
California's Legislature

The footnotes in this work contain the following abbreviations to legal reference materials:

U.S.—United States Reports (published opinions of the United States Supreme Court)

F. 2d—Federal Reporter, Second Series (published opinions of U.S. Circuit Courts of Appeal)

U.S.C.A.—United States Code Annotated

Fed. Reg.—Federal Register

Cal.—California Reports (published opinions of the California Supreme Court; inclusion of a number denotes subsequent series, i.e., **Cal. 2d** denotes California Reports, Second Series)

Cal.App.2d—California Appellate Reports, Second Series (published reports of California Courts of Appeal; also, **Cal.App.3d**)

Op. Att’y Gen.—California Attorney General Opinions

P.—Pacific Reporter (published opinions from courts of the Pacific region; also, **P. 2d**)

A. 2d—Atlantic Reporter, Second Series (published opinions from Atlantic region courts)

Pa., Okl.—Pennsylvania and Oklahoma Reports, respectively (court opinions from Pennsylvania and Oklahoma state courts)

For convenience, references to the California Constitution of 1879 are cited “*Constitution*,” while the federal document is identified as “*United States Constitution*.”

Please note that the code citations contained herein represent the law of the State of California as it existed December 31, 2015. They do not, in many instances, reflect all changes made during the 2015–16 session or later.

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Mission San Diego de Alcalá

California's first mission, founded in 1769 by Father Junípero Serra.

Chapter I

California's Historical Background

Exploration and Colonization

The “discovery” of the New World by Columbus ignited the aspirations of European powers and rekindled their efforts to find a westerly route to the “spice islands” of Asia. Amerigo Vespucci and Magellan described the immense continent of South America, while John Cabot and others returned from North America without having found a northwest passage to the Indies. Enormous wealth, wrested from Mexico by Cortés and from Peru by Pizarro, called forth yet more exploration by land and sea for new riches as well as for the “Strait of Anian,” fabled waterway to the treasures of “the Orient.”

One expedition after another crept up the west coast of Mexico and around the peninsula of Baja California. On September 28, 1542, a half century after the discovery of America, a Portuguese navigator sailing under the Spanish flag set foot on the most southerly part of what is now the State of California. Juan Rodríguez Cabrillo had discovered San Diego Bay, which he named San Miguel.¹ This expedition of two small ships proceeded up the coast as far north as Point Reyes, claiming the land for Spain, but returned with neither stories of wealth nor clues to a western passage.

On June 17, 1579, the *Golden Hind*, laden with booty taken from the Spanish, anchored at an inlet north of San Francisco. Sir Francis Drake took possession of this land in the name of the English Queen, Elizabeth, and called the country Nova Albion, Albion being an archaic and poetic name for England.

In 1595, seeking ports of refuge and resupply for the Manila galleons, Sebastián Rodríguez Cermeno sighted what he called Cape Mendocino and later anchored the *San Agustín* in a bay somewhat north of San Francisco. On November 30, a storm dashed the ship against the shore, and Cermeno and his men set out in an open launch for Acapulco, charting the California coastline as they went.

In 1602, Sebastián Vizcaíno, a merchant rather than a mariner, set sail with specific instructions to explore the Pacific coastline as far north as Cape Mendocino. In November, Vizcaíno entered the bay previously discovered by Cabrillo, and renamed it San Diego. He then proceeded north and, one month later, anchored in the Bay of Monterey, which he named after the Viceroy of New Spain, the Count de Monterey. His description of the Port of Monterey as one of the finest along the coast encouraged continued Spanish interest in California. Contemporary names of many coastal features are attributed to this voyage.

Colonization and development of the northwestern provinces of New Spain (Northwest Mexico) eclipsed further interest in California. Serious attention was not given the area by the Spanish until the 1760s, when British and Russian interests began explorations into the North Pacific. “An order was

¹ To commemorate this event, September 28 has been designated as “Cabrillo Day” in California. *Government Code*, Section 6708.

sent the Viceroy of New Spain to investigate the Russian danger, but he was not told to colonize California. He transmitted this order to the visitador-general, José de Gálvez, and it was this officer who really determined that Alta California should be settled.”²

Under the direction of Gálvez, a venture combining land and sea expeditions undertook to establish a base at San Diego with the further intent of securing the Port of Monterey as a presidio. In July 1769, Gaspar de Portolá and Father Junípero Serra, leaders of the second of Gálvez' land expeditions, established a presidio and the mission of San Diego de Alcalá. The following year, Portolá founded the presidio of Monterey and the mission of San Carlos.

The Spanish approach to colonial development consisted of the creation of missions, for the Christianization and “civilization” of the Native American inhabitants; presidios, primarily to protect the missions and to guard against foreign aggression; and pueblos, established as an inducement for citizens to settle in the new country.

Twenty missions³ were founded, extending in a chain along the California coastline northward from San Diego to San Rafael. The presidios were situated at strategic points along the coast, generally at the entrances to ports, and the pueblos were located adjacent to the missions and presidios.

Spanish rule continued until 1822, when Mexico won her independence from Spain, and California became a province of Mexico. The remote and fragile Mexican government, beset with internal problems, displayed little interest in and even less understanding of the problems of this distant region.

Ineffective political control of the province led to the disruption of already attenuated institutions. Many of the missions were separated from their agricultural holdings; the military shuffled loosely under northern and southern commands, and civil and military authorities clashed over jurisdiction. Into this troubled atmosphere came foreign settlers, such as the Swiss, John Sutter, and the pioneers from the United States who traversed the Sierra seeking land in the valleys. Throughout this period, coastal trade with British and Russian fur traders and merchants steadily increased.

With its crumbling internal order and concomitant vulnerability to foreign interests, California rapidly drew the attention of the United States government. In 1835, President Andrew Jackson tried unsuccessfully to purchase part of California from Mexico. The following year, California's Governor Alvarado issued a pronouncement regarding the province's independence. This proclamation raised the possibility of Russian or British intervention on California's behalf. Under President James K. Polk, America's westward expansion “Manifest Destiny” now faced the possibility of British control of the Pacific Coast. “Government explorers” were dispatched to California, and the United States Pacific Fleet kept close watch.

² John Walton Caughey, *California*, Second Edition, Prentice Hall, Inc., 1953, p. 100.

³ Under Mexican rule, the 21st, and last, of the missions was established at Sonoma on July 4, 1823.

Rumors of war, fears of American domination by native Californians, and the dissatisfaction of immigrant settlers with Mexican rule finally exploded into open hostility, culminating in the Bear Flag Revolution.⁴

The Bear Flag Revolution

On the morning of June 14, 1846, a group of American settlers, numbering from 32 to 35, unaware that a state of war existed between the United States and Mexico, captured General Mariano G. Vallejo, Mexican Comandante for Northern California, and took possession of the Pueblo of Sonoma.

William B. Ide, with the approval of the group, issued what has come to be known as Ide's Proclamation, the substance of which was to proclaim California independent of Mexico, under the title "California Republic."

The United States and Mexico had been at war since May of 1846, but the news did not reach California until several weeks later. On July 7, 1846, American marines and seamen under the command of Commodore John D. Sloat raised the American flag over the Port of Monterey, and a courier was dispatched to San Francisco where, two days later, Commander John B. Montgomery took possession of San Francisco for the United States.

On the same day (July 9), the Bear Flag was lowered at Sonoma by Lieutenant Joseph Warren Revere, the grandson of the revolutionary patriot Paul Revere, and the Stars and Stripes unfurled in its stead. Thus ended the Bear Flag Revolution—less than four weeks after its beginning.⁵

The Admission of California

California⁶ was admitted into the Union on September 9, 1850, as a free state,⁷ and without ever having been a territory.

This great national and historical event was the result of a peculiar situation, due, partly, to the tremendous increase in population in California within a year's time (caused by the Gold Rush of 1848–1849) and to a compromise made by Congress in the Clay Omnibus Bill⁸ which, among other items, included the admission of California as a state.

The debates in Congress on the admission of California were intense and prolonged. The first compromise resolution by Henry Clay was introduced in the United States Senate on January 29, 1850, and President Zachary Taylor presented copies of California's Constitution to Congress on February 13.⁹ Many amendments, motions, proposals, and compromise offers were submitted and rejected.

The principal objections raised by opponents to the admission of California were to its acceptance as a free state, the extensiveness of its boundaries, the irregularity of the manner in which its Constitution was framed, its failure to

⁴ For a short history of the Bear Flag Revolution, see *California Blue Book 1954*, pp. 9–10.

⁵ For brief descriptions of the Bear Flag, see *California Blue Book 1958*, pp. 9–16; Joseph Warren Revere, *Naval Duty in California*, Bio Books, Oakland, California (1947 Centennial Edition); and, *Appendix Q, infra*, p. 343; *Appendix V, infra*, p. 376.

⁶ For origin of the name California, see *Appendix S, infra*, p. 357.

⁷ The balance of power between North and South made the status of California as a slave or free state a paramount issue in Congress. At the time, the Union was composed of 15 free and 15 slave states.

⁸ An omnibus bill is a legislative bill which makes a number of miscellaneous appropriations or contains several unrelated but distinct provisions.

⁹ *Journals of the Senate and of the House*, 1st Session, 31st Congress, pp. 148, 529.

have served a probationary period as a territory, and the fact that many of its residents were not citizens of the United States.

On March 11, 1850, President Zachary Taylor's message transmitting the Constitution of California was before the United States Senate for consideration. During the heated debate on the question, William H. Seward, then a Senator from New York, speaking in favor of the admission of California to the sisterhood of states, used these poetic and descriptive words:

“California, that comes from the clime where the West dies away into the rising East—California, which bounds at once the empire and the continent—California, the youthful Queen of the Pacific, in her robes of freedom, gorgeously inlaid with gold—is doubly welcome.”¹⁰

In this same eloquent speech, the distinguished Senator uttered these prophetic words: “The unity of our Empire hangs on the decision of this day.”

After weeks of tiresome deadlock and caustic debate, the bill admitting California into the Union was passed by the Senate on August 13, 1850,¹¹ and by the House of Representatives on September 7.¹² Two days later, on September 9, 1850, President Millard Fillmore, who had succeeded to the presidency upon the death of President Taylor, signed the bill, and California became the 31st state in the Union.¹³

On the following page is a facsimile of the act providing for the admission of California into the Union:

¹⁰ *Appendix to the Congressional Globe*, March 11, 1850, p. 261. (Special Order: Consideration of the President's Message transmitting the Constitution of the State of California.)

¹¹ *Journal of the Senate*, 1st Session, 31st Congress, p. 557.

¹² *Journal of the House*, 1st Session, 31st Congress, pp. 1423–24.

¹³ By coincidence, California, the 31st state, was admitted to the Union by the 31st Congress.

169

S. J. Res. 2 Sept 20

Table 14

Thirty-first Congress of the United States of America:

At the First Session.

Open and laid on the City of Washington as Meeting at Three Day of December, one thousand eight hundred and forty-nine

AN ACT

In the admission of the State of California into the Union

Whereas the people of California have presented a constitution and asked admission into the Union, which constitution was submitted to Congress by the President of the United States by message dated February thirtieth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government: And it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever: Section 2. And be it further enacted, That until the representation in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress: Section 3. And be it further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law, and do no act whereby the title of the United States to and right to before of the same shall be impaired or questioned, and that they shall never by any law or ordinance of any description whatsoever upon the public domain of the United States, and in no case shall any such provision, law or ordinance of the United States be taxed higher than residents and that all the navigable waters within the said State shall be common highways and free ports as well to the inhabitants of said State as to the citizens of the United States without any tax, impost or duty therefor: Provided, That nothing herein contained shall be construed as recognizing or adjusting the population taxed by the people of California in articles of compact in the admission of the constitution which forms the constitution of that State.

Approved September 9th 1850.

Millard Fillmore

Russell G. Bradley
Speaker of the House of Representatives
William R. King
President of the Senate pro tempore