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Ranchos and the Politics of Land Claims

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Most accounts of land and property in Southern California decry as unfair the 1851 California Land Act that governed the transition in property rights between Mexico and the United States. These stories of loss, although compelling, fail to tell us how widespread the loss was, what precisely the losses were, or why these costs occurred. In short, the literature devoted to land claims fails to provide an adequate metric against which loss can be measured and then interpreted.[1]

In comparing how Los Angeles–area claims fared relative to other California land claims, we have examined the specific costs Los Angeles claimants bore and the political constraints that led to the passage of the Land Act. We have also tried to compare the outcome of the claims process in California to the outcome in acquired territory.

Land and Property in Nineteenth-Century Los Angeles

Spanish settlement began in the late eighteenth century with the establishment of Roman Catholic missions and military presidios along the California coast. Missions were expected to be largely self-sustaining, and the Spanish government granted control over large tracts of land. A small number of grants were made to individuals as a reward for service (see figure 3.1).

After independence in 1821, the Mexican government continued and expanded the practice of granting land to citizens.[2] Until the 1830s, the Roman Catholic missions controlled most of the desirable coastal land. Because the priests actively resisted the granting of lands, only a small number of grants were made in most years. In the mid-1830s, the Mexican central government secularized the missions, reducing them to the status of parish churches and

stripping them of virtually all of their lands. In the process of secularization, the Catholic Church was given ownership rights in small parcels that encompassed the mission buildings, and government officials awarded certain Native Americans rights to use lands near various missions.

Secularization opened up huge tracts of land at a time when the external market for cattle products was growing. Up to the 1820s, Latin America had

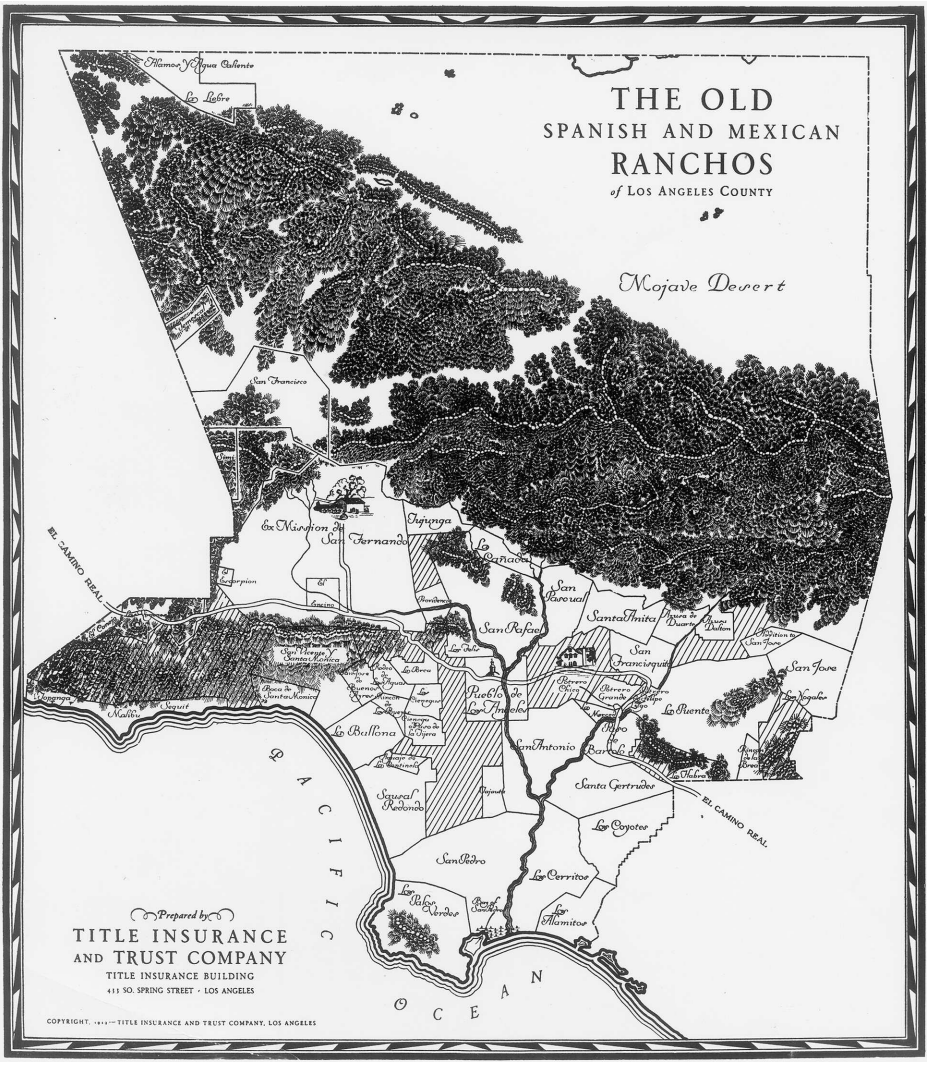

Figure 3.1. Spanish and Mexican land grants in California. Public domain.

been the primary supplier of hides and tallow for world markets. Political instability forced traders to seek alternative sources of supply, and one place they looked was California. Cattle that ran wild on land near the California coast that had been of little value suddenly became a commodity that could be exchanged for foreign goods such as fabric, luxury foodstuffs, and religious goods. Multiyear contracts offered by traders indicated that the hide and tallow trade would be an ongoing proposition. Secularization and the continued strength of the foreign market in turn drove an economy centered on ranchos (large ranches) and gave increased prominence to rancheros (the holders of titles to these properties).[3]

Since nearly all the grants of land in Southern California were made by the Mexican government, it is useful to examine the process by which individuals could obtain grants under that system. Mexican land law stated that citizens could apply to the governor of California and receive grants of up to eleven leagues (about forty-eight thousand acres) of land. The procedure was relatively straightforward: the applicant sent a petition to the governor that included the request for land and the reason for the request, a description and sketch of the land, and personal information. The governor sent these materials to a local official, the *alcalde* (mayor), who attested to the petitioner's standing in the community and verified that the land was unoccupied. If the alcalde's report was positive, the governor would usually make the concession, and the alcalde would put the grantee in formal possession of his land. This typically involved conducting a survey of the land in the presence of neighbors. Once occupation and improvement conditions had been met, grantees submitted their request to the territorial legislature for approval, which, if granted, finalized the transfer.

Prior to the American takeover in July 1846, governors had made approximately 750 land grants.[4] These property holders had rights, and these were guaranteed protection under the 1848 Treaty of Guadalupe Hidalgo at the close of the Mexican-American War. At the time of the treaty, the U.S. Congress recognized the need for an institution to govern the transition but waited until after the Compromise of 1850 had guaranteed California's admission as a state to take action on property rights.

In the aftermath of the compromise, Congress faced a backlog of legislation as well as eighteen bills on California. The issue of land titles in the new state nevertheless received immediate attention, in the form of the California Land Act. The heart of the act was the requirement that "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same . . . together with such documentary evidence and testimony of witnesses as the said claimant relies

upon in support of such claims." Individuals had to present these claims to a three-person land commission that would investigate and decide their validity. The act provided for the appointment of an agent whose duty it was to "superintend the interests of the United States." Both sides—the claimant and the U.S. government—had the right of appeal from the land commission to the U.S. district courts in California and from there to the U.S. Supreme Court. If the highest court that a claim reached confirmed its validity, the next step was to have the claim surveyed and resolve any boundary disputes. Once this was complete, the owner of the claim could receive a patent, which definitively established property rights under U.S. statutes.[5]

The Fate of Los Angeles Land Claims

The act gave owners two years to submit their claims to the land commission. Filing gave grantees the option, but not the obligation, of pursing their claim once the commission began hearing cases. Filing a claim was free. It appears that virtually everyone who held a grant filed a claim. By the March 1852 deadline, 813 land claims had been filed.[6]

An examination of statistical evidence for four Los Angeles–area land claims, San Pedro, Ballona, Alamos y Agua Caliente, and Jurupa, sheds light on the fate of such claims under the California Land Act. These claims represent a variety of grant dates, sizes, and outcomes. For two of the claims, there is additional evidence from partition suits in the 1860s. San Pedro, a Spanish grant to Juan Jose Dominguez of ten leagues in Los Angeles County, was regranted to Cristobal Dominguez, Juan Jose's nephew, in December 1822. Jurupa, seven leagues in Riverside County, was granted to Juan Bandini in September 1838. La Ballona, about three leagues in Los Angeles County, was granted to Agustin Machado, Ignacio Machado, Felipe Talamantes, and Tomas Talamantes in November 1839. Interestingly, the Ballona grantees had been in possession of the land for nearly two decades prior to the granting. Finally, Los Alamos, six leagues in Los Angeles County, was granted to Pedro Carrillo in October 1843.[7]

The outcome of the claims process was eventually favorable for three of the four claims. The land commission confirmed San Pedro, Ballona, and Jurupa. Confirmation meant that if there were no appeals, claimants could have their property surveyed and patented. The commission rejected Alamos y Agua Caliente because of nonperformance of the conditions of the grant, a common reason for rejecting a grant. The federal government appealed all three of the successful claims, and the federal district courts again confirmed each. The federal government appealed two of the three claims (San Pedro and Ballona) to

the Supreme Court. In 1857, the government dropped its appeals in the San Pedro and Ballona cases. The government issued patents for San Pedro in 1858, Ballona in 1873, and Jurupa in 1879.

Table 3.1 presents evidence on how the size and grant date of Los Angeles–area land claims compared with other California land claims. Los Angeles County grants, desirable because of their proximity to the village and the port, were significantly smaller on average than grants elsewhere in the basin. And Los Angeles–area grants were smaller than other California land grants. The timing of these grants, however, was typical of California as a whole. Within the area, grants of land in Ventura County were made somewhat earlier than average, and grants of land in Riverside County were made somewhat later than average. This is a reflection of the fact that Riverside was considered to be

TABLE 3.1
Size and timing of land grants

Size	*All*	*LA area*	*Los Angeles*	*Orange*	*Riverside*	*San Bernardino*	*Ventura*
Number	802	145	88	18	13	7	19
			SIZE IN SQUARE LEAGUES				
Smallest	0.00004	0.00004	0.00004	0.0036	0.5	1	0.0064
Largest	400	25	20	17	11	8	25
Average	4.4	3.6	2.7	5.6	4.6	4.3	5.6
Median	2.3	2	1	4.5	4	3	4
			YEAR				
Earliest	1778	1781	1781	1784	1818	1838	1795
Latest	1846	1846	1846	1846	1846	1846	1846
Average	1839.2	1835.8	1837.5	1827.2	1842.2	1841.1	1836.2
Median	1841	1842	1843	1841	1844	1841	1837
Granted in 1840s	61%	61%	66%	56%	85%	57%	42%

Note: Grants that were ultimately patented under the California Land Act were assigned to modern counties based on the location of the majority of the acreage of the grant. So, for instance, a grant where 90 percent of the acreage was located in Los Angeles County and 10 percent in Orange County would be listed as located in Los Angeles County. Grants that were not patented were assigned to counties based on the best available information about location. Data on the original grants are based on R. H. Avina, "Spanish and Mexican Land Grants in California" (master's thesis, University of California, 1932); J. N. Bowman, "Index of the Spanish-Mexican Private Land Grant Records and Cases of California," Bancroft Library, 1958; O. Hoffman, "Reports of Land Cases Determined in the United States District Court for the Northern District of California, June Term 1853 to June Term 1858, Inclusive," San Francisco, 1862.

TABLE 3.2
Outcomes under the California Land Act

Confirmations	*All*	*LA area*	*Los Angeles*	*Orange*	*Riverside*	*San Bernardino*	*Ventura*
			LAND COMMISSION				
Total heard	788	144	87	18	13	7	19
Number confirmed	512	98	59	16	6	5	12
Percentage	65	68	68	89	46	71	63
			FEDERAL DISTRICT COURTS				
Total heard	591	110	58	16	12	7	17
Number confirmed	526	103	54	15	12	6	16
Percentage	89	94	93	94	100	86	94
			U.S. SUPREME COURT				
Total heard	92	8	4	1	3	0	0
Number confirmed	44	4	2	0	2	0	0
Percentage	48	50	50	0	67	NA	NA
			PATENTS				
Total	788	144	87	18	13	7	19
Number patented	627	120	67	16	12	6	19
Percentage	80	83	77	89	92	85	100

Note: Data based on J. N. Bowman, "Index of the Spanish-Mexican Private Land Grant Records and Cases of California," Bancroft Library, 1958; O. Hoffman, Reports of Land Cases Determined in the United States District Court for the Northern District of California, June Term 1853 to June Term 1858, Inclusive, San Francisco; with additional information on Supreme Court decisions from United States Supreme Court Reporters (various years).

relatively remote. Los Angeles County had average timing, because individuals continued to request and receive grants that were further inland over time.

Table 3.2 documents the outcome of the land claims process for Los Angeles–area land claims and other California claims. The land commission confirmed roughly two-thirds of the cases both in the Los Angeles area and overall. Alamos y Agua Caliente was rejected because of nonperformance of the conditions of the grant. Other claims were rejected either because the original grant was made in violation of Mexican land law or because there was no evidence that a grant had been made. A large number of the commission's decisions were appealed; district courts confirmed 89 percent of all claims and 94 percent of the Los Angeles–area claims. The relative success of the claimants in Los Angeles County may be a reflection of the higher quality of the claims on average.

Southern district judge Isaac Ogier was, however, reputed to be more lenient than the northern district judge, Ogden Hoffman, so the success of Los Angeles claimants may be a reflection of judicial preference as well.[8]

While a number of decisions were appealed, the majority of these were dropped prior to being heard by the Supreme Court. Although Los Angeles–area claimants fared about as well as their counterparts in other sections of the state at the Supreme Court level, many fewer Los Angeles–area cases than average reached the Supreme Court. Los Angeles–area cases represented 18 percent of the land commission cases and 19 percent of the district court cases but only 9 percent of the Supreme Court cases. Thus Los Angeles–area landowners were more often spared the difficulty and expense of pursuing a land claim thousands of miles away in Washington DC.

Eighty percent of the claims in California were ultimately patented, and the Los Angeles area, at 83 percent, did slightly better than average. The patent rate varied from a high of 100 percent in Ventura County to a low of 77 percent in Los Angeles County. The lower percentage in Los Angeles County most likely reflects a number of factors, including the size of grants, the year granted, and whether the claimants had an *expediente* (a document of record for the grant issued by the Spanish or Mexican governor). In particular, because of the high value of some real estate in Los Angeles County, it might have been more attractive for individuals to pursue doubtful land claims than in the outlying counties. The salient point is that Los Angeles–area land claims fared about the same as other California land claims under the California Land Act.

The Burden of the Act on Los Angeles–Area Claimants

Although Los Angeles–area land claims fared reasonably well under the California Land Act, claimants were not so fortunate. To protect what claimants viewed as rightfully theirs, they had to undertake costly and time-consuming litigation. Some claimants, faced with lucrative offers or burdensome debts, sold part or all of their land. Those that persevered faced the threat of squatters. For those claimants who survived or escaped squatters, an agricultural depression of the early 1860s and the imposition of property taxes imposed additional hardship.

The average claim spent five years in litigation, appearing during that time before both the land commission and the federal district court. Legal fees for bringing a claim before the land commission typically fell between five hundred and fifteen hundred dollars. Appeals to the federal district courts cost one hundred to five hundred dollars. Lawyers sometimes agreed to work on a contingency basis, with the typical fee being one-quarter of the land to carry the

claim through the land commission and the district court. For those claims that were appealed to the Supreme Court, legal fees were another six hundred to one thousand dollars. In addition to the lawyers' fees in land or money, claimants had to pay for other litigation expenses, the survey, and any boundary litigation, which necessarily added to an often high total expenditure. For instance, the Dominguez family incurred a total cost of more than twenty thousand dollars in obtaining a patent for Rancho San Pedro.[9]

As land became an increasingly marketable asset, some original grantees wanted or needed to realize that increment of value. Sale for profit or for necessity raises a problem when interpreting property transfers since these transfers may or may not have been a result of the Land Act. Nineteenth-century historian Theodore Hittell alleged that 40 percent of the land in Los Angeles County was alienated to meet the costs of litigation under the act. Some claimants undoubtedly did have to mortgage their property or sell undivided shares of their ranches to outsiders to fund litigation. Evidence on this point is sketchy and inconclusive, however.[10]

One form of evidence helps to clarify land transfers: partition-suit records. Prior to patenting and partition, individuals bought and sold undivided shares of an entire claim. At some point either before or after a patent was awarded, a partition suit was often brought in the local state district court to allow division of the land among multiple owners. Table 3.3 provides new evidence on ownership in the mid-to-late 1860s for five grants: Tajauta, Ballona, Cienega, San Pedro (all in Los Angeles County), and Valle de San Jose (in Alameda County). Documents related to these five partition suits were uncovered in the course of research on the California land grants.

The extent to which the families of the original grantees retained ownership of the land is striking. Indeed, the finding is so striking that it is worth questioning the results. One possibility is that the partition suits were conducted in family members' names although those individuals no longer owned the land. This seems unlikely, however, since all five partition suits contain at least one name that clearly belongs to an outsider.[11] Another possibility is that these five ranches are not representative of the experience of the 551 patents. Without a full search of the legal and historical archives for partition suits, it is impossible to determine how representative these five suits are. A priori, however, there is no reason to believe that they are not representative. The evidence suggests that in the mid-to-late 1860s grantees and their heirs may still have controlled a significant portion of the land then in private ownership in Los Angeles County and perhaps in California as a whole.

In some cases owners had to defend their property rights against the federal government, holding off encroachment from squatters. The majority of the

TABLE 3.3
Evidence from partition suits

Name	*Share*	*Cumulative (percent)*	*Name*	*Share*	*Cumulative (percent)*
RANCHO TAJAUTA (AKA LOS CUERVOS), JUNE 14, 1867 (PATENTED 1873)					
Jose Maria Abila	11/70	15.71	Emilina Mellus	1/210	87.62
Henrique Abila	11/70	31.43	Josephina Mellus	1/210	88.10
Felipe Abila	2/35	37.14	Edward Mellus	1/210	88.57
Juan Abila	2/35	42.86	Tomas Alvarado	1/70	90.00
Carnelio Abila	2/35	48.57	Delores Alvarado	1/70	91.43
Petra Abila	2/35	54.29	Andrea Alvarado	1/70	92.86
Louisa Abila	2/35	60.00	Lugardu Alvarado de Palomares	1/70	94.29
Juana Maria Abila	2/35	65.71	Julio Valenzuela	2/245	95.10
Soledad Abila	2/35	71.43	Nervio Valenzuela	2/245	95.92
Vincente Elisalda	2/35	77.14	Ascension Valenzuela	2/245	96.73
L. D. Philips	2/35	82.86	Tomasa Valenzuela	2/245	97.55
A. Dalidu, J. Alexander	1/35	85.71	Alfundo Valenzuela	2/245	98.37
Francis Mellus	1/210	86.19	Maria Valenzuela	2/245	99.18
James J. Mellus	1/210	86.67	Felipe Valenzuela	2/245	100
A. Dalidu Mellus	1/210	87.14			
RANCHO LA BALLONA, MAY 1868 (PATENTED 1873)					
Estate of Aug. Machado	17/56	30.36	Fr. and Dal. Machado	1/48	92.86
A., J. A., R., C. Machado	7/32	52.23	Benina Talamantes	1/84	94.05
John D. Young	1/8	64.73	Gregoria Talamantes	1/84	95.24
Maced Aguilar	3/32	74.11	Tomasa Talamantes	1/84	96.43
Geo. Ad. Sanford	1/16	80.36	Pedro Talamantes	1/84	97.62
Elen. Young et al.	1/16	86.61	Jacinto Talamantes	1/84	98.81
Laurinao Talamantes	1/48	88.69	Jesus Talamantes	1/84	100
Manuel Valenzuela	1/48	90.77			
RANCHO LA CIENEGA, DEC. 1866 (PATENTED 1871)					
Henry H. Gird	1/5	20.00	Elizabeth Dalton	1/20	83.75
Francisca Abila de Rimpau	1/5	40.00	James A. Vandenburg	1/32	86.88
Januario Abila	1/5	60.00	John G. Carpenter	1/32	90.00
Antonio Urquidy	3/40	67.50	William Andres	1/40	92.50
Thomas Gray	1/16	73.75	James H. Whitworth	1/40	95.00
Matthew Lanfranco	1/20	78.75	Mariano Chavis	1/40	97.50
			Francisco Alvarado	1/40	100

TABLE 3.3
Evidence from partition suits

Name	*Share*	*Cumulative (percent)*	*Name*	*Share*	*Cumulative (percent)*
RANCHO SAN PEDRO, DEC. 1855, 1862, 1885 (PATENTED 1858)					
Manuel Dominguez	0.596	59.61	H. R. Myles	1/6	66.67
Conception R. de Rodriguez & J. A. Aguirre	0.260	85.62	P. Banning	1/6	83.33
Pedro & Maria de Jesus Dominguez	0.105	96.12	J. P. McFarland	1/12	91.67
Antonio M. Rocha	0.020	98.12	J. G. Downey	1/12	100
Maria Rocha de Macado	0.019	100	Subdivision of 22,222 acres of Manuel Dominguez's share, 1885		
Subdivision of 2,423 acres of Manuel Dominguez's share, Oct. 1862			One-sixth each to Ana Josefa D. de Guyer, Guadalupe Dominguez, Maria D. D. de Watson, Victoria D. de Carson, Susana Dominguez, and Maria de los Reyes Dominguez		
B. D. Wilson	1/3	33.33			
M. Dominguez	1/6	50.00			
RANCHO EL VALLE DE SAN JOSE, 1868 (PATENTED 1865)					
Antonio Sunol	0.214	21.38	Jose Bernal	0.023	74.03
Leonard Hill + Martin Ambrose	0.054	26.82	Charles Duerr & Louis Nusbaumer	0.023	76.30
Rafaela Felis y Bernal	0.045	31.35	John Botts	0.018	78.08
James Pedie	0.044	35.71	N. G. Patterson	0.017	79.83
Juan Pablo Bernal	0.036	39.28	William Mendenhall	0.014	81.26
Guadalupe Bernal	0.036	42.85	Juan Bernal, Junior	0.014	82.69
Lafayette Lagrange	0.036	46.42	A. Baker & Alex. Esdon	0.014	84.12
Juana Higuera Bernal	0.034	49.83	Dyonisio Bernal	0.014	85.55
Teresa Bernal Livermore	0.033	53.15	Delfina Bernal	0.014	86.98
Refugia Bernal Kottinger	0.026	55.72	Rita Bernal	0.014	88.41
Michael Rogan	0.024	58.12	Martin Mendenhall	0.013	89.71
Augustine Bernal	0.023	60.39	Thomas Hart	0.013	91.02
Maria Antonio Bernal	0.023	62.66	Abalino Bernal	0.011	92.16
Augustine Bernal Jr.	0.023	64.94	Presentacion Bernal	0.011	93.29
Maurice Bernal	0.023	67.21	Charles G. Garthwart	0.011	94.43
Jose Reyes Bernal	0.023	69.48	And 11 others	0.45	98.88
Angelina Bernal Neil	0.023	71.75			

Note: All five partition suits are located at the Huntington Library, San Marino, CA. Tajauta is 1200 (microfilm); Ballona, Cienega, and San Pedro are in the Solano-Reeve Collection; Valle de San Jose is 306995.

squatting took place in or near San Francisco, but Los Angeles–area grants suffered incursions as well. For instance, in 1855 Mission San Gabriel in Los Angeles County reportedly had between three hundred and five hundred squatters. In the late 1850s and early 1860s, Jurupa and San Bernardino were both sites for squatters who took up land. Then in the late 1860s and early 1870s, squatters staked claims on land held by the Mission San Buenaventura and Sespe in Ventura County. These are merely the cases that were reported in the popular press and likely represent but a fraction of the instances of squatting.[12]

To compound problems of adjudicating land titles, Southern California experienced an agricultural depression in the early 1860s. Drought, combined with a diminishing market for cattle, combined to leave some owners land poor. To pay taxes, service existing debt, and maintain their lifestyles, many formerly well-off owners mortgaged their properties, betting that the downturn was only temporary. Unfortunately, the drought continued and cattle died off (in some cases faster than they could be slaughtered for hides and tallow). Cattle that survived were sold at low prices as everyone tried to salvage what they could. Land, previously a source of income and a store of value that could be borrowed against, suddenly produced little or no income.

Tax obligations were roughly 2 percent of total wealth measured as real estate and personal property (chiefly cattle). Between 1852 and 1862, grazing lands in Los Angeles County and much of Southern California were valued for tax purposes at a standard $0.25/acre, with the value falling to $0.125 and then to $0.10 over the next two years. Cattle, previously valued for tax purposes at $4.50/head, fell to $3.00 and then to between $1.00 and $2.50. Prior to the drought, an average Los Angeles–area ranch of eighteen thousand acres (about four leagues) with two thousand cattle and $1,000 worth of horses and other taxable improvements required a tax payment of $290. Once the drought began, this figure fell to $185 and then to around $140. According to historian Robert G. Cleland, more than 85 percent of the property owners in 1864 Los Angeles were delinquent in paying taxes. Compared to litigation expenses for the ranches and probably the household expenses of many owners, tax payments were small, but finding any cash at all during the depression was problematic.[13]

The Fairness of the Land Act

The California Land Act was probably the only politically tenable solution to the problem of California land claims. Millions of acres of prime coastal and valley land were at stake in California. Two types of problems complicated the resolution of property rights. The first was the difficulty in determining

whether property rights had been established under Mexican law. Grants were provisional, and few had complied with all of the conditions of their grants. Further, many grants had been made in violation of one or more tenets of Mexican land law. The second problem was the difficulty in determining boundaries of the land grants. When individuals applied for grants, they appended a *diseño* (a rough sketch) of the land. An 1849 report on land titles noted, "These sketches frequently contain double the amount of land included in the grants; and even now very few of these grants have been surveyed or their boundaries

TABLE 3.4
Property rights in acquired territory

Territorial acquisition	*Acreage acquired*	*State*	*Confirmed claims*	*Confirmed acreage*	*Average size*
Old Northwest and Old Southwest	525,452,800	Illinois	936	185,774	198
		Indiana	962	188,303	196
		Michigan	942	280,769	298
		Ohio	111	51,161	461
		Wisconsin	175	32,778	187
		Alabama	448	251,602	562
		Mississippi	1,154	773,087	670
Louisiana Purchase	523,446,400	Iowa	1	5,760	5,760
		Louisiana	9,302	4,347,891	467
		Missouri	3,748	1,130,051	302
		Arkansas	248	110,090	444
Florida	43,342,720	Florida	869	2,711,290	3,120
Texas	247,060,480	Texas			
Oregon Compromise	180,644,480	Oregon	7,432	2,614,082	352
		Washington	1,011	306,795	303
Treaty of Guadalupe Hidalgo	334,479,360	California	588	8,850,144	15,051
Gadsden Purchase	18,961,920	Arizona	95	295,212	3,107
		Colorado	6	1,397,885	232,981
		New Mexico	504	9,899,021	19,641

Source: Report of the Public Lands Commission, 1904, cited in P. W. Gates, *History of Public Land Law Development* (Washington DC: Zenger, 1978), 86, 92, 113, 118, 119.

fixed." The high quality of the land, the possibility of gold, and the large number of Americans who wanted land guaranteed that debate would be litigious and extensive.[14]

Aware of these problems, Congress considered several approaches to the land claims issue. Senator Thomas Benton, the father-in-law of John Fremont, owner of one of the most valuable claims in California, relentlessly championed confirmation. Confirming invalid claims would have been costly for Congress both in political and economic terms since it involved a government grant of additional land—land that was of high quality and possibly contained gold. Confirmation also carried the risk of widespread violence since many grants were already overrun with American squatters who believed, wishfully or otherwise, that the land was theirs for the taking.[15]

Three approaches were given more serious consideration. Using a land claims commission with a right of appeal to Congress, as Congress had done before, was likely to lead to delay and lobbying. The resolution of property rights under this system had been time consuming and could be unnecessarily protracted.[16] An appealing alternative was to retain a land claims commission and designate federal courts to hear appeals. Congress had not previously made district and supreme courts the only forums for appeal.[17] In doing so, Congress freed itself from much of the burden of confirmation and sharply limited the number of appeals that claimants could conduct. This freedom came at a cost—Congress had to pay for judges, defense, and other expenses, and it would not have the final word on the validity of land claims. The Committee on the Judiciary, which shaped the final bill, also discussed a hybrid approach that would have limited government appeals for claims smaller than 640 acres. Ultimately, the costs of fraud loomed too large. Senator John M. Berrien noted the committee had decided against adopting this approach because even claims of 640 acres could be extremely valuable if they encompassed mineral deposits.[18] The California Land Act, although imperfect, represented a politically expedient solution to a difficult problem.

This politically expedient solution also meant that land claimants in California fared well relative to other individuals holding grants to land that had been made by foreign governments. Table 3.4 shows the number of claims, the total number of acres claimed, and the average claim size for all such territory. Although California had comparatively few land claims, the size of the average claim, at 15,051 acres, was forty or fifty times larger than those of claims in most other states. Only Florida, at 3,120 acres, and Iowa, at 5,760 acres, had claim sizes that were even close. Land claims resulting from the Treaty of Guadalupe Hidalgo and the Gadsden Purchase also covered a larger portion of the

acquired territory than did claims resulting from all other acquisitions except Florida. Despite this, 80 percent of California land claims were ultimately confirmed and patented.

Statistics have not been compiled on how rapidly claims were patented prior to the California cases. Anecdotal evidence suggests, however, that claimants of similar-sized grants elsewhere had spent decades before Congress and in the courts pressing their claims. In contrast, in California the average time from the filing of a land claim to the awarding of a patent was seventeen years. Thus an average claim had received a patent by 1870, or about twenty years after the passage of the California Land Act. The resolution of property rights was adjudicated in-state for 88 percent of the claims, not thousands of miles away in Congress or before the U.S. Supreme Court.

Following its experience in California, Congress abandoned the commission and court system. In New Mexico it required the surveyor general of the territory to investigate claims and make recommendations on confirmation to Congress. The surveyor general was not, however, given either the personnel or the budget to carry out this mandate. In the first annual report he observed that "the present law has utterly failed to secure the object for which it was intended." This approach proved so ineffectual in resolving property rights that Congress found it necessary in 1891—nearly forty years after acquisition—to establish a Court of Private Land Claims. This court finished its work in 1904. About 24 percent of New Mexican land claimed was eventually confirmed and patented. This rate was about one-third that of California, and the resolution of property rights took decades longer.[19]

One hundred twenty of the 144 Los Angeles–area claims submitted under the California Land Act—or 83 percent—were ultimately patented. This patent rate compares favorably with the overall patent rate in California of 80 percent. The claims process was both expensive and time consuming. Squatters, taxes, and a severe drought compounded claimant hardship. Scholars have long believed that the combined effect led many owners to sell their land or lose it through taxes or mortgages, but the evidence from partition suits indicates that land loss up to the mid-1860s may have been significantly smaller than previously reported.

The fairness of the California Land Act depends on the counterfactual scenario. If without the act, all claims would have been confirmed immediately and at no cost to the claimant, then the act was not fair. But this conjecture disregards key problems: many land claims overlapped, and in these cases confirmation would have led to protracted boundary litigation, possibly forcing one party to choose land elsewhere. Squatters, on the verge of rioting under the

California Land Act, could easily have staged a full-scale rebellion. Congress might have lost the revenue from the roughly 3 million acres that were not confirmed under the act.

If the California case is compared to the land claims processes that applied in other acquired territory, the California Land Act looks a bit better. The act resolved claims more quickly than had previous land acts. Whether the outcomes for California land claims would have been more favorable under previous acts is difficult to tell because only a small number of claims greater than five thousand acres had ever been submitted under previous acts. Given the high patent rate in California, it seems unlikely that outcomes there would have been better. The more relevant comparison for California may be New Mexico. New Mexico was acquired during the same period and was also covered with large grants; its claims process moved extremely slowly and had a much less favorable outcome. In any event, one aspect of this complex and important chapter in the history of Southern California is that environmental issues, especially the deleterious effects of drought, played an undoubtedly critical role in undermining what the California Land Act of 1851 seemingly, if briefly, upheld: the legitimacy of property rights established during previous national, and ethnic, regimes.