envisioned the marketplace incorporating Indian labor and goods, while the government protected the property of Individuals whom they viewed as innately racially distinct and inferior.

It was in this immediate context that Congress authorized the Secretary of the Interior to conduct an investigation into the condition of California Indians. The Office of Indian Affairs appointed Clarence Kelsey to conduct the investigation and he began his field work in August. Initially, his charge was to examine the condition of “landless” Indians — those who had signed treaties and now found themselves without any land at all — most of whom resided in the northern part of the state. In describing their situation, he pointed to the fact that the Indians:

did not understand the intricacies of our Governmental system, or the meaning of Senatorial ratification of a treaty... [they] certainly understood that they had made a solemn agreement with the United States; and that they had sold their lands for a price. The Government has taken their lands and their reservations and paid nothing, and from an Indian standpoint, this constitutes a deliberate breach of faith without palliation or excuse.¹⁰⁶

At the end of 1905, he received supplemental authorization to investigate conditions south of the Tehachapi mountains, where the conditions were quite different than those in the north.¹⁰⁷ Of the 5,200 Indians he enumerated in the state who lived on reservations, two thirds of them lived in southern California.

¹⁰⁶ Kelsey, Clarence E., “Report of the Special Agent for California Indians to the Commissioner of Indian Affairs,” (21 March 1906), 8, included in “Indian Tribes of California,” hearings before a subcommittee of the House Committee on Indian Affairs, 66th Cong., 2d. sess., (23 March 1920), 116-131.

¹⁰⁷ He called San Manuel “about the most worthless that I have seen anywhere in California.” Kelsey, “Report of the Special Agent,” 129.

His report described scattered, tenuous and insufficient reservations, woefully short of the arable land and the water necessary to achieve self-sufficiency. Despite the differences — landless Indians in the north and Indians with substandard reservations in the south — Kelsey’s recommendations were the same: government appropriations to purchase land to either *provide* land or *improve* the quality of that which Indians already occupied. He recommended congressional appropriations of \$70,000 to ameliorate the situation, with nearly one half of that slated to purchase land for the Campo reservation in far southern San Diego County alone.¹⁰⁸

Kelsey’s recommendations to buy land to strengthen existing reservations cut against his belief that the reservation system was an “evil which we trust will be eliminated in time.”¹⁰⁹ While Kelsey more closely identified with the earlier “ethical” reform element, he nonetheless recognized that this was an increasingly “practical” era and enumerated a number of reasons for Indian reform in his report and the public speaking he did in support of it.¹¹⁰ Specifically, he cited the fact that securing Indian land tenure provided a stable Indian labor force for California industries, and that day schools staffed by Indians themselves provided cost savings over Indian Office staffed boarding schools. The report he issued, and its critique of federal ineptitude and waste tapped into a

¹⁰⁸ Kelsey, “Report of the Special Agent,” 126-27.

¹⁰⁹ Edwards and Kelsey, “Memorial,” 16; Kelsey, “Report of the Special Agent,” 118.

¹¹⁰ The characterizations are his words. C. E. Kelsey, “Indian Rights and Wrongs,” *Transactions of the Commonwealth Club of California*, IV, no. 7, (December 1909), 417-29.

growing frustration among western progressives about the inefficiency and impracticality of the Indian assimilation efforts.

Most prominent among the western reformers was Charles Lummis, the outspoken editor of *Out West*.¹¹¹ Lummis became involved in California Indian affairs as he sought to forestall the eviction of the Cupeño from Warner's Ranch as he worked to procure "more and better lands" than that which had been secured by the Indian Office. To support that effort, he organized the Sequoia League, which he described as having been founded by "persons familiar with the frontier, with Indians, and with the Indian policies that have made our 'Century of Dishonor' an international byword." The group consisted of a number of prominent westerners committed to "mak[ing] better Indians."¹¹² The league's 1906 annual report quoted at length and approvingly from Kelsey's report, particularly its practical emphasis on purchasing land for allotment as a way to "put

¹¹¹ Charles Fletcher Lummis awaits his definitive biography, not for lack of attempts. The most recent is Mark Thompson, *American Character: The Curious Life of Charles Fletcher Lummis and the Rediscovery of the Southwest* (New York : Arcade Pub., 2001). See also, Dudley Gordon, *Charles F. Lummis: Crusader in Corduroy*, (Los Angeles: Cultural Assets Press, 1972), Edwin R Bingham, *Charles F. Lummis: Editor of the Southwest*, (San Marino, Calif.: Huntington Library, 1955); Keith Lummis and Turbesé Lummis Fiske, *Charles F. Lummis: The Man and His West*, (Norman: University of Oklahoma Press, 1975); Joseph Perry Staples, "Contracting the Land of Sunshine Charles Fletcher Lummis and the Marketing of a Post-Frontier West" (Ph.D. thesis, English, University of Arizona, 2004). William Hagan's chapter on Lummis is an excellent overview of the complexities of Lummis' ego, his mindset and his relationship with both Washington D.C., and the Indians. Hagan, "A Friend Self-Destructs," in *Theodore Roosevelt and Six Friends of the Indian*, 120-139; Sherry Lynn Smith, "Charles Fletcher Lummis and the Fight for the Multicultural Southwest," in *Reimagining Indians: Native Americans through Anglo Eyes, 1880-1940* (New York: Oxford University Press, 2000), 119-144.

¹¹² The phrase was the banner of the Sequoia League. For Lummis' description of the land at Pala as infinitely superior, see Sequoia League, "What Has Been Done; What Needs to Be Done," *Out West*, (June 1904), 4: the "League's "great achievement was in securing a new—and a better— home for the Warner's Ranch Indians..." Later, the Sequoia League "succeeded in doing what was never done before done [sic] in the history of our Indian policy, so far as I know the records—in getting for the evicted Indians more and better lands than those from which they were ousted."

these Indians in a position where they can earn their own living.” This was best accomplished, the report proposed, by “men who know the country,” not reformers and sentimentalists from the East.¹¹³ Lummis himself in 1904 declared that Indian policy had “failed” not because the Indian was “a fool,” but “simply because this Superior Race has been trying to teach political economy, logarithms and Christian Science to an Infant Class,” a process he had elsewhere criticized as “trying to make Chinamen, darkey and Indian into hand-me-down white men.”¹¹⁴ The trope of Indians as children ran through the Sequoia League and Lummis’ rhetoric, as it did in fact through much Anglo rhetoric on Indians.¹¹⁵ But the trope was misleading. Unlike Anglo children, Indians could not grow into Anglo adults:

The Indians are children, quite incompetent to make headway against the cunning or force of the white settlers who covet their lands. The [Sequoia] League proposes to see that the Indians are justly treated. *They are Indians, not white men; with Indian blood, the Indian traditions, and also the Indian sense of dignity and honor.* It is the League's suggestion that they may remain Indians if they want to, as they unquestionably do: and that they should be also guaranteed, out of the boundless lands that we have taken from them, at least enough on which to gain a decent living by labor and thrift. This the Sequoia League has set itself to secure; and when it is secured, to make permanent, being well assured

¹¹³ Charles Fletcher Lummis, "Getting Results" (Los Angeles: Sequoia League, 1906). Lummis particularly picked out sentimentalists as his target. He referred to them as the “sickly sentimentalists” in a 1902 letter to Edward Ayer, 6 Jan 1902, Charles F. Lummis Manuscript Collection (hereafter LMC), Southwest Museum (hereafter SWM), Los Angeles, California, MS 1.1.158a.

¹¹⁴ Lummis, “What Has Been Done,” 3; Lummis, “Sequoyah League” *Out West* 20 (April 1904), 384.

¹¹⁵ Richard White, “Fictions of Patriarchy: Indians and Whites in the Early Republic,” in Frederick Hoxie, Ronald Hoffman and Peter Albert, *Native Americans in the Early Republic* (Charlottesville: University Press of Virginia, 1999), 62-84.

that eternal vigilance is the price of red as well as white independence.¹¹⁶

The Sequoia League advocated enabling Indians to rise or fall on their own, while describing their inability to do so in innate, racialized terms that “necessitated” constant vigilance by the “superior” race. To facilitate that, and partly in response to the *Heff* decision’s limitations on federal power, South Dakota Congressman Charles Burke offered the amendments to the Dawes Act which became the Burke Act of 1906.

The Act postponed the conference of citizenship until the end of the trust period, and established the patent in fee simple as the bright line to mark the boundary between citizenship and guardianship. The Secretary was authorized to issue fee patents at his discretion when allottees were deemed to be “competent and capable of managing his or her affairs.” However, until the fee patent was issued, allotted Indians in the trust period were under the exclusive jurisdiction of the federal government.¹¹⁷ In holding citizenship as something to be trained for, not as an educative experience itself, the Burke Act incurred the opposition of the Board of Indian Commissioners.¹¹⁸

The Burke Act dramatically expanded the ways in which federal power was asserted over the lives of Indians. Consequently, commissioner Leupp en-

¹¹⁶ Wayland Smith, “The Scattered Sheep of Mission Flocks: An Account of the Present State of the Mission Indians in Southern California,” *The Fourth Bulletin of the Sequoia League, Los Angeles Council*, 1907, 12. (emphasis added)

¹¹⁷ Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties, vol. III, Laws (Compiled to December 1, 1913)*, (Washington DC: Government Printing Office, 1913), 181-182.

¹¹⁸ Arthur Ludington, who was hired by the BIA in 1912 to reassess Indian policy, wrote in his first report: “citizenship is not regarded as in any sense something which educated, but solely as something which one must be educated for,” as quoted in Barsh, “Progressive-Era Bureaucrats,” 9. The Board of Indian Commissioners’ opposition can be found in ARCIA (1906), 5-6.

thusiastically supported the Act, and sought to buttress it by strengthening the power of his office. In the 1906 Indian appropriation bill, he included the authorization to extend wardship beyond twenty-five years as deemed necessary by the president. The following year, he amended the “Noncompetent Indian Act” to appropriation legislation, which established the legal category of noncompetent Indians.¹¹⁹ These measures were critical in the development of what Frederick Hoxie has described as a “colonial land policy” in which the pretense of full incorporation of Indian peoples was abandoned in favor of ascribing them to a peripheral position in society and the efficient development of their lands and resources under government control.¹²⁰ This chain of events would have struck elderly southern California Indians as familiar given its similarities with Franciscan efforts to push back the date of the emancipation of neophytes in the early nineteenth century.

Leupp signaled the change in Indian policy in 1910 when he wrote that the Dawes Act and the Burke Act were each “suited to its own era.”¹²¹ The Burke Act animated the concern expressed in the Heff decision by creating a “special class” of citizens-in-training for whom the federal government assumed the role of guardian.¹²² Freed from the threat of “premature citizenship” for Indi-

¹¹⁹ Hagan, *Six Friends*, 208.

¹²⁰Hoxie, *Final Promise*, 173-75.

¹²¹ Leupp, *Indian and His Problem*, 66.

¹²² *Matter of Heff* 197 U. S. 488 (1905), as quoted in Hoxie, *A Final Promise*, 219.

ans, the Indian Office resumed allotment on southern California reservations such as Pala.¹²³

However, just as new legislation and policy changes worked to reinvigorate the allotment process, it also undermined its eventual success. Between 1907, when allotments in southern California resumed, and 1915 when patents began to be issued to Indians, there were a series of important policy changes at the national level, all of which pointed toward Indian Office use of Indian lands and rivers as, in commissioner Valentine's telling phrase, "text-books and laboratories" in an Indian "citizenship school." Replacing captaincies with committees and consolidating jurisdictions increased the conceit of federal power while simultaneously creating local structures of Indian power and removing some agents from the reservations. The result was a greater *perception* of federal power while, at the same time, more latitude and structural support on the reservations in organizing to resist it.¹²⁴

Under the Act of 25 June 1910, which expanded the powers of the Indian Office in regard to Indian inheritance, the secretary could issue a "certificate of competency" to allottees that would remove all restrictions on alienation, freeing them to sell allotments if they wished.¹²⁵ Increasingly, competency became the arbiter of Indian fate. The Indian Office's prevailing negative definition hailed from the 1907 Noncompetent Indian Act as summarized in a 1908 circular:

¹²³ *Pushed into the Rocks*, 50. "Premature" comes from Leupp, *Indian and His Problem*, 36.

¹²⁴ This included replacing captains with committees, consolidating agency jurisdictions, and cracking down on Indian resistance. See subsequent chapters. Robert G. Valentine, "Making Good Indians," *Sunset* 24, no. 6 (1910), 602.

¹²⁵ especially section 17, 36 Stat. L. 855-859.

“That general class of Indians, who, through mental or physical infirmities incident to accident, disease, or old age, are unable to avail themselves of the benefits arising from the development of their allotments, and whose best interests require that their lands be converted into money, so that funds may be available for medical attendance, and for their support.”¹²⁶ Over the next ten years, the category “incompetent” grew to include all Indians under twenty-one, over fifty-five or with more than fifty percent “Indian blood.”¹²⁷ Indianness itself became an infirmity.¹²⁸

As an adjunct to the evolving notions of competency, the Supreme Court, in a series of independently minor, but collectively significant decisions, reinforced a racially distinct category of Indian citizenship predicated on incompetence and continued federal guardianship.¹²⁹ Collectively, these decisions conflated Indian citizens and incompetence by ruling that federal responsibility did not end with citizenship.

In 1913, Cato Sells became commissioner of Indian Affairs, and over the next seven years, he and secretary of the interior Franklin Lane embodied the Progressive ascendancy over Indian resources and affairs. Both men were

¹²⁶ Circular, no. 181, 9 Jan 1908, as quoted in Prucha, *Great Father*, 877, n34.

¹²⁷ Cato Sells, “Declaration of Policy in the Administration of Indian Affairs,” 17 April 1917, NARA-LN, RG75, Records of the La Jolla Superintendency (hereafter “La Jolla”), box 343, folder “Letters Rec’d 1911 [sic] [1/2];” McDonnell, *Dispossession*, 103-110.

¹²⁸ Hoxie, *A Final Promise*, 220.

¹²⁹ Specifically: *United States v. Sutton*, 215 US 291 (1909); *United States v. Celestine*, 215 U. S. 278 (1909); *Hallowell v. United States*, 221 US 317 (1911); *Tiger v. Western Investment Company*, 221 US 286 (1911), as discussed in Goodrich II, 178 and Hoxie, *A Final Promise*, 223. *Sutton* and *Celestine* are discussed by William E. Johnson in a letter to “All [police] Officers,” 2 July 1910, NARA-LN, RG 75, BIA, La Jolla, box 343, folder “Letters Received, 1910.”

firmly committed to the efficient “emancipation” of Indians from federal control, while maintaining the government’s control over Indian resources. This was no easy balancing act, and the Indian Office generally tilted toward the latter over the course of their tenure. Increasingly, government management of Indian resources and the growing emergence of blood quantum in determining competency strengthened the sense of racialized identity among Indians.

One example of this change is evident in the 1913 decision by the Supreme Court in *United States v. Sandoval*, which overturned *United States v. Joseph* (1876) and established that Pueblo Indians were wards of the federal government, despite the fact that they had been citizens of Mexico with a fee patent title to their land at the time of the U.S. acquisition. Nonetheless, the Supreme Court argued, they were “Indians in race, customs, and domestic government ... living in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetishism, and chiefly governed according to the crude customs inherited from their ancestors, ... essentially a simple, uninformed, and inferior people.”¹³⁰ They were Indians not because of their political, legal or historical relationship with the United States, nor the internal structure of their own communities, but because of their perceived racial inferiority.¹³¹

When Indians in southern California resisted federal officials, their acts gave federal courts further opportunities to restrict and define citizenship.

¹³⁰ *United States v. Sandoval*, 231 US 28 (1913)

¹³¹ *United States v. Sandoval*, 231 US 28 (1913)

When Ambrosio Apapas and nine other Cahuilla Indians were convicted for the 1912 murder of Indian Agent William Stanley on the Soboba reservation, Apapas appealed for a direct review by the Supreme Court on several grounds.¹³² The Court entertained only three of them, all of which it dismissed summarily for want of jurisdiction. Of interest here is Apapas' claim that the Treaty of Guadalupe Hidalgo had made him a citizen of the state, and therefore, he was "not amenable to prosecution in the courts of the United States for the crime of murder committed within the State of California." The court declared this argument, "absolutely devoid of merit." With that, the sixty-five year quest for clarity under the law over California Indian citizenship under Guadalupe Hidalgo was effectively over. But by 1914, the question was all but a moot point.¹³³

Of additional interest in the *Apapas* ruling was Chief Justice White's aside describing the Cahuilla as "tribal Indians, leading a tribal life, and living on a tribal reservation under the control of the United States."¹³⁴ This distinction would soon have potential legal value. With *Sandoval*, the Court ruled that Pueblo Indians, *as a race*, required the tutelage of the U.S. government. With *Apapas*, the Court ruled that *as tribal Indians*, the Cahuilla were subject to federal jurisdiction. In effect, by 1914, the distinction between racial or tribal Indianness was insufficient to alter the federal government's guardianship over

¹³² Thorne, "The Death of Superintendent Stanley," *Apapas v. United States*, 233 US 587 (1914).

¹³³ *Apapas v. United States*, 223 US 587 (1914), 590.

¹³⁴ *Apapas v. United States*, 223 US 587 (1914), 590.

southern California Indians, but it remained an alive question as a way to determine citizenship.

The Office of Indian Affairs was overburdened by the growth in the number of its wards. Commissioner Sells and Secretary of the Interior Franklin Lane sought to streamline the government's "protection" efforts by concentrating on those Indians whom they determined needed it the most. When, in 1914, Lane proposed the establishment of a full-time and permanent competency commission charged with traveling from reservation to reservation to determine competency, Sells responded enthusiastically that the proposal would "go a long way toward curing the most vital evil which many years of administrative efforts have brought about in an honest attempt to settle the Indian's future and qualify him for real citizenship."¹³⁵ While the commission's goals were a more efficient management of that process. But at the same time, Sells felt it necessary to clarify that the goal was not merely citizenship, but *real* citizenship. Despite the fact that both the Dawes and Burke Act had outlined the path to citizenship, there was an unstated recognition that what was offered was not full citizenship, but a pale imitation of it.

Sells' and Lane's policy objective to emancipate the competent Indians in order to concentrate on those who were not further exacerbated the distinction between the two categories and elevated the importance of the declaration of competency.¹³⁶ In 1915, Lane appointed James McLaughlin and Frank Thack-

¹³⁵ Cato Sells to Franklin Lane, 14 December 1914, NARA, RG75, BIA-CCF, Flathead, 123598-14-150, as quoted in Janet McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington: Indiana University Press, 1991), 94.

¹³⁶ Prucha, *The Great Father*, v. II, 881; Hoxie, *A Final Promise*, 176-78.

ery to form competency commissions that would move from reservation to reservation assessing the ability of Indians to regulate their own affairs. That effort expanded the following year, and again in 1917. Despite criticism, both for moving too slow, and for being a bad idea in the first place, Sells continued to push the issuance of fee patents.¹³⁷

He was also emboldened by the Supreme Court decisions in the cases of the *United States v. Noble* (1915) and *United States v. Nice* (1916), which categorically overthrew *Heff* by arguing that citizenship did not automatically end Indians' status as wards.¹³⁸ Instead, the ruling argued that "citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for their protection."¹³⁹ Where the Burke Act had attempted to address the dichotomy created by the *Heff* decision — namely state jurisdiction over an Indian person as a result of their citizenship, but federal jurisdiction over their property by dint of federal guardianship — by synchronizing the transfer of authority, *Nice* severed the connection between citizenship and guardianship effectively creating a distinct category of citizen fully under the jurisdiction of the United States. That is, a type of citizen-

¹³⁷ Prucha, *Great Father*, 875-882; Hoxie, *A Final Promise*, 176-80; McDonnel, *Dispossession*, 90-99.

¹³⁸ *US v Nice*, 241 US 591 (1916)

¹³⁹ *US v. Nice*, 241 US 591 (1916), 598.

ship that failed to emancipate its holder and meant that, outside of voting, the citizen Indian was treated largely the same as the non-citizen Indian.¹⁴⁰

Despite the fact that both tribal and racial Indians were subject to federal guardianship by 1917, that distinction remained important in California. In March 1917, the state supreme court ruled that Indians whose identity was primarily racial, not tribal, were citizens. Ethan Anderson, a Pomo Indian, attempted to register to vote but was denied on the grounds that he was not a citizen. The state supreme court declared him to be a member of a “group of Indians [who] do not belong to any tribe that was ever known or recognized as such by the United States as a distinct political community.” While his tribe may have had an original government of some kind, for quite some time they have owed no allegiance to any government except that of the United States. The Anderson decision relied on the distinction provided in 1884 in the *Elk v. Wilkins* case — that an Indian’s allegiance to a functional tribal government meant that they were not under the jurisdiction of the United States as is required in order to have citizenship conferred by birth under the Fourteenth Amendment. In the case of Anderson, as he lacked that allegiance, he was a citizen. In short, tribal Indianness was sufficient to preclude citizenship but racial Indianness, in California, was one way to claim it. But neither status directly affected the persistence of federal guardianship. Where *Sandoval* drew a bright line around wardship as a racially determined category, *Nice* allowed for its coexistence with citi-

¹⁴⁰ *US v. Nice*, 241 US 591 (1916), 598.

zenship, and *Anderson* thus secured an increasingly racialized citizenship for Indians in California by pushing them to claim citizenship by race.¹⁴¹

But the law is an interpretive process. Without cases explicitly adjudicating the citizenship of the Indians of the San Luis Rey watershed, their status remained unclear. At Pala, Indians' racial and tribal identities came into conflict. According to a later letter by the Mission Indian Agency superintendent, the *Anderson* decision provided citizenship to Pala Indians because they lacked the federal recognition and autonomous community continuity required by *Elk v. Wilkins*.¹⁴² However, given the high blood quantum of most Indians of the San Luis Rey Valley, they were nonetheless restricted by Indian Office policy that ascribed restricted, non-competent status to Indians who had fifty percent or more of "Indian blood." That is, by the 1920s, under *Anderson*, most Indians in the region were non-competent citizens by race, and of those whose blood quantum would have made them eligible for competency, few had been declared so by the Indian Office. Thus seven years in advance of the extension of federal citizenship by the 1924 Snyder Act, which granted citizenship to all "noncitizen Indians born within the territorial limits of the United States," federal policies and court decisions had created a restricted and racialized category of Indian citizen.¹⁴³ The fact that citizenship for California Indians was incomplete

¹⁴¹ *Anderson v. Mathews* 174 Cal. 537 (1917)

¹⁴² John Dady to E.R. Martin, "Citizenship Verification," County of Los Angeles, Department of Charities, Transportation Section, 22 June 1938, NARA-LN, RG75, BIA-CCF, box 14, folder (6), "citizenship of Mission Indians."

¹⁴³ 43 Stat. 253 (1924), reproduced in Francis Paul Prucha, *Documents of United States Indian Policy*, 3rd edition (Lincoln: University of Nebraska Press, 2000), 218; See also, see *Cramer v. United States*, 261 US 219 (1923) which upheld *Kagama* and *Nice* in light of *Anderson*.

brought it more closely within reach of Indians operating in the highly charged racial atmosphere of the time. But precisely because it was incomplete, Indians were able to use its limited benefits to demand full citizenship — the subject of chapters six and seven.

...

CHAPTER THREE

“TO ATTACH THEM TO THE SOIL”

Indians and the Landscape of Southern California, 1860 to 1903

Since the eighteenth century, Spanish, Mexican and Americans viewed the Indians of the San Luis Rey watershed as occupying distinct places in the natural world. To varying degrees and for distinct reasons, non-Indians created economic and political systems which de-naturalized, dispossessed and re-mapped Indians onto the landscape according to their visions. During the Spanish period, it took the form of the Mission system. In the Mexican era, it was the large non-Indian ranchos which dominated the southern California landscape and thrived on Indian labor. This chapter focuses on the American period and uses the fight over the eviction of the Cueleño Indians from their ancestral village at Kupa to chart the declining opportunities for economic autonomy Indians found on the margins of Anglo society.

When California became a state, Indians along the San Luis Rey River were left in possession of a hybrid agricultural system, but not the legal title to the land upon which it was based.¹ Luiseño, Cupeño and Kumeyaay communities exploited the ambiguity of political control to their advantage, adapting Spanish agricultural practices to their own subsistence patterns. Over the next

¹ Zephyrin Engelhardt, *San Luis Rey Mission* (San Francisco: The James H. Barry Co., 1921), 46-48, 88-91.

two decades, they successfully navigated the changing political reality by moving inland in some cases, and supplementing their traditional subsistence crops of corn, beans and squash with products for the growing commercial marketplace. Their agricultural successes were well-documented.²

In 1883, noted author Helen Hunt Jackson and New Jersey cigarett scion Abbott Kinney visited the region on behalf of the Indian Rights Association (IRA).³ In the area around the hot springs at Kupa, they noted that many Indians retained large acreages devoted to commodity crops such as grain, grapes and fruit trees.⁴ Rosinda Nolasquez, a young Cupeño resident of the village at Agua Caliente, who recorded her memories with anthropologists from the University of California remembered watermelons, beans, and corn growing at Kupa, along with apple, pear, apricot, peach and almond trees – all of them irrigated from the springs.⁵ Honorato Chapula, of the nearby Kumeyaay village of San Felipe, claimed that his village lived very well growing wheat, corn, pumpkins, watermelons, onions and barley.⁶ Among all these people, agriculture was clearly devoted to more than subsistence crops. By the end of the nineteenth century, the agricultural potential of the valleys along the river was well known.

² Carrico and Shipek, “Indian Labor in San Diego County,” 199-202.

³ Abbot Kinney met Jackson in Los Angeles during her 1882 visit. Mathes, *Helen Hunt Jackson*, 49.

⁴ Helen Hunt Jackson and Abbot Kinney, *Report of Mrs. Helen Hunt Jackson and Abbot Kinney on the Mission Indians in 1883*, (Boston: Press of Stanley and Usher, 1887) 8, 18-20.

⁵ Hill and Nolasquez, *Mulu'Wetam*, 24a-25a.

⁶ Honorato Chapula, “Interview with the San Felipe Indians,” copy in the Charles L. Partridge Collection, Papers Concerning the Resettlement of Warner’s Ranch Indians, 1901-24 (hereafter “Partridge Papers”), Bancroft Library, University of California, Berkeley, MSS C-B 335, box 1, folder 1; Martha Ingersoll-Robinson, “Warner Ranch Indians,” *San Diego Union*, 5 April 1903.

As Los Angeles and San Diego boomed, so too did the potential retail market for the produce of the region's backcountry. To capture that market, Frank Salmons opened a store at Pala some time around 1892. He worked closely with Ed Fletcher's retail and produce distribution establishment in San Diego. Indian and non-Indian agriculture alike supplied them with their commodities.⁷

But farming was only one of many economic strategies in which the residents of small Indian villages such as Kupa engaged. In addition to the subsistence and commercial agriculture around Kupa, the residents of the small villages also pursued migratory wage labor on local ranches and farms.⁸ Phillip Sparkman, store owner and amateur ethnographer at nearby La Jolla village, described empty reservations because the men had all gone to Orange County to shear sheep. Indefatigable regional booster Charles Lummis gave a similar account when he visited Kupa to confer with the residents about the impending eviction.⁹ In a 1903 newspaper article, Martha Ingersoll-Robinson outlined migratory wage labor patterns around Warner's Ranch:

⁷ Fletcher, *Memoirs*, 70-75. By the time of their eviction in 1903, the village of Kupa had approximately sixty acres irrigated from the springs and 200 acres in cultivation. To recover the cost of those lost crops, at least six of the former residents made claims against the government for reimbursement. Tomasa C. B. Moot's eleven fruit trees and 150 grape vines were valued at \$40, only slightly above the average value. Lummis, "Exiles of Cupa," *Out West* v16, no. 5, (1902), 466, 470; James McLaughlin, *Tabulated acreage and prices of certain tracts of land situated in Riverside and San Diego Counties, California, examined by James McLaughlin, U.S. Indian Inspector, with a view to finding a suitable location for the Mission Indians of Warner's Ranch, recently dispossessed of their former homes.* (Washington D. C.: Department of the Interior, 7 January 1902) 462; Ingersoll-Robinson, "Warner Ranch Indians;" Charles E. Shell, "Claims for Indian Crops," NARA-LN, RG 75, BIA, Records of the Pala Indian School and Agency (hereafter PALA), Miscellaneous Letters Sent (hereafter Misc Ltrs Sent), December 1903-January 1915, box 362, folder "Dec 1, 1904 – June 27, 1905."

⁸ Carrico and Shipek, "Indian Labor,," 210-213.

⁹ Phillip S. Sparkman, "Notes re: Jose Garra's estate," Sparkman Papers, Bancroft Library, University of California, Berkeley, MSS C-B 1068, portfolio 1 [of 1], 32-33; Shipek, *Pushed to the Rocks*, 33-35; Lummis, "Exiles of Cupa," 471.

"In December and January they plow and plant their barley, wheat and corn. By March the home fields are in a thriving condition, so leaving the old men to look after the women and children, the others go off to assist at sheep shearing, usually finding work at Arlington or South Riverside. Four or five weeks are taken up with this work, the men reaching home about the middle of April. Then they plant their potatoes and small vegetables. During June and July the grain planted in December is harvested. In August the majority of the men and not a few of the women and children leave home, first engaging in picking almonds, and then in turn as they ripen, peaches, plums, pears and grapes at the nearby ranches, often not reaching home until the last of October or the first of November. It is thus readily seen that there is but a small portion of the year in which the Indians are idle."¹⁰

This provided Indians with an economic survival strategy that offered access to wages but with independence from the dominant society. Ami Golsh, a non-Indian farmer who owned land near Pala, claimed that throughout most of the year, "200 men could easily find employment within forty miles of here ... at a minimum wage of \$1.00" per day, while during harvest season, the average wage was \$1.50 per day.¹¹

Economic growth affected all of Southern California. The region's population exploded after 1880 as the expanding rail network brought the region into closer connection with the east and tourism increased.¹² As a result, the residents of Kupa expanded on their earlier use of the springs by constructing bath houses, flumes, and pools and charging visitors from Los Angeles and San Di-

¹⁰ Ingersoll-Rand, "Warner Ranch Indians."

¹¹ Charles F. Lummis, Charles L. Partridge, and Ami V. Golsh, "Pala Property. Questions asked Mr. Ami Golsh," (1902), 11. In "Partridge Papers," box 1, folder 1.

¹² Richard Orsi, *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850-1930* (Berkeley and Los Angeles, Univ. of California Press, 2005), 140-65.

ego for meals and visits to the therapeutic baths.¹³ Cupeño Ramona Sibimooat opened and operated a restaurant at the springs for a number of years.¹⁴ Village elder Adolfo Moro testified in 1893 that the Indians had always controlled the springs and claimed former California governor John Downey had paid Moro himself for a visit.¹⁵

This new entrepreneurial activity was not shared equally by all. In a 1902 visit to the village, Lummis claimed that the residents earned, a “few thousand” dollars of revenue from white tourism, and that, despite the fact that the bathing privileges were controlled by a few families, everyone in the village benefited by house rentals and associated small enterprise.¹⁶ Writing in the Los Angeles

¹³ Ingersoll-Robinson claimed they earned \$1 / week or \$0.25 / bath in 1902-3, , “Warner Ranch Indians.”

¹⁴ Frank Mead to Jim S. Callen, 12 December 1911, NARA-LN, BIA, RG 75, PALA, box 349, fu 241.

¹⁵ Superior Court, San Diego County, 17 July 1893, *J. Downey Harvey, Administrator of the Estate of John G. Downey, deceased and the Merchants Exchange Bank of San Francisco, a corporation, plaintiffs, v. Alejandro Barker, et. al., defendants*, “Deposition of Witnesses,” 66, photocopy on file at Cupa Cultural Center, Pala Indian reservation, Pala, California.

¹⁶ Lummis, “Exiles of Cupa” 471. See also O.M. Adae, “Opening of Season at Warner’s Hot Springs,” [letter to the editor of] *San Diego Union*, 30 May 1902, which described the author’s recent trip to the springs: “I like to have the Indians around me. Never abusive, never vulgar, ever reserved; clad in a certain graceful dignity, scrupulously clean and honest, and always picturesque... The springs are now well patronized; every adobe is occupied, with about half a dozen snowy white tents embracing the landscape.... Everybody does his own cooking, and the dishes one concocts are a caution... all very jolly, not to mention the curative qualities of the water. And I contemplate with keen regret that all this is so soon to be a thing of the past. Of course ‘Lo! the poor Indians,’ are looking forward to the future with loomy forebodings, but withal with dignified soicism [sic]. The fundamental trouble it seems to me, is that we ever judge the Indians from our standpoint. Look at the gipsies. They are white; have for the last thirty centuries lived among what we are pleased to call civilized nations, and still they refuse to relinquish their nomadic life, refuse to work of live in houses; and yet we expect he Indians to change their nature in four generations. Change the Indians here into negroes or Chinese, and neither I nor anybody else would remain here a day. The newly appointed commission is expected here this week. Perhaps they will assist solving the question.” Also, [E.N.S.] listed may prominent San Diegans who were at the springs, “San Diegans at Warner’s Ranch,” *San Diego Union*, 17 June 1902.

Herald, journalist Mary Moore claimed that three Indian families owned the water rights at the hot springs. They built the bathhouses, and two or three other families rented out their own homes.¹⁷ Ownership of water rights by a few families was consistent with the distinction that Anderson draws between the communal rights attached to some resources and the exclusive, usufruct rights possessed by others in native California society. If a particular resource such as an oak grove or a particular hot spring was used or tended, it became the property of the user or tender, a legal practice not far out of alignment with the policies of appropriation and beneficial use that California courts applied to water rights in the late nineteenth and early twentieth centuries. These land tenure patterns ensured survival and knowledge transfer across generations.¹⁸

This diversified, community-oriented subsistence pattern allowed the residents of the small villages to adapt to the changing social, political and environmental conditions around them. This understanding also adds perspective to the claims made by anthropologist Jane Hill that the Cupeño “constructed [an identity for themselves] in intimate contact with their lands, which were small, but rich enough in natural resources and beauty to sustain a complex way of life for the villages,” which was adaptive to, and in fact, dependent on the distant

¹⁷ Mary B. Moore, “Lo, the Poor Indian,” *Los Angeles Herald*, 10 November 1901, 13.

¹⁸ Anderson, *Tending the Wild*, 133-34. See also the useful discussion of this issue provided by Shepard Krech, *The Ecological Indian: Myth and History* (New York: W.W. Norton and Co., 2000), 15-29. Clearly, this is not to suggest that Indians usufruct rights were respected as such under United States law, nor in a legal sense analogous to prior appropriation. Both assertions engage an extensive body of legal scholarship outside the ken of this present work. Property rights within Indian society were not exclusive or permanent, although inheritable. In some ways, they appear similar to that described in *Eddy v. Simpson*, 3 Cal, 249 (1853), as discussed in Donald J. Pisani, “Enterprise and Equity: A Critique of Western Water Law in the Nineteenth Century,” in *Water, Land, and Law in the West: The Limits of Public Policy, 1850-1920* (Lawrence: University Press of Kansas, 1996), 15-16.

presence of the Anglo economy.¹⁹ But at the same time it required Indian autonomy and independence. The springs, despite the language used in popular accounts of the eviction, were an important part of the Indian economy – not just a component of their nostalgic or spiritual landscape.

The same factors that helped sustain Indian economies by promoting local development simultaneously put greater pressure on Indian land tenure. By the mid 1870s, former California governor John Downey had consolidated the various properties that made up Warner’s Ranch, for which he eventually received a patent from the U.S. Government in January 1880.²⁰ Downey’s vision for the ranch was different from Warner’s. Rather than the rancho that Warner had sought to build in the 1840s, or the homeland Indians had tried to protect, Downey, and his heirs, sought to divide up the resources of the valley into discrete parts. To them, the valley floor was cattle country; the foothills and the springs were ideal for tourism, and the river system itself could foster municipal, downstream water development.

Walter Vail and Carroll Gates established the western headquarters of their Empire Land and Cattle Company at Warner’s Ranch, where they leased

¹⁹ Hill and Nolasquez, *Mulu’Wetam*, i.

²⁰ Hill, *History of Warner’s Ranch*, 153.

pasture from Downey and subsequent owners from 1887 until 1913.²¹ Vail and Gates were not alone. Testimony in an inheritance dispute suggests that they were only two of many who were trying to purchase the ranch for cattle purposes. The Mendenhall Cattle Company was located just to the northwest in the valley by that name. All were tapping into the economic growth of the railroad-led population boom of the 1880s.²²

At the same time, the growing viability of the springs as a tourist destination made Indian tenancy increasingly undesirable.²³ Downey resisted the advice of his attorney to let the Indians remain on a portion of their land, and instead initiated an eviction suit in 1893.²⁴ Downey's actions may have been influenced by the rather well-known drinking problem which affected his business

²¹ Vail and Gates leased the entire ranch to run cattle. In 1902, Vail was successful in acquiring approximately 11,000 acres of it from the current governor, Henry T. Gage and his wife Fannie, but they continued to lease the remainder of the ranch until perhaps as late as 1928. *Gage v. Downey*, 79 Cal. 140 (1880); Agnes McIlroy, "Deposition," 64-71, *John Kelley, et. al., Plaintiffs, v. J. Downey Harvey, Admr, et. al., Defendants*, Superior Court of the County of San Diego, no. 8551 (1894), Huntington Library, San Marino, California; Mortgage, Walter Vail and Fannie Gage, 25 Feb 1902, Empire Ranch Records [AZ 246], Box 10, Folder 4, University of Arizona Special Collections (hereafter UASC), Tucson, Arizona; Indenture, 25 Feb 1902 between Glassells [Hugh, Andrew, William T., Philip H., Alfred Leigh, Susan Glassell Mitchell, Minnie Glassell Brown and Louise Glassell Shorb – the heirs of Andrew Glassell] and Walter L Vail., Empire Ranch Records [AZ 246], Box 10, folder 4, UASC; Walter Runke to Robert G. Valentine, 5 April 1912, RG 75: BIA, PALA, Letters Sent to the Commissioners of Indian Affairs (hereafter Ltrs Sent CIA), box 375, book 3, 98-99; Philip T. Lonergan to Francis E. Leupp, 15 February 1908, RG 75: BIA, PALA, Ltrs Sent CIA, box 375, book 1; Charles G. Lusher to P.T. Hoffman, 21 April 1921, RG 75: BIA, PALA, Ltrs rec'd, box 373, folder General Correspondence PT Hoffman, 1921; Deed, Gates to Empire Land and Cattle Company, 25 January 1910, Empire Ranch Records [AZ 246], box 10, folder 4, UASC, Tucson, Arizona.

²² Andrew Isenberg, *Mining California: An Ecological History*, (New York: Hill & Wang, 2005), 102-130; David Iglar, *Industrial Cowboys: Miller & Lux, and the Transformation of the Far West, 1850-1920* (Berkeley: University of California Press, 2001).

²³ A. K. Smiley's letter to W. A. Jones was published in the Los Angeles newspapers, *Los Angeles Daily Times*, 25 November, 1901, found in HL, Bard Coll., b.9-E, f.2 [news clippings, 7].

²⁴ *J. Downey Harvey, et. al., v. Alejandro Barker, et. al.* Superior Court, San Diego County, 17 July 1893, on file in the Cupa Cultural Center, Pala, Calif.

judgment. After his death in 1894, probate hearings challenged a purported deed for the ranch that he had given to his wife, Rosa (Kelley) Downey. Attorneys for the governor claimed that Downey signed the deed over to her at a time when he was in no condition to do so. He subsequently second-guessed the decision and tore the deed in two before it was recorded. However, the restored deed appeared in court along with his ex-wife, who allegedly was working in collusion with Walter Vail and Bradford Thompson. Thompson evidently wanted the hot springs in order to build a hotel while Vail wanted the ranch for his growing cattle business. In the end, the court ruled in favor of Downey's son-in-law, J. Downey Harvey.²⁵

While Warner's Ranch was good cattle country, and the springs on its eastern end were a potentially lucrative tourist destination, its speculative value to developers lay in the potential for water storage that the broad, fan-shaped valley draining into a narrow canyon at its western end offered. Developing the water storage potential of the valley required a comprehensive, aggressive, and highly capitalized effort. The Office of Indian Affairs proved inadequate to the task, but the Merchants Exchange Bank was.

In August 1892, Downey and the bank filed the eviction case in the San Diego, where it came before Judge George Puterbaugh, one of two county superior court judges who had been elected in 1890 for six year terms. Arguments were heard but no decision was rendered. After Downey's death, Harvey revived the case in April 1894, and expanded its scope by filing a second eviction

²⁵ *John Kelly v. J. Downey Harvey*, "Digest of Evidence," Superior Court of San Diego County, Huntington Library, MS 29316.

in August of the same year. Again, the case came before Judge Puterbaugh, who heard arguments a second time before eventually recusing himself over a deep conflict of interest. Ed Fletcher later remembered that Puterbaugh himself had first proposed to buy up land and water rights around the headwaters of the San Luis Rey River in order to build a dam at Warner's Ranch some time between 1888 and 1894.²⁶ Puterbaugh not only sat on the eviction case, but on the previously mentioned probate case in 1894 as well. While it is unclear exactly when Puterbaugh first proposed the idea in relationship to the cases he heard in his court, it is clear that while he was the presiding judge in the case, Puterbaugh was working with the sons of the former president, Jesse and Ulysses S. Grant, Jr., to buy up land and secure water rights. In January, 1895 Puterbaugh wrote to inform them that he had found someone to file on water around Warner's Ranch who would do it for \$25. He confidently asserted, "I think we are in time, at least I find no records of any notices having been filed." This confident appraisal came four days after Grant had presented to the city of San Diego a proposal to provide 1,000 miners inches of water, perpetual flow, to the city for \$900,000, and had assured them he was "quite sure of getting that 10,000 acres [of WR land] if we want it. I know there has been a suit filed within the court of this county within the last two weeks; I know it." He later re-

²⁶ Ed Fletcher, unsurprisingly, contradicted himself. In an interview for the *Los Angeles Times*, he claimed that Puterbaugh had initially proposed the idea in 1888. But in his memoirs, he places the date at 1893 or 1894. Gardner Bradford, "Can an Indian Curse be Removed?" *Los Angeles Times*, 26 January 1936, 26; Ed Fletcher, *Memoirs of Ed Fletcher*, (San Diego: Pioneer Printers, 1953), 53; Puterbaugh to Grant, 18 Jan 1895, Ed Fletcher Papers, University of California, San Diego, Mandeville Special Collections, MSS 81, box 72, folder 23. Courtemanche places the date sometime after 1890: Carl Joseph Courtemanche, "The Utilization of Water in San Diego County from 1890 to 1940: A Cultural Analysis" (M.A. thesis, San Diego State University, 1982), 5-7.

fused to expand on the “particulars” of the case.²⁷

In November 1895, ten months after that proposal, and almost two years after the initial ejectment suit was filed, Puterbaugh recused himself and transferred the case to Judge W.L. Pierce, the other county Superior Court judge. Pierce, after he was not renominated for the bench and was shot by W.S. Clendennin, a party to a lawsuit in his court, rendered his decision in favor of the Downey interests and moved to San Francisco. There he practiced law as the private attorney for one of the plaintiffs in the suit, the Merchants Exchange Bank.²⁸

The judicial system was obviously stacked against the Indians, but they were not alone in their fight against the encroaching pressure of regional development. Motivated in part by Helen Hunt Jackson’s 1881 critique of federal Indian policy, *A Century of Dishonor*, and *Ramona*, her 1884 novel dramatizing the eviction of residents of the Indian village of Temecula, the Indian Rights Association took up the cause of the Mission Indians.²⁹

²⁷ Puterbaugh to U.S. Grant, Jr., 18 January 1895; “U.S. Grant’s answers to questions asked before the Joint Water Committee in regard to the Grant brothers last water proposition to the City of San Diego,” 14 January 1895, Ed Fletcher papers, box 72, folder 20.

²⁸ The decision was filed 29 December 1896. Shirley Ward claimed that Pierce was “a very intimate friend of the plaintiff, and while the case was under submission, was quite frequently ‘dined and wined’ by him, and since he has retired from the bench, has removed to San Francisco, where plaintiff lives, for the special purpose of becoming plaintiff’s private attorney and now is such.” Ward to Herbert Welsh, 19 June 1897, Indian Rights Association Papers, (microfilm edition) (hereafter IRA Papers), correspondence, reel 13. “Public Lands. Mexican Grants. Rights of Indians. Harvey et al v. Barker et al., 58 Pac. Rep. 692 (Cal.)” *The Yale Law Journal*, volume 9, no. 3. (December 1899), 146-47; William E. Smythe, *History of San Diego, 1542-1908, v. II: The Modern Era* (San Diego: The History Company, 1908), 592.

²⁹ Helen Hunt Jackson, *Ramona: A Story* (Boston: Little Brown, 1916 [originally published 1884]); Jackson, *A Century of Dishonor: A Sketch of the United States Government’s Dealings with Some of the Indian Tribes* (New York: Harper & Brothers, 1885); Mathes, *Helen Hunt Jackson*, 81-83.

Jackson occupies an important place in the history of the Mission Indians. She was not officially affiliated with the Indian Rights Association (IRA), nor did she share their evangelical, religious outlook.³⁰ But it was her work, more than anyone else's, that brought the issue to the IRA's attention. In 1881, she visited the Mission Indians to research a series of articles for *Century* magazine. Those articles led to her appointment as an official agent of the U.S. government in 1883. In that capacity, she visited many of the reservations in the region and sought to stem white encroachment. A perhaps apocryphal Indian account of her 1883 visit survived among the Indians of the Los Coyotes reservation. Pablo Chaparosa, captain of the nearby San Ysidro band received a letter from Jackson after it had sat in the post office for a month. The letter asked that Chaparosa come to Los Angeles to meet with Jackson. He and Bill Ballatt of Los Coyotes village left the next day, walking three days to Colton, where they caught the train. They had no idea where to go in Los Angeles, but "[i]t was fortunate that the Captain's name was marked on his hat band, for as they were walking along on the streets they met the commissioner [Jackson] and she saluted him, mentioning his name." They immediately sought out an interpreter at the court house who turned out to be a J.J. Warner, almost certainly, Juan Jose, who was living in Los Angeles at the time. The interpreter was "well acquainted" with Captain Chaparosa. In their meeting, Jackson urged Chaparosa and his people to become citizens so that they could avoid further molestation — clearly overestimating the value of citizenship in that regard. Chaparosa replied, "citi-

³⁰ Mathes, *Helen Hunt Jackson*, 89.

zenship will not benefit us as we are Indians in utmost poverty, have no money whatever to meet our taxes or expenses... We once owned lands and were not in need, but to become citizens now we will lose our rights to the cunning citizens' law." Jackson pledged to help with the removal of a whites encroaching on the reservation, gave them money for the return passage and they went home.³¹ If we accept Chaparosa's statement as true, it represents an accurate assessment of the limitations of Indian citizenship in the time between the Fourteenth Amendment and the onset of allotment.

After Jackson's death in 1885, the IRA continued her work. Charles Painter, an active member in the Lake Mohonk conferences and IRA lobbyist first toured the Mission Indian reservations after visiting Jackson on her deathbed and promising to carry on her work.³² He made two subsequent trips to the region, each time issuing a report published by the IRA.³³ The two issues that most closely tie Jackson's reform work to the IRA are the successful prevention of the eviction of the Indians at the Soboba reservation through the California Supreme Court decision, *Byrne v. Alas* (1887), and the passage of the 1891 Act for the Relief of the Mission Indians in the State of California, which was largely

³¹ Crispin Ballatt, "Los Coyotes Indian Reservation Suffered For Many Years, pt. 1," *The Indian*, April 1922, 8-9; and Ballatt, "Los Coyotes Indian Reservation Suffered For Many Years, pt. 2," *The Indian*, May 1922, 7-8.

³² Charles Painter, *The Condition of Affairs in Indian Territory and California* (Philadelphia: Indian Rights Association, 1888), 90; Mathes, *Helen Hunt Jackson*, 6.

³³ Painter, *A Visit to the Mission Indians of Southern California and Other Western Tribes* (Philadelphia: Indian Rights Association, 1886); Painter, *The Present Condition of the Mission Indians of California* (Philadelphia: Indian Rights Association, 1887); and Painter, *Condition of Affairs*.

based on Jackson's recommendations.³⁴

The Saboba village, with a population of approximately 150 Indians, was located about 50 miles north of Kupa, adjacent to the San Jacinto grant. The residents were engaged in agricultural pursuits, particularly vineyards, wheat and orchards. When the grant fell into the hands of M. Byrne of San Bernardino, he sought the eviction of the Indians in order to develop and settle the valley. In May 1882, José Jesús Castillo, grandson of the Soboba captain, sent a letter to the Secretary of the Interior that claimed that the original San Jacinto grant did not encompass any of the lands claimed by the Indians, but a later survey — the one upon which the U.S. government issued its patent — did. The village land was being assigned to new residents as part of a colony “scheme” and he urged justice, as “this danger is at our door now.”³⁵

After exploring their legal claim, Jackson urged Byrne to file an ejection suit, confident that he would lose.³⁶ The U.S. government appointed Shirley Ward as an attorney for the Indians, but failed to appropriate any money to pay his expenses. The IRA stepped in and assumed responsibility for the cost of the defense. Judge Puterbaugh, sitting on the San Diego Superior Court, ruled in favor of Byrne in the original ejection suit. In what would become a familiar pattern, the IRA put up \$3,300 in indemnity bonds to postpone eviction awaiting

³⁴ *Byrne v. Alas*, 74 Cal 628 (1888); “An Act for the Relief of the Mission Indians of California,” (26 Stat. 712)

³⁵ José Jesus Castillo to Henry Teller, 29 May 1882, reprinted in Helen Hunt Jackson, “The Present Condition of the Mission Indians in Southern California,” in *Glimpses of California and the Missions*, (Boston: Little, Brown), 1903 [originally published 1883], 141-42.

³⁶ Mathes, *Helen Hunt Jackson*, 48, 70.

appeal and assumed Ward's fees. While they were not involved in selecting Ward for the job, Painter met and approved him, describing him as earnest and vigilant.³⁷

Ward argued that the Soboba Indians had, under Spanish and Mexican law, a right of occupancy and that all subsequent grants were subject to that right. Accordingly, the Indians were "third persons," as provided for under the 1851 California Land Claims Act.³⁸ Further, he argued that the law made it the duty of the Commissioners themselves to report to the Secretary of the Interior on Indian land tenure. Finally, he argued that no act was required on the part of the Indians to perfect their rights, as their right was of occupancy and not an inchoate right. The Act applied only to inchoate and imperfect rights. The California Supreme court heard arguments in the case, and in 1887 ruled in favor of the Indians.³⁹

The second "victory" by the Indian Rights Association and their friends was the passage in January 1891 of the "Act for the Relief of the Mission Indians in the State of California."⁴⁰ The act established a three-man commission to "select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the occupation and possession of said

³⁷ Painter, *A Visit to the Mission Indians*, 3-4.

³⁸ Act of March 3, 1851, ch. 41 (9 Stat. 631)

³⁹ On the legal arguments, see Ward to Welsh, 19 June 1897, IRA papers, reel 13; *Byrne v. Alas* (74 Cal. 628)

⁴⁰ 26 Stats. 712

Indians, and which shall be sufficient in extent to meet their just requirements.” In the instances in which the villages they occupied were within the limits of confirmed private grants, the commissioners were to locate vacant public lands in the vicinity for the Indians removal. The act also applied the provisions of the 1887 Dawes Act to the Mission Indians by outlining the process of allotting the land to the Indians removed to these newly established reservations.⁴¹

Despite the fact that Jackson and the IRA had worked assiduously for both measures, to some degree they cut against each other. While the *Byrne v. Alas* decision set a legal precedent for the IRA’s subsequent defense of the residents of Kupa, the 1891 Act outlined the procedure for removal and relocation which eventually occurred. Further, in a belated attempt to protect Indian water rights, the 1891 Act authorized granting private water companies rights-of-way across Indian reservations for irrigation projects, but required they provide a “sufficient” quantity of water to the Indians.⁴² In mandating that they receive “sufficient” water for agricultural and domestic purposes, federal officials precluded exactly the sort of growth in Indian agriculture upon which the Indian

⁴¹ Beginning in the mid 1870s, a series of very small executive order reservations were established around existing villages. These were legally weak, as they were removed from the public domain by executive order, and were thus, reversible. Anglo pressure on a number of these reservations, including Pala, led to their being rescinded within a few years. The 1891 Act established trust patents to the band, a much stronger form of land tenure. Shipek, 33-37; Emily Rader claims the process in Southern California ran counter to the national process: Instead of the federal government clearing Indians onto smaller and smaller pieces of land in order to make way for white settlers, the settlers and investors “took indigenous land and refused to allow the government to reserve any for them. Only when almost all their land had been taken did Native Californians in San Diego County receive any significant aid from the federal government.” Rader, “So We Only Took 120 Acres,” 354.

⁴² “An Act for the Relief of the Mission Indians of California,” (26 Stat. 712); Steven Karr, “Water We Believed Could Never Belong to Anyone: The San Luis Rey River and the Pala Indians of Southern California,” *American Indian Quarterly*, v.24, no. 3 (Summer, 2000): 386-388.

Office's program of civilization was based. The assimilationist campaign was predicated on farming, which in southern California required irrigation, but until the courts spoke on the matter it was unclear how much water should be reserved for Indian reservations.⁴³

Shirley Ward, the attorney for the IRA in the *Byrne v. Alas* case, saw the issues in the *Harvey* case as fundamentally the same in both actions. The villages were on a Mexican land grant that had originally included a right of occupancy for the Indians who resided there. That right exempted them from the burden of presenting their claims to the Land Claims Commission. He was confident in the outcome, assuring the IRA's Herbert Welsh that, "personally, I have no doubt as to the case being decided in our favor both by the Supreme Court of this State and the Supreme Court of the United States."⁴⁴ This optimism that fueled the Warner Ranch appeals can be seen in Charles Painter's assessment of the *Byrne* decision, claiming that it was a partial fulfillment of the work begun by Helen Hunt Jackson in 1881, and that it enabled the United States to "enter upon a brighter and more creditable chapter, in which is to be recorded our atonement for these wrongs."⁴⁵

The IRA was committed to Indian retention of land because it was devoted to allotment in principle. The self-styled friends of the Indians sought to

⁴³ Norris Hundley, Jr. "The 'Winters' Decision and Indian Water Rights: A Mystery Reexamined" *Western Historical Quarterly*, 13, no. 1 (Jan 1982): 17-42; Norris Hundley, Jr. "The Dark and Bloody Ground of Indian Water Rights: Confusion Elevated to Principle" *Western Historical Quarterly* 9, no. 4 (Oct 1978): 454-82.

⁴⁴ Ward to Welsh, 19 June 1897, IRA papers, reel 13.

⁴⁵ Painter, *Condition of Affairs*, 90-92.

accelerate the pace of “civilization” by concentrating Indians on isolated tracts of agricultural land, where they would learn the ways of the white world and prepare for eventual inclusion in American society without getting in the way of economic development in the interim. While their efforts agreed with those of the Indians in defending their traditional land, their long-term goals were in conflict: For the IRA, Indian land retention enabled the assumption of non-Indian cultural traits such as Anglo agricultural practices. In this way, Indians were to lose their Indianness as they acquired “civilization.”⁴⁶ But, to the Indians, their traditional lands were critical for the deployment of their community-based economic subsistence strategies. They sought to retain their land so as to protect their way of life.

There were differences between the *Brynes* and the *Harvey* decisions — both in terms of law and circumstance. The land in question in *Harvey* was large and had many potentially lucrative uses. From the earliest Anglo accounts of the valley, the economic potential of the springs was evident. In December 1846, William H. Emory, a lieutenant in Stephen Kearny’s Army of the West, recorded in his diary, “a day will come, no doubt, when the invalid and pleasure seeking portion of the white race, will assemble here to drink and bathe in these waters, ramble over the hills that surround it on all sides, and sit under the shade of the great live oaks that grow in the valley.”⁴⁷ C. C. Painter’s 1888 re-

⁴⁶ Hagan, *Six Friends of the Indian*, 120-29. On the agrarian myth in the West, see Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton and Co., 1987), 196-99; Robert Wiebe, *A Search for Order, 1877-1920* (New York: Hill and Wang, 1966), 11-43.

⁴⁷ Emory, *Notes of a Military Reconnaissance*, 105.

port included a similar and prescient note: "The hot spring is a valuable property, or would be in the hands of men who could develop it – worth, perhaps, hundreds of thousands of dollars."⁴⁸ There were a number of parties interested in developing the property along those lines by the 1890s, just as the Cupeño villagers had begun to modestly profit from their use of the springs.⁴⁹

Municipal growth throughout southern California had already begun to put pressure on Indian water, and the 1891 Act opened Indian reservations to outside developers. The first to take legal advantage of the new law was the Escondido Irrigation District, and its successor in interest, the Escondido Mutual Water Company. Founded in 1888, the town of Escondido was short of water from the very beginning. In 1894, representatives of the Escondido Irrigation District and representatives of three bands of Indians from Potrero, La Jolla and Ya Piche, signed a contract with the Indian Office. In return for maintaining the water supply and providing the residents with the water they needed, the Irrigation District received the right to divert water from the river and a right-of-way across the reservation to carry it.⁵⁰ On the basis of that contract, the company made a diversion on the San Luis Rey River, approximately nine miles below Warner's Ranch. Despite the fact that these initial appropriations of Indians' water were slight, and included language to protect the Indians' rights, water development was a growth industry, especially after the recovery from the na-

⁴⁸ Painter, *Condition of Affairs*, 55.

⁴⁹ Governor Downey began issuing pamphlets advertising the spas as early as 1894. Morrison, *Warner*, 76; Martha Ingersoll-Robinson claimed the idea that someone was going to build a hotel there was, by 1903, "generally believed." Ingersoll-Robinson, "Warner Ranch Indians."

⁵⁰ Rader, "So We Only Took 120 Acres," 436 - 439.

tionwide panic of 1893. Growth ensured the expansion of water use and the continuation of conflict for many years to come.

Nonetheless, and despite the growing pressure on Indian tenure, the Indian Rights Association was optimistic about the prospects of an appeal of the *Harvey* decision, and saw a potential victory as an opportunity to leverage gains they had made into a substantive shift in momentum. To prevent the eviction of the Indians during the appeal of Pierce's 1896 decision, the IRA again provided an indemnity bond, and secured the further legal help of Shirley Ward. In an effort to raise the stakes to dissuade the IRA from an appeal, Harvey was successful at manipulating the property assessment so as to require an indemnity bond of \$6,100. The organization had \$4,000 in their coffers for "the entire Indian work," and decided to raise the additional \$2,100 through a donation campaign and stake it all on this case.⁵¹

In October 1899, the California Supreme Court ruled in favor of Harvey. The difference, in the eyes of the supreme court, was that there was no explicit provision in Warner's 1844 grant to respect the rights of the Indians living thereon. Chief Justice Beatty, who dissented in the decision, claimed that the proscription against interfering with *servidumbres* [duties], which explicitly referred to roads, had a meaning in Spanish law broad enough to include the Indians who lived there. In that, he argued, the *Harvey* case should follow *Byrne*. But the majority of the court did not agree.⁵² Also at play here was the recent

⁵¹ Mathes, *Helen Hunt Jackson*, 147-51.

⁵² *Harvey v. Barker*, 126 Cal. 262 (1893); "Public Lands, Mexican grants, Rights of Indians." 147.

Supreme Court decision in *Botiller v. Dominguez* that held that the Supreme Court was not the proper instrument for adjudicating disputes over international treaties, thus effectively invalidating the applicability of the Treaty of Guadalupe-Hidalgo in the *Harvey* decision.⁵³

With further support from the IRA, Shirley Ward optimistically argued the case before the U.S. Supreme Court in March 1901. Basing his arguments on the precedent set in *Byrne*, he claimed that the residents drew their right of occupancy from Spanish and Mexican law and all grants were subject to such occupancy; that Indian rights were prior to those granted by the Mexican government, and therefore prior to the U.S. patents based on them. They were therefore “third persons” under section 15 of the Land Claims Act of 1851; that as such they weren’t bound to present their claims to the Board of Land Commissioners and that their rights required no further perfection.⁵⁴

In May 1901, the U.S. Supreme Court upheld the California Supreme Court ruling, basing their decision on two partly contradictory points: That the Cupeño Indians had not permanently resided on the land they claimed, and in fact had not been resident upon it at the time of the original land grant from the Mexican government to Juan Jose Warner in 1844; and secondly, that the Cupeños had not made the necessary subsequent efforts to assert their claims before the California Land Commission established in 1851.⁵⁵ The first assertion ran counter to the established facts, but attorneys for the plaintiffs were suc-

⁵³ *Botiller v. Dominguez*, 130 US 238 (1889).

⁵⁴ *Barker v. Harvey*, 181 US 481 (1900).

⁵⁵ *Ibid.*

cessful in playing the vagaries of Indian identity to their advantage by characterizing the Cupeño villagers as members of the nearby Cahuilla band.⁵⁶ The second assertion misrepresented the California Land Commission's responsibilities in reporting to Congress those Indian claims which had not been presented. Attorneys for Harvey claimed that it must be assumed that the Land Commission did indeed notify the Indians and prepare a report for Congress of those claims which had not been presented, despite the fact that no such report has ever been found.

The outcome of the decision had severe consequences for both the Indians and the IRA. For the Indians it meant removal, and presented them with a hard choice between two unpalatable options. Either they could resist the eviction and face almost certain defeat, or they could relocate to the existing Luiseño village at Pala, along with both Luiseño and Kumeyaay residents of nearby villages, and to try to re-establish their lives there. They pursued a policy that rhetorically followed the first option, but in practical terms prepared for the latter. For the Indian Rights Association, which had staked its reputation and its resources on the case, losing the \$6,100 indemnity bond they put up to cover the appeal was quite a blow. The decision punctured the profound optimism that had reigned since the *Byrne* decision, and the failure to replicate that decision on the federal level marked and contributed to its decline, and the larger transition from the idealistic and optimistic evangelical reform efforts that characterized the last quarter of the nineteenth century to a more pragmatic Indian policy

⁵⁶ *Ibid.* On southern California Indian identity, see Alfred Kroeber, *Handbook of the Indians of California* (New York: Dover Publications, 1976), 689-692.

rooted in the American West.⁵⁷

The legal defeat and threatened eviction fired public opinion as well. A petition circulated by San Diego resident G. C. Robbins, was published in the San Diego *Union* and urged relief of the “quiet, peaceable, honest, deserving and industrious” Indians who, despite the fact that they were “capable to earn their living under the circumstances that have heretofore existed from their lands and from the springs,” nonetheless face eviction.⁵⁸ He praised the Indians’ character, citing their Christian faith, deep “family affections,” and health — which he attributed to the medicinal effect of the springs. The petition argued for the purchase of the land they occupied on moral and practical grounds, arguing that the Indians were self-sufficient, and that relocating them would likely make them dependent on the government.⁵⁹

By the time of this newspaper article, Congress had already responded, appropriating \$100,000 for the purchase and relocation of the Indians, \$30,000 of which was to be set aside for the expenses incurred in removal and relocation. Veteran Indian inspector, James McLaughlin, began his work in September 1901 visiting a number of regional properties offered for sale. He described the attention to the case in the popular media as a cloud of “agitation” and lamented

⁵⁷ Hoxie, *Final Promise*, 90-103; Herbert Welsh, “The Warner Ranch Indian Case,” *New York Evangelist*, 15 July 1897, 16.

⁵⁸ Josephine H. Babbitt to G. C. Robbins, 1 May 1902, LMC, SWM, MS.1.1.161; Josephine H. Babbitt to G. C. Robbins, 2 May 1902, LMC, SWM, MS.1.1.161; Babbitt to Robbins, 22 April 1902, LMC, SWM, MS.1.1.161. Robbins had also corresponded with Domingo Moro at Warner’s Ranch. Thomas R. Bard to S. M. Brosius, 27 February 1902, HL, Bard Coll., box 4-B, folder [1], subfolder on Warner Ranch Land offers.

⁵⁹ “Working for the Indians,” *San Diego Union*, 26 June 1901. See the very similar account by Mary B. Moore, “Lo the Poor Indian,” *Los Angeles Herald*, 10 November 1901, p12-14.

that everyone he met in California felt called upon to express their views.⁶⁰ On 6 December, he met with the Indians in council at Kupa, where “every male adult Indian upon the reservation was present, [and] requested [that he] report ... their earnest desire to retain a tract on Warner’s ranch embracing the Hot Springs.”⁶¹ But the owners of Warner’s Ranch refused to sell anything less than the 30,000 acres that surrounded the springs for \$245,000. Not only was this more than twice the total appropriation, but it failed to satisfy McLaughlin’s desire to secure Indian land that would assure them agricultural prosperity and support the drive toward assimilation. In early January 1902 a number of regional newspapers reported the story of an interview in which McLaughlin claimed the best solution was to buy several small tracts and “scatter the Indians about somewhat, so that they possibly will become more industrious and self-reliant.”⁶²

McLaughlin sought to secure sufficient irrigable land to “ensure their prosperity by agriculture.”⁶³ Prosperity meant growth, and agricultural growth required irrigation. “Dry farming ... in Southern California,” he wrote to the Secretary of the Interior, “is not adapted as a home for Indians, therefore mesa

⁶⁰ James McLaughlin to Ethan A. Hitchcock, 18 December 1901, Major James McLaughlin Papers, microfilm edition, roll 24, f946-49.

⁶¹ *Ibid.*

⁶² The quote is from “Separation Recommended,” *San Diego Tribune*, 3 January 1902. See also “Interest to Pacific Coast,” *San Francisco Chronicle*, 3 January 1902; “Scatter Indians from Warner’s Ranch,” *Los Angeles Record*, 3 January 1902; “The Warner Ranch Indians,” *San Diego Sun*, 3 January 1902; “Warner Ranch Indians,” *Los Angeles Times*, 3 January 1902; “Warner Ranch Indians,” *Redlands Facts*, 6 January 1902; “Warner Ranch Indians,” *San Diego Union*, 14 January 1902.

⁶³ McLaughlin to Hitchcock, 13 Feb 1902, McLaughlin Papers, r25, f13.

tracts, without a reasonable proportion of irrigable valley lands, should not be considered in any way suitable for their location."⁶⁴

Using this assessment, he claimed that Warner's Ranch itself was not adapted to agriculture because it was "devoid of water for irrigation, except a small tract near the said hot springs."⁶⁵ The uneven and broken land of the valley could be successfully cultivated, but only through extremely expensive irrigation works. The land surrounded the 200 or so acres that the Indians were cultivating was essentially worthless. Despite their desire to stay, and that of their "many friends," whom he dismissed as "well meaning persons," whose ideas were "impractical, inspired largely by sentiment and lacking in sound business principals," he cautioned it would be "unadvisable to purchase such a large tract, containing so much worthless and high-priced land ... unsuitable for agricultural purposes."⁶⁶ Thus, the home that had sustained the Cupeños for generations, and enabled them to remain self-sufficient, was not "practical" in the narrowly defined concept of government defined agricultural prosperity.

McLaughlin submitted his report in January 1902, recommending the purchase of the Monserrate Ranch, near present day Fallbrook as a reservation for the evicted Indians.⁶⁷ Almost immediately, McLaughlin's report came under harsh criticism, most pointedly from Charles Fletcher Lummis, who described

⁶⁴ *Ibid.*, McLaughlin to Hitchcock, 13 Feb 1902, McLaughlin Papers, r25, f11.

⁶⁵ McLaughlin, *Tabulated Acreage*, 462.

⁶⁶ McLaughlin to Hitchcock, 18 Dec 1901, McLaughlin Ppaers, r24, f949; McLaughlin, *Tabulated Acreage*, 463.

⁶⁷ McLaughlin, *Tabulated Acreage*.

the Indian Office and the federal government as out of touch, neglectful and corrupt — weakened by the “sickly sentimentalism” and nostalgia of the IRA. The Indians, he argued, were somewhat backward, nostalgic, and overly attached to the springs.⁶⁸ To Lummis, the Indians and their “friends” were both trapped in the past. Lummis, the editor of the fiercely optimistic journals *Land of Sunshine* and *Out West*, had little patience for what he felt was a particularly East-coast type of institutionalized pessimism. He took the Warner’s Ranch case as a chance to put his ideas into action.

In a February, 1902 letter to California Senator Thomas Bard, he described the Monserrate property as, “very pretty country, but ... I don’t know where they would get their water from ... They certainly could not irrigate it; and my idea is that whatever we do with these Indians the first thing shall be to enable them to become, and help them to become, and insist that they do become, farmers.”⁶⁹ In a more emphatic follow up, Lummis described the property as “one of the most notorious White Elephants in Southern California ... a beautiful piece of landscape, a millionaire could make it a little kingdom. But it is no place for Indians.”⁷⁰ While he largely agreed with McLaughlin’s goals and reserved kind words for him personally, Lummis savaged his actions. To Lummis, McLaughlin was one in a long line of “tenderfeet,” who failed to understand the

⁶⁸ [Wayland Smith and Charles F. Lummis], *Seventh Bulletin: On Land and Irrigation for the Indians of Southern California: An Official Report to the Sequoia League on the Indian Situation to July, 1911* (Los Angeles: J.F. Elwell Publishing, Co., 1911), 5-6.

⁶⁹ Lummis to Bard, 11 February 1902, HL - Bard Collection. Box 4, folder “Indian Affairs”

⁷⁰ Lummis to Bard, 13 March 1902, LMC, SWM, MS.1.1.222a.

West and its Indians as Lummis did.⁷¹

Lummis' criticisms, and no doubt his acquaintance with president Roosevelt from their Harvard days, paid quick dividends, and the Commissioner of Indian Affairs appointed him chairman of the Warner's Ranch Indian Advisory Commission charged with investigating the region in order to locate a more suitable site.⁷² After reviewing offers from 106 ranches, and traveling for six weeks throughout the backcountry by wagon, inspecting as many as they could, the Commission issued its preliminary report. In it, they recommended the purchase of approximately 3,300 acres in the Pala valley along the San Luis Rey River. The reports they issued illuminated the Indian Office's new vision of reservations in southern California as irrigated, agricultural spaces, where Indians were to be concentrated and isolated, and through practical management and expert advice, be guided toward the eventual goals of citizen farmers at the periphery of society. The Indian Office's focus on agriculture, at least at the dawn of the twentieth century, had an internally contradictory sense to it. The office clearly realized the necessity of large-scale irrigation projects and envisioned a thoroughly modern farming system involving agricultural guidance through experimental farms and expert farmers. However, their emphasis on the ideal of the individual family farm as the basic organization of Indian communities was predicated on a deep sense of optimism about the democratizing effects of irri-

⁷¹ On his use of the word "tenderfoot," see Lummis to Thomas R. Bard, 20 March 1902, LMC, SWM, MS.1.1.222a; Lummis, "The Mission Indians," *Outlook*, v74, no. 13, 25 July 1903, 738.

⁷² In addition to Lummis, Charles L. Partridge, Russell C. Allen, Ambrosio Ortega and Salvador Nolasquez as translators, and a cook. Warner's Ranch Indian Advisory Commission (hereafter WRIAC), *Preliminary Report* (1902), (hereafter "Preliminary Report"); WRIAC, *Final Report* (1902), (hereafter, "Final Report").

gation and irrigated agriculture.⁷³ In reality, irrigation favored industrial agricultural patterns, often at the expense of the individual, and often made it more difficult for farmers, especially non-citizen Indians, to succeed.⁷⁴ Just as Indians played the part of traditional relics in a “modern” society; Indian farmers played a similar role in the landscape of industrial agriculture. What for many non-Indians was a hopeful goal, when placed in the hands of an increasingly powerful federal government as policy, actually served to quiet and marginalize Indian populations.

The commission recognized that traveling long distances for work took Indians off the reservation. Thus, they touted the extensive demand for labor near Pala as a way of both keeping them on the reservation and contributing to their stability. In their preliminary report, the commission highlighted the proximity of work for Indians in the region. The Commission viewed this as an important improvement because, “the nearer these men are to their families, the better for both; and ... the aim of the Government should be — as it doubtless is — to make these people home-owners, home-builders, home-lovers and home-dwellers, rather than a peon class of wandering day-laborers. The logic of purchasing lands for them seems to be to attach them to the soil.”⁷⁵

To correct what they believed to be the greatest drawback of the Monserate property — the lack of a reliable water source, the commissioners devised a rating system to assess the various properties they visited. Of the nineteen

⁷³ Pisani, “Betrayal of Indian Allotments,” 157-76.

⁷⁴ Pisani, *From the Family Farm to Agribusiness*, 284-93.

⁷⁵ WRIAC, “Preliminary Report,” 49.

separate categories assigned a point value, irrigation figured prominently.

“Available gravity water” was worth one-hundred points — one-fourth of the total — while “irrigable area” and “distribution of water” were each worth fifty. Despite Lummis’s oft-stated desire to help the Indians, the category “favored by the Indians” was worth only five points. Climate, the availability of native foods, basket making materials, and a local market for labor, each of which would have contributed to Indian cultural persistence, received ten points each. Basing its decision on pseudo scientific methods such as these, Pala received 372 of a possible 400 points.⁷⁶

The structure of the point system contributed to the larger process of rendering the Indians’ attachment to the springs and their villages as solely emotional rather than economic. In so doing, the commission and those who sought to develop the region unwittingly cooperated by exploiting a perception that Indians were irrational, sentimental and nostalgic, as yet unfit for a modern, capitalist, rational world. In this light, Indian control of the springs had to pass, as part of the general decline of the old ways, to make way for the new world of efficient capitalist exploitation.⁷⁷ In that vision, Indian small enterprise was not seen as the nimble economic strategy it was, but as a pale imitation of potential

⁷⁶ WRIAC, *Preliminary Report*, 16.

⁷⁷ The decline of the Indian was a very common trope. See Brian Dippie, *Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, CT: Wesleyan University Press, 1984). One local example described San Felipe as a “poverty-stricken, crouching little village [...] the first settlement of the widely-scattered tribe of the Dieguenos that is met on the way south from the Cupanos [sic] of Agua Caliente [...] one of the typically poor, shrinking little places that shelter the poor, shrinking bands of Southern California Indians, its thirteen or fourteen habitations huddling close to earth here and there on a sun-blasted hillside, like a bevy of frightened young quail, and so much like the old earth in color that they are hardly noticeable from a distance.” “Stage Rolls Down Bank. Indian Commission in a Rough Country...,” *Los Angeles Times*, 13 June 1902.

non-Indian exploitation of a natural resource and thus a forfeiture of the right to continue to control it. Riverside attorney Frank Lewis, who worked with Ward on the initial defense and continued to advise the Indians, claimed that the

loss to these Indians is a sentimental rather than a material one, for the land secured for them at Pala is better in every way than that which they are forced to leave, better watered and better supplied with irrigation facilities, and while in their new location the Indians are nearer to the industrial centers, they are removed from contaminating influence of a class of undesirable characters attracted to their village by the waters of the Hot Springs.⁷⁸

“Better” in this sense, meant more. With more water, more agricultural potential existed. But more water increased the value of water as a commodity and contributed to the threat that non-Indian developers would challenge their control over it. The hot springs were clearly a material benefit for the Indians, but to Lewis the wrong kind, as it brought Indians into American society as landlord not tenant; owner not worker. San Diego developer Ed Fletcher, who was instrumental in the eventual development of the valley’s water storage potential, and was perhaps one of the “undesirable characters” of whom Lewis spoke, later referred to the “charm” of the hot springs in a tourist brochure, owing, he said, to the erstwhile “reverence in which the Indians have held the place for so many years during the time of their residence there.”⁷⁹ Fletcher disguised his own participation in the theft of Indian land and economic opportunity, while keeping Indians in the landscape and relegating them to the status of “local

⁷⁸ Frank D. Lewis, “The Warner Ranch Indians, and Why They Were Removed to Pala,” *Overland Monthly and Out West Magazine*, XLII, no. 2 (1903), 173.

⁷⁹ Ed Fletcher, “An Auto Trip Through San Diego’s Back Country,” (n.p., 1906), 16.

color.”⁸⁰

The Indian Office seized upon Lummis’ recommendations as a way out of the vicious circle of advocates harrying them from all sides. Pala served the various interests as a compromise. The government pointed to “better” land for their plan of assimilation through irrigated agriculture. The Indians’ practical Western advocates, such as Lummis, saw in Pala an opportunity to shield Indians from further encroachment and dispossession, where they could devote themselves to improvement and civilization while playing the part of extras in the Spanish fantasy past in the shadows of the *asistencia*.⁸¹ The growth machine saw reservations as getting Indians out of the way and making the expropriation of their water more manageable. Indians alone were steadfast in their devotion to their land and their resistance to Pala, which some described as a “worthless place... whose owners were unable to make a living on.” They complained about the lack of water in the river in the summer when it was most needed for crops.⁸² But their resistance was largely rhetorical. When eviction came, despite the threats, few refused to go. According to Indian Office census figures, approximately 80% of the Indians living on Warner’s Ranch in 1902 appear in the 1905 Pala census, and most of the remaining 20% were Kumeyaay

⁸⁰ William Deverell describes the ways in which Mexican American workers in early 20th century Los Angeles were simultaneously visible and invisible, turned into local color, as their labor made the city’s growth possible. Deverell, *Whitewashed Adobe*, 129-171.

⁸¹ Phoebe Kropp, *California Vieja: Culture and Memory in a Modern American Place* (Berkeley: University of California Press, 2006), 50-52; 95-103.

⁸² Juan Maria C.B. Mooat, Ambrosio Ortega, and Salvador Nolasquez, “A Petition To President Roosevelt and the Whole American People,” reprinted “Warner Indians’ Pathetic Appeal,” [San Bernardino] *Daily Times-Index*, 9 May 1903.

or Cahuilla, and likely moved to other reservations where those bands predominated.⁸³

Water ran through the visions of all of these groups. For regional developers, water was a resource — *the* resource upon which economic growth and municipal development depended. For the Indian Office, water was the sine qua non without which agriculture, and thus assimilation, was impossible. For the Indians, water was an absolutely central component of their mobile and diverse subsistence strategy, as well as critical to the survival of their culture. The springs had leached the bitterness out of their acorns, soaked the tules and grasses to make baskets, irrigated their fields and sustained life enabling them to leave their villages as the need presented itself, but to maintain a village to return to as they could. At Pala, the San Luis Rey River could, to some degree replace the hot springs. But the geographical scope of the reservation, the larger population, and the decrease in Indian autonomy undermined that function. The springs turned the village inward, but the river reoriented them outward to face threats from a growing number of powerful adversaries. Water cut against the security the valley provided. The establishment of the enlarged reservation at Pala did not diminish these conflicts. Rather, it emboldened a new set of policymakers in Indian Affairs, increased the scale and scope of the federal presence and knitted the Indian communities along the San Luis Rey River more closely together.

The coverage of the eviction in the local newspapers in May 1903 was

⁸³ *Indian Census Rolls, 1885-1940*, Microcopy 595, NARA, BIA, RG75, roll 335.

extensive, sensational and condescendingly sympathetic. It betrayed the assumptions which bore heavily on the entire process.⁸⁴ Despite persistent rumors of potential violence, the forced eviction took place peacefully. Federal marshals and local teamsters haphazardly loaded up the nearly 300 villagers' belongings and moved them to Pala along a three-day journey which has come to be called the Cupeño Trail of Tears.⁸⁵

Just as the IRA, who funded the appeal process, lost the legal fight and with it their momentum, the eviction itself damaged Lummis' reputation among the Indians. His involvement was heavy-handed and nurtured Indian resentment. On the day following the eviction, the Los Angeles *Times* reported that Celsa Apapas gave birth to a son whom she named in honor of the newly-appointed Indian Office inspector who had overseen the eviction and advocated against the use of force. On the same day, a calf was born among the village herd, which the community agreed should be called "Lummis."⁸⁶

The eviction left profound distrust and disillusion with everyone. While

⁸⁴ The *Los Angeles Times* from 13 May 1903 contained a large chalk drawing of elderly Indians packed into a series of wagons, escorted by soldiers on horseback as they left their village at Warner's Hot Springs, California. "Indians Bundled Away Like Cattle to Pala," *Los Angeles Times*, 13 May 1903, pA1. See also, "Lo, the Poor Indian," *Los Angeles Times*, 13 May 1903, p6; "Indian Blood was Stirred," *Los Angeles Times*, 14 May 1903, p7; "Warner Indians' Pathetic Appeal," *San Bernardino Daily Times-Index*, 9 May 1903; "Indians are Led by a Dusky Joan of Arc: Removal from Warner's Ranch Begins," *Los Angeles Herald*, 13 May 1903; A.S. Patterson, "White Men Coveted Agua Caliente Hot Springs," *Los Angeles Herald*, 14 May 1903, 11.

⁸⁵ Hyer, *We Are Not Savages*, 108-110; Karr, "Pala," 89-117; Hagan, *Six Friends*, 120-123; Tom Holm, *The Great Confusion in Indian Affairs: Native Americans & Whites in the Progressive Era* (University of Texas Press, 2005). There were five villages on Warner's Ranch: Kupa, Mataquay, San Felipe, Puerta la Cruz and San Jose. Kupa was by far the largest with approximately 150 people. Eventually, at least four other villages in the area were eventually removed to Pala between 1903 and 1904: Santa Ysabel, Tawhee, Puerta Noria, and Cuca — a total of approximately 300 people. Shipek, *Pushed into the Rocks*, 44.

⁸⁶ "Indian Blood was Stirred," *Los Angeles Times*, 14 May 1903.

Indians, the federal government, reformers and the growth machine all viewed reservations as part of the answer to their particular understanding of the Indian “problem,” they disagreed fundamentally over what a reservation would be. To the Cupeño eviction came at a critical time of increasing racial rigidity.⁸⁷ Being very publicly dispossessed *as Indians* — and particularly as Indians clinging to a misrepresented past — contributed to a growing sense of Indianness, and provided a cause to rally around in resistance to the federal system that all too often failed to distinguish among tribes, bands or groups. By 1903, Indians at Pala had been re-mapped onto the landscape, but in very different ways than those who had overseen the process intended. Their resistance would take the form of trying to regain the economic autonomy they had previously had. Those efforts ran counter to the perception of Indians as nostalgic elements of the past.

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⁸⁷ Elliott West, “Reconstructing Race,” *Western Historical Quarterly*, 34 (2003), 7-26; Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley and Los Angeles: Univ. of California Press, 1994), 107-50.

CHAPTER FOUR

MAKING RESERVATIONS: Indian Activism at Pala, La Jolla and Rincon, 1880 to 1906

On 31 March 1890, Horatio N. Rust, a former medical officer in the Civil War, collector of Indian artifacts, and amateur anthropologist, who at that time was serving as the federal Indian agent of the Mission Indian Agency in southern California, dashed off a quick letter to the Commissioner of Indian Affairs in Washington. In it he claimed the San Luis Rey Water Company had begun grading for a ditch across the La Jolla reservation without his knowledge. The reply he received a month later was not encouraging. Commissioner Thomas J. Morgan stated bluntly that if there were trespassers, Rust should take the necessary measures to stop them. If he was unable to enforce such an order, he should report that to the Indian Office. However, Morgan added, "I have to state that no reservation is known to this office by that name. For the purpose of identification, the township and range in which the reservation is situated should be given."¹

¹ Horatio Rust to Thomas Morgan, 31 March 1890; Morgan to Rust, 1 May 1890, both reprinted in U.S. Congress, Senate, "Report on the Illegal Occupation of the Capitan Grande and La Jolla Reserves," 51st Cong., 1st session, Ex. Doc. no. 118, 16. Certainly, this was not the only such incident. Contained in the same Congressional Report was the 1887 complaint from Joseph Preston, the agent of the Mission Consolidated Agency, over the San Diego Flume Company's construction of a flume across the Capitan Grande reservation and their plans to divert almost the entire water supply. That response was much stronger. The Commissioner of Indian Affairs urged him to turn the issue over for prosecution to Shirley Ward, a local attorney who worked with the OIA as well as the IRA, despite the fact that Ward's father was a local Indian agent and had heartily "indorsed" the plan. Charles Painter described the anxiousness surrounding that the activities of the Oceanside Land and Water Company at La Jolla and Ya Piche villages in 1888. The company was engaged in posting for water, digging ditches and constructing dams throughout the region. Painter, *The Condition of Affairs in Indian Territory and California* (Philadelphia: Indian Rights Association, 1888), 61.

Most likely, Morgan's failure to recognize the reservation stemmed from the fact that, despite variety in local usage, the reservation's official name was "Potrero (La Jolla)."² However, the anecdote is nonetheless illustrative. Clearly, La Jolla was a long way from Washington, D.C. and Rust's powerlessness vis-a-vis the forces of development from without the reservation encapsulates the relationship between the federal Indian Office and the regional growth machine. This chapter explores the context of Indian actions on the reservations along the San Luis Rey River, where distance from Washington D.C., and proximity to regional sites of commerce and development reduced the practical scope of the Indian Office's tenuous legal authority and enabled Indians to actively make policy of their own.

The three principle villages on the La Jolla reservation — Potrero, Ya Piche and La Jolla — were situated along the boundaries of the Rancho Cuca (El Potrero) grant, which lies completely within the reservation itself.³ Largely comprised of steep valleys and craggy mountains, the reservation's small patches of irrigable and arable land were clustered alongside two small creeks in the canyons of Smith Mountain, and around the perimeter of the Cuca grant. Five miles due west of the village of La Jolla, but 2,000 feet below it, the village of

² For consistency throughout the dissertation, I will use "La Jolla" in a general sense to refer to the reservation, "La Jolla village" or variants to refer to the village on that reservation, and "Potrero" to refer to the Potrero village, located on the La Jolla reservation.

³ Reading the map of Indian settlement on La Jolla hints at the dispossession that took place. Indians resided in a number of settlements on the Cuca grant controlled by Margarita Trujillo. She leased the land for cattle grazing. Luiseño Indians under the leadership of Olegario attempted to stop the new lessee from taking possession. Their efforts motivated Trujillo to evict them, forcing them to settle on public land along the border of the grant. Carrico, *Strangers in a Stolen Land*, 84-86.

Rincon is situated along the north side of the San Luis Rey River as it fans out from its steep mountain grade. All four villages are populated by Luiseños, as is Pauma, which flanked the river on the other side of the Pauma Valley. Given the variegated landscape of the region, the villages were not only remote from Washington, DC, but protected from nearby sites of expanding Anglo settlement, such as Escondido and Oceanside, and from each other as well.

The villages became part of what collectively came to be called the “Mission Indian reservations.” The term was first used as an administrative label in the 1860s when John Q. A. Stanley was appointed Special Agent to the Mission Indians. He was replaced in December 1869 by Augustus P. Green, whose initial field report recorded the “Mission Indian” population at 2,000. That designation included the Kumeyaay, Luiseño and “other small bands” such as the “Vallecito, Puerta la Cruz and San Felipe. It did not include the Cahuilla, who were distinguished as distinct in the population tabulations, primarily because of the limited contact they had with the missions themselves. Thus, at this time, the term still referred to Indians who either formerly resided at the missions, or their descendants.⁴

Between 1869 and 1875, events transpired to bring the Indians of the region to greater attention of the federal government. Particularly, the establishment of reservations at Pala and San Pasqual in 1870, their revocation the following year, and the dispossession of the Indians at Temecula. Thus, by

⁴ Augustus P. Green, report to Ely S. Parker, Commissioner of Indian Affairs, 16 December 1869, as reprinted in House, “Indian Reservation in San Diego County, Cal., a letter from the Secretary of the Interior,” Ex. Doc no. 296, 41st Cong., 2d sess, 8-11.

1875, , when the villages were designated reservations in 1875 by executive order, the commissioner neatly glossed over the use of the term defining Indians as having “received the name of Mission Indians from their relation to the early Catholic missions on the Pacific coast.”⁵ With the establishment of the reservations, the term “Mission Indian” gained some functional administrative traction as a convenient way to refer to a baffling variety of “other small bands,” and was quickly adopted into the legislative and reform drives of the 1870s, 1880s, and 1890s.⁶

Until 1892, when patents were issued, the reservations hung in a state of institutional limbo, characterized by a combination of federal malfeasance and neglect. At the time, expanding rail lines brought the region more fully into the rapidly growing southern California economy.⁷ Largely ignored by the Indian Office in many day-to-day matters, Indians were nonetheless subject to the periodic whims of federal policies. As executive order reservations, title was technically an executive-protected right of occupancy that was less secure than that which derived from treaties or congressional actions. Executive orders were occasionally rescinded as had been the case a few years earlier with Pala and

⁵ *Executive Orders Relating to Indian Reservations from May 14, 1855 to July 1, 1912* (Washington, DC: Government Printing Office, 1912; reprint: Scholarly Resources, Inc., 1975), 43-46; Hyer, “*We Are Not Savages*,” 77-92; Shipek, *Pushed into the Rocks*, 163-64; ARCIA, 1875, 511.

⁶ The phrase was Green’s. Report, 16 December 1869, in op. cit., “Indian Reservation in San Diego County,” 10.

⁷ The California Southern Railroad connected San Diego to Fallbrook in January 1882, to Temecula in March 1882, and to San Bernardino in September 1883. But disputes with the Southern Pacific and damage to the tracks due to flooding delayed its connection to the eastern trunk lines from February 1884 to early 1885. In November, the line was completed through Cajon Pass under an arrangement with the ATSF, and connected San Diego to Barstow and the eastern trunk lines. See Franklyn Hoyt, “San Diego’s First Railroad: the California Southern,” *Pacific Historical Review*, 23, no. 2 (May 1954): 137-38 and Orsi, *Sunset Limited*, 20-24.

San Pasqual.⁸ In May 1877, President Hayes removed twelve-hundred acres of mountainous land on the eastern flank of the La Jolla reservation from the previous executive order and restored it to the public domain.⁹ Residents of the rancherías were caught in between seeming autonomy and federal power. They retained significant control over the day-to-day affairs within the reservations, but nonetheless were subject to the actions of the distant federal government.¹⁰ As a result, Luiseños in the region came not only to distrust the motives of federal officials, but to initially question their power as well. The Indian agents interfered with the existing Indian political structure, but were unable or unwilling to address many of the most pressing issues that the communities faced. This strengthened existing patterns of off-reservation employment and high rates of mobility.¹¹

By 1890, real political power on the La Jolla and Rincon reservations was a matter of negotiation between the Luiseño political system and the growing presence of the federal Indian Office. Traditionally, Luiseño leadership

⁸ Shipek, *Pushed Into the Rocks*, 33-37.

⁹ On 2 March, 1881, a similar amount of valley land, surrounding the road at the center of the Rincon reservation was added to the. *Executive Orders Relating to Indian Reservations*, 46-47.

¹⁰ Pointing out the weakness of the federal presence on the reservation is not meant to indicate that all agents or representatives of federal authority were as weak as Rust appears in this brief correspondence. Some were in league with the regional growth machine, either intentionally or ideologically. In 1883, J.G. McCallum took office as Mission Indian Agent. He quickly set about purchasing land adjacent to the Rincon reservation and diverting water from the reservation to his land. He eventually faced investigation for his actions, but emerged relatively unscathed and went on to prominence in the establishment of Palm Springs. See Mathes, *Helen Hunt Jackson*, 76; Mathes, ed., "Helen Hunt Jackson to Ephraim W. Morse, 3 November 1883, *Journal of San Diego History*, 42, no 2 (Spring 1996), 108-13.

¹¹ Thorne, "On the Fault Line," 184.

rested in the *net*, or clan leader.¹² But in 1853, Cave Coutts, the local Indian agent, had appointed Manuel Cota as the “general,” or leader of all Luiseño Indians, a position that had not existed before.¹³ In 1870, regional clan leaders replaced Cota with Olegario Calac, an action that the participants sought to legitimize by seeking certification from San Diego County Judge Thomas Bush. For the next few years, Cota and Calac engaged in a simmering political battle over the appropriate relationship between Luiseño communities and the Indian Office.¹⁴ The Indian Office’s rather anemic efforts to “protect” Indian land and water rights at the expense of Indian sovereignty exacerbated existing internal political disputes.

When the San Luis Rey Water Company began building its ditch across La Jolla, residents of the Indian villages in the watershed feared losing their water for a number of reasons. Rincon contained some reasonably good agricultural “bottom” land, while La Jolla was unsuited for large-scale irrigated agriculture. With very little irrigable and arable land, the residents of La Jolla continued to rely on a highly diversified and porous economic system, raising stock on grazing lands held in common by the village, working off reservation, and farming their individual plots, growing corn, beans, potatoes, barley, pumpkins, watermelons and cantaloupes.¹⁵ At the government’s advice, some began to de-

¹² Also *nuut*, or *kwaaypaay* in Kumeyaay. Shipek, *Pushed into the Rocks*, 7.

¹³ Carrico, *Strangers in a Stolen Land*, 66-74.

¹⁴ Shipek, *Pushed into the Rocks*, 34-37.

¹⁵ Dolores Newman, testimony, part 1, 30-31 December 1929, Reporter’s Transcript, v20, *United States v. Albanes*, NARA-LN, Records of the District Court of the United States, RG 21, Southern District of California, Southern Division, 1929-1938 (San Diego,) (hereafter *US v Albanes*), box 3, folder A2 [10/14], 2193-2201.

velop orchards, to try to take advantage of the growing citrus and fruit tree industry.¹⁶ Residents remembered it as a prosperous time.¹⁷

As a result, when the Act for the Relief of the Mission Indians was passed in January of 1891, and C.C. Painter visited the reservations that summer urging immediate allotment, the residents of the villages were generally not hostile to the idea. Both bands received trust patents in September 1892, and the process of surveying for individual allotments began soon thereafter.¹⁸

Kate Foote of the Women's National Indian Association, directed the initial allotment surveys, which largely followed existing land tenure patterns, because of the deep attachment many Luiseños had to the land they occupied. To do otherwise would have provoked powerful resistance among the residents of the villages who had traditionally held land in a complex web of ethnic territories, band-controlled commons and smaller units, spaces, and resources under family or clan control. Similar surveys had led to resistance by Luiseño leader Olegario in 1875.¹⁹

Given the nature of the landscape and the Indians' intensive use of it, it was not possible to adhere to the neat section plots of the federal land survey

¹⁶ Steven Stoll, *The Fruits of Natural Advantage: Making the Industrial Countryside in California* (Berkeley: University of California Press, 1998), and David Vaught, *Cultivating California: Growers, Specialty Crops, and Labor, 1875-1920* (Baltimore: The Johns Hopkins University Press, 1999).

¹⁷ Newman, testimony, part 1, *US v. Albanes*, 2200-2201.

¹⁸ Mathes, *Helen Hunt Jackson*, 117-18; Shipek, *Pushed into the Rocks*, 46-49; Karr, "Pala," 95-97.

¹⁹ Shipek, *Pushed into the Rocks*, 9-19; Anderson, *Tending the Wild*, 133-34; Carrico, *Strangers in a Stolen Land*, 76-78.

system.²⁰ Accordingly, the surveys were jagged and irregular, averaging approximately twenty acres for the head of a household and ten acres for single individuals.²¹ At the Luiseño village of Pala, at the same time, Foote and special allotting agent John Carrere made thirteen allotments totaling 206 acres. The forty remaining Indians were either to be provided for in the future, or at La Jolla or Rincon. But they were not.²² At the conclusion of the surveys and selection process Foote issued “Selection for Allotment” forms (Form 5-201) to the proposed allottees, many of whom fenced off their tracts and continued cultivating the land as they had been doing.²³ Indians made both practical and ideological use of the surveys. In a practical sense, they facilitated the growth of agricultural production by temporarily helping to settle internal disputes over land use.²⁴ In ideological terms, surveys appeared to sanctioning existing patterns of land ownership and falsely signaled to many Indians the government’s willingness to allow them to control their own affairs on the ground.

The federal government’s authority flowed through existing political channels, and as water cuts the channel in which it travels, so too did the initial

²⁰ Vernon Carstensen, “Patterns on the American Land,” *Publius: The Journal of Federalism* 18, no. 4 (Aug, 1988), 31-39.

²¹ John Plover, “Special Instructions to Cover Surveys Under Group 125 (Indian Allotment Surveys),” 8 October 1923, read into testimony, Reporter’s Transcript, v. 5, *US v. Albanes*, box 2, folder A2 [4/14], 564-568.

²² Karr, “Pala,” 97.

²³ See H. E. Wadsworth, testimony, Reporter’s Transcript, v.1, *US v. Albanes*, box 1, case A2 [3/14], 95.

²⁴ William H. Thorn, testimony, Reporter’s Transcript, v. 6., *US v. Albanes*, box 1, case A2, folder [3/14], 632-33.

assertion of federal power strengthen existing village authority.²⁵ To many Indians, allotments were not an imposition of a foreign idea, but federal sanctioning of existing internal power structures that were inherently at odds with the federal policy of allotment and its larger goals of assimilation.²⁶

The surveys and allotment schedules for the La Jolla and Rincon reservations were sent to Washington but were not approved by the Secretary of the Interior for two distinct, but overlapping reasons: the Indian Office questioned the wisdom of allotting only to heads of households, not to individual Indians; and secondly, the irregular and meandering shapes of the surveys cut against the government project of organizing land into uniform rectilinear survey plots authorized by the Land Ordinance of 1785, which scholars have pointed out was critical to the process of making the land “legible” to a colonial state.²⁷ In the second instance, the government eventually rejected allotment for some of the same reasons that made it more attractive to the Indians themselves. leaving the Indians further under an authority they did not welcome or entirely recognize, and that was insufficient to adequately address their grievances and offer them the protection it promised. As was often the case in California, the

²⁵ Robert Magee, testimony, January 1930, Reporter’s Transcript, v. 23, *US v. Albanes*, box 3, case A2, [11/14], 2386.

²⁶ Magee, testimony, *US v. Albanes*, 2387.

²⁷ See *US v. Albanes*, box 1, folder “A2 [1/14]”; H.E. Wadsworth’s comments in “Report of Meeting of La Jolla Indians at La Jolla Reservation, on April 18, 1924, at 2:00 p.m.,” *US v. Albanes*, exhibit 97, box 1A, folder “A-2-M, exhibits 73-116,” Rader, “So We Only Took 120 Acres,” 380; Carstensen, “Patterns on the American Land,” 31-39; James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 38-52; Roger J. P. Kain and Elizabeth Baigent, *The Cadastral Map in the Service of the State: A History of Property Mapping*, (Chicago: University of Chicago Press, 1992); Michel Foucault, *Discipline and Punish: The Birth of the Prison* (trans. Alan Sheridan; New York: Vintage, 1995 [orig. 1975]).

residents of La Jolla and Rincon did not learn that their allotments had not been approved until years later.

Drought hit the region in the early 1890s, along with the nationwide economic depression. This dried up the sources and funding for irrigation projects, but heightened the recognition of their need. Both environmental and economic conditions improved slightly in the mid 1890s, resulting in renewed interest in irrigation in the region. For the regional growth machine, allotment promised more efficient use of Indian lands and water that would limit the overall extent of Indian landholding as well as increasing the possibility that allotted citizen Indians would be able to alienate their lands. In June 1894, the Escondido Irrigation District signed a contract with representatives of the three bands residing on the La Jolla reservation. The contract guaranteed the right to divert water from the San Luis Rey River upstream from the Potrero village, and a right-of-way across both the La Jolla and Rincon reservations to build flumes and ditches to carry water to the Bear Valley reservoir (now Lake Wohlford). In return, the EID guaranteed an “ample supply and quantity of water ... for agricultural and domestic purposes.” There was no further clarification as to what ample supply meant, and the subsequent construction of the flume well below the fields where that water was to be delivered revealed the EID’s disinterest in providing water for Indians’ agricultural use.²⁸

As historian Emily Rader points out, that Indians signed the contract at

²⁸ H.K. Palmer to Paul T. Hoffman, 12 November 1920, NARA-LN, BIA, RG75, PALA, Letters Received, box 374, folder “General Correspondence, Paul T. Hoffman — Pala Indian School, 1920 [2/3];” Rader, “So We Only Took 120 Acres,” 440-42.

all was a departure from federal practice, which had largely bypassed Indian consent.²⁹ However, the inclusion of the Indians did not indicate a shift in policy. By including a right-of-way across Rincon, despite the fact that no representative from Rincon signed the contract, the process was a rear-guard effort by water developers and the Indian office to blunt future criticism that Indians did not approve the contract. The Indian Office viewed this contract and others of similar language as a way of belatedly protecting for the Indians that which was necessary for their “civilization,” the EID saw it as a way of securing for themselves that which the Indians weren’t using. But it is not entirely clear what the Indians thought of the contract. Given their recent experience with allotments, which largely respected existing Indian tenure patterns, it is likely that the Indian signatories interpreted their inclusion as an recognition of their sovereignty.

The farmers at Rincon and La Jolla certainly recognized the practical benefit of the contract. Writing in June 1899, local storekeeper and ethnographer, Philip Sparkman warned the superintendent of Indian Affairs that the Indians at Rincon were having some trouble with the EID. When rain returned after a long drought, the river began to run again. “The Indians at once began to irrigate their corn melons + e [sic] in hopes of raising a crop, but the irr. Co. turned all the water into their flume, leaving the Indians without any.” Sparkman went on to describe the EID as apparently “actuated by a desire to annoy the Indians as much as possible.” He claimed they regularly turned the water from the river into their flumes, requiring the residents of Rincon to appeal to the Indian agent,

²⁹ Rader, “So We Only Took 120 Acres,” 440.

or to the water company superintendent. However, after having suffered under a prolonged drought, the “Indians took the law into their own hands this time and turned the water back into the river, and are now using it.”³⁰ Indians at La Jolla and Rincon were, by 1899, more secure in the possession of their land than they had been previously, but they faced the threat of economic dislocation through the loss of their water.

Concerns over water supplies were exacerbated by the increased attention paid to the region as part of the search for a new home for the Indians evicted from Warner’s Ranch. Prior to 1901, few Anglos made the trip into the San Diego backcountry along the San Luis Rey River. Those that did were drawn by the romance of the *asistencia San Antonio de Pala*, the sub-mission of the Mission San Luis Rey, built in 1816 on the north bank of the river, and serving Indian congregants continuously since that time.³¹ But inspecting potential sites for a new reservation involved measuring water supplies throughout the region. After Pala was selected and over 11,000 acres of land eventually reserved for it, the Landmark’s Club raised funds to restore the *asistencia*. Anglo interest in the region grew and by 1910, stages made the run from Oceanside

³⁰ P.S. Sparkman, “letter to Superintendent of Indian Affairs,” 6 June 1899, San Diego Historical Society, Document File “Philip S. Sparkman;” Courtemanche, “The Utilization of Water in San Diego County,” 25-28.

³¹ George Wharton James, *Picturesque Pala: The Story of the Mission Chapel of San Antonio de Padua, connected with Mission San Luis Rey* (Pasadena: Radiant Life Press, 1916); Lightfoot, *Indians, Missionaries, and Merchants*, 215-17; Hyer, “*We Are Not Savages*,” 32.

to Pala daily.³²

In 1903, there were three main routes into the Pala Valley.³³ From points west, the road roughly followed the slowly rising grade of the river, from the ocean through Rancho Guajome, Bonsall and the Monserate Ranch. Past Monserate, the rough road hugged the southern contour of the Monserate mountains, skirting northeast along the edge of the flat, alluvial valley floor as it gradually widened.

From the north, the road connected Pala to Temecula, twelve miles away. Descending into the valley along the modern road today, one is struck by the seeming remoteness of the country, a far cry from the urban sprawl that has crept inland from Oceanside, Escondido and points beyond as Los Angeles and San Diego grow into each other. Oak trees line the road, occasionally covering it with a full canopy, as it drops nearly nine hundred feet following a number of sharp cutbacks contouring the craggy slopes that drop off to the Pala Creek bed on the left. Approximately a mile north of the village of Pala, the canyon widens and the road straightens. This was the route the Cupeños and other Indians followed in May, 1903, with all their possessions packed precipitously into dozens of wagons. Their circuitous three-day, forty-five mile journey from Kupa, along

³² Phoebe S. Kropp, *California Vieja: Culture and Memory in a Modern American Place* (Berkeley: University of California Press, 2006), 94-100; Thompson, *American Character*, 230-31; Smith, *Reimagining Indians*, 134; Philip Lonergan, "Narrative Annual Report," *Superintendents' Annual Narrative and Statistical Reports from Field Jurisdictions of the Bureau of Indian Affairs*, microcopy 1011, NARA, BIA, RG 75, (hereafter "Narrative Annual Report") 16 Sept 1910, section 8.

³³ There were many small footpaths and trails, many used regularly by the region's Indian population. In suggesting that there were three paths *into* the valley, my point is to emphasize its isolation from outside communities, not to uncritically privilege a non-Indian perspective by indiscriminately labeling Indian communities "remote."

the old Butterfield Overland Mail route through Aguanga Canyon, Oak Grove, the Pauba Ranch and Temecula testifies to the size of the relocation effort, and the ruggedness of the landscape in which it was done.³⁴

The third route into the valley shadowed the San Luis Rey River itself for much of its course from the western narrows at the end of Warner's Valley (now Lake Henshaw), through the river canyon past the village of La Jolla, situated atop a small bluff overlooking the river and road from an elevation of three thousand feet. From there, the river veers west toward the village of Rincon, while the road meandered northwest and down, through the Rancho Cuca (el Portero) and into the Pauma Valley rejoining the river just west of Rincon. There were variations of this road, some of which crossed over Smith (now Palomar) Mountain, and through the San Jacinto Forest Reserve (now part of the Cleveland National Forest), and all of which were more direct and shorter than the route chosen by the authorities removing the Indians from Warner's Ranch.

Each route was significant for different reasons. One was traveled by developers from Oceanside, Escondido, Los Angeles and San Diego, who increasingly in the early twentieth century were rooting around in the backcountry canyons in search of water and places to store it. Another route tied the Indian communities further south to the Luiseño communities at Pechanga and Temecula and the wage labor available on the ranches in that area. The third route brought the water, or was supposed to. Whether flowing or not, the water knitted the Indian villages of La Jolla, Portero, Yapiche, Pauma and Pala together

³⁴ The linear distance between Kupa and Pala is approximately twenty five miles. On the route of the removal, see Hyer, *We Are Not Savages*, 121-28.

and reconfigured the human landscape of the region.

The federal government held the power to make lines on the land by creating reservation boundaries. The enlargement of Pala illustrated federal authority and the Indian Office sought to fill the reservations of the region with productive economic activity. However, the veneer of progressive-era Indian Office control over the landscape and the people living in it lacked the substance of authority to back it up. Residents of the villages used the reservation boundaries, resources and the circumstances to assert their autonomy and to recreate communities for themselves.³⁵

The Pala valley's remoteness was a major asset to the government officials in Congress and the Office of Indian Affairs who had, in 1902, purchased a large section of the Pala Valley for the use of the Indians relocated there.³⁶ They believed that the topography provided a measure of protection from encroaching non-Indian settlement and facilitated the Indian Office's ability to draw the lines around the reservation and enforce social control within it.³⁷ The preliminary report produced by the Warner's Ranch Indian Commission claimed the Pala valley, "would practically *unite* the Warner's Ranch, Pala, Pauma, Potrero and Rincon reservations [where] one Farmer-Overseer could serve all five fairly

³⁵ This draws heavily on cultural geographers' work on space and spatial theory, particularly Henri LeFebvre, *The Production of Space* (tr. Donald Nicholson-Smith; New York: Wiley-Blackwell, 1992), 68 - 168; and David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Oxford: Basil Blackwell, 1989), 218 - 23; 253-56; as well as sociologist Pierre Bourdieu's concept of the *habitus*. Bourdieu, *Outline of a Theory of Practice* (tr. Richard Nice; Cambridge: Cambridge University Press, 1977), 72 - 95.

³⁶ Robert G. Valentine, letter to Levi Green, 19 May 1909, NARA-LN, BIA, RG 75, PALA, Letters Received, 1903-1921, b370, fu "LR (Lonergan) 08-10 [1/4]"

³⁷ Charles Fletcher Lummis described the valley as a space in which the Indian Office should be able to "keep watch over the Indians" Lummis to W. A. Jones, 28 January 1903, LMC, SWM.

well." Further, the valley was "within easy reach of every refining and civilizing influence, [but] safe from aggression [from] ... the neighbors who advance their fences upon Indian land, impound Indian stock whenever they can catch it, run their own stock over Indian land, and in general 'crowd' the weaker."³⁸

Even more than its isolation, the valley's greatest asset, in the minds of those who organized and oversaw the relocation, was the presence of the river, which entered the valley from the southeast corner where it flowed steadily along the northern slope of Pala Mountain. To government officials in the Indian Office and individuals like Charles Fletcher Lummis, the combination of topographical isolation, ample water supply and a broad valley floor of potentially valuable agricultural land guaranteed that Pala would be an "improvement" over Kupa, where the steady and mineral-rich flow of the springs were deemed too small for successful commercial agriculture, and "walking fences" allowed for Anglo encroachment. The river, which periodically flooded or flowed underground, and drained 318 square miles above Pala, was to be the backbone of a new model for California Indian reservations promising an efficiently managed answer to the "problem" of the Mission Indians.³⁹ But no one controlled the river.

The region suffered from below-average rainfall between 1892 and 1893, and again between 1900 and 1905 — both times when surveyors, agents and commissioners surveyed for allotments and investigated relocation sites and

³⁸ "Preliminary Report of the Warner's Ranch Indian Advisory Commission [WRIAC]," (1902), 46, emphasis added.

³⁹ C. E. Kelsey, *Report of the Special Agent for California Indians to the Commissioner of Indian Affairs* (Carlisle, Penn.: Indian School Printing Office, 1906), 25-27; WRIAC, "Preliminary Report," 16; Charles Fletcher Lummis, "The Mission Indians," *Outlook* 74, no. 13, 25 July 1903, 740; Shipek, *Pushed into the Rocks*, 112-13.

declared the region to have an ample water supply.⁴⁰ As the river returned to its “normal” patterns, the increased rainfall did not translate into a more stable water supply for the Indians along the banks. Instead, floods hampered the overly complicated irrigation works built by the government and increased calls for greater flood control measures downstream. The sight of “wasted water” reaching the sea untapped motivated regional developers to increase their efforts at regulating, managing and exploiting the San Luis Rey river through diversions for hydroelectricity and the eventual construction of Henshaw dam at the west end of the San Jose Valley.⁴¹ More water, coupled with the region-wide growth in irrigation projects, brought increased attention to the water of the San Luis Rey River. Unwanted outside attention to Indian water was nothing new. The springs at Kupa had long been popular among non-Indians. But unlike the springs, where Anglo water use was to some degree compatible with Indian use, the efforts to utilize the San Luis Rey River were much more disruptive of the communities Indians were trying to construct.

The community the Indians were building at Pala was itself contentious and not as simple as reconstructing the world(s) of their former villages. All along the San Luis Rey, Indian residents constructed adobe dwellings, with

⁴⁰ Pala as “one of the best watered areas of southern California,” WRIAC, “Preliminary Report,” 6; Kelsey, *Report of the Special Agent*, 26.

⁴¹ Charles H. Lee, “Report on Effect of Proposed Construction of Warner Dam Upon the Ground Water Supply of the San Luis Rey Valley in Connection with the case of City of Oceanside, et. al. vs. Volcan Land and Water Co., et. al.” 31 August 1916, Charles H. Lee Papers, MS 76/1, The Water Resources Center Archives, University of California, Berkeley (hereafter “Lee Papers”), box 2, folder 10f, page 2.

thatched roofs and attached ramadas for cooking.⁴² The new residents of Pala sought to replicate not only the village structure they had left behind, but also the housing style. They demanded the right to construct homes from adobe and the rough lumber readily available in the nearby San Jacinto Forest Reserve.

This plan was supported by Charles Lummis and C.E. Kelsey, whose report based on his extensive investigation of the conditions of California Indians, argued that adobe homes were well-suited to the climate, windproof, dust proof, and often, even with thatched roofs, waterproof.⁴³ Lummis urged the Indian Office to employ the Indians themselves in the construction of new homes at Pala, to be paid similar wages as they would pay elsewhere. Partly, this would help replicate Cupeño wage labor subsistence patterns that relocation to Pala had severed. He claimed:

[the] adobe house is far more sensible and far more healthful for that country than the frame buildings that we would put up. Where our superior brains ought to come in in the matter is to show them how to build the adobe houses a little better than they did. [When well-built] [t]hey are always cool; they are cleaner than a wooden house; less a harbor of vermin... and in the case of the Indians particularly, ... a sanitary measure it would be a great pity to disregard. If you put these three hundred people who have been used to living in adobe into wooden houses you will have within ten years a large and growing nucleus of consumptives.⁴⁴

As was often the case with Lummis, he combined what appeared to be a

⁴² Prior to the Spanish arrival, these were often circular in formation. With the Spanish presence, they took on a more rectilinear shape, but retained the construction methods. William Duncan Strong, "Aboriginal Society in Southern California," 184; Bean and Shipek, "The Luiseño," in Heizer, ed. *Handbook of North American Indians*, v. 8, 553-54; Photos of Kupa Charles Fletcher Lummis, "The Exiles of Cupa," *Out West*, 16, no. 5 (1902), 466-69.

⁴³ Kelsey, *Report of the Special Agent*, 27-28.

⁴⁴ Charles Fletcher Lummis to W. A. Jones, 28 January 1903, LMC, SWM, 8-9.

genuine respect for Indian cultural practices with a colonialist, nostalgic ethnocentrism that rendered Indians as marginal local color.⁴⁵ In this case, Lummis argued that Anglos could show the Indians how to improve the construction of the adobe houses through the inclusion of better drainage, foundations and roofing materials. Just as Indian labor, guided by “superior” Anglo brain power would build a better house, it could make Pala blossom and “make better Indians.”⁴⁶

Some elements of the Western, progressive reform turn in Indian policy clashed with the prevailing drive for civilization and the Indian Office chose to ignore the demands of the Indians and the recommendations of Lummis and others. The Indian Office’s opposition to adobe construction stemmed from a cluster of ill-formed notions and prejudices. The office assumed that adobe construction would take longer and perhaps cost more than shipping partially pre-built houses of “traditional” wood construction across country. Kelsey described the Indian response as “mutinous,” and argued that the eventual expense of the imported temporary housing was double the cost of building from local sources of lumber and four times that of building with adobe.⁴⁷

Additionally, despite the well-recognized climactic adaptation of the

⁴⁵ Charles Fletcher Lummis, “To Make Better Indians,” *Out West* 16 (February 1902): 177-79. The title was also the slogan of the Sequoia League which Lummis organized. See Smith, *Re-imagining Indians*, 119-144. On imperialist nostalgia, of which Lummis’ vision of the Indians in the southwest is an excellent example, see Renato Rosaldo, *Culture & Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989), 68-87.

⁴⁶ Lummis, “To Make Better Indians.”

⁴⁷ Kelsey, *Report of the Special Agent*, 24-28; “Indian Houses Blown Down,” *Escondido Advocate*, 5 December 1905.

adobe house, the Indian Office felt it was not an appropriate dwelling for “civilized” Indians. The government feared that adobe construction was an important aspect of Indian nostalgia, and thus a potential site for resistance to the progress that animated Indian Office policy. Distinctly non-Indian housing was a critical part of the process of “civilization,” particularly as it addressed the imposition of gender patterns into Indian life, with Indian women taught by field matrons how to appropriately manage a non-Indian home.⁴⁸ The agent who oversaw the removal of the Cupeño wrote that “the home is the best exemplification of American Citizenship,” and that therefore, any plan that sought the “improvement and civilization of the Mission Indians” should concentrate its efforts there.⁴⁹

Accordingly, the Indian Office contracted with a company from New York to provide fifty, eleven by twenty-two foot, two room, temporary, wooden houses to be delivered from the east coast by rail at a cost of \$800 each. They began to arrive in September of 1903 — fully four months after their occupants — with another twenty houses ordered in November of that year.⁵⁰

Lummis’ admonition proved prescient. The Indians found the houses poorly suited to the climate, and, according to contemporary accounts, referred

⁴⁸ Mathes, *Helen Hunt Jackson*, 134; Jane E. Simonsen, *Making Home Work: Domesticity and Native American Assimilation in the American West, 1860-1919* (Chapel Hill: University of North Carolina Press, 2006), 71-110.

⁴⁹ L. A. Wright to Thomas A. Bard, 8 October 1901, Bard Collection, Huntington Library, San Marino, Calif., box 4-b, folder 1.

⁵⁰ P.T. Lonergan to Robert Valentine, 6 July 1910, NARA-LN, BIA, RG75, PALA, Letters Sent to the Commissioner of Indian Affairs, box 375, book 2, p 112-13; William A. Jones to L.A. Wright, 14 July 1903, NARA-LN, BIA, RG75, PALA, Letters received; Letter from Wilson, Financial Clerk and Special Distribution Agent, to unknown recipient, 24 November 1903, NARA-LN, BIA, RG75, PALA.

to them as “coughing houses” due to their tendency to cause illness.⁵¹ Rosinda Nolasquez who was relocated to Pala as a young girl remembered agents of the government telling those about to be relocated, “Now go tomorrow to your homes at Pala. You are going to build nice homes there, we will give you money... All your homes will be just nice, they will be shining.” But she described the houses as “tiny as beehives,” and complained about the government’s failure to honor its word.⁵²

Years later, as the “temporary” housing persisted against the logic of time and the climactic extremes of the semi-arid San Diego backcountry, their inappropriateness became increasingly obvious. In 1910, the superintendent at Pala described them as “hotter than the hottest tenement houses ever constructed.” They were overcrowded, unbearably hot, and contributing to illness, particularly tuberculosis — a condition that was “practically unknown among these Indians [at Warners], but now ... is very common, eleven deaths from this dread disease have occurred since I came here a little over two years ago and I am certain that is due to the crowded, unsanitary condition of the houses.”⁵³ Elsewhere he complained that the houses lacked ventilation, except that which “is secured through cracks in the walls.”⁵⁴

Reports such as these challenged the status of Pala as a model reserva-

⁵¹ Fletcher, *Memoirs*, 88-89; “Red Men Don’t Like Their New Houses,” *Los Angeles Record*, 10 Oct 1903, in Bard Collection, Huntington Library, box 9E, folder 5, clips 74.

⁵² As told to Jane H. Hill, August 1962. Hill and Nolasquez, eds. *Mulu’wetam*, 24a.

⁵³ P.T. Lonergan to Robert Valentine, 6 July 1910, NARA-LN, BIA, RG75, PALA., Letters Sent to the Commissioner of Indian Affairs, box 375, book 2, p 113.

⁵⁴ Philip T. Lonergan, Narrative Annual Report, 1910, roll 99.

tion and center of the Indian Office's regional plan. To counter it, the superintendent initiated monthly "clean-up days," and urged the construction of a modern sewer system that would make Pala the "ideal village which we hope to make it." But in an apparently inadvertent example of irony, he also argued that the construction of a "public bath would be a splendid addition for the health and pleasure of the people" — this for a people who had been evicted from their hot springs only a few years prior.⁵⁵

The poor quality of the houses was the most significant and long-lasting concern, but certainly not the only one. The potential economic activity that the construction of housing might have provided to reservation residents, and the layout of those houses, were additional points of contention. Rather than building their houses, Indians at Pala worked on irrigation projects. The "south side" irrigation ditch was begun in the summer of 1903 to apply water from the San Luis Rey river to the broad fields on its left bank. On at least two occasions during that summer and fall, the Indian workers struck for higher wages and better working conditions. According to George Butler, the Superintendent of Irrigation, the Indians refused to work on the ditch unless all were hired to do the work. He relayed his frustration to commissioner Jones, who in reply claimed that the Indians misunderstood their relationship with the government, arguing that they

⁵⁵ Philip T. Lonergan, Narrative Annual Report, 1911, roll 99, 3-4. In 1913, Walter Runke argued that the portable houses were in "pitiful" shape. Despite describing Pala Indians as very "thrifty" and hard-working, he nonetheless felt the expense would make it very difficult to build new homes. Instead, he vaguely urged that "something should really be done by the Government in assisting these people in getting better homes in which to live." Incredibly, he ended his letter by pointing out that the government's failure to build *him* a new house was having a deleterious effect on the Indians morale and cooperation. Walter Runke to Robert G. Valentine, 11 December 1912, NARA-LN, BIA, RG75, PALA, Letters Sent to the Commissioner of Indian Affairs, box 375, book 3, p481-83.

“can’t depend on the government forever” without making an effort to help.⁵⁶

The Indian Office downplayed the strikes for obvious reasons, as it ran counter to the myth of the model reservation they wanted to perpetuate. Jones applied pressure on the Indian agent at Pala to “do everything within your power to persuade the able-bodied Indians to work on the irrigating ditch” in order to complete it as quickly as possible.⁵⁷ But at the same time, it was important that the work be performed only by “the Indians who will be benefitted by it.” In Jones’ rhetoric, and the Indians’ actions, two radically different notions of ownership and benefit came into conflict. As an Indian space, the entire reservation potentially benefitted from the irrigation works. In addition, it was a necessary source of wage labor that contributed to Indian efforts to maintain control over the reservation. But to Indian Office logic, only those who owned land that the irrigation works would directly water would benefit from its construction.⁵⁸

But there were other issues that drove the strikes. Despite government promises, the land had not been cleared. Indians employed in clearing land and baling hay struck to protest government attempts in the summer of 1903 to reduce the amount of provisions they were to receive. Later in the summer, the government cut wages from \$1.50 a day to \$1.25. Again, the Indians struck to resist the changes. Both strikes were successful — both in stopping the pro-

⁵⁶ W. A. Jones letter to Charles Shell, 6 October 1903, NARA-LN, BIA, RG75, PALA, Letters Received.

⁵⁷ *ibid*

⁵⁸ *ibid*.

posed changes, as well as flexing Indian authority on the reservation.⁵⁹

Strikes were only the most obvious way that Indians demanded control over the day-to-day affairs of the reservation. In addition to protecting their wages, they also demanded the removal of Frank Salmons' store and its telephone line to a point at least one mile from the reservation.⁶⁰ U.S. Indian farmer Norton Barnes, labeled the Indians' displeasure "absurd" given the good water and fertile soil at Pala. Nonetheless, he worried for his own safety in the face of a "sort of insurrection among the Warner's ranch tribes" which threatened "trouble of a serious nature."⁶¹ The demand to remove Frank Salmons store is interesting. Because Salmons' half-sister Ora was the school teacher at Pala, he may have had a few strikes against him in the Indians' eyes. Since the 1890s, he had been in partnership with Ed Fletcher, whose San Diego wholesale grocery business had sold much of the produce which Salmons was able to obtain from northern San Diego County farmers. In this sense, the store represented a potential outlet for Indian agricultural production. But it was this partnership that had recently drawn Fletcher's attention to the region's potential for water development. Additionally, Salmons and Fletcher had engineered the real estate deal with the Warner's Ranch Indian Advisory Committee that resulted in the sale of

⁵⁹ "Indians are Dissatisfied," Pasadena *Star*, 30 September 1903 in Thomas Bard Collection, Huntington Library, box 9E, folder 5, clips 74; "Pala Indians Back at Work," San Diego *Union*, 2 October 1903 in Thomas Bard Collection, Huntington Library, box 8E, folder 5, clips 74; "Partridge Papers," Steven Karr argues that they refused to work because the daily flour ration for reservation unmarried males was reduced and the married men struck in solidarity. Karr, "Pala," 122; Hyer, "*We Are Not Savages*," 129-33.

⁶⁰ "Indians are Dissatisfied."

⁶¹ *ibid.*

the various tracts which now constituted the new Pala reservation itself. While both of these were obscure connections, it is likely that Indians perceived Salmons as bringing outside influences to bear on the reservation itself. This helps to make sense of their demands in regard to the telephone line. Much more likely a cause of the Indians' resentment was the fact that Salmons was living in and running his store out of a building on the mission grounds.⁶² Despite their protests, Salmons remained, eventually building a larger store across the street from the mission complex, although it is unclear if that was due to Indian pressure or the growth attendant to a successful business.

A less overt but more successful form of resistance involved Indian attempts to control allotment at Pala. Of particular concern was their ability to retain the grazing lands of the reservation in common, and to locate their houses in a village rather than living on their isolated allotments. Allotment policy sought to replicate the homestead experience on Indian reservations — isolating Indians from other Indians as a way of replicating the purportedly civilizing process of the yeoman farmer.⁶³ But the residents of Pala saw the reservation as a site for the creation of a meaningful Indian community.

Preliminary work on allotments at Pala began under Charles Partridge in 1907, fully four years after the Indians arrived. He initially reported resistance to allotment of non-irrigable land, as it was being used by the Indians communally

⁶² Fletcher, *Memoirs*, 70-72.

⁶³ Hoxie, *A Final Promise*, 70-81; Leonard A. Carlson, *Indians, Bureaucrats and Land: The Dawes Act and the Decline of Indian Farming* (Westport, Conn.: Greenwood Press, 1981); McDonnell, *The Dispossession of the American Indian*, 6-25; D.S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1973).

for grazing livestock. Those wanting to farm non-irrigable land, particularly in grain, did so with the permission of the tribe. This synchronized with existing Indian land use patterns, in which private and communal ownership coexisted.⁶⁴ Partridge recommended allotting the irrigable land, as that would offer “ample land for irrigated crops.”⁶⁵ However, his recommendations were not accepted. Instead, the Indian Office sought to impose a flat and homogenous land tenure system onto the reservation that would establish clear lines of ownership. In the words of C.F. Larrabee, it was “an injustice to allow those having a large number of cattle to graze them on the reservation without compensating the other members of the tribe,” and instead recommended allotting the whole reservation with the proviso that those who did not keep cattle would lease their lands to those who did.⁶⁶ Perhaps due to the internal disagreement, or perhaps due to Indian resistance, the allotments did not proceed.

The following year, Levi Green was appointed special allotting agent to begin surveying Pala for allotments. He began with the additional land outside the reservation that had been withdrawn from the public domain in 1903, and by fall of 1909, he had surveyed the reservation itself. In the end, 1,300 acres of non-village land was allotted, 300 acres of it irrigable and the Indian Office consented to leave the “waste and pasture land” in common.⁶⁷ On average, each of

⁶⁴ Anderson, *Tending the Wild*, 133-34.

⁶⁵ C.F. Larrabee to Duncan D. McArthur, 29 June 1907, NARA-LN, BIA, RG 75, PALA, Letters Received, 1903-21 (hereafter LR 1903-21), box 369, folder “letters received (Duncan D. McArthur) 1907.”

⁶⁶ *ibid.*

⁶⁷ Levi W. Green to Commissioner of Indian Affairs, 29 March 1911 NARA-LN, RG 75, BIA, Pala.

the 162 allottees received an irrigable plot of just under two acres and a piece of dry grain land of approximately six acres. In addition, the heads of households received a village plot of approximately 80 feet by 100 feet.⁶⁸ Upon completion of the allotments, Green wrote to the commissioner:

The Indians have taken possession of their allotments with great pride and ambition, many miles of good fences have already been built, and seven roomy and well-built barns have been erected. While there is considerable difference in the value of different allotments, the Indians have recognized the necessity for such a difference, and there has been, with almost no exception, no objection to, or complaint of the allotments assigned. [Despite the fact that they originally thought they would receive allotments in accordance with ownership patterns at Warner's] as soon as they understood that the plan of the Office was to make an equal and equitable division of the land among them all, they have invariably accepted the result in an excellent spirit. As the Pala Indians have accepted their allotments so amicably and cheerfully when it was supposed, from the removal they had been subjected to, and the losses they had sustained, that their temper might be rather difficult, and as the technical part of the allotment work has been found by the U.S. Examiner of Surveys to be so accurate, I sincerely hope that the Indians may not be subjected to the trying uncertainty of waiting long for titles to their lands.⁶⁹

Had allotments proceeded immediately upon the Indians' arrival in 1903, then Shell might have been able to influence the placement of the houses. In a letter that September, he wrote: "While it would create much dissatisfaction among them... I am of the opinion that the land should be allotted at once and houses placed on these allotments. [...] Of course the Indians will refuse to accept the houses unless placed in village form, but it is time they ... were taught that the Government has some voice in the Affairs of the reservation."⁷⁰ It

⁶⁸Green to CIA, 29 March 1911; also Walter Runke, Narrative Annual Report, 1912, roll 99, 5-6.

⁶⁹ Green to CIA, 29 March 1911.

⁷⁰ Charles Shell to W. A. Jones, 24 Sept 1903.

seems that people who had only recently been forcibly removed from their homes and relocated to the reservation, did not need any additional lesson in the voice the Indian Office had in reservation affairs.

But allotments did not proceed immediately, and temporary houses, although late, arrived in the fall of 1903 and they had to go somewhere. The Indians were thus able to demand more control over the layout of the village they formed around the *asistencia*. As a result, Pala was the only reservation in Southern California to be laid out and allotted in a village format.⁷¹

Unlike the debate over construction materials for the houses, the question of where to put them divided Indian Office officials. Agent Lonergan claimed the allottees, “will need every inch of this [irrigated land] in order to make the living, and cannot afford to waste any of it by erecting buildings upon it.”⁷² The only way to make the small allotments profitable was to acquire control of several from rental or purchase, or to devote them to highly valuable crops. The former had been authorized by the Burke Act, but was inexplicably uncommon at Pala; the second option grew in importance over the course of the next twenty years. Allotment at Pala highlights the inherent internal tension in American Indian policy between the drive to promote Indian homesteading and the impulse toward modernization with an emphasis on the most efficient use of resources. In this particular case, allotment pushed the two tendencies to the

⁷¹ Shipek, *Pushed into the Rocks*, 53-54.

⁷² Philip T. Lonergan to Robert G. Valentine, 18 March 1910, NARA-LN, BIA, RG 75, PALA, ltrs sent to CIA, box 375, book 2, 43; Paul Hoffman to Cato Sells, 6 June 1919, NARA-LN, BIA, RG 75, MIA/CCF, box 14, folder 7.

breaking point.⁷³

By 1908, the residents of Pala were engaged in farming the land they occupied under the existing surveys. According to the local superintendent, fifty Indians farmed 352 acres of land, over half of it irrigated. The largest crop was corn, followed by beans, potatoes, barley, melons, squash, pumpkins, and other garden vegetables. Within a few years, Indian officials began to promote various specialty crops, apricots and walnuts in particular.⁷⁴ Walnuts were deemed a potentially lucrative crop, as they thrived in the region, and, according to agent Hoffman, "Generally speaking, no attention is required except water occasionally." Further, the walnuts were resistant to damage in transit, were easily picked and hulled, and brought a good price at the market.⁷⁵

Visitors to the Pala village remarked on its appearance, with flower beds surrounding family houses, and small family garden plots planted to vegetables and fruits, such as berries, grapes, peaches and lemons. Chief irrigation engineer H.W. Code claimed later that "A walk down the street along which their portable houses are located with military regularity surprizes [sic] one accustomed to the appearance of the average Indian village."⁷⁶ By touting the success of Pala as a model for other reservations in the region, the Indian Office outlined its vision of reservation-based economic development. But it also, inci-

⁷³ Donald J. Pisani, *Water and American Government: The Reclamation Bureau, National Water Policy and the West, 1902-35* (Berkeley: University of California Press, 2002), 179-80.

⁷⁴ Philip Lonergan to Francis Leupp, 15 June 1908, NARA-LN, BIA, RG 75, PALA, Ltrs to CIA, box 375, book 1, p 96-98; Vaught, *Cultivating California*.

⁷⁵ Paul T. Hoffman to Cato Sells, 27 October 1918, NARA-LN, BIA, RG 75, PALA, box 353, 57a "Farming."

⁷⁶ William H. Code, quoted in ARCIA, 1906, 86.

dentally, highlighted the degree to which that vision was contingent upon Indian adaptation and participation. Indians sought to recreate their lives by insisting on adequate living and working conditions, community integrity in the layout and structure of the village at Pala, and land tenure which comported with the economic autonomy they had previously maintained. When allotments facilitated these goals, the Indians welcomed them. When allotment worked against them, Indians resisted. But in either case, Indians worked in conjunction with other Indians and against increasingly intrusive legislative, legal and policy agendas.

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CHAPTER FIVE

“A SHADOW OVERHANGING US”:

Irrigation and Allotment on the San Luis Rey
River Reservations, 1905 to 1924

While agricultural practices across the region's reservations were similar, the results differed. At Rincon and Pala, substantial arable land existed, but at La Jolla, there was much less. In all cases, potentially arable land exceeded actual irrigated acreage and prompted the Indian Office to develop irrigation projects throughout the region. This chapter examines how those efforts inadvertently derailed the government's own plans.

The first large irrigation project at Pala was the ditch begun in 1905. Illustrating the differential approach the Indian Office took in regard to Pala and Rincon, the Pala ditch was constructed with a capacity sufficient to irrigate three to four times the amount of irrigable land on the reservation and could carry more water than the river itself. Comparatively, the ditch at Rincon, completed the previous year, had approximately half the capacity of the Pala ditch, but cost roughly 1/20th as much to build. After inspecting both reservations in 1906, C.E. Kelsey claimed he was unable to answer why “it should have been necessary to build the ditch a dozen times larger than there is land to irrigate, or water to irrigate with.”¹ The answer is elusive. Perhaps it was a contracting boondoggle; perhaps it was an innocent oversight. Perhaps it was an unintentional product of the belief by some in the Indian Office that wages paid for Indian labor on irrigation projects was in some instances more important than the water the pro-

¹ Kelsey, *Report of the Special Agent* 27-28.

ject promised to eventually yield. The ditch conformed to the expectations that the Indian Office had for Pala. More than merely a place for the Cupeños to reside, the reservation was intended to be the best in southern California.²

The exorbitant expense of ditch construction was compounded in 1906 when floods destroyed much of the irrigation network. Repairs were expensive and thus slow in coming. Without them, the lack of water became a perennial problem and the reservation's economic activity was curtailed and kept, in the words of the superintendent, in "practically a barren condition."³

Flooding was not the only cause for conflicts over the water supply. A few years earlier, on a visit to Salmons' store, Ed Fletcher went quail hunting with Salmons in the Pauma valley between Pala and Rincon, where Fletcher "stumbled on" the Pauma Creek and saw the potential for water development. In an effort to raise capital for its development, he traveled to Los Angeles where he was able to convince William Kerckhoff of the Pacific Light and Power Company and Howard Huntington, whose father Henry was the architect of the region's inter-urban rail system, to support the project. They agreed to send an engineer to inspect the creek for its water development potential. On that inspection trip, according to Fletcher's memoir, while the engineer was taking a nap, a breeze blew up and scattered his papers. In the effort to put them back in his briefcase, Fletcher noted that the engineer had detailed maps of the area around Warner's

² On the ostensibly beneficial nature of Indian labor on irrigation works and the tendency it had to inflate the capacities of irrigation projects, see Donald Pisani, "Betrayal of Indian Allotment," 166-67.

³ Karr, "Water We Believed Could Never Belong to Anyone," 381-99; Walter Runke to Robert G. Valentine, 28 November 1912, NARA-LN, BIA, RG 75, PALA, Ltrs Sent CIA, box 375, book 3, 449-53.

Ranch and the San Luis Rey Valley below, all with extensive markings, that indicated to him, “plainer than words that the Pacific Light and Power Company were interested in other things besides Pauma Ranch and Doane Valley.”

Fletcher “secured” Post’s papers and returned them to his briefcase before he woke up, but quickly set his sights on the region’s potential for water development.⁴

By the Fall of 1905, a number of other competing schemes to develop water in Warner’s Valley came to an agreement to pursue the development together, and Fletcher had positioned himself to be the agent on the ground. Picking up the Grant / Puterbaugh project and the early efforts of the San Luis Rey Water Company, Fletcher was charged with the task of acquiring all the riparian water rights from Warner’s Ranch to Oceanside for a new coalition including Kerckhoff, Huntington, Walter Vail and Carrol W. Gates. One of their projects involved diverting water from the river to “Hell’s Hole,” a steep valley just south-east of Rincon, where they planned to use the 1,400 foot drop to produce hydroelectricity, which the Pacific Light and Power Company would provide to power Huntington’s proposed electric rail line between Santa Ana and San Diego.⁵

The Indians and the federal government were well aware of the plans.

Between August 1905 and March 1906, C.E. Kelsey, special agent for California

⁴ Fletcher, *Memoirs*, 76-81.

⁵ Fletcher, *Memoirs*, 230-53; also Fletcher’s efforts to acquire water rights to the San Luis Rey River are detailed in the Ed Fletcher Papers, Mandeville Special Collections Library, University of California, San Diego (hereafter “Fletcher Papers”), box 23, folder 3 and box 51, folder 3. On the San Luis Rey Water Company, see Karr, “Pala,” 91-92.

Indians, toured the region inspecting the conditions on the reservations. In his report he claimed that much of the land was worthless without water, but that even small plots with water could be very valuable. He also reported on the potential dam at Warner's Valley and water development below it. He suggested that steps be taken to protect Indian water rights and recommended \$3,000 be spent to do it. Given that Fletcher estimated that it took him seven years and "several hundred thousand" dollars to secure the riparian rights along the river, Kelsey's recommendation was far too small to adequately protect Indian rights, but much more than the Indian Office was willing to do.⁶

Kelsey's suggestion was good advice. Not surprisingly, it was ignored. He correctly noted that farming was critical to the "success" of the allotments, that insecure allotments jeopardized vague water rights, and that while the allotments were being put to use, they were clearly not being utilized to their full potential. Of the 312 Indians residing on the two reservations in 1908, only twenty at La Jolla and thirty-five at Rincon were engaged in farming under their allotment or on land occupied by them.⁷ The total cultivated acreage is even more instructive: Of the over eight thousand acres at La Jolla, only two percent

⁶ Kelsey, *Report of the Special Agent*, 126; Fletcher, "letter to the San Diego City Council and San Diego Water Commission," 22 May 1914, reprinted in *Memoirs*, 236-42. In 1911, Philip Harroun estimated that the value of water rights along the San Luis Rey River to be between \$1,000 and \$2,000 *per miner's inch*. Philip Harroun, "Report to the City of San Diego and to the Volcan Land and Water Company on the Safe Net Yield, Value, Cost of Completed System, and Cost of Water Delivered, of the Properties of the Volcan Land and Water Company," August 1914, Lippincott Papers, WRCA, (hereafter Lippincott Papers), box 57, item 114-4. Fletcher claimed he paid over \$3 million for \$1.5 million worth of property up and down the river. Fletcher, testimony before the House Committee on Public Lands hearings, "San Diego, California, Dam and Reservoir Construction Rights-of-Way across Indian and National Forest, part 2," 1 Feb 1918, 65th Cong., 2d session, 65 H.R. 4037, page 102.

⁷ Lonergan to Leupp, 15 June 1908, NARA-LN, BIA, RG75, PALA, Letters to the Commissioner of Indian Affairs (hereafter CIA), box 375, book 1, 96-98.

was cultivated, none of it irrigated, and principally devoted to extensive crops such as wheat, barley, corn, oats, potatoes, beans and peas. At Rincon, forty-two percent of the total land was cultivated, seventeen percent of that under irrigation. That land was planted in beans, hay, wheat, corn, watermelons, some garden truck, onions, peas and chilies. Clearly, La Jolla's lack of irrigable and arable land kept its agricultural production down.⁸ Many of the crops were meant for market, likely to supplement continued wage labor on nearby ranchos and farms.⁹ But notably absent were the high value intensive agricultural crops, such as citrus, fruit and nut trees that promised the greatest economic potential at the time, and which had recently come to dominate California's agricultural economy.¹⁰ This was due in part to the difficulty of transportation and market, and partly to the lack of reliable water supplies that intensive arboriculture required. Indians were active in working to secure both.

A June, 1907 letter from Gregorio Omish, captain at Rincon, to Duncan McArthur, the superintendent at Pala further illustrates the importance of securing markets for Indian agriculture. In the letter, Omish simultaneously asked for and granted permission to a non-Indian to open a store on the reservation:

Here in Rincon Reservation, Mr Carlos Forbes [wants] to live among with [sic] us, he came to me and spoke this matter, of course he have [sic] to obey the order like the rest of the people in this Reservation. And he promised me to obey my order and help us when ever their [sic] is some thing in this Reservation... he wants to have [a] little Grocery. Mr McArthur you know we need a

⁸ Philip T. Lonergan to Frances E. Leupp, 15 June 1908, NARA-LN, BIA, RG75, PALA, Letters to CIA, box 375, book 1, 96-98.

⁹ Shipek, *Pushed Into the Rocks*, 54-55.

¹⁰ Vaught, *Cultivating California*, 11-53.

little store around here. Now days on just for 25c we have to go clear down to Pala store or to Valley Center or Escondido.¹¹

According to Florence Shipek's analysis of Omish's journal, he "raised wheat and barley for sale, raised and sold livestock, [and] picked grapes."¹² The most likely destination for these goods would have been the store operated by Philip Sparkman on the Rincon reservation. However, Sparkman had been murdered a few weeks before Omish's letter, and Omish was likely looking for a new outlet for his own agricultural production.¹³

But another important component of the letter is Omish's understanding of his power in the matter. He clearly viewed his role in the decision as important. He had already granted conditional approval. But he also knew that federal sanction was, if not absolutely required, at least desirable. Omish's authority was contingent on the superintendent's approval.

Working to protect water rights was more complicated than securing a store. At the behest of the acting commissioner of Indian Affairs, investigations as to Indians water rights were begun in June 1905, but their outcome was inconclusive. Special attorney for the Mission Indians William Collier reported that the reservation land was riparian, and therefore had rights of its own, regardless of claims from downstream users. But he also urged superintendent Shell that

¹¹ Gregorio Omish to Duncan D. McArthur, 8 June 1907, NARA-LN, BIA, RG75, PALA, LR 1903-21, box 369, "Letters Received (Duncan D. McArthur)."

¹² Shipek, *Pushed Into the Rocks*, 54-55.

¹³ Richard Crawford, "Rincon Scholar: Storekeeper Quietly Recorded Luiseño Language, Culture," *Los Angeles Times* (San Diego edition), 29 August 1991; C.F. Larrabee to Duncan McArthur, 31 July 1907, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 369, folder "Letters Received, Duncan D. McArthur, 1907 [4/4];" Fred M. Jennings, letter to McArthur, 11 June 1907, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 369, folder, "Letters Received, Duncan D. McArthur, 1907."

the Indians must be made to keep the ditch in working order and to use it. "If the Indians quit the cultivation of the land, do not use the water and by reason of allowing their lands to remain uncultivated, put themselves in a position where they are not in any manner damaged by anything done by [upstream appropriators], they have no cause to complain in equity." Collier felt that legal action would be necessary to protect the reservation's rights. Acting Commissioner Larrabee agreed, urging Shell to advise the Indians that unless they kept the ditch in proper condition and the land cultivated, "the Office deems it advisable to move other Indians on to the reservation who will make the proper use of the land."¹⁴ While the recommendations were clear, the rights the Indian Office sought to protect were not. Before 1908, Indian water rights were unclear. After that time, they were only slightly less so. Further, until 1911, the state of California did not systematically collect and coordinate data on water usage and claims.¹⁵

Protecting water rights was left to the Indians themselves. The residents of Pauma constructed their own cement reservoir, for which they later sought reimbursement from the Indian Office. They were unsuccessful.¹⁶ In 1908, the agent for Rincon reported that the "only canals [on the reservation] are ditches made by the Indians" that were constructed to supplement the main line that

¹⁴ William Collier to Charles E. Shell, 27 June 1905, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 368, folder "LR May-Oct 1905;" and the enclosure, Indian Office to Collier, "Land 23781-1905," 3 June 1905.

¹⁵ Hundley, *The Great Thirst: Californians and Water, A History*, rev. ed. (Berkeley: University of California Press, 2001), 237.

¹⁶ [Charles Fletcher Lummis], [typed recommendations], The Papers of Charles Fletcher Lummis, University of Arizona, Special Collections Department, MS 297, box 13, folder 4.

was just outside the reservation.¹⁷ Additionally, in 1909, he requested \$154 for materials so that the residents could construct a flume to bring water from the San Luis Rey river to their fields.¹⁸ In all cases, Indians were seeking federal assistance in managing their own affairs — an attempt to synchronize local autonomy and federal authority in much the same way that the 1893 allotments had appeared to do.

In 1908, the United States Supreme Court moved to protect Indian water rights in *Winters v. United States*. The court recognized a “reserved” Indian right to all the water that could be used on the Fort Belknap Indian reservation. The so-called Winters doctrine extended to other Indian reservations. This right differed from a riparian right in that it could be diverted to non-riparian lands; and it differed from a right based on prior appropriation in that it was not contingent on continued beneficial use. But the Winters doctrine was unclear in terms of who exactly reserved the rights: the Indians by right of occupancy and thus dating from their original occupation of the lands in question; or the federal government on behalf of the Indians, and thus dating from the establishment of the reservation itself. Given that the congressional agreement that created the Fort Belknap reservation had the trappings of a treaty between sovereigns and played a significant role in the court’s decision, it was additionally unclear if the doctrine was applicable to reservations such as those along the San Luis Rey

¹⁷ Kelsey, *Report of the Special Agent*, 29.

¹⁸ William J. Davis to C.F. Larrabee, 8 March 1909, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 370, folder “Letters Received (Lonerger) 1908-10.”

River that had been created by executive order.¹⁹ In the case of La Jolla and Rincon, there was no attempt to apply the ruling. While developers asserted both riparian and appropriative rights, the Indian Office investigated both but sought to protect neither.

Everyone involved with the Indian Office had come to expect delay as normal operating procedure. But some time around early 1909, the residents of La Jolla and Rincon began to realize that the fact that titles to allotted land had not yet arrived was not attributable to delay. Tom Arviso of Rincon remembered speaking to the superintendent about the possibility of increasing the size of his twenty acre allotment when he was shown a letter that explained that the allotments had not been approved.²⁰ The revelation was a shock to the Indians who had fenced land and used it as their own for fifteen years. Additionally, it demonstrated the bureaucratic power of the distant federal government vis-a-vis the weakness of local officials.

The unapproved allotments put Indians in a double bind. Without clear title, many people “let things go... they got careless... because they [thought]

¹⁹ The issue was not decided until the Supreme Court decision *Arizona v. California*, 373 US 546 (1963) which ruled that executive order reservations have a recognized and vested right only back until the founding of the reservation. Norris Hundley, Jr. “The ‘Winters’ Decision and Indian Water Rights: A Mystery Reexamined” *Western Historical Quarterly*, 13, no. 1 (Jan 1982): 17-42; Hundley, Jr. “The Dark and Bloody Ground of Indian Water Rights,” 454-82; Pisani, “Betrayal of Indian Allotment,” 164-179; Daniel McCool, *Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era* (Tucson: University of Arizona Press, 2002), 10-20; House Committee on Indian Affairs, *Indians of the United States, Field Investigation: Hearings*, v. 3, Riverside, California, 66th Cong., 3d session, 18 May 1920, 1121-22.

²⁰ “Transcript of conference[s] between George Von Baux, Chairman of Commission of Indian Affairs, and Indians,” dated Escondido, 28 June 1925 and Rincon, 17 April 1925, entered as exhibit I in *US v. Albanes*; Arviso testimony, Reporter’s Transcript, v. 1, *US v. Albanes*, box 1, case, A2, folder [3/14], 261-63.

the land [did] not belong to them.”²¹ If fields went unplanted, water was not used, which in turn jeopardized unclear water rights that were ostensibly dependent on beneficial use. Residents of Rincon petitioned the Commissioner of Indian Affairs urging the completion of the allotments. But the Indian office informed them that the allotments would have to wait until they had settled the question of water rights.²²

Allotments at Pala had been approved, so the Cupeños avoided the confusion experienced at La Jolla and Rincon where the lack of allotments complicated water rights, and the uncertainty over water rights in turn stalled the allotment process. The status of the allotments also complicated the implementation of federal policies regarding inheritance. In May 1908, Congress passed a law changing the probate procedures involving Indian land.²³ Under the act, when an allottee died, land reverted to the government who sold it and distributed the proceeds among the heirs. The law generated a significant amount of confusion over the legality of Indian marriages and whether or not the change was retroactive and therefore applicable to the 1893 surveys at Rincon and La Jolla. In January 1909, agent P.T. Lonergan wrote to the commissioner requesting clarification and expressing his hope that the earlier allotment surveys could still be approved and that the allotments of those who had died could be sold.

²¹ Arvizo testimony, Reporter’s Transcript, v. 1, *US v. Albanes*, box 1, case, A2, folder [3/14], 263.

²² Shipek, *Pushed Into the Rocks*, 53-55.

²³ Act of 20 May 1908; Act of 25 June 1910.

This solution, he claimed, would “clear things up with a minimal cost.”²⁴ Further, this change was often perceived quite differently among Indians accustomed to viewing the government’s actions with suspicion. Dolores Newman later described the new policy as allotments returning to the government upon the death of the allottee, without any mention of the sale of the land and distribution of the proceeds.²⁵

A practical example of the expansion of federal authority was the bureaucratic reshuffling that Indian reservations in the region underwent in January 1909. The Pala superintendency, which previously had jurisdiction over the La Jolla and Rincon reservations, was broken into four separate superintendencies: Rincon, Pechanga, La Jolla and Pala. While the change expanded the scope of federal power, it also increased the bureaucratic confusion and in some important ways further undermined the allotment process, as with the family relations cards that had recently been sent to agent Lonergan at Pala. These were an effort by the Indian Office to record and reconcile Indian kinship systems with American legal patterns and were critical in determining inheritance.²⁶ Lonergan forwarded the cards to the various new superintendents, although he was himself unclear over jurisdictional boundaries. Confusion over kinship added difficulty to the allotment process.²⁷

²⁴ Philip Lonergan to Francis Leupp, 12 January 1909, NARA-LN, BIA, RG75, PALA, Letters to CIA, box 375, book 1, 218.

²⁵ Dolores Newman, testimony, reporter’s transcript, v. 20, *US v. Albanes*, box, 3, A2 [10/14], 2193-94.

²⁶ Strong, “Aboriginal Society in Southern California,” 189.

²⁷ Philip Lonergan to Francis Leupp, 4 January 1909, NARA-LN, BIA, RG 75, PALA, Letters to CIA, box 375, book 1, 210.

In 1912, Superintendent Runke urged the Indian Office to abandon the attempts to belatedly approve the earlier allotment surveys. He argued that the irrigation projects underway had altered the value of the land, and thus allotments should be resurveyed in a more equitable basis.²⁸ The project of which Runke was speaking began at La Jolla in August 1911. It consisted of a new dam on one of the two creeks that fed the reservation, and concrete pipes that carried the water to the arable land. The topography complicated the work, requiring sand to be hauled up from Rincon at great cost. In the end, over two thousand dollars was spent to construct the dam, purchase materials and lay one thousand feet of pipe, barely sufficient to irrigate the arable land. However, the work provided employment for two Indian supervisors, and twenty-one Indian laborers.²⁹

These projects were critical in securing the rights to the water that they would convey, but by 1911, the Office had done nothing to assert those rights. That year, Charles Olberg, the Indian Office's state superintendent for irrigation began to grow concerned that additional development of the river threatened the reservation's water supply and rights.³⁰ While the Indians of Pala could have claimed prior use from as early as 1874, if not earlier, the Office did not pursue

²⁸ Runke, Narrative Annual Report 1912, roll 99, 18.

²⁹ [Wayland Smith or Charles Fletcher Lummis], *On Land and Irrigation for the Indians of Southern California: An Official Report to the Sequoia League on the Indian Situation to July, 1911* (Los Angeles: JF Elwell Publishing for the Sequoia League, Los Angeles Council, 1911), 8-9; La Jolla Reservation Payroll, August 1911, NARA-LN, BIA, RG 75, PALA, Correspondence 1910-20, file 196.

³⁰ C. R. Olberg to Frank Mead, 6 September 1911, NARA-LN, BIA, RG 75, PALA, Correspondence, box 349, file 226.

legal measures either to assert the rights via *Winters* or to adjudicate their right on the basis of riparian rights or prior appropriation.³¹ In fact, Pala superintendent Frank Mead claimed his office had no information on file regarding the water rights on Pala, La Jolla, Rincon and Pauma. He requested information from Charles Olberg, the state superintendent of irrigation for the Indian Office. Olberg responded that none of the water rights along the river had been adjudicated, but "As you are probably aware," he wrote, "the Huntington interests have bought up from 90 to 95 per cent of the riparian rights of this system. Of course they could not obtain the rights belonging to the Indian Reservations, and they form a major portion of the water rights not now in their possession." By this time the Huntington interests had sold out to the South Coast Land and Water Company which was acquiring the remaining rights necessary for the construction of a dam at the site. Olberg advised that he did not "think it would be of any advantage to file on any waters of the San Luis Rey at this time for any of the above named reservations. Such water rights as these reservations have belong to them through prior use, and also through the riparian rights accruing to them through the Indian lands abutting on the ... river."³²

Unlike the Indian Office, private developers worked thoroughly to acquire and perfect their water rights along the river. Civil engineer Walter Huber filed a report on the water rights and potential damage from a proposed San Luis Rey

³¹ Butler's 15 March 1905 report, which was quoted in C.F. Larrabee to Charles Shell, 3 June 1905, NARA-LN, RG75, BIA, PALA, LR 1903-21, box 368, folder "LR May-Oct 1905;" Rader "So We Only Took 120 Acres," 420-22.

³² C.R. Oldberg to Frank Mead, 6 Sept 1911, NARA-LN, BIA, RG 75, PALA, Correspondence, box 349, file 226.

Irrigation District — an effort spearheaded by the Volcan Land and Water Company (VLWC). He recounted the VLWC's efforts, which included notices of appropriation filed prior to 1914 when such filings went before the State Water Commission. But to protect their rights, the VLWC asked the Water Commission to informally review the company's diligence and they found no complaint. Further, Huber claimed that VLWC's "right by appropriation ... is unquestioned and is believed to be fully established to date." But in addition to their rights by appropriation, the company had acquired practically all the riparian rights along the river.³³

The inability of *local* Indian Office officials to effectively manage the reservations created spaces for Indian organizations to develop. Initially established by the Indian Office to counter the power of the captains, reservation committees or councils usually consisting of six men, and elected by the adult males of the reservation, soon took on more autonomy than the Indian Office wished. While the agent described the members of the Pala Common Council as "uniformly progressive, reliable and intelligent," their actions make it clear that their agendas were never in lockstep with government plans, despite what the Indian agent said.³⁴

John Ortega served as the president of the Pala council. In that capacity, he wrote and signed a petition urging that the two thousand acres of the reservation that had not been allotted should be patented to the tribe in trust. At the

³³ Walter L. Huber, "Engineering Report upon Proposed San Luis Rey Irrigation District," 4 November 1918, Huber Papers, Water Resources Center Archives, University of California, Berkeley (hereafter "Huber Papers,") box 13, item 322.

³⁴ Runke, Narrative Annual Report, 1912, roll 99, 20.

time of their petition (1913), the government held the patent for the “so-called waste lands, or strictly speaking pasture lands” that were deemed of “such a rough and inhospitable nature as to make it unfit for allotment.” The signatories of the petition wanted it for use as grazing land and feared that it “may be some day opened to settlement or otherwise be conveyed to outside parties regardless of the interests of the Pala Indian tribe.” Collectively, the council resisted Indian Office efforts to control Indian space and lives.³⁵

In January 1912, the six-person Committee of La Jolla, Potrero Indian Reservation wrote to the Indian Commissioner in Washington protesting the construction of a road through the reservation:

In regard to the road that they intend to make through this reservation, we, the people of La Jolla, Potrero Indian Reservation, desire to call your attention to the fact that the road will come in contact with several allotments. The road camp came through here once and damaged our fences and cultivated lands without notifying us. For this reason we opposed for its further continuance [sic]. On account of our farming lands being so small, we desire that some pay may be made to us. We ask that the people desiring the right of way be given to them on condition to save as much of cultivated land as possible. We would like to have full information of the matter by which we may be able to collect damages done to us without trouble. Hoping we will receive an early reply and asking that you consider this our petition favorably, we submit our signatures.³⁶

Development increased the pressure on Indian land, but was also useful for the employment opportunities it produced that bolstered Indians ability to protect their land base. While the Committee above opposed the construction of

³⁵ Walter Runke to Robert Valentine, 8 April 1913, NARA-LN, BIA, RG75, PALA, Ltrs Sent to CIA, box 375, book 1, 148, 50.

³⁶ Sotero Amago, Mike Morales, Florencio Subish, Benito Amago, Toni Toba, and Bernardo Cuevas to Commissioner Robert G. Valentine, 30 January 1912, NARA-LN, BIA, RG 75, PALA, letters sent to CIA, box 375, book 3, 120.

the road because it jeopardized their land, the majority of Indians in the region engaged in periodic off-reservation wage work, and in 1912, agent Runke pointed to the county's highway and the Escondido Ditch company as two of the largest.³⁷ It is very likely that Indians represented by, or perhaps sitting on, the committee themselves worked in the road construction they protested here. This was a difficult balancing act — supplementing economic opportunities on the reservation with off-reservation work while maintaining control over Indian land in the face of that development.

Indian dependence on the river for economic development on the reservation increased their exposure to the pressures of off-reservation development. Non-Indian developers deemed Indian concerns irrational and excessive. Working for the Volcan Land and Water Company, under chief engineer W. S. Post, consulting engineer Charles Lee argued that damming the San Luis Rey at Warner's Valley would have little or no effect on *groundwater* supply in the San Luis Rey Valley. He cited the significant amount of precipitation below Warner's and above Pala, the steady flow of tributaries between the two valleys, and the beneficial regulative effect of gravels between Rincon and Pala.³⁸

In lieu of asserting Indian rights to more water from the river, the Indian Office advocated pumping groundwater and more efficient use of the water it

³⁷ "Conservative estimates place the amount of earnings of Indians from outside employment in the sum of Twenty-three thousand eight hundred thirty-four dollars for the for reservations." Runke, "Narrative Annual Report," 1912, roll 99, 15.

³⁸ Charles H. Lee to W.S. Post, 31 August 1916, included in his "Report on Effect of Proposed Construction of Warner Dam Upon the Ground Water Supply of the San Luis Rey Valley in Connection with the case of City of Oceanside, et. al. vs. Volcan Land and Water Co., et. al." Lee Papers, box 2, folder 10f, 3.

did receive. Supervising engineer of the Indian Irrigation Service, H. K. Palmer urged the superintendent to insist on receiving the 300 miners inches of water all year round and to spread it over the gravel and sands at Rincon. From there, the water could be pumped to both Rincon and La Jolla.³⁹ Just such a plant had opened at Pala in 1913, largely to replace additional irrigation works destroyed by other floods. The pumping plant brought 160 acres on the north side of the river under irrigation.⁴⁰ However, the cost overruns and inefficiency compromised the utility of the system.

By 1914, the Volcan Land and Water Company (VLWC) had secured control over much of the river through purchase of most of the riparian properties, from the South Coast Land and Water Company. VLWC signed a contract with the Escondido Mutual Water Company, the successor in interest to the Escondido Irrigation District, that gave Volcan the right to build Warner's Dam in return for protecting EMWC's water supply.⁴¹ Also, at roughly the same time, the secretary of the interior, on behalf of the Indians of Rincon, La Jolla, Pala and Pauma, signed a contract with William G. Henshaw, who had acquired Warner's

³⁹ H. K. Palmer to P. T. Hoffman, 12 November 1920, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 374, folder "General Correspondence of Paul T. Hoffman-Pala Indian School, 1920 [2/3];" C.R. Olberg to William S. Post, 16 April 1915, Fletcher Papers, box 20, folder 26.

⁴⁰ George Wharton James puts the cost of the pumping plant at \$18,000, but this is suspect, as it is the same figure ascribed in numerous other sources to the 1905 ditch of which Kelsey was so critical, and that was largely destroyed in the January 1916 floods. James, *Picturesque Pala*, 53-54. Also, in reply to Office Ltr "Education-Schools; Inspection. 3042-2-1911, 16518-1911, A.V.S." C. R. Olberg advocated pumping from the river bed as the San Luis Rey flowed underground during low water season. Pumping could irrigate approximately two hundred acres of land north of the river that was not susceptible to gravity irrigation. However, this would unequally distribute irrigated acreage leaving allottees north of the river with over 7 acres compared to the 1.25 acres available to those on the south side. Olberg to William H. Code, 22 April 1911, NARA-LN, BIA, RG 75, PALA, Corres, box 358, file 1052t.

⁴¹ Ed Fletcher to Herbert Clotts, 16 December 1918, Fletcher Papers, box 5, folder 1.

Ranch from the Huntington and Pacific Light and Power interests in 1911, and who also owned a controlling share in the VLWC. The contract stipulated that the proposed dam at Warner's ranch would be a "substantial benefit to the Indians" of Rincon, La Jolla, Pauma and Pala as it would impound the storm waters and reduce damage from erosion and flood. As a result, the secretary of the interior agreed not to object to the construction of the dam, and the company agreed to construct wells and pumping facilities and furnish the Indian residents the necessary electricity at a reduced rate if the dam affected the reservations' water supplies.⁴² But the contract also degraded Indian water rights for Rincon, from the "ample supply..." guaranteed to Rincon in 1894, to the 300 miners inches guaranteed by the 1914 contract. The minimum guaranteed became the de facto maximum.⁴³ In addition to the water rights, the contract guaranteed a right of way for EMWC to build and maintain a power plant on Rincon and rights of way across the reservation for the installation, operation, repair and maintenance of power lines and a road.⁴⁴

In addition to reducing the supply, the contract left in doubt who exactly was responsible for providing the water. In July, 1914 California Supreme Court Justice Frederick W. Henshaw informed William Henshaw — his brother — that Volcan had no obligation to provide the Indians at Rincon with water. Rather, it

⁴² Fletcher Papers, box 24, folder 34.

⁴³ Complicating comparisons are the discrepancies in the miner's inch. Thus, one second foot was equal to between 38.4 and 50 miners inches. Samuel C. Wiel, *Water Rights in the Western States*, 3d ed., v.1 (San Francisco: Bancroft-Whitney Company, 1911), 521; Olberg in 1915 argued that six second feet was equal to 300 miners inches, Olberg to William S. Post, 16 April 1915, Fletcher Papers, box 20, folder 26.

⁴⁴ "Contract," Fletcher Papers, box 24, folder 34.

had an obligation to provide EMWC with water, and they, in turn were responsible for providing water to the Indians. Only if EMWC failed to do so would Henshaw be required to supply them with their needs the same as a “white riparian owner.”⁴⁵ While in a legal sense, this was a distinction without a difference, in practical terms, it meant that the residents of Rincon had two layers of institutional resistance and bureaucracy to work through.

But there was also the question of the quality of the water. The 1914 contract mandated that the EMWC would provide Rincon with electricity to pump water as needed should water supplies from the river diminish. But pumping involved a very different sort of relationship with the land than using water from the river or flume. Pumping was dependent on outside forces, such as electricity, infrastructure, management, and was therefore much more prone to interruption and failure than was regular riparian irrigation. Further, underground water was generally held to be of poorer quality for agricultural purposes as it lacked sedimentary nutrients that rivers carried.

There were a series of disputes between the Indians and the EMWC regarding the power supply to Rincon. One such dispute in June 1917, agent Thomas McCormick complained that the EMWC “interprets the contract to furnish the Rincon Reservation with power in an entirely different way than was intended. In [v]iew of this fact, I recommend that the right of way be held in abeyance until this matter is adjusted. [...] regarding the price at which they are

⁴⁵ Frederick W. Henshaw to William Griffith Henshaw, 31 July 1914, Fletcher Papers, box 1, folder 14; Courtemanche, “The Utilization of Water in San Diego County,” 31.

to furnish the power."⁴⁶

The infrastructure of development altered political power relationships on the reservations. If the river was to be managed, then it needed managers. Pumping required pumping plants and people to operate them. This injected new sources of economic and political power into the reservations and accentuated the differential access already available to those sources of power. While it provided opportunities for beneficial wage work on the reservation, it also strengthened the federal government's hand in distributing that work, and benefited some Indians more than others. For example, Tom Arviso, an Indian living at Rincon, was paid well above the going rates for day laborers to operate the pump.⁴⁷ Arviso and the other pump operators did not need to fear for their jobs, as the increasing development of the river and the dam altered the hydrology of the San Luis Rey basin and further entrenched the necessity of pumping and irrigation works on the area's reservations.

Rather than asserting Indians' reserved water rights, or those that derived from prior appropriation or the riparian property, the Indian Office brokered more agreements with developers. In 1917, representatives of the Henshaw and Fletcher interests held a conference in Washington D.C. with Indian Commissioner Cato Sells. They agreed that Pala would not be affected by Warner's Dam because Pauma Creek below the dam but above the reservation provided an abundance of water. However, on Rincon, upstream from both Pala and

⁴⁶ Thomas McCormick, letter to Commissioner, 27 June 1917, NARA-LN, BIA, RG 75, PALA, Letters Sent, box 376.

⁴⁷ Tom Arviso, testimony, Reporter's Transcript, v. 8, *US v. Albanes*, box 2, A2, [6/14], 843-44.

Pauma, Henshaw agreed to put in wells and install a pumping plant to furnish them with water.⁴⁸

Additionally, no effort had been made to follow Olberg's advice above — to press for protection of Indian water rights. In 1920, H.K. Palmer suggested that "Under the circumstances I believe our rights at Rincon and Pala are protected and any permits granted by the [recently formed Federal] Water Commission will be subject to vested rights which we have. However, it might not hurt to notify the Commission of what we consider our vested rights." Clearly, federal officials were not vigorously prosecuting Indian rights. Nothing had been done on that score since the Kelsey and Olberg recommendations in 1906 and 1911.⁴⁹

By far, the most damaging aspect of government ineptitude in terms of irrigation were the changes to the way Congress funded Indian Office irrigation projects. Initially, expenditures for irrigation came through regular congressional appropriations that were to be reimbursed through the sale of public land. Nationally, construction delays and uncertainty over water rights created a system in which entire tribes often paid for irrigation that benefited only a few Indians, and often non-Indian farmers in the region. In an attempt to address that problem, in August of 1914, Congress changed the policy to attach reimbursable irrigation debts directly to the land itself — ostensibly to ensure that only those individuals directly benefiting from irrigation would have to pay for it, regardless of

⁴⁸ Fletcher to Cato Sells, 2 October 1917, Fletcher Papers, box 24, folder 34.

⁴⁹ H. K. Palmer to Paul T. Hoffman, 12 November 1920, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 374, folder "General Correspondence of Paul T. Hoffman-Pala Indian School, 1920 [2/3]."

race.⁵⁰ Congress hoped the individualization of costs would make allottees more responsible. Additionally and importantly, the act that made that change, also made all expenditures *retroactively* reimbursable.⁵¹ In the case of Pala, the cost of the ill-conceived and unnecessarily complex water projects was retroactively attached as a lien on the land itself, soon to be patented to Indians who had exercised no say in the projects' design or construction, but who now "benefited" from them.

The increasing scarcity of water supplies necessitated more complex and thus expensive irrigation projects. That, in turn, increased the debt owed by Indian allottees (or potential allottees) as well as their reliance on electricity and mechanical systems prone to interference or failure. When massive floods struck the area in January and February of 1916 the contingencies facing Indian communities unravelled like a pyramid scheme.⁵²

The cumulative effect of this scenario was that it all-but ensured the 'incompetency' of the Indians, even before commissioner Sell's 1917 "declaration of policy" that established blood quantum thresholds in determining competency

⁵⁰ McDonnell, *The Dispossession of the American Indian*, 71-86.

⁵¹ McDonnell, *The Dispossession of the American Indian*, 77-78.

⁵² The floods took the wind out of the sail in an ongoing lawsuit filed by the City of Oceanside against the Volcan Land and Water Company, part of which rested on the argument that construction of the dam in Warner's Valley would deprive Oceanside of the enrichment of the soil that periodic flood water provided. Charles H. Lee, "Report on Effect of Proposed Construction of Warner Dam Upon the Ground Water Supply of the San Luis Rey Valley in Connection with the case of City of Oceanside et. al., vs. Volcan Land and Water Co., et. al., 31 August 1916, in Lee Papers, box 2, folder 10f.

en masse.⁵³ For those to whom patents had not been issued, irrigation appropriations became a charge against the land, and the land a security against payment of the debt, thus limiting the government's willingness to issue patents.⁵⁴ In cases such as Pala, where patents were issued in 1915, the landowners were saddled with huge debts. An example illustrates this point: In 1918, Enrique Owlinguish was about to graduate from high school at the Sherman Institute in Riverside. He held a trust patent dated 24 May 1915 to an allotment of just under eight acres on Pala, half of which was irrigable. Hoffman put the total value at \$1,200. There was a reimbursable debt of around \$700 standing against this land for the irrigation system. Owlinguish's options as a recent graduate were fairly limited: return to the reservation and attempt to farm his way out from under a debt he had not accrued; or abandon some or all of the land.⁵⁵ This was not an auspicious beginning to a career as a yeoman farmer in the years following the First World War, when commodity prices dropped precipitously.

As the Indian Office continued to build irrigation projects without Indian consent, it also tried to devise a way of collecting this growing debt, a task that

⁵³ Cato Sells, "Declaration of Policy in the Administration of Indian Affairs," 17 April 1917, NARA-LN, BIA, RG 75, Records of the La Jolla Superintendency (hereafter LA JOLLA), box 343, folder "Letters Rec'd 1911 [sic] [1/2];" McDonnell, *Dispossession*, 103-110.

⁵⁴ Paul Hoffman, testimony, House Committee on Indian Affairs, *Indians of the United States, Field Investigation: Hearings*, v. 3, Riverside, California, 66th Cong., 2d session, 20 May 1920, 1097.

⁵⁵ Cato Sells, letter to Henry J. Owlinguish, 18 May 1920, NARA-LN, BIA, RG 75, PALA, LR 1903-21, box 373, folder "General Correspondence, Paul T. Hoffman." It is unclear what Owlinguish did, although he does appear in subsequent census rolls for Pala and appears to have remained on the reservation.

some claimed was already impossible.⁵⁶ By 1918, superintendent Paul Hoffman estimated Pala's irrigation debt at \$219 per acre. By 1919, the figure had risen to \$229 per acre. Debt nearly approached the value of the land itself.⁵⁷ In February 1920, Cato Sells, the Commissioner of Indian Affairs, requested opinions from superintendents on a plan to begin to collect portions of the debt in November of that year. Generally, superintendents saw chaos ahead. Hoffman claimed that any attempt to collect the reimbursable debt then was "exceedingly ill-timed." He suggested that the government could waive the requirement on the basis of inadequate funds. He was well aware of the fact that the government had already exhibited no willingness to do this on grounds of the precedent it would set, and wrote, "Permit me to contend that these Indians are entitled to have their case decided upon its merits, and not upon whether or not a precedent would embarrass the Indian Office. Such seems to be hardly adequate grounds for collecting \$120,000."⁵⁸ New York representative Homer Snyder, who chaired the Committee on Indian Affairs, labeled the debt "unfair and unconstitutional," and claimed it would "cost more to attempt to collect these items than the Government would recover."⁵⁹ In field hearings before that committee in Riverside California in 1920, he claimed there "is just about as much chance for the Government to get that [money] back as there would be if I gave

⁵⁶ Homer P. Snyder, "Report on Indian Appropriation Bill for 1921," 19 December 1919, U.S. House Committee on Indian Affairs, 66th Congress, 2d session (hereafter "Snyder Report").

⁵⁷ Hoffman to Sells, 23 November 1919, 1, NARA-LN, BIA, RG 75, PALA, Correspondence, 1910-20, box 359, file "Irrigation and pumps."

⁵⁸ Hoffman, "Urgent Needs of Pala Agency," 1920, NARA-LN, BIA, RG 75, PALA, Correspondence, 1910-20, box 361, file "Hoffman Personal," 2.

⁵⁹ Snyder Report.

you a thousand dollars twenty five years ago as a present and changed my mind now and brought an action against you to recover,” and urged those present to actively resist paying the debt.⁶⁰

The debt made it impossible for Indian Office officials to justify issuance of patents in fee to those Indians who, according to the superintendent, were deemed “competent.” This surprised South Dakota congressman, and future Commissioner of Indian Affairs, Charles Rhodes, who stated that, the fact that reimbursable appropriations affected the issuance of fee patents was “certainly news to me.”⁶¹ Hoffman feared that if Indians received a fee simple patent, they would sell their land to cover the lien, and in so doing complicate the water rights of other Indians on the reservation. Hoffman urged a resolution to the “reimbursable situation,” so that they could “allot, issue fee patents and certification of competency to those capable of receiving them, [at which time] the work of the Government in this locality will, to a large extent, be accomplished.”⁶² Despite his efforts and the fact that many of the Indians on the Pala reservation had become self-sufficient agriculturalists, by 1920, only one such patent in fee was issued. That went to Domingo Moro, the one-time assistant farmer, Chief of Police and pumping plant operator, who had a homestead just outside Warner’s Ranch and had not received an allotment on Pala.⁶³

⁶⁰ House Committee on Indian Affairs, *Indians of the United States, Field Investigation: Hearings*, v. 3, Riverside, California, 66th Cong., 2d session, 18 May 1920, 1121.

⁶¹ *Ibid*, 1097.

⁶²P.T. Hoffman, letter to Commissioner [Sells], 23 November 1919, NARA-LN, BIA, RG 75, PALA, Correspondence, 1910-20, box 359, "Irrigation and pumps."

⁶³ Hoffman to Sells, 6 June 1919, NARA-LN, BIA, RG 75, PALA, MIA/CCF, box 14, folder 7.

In November, additional irrigation work began at La Jolla which Hoffman, seemingly forgetting the difficulties with the financing, claimed would add a lot of security to the reservation. The existing reimbursable irrigation debt was more than \$73,000, but hung in a state of abeyance awaiting allotments. It was, in the words of Saturnino Calac, “a shadow overhanging us.”⁶⁴

As a result, Indians were tied to the river in ways they had not been before. The bind exposed the shallowness of the Indian Office’s desire to see the reservations become self-sufficient and successful agricultural enterprises. It had always been a tenuous goal, buffeted by the Office’s equally strong desire to see Indians leave the reservations and assimilate into American society. With the former option in disarray, Indians turned to the latter. In 1919, despite his pat reassurances that the men of La Jolla were engaged in gainful employment, entirely self-supporting through farming, stock-raising, poultry-raising and day labor, superintendent Hoffman admitted that there had been a “gradual exodus” from La Jolla over the question of allotments. Tentative allotments gave small plots to young men who were now married with families. Their land was too small to support them and they were leaving for work as laborers. Hoffman seemed oblivious to the contradiction, wishing to report positively to the Indian Office that his management of the reservation was in keeping with the prevailing civilization model, but unwilling or unable to mask the fact that he himself did not think it was working. In fact, he urged the Indian Office to let the Indians

⁶⁴Saturnino Calac, transcript of remarks at Conference between George Von Baux, Chairman of Commission of Indian Affairs, 17 April 1925, Rincon reservation. Included as exhibit I in *US v. Albanes*, exhibits A-2-M, box 1A, folder “San Diego A-2-M exhibits 1-46.”

go to the cities, give them patents in fee, and let them dispose of their lands. This would “let him and his family forget that they were ever wards of the Government,” despite the fact that the prevailing judicial opinion would have found them to still be wards.⁶⁵

Indian residents of the reservations had watched as the Indian Office put them further in debt, abused their rights and mismanaged their affairs. They recognized where real power lay — in Washington D.C., and in the courts, not with the local agents. Two simultaneous events drove this lesson home: In January 1923, construction began on Henshaw dam, which altered the hydrology of the valley in ways that were detrimental to Indians. As the valley began to fill, and the Indian bodies were exhumed from graveyards to make way, William Thorn began to resurvey the nearby Rincon reservation into five acre plots under the authority of Special Allotting agent, H.E. Wadsworth.⁶⁶ He attempted to respect the existing, irregular and larger surveys, as the “Indians have followed this local survey ever since [1893], as representing the boundaries of their allotments and it is the opinion of the supervising engineer that they should form a basis for the present allotment survey.”⁶⁷ Thorn wanted to preserve to each Indian their current home, and the land adjacent to it. The current resident received first choice, before it was made available to others. The goal through

⁶⁵ Hoffman to Sells, 23 November 1919, NARA-LN, BIA, RG 75, PALA, Correspondence, 1910-20, box 359, "Irrigation and pumps," 1.

⁶⁶ John Plover to William H. Thorn, “Special Instructions to Cover Surveys Under Group 125 (Indian Allotment Surveys),” 8 October 1923, read into testimony, Reporter’s Transcript, v. 5, *US v. Albanes*, box 2, folder A2 [4/14], 567.

⁶⁷ *ibid.*

all of the allotments was to assign the home to the head of household, and adjacent land to the family members, and thus, in an informal way to replicate family ownership of larger plots. However, it is logical that the most agriculturally productive section of the plots was rarely the ideal place to locate a home. Thus residents who had farmed one section of their allotments, and located their houses elsewhere, often found that they risked losing their farmland in the new allotments.

There were a number of problems with the new surveys. Attempting to align the pre-existing allotments with the aggregate family plots of the new surveys provoked internal disputes and challenged parental authority. There were also large and important questions over eligibility for allotment as Wadsworth used the 1923 census as *prima facie* evidence of eligibility. And finally, the new allotments often dispossessed existing users of the land. Unlike the surveys in 1893, the Indian Office would face organized resistance from the Mission Indian Federation, the subject of the subsequent chapters.

In the end, the construction of the dam was less destructive on La Jolla than on Rincon and Pauma as it was not directly receiving water from the river itself. It was less destructive on Rincon and Pauma than on Pala, where the San Luis Rey River dried up within twenty years.⁶⁸ Floods had once provided more water than that required by contract. But the dam regulated floods and reduced the amount of water available to Indians.⁶⁹ Water rights and supplies un-

⁶⁸ Karr, "Water We Believed Could Never Belong to Anyone," 393-94.

⁶⁹ Karr: "Pala," 152-53; [untitled manuscript], [1920], NARA-LN, BIA, RG 75, PALA, LR 1903-20, box 373, folder "General Correspondence, Paul T. Hoffman, 1920" [2/2].

dermined allotment. The bureaucratic gridlock and mismanagement vested some Indians, dispossessed others, and polarized the reservations, pitting Indian against Indian, and in some cases, the young against the old. Indian Office policies unintentionally created a power vacuum that the Indians organized to fill. When, in March of 1925, Vidal Mojado and perhaps a half-dozen others tore down Steve Kitchen's fence on the La Jolla reservation because he had abandoned the land and moved away, he justified their actions by claiming, "we didn't have any pasture, and besides, it wasn't given by the people; it was given by the superintendents."⁷⁰ Mojado claimed to be doing the will of the people in retaining the communal land which allotment and the irrigation works on the reservations had challenged. Recognizing the futility of relying on federal oversight for protection of their interests, Indians made reservations such as those along the San Luis Rey River into homelands from which they deployed their political and legal agenda.

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⁷⁰ Mojado, testimony, pt. 2, Reporter's Transcript, v. 11, *US v. Albanes*, box 2, folder [7/14], 1350.

CHAPTER SIX

“NOT ORGANIZED FOR AMUSEMENTS NOR CURIOSITIES”

The Emergence of the Mission Indian Federation, 1908-1921

The Mission Indian Federation developed out of the reservation committees, councils and informal self-defense organizations active across the Mission Indian reservations of southern California in the early twentieth century.¹ Through participation in the American legal system to defend Indian land, assert their rights as citizens, their sovereignty as Indians, and the responsibilities of the government, the federation sought to displace the power of the Indian Office itself. It eventually coalesced into a formal organization in 1919, as representatives from the numerous reservations in southern California met at the Riverside home of Jonathan Tibbet, a white real estate broker. Despite his very public presence as the organization's Grand Counselor, the federation was popular among the Indians of the region, particularly for the first few years of its formal existence. While no membership records exist, the federation claimed over 2,000 members by 1920 and the Indian Office generally concurred.² With Tibbet as the only non-Indian member by constitutional design, the federation retained an essentially Indian identity, especially after 1922 under the leadership of

¹ Shipek, *Pushed Into the Rocks*, 50-53; Thorne, “Death of Superintendent Stanley;” Thorne, “On the Fault Line.”

² Certainly, both groups had very different reasons to inflate the numbers: the federation wanted to demonstrate its power as a recruitment and bargaining tool; local superintendents and those most likely to investigate the federation were predisposed to see it as a threat and often exaggerated the nature of that threat to facilitate a response.

Adam Castillo, a Cahuilla from the Soboba reservation.³ The Indian Office perceived the federation to be a significant threat and their initial reactions to it seemed designed to promote federation recruitment efforts. Both sides engaged in hyperbole, a fact that has captured the attention of the few scholars who have written about the federation. But rhetoric can be misleading. This chapter examines some of the important members of the organization during its early years as a way of deepening our understanding of the appeal of this important Indian organization.

Adam Castillo, who led the federation from 1922 until the 1940s, was born in 1885 on the Soboba Indian reservation in what is now Riverside County, but these facts mask the incredible complexity of the time and place. The three thousand acre reservation had been created by executive order in June 1883, but large portions of it were cancelled in March of 1886. Some of those cancellations were restored in January of the following year, but at the same time, other sections of the reservation were cancelled. In 1885, it was difficult to know with certainty just exactly where the reservation boundaries were.⁴

Castillo was raised by his mother, Palonia Lugo, and her husband Adolfo Chapo Luna, a Yaqui Indian whom she married when Adam was ten.⁵ Neither census records nor his testimony identify his father or place of birth, and some sources list Palonia as his grandmother. As a result, Castillo's Indian ancestry

³ Adam Castillo, testimony, pt.3, Reporter's Transcript, v.26, *US v. Albanes*, box 3, folder [13/14], 2797.

⁴ *Soboba Band of Mission Indians v. United States*, 37 Indian Claims Commission, 326, (1976).

⁵ W. L. Chilcott letter to C.L. Ellis, 7 July 1930, NARA-LN, RG75, MIA / CCF, box 16, folder (3).

became a matter of some contention at a time when it was a critical determining factor in Indian policy decisions. The 1910 federal census recorded his mother as a “full blood” Cahuilla.⁶ Castillo later claimed he was three-quarters Indian, while the Indian office consistently recorded him as one-quarter, although acknowledging that he claimed more.⁷ The facts are uncertain, but by claiming a high degree of Indian ancestry, Castillo established a more “authentic” Indian-ness. This was in keeping with assertions by federation members that their activities represented the “purer-blood” Indians against the “half-breeds,” (the common terms of that day) immigrants, and off-reservation Indians, to whom, they argued, the government gave preferential treatment in the allotment process.⁸ But on the other hand, after commissioner Sells’ 1917 “declaration of policy,” which authorized patents in fee, and thus competency, to all Indians “of less than one-half Indian blood,” the higher blood quantum, along with the lack of an allotment, guaranteed his continued wardship and ineligibility for citizenship. As late as 1931, he was, as were almost all Indians in the jurisdiction, still a ward.⁹

⁶ *Thirteenth Census of the United States, 1910*, Hemet Township, Riverside County, California, Microfilm copy T624, roll 91.

⁷ In 1934, Indian census enumerator recorded Castillo as being 1/4 Indian, but wrote above that, “Claims 3/4.” Indian Census schedule, “Mission Indian, 1934-35,” *Indian Census Rolls, 1885-1940*, NARA, microfilm publication M595, BIA, RG75, roll 265.

⁸ Edward J. Kelly, “Respondents’ Opening Statement,” 26 September 1929, Reporter’s Transcript, v. 1, *US v. Albanes*, box 1, folder [3/14], 39.

⁹ Cato Sells, “Declaration of Policy in the Administration of Indian Affairs,” 17 April 1917, NARA-LN, BIA, RG 75, BIA, MIA/CCF, box 14, folder 7. Indian Census schedule, “Mission Indian, 1930-31,” *Indian Census Rolls, 1885-1940*, NARA, microfilm publication M595, BIA, RG75, roll 262; *Fifteenth Census of the United States*, Hemet Township, Riverside County, California, Microfilm copy T626, roll 183.

The Indians at Soboba felt their status as wards in very palpable ways. In 1882, Matthew Byrne, who had recently acquired the rancho San Jacinto grant, secured an ejectment order against Antonio Alas and the other Mission Indians living on it, but the superior court of San Diego County vacated the order and the state supreme court affirmed that ruling in 1886. Byrne tried again, this time getting a favorable ruling from the county court, which was overturned by the state supreme court in 1888.¹⁰ The two *Byrne* decisions were clear victories for the Indians of Soboba and the Indian Rights Association that had supported the legal fight.

Obviously, at the age of five, Castillo did not follow local land disputes closely. But until the Supreme Court decisions in *Botiller v. Dominguez* (1899) and *Barker v. Harvey* (1901), the *Byrne* decision caused local optimism. But it was always tempered with an underlying anxiety over land as non-Indian settlement in the region grew. These were Castillo's formative years, and, as all Indians around Soboba, he was likely keenly aware of federal power over their lives.

When the twentieth century turned, Indian optimism ran headlong into Indian Office efforts to assert control over Indian affairs in the region. Such was the case at the nearby Cahuilla reservation. The remote reservation, and others in the Soboba jurisdiction, had retained comparatively more independence from federal Indian Office oversight than the reservations closer to the coast.¹¹ The

¹⁰ 9 P. 850 (1886); 74 Cal 628, 16 P. 523 (1888)

¹¹ Thorne, "Death of Superintendent Stanley," 234.

captain of the Cahuilla reservation in 1907, Leonicio Lugo was an heir to that independence. He assumed the captaincy of the reservation from his father, just as the Indian Office attempted to replace captaincies with committees. His methods of leadership clashed with that of the superintendent, Frances Swayne, who was appointed two years after Lugo assumed the captaincy. The new superintendent questioned Lugo's rights to collect a three dollar tribute from each adult male Indian for the dispensation of justice, and challenged the existing system of levying fines for non-Indian cattle trespass as corruption. Instead, he recommended impounding trespassing cattle and bringing suit against their owner — a very cumbersome process that usurped what Lugo took to be the legitimate exercise of the captain's authority. Lugo asserted the reservation's right to control its own affairs, even suggesting that it was inappropriate for Swayne to bypass him in his correspondence with the Indian Office.¹² Swayne claimed in 1910 that the Indians "wanted a patent to their land so that they could be left to do as they wished, and said they wanted [Swayne] to let them alone and let them run things on their reservation as they pleased."¹³

Rather than following that path, Swayne deposed Lugo on spurious charges related to drinking and proposed a business council to replace him. But Lugo refused to step down and the Indian judge refused to levy a fine against him or sanction his replacement. The period between mid 1910 and late 1911 was characterized by two competing systems of authority, with the real power

¹² *Ibid.*, 241-242.

¹³ Swayne letter of 10 Nov 1910, in NARA-DC, RG 75, file 102298-1-1910 Cahuilla-150, as quoted in Thorne, "Death of Superintendent Stanley," 242.

resting in the hands of Lugo, who went to Washington, D.C. in the summer of 1911 to get the patent for their reservation.¹⁴ He believed that the patent was the key to ending outside interference by the Indian Office, and restoring his authority.¹⁵ At roughly the same time as Lugo's visit to Washington, the Indian Office replaced Swayne with William Stanley, an act that emboldened Lugo among the Indians of Soboba. As a result, the Indian Office increasingly targeted Lugo and his supporters as "trouble makers," and attempts at reconciliation in the fall failed.¹⁶ In October, Lugo wrote to Stanley:

Really Mr. Stanley we are not a grouchy or complaining people... It is true that we have complained in the past, but it was because of the injustice that was inflicted upon us, we ask [for a] square deal, that's all, we want to be given a certain degree of self government consistent with the rules of the Indian department — we desire to be treated as men not as children.... We complained in the past because the government put a tyrannical man over us who disregarded our wishes and rode over our rights simply because he had the power to do so.¹⁷

In May 1912, during the Cahuilla's annual fiesta, a confrontation occurred over a dispute about public access to reservation grazing lands. When Stanley summoned the Indian responsible for blocking access, he met with resistance, and turned to agency policemen for assistance. They were met by a group led by Lugo who resented Stanley's interference. The dispute eventually evolved into a heated argument over whether or not Lugo was a captain and

¹⁴ Thorne, "Death of Superintendent Stanley," 242.

¹⁵ *Ibid.*, 243.

¹⁶ Frank Thackery, report to Commissioner, 21 June 1912, NARA-LN, RG75, MIA, box 29, file 171: Law— Offenses and Crimes.

¹⁷ Leonicio Lugo to William Stanley, 20 Oct 1911, NARA-DC, RG75, MIA file 25430-1911 Soboba-175, as quoted in Thorne, "Death of Superintendent Stanley," 244.

what that authority meant. Stanley purportedly claimed that “Washington doesn’t know you are captain.” To which Lugo replied, “They are not voting at Washington for me to be captain,” rather, the people of the reservation voted.¹⁸

During the confrontation, a fight broke out in which Stanley was shot and killed and a number of people were wounded by gunfire. Nine people were charged with Stanley’s death, and six were found guilty including Lugo and sentenced to ten years in the federal penitentiary in March 1913.¹⁹ The six appealed the decision to the Supreme Court on grounds that, under the Treaty of Guadalupe Hidalgo, they were citizens, and as such were subject to the laws of the state of California, not the jurisdiction of the federal government. In 1914, the Supreme Court dismissed this argument and ruled, as an aside, that Cahuilla Indians were, “tribal Indians, leading a tribal life, and living on a tribal reservation under the control of the United States.” In dismissing the argument, and the case, the Court also labeled the entire reservation “tribal,” a distinction that became critically important in denying Indians citizenship with the 1917 *Anderson v. Mathews* decision three years later.²⁰

The murder and conviction polarized southern California. Many non-Indians perceived the killing as evidence of an impending regional Indian uprising. The Indian Office now had an identifiable target for its suppression of Indian resistance, and a ready-made litmus test for Indian “loyalty.” The efforts to stifle dissent on the reservations that followed led to the politicization of many who

¹⁸ As quoted in Thorne, “Death of Superintendent Stanley,” 244.

¹⁹ *Ibid.*, 247.

²⁰ *Apapas v. US*, 233 US 590 (1914); *Anderson v. Mathews*, 174 Cal. 537; 163 P. 902 (1917).

had not previously been involved. Leonicio Lugo's nephew circulated petitions that, according to historian Tanis Thorne, demanded Indian citizenship as a means of escaping federal guardianship.²¹ Those with the clearest economic prospects, who had the most to lose with further government mismanagement led the charge.

Less dramatic events took place at the Soboba reservation, twenty miles to the north. Allotment surveys for two-and-a-half acre plots began in 1912, and Harwood Hall, the superintendent and regional fixture in Indian affairs claimed he would do away with the old political leadership and appoint a six-man committee to govern the reservation.²² Adam Castillo recalled a meeting with Hall at this time in which Hall announced his decision, but refused to let Indians speak by claiming, "this is no day for speeches." Many Soboba residents refused to recognize the authority of the new committees.²³

Castillo's involvement with the dispute on the reservation was limited by his mobility. Around 1912, he left for Redlands.²⁴ Castillo was therefore absent from the reservation when the allotment surveys were completed and claimed

²¹ Thorne, "Death of Superintendent Stanley," 247. Lupy Lugo eventually joined with Ben Amago, William B Nelson and Ignacio Costo, among others, to form the short-lived American Mission Indian Cooperative Society in May 1920, which they envisioned to be an alternative to the Mission Indian Federation. House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1094.

²² Hall apparently published his plans in the San Jacinto Register. I am relying here on Adam Castillo's interpretation of the article, which is obviously problematic. Castillo, testimony, *US v. Albanes*, 8 January 1930, box 3, A2 [13/14], 2749-50.

²³ Adam Castillo, testimony, *US v. Albanes*, reporter's transcript, v26, NARA-LN, RG21, box 3, folder A2 [13/14], 2749.

²⁴ Castillo described it as a few months at each place, working "combined harvesters... sowing sacks," that is, harvesting grain and using a sacking jig to fill and sew sacks.

he received no land there. Some time around 1915, Castillo returned to the reservation and began petitioning the Indian Rights Association and the Indian Office in Washington D.C. for help in preventing Indians from other reservations and villages, whom he referred to as “outside Indians,” from receiving allotments at Soboba, and for help in establishing the boundaries of the reservation itself.²⁵ His early activism was not on behalf of *Mission* Indians, but *Soboba* Indians, and seems in part at least to have been motivated by very personal concerns — namely, his own lack of an allotment.²⁶

In 1917, H. E. Wadsworth replaced Hall as superintendent at Soboba and reinstated popular elections for tribal offices. Castillo was elected judge, and requested some instruction on the law. He was given an 1887 compendium of Indian Office rules and regulations. This was a difficult time to be an Indian judge, even with an up-to-date handbook. But it was particularly complicated as major legislation and court decisions between 1887 and 1917 had fundamentally altered Indian law. While Castillo’s charge as judge was to keep the peace and settle local disputes, it is clear that he viewed his task as much more expansive and part of an existing Indian legal system.

The following year, allotments proceeded at the Morongo (Malki) and the other desert reservations. Indians resisted the allotments on a number of grounds: the plots were too small (e.g. five acres) to be productive, they would likely lead to overall Indian land loss, and the survey lines didn’t agree with nor

²⁵ Castillo testimony, *US v. Albanes*, reporter’s transcript, v26, NARA-LN, RG21, box 3, folder A2 [13/14], 2798.

²⁶ He mentioned La Jolla, Rincon and Mesa Grande specifically. Castillo, testimony, *US v. Albanes*, reporter’s transcript, v26, NARA-LN, RG21, box 3, folder A2 [13/14], p2798.

respect the improvements upon existing landholding patterns that appear to have originated with surveys from the 1890s that were never approved by Congress. In April, Julio Norte, of Malki, and Joe Pete, the captain of the Cahuilla at the Torres reservation, traveled to Riverside where they solicited the aid of local lawyer B.H. Jones and Jonathan Tibbet.²⁷ Norte had planted an orchard on three acres of his previous allotment selection on the Malki reservation some time around 1912. He was understandably concerned about losing that six-year investment before it had a chance to yield.²⁸ Joe Pete was fifty at the time. He had led a draft resistance movement during WWI, and written a number of Indian office officials and local politicians complaining about the increasing debt accruing to allotments due to changes in the way irrigation projects were funded, as well as the deplorable living conditions on the reservations. His work aroused considerable local attention and earned him the label, “trouble

²⁷ B. H. Jones, described by Hoffman as a “mixed-blood” negro who, along with Joe Pete, Julio Norte and Jonathan Tibbet, moved about from place to place, trying to make trouble on these reservations.” Jones testified in hearings before the House Committee on Indian Affairs that at Martinez, Malki and Cabazon, land was being allotted to unborn children. Jones was also a defendant in a 1921 criminal case brought by the federal government which claimed that Jones was stirring up trouble at the Martinez / Torres Indian Reservation by claiming that the federal government was planning to confiscate Indian land to give to discharged U.S. soldiers. House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1121; “Indictment,” *United States v. Jonathan Tibbet, [sic] Joe Pete, B.H. Jones and F.U.S. Hughes*, NARA-LN, USDC, RG 21, District Court for the Southern District of California, Southern Division, 1921.

²⁸ House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1117; CC Painter, *The Present Condition of the Mission Indians of California*, 10.

maker.”²⁹ The fledgling organization’s work in 1918 seems to have been limited to raising public awareness and the ire of the Indian Office. Initially, the limited ambitions of the organization stemmed from the very different perceptions people had of it within and without southern California Indian country.

One of the problems in making sense of the Mission Indian Federation, is making sense of Jonathan Tibbet’s participation in it. A former real-estate agent and son of a California pioneer family, Tibbet appears to have had both a genuine interest in California Indians, and a host of potential ulterior motives for becoming involved in their affairs.³⁰ He was successful enough in the Riverside real estate and mining booms of the late nineteenth century that he was able to retire early to a comfortable life at his large home on Prospect Avenue that he and his wife, Emma, owned free and clear by 1910.³¹

Tibbet was born around 1863 and raised on his family’s ranch near San Gabriel. At some point in his youth, Tibbet served as a “Civilian Scout,” assisting the U.S. government in its campaigns with the Indians of the southwest. Tibbet

²⁹ Hoffman was the superintendent at Pala from 1917 until 1920, when it was consolidated into the Mission Indian Agency, of which he was the superintendent from 1920-22. He nursed a long-standing animosity toward the federation. On 4 November, Joe Pete sent a petition to commissioner Sells, which Hoffman claimed was actually written by B.H. Jones, whose “fine Italian hand,” he recognized in the writing. *Fourteenth Census of the United States*, Thermal Township, Riverside County, California, Microfilm copy T625, roll 125; Castillo, testimony, 2791-94; Christian McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven: Yale University Press, 2007), 24.

³⁰ Tibbet wrote to the Los Angeles *Times* in 1920 criticizing an editorial that portrayed him as out of balance for being a lifelong friend of the Indian race. He urged the “palefaces” to listen “with attentive ear to the cries of these persecuted Americans.” Los Angeles *Times*, 19 Mar 1920, II, 2. Adam Castillo denied that Tibbet was “connected with our Federation for any other purpose than to aid us in our work of benefit to the Indian and the uplift of a maltreated American race.” Los Angeles *Times*, 20 Aug 1921, II, 6.

³¹ *Thirteenth Census of the United States, 1910*, Riverside Township, Riverside County, California, Microfilm copy T624, roll 91, page 160.

purportedly wore a badge identifying him as an “Apache Scout.” Popular folklorist Frank Thomson described Tibbet as “quick on the trigger,” in fighting the Indians, but nonetheless, “was one of their best and truest friends, as his later life proved. ... while he wore on his body the marks of the Indians' tomahawk and scalping knife, it also bore the scars of the tattoos of the ceremony which admitted him to their tribe as a member.” In Thomson’s mind, Tibbet’s “[i]ntimate knowledge of the Indians and their ways” which was so appreciated by the Indians that it enabled him “to obtain from the Indians, relics which few white men were able to get,” was proof of Tibbet’s sympathy for Indians.³² His collection of “Indian and Pioneer relics” eventually numbered over 5,000 specimens, and was later donated to Pomona College. The son of pioneer family who was personally engaged in the conquest of Indian territory, Tibbet was uniquely poised to experience the imperialist nostalgia about which anthropologist Renato Rosaldo has written.³³ Access to valuable “relics” potentially shaded into a propensity to view Indians themselves as relics, a common trope among those who wrote about Indians at the time.³⁴

In a 1918 letter to Julio Norte, Tibbet outlined his plans for the creation of the Southern California Pioneer Association and its Memorial Museum that would be dedicated and consecrated by the “the Indians, Pioneers and the Padres as like the old ceremonies as possible.” Tibbet proposed that land be set

³² Frank D. Thomson, “California Reminiscences of Jonathan Tibbet Jr.,” *The Historical Society of Southern California Quarterly*, 27, no. 2-3, (June-Sept, 1945), 81.

³³ Renato Rosaldo, *Culture & Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989), 68-87.

³⁴ Lisbeth Haas, *Conquest and Historical Identities*, 173.

aside at the museum for “an Indian Village where they [Indians] can live their old simple lives once more,” alongside “old time pioneers” in log cabins. His vision of a peaceful past belied historical reality but spoke to his vision for Indian communities in the area. They were to endeavor to “preserve the old life, and the relics of the past.”³⁵

By the time Tibbet sent his proposal to Norte, he was by no means alone in his interest California’s distinctive history. In the early years of the twentieth century, a phenomenal explosion of popular fascination with a highly romanticized California past, and particularly an emphasis on the missions as a part of that, gripped the region. As Lummis and the Landmark’s Club raised money to restore missions and *asistencias*, such as the one at Pala, regional boosters raised funds to build the *Camino Real* as an explicit attempt to bring tourists to the missions. Increased tourism to empty and decaying missions contributed to the notion of a vanishing Indian race.³⁶

Tourists also wanted to visit one of the many “authentic” homes of Ramona Lubo, the model for the eponymous character in Helen Hunt Jackson’s novel. In 1910, Thomas Getz opened “Ramona’s Marriage Place” in Old Town, San Diego. Ramona-themed tourism helped to spread the Spanish past by giving it, in the words of historian Phoebe Kropp, “an Anglo author.”³⁷ By 1912, John Steven McGroarty’s “Mission Play” began its long and storied career as a

³⁵ Jonathan Tibbet to Julio Norte, 20 April 1918, as reproduced in Baggs. “An Unfortunate Kind of Leadership,” appendix C.

³⁶ Phoebe Kropp, *California Vieja: Culture and Memory in a Modern American Place* (Berkeley: University of California Press, 2006), 47-156.

³⁷ Kropp, *California Vieja*, 36.

popular (mis)representation of California history.³⁸ Many of those images were replicated as part of the effort by railroads, particularly the Santa Fe Railway and Harvey Houses to market travel to the region. Perhaps the culminating experience in the regional performance of a scripted Spanish past was the Panama-California Exposition of 1915-1916 in San Diego, where the Santa Fe Railway and the Harvey Company produced a living display of imagined Indian landscapes.³⁹

Indians were at the center of the Spanish past, but marginalized from it. At Pala particularly, the presence of Indians at the *asistencia* — the only continuously operational church with a predominantly Indian congregation among the ex-missions and chapels — challenged the ability of non-Indians to script history according to their visions. Material conditions on Indian reservations had grown desperate due in large part to the failures of federal policy. Many tourists' expectations clashed with Indian Office attempts to "civilize" Indians, and with Indian efforts to help themselves.⁴⁰

³⁸ William Deverell, *Whitewashed Adobe*, 207-249.

³⁹ Richard Orsi, *Sunset Limited: The Southern Pacific Railroad and the Development of the American West, 1850-1930* (Berkeley: University of California Press, 2005), 130-65; Kropp, *California Vieja*, 103-56; Matthew Bokovoy, *The San Diego World's Fairs and Southwestern Memory* (Albuquerque: University of New Mexico Press, 2005). For scholarly treatment of the rise of the Spanish past, see David J. Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 1992), 351-55; and Carey McWilliams, *Southern California Country: An Island on the Land* (New York: Duell, Sloan & Pearce, 1946); Herbert Eugene Bolton, *The Mission as a Frontier Institution in the Spanish-American Colonies* (El Paso: Texas Western College Press, 1960); Bolton, *The Spanish Borderlands* (New Haven: Yale University Press, 1921).

⁴⁰ Kropp, *California Vieja*, 262; WRIAC, "Final Report," 46; Russell C. Allen to Lummis, 27 March 1903 and Lummis to Allen, 30 March 1903, LMC, SWM, ms.1.1.63.

But Tibbet's plan struck a chord with Norte, Pete and others. By describing an Indian space, although greatly proscribed, marginalized and idealized, Tibbet nonetheless promised that the "control of the Indians will be in their own hands, by their electing a Capitan, and a council of their own people." He also outlined biannual fiestas where Indians and Whites could "enjoy again the old time pleasures of the by gone days." Norte saw the possibilities of an Indian federation in Tibbet's nostalgic pioneer world, for over the course of 1919, the federation's membership grew.

Tibbet was certainly not alone at the time in his concern for Indian rights. In 1913, Federick Collett, a Methodist minister, founded the Board of Indian Cooperation on the Round Valley reservation. Through its journal, the *Indian Herald*, legal organization and public spectacles, the BIC achieved more popularity than the MIF but pursued a significantly less radical posture, concentrating on reforming Indian education and shepherding the 1917 *Anderson v. Mathews* test case which eventually established citizenship for California Indians.⁴¹ The Indian Office could see nothing in Tibbet, Collett and their allies other than self-interest and corruption. Pala superintendent Paul Hoffman nursed a vitriolic hatred for Tibbet that meshed with his paternalistic understanding of Indian racial capacities and colored much of the Indian Office's record of the movement. It

⁴¹ While initially cooperative, the MIF appears to have later collaborated with the California Indian Rights Association to challenge Collett and the BIC, Indian Rights Association Papers, microfilm copy, reel 129, frame 315, passim; Rawls, *Indians of California*, 209-10; Cindy Beck, ed., "Three California Writers," American Native press Archives and Sequoyah Research Center, University of Arkansas, Little Rock, www.anpa.ualr.edu/digital_library/Three%20California%20Writers.htm, accessed 6 June 2008; "To Aid Indians," 29 Oct 1920, *Los Angeles Times*, I 16; Ida Eckert-Lawrence, "Ida Eckert-Lawrence, Noted Poet, Writes on the California Indian," *The Indian*, May 1922, 3, 18.

was inconceivable to him that Indians could have engaged in this behavior themselves, and he ignored signs of legitimate Indian strength and support by pointing to subterfuge on the part of Tibbet. For example, in April 1920, Hoffman described the Indians active in the federation as

the older Indians who are easily misled (usually those who cannot read or speak English) and the younger reactionaries and ne'er-do-weels [sic]. My observation is that there is not a man who holds a position in the association, even down to the lowliest committeeman, who could be classed as an upstanding, prosperous Indian. Those who cry for more land are, to a large extent, those who resist in every way our efforts to get them to make at least 50% of the maximum possibilities of the land they control.⁴²

Hoffman's comment was misleading and his assessment blinded by his own misconceptions. In less than two years, the federation leadership would be made up of a number of the most prosperous Indians from his own jurisdiction. Additionally, by arguing that Indians in essence did not deserve more land unless they efficiently used that which they had already received, Hoffman misunderstood the complexity of Indian demands. They wanted more land because it was their right, not because of necessity.

Tibbet provoked reactions such as Hoffman's. He had, by many accounts, a rather unsavory reputation, and the rhetoric he chose to use was inflammatory. He claimed at a federation meeting at his house in 1920, that the members were "going to wear in your belts the scalps of some of the people who have handled some of your business -- men who ride up to your place with a bully policeman and tell you how to live and how to conduct your own busi-

⁴² Paul Hoffman to Cato Sells, 16 April 1920, NARA-LN, BIA, RG75, Mission Indian Agency, Records in Re: the Mission Indian Federation, box 136.

ness. These are the scalps that will be dangling from your belts."⁴³ With rhetoric such as this, a membership of 2,000, one dollar per month dues, the federation was a real threat to the Indian Office. Given that the MIF frequently attacked Hoffman, it was understandable that he might overstate the threat of the federation in order to obtain support or authority from the Indian Office in his efforts to fight it.

Regardless of the uncertainty over Tibbet's motives, the structure of the federation ensured that Indians participated at a variety of levels and maintained the sort of organizational autonomy that made widespread corruption difficult. The federation struck a chord with Indians who had experienced the effects of corruption and graft. Many were motivated by the trouble with the 1914 Appropriations bill which retroactively made the cost of water development on reservations a reimbursable debt, which Tibbet claimed was the "principal grievance" in 1920. Others saw in seeking redress for the abandoned treaties a potential opening for political change.⁴⁴

If the federation had existed merely to benefit a corrupt white man grafting off the Indians with some assistance by a few Indians, then the federation would have disappeared quite quickly, rather than growing in strength and spreading across the region. Admittedly, tracking the popular support from reservation to reservation is suggestive at best, but it is clear that initially at least,

⁴³ Ibid.

⁴⁴ House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1105-1109; 1123.

support for the federation followed the allotment process.⁴⁵ And it is also clear that the movement's popularity simmered at the reservations, not in Riverside. Vidal Mojado's experiences are illustrative.

Mojado was born on the La Jolla reservation in 1877. While Indian census schedules show him living as a child with both his mother and her brother, he later testified that he was raised solely by his uncle. Indian agents in southern California often recorded members of families on their annual census regardless of whether or not they actually resided on the reservation.⁴⁶ Some time between 1892 and 1895, he left the reservation for work, and lived for at least a year of that time with his godfather, Manuel Evarra, in the Pauma Valley, and some of that time at the Soboba reservation. He may have been away from the reservation when the 1892-93 allotments took place. He eventually controlled the land at La Jolla where he had been born, although how he came to claim it is somewhat unclear.⁴⁷ In 1895, he married Cinciona Romero, a Soboba Indian, and settled on land she had there. The 1910 federal census shows him living on

⁴⁵ Paul Hoffman, "In re conduct of Jonathan Tibbet with respect to the last clause of Sec. 2133, R.S.," [January-February] 1921, NARA-LN, BIA, RG75, Mission Indian Agency, Records in re the Mission Indian Federation, box 136, folder "Paul Hoffman re: Tibbets."

⁴⁶ Walter Runke to Commissioner, 19 April 1912, NARA-LN, BIA, RG 75, Pala Supt, Ltrs Sent to Indian Office, Jan 1908 - August 1914, Box 375, folder "20 Dec 1911-24 Dec 1912."

⁴⁷ He claimed he did not *select* an allotment there, but that he *received* one. The Indian Office often assigned allotments to those who refused to select one for themselves. However, elsewhere in the records he claims that he was born on the land he later leased to William Guassac, which was willed to him from its owner. Vidal Mojado, testimony, Reporter's transcript, v10, *US v. Albanes*, box 2, folder A2 [7/14], 1279, 1348.

the Soboba reservation, a few houses below Adam Castillo in the census enumerator's schedule.⁴⁸

At Soboba, Mojado worked as a pump man and later a *zanjero* (ditch tender). Sometime in 1918, he returned to La Jolla in order to "try to organize the Federation there." The captain of the reservation at the time organized a meeting that elected William Nelson, Ben Amago and Vidal Mojado to represent La Jolla at the first Mission Indian Federation organizational meeting in Riverside in January 1920. While Nelson and Amago quickly grew disillusioned with the federation, Mojado was committed to it and he soon became the federation captain of La Jolla.⁴⁹

The federation was not only concerned with allotment. In its first few years, it moved rhetorically and ideologically from the periphery of Indian society to the center through a series of astute and opportunistic maneuvers. In March, 1920, agent Wadsworth arrested Patricio Tortes for trespassing. Tortes was a Santa Rosa Indian who had lived at Soboba since 1917. Tortes claimed the federation captain, Castillo's half-brother, had given him permission to live on the reservation. Using his power as Indian agent, Wadsworth sentenced Tortes to eighty days in jail. The federation brought a habeas corpus suit that was dismissed, but it focused attention on Wadsworth's tenure and may have contributed to the Indian Office reassigning him as a special allotting agent

⁴⁸ *Thirteenth Census of the United States, 1910*, Hemet Township, Riverside County, California, Microfilm copy T624, roll 91.

⁴⁹ Mojado claimed that the existing captain stepped aside in favor of Mojado when he returned from the meeting. It is not clear whether or not there was an election. Vidal Mojado, testimony, reporter's transcript, v12, *US v. Albanes*, box 2, folder A2 [7/14], 1454.

soon thereafter.⁵⁰ Regardless of the reason for Wadsworth's reassignment, the federation seized upon it as evidence of their growing power, spreading rumors across the reservations of southern California that they were now in charge of Soboba.⁵¹

In May of that year, the federation timed its biannual convention to coincide with the field hearings held by the House Committee on Indian Affairs in Riverside under the chairmanship of Homer Snyder. In this way, federation members, particularly Tibbet, claimed that the federation had brought Congress to Riverside. Tibbet, Jones, and Nicholas Peña of Pala and Vice President of the federation, all testified. Peña's involvement is indicative of the federation's popularity among those who were not the "troublemakers" associated with the early self-defense organizations. While Pala was never a hotbed of federation activity, by 1922, four of the seven members of the federation executive council were from there. The federation's popularity among allotted Indians, who more than most, had benefitted from the Indian Office's programs, signaled the growing appeal of the organization. Many of the "progressive" members of the reservation were drawn to the MIF by its promise of sovereignty.⁵² As the federation grew in strength, it offered members something vital — a way to assert a political identity.

⁵⁰ Reporter's transcript, v. 26, *US v. Albanes*, box 3, a2 [13/14], 2773.

⁵¹ Paul T. Hoffman to Cato Sells, 16 April 1920, NARA-LN, BIA, RG 75, Mission Indian Agency, Records in Re: the Mission Indian Federation, box 136.

⁵² By 1922, Joe Pete was Grand Chief Inspector, Adam Castillo was president, Nicholas Peña was Vice President, Andrew Moro was Second Vice President, Ben Watta was Secretary, and Samuel J. Rice was Treasurer. "At the Council Fires: The Council Days," *The Indian*, 4 May 1922.

Nicholas Peña was born at Kupa in 1879. His mother was one of the original defendants in *Harvey v. Barker* (1893) and was removed from Warner's Ranch in 1903. It appears that Nicholas was at Carlisle when the removal took place, as he graduated there in 1905. After school, he returned to Pala, received an allotment, and in the annual fiesta of September 1912, won an award for the "best irrigated field." Superintendent Runke described him as one of three, along with Santiago Brittian and John Ortega, as being the best farmers on the reservation.⁵³ Within a few years, he was elected chairman of the Pala Common Council. John Ortega was secretary. By 1920 Peña was the vice president of the federation and, in May of that year, testified at the Snyder hearings. He described the purpose of the federation was "to take up all the difficulties that the Indians have and have it all in one and present it to the Government to see if the Government will help them out, and I am sure they will all realize that we have a good Government; but somehow the Indian has been left out, and lots of wrongs done and never corrected, and that is what the Indians are trying to get up now." He claimed that he joined in order to advocate for more land and water for the Indians. He pointed out that he was not currently a citizen because he had not yet been declared competent as his land was restricted. He wanted to become a citizen, and would be willing to pay taxes and

⁵³ Peña was successful. Along with John Ortega and Santiago Brittian, Peña was specifically listed by superintendent Walter Runke as being one of the best Indian farmers, working 20 acres on Pala in 1920, planted to hay and beans. "Pala Indian School & Agency," Superintendents' Annual Narrative and Statistical Reports from Field Jurisdictions of the Bureau of Indian Affairs, Microcopy 1011, RG 75, National Archives, roll 99, 1920. By 1931, he was working almost 16 acres of *irrigated* land with his brother, planted to oranges, hay, corn and truck garden. "Pala Family Narratives," NARA-LN, RG75, BIA, Records of the Mission Indian Agency, box 218, folders "Pala, California, 1931 [1 and 2]."

the reimbursable debt on his land in order to do so. Unfortunately, he claimed he wasn't able to do so with the small piece of land he had been allotted, and the threat of having to pay taxes on his land without income to do so made citizenship a losing proposition.⁵⁴

Peña was not drawn to the federation out of a reactionary opposition to allotment, nor does he appear to have hoped to use the federation to find a larger political role for himself off the reservation. Instead, the federation provided him with opportunity to assert greater control over reservation affairs which, at this particular instance, meant opposition to allotments. In 1922, he phrased the purpose of the federation as "not to antagonize the Indian department but to prepare a statement of wrongs and present them to the government for correction."⁵⁵ Eventually, he came into conflict with other, more radical members of the federation including his younger brother.⁵⁶

John Ortega followed a similar path. He was also born at Kupa in early 1876, and graduated from Carlisle. At the time of the removal, he was likely

⁵⁴ House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1105-1109; 1110-1112.

⁵⁵ "Local Indians Get Hearing," *The Indian*, April 1922, 17.

⁵⁶ His critics included his younger brother, Louis. George Robertson wrote to Superintendent Ellis: "Onselmo Leo, Florentia Portillo, Louie Pena [sic] and a few others are dissatisfied with the Captaincy of Nicholas Pena. They called Vidal Mojada and 'his gang' down to assist in throwing him out. They failed. They claim they want someone who is not so conservative and who will buck the Govt. and force the free use of water to their renters. It seems that Vidal is unable to handle Nick who has allways [sic] been very nice to work with hence his desire to see a radical in the Captains position should they succeed in dis placing Nick and get any one of the above named in his place we are in for a hectic time of it here at Pala Nick is pretty level headed understands more or less the workings of the law and aims to keep pretty well within the law It would be a misfortune for them to succeed this is still another reason for checking Vidal Ma-jado's activities." George Robertson to Charles Ellis, 9 Jan 1929, NARA-LN, BIA, RG75, MIA-CCF, box 16, folder (3) 091.

serving in the Army.⁵⁷ By 1910, he was back in southern California, living on the Pala reservation and married to Nellie La Chappa.⁵⁸ He was elected to the newly formed Pala Common Council. In 1913, the council sent a petition to Commissioner demanding that additional “waste” lands up to 2,000 acres be patented as a whole to the tribe “for use as grazing land and also to avoid white settlement hereafter.” Ortega had twenty acres of land to farm, five horses, and was receiving agricultural bulletins from the University of California extension. Ortega, like Peña, was considered by the superintendent to be one of the best farmers on Pala. By 1920, he was the treasurer of the federation and chairman of the Pala Common Council. As with Peña, Ortega’s involvement with band politics and the federation appear to have been symbiotic. Ortega’s political activism had historical roots. Ambrosio Ortega, who appears to have been his older (half-) brother, was one of the two unofficial representatives of the Cupeño people, who traveled with the Warner’s Ranch Indian Commission in their search for a suitable site for their removal. Ambrosio’s obituary in a 1922 edition of *The Indian*, identified him as a “strong member” of the federation.⁵⁹

While both Peña and Ortega had been successful on the reservation, the federation also appealed to Indians with weaker reservation ties. In the case of Robert Magee, it helped to restore a racial sense of Indianness and attachment

⁵⁷ *Twelfth Census of the United States, 1900*. Pala township, San Diego County, California], microfilm copy T623, roll 72.

⁵⁸ *Thirteenth Census of the United States, 1910*, Pala township, San Diego County, California, microfilm copy T624, roll 95, page 151.

⁵⁹ Crispin Ballatt, “Los Coyotes, San Ignacio and San Ysidro Villages,” *The Indian*, 6 May 1922, 6-7.

to a reservation. Magee was born in Temecula in 1871, into what was by late nineteenth century California standards a successful family. But his Indianness limned his story and politicized him in the process. His mother, Castoria, was a Luiseño Indian from Temecula.⁶⁰ His father was Irish and French from New York who, along with his brother, served in the U.S. Army during the Mexican American War. Both brothers came to California and stayed. Thus, Robert was literally a child of two important influences on Southern California culture at the time: a strongly hispanicized Indian population, and an influx of white immigrants from the northeast.

This was the context in which the marriage between John Magee and Castoria in 1870 occurred. As historian Albert Hurtado has shown, Anglo marriage into existing *californio* families was often a road to potential economic and social success. One such case was Robert's uncle, Henry Magee, who married Victoria Pedorena and went on to economic success in Riverside and Orange counties. But John married an Indian, a road Hurtado described as often, an economic "dead end."⁶¹

However, it is possible that John's marriage into an Indian family gave him better economic access to the Indian village in Temecula where he kept a store. Magee opened his store on the south side of the Temecula Creek some time before 1858. It was situated between the Temecula Indian village and the

⁶⁰ Castoria's blood quantum unclear. Later Indian Census Rolls list Robert as either 1/4 or 1/2 Indian. Indian Census schedule, "Mission Indian, 1930-31," *Indian Census Rolls, 1885-1940*, NARA, microfilm publication M595, BIA, RG75, roll 262.

⁶¹ Hurtado, *Intimate Frontiers*, 44.

home of Pablo Apis on the Gila trail.⁶² Thus, Magee would have had a regular traffic of overlanders that dovetailed nicely with a trade relationship with an Indian agricultural community who served as both producers of commodities for sale as well as occasional customers. Castoria may have recognized that given the demographic changes, her security could best be protected through such a relationship. Robert's recollections don't give us many clues. In his testimony in a later equity case, his mother recedes behind the shadows of the two important men in his memory: his maternal grandfather and his father.⁶³

Robert grew up at his father's store, "practically raised by the Indians." He was six or seven, when the events dramatized in Helen Hunt Jackson's novel, *Ramona*, took place. In 1873, three homesteaders bought the Little Temecula Ranch from one of Apis's daughters. They agreed to allow the residents of the Temecula village to remain, so long as they signed an agreement that acknowledged the fact that they no longer owned the land. They refused to do this, and in 1875, they began the process of removing the Indians — that is, Robert's maternal kin — to the Pechanga Indian Reservation. Robert's immediate family did not go, but instead moved to Tabisbaa, a spring nearby his fa-

⁶² Apis was a Luiseño Indian who was born in and resided in the San Luis Rey mission. By the time of secularization of the missions in the 1830s, he had risen to a position of some authority and worked to assist the mission in its protection of their lands against encroachment by *californios*. For his effort, he was rewarded with a 2000 acre grant encompassing the Indian village at Temecula. As such, he became the de facto captain of the Temecula Luiseños and built his home to benefit from the proximity of the Gila trail. He also acted as a patron in his dealings with other rancho owners, most notably with Isaac Williams who desperately needed laborers to work his nearby Rancho Chino. Apis was able to secure work for Luiseños as well as a potential market for their agricultural goods. To cement this relationship, both of Apis' two daughters bore children to Isaac Williams. Bibb, "Pablo Apis and Temecula."

⁶³ Robert Magee, "testimony," Reporters transcript, v. 23, *US v. Albanes*, box 3, folder [11/14], 2373-2387.

ther's new store in Rainbow Canyon. Certainly, many of Robert's maternal kin would have rather remained in Temecula instead of being removed to Pechanga and in this sense, Castoria had been wise in casting her lot with Magee.⁶⁴

After their move, the Temecula school was too far to walk to, so Robert's father sent him to Fallbrook about 15 miles southwest, to live with his uncle Henry and to attend a Catholic school, where he was taught by an Irishman named Martin. He made it through eighth grade. It is clear that Magee maintained an "in" into early American California society. His father's economic prospects appeared to be improving as well. Some sources describe John Magee, and his sometimes partner, sometimes rival, Louis Wolf as exercising almost "dictatorial" control over the entire valley. John acquired the Little Temecula Ranch in the 1880s, before losing it through a sheriff's sale to Wolf. By 1887, John was listed in municipal booster-documents as a prominent citizen of Temecula engaged in bee keeping.⁶⁵

The material conditions of Robert's childhood, and his apparent assimilation into Anglo society were complicated. His father served as trustee of the Little Temecula School, a position that Robert held after his father's death.⁶⁶ The fact that Robert was trustee of a public school enrolling non-Indian children during a time of Temecula's growing Americanization speaks to the fluidity and indeterminacy of Robert's racial status, rather than the openness of municipal

⁶⁴ Magee, testimony, pt. 1, Reporter's transcript, v.23, *US v. Albanes*, box 3, folder [11/14], 2376-77.

⁶⁵ Kurt Van Horn, "Tempting Temecula" *Journal of San Diego History* 20, no. 1, (1974), 20-38.

⁶⁶ Magee's testimony, pt. 1, Reporter's transcript, v.23, *US v. Albanes*, box 3, folder [11/14], 2379.

power structures to Indians in Temecula at the time. But Robert's tenuous whiteness was conditioned by layers of alienation: his access to white privilege in the form of a private, parochial education, and economic prosperity that came as a member of a privileged underclass in the local community. He was an Indian kid educated in an Irish Catholic school in the 1870s and 1880s — certainly not a good time to be Indian, Irish or Catholic. His memories of his childhood are equally indeterminate: He remembered, “in those days there were no white people at all. I was about the only boy around with the Indians there,” thus positioning himself outside the category “Indian” and rendering other male Indian children as not “boys.” While his avoidance of the first person does not necessarily indicate a disavowal of his Indian past, it does indicate a distance from it.

But Magee wasn't “passing,” at least not yet. His liminality and conflicted identity is perhaps common among bicultural children. What makes his story interesting is the way that both of his identities were attached to a changing power structure, while he retained a fluidity in moving between them. As Indian autonomy decreased and Anglo hegemony increased, Magee increasingly identified with the Indian. Perhaps he embraced his Indianness because it became increasingly valuable to him for economic, personal or social reasons. Perhaps because he was increasingly identified by others as an Indian, Magee became an Indian, but not necessarily explicitly a Luiseño. That is not to say his ancestors were not native, nor that they did not see themselves as having some shared affinity with other villagers, but these other identities tended to be

village-based, kin-networks. Magee “needed” a larger identity into which he could fit. He was not raised in an Indian village, not removed to a reservation, not tied to a specific band.

With the exception of the two years when he lived at the Indian village of Rincon in 1891 and 1892 with his aunt, Magee lived near his father’s store in Rainbow Canyon. At Rincon, he did not avoid allotment, but sought it out and used his ten acres to keep bees. After a few years, the weather turned dry and he moved to the Pauma reservation, then back to Temecula, turning his land at Rincon over to his aunt. In 1897 or 1898 he married Mary, a Cahuilla Indian living at Pechanga and took up residence there.⁶⁷

Magee’s mobility is important. While he claimed that he didn’t “really belong on the reservation,” he took an allotment at Rincon.⁶⁸ Reservations somewhat counterintuitively and contrary to the government’s wishes, increased Indian mobility. In the case of Magee, having entitled access to a series of locations in the area promoted his ability to move between them. But it also promoted a sense of emergent identification. He didn’t belong at Rincon because that wasn’t his village, but his increasingly racial Indianness gave him a general right to Indian land. Throughout this time, his livelihood was determined by two factors: access to Indian land on a number of reservations as well as wage work in the region’s growing urban economy.

⁶⁷ Magee’s testimony, pt. 1, Reporter’s transcript, v.23, *US v. Albanes*, box 3, folder [11/14], 2374-78; *Indian Census Rolls, 1885-1940*, NARA, microfilm publication M595, BIA, RG75, roll 262.

⁶⁸ Magee’s testimony, pt. 1, Reporter’s transcript, v.23, *US v. Albanes*, box 3, folder [11/14], 2386.

Throughout the 1890s and early 1900s, Magee moved among the region's growing cities and numerous Indian reservations with relative ease. He was well suited to the task: A Half-Luiseño Indian who was married to a Cahuilla, he had rights through his wife to land on the Pechanga reservation, claims of his own on Rincon, and friends everywhere he went.⁶⁹ He seems not to have been cut out for agriculture, at least not on the sort of allotments available in southern California. He decried the poor quality of the land and added that the allotments were so small that they were insufficient to raise grain to feed horses nor to generate sufficient revenue to purchase a tractor. As a result, he claimed that neither he nor his people wanted to “make horses or oxen of ourselves,” and therefore never pursued agriculture very vigorously.⁷⁰

The other component supporting Robert's mobility at this time was his access to wage work in the non-Indian industrial economy of southern California. Temecula was the site of a significant granite discovery in 1886, and soon thereafter, Robert began to work in the quarries, benefitting from the growth in the market for granite paving and curbing stones.⁷¹ Over the next twenty years, he moved between periodic jobs in quarries in Riverside, Lakeside, Temecula and Los Angeles. His work in the granite industry around Temecula and his Irish last name gave him a skill that opened doors for him throughout the region. The

⁶⁹ Magee, testimony, pt. 1, Reporter's transcript, v.23, *US v. Albanes*, box 3, folder [11/14], 2387.

⁷⁰ “Transcript of conference between George Von Baux, Chairman of Commission of Indian Affairs, and Indians, dated Escondido, 28 June 1925 and Rincon, 17 April 1925,” entered as exhibit I in *US v. Albanes*, Exhibits A-2-M, box 1A, folder “San Diego A-2-M ex 1-46”

⁷¹ S. Tom Wood, “A Brief History of the Granite Industry in San Diego County.” *Journal of San Diego History* 20, no. 3 (Summer, 1974), 61-66.

1910 census found Robert and his wife living near Temecula where he was working as a stone cutter at the local quarry. They, and their three children, are recorded as “white” by the census enumerator.⁷² Sometime in that decade, Robert rose to manage a large quarry in Riverside that shipped stone primarily to San Francisco and Los Angeles. At around the same time, Mary died, and the paving block / curbing business declined. So, Robert left Temecula first for Lakeside, where, while working for the Rossi Brother’s quarry in 1919-1920 he joined the fledgling Mission Indian Federation. Soon thereafter, he moved to Pala, where the 1920 census found him living in the house of John Benson, a Swedish immigrant, along with Tricolina Chapule, an Indian “servant.” Both he and Benson were listed as partners working in the quarries and their racial classification was recorded as “white.” In 1922, they became the first to quarry black granite there. That year, Magee, Peña and Ortega all voted in county elections.⁷³

Tricolina Chapule was a San Felipe Kumeyaay Indian who had been removed to Pala in 1903 and who had two allotments there. Some time around 1921, Magee married her. But the remarried life didn’t slow down his movement. By late 1922, a local news section from the Mission Indian Federation publication, *The Indian*, has Robert living in Los Angeles, but back in Pala for a

⁷² In the 1910 census, Robert is living in the same house with his brother, Frank Magee, and next door to his mother, Castoria. *Thirteenth Census of the United States, 1910*, Murrietta township, , Riverside County, California, microfilm copy T624, roll 91, page 209.

⁷³ *Fourteenth Census of the United States, 1920*, Foster precinct, El Cajon Township, San Diego County, California, microfilm copy T625, roll 130, page 42; Wood, “Granite Industry,” 66. All three of their names appear as registered and voted in the *Index to the Great Register of San Diego County, Pala Precinct*, NARA-LN, BIA, RG 75, MIA/CCF, box 14, folder (7).

visit.⁷⁴ Robert's movements were of interest to the readers of *The Indian* because in 1922, he became the Federation's First Vice President. Thus, a half-Luiseño became increasingly identified as an Indian by marrying a Kumeyaay and moving onto a primarily Cupeño reservation where he had previously quarried granite with his Swedish business partner. Developing an Indian identity off-reservation is in keeping with the traditional interpretations of pan-Indian thought. But in this case, Magee was becoming increasingly attached to a specific reservation through his work with the federation. It provided a way back to being Indian and a way back to a specific reservation on which he had never lived. Despite the fact that his experience was unique — his liminal status gave him an option — Magee's choice illuminates the process that many other Indians may have undergone in expressing their Indianness in new ways.

The federation also appealed to off-reservation Indians who did not find their way back to reservations. Interviews conducted with descendants of Mission Indian Federation members in San Juan Capistrano by Lisbeth Haas found that the federation was an instrumental part of the process of constructing a public representation of Indianness that was distinct from "Spanish Californian."⁷⁵ It is likely that further research on the Los Angeles branch of the federation would corroborate her findings. Its president was Andrew Moro, who had been born at Kupa in 1880 where his family had effectively controlled the

⁷⁴ John Ortega, "Items from Pala," *The Indian*, 6 May 1922.

⁷⁵ Haas, *Conquests and Historical Identities*, 129-34.

hot springs for years.⁷⁶ Both his parents were respondents in the original Cupeño eviction case of 1893. Like Peña and Ortega, Moro graduated Carlisle in 1905, returned to Pala, was elected to the Pala Common Council and received an allotment. But unlike them, when his allotment was patented in 1915, he leased it and left the reservation for Los Angeles where he worked as a gardener.⁷⁷

In Los Angeles, Moro served as both the president of the federation's Los Angeles branch, as well as the general second vice president of the organization. His primary goals were to serve as a liaison between the organization and its potential urban supporters. In April 1922, he was selected to be the delegate to the Southwest Museum to answer their questions about the federation's intentions.⁷⁸ Moro was not drawn to the federation by the immediate threat of his own dispossession, nor his family's dire conditions.⁷⁹ Rather, he appears to have been attracted to it by the political opportunities it presented. Here, as it did in many instances, the federation divided the family — Andrew's older brother Domingo served as the Mission Indian Agency chief of police for Pala, and was charged with upholding the authority of the Indian Office.

⁷⁶ Adolpho Moro testimony, Amended Complaint, *J. Downey Harvey, Administrator of the Estate of John G. Downey, deceased, and the Merchants Exchange Bank of San Francisco, a corporation, plaintiffs v. Alejandro Barker, et. al, Defendants*, Superior Court, San Diego County, 17 July 1893, *Indian Rights Association Papers*, microcopy edition, reel 119, frame 75 and passim.

⁷⁷ *Fourteenth Census of the United States, 1920*, Foster precinct, El Cajon Township, San Diego County, California, microfilm copy T625, roll 130, page 44;

⁷⁸ "At the Council Fires: The Council Day," *The Indian*, May 1922, 4.

⁷⁹ By 1931, his holdings on Pala had grown through inheritance to over ten acres of irrigated land and twelve acres of dry. "Pala Family Narratives," NARA-LN, RG75, BIA, Records of the Mission Indian Agency, box 218, folders "Pala, California, 1931 [1 and 2]."

Domingo was at least eight years Andrew's senior and had been the captain of Kupa throughout much of the legal battle over eviction. He also hedged his bets by applying in 1902 for an Indian public domain allotment (often called an "Indian homestead") for approximately eighty acres. The land was his family's and lay just outside Warner's Ranch to the east of the hot springs. He had inherited it when he was married in 1891.⁸⁰

After the removal, he began to work his homestead, planting vineyards as well as peach, pear, apple, apricot and cherry orchards. He also kept livestock and developed the small springs and streams on the property. Delay kept the trust patent from being issued until May 1907, a year after the Burke Act took effect and thus too late to convey citizenship under *Heff*.⁸¹ Nonetheless, Moro applied for a declaration of competency in 1908. The superintendent, who possessed a tremendous amount of authority in competency decisions, labeled him a "very good agriculturalist, a competent stockman, [who] takes excellent care of the Government property intrusted [sic] to him."⁸² Pointing to his respect among both Indians and whites, and the fact that he was "absolutely a teetotaler in his habits as far as intoxicating liquors are concerned..." Superintendent Lonergan testified that Moro was fully capable of managing his own affairs, and that he had no intention of selling the land, but rather hoped to pass it on to his

⁸⁰ Salvador Nolasquez to Levi Green, 28 April 1911, NARA-LN, BIA, RG75, PALA, Letters Received, 1903-1921, box 370, folder "Letters Received (Lonergan) 1908-10 [sic]."

⁸¹ The allotment was No. 20, Los Angeles Office, Miscellaneous, vol. 658, page 388. [

⁸² Philip T. Lonergan to Francis Leupp, 6 August 1908, NARA-LN, RG75, Pala Recs, Ltrs to CIA, box 375, book 1, 122; and Lonergan to Leupp, 9 March 1908, NARA-LN, RG75, Pala Recs, Ltrs to CIA, box 375, book 1, 36.

children as it had been passed to him.⁸³ Lonergan's encomium neatly anticipated the contents of an Indian Office circular from November of that year.⁸⁴

Moro's request was successful, and he eventually received a fee patent, and with it, status as an American citizen. He was omitted from all subsequent Indian census rolls, although his family was not. His public domain allotment was not as agriculturally productive as land that he could have received through allotment on Pala. But his holdings were approximately ten times the size of allotments on the reservation, and the manner in which he acquired it gave him greater control over its use than he would have had through reservation allotment. Specifically, his homestead was not restricted, and as an off-reservation citizen Indian before the supreme court decision in *U.S. v. Nice*, he was no longer a ward of the government. Additionally, the land was adjacent to the old village, and it positioned Moro as an informal protector of Indian interests there.⁸⁵

Over the next few decades, Moro's citizenship enabled him to skirt Indian Office control over his affairs, while his Indianness gave him something of a privileged position within its employment ranks. He secured a job as the reservation's additional farmer, purchased for his own personal use one of the three

⁸³ *ibid.*

⁸⁴ Circular 254 1/2, 18 November 1908. Bureau of Indian Affairs, *Procedural Issuances of the Bureau of Indian Affairs: Orders and Circulars, 1854-1955*, microcopy M1121, roll 9.

⁸⁵ Asa Dow Hammock, farmer at Pala, kept a scrapbook that contains an undated photograph of Moro standing at the front of a double-wheeled truck, loaded down with people dressed well. The caption reads, "Domingo Moro, Pala Indian policeman ... Going back to visit the old home at Warner's Hot Spring." Asa Dow Hammock Papers, Bancroft Library, University of California Berkeley, BANC MSS C-V 22. Volume 2.

wagons that had been issued to the reservation, fought the liquor trade and continued to impress the superintendents who served there. In 1909, Lonergan described him as "[t]he most eminent Indian on the reservation under me or any other Mission Indian reservation." At that time, he went to Washington, DC to consult the office about purchasing agricultural implements for the reservation, stood in for Lonergan as the "acting" superintendent when Lonergan was away in Los Angeles on business, and corresponded with the commissioner of Indian Affairs regarding the necessary acreage to adequately support a family, which he claimed to be ten acres — approximately the size of the allotments at Pala, but far smaller than his own holdings. By 1910, he had also been appointed a state fire warden.⁸⁶

Moro's success paid even more dividends for his family. In October 1908, he filed through his daughters Annie and Katherine for additional Indian allotments under Dawes for adjacent tracts to his own allotment. In the summer of 1910 he discovered that the land had been withdrawn as part of the Los Coyotes reservation — a mountainous, expansive and sparsely populated Kumeyaay reservation that had been expanded under a 1907 act of Congress.⁸⁷ Appealing to the Commissioner via the local superintendent, he was able to secure a special exemption. The land in question was withdrawn from the reservation, restored to the public domain, and opened up for allotment to his daughters.⁸⁸

⁸⁶ Superintendent's Annual Narrative and Statistical Reports from the Field Jurisdictions of the BIA, (1910,) roll 99.

⁸⁷ March 1907 Act (34 Stat. L. 1015).

⁸⁸ Moro to Commissioner, 15 Aug 1910, NARA-LN, BIA, RG75, PALA, ltrs sent to CIA, box 375, book 1, 360.

By 1912, he had secured a cottage on the Pala reservation to facilitate his activities as farmer, and the pressure to sell his land at the springs was increasing as Warner's Ranch was again devoted to cattle ranching and the springs to tourism. He held off against a number of purchase offers until some time before 1920, when he sold the land for approximately \$10,000, which the current superintendent, Paul Hoffman claimed was "a very advantageous deal."⁸⁹

While self-interest, rather than citizenship seems to have motivated Moro's actions, he nonetheless recognized the dividends that citizenship might pay in that regard, and his choice to pursue it *outside* the channels offered by the Indian Office was prescient. Had he chosen to take a reservation allotment, he would have been less successful. By 1919, he was still the only recipient of a patent in fee simple in the Pala jurisdiction.⁹⁰ Others, like William Nelson and Ben Amago, tried to follow his trajectory, but found less success, largely because the path to economic independence and citizenship had grown considerably more steep in the years after Domingo traveled it.

For some members, the federation was an advocate for Indian rights in the face of federal government ineptitude and local economic pressures. To

⁸⁹ Paul Hoffman to Jonathan Tibbet, 15 October 1920, NARA-LN, RG75, BIA, MIA/CCF, box 16, folder (3) 091.

⁹⁰ Domingo Moro was not the only one who had such options. Antonio Majel and Patricio Soberano each applied for Indian allotments to public land some time in the 1890s, but died before their patents were issued. Philip T. Lonergan, to Francis E. Leupp, 8 June 1908, NARA-LN, RG 75, BIA, Pala, Letters to CIA, box 375, book 1, p91-92. Also, Salvador Nolasquez enquired about an Indian allotment to Levi Green. Salvador Nolasquez to Levi Green, 29 April 1911, NARA-LN, RG75, BIA, Pala, Letters Received, 1903-1921, box 370, folder "Letters Received (Lonergan), 1908-10."

others, the federation revived a sense of racial Indianness. But regardless of the motivations, participation in early twentieth century American legal culture in order to defend Indian land tenure, and asserting rights of citizenship to further strengthen those claims, transformed reservation-based self-defense movements into a pan-Indian movement pushing for Indian sovereignty across southern California.

This did not sit well with the federal government. In 1921 brought criminal charges against Tibbet, Pete, Jones, F.U.S. Hughes and Gregorio Torres, for “knowingly, willfully and unlawfully” conspiring to “attempt to alienate from the Government of the United States the confidence of [numerous Indians], all of whom were then and there California Mission Indians and wards of the Government of the United States.”⁹¹ This stemmed ostensibly from the January 1920 convention in which Tibbet, Joe Pete and B.H. Jones purportedly made speeches in which they asserted that the United States was not doing anything for the advancement or benefit of the Indians, that the government had robbed them of their lands, that the agents were grafters, and that the government permitted it to continue.⁹²

⁹¹ Julio Norte, Ignacio Costo, John Ortega, Nicholas Pena, Saturnino Calac, William Calac, Adam Castillo, Bernardo Resvoloso, Fig Tree John, Juan de la Cruz Norte, Silvas Lubo, Joseph Sholder, Ben Amago, Dan Tortuga, Lois Antonio Ashman, William Nelson, Jr., Loretto Lubo, Lupy Lugo, Simon Lubo, Joe Woods, Alex Tortes, Mrs. Salida Stevenson *US v. Tibbitts* [sic], 1921, NARA-LN, Records of the District Court of the United States, RG 21, Southern District of California, Southern Division, 1929-1938 (San Diego,) case 2979 (hereafter *US v. Tibbets*).

⁹² They were charged with violating Section 37 of the Federal Penal Code, and conspiring to violate Sec. 2113, Ch. 3, Title 28, of the revised statutes. “Bench Warrant,” 22 April 1921, *US v. Tibbets*.

Tibbet and the federation were successful in having the charges dropped by pointing out that the actions of which they were accused were not criminal in nature and therefore the government would have to pursue the issue through civil court. The victory emboldened the federation by raising attention and building confidence among Mission Indians, giving them a stronger sense of collective legitimacy and power.

In its formative years, the Mission Indian Federation was coherent enough to provide direction and coordination to a diverse number of Indians across the region. At the same time, it was amorphous enough to accommodate a variety of experiences and agendas. By bridging the reservation-based political culture of Indian resistance, and regional efforts at legal and political reform, the federation gave Indians such as Robert Magee, Nicholas Peña, John Ortega and Andrew Moro — all of whom had attained a level of economic or cultural competency in the non-Indian world — a way to return to the Indian spaces along the San Luis Rey River and integrate their Indianness with the non-Indian world around them. For people like Vidal Mojado, whose identity as an Indian was rooted in local, village relationships, the federation provided him a way to reclaim that authority from the Indian Office and to deploy it against the non-Indian powers which were working against him.

Others saw in the federation a way to push for reservation-based political and economic reform. Adam Castillo in particular predicated his articulation of Indian policy on an emergent racial identity, and saw the federation's ability to speak to a broad audience but at a local level as a foundation for its future suc-

cess regionally and nationally. Magee found in the federation a way to become Indian which meshed with the hybrid economic and cultural practices which had undergirded his mobility over the first forty years of his life.

But finally, some Indians in the region had no need for the federation because they were able to accomplish what it sought through official channels, while others opposed it for local political reasons. Over the next decade, the federation's adversaries, both in the Indian Office and local Indian communities, gave the federation plenty of opportunities to articulate their goals in court.

...

CHAPTER SEVEN

“HUMAN RIGHTS AND HOME RULE” Making Indian Policy in Southern California, 1920 to 1932

The space the Mission Indian Federation called its “council chambers,” where the organization held its biannual meetings, was a large terrace at Jonathan and Emma Tibbet’s Riverside home. Anchored on one end by a large brick fireplace and hearth, and heavily shaded by tall trees, the porch contained a long wooden table. Accounts of meetings describe the porch decorated with American flags, red-white-and-blue pennants and banners. On one wall hung a portrait of Abraham Lincoln; above the fireplace a large cross.¹ The terrace staged the federation’s public events that were often attended by local dignitaries. Some came because the conventions were public events and they were civic leaders; others because the federation’s call for reform matched their own agendas. Still others came for the opportunity to reunite with other “old timers,” and to relive the past.²

For the Indian participants, while the past was important, perhaps even critical, their purpose was to plan for the future. The meetings, and the federation itself, provided a place for Indians to defy Anglo expectations of their disappearance. While attendees such as “Fig Tree John” Razon, who was said to be

¹ “Pioneers Gather at Great Riverside Picnic in Honor of Federation of Indians,” *San Bernardino Sun*, 14 April, 1922, reprinted in *The Indian*, April 1922, 14-15.

² “Mission Indians Open Convention — Riverside Citizens Provide First Day's Program,” *Los Angeles Times*, 2 May 1923, II, 10; House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1920, 1112-1117, 1122-1123; “Pioneers Gather at Great Riverside Picnic in Honor of Federation of Indians,” *Los Angeles County News — South of Tehachepi's Top*,” *Los Angeles Times*, 21 Jan 1920, II, 6.

128 when he attended the 1923 convention, were photographed as examples of the “Last of a Vanishing Race,” younger members of the federation — and they were all younger than him — planned for future action, organized committees, outlined strategy and wrote petitions.³

Plans and programs to challenge government authority were organized in a setting reminiscent of a Fourth of July celebration. Indians from across the region shared stories, dances, and revived rites and rituals alongside pseudo Indian ceremonies led by non-Indians. Local Protestant clergy delivered prayers before an audience whose religious views were an amalgam of folk Catholicism and traditional Indian spiritual practices. The conventions were a nexus where the federation’s contradictions were held in loose orbit, and out of those meetings came the organization’s slogan — “human rights and home rule.”⁴

While the two demands were usually presented as a pair, closer examination of what the federation meant by those terms demonstrates that they often worked against each other. The former appealed to a universal sense of justice, and therefore had broad popular appeal beyond Indian Country as those claims downplayed the Indianness of the claimants. But the latter half of the slogan required greater attention to racial identity in order to supplant federal power and assert Indian sovereignty on the reservations *as Indians*. Claims for human rights did not require a coherent sense of Indian identity, nor did they

³ Also pictured with Fig Tree John were Chief Manuel Tortes and Jim Chaalees. “Mission Indians to Stage Pow-Wow,” *Los Angeles Times*, 30 April 1923, I, 10. Fig Tree John was the subject of a popularized eponymous novel by Edwin Corle, (1935), and a subsequent scholarly treatment of the novel’s accuracy by Peter Beidler, *Fig Tree John: An Indian in Fact and Fiction* (Tucson: Univ. of Arizona Press, 1977).

⁴ Samuel Rice, “Our Foundation as a Light to Justice,” *The Indian*, April 1922, 11, 18.

necessarily challenge the existing power relations that undergirded Indian policy. Indians could assimilate, intermarry and disappear as a race, but they nonetheless possessed human rights which transcended their rights as citizens. The federation deployed the latter to pressure the federal government to live up to American ideals.

But home rule was a different matter. It pitted Indian demands against government initiatives, and it did so on the basis of an increasingly racialized sense of Indian identity. While the federation's demands didn't necessarily distinguish it from other reform organizations that were active at the time, its call for home rule and willingness and strength in asserting sovereignty on the ground did. As the federation gained strength, and the federal response sharpened, the federation shifted toward an increasingly strident and polarizing stance predicated on *Indian* control over Indian spaces.

This chapter takes the federation's rhetoric as seriously as its actions, using "human rights and home rule" as a way of broadly framing the outline of an *Indian* Indian policy which included a cluster of demands: opposition to allotment, a demand for rights under unratified treaties, and placing limits on the power of the Indian Office. The federation simultaneously demanded human rights through full citizenship and the fulfillment of government obligations to Indians, at the same time that it pressed for a reinvigoration of tribal authority and greater Indian sovereignty rooted on reservations. Both tactics threatened to weaken the power of the Indian Office. Home rule was not an entire disavowal of the Indian Office agenda. Rather, the MIF conceived of home rule as the right

to be citizens and participate as Indians in the American polity without federal intervention. The tension inherent to these conflicting goals should not detract from the seriousness with which the MIF pursued its objectives. To dismiss their rhetoric and actions as unrealistic or idealistic *because* they were eventually unsuccessful ignores historical contingency and privileges a national, non-Indian teleology. Despite obvious posturing, MIF leaders believed deeply in what they said.

The initial goals of the federation, as laid out in their 1920 constitution, were to “secure by legislation or otherwise all the rights and benefits belonging to each Indian, *both singly, and collectively*; to protect them against unjust laws, rules and regulations; to guard the interests of each member against unjust and illegal treatment.”⁵ In distinguishing Indians’ rights as both individuals and members of a collective unit, the federation’s constitution recognized the tensions that pulled on Indian communities — that is, between identity defined collectively and determined by relationships to other members of one’s village, band or reservation, and identity defined by the racial or cultural characteristics of individual Indians. Contrary to what the Indian Office understood, Indian resistance to federal policy was not in this case resistance to individuation in defense of Indian communalism. Rather, the federation occupied an emerging racial identity which intermediated between these tensions, and demanded rights on both accounts. The organization’s constitution outlined a strategy to protect

⁵ “Constitution of the Mission Indian Federation,” article 12, section 1, Copy filed as Government Exhibit No. 89 in *US v. Albanes*, box 1A, folder “San Diego - A-2-M, exhibits 46-72 [sic].”(emphasis added)

the area's reservations from federal abuse and mismanagement, while also urging that "All matters pertaining to the Mission Indian Federation must be handled in a broad, comprehensive sense. We are working for the Indian Race and must never lose sight of these facts." In short, working on behalf of the reservations in southern California was benefitting the Indian race as a whole.⁶

At its 1922 spring convention, the federation responded to the 1921 lawsuit that the government had filed against its leadership by issuing a statement that expressed their "regret" over recent "misunderstandings" and further clarified the objectives of the federation. In addition to restating the aims of the constitution, it added a second point: "to be loyal and patriotic to the government of the United States and the American flag, which is intended to secure liberty, justice and right for all, with the rights to life, liberty and the pursuit of happiness." In April 1922, the following appeared on the title page of the federation's official organ, *The Indian*: "Our Slogan: Loyalty and Co-operation with our government."⁷

The federation's embrace of citizenship and patriotism was, in part, an attempt to blunt the charges of disloyalty leveled by the Indian Office in court. But it also revealed a fundamental element of the federation's policy. The demand for human rights were grounded in treatment the Indians of southern California had received at the hands of the state and federal government. "Habit-able surroundings," sanitary living conditions, productive lands and perpetual

⁶ "Constitution of the Mission Indian Federation," *US v. Albanes*, box 1A, folder "San Diego - A-2-M, exhibits 46-72 [sic]."

⁷ *The Indian* April 1922.

water rights — all demands the federation made of the United States government in their desire to be treated “like other human beings.” The basis for these demands were the treaties the Mission Indians signed with the government in 1852. Patriotism supported the government, whose responsibility the federation believed it was to fulfill their obligations to the Indians. Citizenship, in this light, was a way to secure human rights.⁸

The federation touted the pledge it required of all new members, to “obey the laws of the United states, the State in which you live, and the county in which you reside,” as well as the “laws, rules, and regulations, of the Mission Indian Federation.” Future members were also asked to pledge their honesty, truthfulness, and loyalty to Indian rights and to the “honor... and dignity” of the United States.⁹ The federation constitution was careful to point out that the pledge in no way interfered “with the duties you owe to your country, or to your God.” In addition, *The Indian* was larded with patriotic references, most notably in the use of the eagle as a symbol meaningful to both the United States and Indians, and the presence on the inside front cover, of William Tyler Page’s “The American’s Creed.” Page was clerk of the U.S. House and wrote the creed during 1917 as part of a national contest. It was adopted on 3 April 1918, and read:

I believe in the United States of America as a government of the people, by the people, for the people, whose just powers are derived from the consent of the governed; a democracy in a republic; a sovereign Nation of many sovereign States; a perfect Union, one and inseparable, established upon those principles of free-

⁸ Ibid.

⁹ “The Mission Indian Federation Pledge,” read into evidence as part of Adam Castillo’s testimony, pt. 4, Reporter’s transcript, v.27, *US v. Albanes*, box 3, folder A2 [13/14].

dom, equality, justice and humanity for which American patriots sacrificed their lives and fortunes. I, therefore, believe it is my duty to my country to love it; to support its Constitution; to obey its laws; to respect its flag; and to defend it against all enemies.¹⁰

The federation's use of the creed was undoubtedly a byproduct of wartime hysteria. But it was also a challenge to the existing racial assumptions regarding citizenship. As scholars such as Gail Bederman and Ian Haney-Lopez have shown, the early twentieth century was a time of entrenched white, male citizenship.¹¹ In California, the *Anderson v. Mathews* decision (1917) granted citizenship to non-reservation Indians. But the federation was a reservation-based organization with strong support among Indians which the Supreme Court had recently labeled "tribal," and it strongly resisted the assimilationist assumptions upon which citizenship was based.¹² Instead, the federation conceptualized an expanded notion of racial citizenship and looked forward to a time when Indians would be "a nation, or a people to themselves," but at the same time citizens with the federation as "our government."¹³

The federation demanded that Indian children receive a "good practical education," which would qualify them to "become good citizens, [able] to labor and earn [an] honest living for themselves and their families."¹⁴ After 1917, the Indian Office was determined to reduce costs by closing poorly attended reser-

¹⁰ *Congressional Report*, Appendix, 6 April 1918, vol. 56, part 12, 286-289.

¹¹ Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*, (Chicago: University of Chicago Press, 1996); Ian Haney-López, *White By Law: The Legal Construction of Race* (New York: New York University Press, 1997).

¹² *Apapas v. United States* 233 US 587 (1914), 590.

¹³ Castillo, "The Story of the Indian Federation," 7.

¹⁴ Resolutions from 1922 convention in Riverside, reprinted in *The Indian*, April 1922.

vation day schools and putting Indian students in nearby public schools.¹⁵ The program was intended to foster rapid assimilation. The Indian Office, over the objection of the local superintendent, raised the minimum number of students required to keep reservation day schools open, and a number of schools in the area closed as a result. While the federation generally supported a public education for their children, they protested the closure of reservation day-schools and pointed to the gross inefficiency and waste caused when the Indian Office hired watchmen to guard empty schools at salaries sufficient to pay teachers.¹⁶

In their complaints about the Indian Office's mismanagement of Indian education, the federation echoed a growing chorus of criticism over the cruelty, inefficiency and misguided nature of Indian schools throughout the early twentieth century. That critique gained traction within the Indian Office itself and translated into policy changes that sought to make Indian education more appropriate to the needs and abilities of the subjects.¹⁷ But there was a delicate tension between making Indian education more appropriate to the needs of the students and making it intentionally obsolete. Commissioner Leupp had earlier argued that "Ethnically, [the Indian] will always remain an Indian, with an Indian color, Indian traits of mind, Indian ancestral traditions and the like."¹⁸ Given the widespread assumption of impending Indian extinction in the first decade of the

¹⁵ David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875 - 1928* (Lawrence: University Press of Kansas, 1995), 303-08.

¹⁶ M.W., "What the White Man Writes," *The Indian*, May 1922, 11-12.

¹⁷ Adams, *Education for Extinction*, 308.

¹⁸ Leupp supported day schools over boarding schools as "outposts of civilization." Rather than bringing Indians to "civilization," he advocated bringing a marginal form of it to the Indians while keeping them where they were. Adams, *Education for Extinction*, 309.

twentieth century, the effort to make education more reflective of Indian culture had a disingenuous ring to it. Psychologist G. Stanley Hall had challenged the logic of boarding schools because it turned Indians into “a cheap imitation of the white man,” rather than a “good Indian.” Instead, he advocated educating Indians in their native languages and allowing only “the bright ones” to transition to English. He urged that the Indian Office make use of the Bureau of Ethnology in constructing their curricula, and that “we need at least to learn what they have to teach us before it is all extinct.”¹⁹

The federation reacted against assimilation and extinction. Instead, they called not for more schools, or more efficiently managed schools, but rather “better schools” which promoted functional literacy in American political culture.²⁰ Several issues of *The Indian* in 1922 approvingly reprinted anti-BIA screeds from Pennsylvania Representative M. Clyde Kelley.²¹ In them, Kelly criticized existing schools for impeding children’s ability to learn the ways of American life by holding them “fast to outworn traditions and outgrown customs.”²² In another excerpt, Kelly argued that the Indian Office wasted mil-

¹⁹ G. Stanley Hall, “How Far are the Principles of Education Along Indigenous Lines Applicable to American Indians,” *Pedagogical Seminary*, 15 (September 1908), 365-69. See Irving G. Hendrick, “Federal Policies Affecting the Education of Indians in California, 1849-1934,” *History of Education Quarterly* 16, no. 2 (Summer, 1976).

²⁰ Jonathan Tibbet, testimony, 26 May 1920, House Committee on Indian Affairs, *Indians of the United States: Investigations of the Field Service, Hearings*, v. 3, 66th Cong., 2d sess., 1105-1109; Ida Eckert-Lawrence, “Ida Eckert-Lawrence, Noted Poet, Writes on the California Indian,” *The Indian*, May 1922, 3, 18; M., W. “What the White Man Writes,” *The Indian*, May, 1922, 11-12.

²¹ John W. Larner, Jr., “Braddock’s Congressman M. Clyde Kelly and Indian Policy Reform, 1919-1928,” *Western Pennsylvania History Magazine* 66 (April 1983), 97-111.

²² W. M., “What the White Man Writes,” 11; “Transcript of conference[s] between George Von Baux, Chairman of Commission of Indian Affairs, and Indians,” dated Escondido, 28 June 1925 and Rincon, 17 April 1925, entered as exhibit I in *US v. Albanes*, 5.

lions of dollars of the Indians' and taxpayers money, as well as the "self-respect of a race and the possibilities of a proud people. It wastes the confidence of the Indians by setting up decoys that lead them to their doom. It wastes their labor by setting them at futile tasks which have no value in American civilization. It wastes their youth in segregated schools which perpetuate tribalism.... It wastes money and manhood, character and citizenship, and conserves only idleness and ignorance and vice."²³ Kelly's critique was by no means a lonely voice.

Our ability to read *The Indian* as the voice of the federation is hampered by three factors: Publication of the magazine was erratic; the federation itself was never as ideologically coherent as its opponents in the Indian Office assumed; and the relationship between the executive council of the federation and the editorial policy of *The Indian* was fairly loose. The apparent impetus behind *The Indian* was Samuel J. Rice, a Kumeyaay / Cahuilla Indian from Soboba, born in 1885, who worked in the nearby fruit orchards and served as treasurer of the Mission Indian Federation. He tried three times to launch the magazine in 1921, but it was not until January of 1922 that the magazine had any sort of regularity in its publication with eleven issues before he resigned as editor in February 1923.²⁴ During his tenure, Rice published writings by Yavapai physician and activist Carlos Montezuma, Luiseño artist Wa Wa Cha, news from the various reservations in southern California, reprints of Congressional debates as well as his own writings in which he urged Indians to organize "to honor the

²³ M.W., "What the White Man Writes," 11.

²⁴ Daniel F. Littlefield and James Parins, *American Indian and Alaska Native Newspapers and Periodicals, 1826-1924* (Westport, Conn.: Greenwood Book, 1984), 157-58.

government and the governed,” a phrase he repeated throughout a number of articles.²⁵

Clearly, the magazine was meant to function both as a public relations device as well as a recruitment tool. Rice urged Indians to organize, arguing that “what is good for the aliens is also good for the hundred and fifty percent native American Indians.” He warned of a “race death toward which we are traveling” unless Indians learned to “lift our heads again as an Indian race, with traditions of our Federation, hopes of which no people need feel ashamed.”²⁶ Between reports from the semi-annual conventions, Rice outlined the federation’s *raison d’être* as the legitimate body of Indian political organization, the necessity of citizenship and the importance of meaningful education as a means to that end.²⁷

But in February 1923, Rice resigned and was replaced by E. Colman Raby, an Anglo from Pasadena whose prior involvement with Indian affairs was unclear.²⁸ With his tenure, the magazine took on a different tone. Its motto was changed to “Emancipation of the American Indian,” and it began to display prominently the seal of the Mission Indian Federation which featured a picture of Adam Castillo at its center. (see fig. 1 at right) While it is not entirely clear what caused Rice’s departure, it is clear that the magazine took on a slightly

²⁵ Samuel J. Rice, “The Experiment of Indian Policy,” *The Indian*, January 1922, 1.

²⁶ Samuel J. Rice, “Our Foundation as a Light to Justice,” *The Indian*, April 1922, 11.

²⁷ “The American Indian,” *The Indian*, January 1922, 9; “The Meaning of Our Co-Operation,” *The Indian*, February 1922, 10-11; “The Inspiration of the Mission Indian Federation,” *The Indian*, March 1922, 10; and “Our Foundation is a Light to Justice,” *The Indian*, April 1922, 11.

²⁸ “From the Council Fires,” *The Indian* 1, no. 1, February 1923, 5.

more professional appearance and increased the amount of content written by non-Indians. However, it ceased publishing soon thereafter.

Rice's clear support for effective on-reservation education was not always shared by federation members, for whom the particulars of the local situation overrode what semblance of organizational pol-

icy there might have been. The residents of the villages of the La Jolla reservation were particularly unhappy with the school there, where Vidal Mojado later claimed he learned "nothing," while Reginaldo Colul remembered he "learned about lifting rocks."²⁹ In addition to the insufficient and inappropriate education the school provided, it also sat at the center of a heated dispute over allotment. Surveyors, who were preparing new and highly unpopular allotment schedules, camped at the school house, using it as the reference point from which to organize the survey. The school was the symbol of the heavy handed actions of the Indian Office at a time when Indians in the federation were organizing to implement their own policies.³⁰



fig 1. Logo of the Mission Indian Federation, featuring the image of Adam Castillo. Source: Mission Indian Federation letterhead, Adam Castillo to Charles Ellis, 28 April 1925, NARA-LN, RG75, MIA/CCF, box 16, folder (3) [091].

²⁹ Vidal Mojado testimony, pt. 2, Recorder's transcript, v. 11, *US v. Albanes*, box 2, folder A2 [7/14], 1320; Reginaldo Colul, testimony, Recorder's transcript, v. 14, *US v. Albanes*, box 2, folder A2 [8/14], 1604.

³⁰ William Thorn, testimony, pt. 1, Recorder's transcript, v. 5, *US v. Albanes*, box 2, A2 [4/14], 592.

Olin Beery, the teacher between February 1922 and December 1923 felt that tension as well. He later recounted his unhappiness with his assignment, particularly the resentment he felt from captain Joe Mojado who told him that the money that paid his salary would go to the Indians if he were not there. On the day the school year ended in December of 1923, a fire broke out in the crawl space underneath the school building, destroying it. Without a building, Beery left La Jolla and was reassigned to Rincon at a higher rate of pay. Suspicion for the fire fell on both Beery and on Vidal Mojado, the federation captain of one of the reservation's three villages. Beery, it was claimed, may have started the fire, or at least not worked to put it out as a way of facilitating his reassignment at a more desirable location for better pay.³¹ Suspicion fell more heavily on the shoulders of the federation members on the reservation, who may have destroyed the school in order to get rid of the teacher in the hope that it would thereby increase government appropriations directly to the Indians themselves.

With the demise of *The Indian* in 1923, and passage of the Indian Citizenship Act in 1924, the federation refined its public stance on education and increasingly argued for sending their children to public schools. In 1930, Adam Castillo testified that, through the federal government's failure to ratify the eighteen treaties, California Indians were, "beaten out of our education for over 47 years... if the Government had given us education at that time, we wouldn't have interpreters here today. Our old people would be lawyers and judges."³²

³¹ Olin Beery, testimony, 24 October 1929, Reporter's transcript, v. 6, *US v. Albanes*, box 2, A2 [5/14], 644.

³² Adam Castillo, testimony, pt. 3, 8 January 1930, Reporter's transcript, v. 26, *US v. Albanes*, box 3, folder A2 [13/14], 2785.

By 1934, when *The Indian* began publishing again with Castillo as editor, the federation argued that Indian children's presence in public schools benefitted both Indian and non-Indian children alike.³³ They demanded the right of their children to be admitted into the public schools and argued that denial of public education "retarded" the race, and that the only plan to be followed was "education in the basic fundamentals which have proven themselves across the pages of history."³⁴ "It is the ambition of the Indian race, the same as the white man, to progress, to advance and in full competition with all races, prove ourselves to be worthy of equality as citizens of the American nation. No nation can hope to aspire to go higher than its fountain of learning—its public educational system."³⁵ Castillo's rhetoric echoed earlier calls to education on the basis of human rights, but by 1934, the federation had shifted its emphasis to asserting home rule.

The federation had come into existence to protect Indian Country from the abuses of federal allotment. Over the course of the decade between Indian citizenship and the Indian New Deal, the federation expanded its agenda be-

³³ "Indian Children in Public Schools," *The Indian*, IV, no. 3, Jul-Aug, 1934

³⁴ "Intolerance and Ignorance," *The Indian*, IV, no. 3, July-Aug 1934, 15.

³⁵ By 1923, when the federation's claims that the education system was failing Indian children had already received local coverage, the Secretary of the Interior convened the "Committee of One Hundred," that included many of the leaders of the Society of the American Indian such as Arthur Parker, Sherman Coolidge, Charles Eastman, Henry Roe Cloud, and most notably, Thomas Sloan, who would move to San Diego the following year and take up a virulent anti-federation stance. The Committee argued for on-reservation day schools to the 6th grade, and radically-revamped off-reservation boarding schools to the 8th. Thus, the MIF's calls for changes to the way Indian children were educated was not too far out of step with a larger reform movement that involved many people who would have been classified as anti-MIF. For the Committee of One Hundred, see Joseph Edward Otis, *The Indian Problem* (Washington, DC: United States Department of the Interior, 1924), 6.

yond resisting allotment to articulate a more comprehensive approach to Indian control over Indian spaces.

As construction of Warner's dam was being completed in 1923, federation Captain Sebastian Guassac of Mesa Grande, notified the federation that two graveyards — La Puerta and San Jose — faced imminent flooding by the new reservoir. Guassac's report generated a letter to the editor of *The Indian* from a long-time local resident who argued that without their cemeteries, the people from the two villages — both of which were largely vacant as the residents had been removed to Pala in 1903 — would “lose their identity forever ... submerged in the waters of Lake Henshaw.” He pointed to the “[h]umanity and common decency” that required that the remains be moved above the contour of the proposed reservoir and he urged the federation to take it up directly with the owner of the property and namesake of the reservoir.³⁶

It is unclear from the existing record what actions the federation took directly in the matter. It is clear, however, that the bodies buried at cemeteries were re-interred and that Castillo later claimed credit for the action.³⁷ The archival collection of the engineer responsible for the construction of the dam includes photographs that carefully document the exhumation and relocation of the graves in October, 1923, overseen by Father Mitchell of the Pala

³⁶ James A. Jasper to E. Colman Raby, *The Indian*, 1, no 3, March 1923, 4, 6.

³⁷ Adam Castillo, testimony, pt. 2, 26 November 1929, Reporter's transcript, v. 8, *US v. Albanes*, box 2, folder A2 [6/14], 907-08.

asistencia.³⁸ Whether or not the federation was responsible for the action, the *perception* that it had been contributed to the organization's support across the region.

While the federation's opponents were fond of exaggerating the threat posed by the federation, they were surprisingly accurate in describing the federation's motives. Thomas Sloan, lawyer and former president of the Society of American Indians, who became a prominent MIF critic after moving to southern California in 1925, claimed that the "purpose of the Federation is to control all indian affairs." With a slight alteration, it would be accurate to characterize the federation's long-term objectives as seeking to control all Indian affairs on Mission Indian reservations. Pala Superintendent Paul Hoffman claimed they wanted an "association ... that would have a power in reservation affairs paramount to that of the government."³⁹ But this was not a revolutionary movement, and the federation's immediate claims to home rule were significantly more limited than Hoffman and Sloan feared. Castillo claimed that the federation recognized the authority of the federal government and local Indian superintendents, but saw that authority as deriving from the 1852 treaties, with the federation as

³⁸ Joseph Barlow Lippincott, Photo album, 1922-23, Lippincott Papers, Water Resource Center Archives, University of California, Berkeley, box 73, particularly, photos numbered: 3342, 3344, and 3375 - 3386.

³⁹ Sloan diverged from his testimony to address Castillo directly: "I would like for you, Adam, to understand, and those of you who are here, that you are a dirty, rotten bunch, and that all of you, and the officers of that organization, ought to be in the jail or the penitentiary. I did not come to this reservation until you had one of my non-federation people [Elenterio] in jail. I got him out. The mistake I made was, when I got him out that I didn't put you in. That is where you and the policemen that you ordered to make the arrest ought to be, and it isn't too late to do it now..." Thomas Sloan, testimony, 26 November 1929, Reporter's transcript, v. 8, *US v. Albanes*, box 2, folder A2 [6/14], 856; Hoffman was quoted in "Mission Federation Official is Accused of Conspiracy," *Los Angeles Times*, 3 Apr 1921, IV, 13.

the legitimate representative of Indian interests. So long as the superintendents respected federation officials and attempted to deal with Indians “as a body” by meeting “halfway,” there was room for cooperation. However, when they failed to do so, “[t]hey make it so hard” for Indians that they must turn to organization on their own.⁴⁰

The aspect of home rule over which the federal government and the federation disagreed most publicly was law enforcement. In the late nineteenth century, Indian police had been authorized to enforce Indian Office policies.⁴¹ Some time around 1923, the federation created its own unauthorized police force. Across southern California reservations there emerged parallel and competing law enforcement units — the official Indian police of the newly-consolidated Mission Indian Agency (MIA), and those of the Mission Indian Federation. Both wore badges, but no other distinctive uniform. Both carried weapons and claimed sole authority to enforce the law, keep the peace and make arrests on the reservations.⁴²

In September 1924, F. M. Hewson, the city marshal of Escondido, California wrote to the state attorney general asking which of the two police “factions” operating in the area had authority. He pointed to the MIA’s credentials,

⁴⁰ Adam Castillo, testimony, pt. 3, 8 January 1930, Reporter’s transcript, v. 26, *US v. Albanes*, box 3, folder A2 [13/14], 2781.

⁴¹ William T. Hagan, *Indian Police and Judges: Experiments in Acculturation and Control* (New Haven: Yale University Press, 1966).

⁴² While stipulations for police officers appear in the 1920 federation constitution, the powers are fairly limited — patrolling conferences, councils and conventions. In the summer and fall of 1924 there appears to be an increase in the conversation about the police — in letters in the Indian Office correspondence, and in the local press. 3 Apr 1921 *Los Angeles Times*, IV, 13.; Bernard, “Fighting the Conspiracy,” 35-48.

but claimed that the federation police were actively making arrests and trying cases, perhaps an implicit statement about the lack of MIA activity. He had already denied federation officers the right to use the Escondido jail when the federation policemen arrested a few Indians at the Rincon fiesta.⁴³ A few months later, commissioner Burke authorized the San Diego County Sheriff to begin his prosecution of members of the federation for impersonating police officers.⁴⁴ The prosecutions were unsuccessful and federation policemen continued to operate on the reservations for the remainder of the decade.

Federation efforts at self-determination extended beyond law enforcement. In April 1925, Jim Tortugo, Luis Flores, and Luis Chawe, all from the Pechanga reservation, wanted to organize a fiesta. They first approached the federation captain to ask his permission. He told them he would bring it before the people to let them decide. In the meantime, they visited George Robertson, the government farmer at Pala, and thus the Indian Office's closest local representative. Robertson referred them to the local priest saying he would support whatever decision the priest made. They later learned that the people had decided they did not mind a fiesta, but did not want to have dances and games. Tortugo, Flores and Chawe threatened to have the fiesta with dances and games anyway. Four federation representatives from Pechanga called on federation president Adam Castillo protesting the fact that the fiesta organizers

⁴³ "Organizations Interested in Indians," NARA-LN, RG 75, BIA, MIA/CCF, Box 16, Folder (3), [091]; Thorne, "On the Fault Line," 195.

⁴⁴ "Organizations Interested in Indians," NARA-LN, RG 75, BIA, MIA/CCF, Box 16, Folder (3), [091].

were moving forward “without showing any authority or permission.”⁴⁵ Castillo, in his self-defined role as “peace maker,” called on Robertson where he criticized the Indian Office’s selection of tribal officers and delivered what is perhaps the best existing outline of the idea of home rule:

It was explained to Mr. Robertson, that the said Captain, Judge, and Police were men selected and elected by their people to maintain order upon their respective reservation, and they are the real tribal officers who represent their people pertaining to reservation and tribal affairs. These tribal officers are supported by the majority of the people on each Reservation. As long as the Indian Agents and Superintendents are opposed and not willing to recognize the rights and duties of these tribal officers, It is evident that they cannot secure their co-operation...

The Mission Indian Federation, as an Indian organization, does not give orders to the said tribal officers, But it does, recognize the rights and duties of the said officers; And shall protect them against unjust rules and regulations; to gaurd [sic] the interests of each member against unjust and illegal treatment. ...

This Indian organization is NOT organized for amusements nor curiosities, It is organized for a purpose That PURPOSE which will bring Peace, UNITE [sic] and HAPPINESS for the Indian race.⁴⁶

By arguing that the federation officials were the real representatives of the reservations’ interests and responsible for dealing with the agents and superintendents, Castillo positioned the federation as intermediaries between the federal government and Indian peoples.

Citizenship was a potentially powerful tool to assert home rule, as it allowed the federation to legally challenge the authority of the federal government. In late 1926, Vidal Mojado and six representatives of the La Jolla and

⁴⁵ Adam Castillo, letter to C.L. Ellis, 28 April 1925, NARA-LN, BIA, RG 75, MIA/CCF, box 16, folder (3) [091].

⁴⁶ Castillo to Ellis, 28 April 1925, NARA-LN, BIA, RG 75, MIA/CCF, box 16, folder (3) [091].

Rincon reservations, all of whom were federation members, brought an equity suit against the Southern Sierras Power Company [SSPC]. They alleged that SSPC had attempted to construct a telephone line across the reservations without their authority. SSPC had purchased an existing power transmission line owned by the San Diego Gas and Electric Company, which had been built across the La Jolla reservation with the permission of the residents. In 1924, they began to construct additional transmission and telephone lines to extend the existing lines to provide a backup source of power in case of plant failure in its outlying facilities. They applied for and received, in January 1925, a license from the Federal Power Commission for construction, operation and maintenance of the line.⁴⁷

In early 1926, the plaintiffs ejected SSPC's employees from the reservation and removed the telephone poles they themselves had been contracted to install. The legal action that the Indians brought sought a court order to prohibit the company from returning to construct telephone lines and requiring that they pay damages for the construction already done. The plaintiffs claimed that the 1924 law that made Indians citizens invalidated the stipulations in the 1920 Federal Water and Power Act which regulated the right of power companies to enter federal lands such as reservations with the authority of the secretary of the interior. Without that authority, the plaintiffs argued that the SSPC's actions constituted trespass as they had failed to secure approval from the Indians

⁴⁷ *Vidal Majado [sic], et. al. v Southern Sierras Power Company*, 24 December 1926, eq. case No. J. 88(H), NARA-LN, Records of the District Court of the United States, RG 21, Southern District of California, Southern Division, 1907-29, box 197, folder "J88 (2/2) - J89."

themselves as required in the 1891 Act for the relief of the Mission Indians of California.⁴⁸

The SSPC claimed they had not trespassed as the Indians were not, in any legal sense of the word, owners of the lands. Rather, the land was patented to the band, and held in trust by the U.S. Government. Further, the SSPC countersued on the grounds that Indian citizenship in no way affected the FWPA, and that Indians were conspiring to interfere with their rights. In February 1926, the judge issued his decision, agreeing with the SSPC and denying that the Indians themselves owned the land and therefore had the power to grant rights of way. He issued a permanent injunction against all members of the Rincon and La Jolla bands against any further act disturbing the SSPC in their actions.⁴⁹

But there were complications: According to a number of participants, some time in 1924, before construction began, various Indians, Mission Indian agent Charles Ellis, attorneys representing the Indians and the power company met in a barn at La Jolla. At that meeting, an agreement was made that the power company would pay the Indians \$2,500 for the right of way across Indian land. The money went to the attorney, who assisted the federation in bringing the suit.⁵⁰

On the surface, this may appear as yet another in a series of legal actions benefitting the attorneys more than those who brought the charges. However, the action demonstrated an opportunism and assertiveness that charac-

⁴⁸ *Vidal Majado [sic], et. al. v Southern Sierras Power Company.*

⁴⁹ *Vidal Majado [sic], et. al. v Southern Sierras Power Company*

⁵⁰ Vicenti Albanes, testimony, pt. 1, Reporter's transcript, v.16, 13 Dec 1929, *US v. Albanes*, box 2, folder A2 [9/14], 1810-1811; and Bruno Sovenish, testimony, Reporter's transcript, v. 20, 30 Dec 1929, *US v. Albanes*, box 3, folder A2 [10/14], 2168.

terized the federation's activities. Both Vincenti Albanes and Bruno Sovenish worked for the power company placing poles across the reservation. Both were also co-plaintiffs in the lawsuit filed by Vidal Mojado against the power company.⁵¹ In using a settlement payment for rights-of-way to fund a subsequent lawsuit that sought to deny those rights, while working for the company that they sued for the work they themselves had done, the Indians of the region proved very adept at using the legal system to their advantage. And while the lawsuit did not directly involve the federation, it was a clear beneficiary of the federation's campaign to empower Indians to challenge the authority of the federal government, and the conference of citizenship which enabled them to do that.

At the same time, conflicting ideas over policing authority led to violence. At times, the MIF and MIA officers fought over the right to enforce the same law. Fiestas served as an important site for those disputes, as both police forces had a vested interest in asserting their authority — the federation in order to recruit members, and the MIA as a way to blunt the growing threat of the federation. Historian Tanis Thorne has recounted the events that culminated in the outbreak of violence at the Campo fiesta in the summer of 1927. There, MIA police and county sheriffs arrested federation members for allegedly selling alcohol. The federation argued that the county officials had no authority on the res-

⁵¹ Vincenti Albanes, testimony, pt. 1, Reporter's transcript, v.16, 13 dec 1929, *US v. Albanes*, box 2, folder [9/14], 1829.

ervation, and attempted to free the prisoners. In the shootout that ensued, the federation captain and judge were killed.⁵²

In the fall of 1927, Juan Elenterio of the Soboba reservation brought a suit in Riverside Superior Court against Adam Castillo, Jonathan Tibbet, and two federation policemen for false arrest. It looked to many to be, in the words of a local rancher, “a battle to a finish [sic], with the dissolution of the Federation, if successful, as the result.”⁵³ The dispute started when Elenterio questioned Castillo over some accounting ambiguities at an August 1927 federation meeting at Soboba. Elenterio demanded further accounting of the federation funds and Castillo was unwilling to provide the information and threatened to arrest Elenterio. The following day Castillo sent two MIF policemen who arrested Elenterio and held him in the Hemet jail for twenty-four hours.⁵⁴

Thomas Sloan took Elenterio’s case and filed a lawsuit against the federation for false arrest, arguing successfully that the federation had no jurisdiction to make the arrest. The case dragged on for almost three years.⁵⁵ Castillo disputed Sloan’s account of these events. He claimed that Elenterio was “not exactly” arrested, but voluntarily detained by federation policemen “in accor-

⁵² Thorne, “On the Fault Line,” 197-202.

⁵³ Ed H. Davis to Charles Ellis, 5 Oct 1927, NARA-LN, BIA, RG 75, MIA/CCF, box 16, folder (3) [091].

⁵⁴ “Indian Sues Accusers,” *Los Angeles Times*, 6 October 1927.

⁵⁵ “Indian Sues Accusers;” *Juan Elenterio v. The Mission Indian Federation, an association of persons doing business under said name, but its officers: following named, Adam Castillo, president, Jonathan Tibbet, chief counselor, Joe Lala, Becente Lugo and Gene Chaqua, policemen of said federation, and Adam Castillo, Jonathan Tibbet, Joe Lala, Benecente Lugo and Gene Chaqua, defendants.* Civil Case No. 17199, Superior Court of the State of California, County of Riverside, (hereafter “*Elenterio v. MIF*”) NARA-LN, BIA, RG75, MIA /CCF, box 16, folder (2) [091].

dance with the laws of the state of California" because he and Stephen Arenas had been charged with hitting an old man over the head with a shovel on the reservation.⁵⁶ Castillo claimed the Justice of the Peace for Hemet had told him "You just go over there and get those papers and you can serve them on him and just bring him over here and we will take care of him."⁵⁷ Arenas was an MIF member; Elenterio was not — a detail that Castillo admitted contributed to the fact that only Elenterio was detained. Castillo argued that this was not a federation action, but a reservation action that stemmed from his right to make arrests as the judge of the Soboba reservation. He claimed it just happened that the two men who accompanied him to make the detention were federation policemen. Castillo's claim that he had the power to arrest someone on the reservation, and his use of federation policemen to back it up, illustrates the hand-in-glove relationship between the federation and tribal authority in the minds of federation officials.⁵⁸

The Elenterio case was a defeat for the federation. But in 1928, due in part to pressure brought by the federation and the Indian Board of Cooperation, the California legislature authorized the state attorney general to sue the federal government for compensation for the land taken from California Indians as a result of the federal government's failure to ratify the treaties it negotiated in

⁵⁶ Castillo testimony, pt. 2, Reporter's transcript, v. 8, 26 November 1929, *US v. Albanes*, box 2, folder A2 [6/14], 901-03.

⁵⁷ *Ibid*, 956-57.

⁵⁸ *Elenterio v. MIF*, NARA-LN, BIA, RG75, MIA /CCF, box 16, folder (2) [091].

1851-52.⁵⁹ The 1928 Act offered the hope of victory in one of the federations core demands. But at the same time, victory was illusory, as the lawsuit marked a decline in federation activity and took sixteen years to reach fruition.⁶⁰

In fighting the government's early conspiracy charges against the federation, Tibbet and his attorneys successfully argued that the federation's actions were not criminal and therefore the government should pursue the matter in civil, not criminal court. In 1929, they did. On 13 April, at the request of William Nelson and Dolores Newman, both of the La Jolla village, the United States government filed for a temporary injunction against Joseph Albanes, Vidal Mojado, and forty-one other members of the federation from La Jolla and Rincon, in order to prevent them from interfering with the recently completed allotments on those two reservations.⁶¹ The injunction charged the respondents with engaging in threats and acts of violence to intimidate Indians into refusing to recognize the allotments. Their opposition stemmed from the fact that recent allotment surveys undermined widely accepted, but unofficial surveys and allotment schedules made in the early 1890s.⁶² Those initial surveys assigned a twenty-acre plot to each Indian head of household, and a ten-acre plot to each individual, unmarried Indian.

⁵⁹ House, Committee on Indian Affairs, "Claims of California Indians," hearings held 29 February, 8 and 15 March, 1928 on HR 491, 70th cong., 1st sess., (Washington DC: Government Printing Office, 1928). The Act was passed 18 May 1928, (45 Stat 602).

⁶⁰ Shipek, *Pushed Into the Rocks*, 194, n6; Samuel W. McNabb and Ignatius Parker, "Reply Brief of Complainant," 7 May 1931, *US v. Albanes*, box 1, folder A2 [3/14], 1-2.

⁶¹ John Ortega and Robert Magee, both from Pala, were later added as respondents in the case.

⁶² McNabb and Parker, "Bill of Complaint for Injunction," *US v. Albanes*, box 1, folder A2 [1/14], 9-16.

The subsequent surveys and preparation of allotment schedules, conducted between 1923 and 1928, cut across these unofficial, but popularly recognized boundaries and dispossessed some of the previous occupants. Many of those who were dispossessed, or feared dispossession, were members of the Mission Indian Federation. An analysis of the Indian census rolls shows that the federation members listed as respondents in the case were on average approximately ten years older than those Indians listed as witnesses for the government.⁶³ They were therefore more likely to have received a larger plot of land in the 1890s or to have inherited one since that time. This, and the fact that they were more likely to have improved the lands they had occupied, meant they were less likely to be willing to relinquish their larger, improved tracts for smaller ones under the new allotments.

Hearings in San Diego were held intermittently for roughly four months, producing over three thousand pages of testimony. The federation argued they were defending the right of Mission Indians to occupy their land in common against individual allotment into insufficient and often barren tracts. They charged that the Indian Office, in pushing forward with new allotments, undermined the livelihood of those Indians who had improved the earlier allotment plots. On the other hand, the attorneys for the government dismissed the federation as a small, but vocal minority of discontented and backward Indians

⁶³ Of the 43 people listed as respondents, the average age in 1930 was just over 52 years. For those eleven who appeared as government witnesses residing on the two reservations whose opposition to the Federation was clear, the average age was just over 43 years. *Indian Census Rolls, 1885-1940*, Microcopy 595, RG 75, National Archives, (hereinafter *Indian Census Rolls*), rolls 260-265.

working to thwart progress and retain power.⁶⁴

What emerges from the testimony is a struggle over racial identity and intratribal authority that, given the unique relationship between the federal government and local Indian communities was projected onto a much larger struggle over the entrenched authority of the Indian Office and the federation's opposition to it. All Indian participants, whether pro- or anti-federation, claimed authenticity as Indians. But unlike those who had initiated the lawsuit, who looked to the Indian Office as their authority, the federation turned to its own authority to buttress their claims.

Much of the testimony involved mundane questions of local authority. On 6 January, 1929, Francisco Colul, who claimed not to know how old he was, nor how to spell his name, placed his mark at the end of a proclamation that read, in part, "This is to certify that I ... have passed my land 20 acres to the people of La Jolla Indians for their pasture and to take off my fence." The proclamation was witnessed and signed by fifteen people including Vidal Mojado and Joe Albanes, captains of the La Jolla and Portrero villages, respectively. Two days later, under Mojado's and Albanes' orders, the fence was removed.⁶⁵ The fence enclosed land that had recently been allotted to William Nelson's niece, Andrilla Van Wie, a La Jolla Indian listed on the census rolls as having 1/4 Indian "blood," and living in Hartford, Connecticut. Nelson, a twenty-five year old Sherman graduate, had been renting the land from Colul for pasture for ten dol-

⁶⁴ McNabb and Parker, "Brief of Complainant," *US v. Albanes*, box 1, folder [1/14], 7-8.

⁶⁵ Exhibit 81, *US v. Albanes*, box 1A; On tearing down the fence, Vidal Mojado, testimony, pt 1, *US v. Albanes*, box 2, folder [7/14], 1269 and William B. Nelson, Jr., testimony, pt. 1, *US v. Albanes*, box 1, folder [3/14], 177 – 178.

lars per year for a couple of years, but had yet to pay him for it.⁶⁶ While some estimated the age of the fence to be at least forty years, Nelson claimed he had built it in 1919. Once the fence was removed, land that Nelson had been using as a private pasture was open communal grazing.⁶⁷

At that time, Vidal Mojado was fifty years old. Prior to returning to the La Jolla reservation around 1920, he and his wife had lived at Soboba, her home reservation. There, they had become acquainted with Adam Castillo. When Mojado returned to La Jolla to organize the Federation there, he was elected by the people, along with Nelson and Ben Amago, to be a delegate to the 1920 Federation convention in Riverside. Unlike Nelson and Amago, who had attended Sherman Institute in Riverside, Mojado had spent only a few weeks at the La Jolla day school.⁶⁸ Both Nelson and Amago withdrew from the organization immediately following the convention and remained staunch opponents to it.⁶⁹ At La Jolla, Mojado's relationship with them evolved into a persistent feud although it is unclear whether the dispute over the Federation was its proximate cause or effect.

This was not the first run-in between Mojado and Nelson over a fence. In 1925, Mojado had clashed with Nelson over some abandoned land which had

⁶⁶ Francisco Colul, testimony, pt. 1, *US v. Albanes*, box 2, folder [7/14], 1561.

⁶⁷ Samuel McNabb and Ignatius F. Parker, "Bill of Complaint for Injunction," *US v. Albanes*, box 1, folder [1/14], p9-10; *Indian Census Rolls*, rolls 260-264.

⁶⁸ Vidal Mojado, testimony, pt. 2, *US v. Albanes*, box 2, folder [7/14], 1321.

⁶⁹ The reasons for their departure are unclear. It seems that during the constitutional convention, a young Sherman graduate named Juan Deporte wanted to establish a parliamentary system with committees on land use, irrigation and allotment. But Tibbet felt that would not work. His heavy-handed response pushed Deporte out and with him many of the younger members. See Adam Castillo, testimony, pt. 3, *US v. Albanes*, box 3, folder [13/14], 2796.

recently been included in an allotment selection to Nelson.⁷⁰ When, almost four years later, Mojado and Albanes tore down the fence on Colul's property, the feud flared once again. Nelson was employed part of the year as a fire warden in the adjacent Cleveland National Forest, a job for which he was supplied a gun and a badge.⁷¹ Nelson confronted the men who tore down the fence, citing the patents that had been issued for the recent allotments. Mojado claimed the patents were fakes. The confrontation escalated and witnesses testified that Nelson brandished his gun.⁷² Nelson claimed he had his gun only for protection from Mojado who had threatened to "get him," if he tried to use his niece's allotment.⁷³ While this confrontation didn't result in bloodshed, it motivated Nelson to pursue legal action and demonstrates a clear distinction in the sources of authority to which the two men appealed. On the one hand, Nelson grounded his claim to the land in the power of the federal government by pointing to the patent issued to his niece and used the inferential authority provided by his government job to back it up. Mojado, on the other hand, grounded his authority in the more abstract will of the people of La Jolla, that obviously, in this case, did not include Nelson, despite the fact that he was an enrolled member of the La Jolla band, living on the reservation and listed in the Indian census rolls as having 1/2 Indian "blood." Thus, an intratribal dispute over land and power was

⁷⁰ Vidal Mojado, testimony, pt. 2, Reporter's transcript, v. 11, *US v. Albanes*, box 2, folder [7/14], 1350.

⁷¹ William Nelson, testimony, pt. 1, *US v. Albanes*, box 1, folder [3/14], 226-27.

⁷² Vidal Mojado, testimony, pt. 4, *US v. Albanes*, box 2, folder [7/14], 1518. Also, Jose Mojado, testimony, pt. 1, *US v. Albanes*, box 2, folder [8/14], 1612-1615.

⁷³ William B. Nelson, affidavit, 16 Feb 1929, filed as part of *US v. Albanes*, box 1, [1/14].

mapped onto a much larger struggle over the definition and deployment of Indian racial identities. Within very small Indian communities, and among people whose membership in the same tribe was beyond question, there were still profound struggles over what being an Indian meant.

It is perhaps not too surprising that younger people like Nelson, Amago and Arviso, none of whom were federation members, turned to the power of the federal government to legitimate their rights.⁷⁴ They pointed to the patents they had received to verify their claims to the land. But they also took great pride in their success in obtaining government jobs. Occasionally, the two converged. In addition to Nelson's job as an assistant fire warden, both he and Ben Amago worked for William Thorn, the surveyor who had done the recent allotment surveys. In addition, Amago drove a school bus on the reservation, for which he received \$80 per month, while Tom Arviso ran the pumping plant on the Rincon reservation, for which he was paid at least \$115 per month. While these jobs paid relatively well, they also allowed their holders to leverage federal power for personal benefit. Arviso agreed with his neighbors' complaints that, while their fields were drying up, his were "suffering from a little too much irrigation."⁷⁵

But their willingness to accept a strong federal presence in their lives extended beyond their livelihood. For example, in 1917, F.M. Conser, the Superintendent at Sherman, wrote to Superintendent of the Pala Indian Agency, which had jurisdiction over La Jolla, to explain that William Nelson was, "responsible

⁷⁴ In 1930, Amago was 48, Arviso 45 and Nelson 34 – an average age of 42.

⁷⁵ William H. Thorn, testimony, pt. 1, *US v. Albanes*, box 2, folder [4/14], 600; Ben Amago, testimony, *US v. Albanes*, box 2, folder [4/14], 346; Tom Arviso, testimony, pt. 2, *US v. Albanes*, box 2, folder [4/14], 284-85; Tom Arviso, testimony, pt. 3, *US v. Albanes*, box 2, A2, [6/14], 843-44.

for the condition of one of our girls and should marry the girl.” Attempting to manage the situation, Conser implored McCormick to secure the consent of Nelson’s father for the marriage. This sort of intimate interference in the daily lives of Indians often produced resistance, resignation or a combination of the two. In the case of Nelson, he married Myrtle Blodgett, returned to La Jolla, secured a series of government jobs, and acquired control over a stretch of good land just southeast of the La Jolla village. In other words, the historical record suggests that Nelson resigned himself to federal authority over his personal life, and in turn leveraged federal authenticity to his own advantage within the reservation.⁷⁶

However, we misunderstand the dynamic if we assume that the federation represented the converse – a disavowal of federal power and return to tribal traditions. At first blush, it might appear that the federation, in organizing at the tribal level to resist allotment, fits into the progressive / traditional binary used by the Indian Office to describe Indian communities at the time, and government officials were quick to make that accusation. But the testimony contradicts that. Certainly, the federation grounded its authority in tribal traditions, such as the revitalization of the position of the village captain, the adaptive resistance to encroachments by non-Indians onto Indian lands, and the assertion of Indian authenticity vis-à-vis off reservation and intermarried Indians. But they did more than just ground their authority in traditional Indian identities. The federation deployed that authority to challenge the Indian Office, and work toward

⁷⁶ F.M. Conser to Thomas McCormick, 3 April 1917, NARA-LN, RG 75, PALA, Letters Received, 1903-1921, b370.

more efficient management of local affairs by articulating an informal system of political sovereignty in which Indians and the federal government would share jurisdiction over Indian peoples in much the same way that power was divided among municipal, state and the federal government under U.S. law.⁷⁷

The ambiguity of deploying traditional tribal identity for progressive goals became obvious in the federation's opposition to allotments. Federation reasons for opposition were often contradictory. Some claimed, as Vidal Mojado did, that the allotments were of no benefit because they were too small to make a living.⁷⁸ But many opposed the allotments because they went against existing community land use patterns. Mojado himself claimed that his justification for tearing down fences was to protect communal property, and access to community pasture land. Vincenti Albanes remembered a federation meeting in which the participants discussed allotments and their opposition to taking away natural springs, critical for farming, from public use.⁷⁹ Additionally, some claimed their opposition stemmed from the fact that the allotments trampled Indian control of land by not recognizing existing occupation and thus dispossessing occupants. Some, like Florencio Subish, opposed the smaller allotments because they challenged parental authority – allotting adjacent plots to children wasn't the same thing as allotting larger portions to the parent.⁸⁰

⁷⁷ Castillo, "The Story of the Indian Federation," 1-7.

⁷⁸ Mojado, testimony, pt. 2. *US v. Albanes*, box 2, folder [7/14], 1406. Also, incidentally, the testimony of Dolores Newman, who opposed the Federation. Box 3, folder [10/14], 2189-2202.

⁷⁹ Vincenti Albanes, testimony, pt. 1. *US v. Albanes*, box 2, folder [9/14], 1822-25.

⁸⁰ Florencio Subish, testimony, *US v. Albanes*, box 2, folder [9/14], 1936-40.

To many in the federation, allotments merely opened the door for further non-Indian encroachment onto Indian land.⁸¹ One way of moving through that open door was to carry an Indian wife over the threshold. Many federation members directed their animosity at non-Indian men who had married Indian women and were now either utilizing the allotments of their wives or pushing for special privileges on the reservation. One such individual was Carl Kansler, a white man living on La Jolla with his Indian wife. After she died in 1927 or 1928, Kansler had a number of clashes with federation members who eventually forced him to leave.⁸² Kansler piqued the ire of Mojado when he was hired by Nelson to plow land that Mojado was renting to another Indian.⁸³ During another similar confrontation, Kansler told Mojado that he “wasn’t anything” – a challenge to his authority that apparently struck a sensitive nerve with him, as the phrase recurs throughout his testimony. But Mojado’s ire had a particularly racial bent to it as throughout his testimony, he almost exclusively referred to Kansler as “the white man.”⁸⁴

A few factors help explain the diversity of responses to allotment. Clearly, the struggle over allotments was mapped onto existing intravillage feuds. Opposition to allotments was an assertion of tribal power and authority within the

⁸¹ Adam Castillo argued the government began the allotment process in the middle and left the periphery open expressly for the purpose of encouraging white settlement. Castillo, “The Story of the Indian Federation,” 7.

⁸² Edward J. Kelly, the attorney for the respondents described him as a “disturbing element... a thief, a rapist, and, generally speaking, a bad hombre on the reservation.” Vincenti Albanes, testimony, pt. 1, *US v. Albanes*, box 2, folder [9/14], 1844.

⁸³ Nelson, testimony, pt. 1, *US v. Albanes*, box 1, folder [3/14], 179.

⁸⁴ Mojado, testimony, pt. 2, *US v. Albanes*, box 2, folder [7/14], 1395.

reservation as well as an act of resistance to forces from without. The destruction of Nelson's fence was an adjunct to other assaults against him on the basis of his success in securing government jobs.

At the same time, federation ambivalence over allotments also highlights a very pragmatic cost-benefit analysis being undertaken by many of the Indians. Rather than opposing allotments outright, as the federation claimed, many federation members were willing to accept allotments, but only if those tracts were large enough to support them.⁸⁵ Ironically the Indian Office labeled Indians as backwards for refusing the small and often agriculturally worthless allotments, despite the fact that to be a "progressive" Indian was to be a successful farmer.

Nicholas Peña, was one such "progressive" Indian who worked roughly eleven acres of irrigated land at Pala. That an allotted official of the federation was actively assisting in the campaign to resist allotments, struck the attorneys for the U.S. as hypocritical. When confronted with this on the stand, Peña's lawyer syllogistically sidestepped the issue: "He knows he is a member of the Federation, of course, and all good Indians are opposed to these allotments. The members of the Federation are all good Indians."⁸⁶ But there is a more substantive interpretation. Peña's allotment at Pala was successful and allowed him to remain on the reservation. The allotments at Rincon, and certainly at La Jolla, did not promise that kind of agricultural success and would continue to

⁸⁵ Joe Albanes testified that it was "unjust to allot ... such poor land... a man can't make a living on them pieces of land" and agreed with Kelly's assessment that his opposition to allotments was based on the fact that they were insufficient plots. *US v. Albanes*, box 2, folder A2 [7/14], 1138.

⁸⁶ Nicholas Peña, testimony, *US v. Albanes*, box 3, folder A2, [11/14], 2340-41.

force Indians off their land, either to survive in the growing wage economy of the region, or through outright dispossession through sale. Thus, in the end, not all allotments were the same, and Peña was willing to stand on such distinctions.

In February 1930, At the end of the hearings in the equity suit, special master Franklin M. Grant congratulated the Indians attending the hearings on being so “well behaved,” and wondered why, given their demeanor, there should be any disputes among them. Thirteen months later, he ruled that the temporary injunction against the federation be made permanent — arguing that, while the Indians certainly had the right to organize the federation, “lawful bodies” could nonetheless acquire a power against which the individual becomes helpless. When they used this power unlawfully, peace “must be purchased at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution ... it is the duty of government to protect the one against the many as well as the many against the one.”⁸⁷ While clearly a reassertion of the power of federal guardianship, it was in many ways a paper victory, enforceable only by recourse to the courts. While the Indian Office had been all too willing to do that in the first few years of the decade, it was much less inclined to do so by 1931. In short, the ruling accentuated by law what conditions had already produced on the ground — the federation’s efforts had been surrounded by calls for reform from a broad sector of the public, such as the Meriam Report and the activism

⁸⁷ Franklin F. Grant, “Special master’s Finding of Facts, Conclusion of Law and Report,” 10 March 1931, *US v. Albanes*, box 1, folder A2 [1/14].

of John Collier's American Indian Defense Association founded in 1923.⁸⁸ Subsequent charges of corruption and malfeasance leveled against Jonathan Tibbet and his death in 1931 contributed to the federation's temporary decline.

In February of 1932, Adam Castillo told "the story of the Indian federation," to a crowd at the La Jolla reservation. In the transcript which has survived into the historical record, the Indian Office author recorded Castillo's explanation of why the organization first sought out Tibbet:

We could not speak effectively as indians and had to get a white man who was friendly to us to do some of the talking... We now know that we have heard a lot of bad reports about him from the white people. But perhaps when his story is all known there will be a lot of good that can be said about him too. He is dead now. He was our friend.

But Castillo continued to explain the federation's position. "The Indians are citizens. This is our government. If we were white citizens nobody would think twice about our having an organization of our own to look after our rights. It is the only way we can help our government in its duty to the Indian." The federation was not only a response to the extension of the power of the federal government over the region's reservations, but a local attempt to formulate Indian policy from the ground up. The federation believed that the Indians were "a nation, or a people to themselves." But they also looked forward to a time when Indians "as citizens of the United States are no different from any other

⁸⁸ Lewis Meriam, *Problem of Indian Administration* (Baltimore: Institute of Government Research, 1928); Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920-1954* (Tucson: University of Arizona Press, 1977), 90-94; Tomás Amalio Salinas, "Pearl Chase, John Collier, and Indian Reform through the New Deal: Native American Affairs in California and the West, 1880-1937," (Ph.D. diss., University of California, Santa Barbara, 1995).

citizens.”⁸⁹ Their calls for full citizenship and greater sovereignty momentarily meshed with various other reform movements active at the time. But the degree to which the federation demanded both simultaneously and pressed for the latter on the ground distinguished them.

...

⁸⁹ Adam Castillo, “The Story of the Indian Federation.”

CONCLUSION

The federation was unique, but not alone. In the first few decades of the twentieth century, Indians all over the nation faced similar circumstances: corrupt, inefficient and out-of-touch Indian Office policies, and pressure on their land and resources from off-reservation development. Indians organized, but as was the case with the federation, the organizations emerged out of distinctive legal, political, environmental and cultural landscapes and took on unique trajectories.

Nationwide, the Society of the American Indians (SAI) pushed an assimilative equality from a position of off-reservation strength. Founded in 1911 under the auspices of anthropologist Fayette McKenzie, the SAI brought together a number of Indians active in the progressive movement. The SAI recruited among assimilated Indians, particularly those who had “successfully” gone through the Indian boarding school experience and who, to varying degrees occupied marginal positions to their tribes and white society.¹ The duality which literary critic Lucy Maddox identified in Arthur Parker’s writing for the SAI as his “Indianness and his humanity,” presaged the MIF’s emphasis on Indian sovereignty and human rights.² But beyond that, the two movements diverged. The SAI sought integration into mainstream society. The federation pressed for sovereignty. Where the SAI looked to the nation, the federation looked home.

¹ Hazel Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971), 31-58.

² Lucy Maddox, *Citizen Indians*, 14.

Where the SAI floundered on the cross tensions of Indians' local and national demands, the federation embraced them, juxtaposing local news stories alongside national demands for Indian rights in their modestly entitled magazine, *The Indian*.

By the end of its first decade of existence, the SAI was under the leadership of Thomas Sloan.³ As it increasingly became a political pressure group, advocating specifically for an Indian Commissioner of Indian Affairs and other national concerns, many of its early leaders left. Between 1921 and 1923, attendance at the organization's annual conventions declined dramatically, the organization found itself in debt, and partially obsolete given the dynamics of Indian reform.⁴ Sloan himself eventually left and relocated to southern California where he became a staunch opponent of the Mission Indian Federation in court.

It should not be surprising that the SAI and the MIF were at odds with each other. They emerged from radically different contexts. The federation rallied various groups around an identity as "Mission Indians" which emerged from a distinctive set of historical circumstances and intermediated among a variety of individual experiences, providing Indians with a way to plot their Indianness locally, while simultaneously presenting it in a way that was intelligible to Indians and non-Indians across the region and nation. It demanded full citizenship in order to secure human rights and home rule, not to assimilate into non-Indian society.

³ Ibid, 184-88.

⁴ Hertzberg, *The Search for an American Indian Identity*, 192-94; Thomas Sloan, "testimony," Reporter's Transcript, v. 8, *US v. Albanes*, box 2, folder A2 [6/14], 879-83.

Exploring that process as it occurred along the San Luis Rey River basin enables us to see the role that local events played in conditioning Indian actions. In the beginning of the twentieth century, to be an Indian in many places throughout the nation involved fighting to protect land tenure, economic autonomy, cultural integrity and sovereignty. In southern California those fights took place in courts over water, unreconciled legal traditions, history, citizenship and racial identity — all intertwined as constitutive elements in the public face the federation presented to the non-Indian world.

But the swirling dynamics of development were not restricted to Indian Country, and neither was the push toward open resistance. While the San Luis Rey River was insignificant in terms of volume, it was central to the development of Escondido, Oceanside and the San Diego backcountry. As in other instances where people struggled to protect their supply of water against outside development, the sense of helplessness often led to open resistance.

In the early years of the twentieth century in California's Owens Valley, the newly formed Reclamation Bureau envisioned the region as a potential site for irrigated agriculture, while the city of Los Angeles flexed the muscle of its Department of Water and Power to secure the rights to the water for use in the city.⁵ The result was devastating to local residents, as Los Angeles bought up property and forced residents out. The desperation led to violence — a sustained series of destructive protests against the aqueduct the city constructed to

⁵ John Walton, *Western Times and Water Wars: State, Culture, and Rebellion in California* (Berkeley: University of California Press, 1992), 131-196., 131-97.

bring the valley's water south. The protests, as sociologist John Walton has shown, cut across a variety of socioeconomic groups.⁶

While there are clear differences between the activities of the federation and those of Anglo farmers of Owens Valley — particularly the much greater alignment between local political authority and the people engaged in protest in Owens Valley, the white residents' much more secure hold on citizenship and the comparative lack of federal oversight over their actions — there are nonetheless important similarities. In both instances, the federal bureaucracy was pitted against regional forces of development, and in both cases regional forces came out on top. More importantly, both resistance efforts were organized locally and reflective of distinctively envisioned landscapes. In Owens Valley, resistance was predicated on an agrarian sense of popular justice which can be traced back deep into American political and popular culture.⁷ But in the case of the Mission Indian Federation, resistance to development arrived along a different path, drawing off of elements from the progressive reform movement of the American West, evangelical campaigns for social justice, the heavy-handed assimilationist policies of the Indian Office, the particularly litigious nature of the early California frontier, Indian economic autonomy, the region's Spanish and Mexican past (both fictive and real), and Indian cultural patterns which predated it all. In drawing off of this rich history, the federation created spaces for Indians to *be* Indian in a publicly meaningful way. It grounded claims of sovereignty and

⁶ Ibid.

⁷ Walton, *Western Times and Water Wars*, 131.

full citizenship not just in the land, but in the racial identity that emerged from those spaces.

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EPILOGUE

The federation's opposition to the Indian New Deal reenergized the organization and sullied its reputation among many Indians and reformers.¹ It also represented a significant change in its direction. Despite its early apparent sympathy between the federation and John Collier's American Indian Defense Association, by the time he became Indian commissioner in 1933, the strong sense of racial identity which motivated the federation left them highly critical of Collier's plans. In an 1934 editorial in *The Indian*, Adam Castillo wrote, "The American Indian, undoubtedly at one time the most independent race of people on earth, is today surely faced with his greatest challenge: Can he save himself from extinction at the hands of his white brother!"²

The federation's critique of the Indian New Deal hinged not only on their racial identity, but on their eroding confidence in the Indian Office as an institution. Earlier in their development, the federation had looked on the Indian Office as potential collaborators with Indian home rule as Indians held the reservations and worked with a greatly reduced Indian Office in Washington to protect their rights. But rather than weeding out the thousands of heavy-handed employees in the Indian Office as the federation had demanded, Collier's efforts seemed to the federation to be intent upon strengthening the existing bureaucracy.³

¹ Rupert Costo and Jeannette Henry Costo, *Natives of the Golden State: The California Indians* (San Francisco: The Indian Historian Press, 1995), 316-17.

² *The Indian*, IV, 3, July-Aug, 1934, 2; on Collier's role in the Bursum Bill, see Kenneth Philp, *John Collier's Crusade*, 26-45.

³ *The Indian*, IV, no. 3, July-Aug, 1934, 2

The federation's fierce advocacy of home rule caused them to reject the heavy-handed version of home rule authorized and organized by the Indian Office in Washington, which they argued looked backwards, segregating Indians on the reservation and maintaining non-Indian control over them.⁴ Articles in the newly revived issues of *The Indian* pointed to the "physical enslavement" of the Indians as incompetent wards and deeply resented the image of the Indian as unable to speak for themselves.⁵ Partially as a result of their agitation, Indian communities throughout the region rejected the 1934 Indian Reorganization Act, and the federation used this success to press for a "new fight: The battle for justice under the law of the white man."⁶ The newly reenergized federation pursued three major initiatives: the repeal of Collier as commissioner, the abolition of the Indian Office, and the protection of Indian rights in the case of the Capitán Grande Indians' displacement from their San Diego County reservation by the construction of a dam and reservoir.⁷

One reason for the federation's stronger national presence in the 1930s was its alliance with the American Indian Federation (AIF). But that alliance took place at the cost of diluting their message.⁸ The AIF was a short-lived organization, dying out in the mid 1940s. But it nonetheless provided the federation with

⁴ "Congressman Kelly of Pennsylvania Speaks with Wisdom," *The Indian*, Jul-Aug, 1934, 16.

⁵ "The American Indian — His Greatest Challenge" *The Indian* IV, no. 3, July - August, 1934, 2-3.

⁶ "John Collier must be removed as Commissioner." *The Indian* IV, no. 3, July-August, 1934, 4.

⁷ Bean and Shipek, "Luiseño," in *Handbook of North American Indian*, 559.

⁸ Laurence M. Hauptman, "The American Indian Federation and the Indian New Deal: A Reinterpretation," *Pacific Historical Review* 52, no. 4 (Nov. 1983), 378-81.

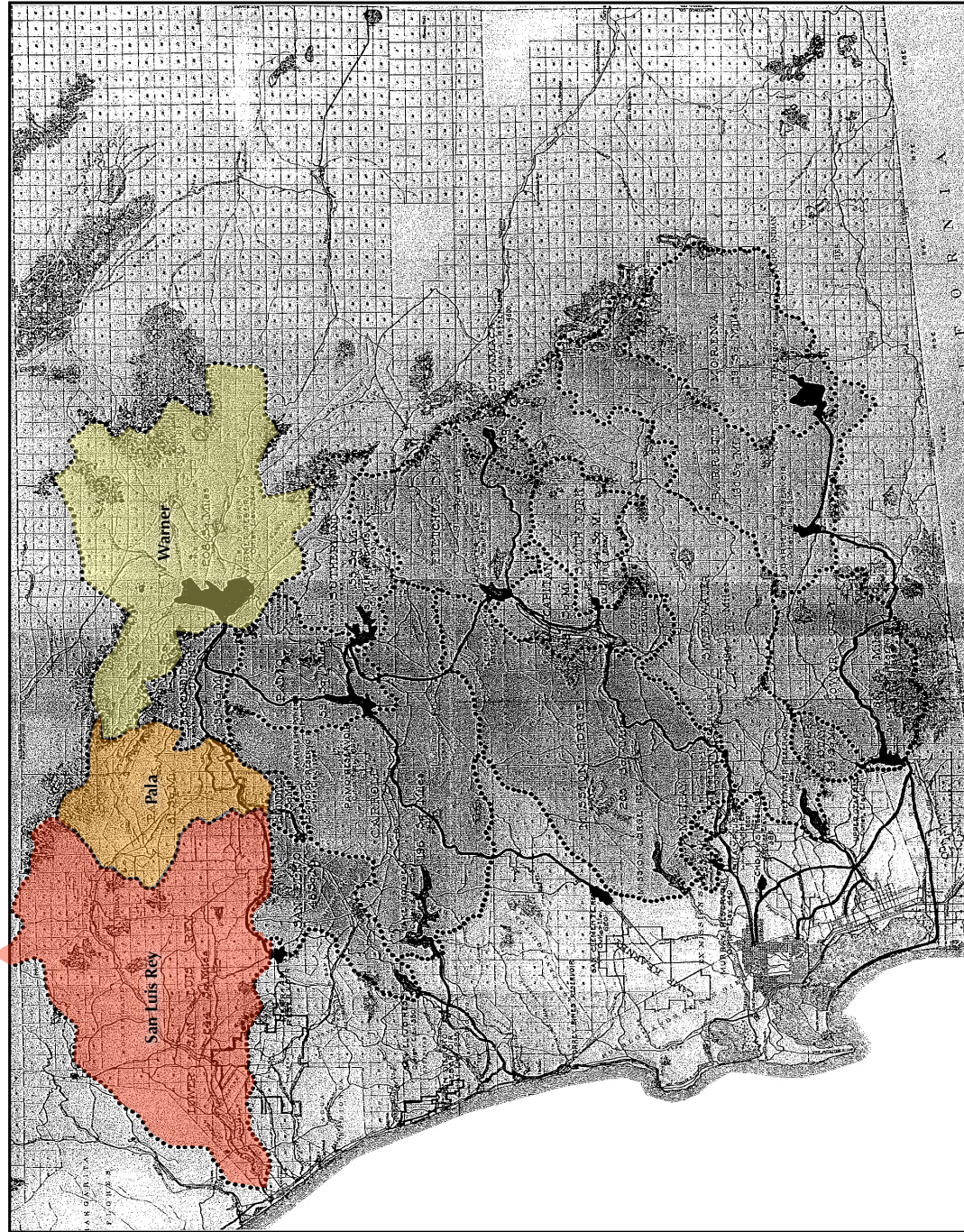
a national stage and a radical reputation. The federation used that reputation to push unsuccessfully for greater control over the prosecution of the California Indian Claims case which was settled in 1944, and to support the 1953 passage of Public Law 280, which made reservations subject to state and local laws.⁹ Throughout the 1960s, the federation worked to protect the region's water supplies from ongoing but increasing pressure by Metropolitan Water District construction projects.¹⁰ But the federation found itself buffeted by a new tide of reform in the 1960s. Its leadership split in 1963 and by the end of the decade it had all but ceased to exist, just as many of the principles it had earlier advocated gained a dramatic national body of Indian supporters.

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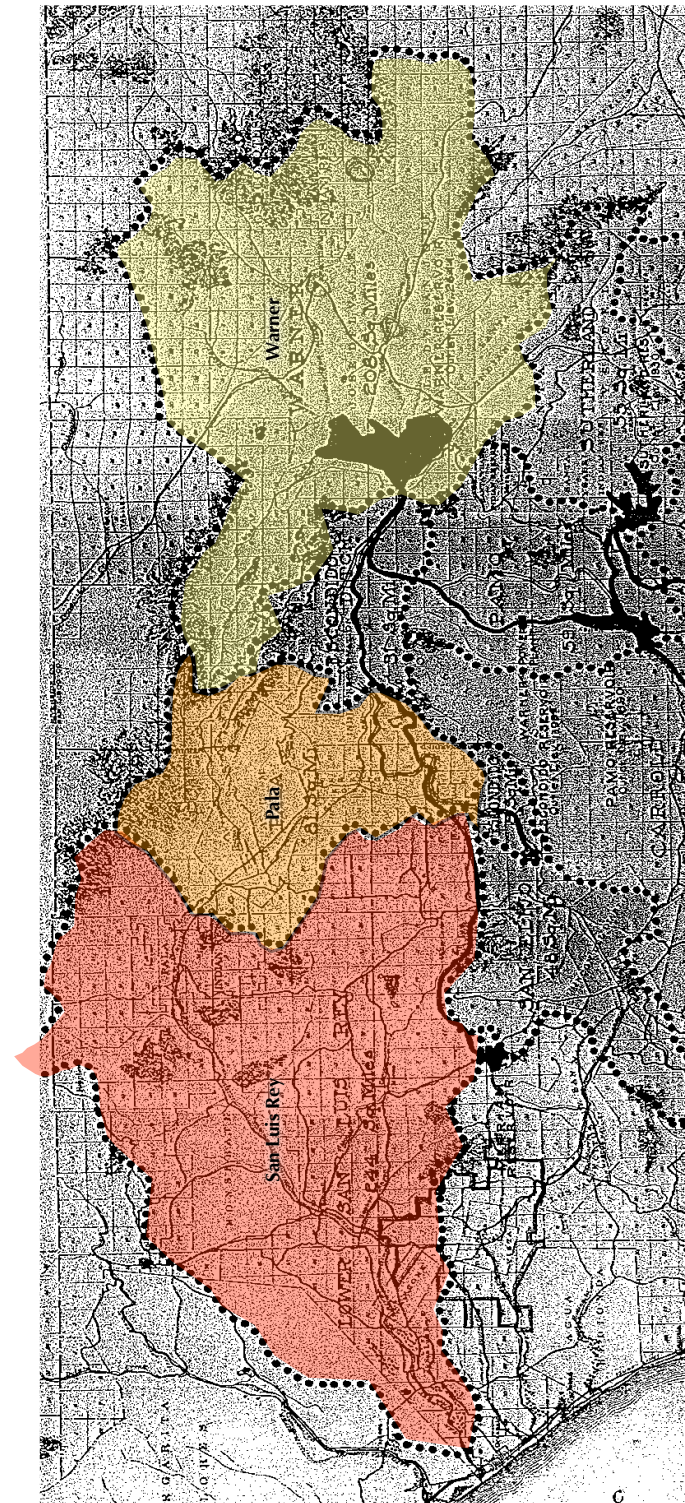
⁹ Shipek, *Pushed into the Rocks*, xi; Edward Castillo, "Mission Indian Federation," 346.

¹⁰ Shipek, *Pushed into the Rocks*, xv, 57; Karr, "Water We Believed Could Never Belong to Anyone," 393-94.

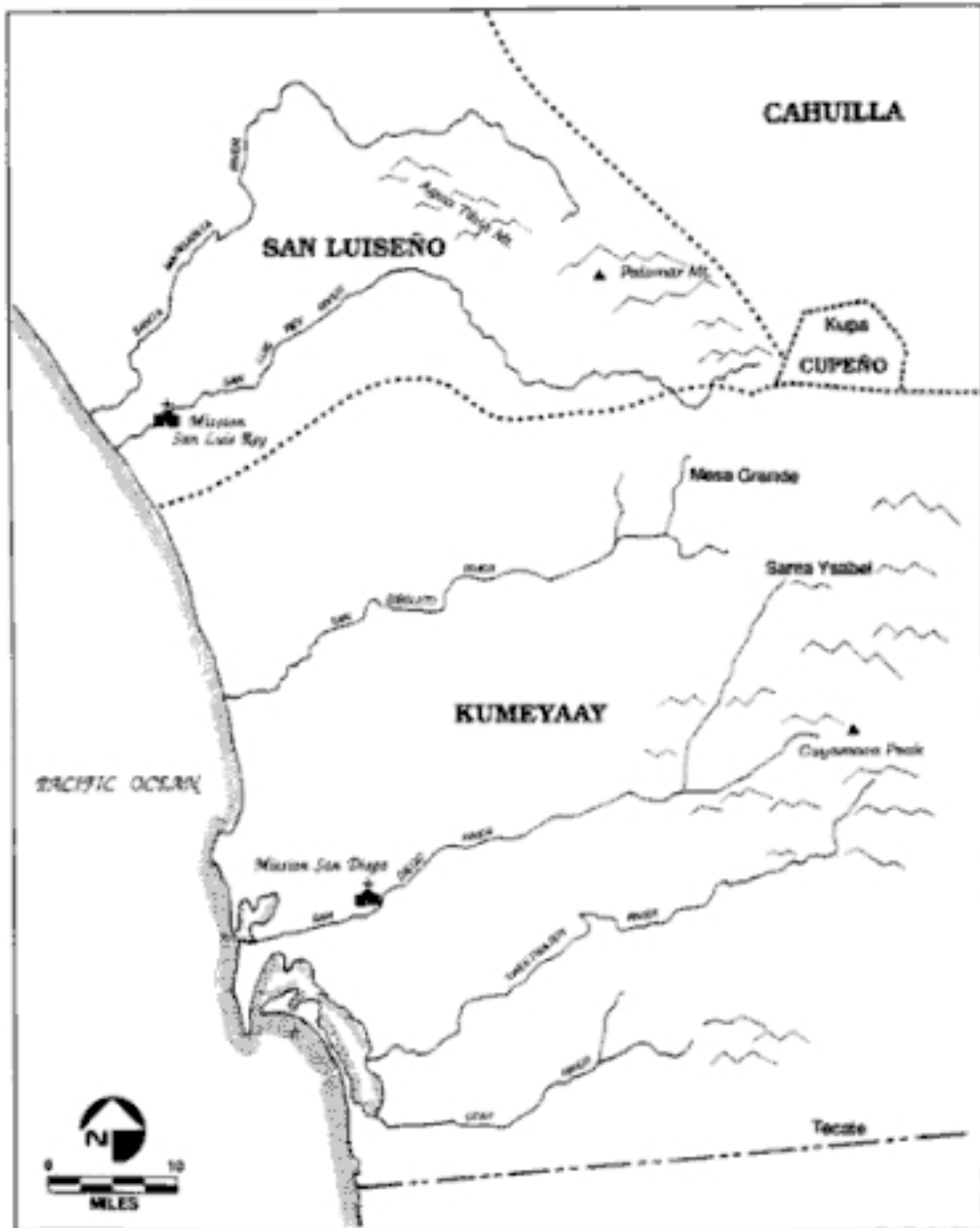
MAPS



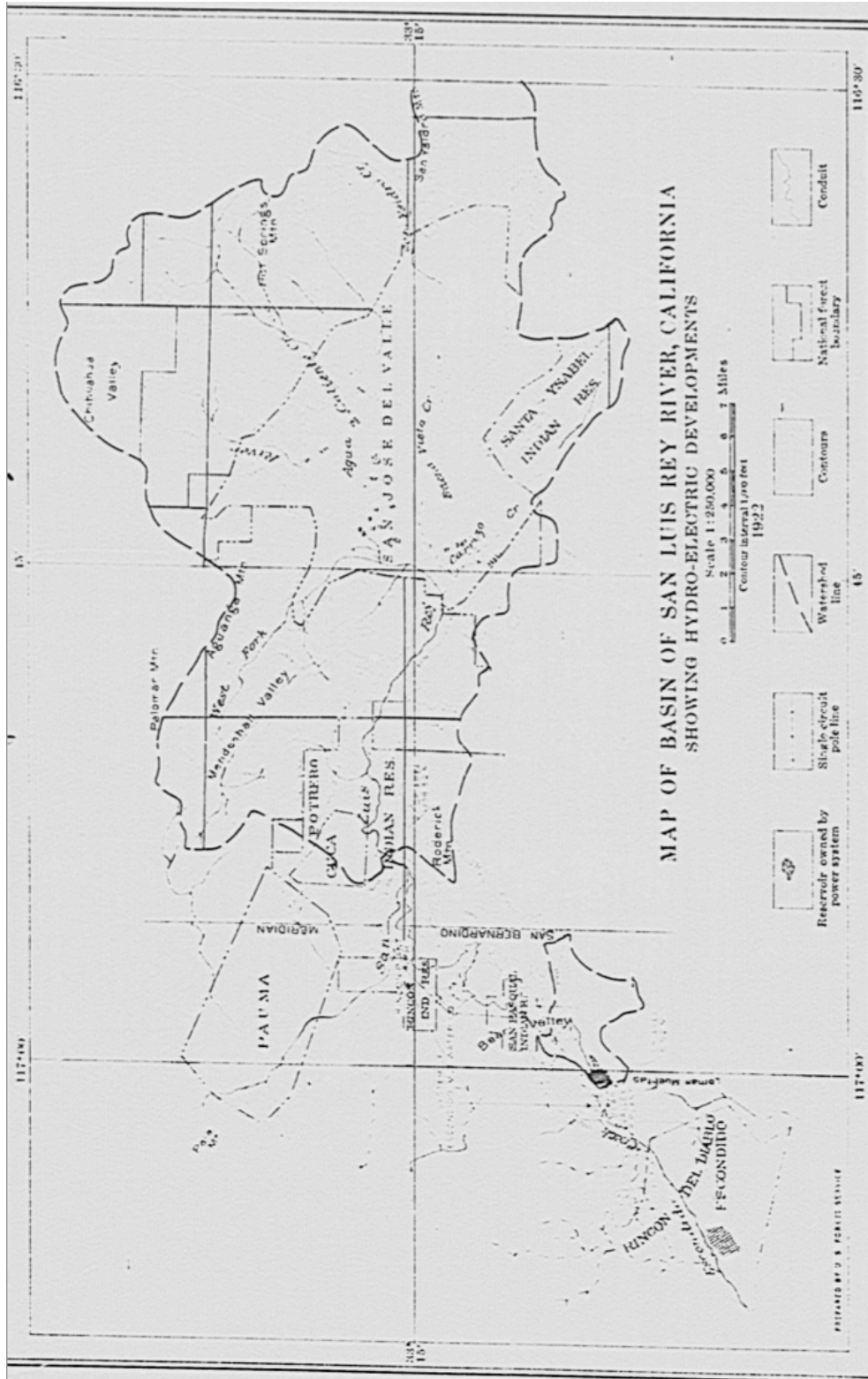
Map 1: Walter L. Huber, "Map of San Diego County Water Systems and Drainage Areas," (no date), Walter L. Huber Papers, Water Resource Center Archives, University of California, Berkeley, box 13, folder 321. (drainage area of the San Luis Rey River highlighted)



Map 2: Walter L. Huber, "Map of San Diego County Water Systems and Drainage Areas," (no date), Walter L. Huber Papers, Water Resource Center Archives, University of California, Berkeley, box 13, folder 321. (detail, San Luis Rey River drainage area highlighted)



map 3: Southern Californian Indian communities, circa 1800. Source: Richard Carrico and Florence Shipek, "Indian Labor in San Diego County, California, 1850-1900," in Martha C. Knack and Alice Littlefield, eds., *Native Americans and Wage Labor: Ethno-historical Perspectives* (Norman: University of Oklahoma Press, 1996), 199.



Map 4: The San Luis Rey River basin, 1922. Source: Frederick Hall Fowler, "Hydroelectric Power Systems of California and their Extensions into Oregon and Nevada," United States Geological Survey Water-Supply Paper 493, (Washington DC: Government Printing Office, 1923), 720.

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