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UNIVERSITY OF CALIFORNIA,
IRVINE

Raciolinguistic Ideologies in the Rhetoric of Early California Statehood

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in English

by

Maureen A.J. Fitzsimmons

Dissertation Committee:
Associate Professor Jerry Won Lee, Co-Chair
Assistant Professor Valentina Montero Román, Co-Chair
Chancellor's Professor of English, Jonathan Alexander
Assistant Professor José M. Cortez

2021

DEDICATION

To

Mom and Dad because of the world you created
Kathy because of your fierce constancy and lifelong faithfulness
Kookie because of your authenticity and unwavering loyalty
Family and Friends because of your indelible patience

*Breathe in golden light,
Breathe out negativity and despair.*

Kookie Fitzsimmons and Maureen Fitzsimmons

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As a neurodiverse person, I hope this for everyone: build your own community out of people who see you as (mostly) a symphony and not (mostly) a cacophony.

And, for those of you that I haven't named, please know that my heart is full of love and appreciation even though my head could only manage these brief acknowledgements.

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ABSTRACT OF THE DISSERTATION

Raciolinguistic Ideologies in the Rhetoric of Early California Statehood

By

Maureen A.J. Fitzsimmons

Doctor of Philosophy in English

University of California, Irvine, 2021

Associate Professor Jerry Won Lee, Co-Chair

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Why does the state of California, while a significant presence on today's world stage, suffer practices which marginalize many of her Spanish-language citizens? I look to the inherently contradictory rhetorical conditions under which the state was founded in the mid-nineteenth century for some insight. Preceding statehood, the Republic of Mexico and the United States of America ratified the Treaty of Guadalupe Hidalgo which mandated that all citizens of Mexico that maintain their homes in California "be considered to have elected to become citizens of the United States." Yet, at that time, per the "Laws of the United States Relative to Naturalization," only those who were "a free white person, may be admitted to become a citizen of the United States." These contradictory decrees did not benignly coexist.

As a historiographic text, this dissertation starts at a point in time in California before the use of Spanish, or being associated with Spanish speakers, was cast as unquestionably "minoritized." More specifically, this dissertation samples moments over a span of decades inscribed by raciolinguistic dynamics, raciolinguistic ideologies and, eventually, the dominance

of raciolinguistic inversion – a phrase that develops Miyako Inoue’s idea of indexical inversion in order to acknowledge the eventual exchange of praise for criticism of the same qualities – through examination of a range of 19th century legislative, judicial, and periodical records. In so doing, it aims to contribute to the scholarship of raciolinguistics by examining how, in the early development of California’s statehood, racialized linguistic hierarchies were inscribed. I focus primarily on documents containing the official records of the state, along with other historical artifacts, in order to delineate an understanding of the substantive and influential statements of the day. Since such raciolinguistic dynamics continue to shape the teaching of academic literacy today, I offer in the Conclusion chapter a series of pedagogical implications for contemporary educators in a range of contexts.

Introduction: A Raciolinguistic Study of Early California Statehood

In 1849, as the inhabitants of Alta California worked to form and ratify the state of California, the dynamic interplay among race, language, and power (both secular and divine) was in full effect. California became a state in 1850. In 1853, it was declared in the state's Senate that, during the 1849 constitutional convention,

the native Californians¹ were the true patriots, and advocated a form of government suited to the times and circumstances; but the Anglo-Saxon² politicians, who moved the wires, were ambitious of official honors, and therefore urged the adoption of an unwieldy and expensive State Government, which created offices, many which were utterly useless and unnecessary. (*Fourth 20*)

That is, the previously-Mexican-citizens-now-referred-to-as-Californians (sometimes also referred to as Natives) were valorized on the floor of the state Senate above the standing of Anglos-Saxons. Despite this passage, in practice, the concerns and rights of Californians – the Spanish-speaking people guaranteed United States citizenship per the Treaty of 1848 – were routinely denigrated as the new state was established. This dissertation examines government records of early state business that memorialize the use of rhetorical strategies which menaced the citizenship, safety, and property rights of California's first-identified U.S. citizens.

¹ For the purposes of this dissertation, and following the usage of the time, I will use the word "Californian" to indicate people who were previously citizens of the Republic of Mexico and who continued on to become citizens of the United States as residents of California; today's nomenclature uses the word "Californio." Although used as an adjective here, the word "Native" was often coupled with "Californian" and did not, necessarily, refer to Indigenous People.

² Likewise, I am taking the hyphenate "Anglo-Saxon" to indicate people from the United States other than the state of California. Also, consistent with the time, my usage includes immigrants to California from other English language countries.

The theory of “raciolinguistics,” popularized by the work of Nelson Flores and Jonathan Rosa, has been instrumental to my interrogation of how contemporary language policy and language education produce rationalizations of language “appropriateness” that frame the language of minoritized peoples, for instance Latinx individuals and communities in the U.S., as chronically inferior. Of particular interest in raciolinguistic analyses are how Latinx peoples are constructed and treated as lesser due to their association with Spanish, even if Spanish is not exclusively characteristic to the category of Latinx people. As an historiographic text, this dissertation starts at a point in time in California before the use of Spanish, or being associated with Spanish speakers, was cast as an unquestionably “minoritized linguistic practice” (*Undoing* 149). But, the earliest stages of the process of minoritization are captured in the legislative, judicial and periodic texts of the mid- nineteenth-century. This dissertation samples moments over a span of approximately twenty years which are inscribed by raciolinguistic dynamics, raciolinguistic ideologies and, eventually, the dominance of raciolinguistic inversion – a phrase that develops Miyako Inoue’s notion of indexical inversion in order to acknowledge the eventual exchange of praise for criticism of the same qualities – through examination of a range of 19th century legislative, judicial, and periodical records. In so doing, it aims to contribute to the scholarship of raciolinguistics by examining how, in the early development of California’s statehood, racialized linguistic hierarchies were inscribed. I focus primarily on documents containing the official records of the state, along with other historical artifacts, in order to delineate an understanding of the substantive and influential statements of the day.

Literature Review

Scholars from several fields – for example, anthropology, history, linguistics, education – have worked to understand the complicated admixture of language, race, and identity exhibited in today’s world. This dissertation explores the historiography of how the Spanish language

became racialized in California. Spanish has been a lightning rod around which significant cultural and behavioral patterns have emerged. Scholarly literature pertinent to this discussion approaches the dynamic from different areas of concern and different fields of study. The first area canvassed in this literature review is a historiography of Spanish language speakers in the states and territories which were newly brought into the United States through the acquisition of Alta California. The second area is that of Spanish speaking students and indigenous students and their education. The third area is a look at language, race, and identity which leads to a discussion regarding the theoretical approach of raciolinguistics and some of today's interrelated sociolinguistic realities.

In 1966, Leonard Pitt wrote his influential monograph *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890*. In it, he explores the experience of some Spanish language speakers as they navigate the transition from being landowners in the Republic of Mexico to landowners in the state of California. Pitt's work is inflected around the metaphor of the United States as a "melting pot" wherein the "submergence of ... 'alien' cultures" occurs (xiv). Pitt identifies that the phrase "Spanish-speaking" was a construct that was not used conversationally during the historical period. He argues that Californios, whom he refers to as "native-born Californians," would not identify with the label of "Mexican immigrants." Yet, in Pitt's reckoning, the phrase is meant to refer to both groups, Californians and immigrants from Mexico to the new state of California, because it focuses on the use of Spanish as the "lowest common denominator of the Spanish-Mexican heritage-language and for that reason seems most acceptable" (Pitt xv) (elsewhere in the text he includes "neophyte Indians" in the category (310)). Historically, while it is accurate that Californians spoke Spanish, records do not show that it was Spanish speaking, perse, that drew the attention

of legislators and jurists. As chronicled in this dissertation, at least two looming concerns were property rights and also non-Anglo-Saxon culture. Further, in those earliest days, the concerns regarding landowning Californians and immigrants (from any country) were decidedly different. The melting pot construct enables an analytical approach with what Pitt calls a “curious twist,” which is “that in California the dominant Yankees are for once cast in the role of immigrants, while the ‘foreigners’ are native born” (83).

Pitt’s work has been both controversial and important for scholars who work to understand the history of Latinx people in California. In a 1998 Foreword to Pitt’s text, Ramón Gutiérrez praises Pitt for taking “the subject position of the Californios he chronicled. He wrote a relational history of social groups before it was widely accepted that groups could not easily be studied in isolation of one another” (xi). But, Gutiérrez also acknowledges that Pitt, in the third edition (1970), following the influence of historian Rodolfo Acuña³, described Californios as “the victims of an imperial conquest” (xi). Pitt thereby redefined the relationship of the Spanish speakers and the newly installed government of the United States that was discussed in the 1966 text from paradoxical native born foreigners to the subjects of “imperial conquest.” It is easy to overlook the cultural tendency of Pitt’s time that this work reflects; that is, the identification of people by their language usage. It does not account for the diversity of identities within the frame of “Spanish speaking” and even the diversity of languages within the frame of “Spanish language.” Additionally, unsubstantiated tropes find their way into Pitt’s analysis. For example, he writes “quite plainly, the Californio’s economic naivete and his penchant for conspicuous consumption led him to the brink of disaster” (283). Yet, this historical rendering was a valuable text of its time.

³ Prof. Acuña was a colleague of Pitt’s and is cited later in this dissertation.

Chronologically, Gilbert González' *Culture of Empire: American Writers, Mexico, and Mexican Immigrants, 1880–1930*, picks up where Pitt ended. But, instead of focusing exclusively on culture in California, he examined the “American economic empire and its historical domination over the nation of Mexico” (85). In fact, “this work veers radically away from exclusive emphasis on race, identity (whiteness, for example), agency, and other cultural themes” (113). But, González does explore issues that touch on areas pertinent to this dissertation. González considers the Californios as “practically disappeared” and argued that the “Southwest underwent a revolutionary transformation, changing from a self-subsistent Mexican feudal economy to United States–based corporate capitalism” (2339). He argues that the tropes present in Pitt’s work are “Kipling-like representations of social and economic relations between Americans and Mexicans, and of Mexican workers as lesser intelligent human forms.” Gonzalez suggests that writers at the turn of the century explicated and “practiced a language of empire” in which “Mexico was represented in a spectrum of colonial images, such as subservient mozos” (1611). Gonzalez’s work notes that Anglo-American Spanish language learning was discussed in terms of economic concerns – Spanish language acquisition north of the border was “highly recommended for effectively dealing with Mexican clients and government officials” (1493). Yet, not for members of Mexican communities within the United States. González outlines a process adopted by educators intended to deal with the “Mexican Problem.” “First, the Mexicanness of immigrants needed to be eliminated” (3446) through the educational system. Then, through the segregated school system, students from Spanish speaking communities were educated largely in “the industrial arts and thereby reproduced the class standing of the Mexican community.” In practice,

language instruction was central to virtually all Americanization programs, which meant the elimination of Spanish through a gradual increase in the exclusive use of English ... Thus, the first two years in the segregated schools were passed in Americanization rooms, but the remainder of the schooling experience continued the stress on Americanization. One teacher contended that Americanization via learning English was more than the teaching of an academic subject or the “requirements for the grade ... it means teaching them how to live as well.” Nothing of lasting value could be expected until the Mexican child acted, spoke, and thought like an American child. (3446)

The agenda regarding language was specifically related to alienating children from their existing cultural identity.

Looking at some of the years within González’ timeframe, George J. Sánchez, in *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945*, analyzes the experience of those living in Los Angeles – a city with a distinct character perse and also a major population center close to the U.S.-Mexico border. Sánchez was motivated to write his study in an effort to understand the Los Angeles that his parents found when they immigrated in the 1950s (vii) and relied heavily on the naturalization files of the period to develop a profile of who immigrated to where in Los Angeles. In terms of language, Los Angeles held the largest Spanish speaking community outside of Mexico City by 1930. And, over the decades discussed by the author, the idea of one language spoken by one people started to become fractured as “any notion that individuals have occupied one undifferentiated cultural

position – such as ‘Mexican,’ ‘American,’ or ‘Chicano’ – has been abandoned in favor of the possibility of multiple identities and contradictory positions” (8). Through a geographic understanding of the homes created by Mexico’s diaspora Sánchez’ study maps “Mexico-centered leadership to one focused on political and social advancement in American society” (274). That is, the multiple cultures of the Mexican-American communities.

In *How Race Is Made in America*, Natalia Molina focuses on the years 1924 to 1965, picking up the narrative six years before González’ work ended. However, Molina’s work traces events in the twentieth-century to the beginning of California statehood in the nineteenth-century. In what Molina calls “conflicting scripts” she identifies that “after the U.S. War with Mexico (1846–48), Mexicans entered the United States linked to two competing racial scripts: indigeneity and whiteness. The war and the ideology of Manifest Destiny that justified it highlighted Mexicans’ inferior racial position due to their indigenous roots” (26). Molina offers this conflict as one of the “historical answers as to why Mexican Americans are still not deemed fully American and are largely equated with illegality” (1). In terms of race, “Anglo-Saxons were defined by what they were not: black, Indian, and, as the United States came into more contact with its southern neighbor, Mexican. After all, these groups were not considered white in any way, racially, culturally, or politically” (26). The exclusion from being considered white has a disparaging effect on Spanish language and culture. Molina traces the work of creating positive associations with Mexican ethnicity to the mid-1920’s, after the Mexican Revolution, when the “Minister of Public Education José Vasconcelos implemented a cultural education program aimed at refashioning Mexican identity. This program encouraged Mexicans to adopt a positive national identity centered on Mexico’s mestizo past. The mestizo was a product of Indian and Spanish blood, which together produced a stronger race, *la raza cosmica*, according to

Vasconcelos” (62). At the same time, the “immigration regime” began to emerge and in turn “remade racial categories that still shape the way we think about race, and specifically Mexicans” (1). Molina ends her detailed analysis by looking at the racial protests of the 1960’s. “Civil rights movements were reaching their apex, seeking an end to racism, demanding equal opportunity and the realization of the full rights of citizenship promised by the Fourteenth Amendment” (140) but goes on to identify racially based problems and inequities that persist in the twenty first-century.

Gloria Anzaldúa took a first-person narrative approach to the subject of language, race, and identity in *Borderlands/La Frontera*. In distinct contrast to Pitt’s use of the metaphorical “melting pot,” Anzaldúa engaged “the language of the Borderlands. There, at the juncture of cultures, languages cross-pollinate and are revitalized; they die and are born. Presently this infant language, this bastard language, Chicano Spanish, is not approved by any society” (20). Moreover, she intermixed proscribed narrative forms of the scholar, the story-teller, and the poet to express her arguments. She wrote,

By Your True Faces We Will Know You

I am visible--see this Indian face--yet I am invisible. I both blind them with my beak nose and am their blind spot. But I exist, we exist. They'd like to think I have melted in the pot. But I haven't, we haven't. (109)

Here, Anzaldúa poeticizes the melting pot, making those that find truth in the image in error – wrong not only for her but for her community. Yet, knowledge, per the selection’s title, is possible. It is the purview of the “we,” of Anzaldúa’s community. In Anzaldúa’s telling, the complexity of the community is respected, presented, and celebrated. Although the author

endured a childhood of physical punishment and public shaming in school for speaking Spanish (65, 76) her commitment was to being “a border woman. I grew up between two cultures, the Mexican (with a heavy Indian influence) and the Anglo (as a member of a colonized people in our own territory)” (19). From Anzaldúa’s perspective, she reported that:

Because we are a complex, heterogeneous people, we speak many languages. Some of the languages we speak are: 1. Standard English 2. Working class and slang English 3. Standard Spanish 4. Standard Mexican Spanish 5. North Mexican Spanish dialect 6. Chicano Spanish (Texas, New Mexico, Arizona and California have regional variations) 7. Tex-Mex 8. *Pachuco*⁴ (called *caló*).

(76)

Regarding language, “there is no one Chicano language just as there is no one Chicano experience” (80). The quoted list is a powerful statement of the complexity of language as related to identity; if language established identity, as would seem true from Pitt’s choice to identify several groups of people as one community signaled by the Spanish language, then how many groups can be identified through this list? Two – English speakers and Spanish speakers? Three – English speakers, Spanish speakers, and Pachucans? Eleven – English variations, Spanish variations, and the remaining hybrid variations? Can language reasonably be used to illuminate racial identity? From the first person perspective the answer would seem to be “no.” The consideration of the borderland as “physically present wherever two or more cultures edge each other” (19) and the long list of “some” of the languages spoken in that land, it was unlikely

⁴ Oxford English Dictionary online defines this as an adjective first used in 1842: “Of, designating, or associated with a Mexican-American youth subculture, characterized by the use of a distinctive idiom, flashy clothes, and often gang membership.”

and perhaps undoable without the use of a disclosing, first person voice – a celebration of languages and identities – plural. The question of the individual as representative of race is also at the heart of the following text.

Victor Villanueva, Jr., also approached his thesis from the individual’s perspective in *Bootstraps: From an American Academic of Color*. He tells his personal story, which began in Puerto Rico, and his story of becoming an academic, by intermixing the two domains. Additionally, he displayed his object of concern in the first line of the Prologue when he stated that “I think of how it would be if the numbers of academics of color actually reflected the demographics of the country” (vii). Villanueva’s text is an academic autobiography with scholarly references and theory which is inflected, explicitly, by personal opinions. His style combines the two authorities of lived experience and scholarly research. Villanueva chose to study language, in the field of rhetoric, because,

to study rhetoric becomes a way of studying humans. Rhetoric becomes for me the complete study of language, the study of the ways in which peoples have accomplished all that has been accomplished beyond the instinctual. ... There was the possibility that in teaching writing and in teaching rhetoric as conscious considerations of language use I could help others like myself: players with language, victims of the language of failure. (77)

The author’s choice of specialty is a recognition that language has power intrinsic to the experience of success or failure. Regarding community he argued that the history lessons related in schools presented an image of various groups, “Hispanics all, yet different in their ways, their histories, their relations to other Americans, whose cultures and histories they also share to great

extent. Such histories are not the standard of the schools. The histories need to be re-created” (57). Here, like Anzaldúa, the author acknowledged the inadequacy of the educational system to present a complete picture of all inhabitants of the borderland. In his rendering, the recognition of multiple languages is necessary to address racism stating that “I mention our differences to point out how we are the victims of racism in being regarded as all alike, this one thing, Hispanics” (42). Six years later, in “On the Rhetoric and Precedents of Racism,” Villanueva, argued that contemporary academics “tend to get our Great Thinkers from Europe” observing that “we don't look to the South. Freire came to our attention only after he became a member of the faculty at Harvard” (658). From his vantage, there is lesser understanding of the Mexican-American borderlands; the “one thing, Hispanics” is an unrecognized, unstudied, uninfluential presence reliant on European oriented academics to make it legible to popular, American culture. Villanueva’s concern with what seeds the work of U.S. educators points to the significant influence of education on culture in the states.

Another heterogenous community that is often bundled within discussions of people living in the Mexican-American borderlands are indigenous people – not part of the European diaspora nor clearly distinguished from Mexican heritage communities. While it is common to refer to Californians in the nineteenth-century as a homogenous group, contemporary scholarship reminds us how faulty that perspective might be. In fact, in the first case study of this dissertation, there is an exchange between delegates as they debate elements of the state Constitution that could indicate heterogeneity amongst the Californians. And, while it is also faulty reasoning to argue that today’s borderland populations indicate the reality of one-hundred and seventy years ago, the connection of the research to this dissertation is twofold. First, most of the surviving documents in English are written from the point of view of the new immigrant,

not the Californians; today's communities may afford insights into the realities of past communities. Second, through spotlighting certain historiographic elements of the founding of California, I hope that this dissertation can help inform the reader about contemporary issues – especially in education; to that end, in addition to knowing The Then, it is important to know The Now. Michael Kearney investigates the “Transnational Oaxacan Indigenous Identity: The Case of Mixtecs and Zapotecs.” As economic migrants who are classified as illegal inhabitants in the U.S., they “create and live within a third sociocultural and political space popularly referred to as Oaxacalifornia. The cultural politics of this third space are shaped by tensions between the indigenous communities and various instances of the Mexican state that attempt to retain political hegemony” (173). The Oaxacans represent sixteen different groups of indigenous peoples with Zapotecs and Mixtecs being the largest two of the sixteen. Zapotecs live primarily in the Los Angeles area while Mixtecs tend to live in rural areas (174). In these California communities, ethnicity is “a constructed identity that arises only within relations of power and difference” (177). For the Mixtecs, their experience in Oaxaca was of an “almost feudal-like rural bossism, which links local relations of domination and intimidation to the repressive power of the state as it is expressed at the regional, state, and federal levels” (183). Additionally, Mixtecs were treated as “distinct from ‘Mexicans,’ or from ‘mestizos,’ or ‘whites,’ as the case may be ... the majority shares the distinction of speaking a language other than Spanish” (185). Kearney stated that while “an indigenous identity is basically a cultural identity ascribed to ‘indigenous’ peoples by non-indigenous peoples, ethnicity is a form of self-identification that emerges from opposition, conflict, and self-defense” (188). And, that self-identification can be harnessed as “a major resource to be managed in promoting and organizing pan-Mixtec identity”

(189). Having touched on the complexities of cultures associated with the U.S.-Mexico borderlands, I turn to scholarship regarding education.

Twenty years into California statehood, in 1870, the first campus of the University of California was two years old. About 78 students were enrolled, only one with a Hispanic surname, Manuel Corella (León 190). A pre-Freshman program named The Fifth Class was created to increase enrollment in general – it was not tailored or intended to increase the enrollment of Mexican heritage students. Yet, sixteen of the 88 students in the program had Hispanic surnames. The one-year curriculum was calibrated to the demanding university entrance exam (180). Seven students of Hispanic descent matriculated into the university; by their fourth years, none of them were still enrolled. The sole Hispanic member of the teaching contingent was Manuel Corella. While records show he completed most of his requirements for a degree, there is no record that he received a degree (197). Corella was a member of the University of California community for seven years; he taught for, at least, his last three years, earning \$75 per month for teaching Spanish. This was less than any other instructor on campus (196). David J. León and Dan McNeill document these items in "A Precursor to Affirmative Action: Californios and Mexicans in the University of California, 1870-72." It is a telling moment in time; while the authors theorize that Mexican heritage youth did not attend, or persist, in college for financial reasons, they did specify that “only Californios, who claimed a European heritage and vestiges of social position, seemed able to send their children to white schools without stimulating Anglo opposition” (184). It may be an ahistorical analysis but the information gleaned from The Fifth Class experiment begs the contemporary question of how to support the success of Mexican heritage students in post-secondary education.

While not explicitly addressed in the article about The Fifth Class, monolingualism and bilingualism are of essence regarding education in lands “where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy” (Anzaldúa 19). Ofelia García, in *Bilingual Education in the 21st Century: A Global Perspective*, looks to education conventions internationally recognizing “the complex multilingualism of most the world” (v). Internationally, she writes, “it is obvious that more powerful groups impose their language on the less powerful” (García II.2). Her chapter on “Bilingualism and Education” captures today what was true in the nineteenth-century.

Language is an important aspect, although by no means the most important, in considering the topic of bilingual education. Because language is so familiar, we operate with a series of assumptions about language that have to be questioned in order to think about bilingual education. ... [O]ur conception of standard language has been constructed through sometimes oppressive practices, and other times discursive practices. Through these practices, many of us have become convinced of the naturalness of the standard language and of its neutrality. (II.2)

This passage illuminates the problem with relying on past experiences to improve current practices. Many considerations, beyond vocabulary and grammar, are integral to language education. “Our conceptualization of language is often limiting and does not reflect the complex ways in which people *language*” (García II.2, emphasis in original). And, that limited concept

becomes a standard, reinforced by assessment practices, “which are then used as gate-keeping mechanisms for promotion, high-school graduation, and college entrance” (García II.2).

This discussion is held in counterpoint to a description of a New York kindergarten class that is bilingual. García presents an academic environment wherein two languages, Spanish and English, are taught and received as equally valuable – where answers are accepted “without complaining about the language in which it is given” and the room’s visual adornments present parallel elements of both languages, without disparaging, degrading, or celebrating one over the other (I.1). In 2019, Nelson Flores, in “Translanguaging Into Raciolinguistic Ideologies: A Personal Reflection on the Legacy of Ofelia García” details that García expanded the meaning of the applied linguistics word “translanguaging” beyond discussions limited to bilingual pedagogical approaches and broadened the “definition to encompass the multiple discursive practices of bilingual communities. This broader definition has been taken up in many different ways by scholars seeking to challenge dominant conceptualizations of bi/multilingualism” (45). Further, through his commentary regarding additive bilingualism, Flores finds the possibility of studying bilingualism situated in “dominant framings of bilingual education within the broader socio-historical context that has led to their emergence” (56). H. Samy Alim, John R. Rickford, and Arneetha F. Ball, in the introduction to their edited volume *Raciolinguistics: How Language Shapes Our Ideas about Race* identify characteristics of raciolinguistics as “an interdisciplinary space for interaction between sociolinguistics, linguistic anthropology, and educational linguistics” (6) expanding the practice to include other arenas including politics, media, and popular culture.

The pedagogy of another kindergarten program was the object of research in Patricia Velasco’s “Indigenous Students in Bilingual Spanish-English Classrooms in New York: A

Teacher's Mediation Strategies.” This work focuses on the development of academic language through student-teacher interactions, studying the “two indigenous Mexican - mixteco students who were attending a New York City dual-language, bilingual kindergarten class (Spanish-English)” (255). These students were placed in the Spanish-English bilingual class even though their home languages were not Spanish (269). In this classroom, sensitivity to students that came from a primarily oral culture led to valuable educational insights. For example, “literacy includes reading and writing as well as the analytical act of producing and comprehending text. Exposure to written text ... makes the individual rely on visual more than auditory skills” representing a skill set that might need to be nurtured. Throughout, the teacher's engagement mediation proved to be the seminal ingredient which facilitated student success (261). Yet, as students from an indigenous heritage, where Spanish may be the official language of their native country but it is not of their home, “these children will fail in school even in bilingual education programs” (269). The reality underscores the value of mediation: “to create the necessary support so that students can work independently and creatively for their own purposes and reach higher levels of performance” (261).

It is a hopeful scenario. There are other reports of multilingual⁵ youths engaged in tactics that, presumably, are part of, or consequent to, their language experiences in an English dominant culture. “‘Spanglish’ as Literacy Tool: Toward an Understanding of the Potential Role of Spanish-English Code-Switching in the Development of Academic Literacy,” by Ramón Antonio Martínez, captures the experience of sixth graders, identified as bilingual, in a Los Angeles middle school (124). The author found students that engaged in the use of Spanglish

^{5 5} When it is not clear that the word “bilingual” is technically accurate, I choose to use “multilingual” because, of the many choices of words or phrases available, I believe “multilingual” is the most appealing, or perhaps the least damaging, to the sensibilities of most students in this particular time.

exhibited a keen sense of their audience. In fact, the speakers would adapt their linguistic choices to different audiences and also calibrate subtleties of expression within audiences. For example, students might facilitate their communication by opting into Spanglish when at a loss for words with a teacher or to startle the author, when communicating to another student in English, to pay attention (131, 138). Martínez argued that by accepting these linguistic choices, “teachers could invite students to explain and discuss the different shades of meaning being communicated” and dialogue on alternative English words that might suffice. This activity could be generalized to discuss language choices found in assigned texts and vocabulary work (144) thereby building on student practices and making those practices part of their critical language practices.

Jürgen Jaspers, in “Linguistic Sabotage in a Context of Monolingualism and Standardization,” examines multilingual Moroccan students that attended school in their new country, Belgium. Jaspers concluded that the students challenged the “hegemonic structures that envelop them at school by constructing playful linguistic sabotage” as seen through different strategies of lightly challenging authorities through “doing ridiculous” behavior such as ironically pretending joy for dry, academic work. Employing this tactic enabled the students to “negotiate their participation at school and challenge stereotyping identity categories and elbow-room limiting situations” (279). While maintaining their identity as Moroccans, the students could “be proud of their Dutch competence” (296). The Moroccan students found spirited and, apparently, benign if not positive ways of persisting in a challenging multilingual environment. In David W. Barillas-Chón’s “Oaxaqueño/a Students’ (Un)welcoming High School Experiences” a different student experience is detailed. Barillas-Chón’s study examined the experience of four high school students in northern California who were from “Oaxaca, a community that has historically experienced economic, political, social, and cultural oppression in Mexico and now

in the United States” (303) and, as we have seen in the Michael Kearney text, is associated with indigenous people as compared to people from a Spanish speaking tradition. While placed in a Spanish-English classroom designed to educate bilingual students, the experience of the programs the high school had in place, meant to ease the transition of the students, resulted in making them feel unwelcomed. For example, a club for new students became an isolating experience with little support for indigenous students to move beyond the organization. Additionally, “the students’ accounts also shed light on how their ethnic/linguistic identities are sources for discrimination at school.” So, in addition to institutional isolation other students generated “discriminatory practices ... toward people from Oaxaca” making it necessary to “acknowledge that such discrimination is taking place” (318). Three recommendations came from the study. First, “directly address the discriminatory practices” of the students from the dominant culture that are inflicted on the vulnerable students, second, create pedagogy around the histories, both positive and negative, of indigenous groups, and third, directly engage indigenous students and support their access to school resources (318). In this scenario, unlike the Moroccan students, there is a separation from other students and the high school culture at large that needed to be addressed before the Oaxacan students were able to engage their environment. While language was an important part of their experience, the identity of the students put them in compromised positions both academically (identified as Spanish speaking yet more accurately indigenous ethnically and linguistically) and socially (attending a school with a student population including members who carried bias against people from Oaxaca).

Norma Mendoza-Denton writes in *Homegirls: Language and Cultural Practice Among Latina Youth Gangs* about the linguistic practices of teenaged, Latina girls in gangs in the mid-1990s, living in Silicon Valley, California, who had competing values – the *Norteñas* attested to

the “northern hemisphere” as home and elevated the speaking of English over Spanish; the *Sureñas* claimed the “southern hemisphere” and elevated the speaking of Spanish over English (59). Mendoza-Denton graphs the linguistic tendencies of these girls noting an ability and inclination to engage in subtle, mock English pronunciation of various Spanish words while objecting “to hyperanglicized pronunciations of Spanish” (293). Although the subjects of the study were unlikely to comment directly on their own manipulations of conventional English utterances, their “spontaneous emergence in the ethnographic context makes it possible to say that speakers do indeed orient to these microphenomena in their fashioning of linguistic and cultural stances” (293). That is, opinions are expressed through the language choice and language expression, even if in a subtle form.

Negotiating communication in a bilingual environment is an activity that certain movements hope to obviate by eliminating bilingual education and making English the official language of the U.S. Frances Aparicio analyzes this agenda through the lens of language and identity in “Of Spanish Dispossessed.” Through autoethnographic narratives of high school and college Latinxs the author captured how “bilingual and bicultural identities give meaning to English and Spanish in their lives” (253). As students in American institutions, the subjects of the study tended to write “in English because that is the language of their intellectual formation, the language in which they have had to conceptualize their bicultural world” (249). Simultaneously, the author finds, language is “a discursive site through which the United States, as a nation, reimagines itself as desirably homogeneous.” Upon these points, and other arguable indices of English language usage as a critical, and uniting practice, the author described the process through which different political movements attempt to implement their agenda. Citing Kenyan writer Ngũgĩ wa Thiong’o (1986), Aparicio relays a description of the process where

there are “two aspects of the same process: the destruction or the deliberate undervaluing of a people's culture, their art, dances, religions, history, geography, education, orature and literature, and the conscious elevation of the language of the colonizer” (256). In fact, that is California’s history:

For Mexican Americans in California and the Southwest, the public role of Spanish was displaced in the aftermath of the U.S. occupation of the Southwest. The dispossession of lands also included the dispossession of culture and language through educational policies and Americanization programs. Throughout the twentieth century, Mexican American communities have consistently resisted colonialist ideologies that purposefully negate the cultural specificity of Mexican American students. (257)

Yet, when engaged in the discussion, students identify the losses that are unavoidable under an English only protocol. Students find their identity, even without being fluent in Spanish language usage, as linguistically hybrid with “language as part of their culture and family heritage” (270); “they acknowledge with pride the symbolic and cultural capital that accompanies knowing two languages in one of the most monolingual societies in the world” (272); and, they value the “intellectual and cognitive work in Spanish.” And, “by internalizing the intellectual, cognitive role of Spanish, students undermine its public domestication, its repression outside or inside the home” (273). The imbrication of language and identity is part of who the students are.

For Jonathan Rosa in “Learning Ethnolinguistic Borders: Language and Diaspora in the Socialization of U.S. Latinas/os” the reality that Latinx students are “faced with language ideologies that stigmatize their English and Spanish linguistic practices” wrongly relegated them

to a deficit level of “Americanness,” whether they were born in the U.S. or not (40). These judgments implicated the role of schools in the damaging imputation possible through language ideologies (43). Five years later Rosa, along with Nelson Flores, argued in “Bringing Race Into Second Language Acquisition” for the necessity of “entering racialized communities” as part of the work exploring Second Language Acquisition (145). Here, too, identity is essential; the authors point out that, as long the linguistic practices of students are not respected in the same way as students who are developing “their expertise in contexts of elite multilingualism and, without broader institutional transformation” then “low-income students from racialized backgrounds” will perfunctorily be seen as problematic and in need of remediation (146).

In “From Mulatta to Mestiza: Passing and the Linguistic Reshaping of Ethnic Identity,” Mary Bucholtz argues that ethnic identity is the result of conscious choices made by the individual and that “the fluidity of ethnicity means that individuals can authenticate themselves in a variety of ways, and language use is a particularly effective tool in this process” (369). Bucholtz conducts the analysis of self-efficacy based on interviews of twelve “women of ambiguous or mixed ethnicity” (353). And, as we have seen in one study after another, identity is fused with language because “language may be a crucial resource for moving from one social category to another” (355). While “ethnic identity is a site of struggle ... language could be instrumental in challenging the assumptions triggered by [their] appearance” (360). In this construct of self-efficacy “the fluidity of ethnicity means that individuals can authenticate themselves in a variety of ways, and language use is a particularly effective tool in this process” (369). While other studies affirm the union of language and identity this study argues the transformational properties one with the other.

Inevitably, teenaged children of parents who are not comfortable with a culture's dominant language, English in most of these studies, are called upon to interface and interpret for their parents and other family elders. These youths are referred to as "language brokers" and their experiences were explored by Raymond Buriel, William Perez, Terri L. DeMent, David V. Chavez, and Virginia R. Moran in "The Relationship of Language Brokering to Academic Performance, Biculturalism, and Self-efficacy Among Latino Adolescents." The results of the study of 122 adolescents found that there was a high correlation between those who engaged in language brokering and "academic self-efficacy [which] was the strongest predictor of academic performance" (292). The study identified that the experience of brokering language for elders changed the traditional familial roles affording "these children's cognitive and socioemotional development [which] may be accelerated relative to children of immigrant families who broker infrequently or not at all" (283). And, the responsibility led to "competencies in two cultural settings, which provide[d] adolescents with greater social and cognitive resources" (294). Of course, the role also carried the negative outcome of increased stress concomitant with the increased responsibility and is gendered with females tracked as language brokers more often than males (287). For these youths, "biculturalism represents an optimum cultural adaptation strategy" (283).

For this dissertation, the science and art of linguistic scholarship is foundational. In Michael Silverstein's "The Whens and Wheres—As Well As Hows—of Ethnolinguistic Recognition," the phrase "ethnolinguistic identity" was considered. Silverstein argued that "ethnolinguistic identity intuits that there are differential claims to social participation based on differences of membership in what we can term a *language community*" (532, emphasis in original). Conversations about those intuitions rely on "certain cultural assumptions about

language.” The conversation pivots around two poles. First, “the logic of ethnolinguistic identity necessitates that it must be, like a subjective sense of one’s own culture, or of having one’s own tradition, a product of contact” (534). The second pole is “at the very other extreme, [where] there is the enveloping social space-time logic of metropolitan ethnolinguistic hegemony” (535). That is, engaging in discussion about ethnolinguistic identity might be more like an eternal wrestling match than a conversation. Yet, Silverstein argued for the efficacy because,

We, the intellectuals or knowledge workers of our societies, must engage, directly or indirectly, with the intellectuals and elites of the currently recognized as well as “wannabe” groups. We must understand where they are positioned in the dynamics of scheduling their, and others’, identities. We must position ourselves in some at least potential trajectory of the (re)scheduling implications of our work in undertaking it and in presiding over or acceding to its use. In the process of working on languages, we must come to terms with our own self-orientations to others’ projects of ethnolinguistic recognition. Only then should we be entrusted to intervene in the ethnolinguistic identity projects of others. (554)

The process of exploring the multiple facets of ethnolinguistic identity is, per Silverstein, endless. Further, Mary Bucholtz, in “Sociolinguistic Nostalgia and the Authentication of Identity,” proposed a “frame for a scholarly conversation ... concerning the relationship between the social linguist and the object of sociolinguistic research” (399). She argued that we need to recognize and isolate the concept of “authenticity as an ideology from authentication as a social

practice” (410). Through this strategy, authenticity becomes an idea worthy of exploration instead of given the untouchable status of a “first principle of sociolinguistics” (411). The author goes on to explain that “inevitably, the original concept of ‘real language’ that has long shaped sociolinguistic theory and method” also undergo a reimagining making possible “a much broader definition of sociolinguistics as quite simply the social study of language, ‘real’ and otherwise.”

The expression “raciolinguistics” was introduced in the 2015 article by Nelson Flores and Jonathan Rosa, “Undoing Appropriateness: Raciolinguistic Ideologies and Language Diversity in Education,” published in the *Harvard Educational Review*. This article launched the discussion of what they referred to as raciolinguistic ideologies, particularly in the context of language education. They construct a deep analysis of the concept of appropriateness around language and “highlight the racializing language ideologies through which different racialized bodies come to be constructed as engaging in appropriately academic linguistic practices” (150). In short, while notions of what is considered appropriate or inappropriate language for use in academic contexts is often taken for granted, Flores and Rosa posit that such naturalized assumptions about appropriateness reflect the historical racialization of certain peoples and language practices in formal education. As Flores and Rosa explain, “the ideological construction and value of standardized language practices are anchored in what we term *raciolinguistic ideologies*” (150, emphasis in original).

This dissertation relies primarily on the application of the Flores and Rosa theory of raciolinguistics; their consideration of “appropriateness” allows the observation of valence and how it might change. Moreover, Flores and Rosa explore current or recent dynamics pertinent to excavating race, language, power and the milieu in which those three things interact; with

“analysis of the codes of power as a raciolinguistic ideology,” the authors look at consequences of idealized and non-idealized linguistic practices (165).

The 2015 Flores and Rosa article argues for an awareness of language ideologies and racialization. Focused on academics and pedagogy, the article calls for “reframing language diversity in education away from a discourse of appropriateness toward one that seeks to denaturalize standardized linguistic categories” (149). The authors contend that certain linguistic practices are considered non-standard and are, thereby, devalued. They find “*raciolinguistic ideologies ... conflate certain racialized bodies with linguistic deficiency unrelated to any objective linguistic practices*” (150, emphasis in original). The practice of raciolinguistic ideologies creates two types of speaking subjects; one, the “racialized speaking subject,” is considered deviant even while the second, the “privileged white subject” engaged in the same practice, is considered “normative or innovative” (150). This reality allows the same behavior from different people to be glossed and valued in wildly divergent ways. While Flores and Rosa are referring to experiences of students in school, this type of exercise becomes evident in the state-building of California.

In discussing the appropriateness-based model of language education, Flores and Rosa point out that certain linguistic practitioners are vulnerable to “the false assumption that modifying the linguistic practices ... is key to eliminating racial hierarchies” (155). They argue that, in practice, “members of these student populations are heard as speaking deficiently by the white listening subject regardless of the ways they attempt to model themselves after the white speaking subject” (155). The fixedness of perception by the white listening subject also maps onto race, language, and power interactions beyond the schoolroom. In fact, their “argument places *racial hierarchies* rather than *individual practices* at the center of analysis” (155,

emphasis in original). The arguments Flores and Rosa make can be put alongside those of Jennifer Roth-Gordon, when she says “race is daily remade by speakers who must reconcile powerful linguistic ideologies with the social interactions that make up the substance of our everyday lives” (Alim *Raciolinguistics* 62). The work of scholars focused on the impact race has on linguistic hierarchies today, can be productively used to discuss the 1850’s. While, in the earliest days of California, some aspects of legislating issues could seem to be individually driven, the cumulative effect was raced-based legislation. *Undoing* makes the point that “the white speaking and listening subject should be understood not as a biographical individual but as an ideological position and mode of perception that shapes our racialized society” (151). Given the repositioning of perspective, analysis over time and valuing the mutability of position and perception, could add narrative beats to the raciolinguistic exploration.

While Flores and Rosa are working toward an informed pedagogy and different experiences for students, per the key 2015 article, raciolinguistics applies to society at large. They wrote in 2019 that “importantly, these raciolinguistic ideologies ... have become entrenched in mainstream institutions and must be negotiated by people as they navigate these institutions and their interpersonal relationships within them” (148). While discussing the twenty-first century, Flores and Rosa’s statement is consonant with the experiences of the Californians of the 1850’s. Further, working from Bakhtin’s argument that heteroglossia is “characteristic of *all* language use,” Flores and Rosa ask how “the notion of raciolinguistic enregisterment challenges us to understand how race has played a key role in bundling together linguistic features ... such that we expect a person identified in a particular way to produce those features or we come to assign identities based on the perception of those features (Rosa, 2018)”

(149). The provenance of the reversion from a heteroglossic sensibility to raciolinguistic enregisterment is part of California's early years.

In 2011, H. Samy Alim and Angela Reyes, in "Complicating Race: Articulating Race Across Multiple Social Dimensions," promoted the examination of "how processes of race and racialization are produced between groups and across multiple linguistic and social dimensions" as an alternative to approaching subjects through the lens of dialect orientation or group orientation (184). They argued that, because we are not, in fact, living in a colorblind and postracial ideological construct, separating race out of analyses effectively sustains dominant ideologies. Eight years later, Alim argued, "rather than postracial, American society is in fact hyperracial, or hyperracializing. That is, ... we are constantly orienting to race while at the same time denying the overwhelming evidence that shows the myriad ways that American society is fundamentally structured by it" (3).

In fact, in his book *Looking Like a Language, Sounding Like a Race: Raciolinguistic Ideologies and the Learning of Latinidad*, Rosa takes his argument beyond the school campus and finds:

The co-naturalization of language and race is a key feature of modern governance, such that languages are perceived as racially embodied and race is perceived as linguistically intelligible, which results in the overdetermination of racial embodiment and communicative practice—hence the notion of looking like a language and sounding like a race. Thus, race, language, and governance must be analyzed collectively. (2)

That is, it is not just the culture in the classroom but also the imbricated, inured governing culture formed through raciolinguistic ideologies that warrants examination. Rosa goes on to explore “the enregisterment of Latinx identity” (7). He identifies and pursues the exploration of “contingent processes rather than naturally occurring cultural essences [that] structure” the supposed contexts of “racial categories and linguistic varieties” (30). While the exploration is important to today’s realities it is also valuable for historiographic work.

In their book *Registers of Communication* Agha Asif and Frog present an edited collection focused on an “interdisciplinary dialogue on register phenomena” (7). Per their description, use of the word “register” in linguistic scholarship emerged mid-twentieth century to reference adaptation by speakers of “the resources of *langue* in heterogeneous ways within specific varieties of communicative conduct” (13). “Enregisterment” references the events that differentiate “register formations ... from each other and emerge as apparently bounded sociohistorical formation for their users” (15). In Rosa’s 2019 work, he shows how “the enregisterment of Latinx identity involves a powerful dialectic through which individuals come to look like a language and sound like a race” (7). Rosa continues that, concomitant with enregisterment, is both stance-taking and recognition of stance-taking; they “become central to the process of raciolinguistic enregisterment that I describe. In seeking to understand the ways that language becomes an emblem of group identity, it is crucial to consider the role that race and related categories of difference play in shaping perceptions of language use” (8). Raciolinguistic enregisterment, then, is subsequent to, and continued through, performative moments of interaction between parties perceived as different from each other with one party taking the advantage of being considered the normative, legitimate identity. What, then, did the

Californians of early California statehood experience as they were vanquished from the roster of cultural legitimacy?

The significance of language likely to be substantial in any human endeavor. In his book, *Language and Social Relations*, Asif Agha plumbed the role of language in the procession of “human affairs” (1). His insights regarding the “organization of social life” are pertinent to the analysis of a new social endeavor like establishing a new state:

I argue that the organization of social life is shaped by reflexive models of social life, ... These moments of being made, grasped, and communicated are the central moments through which reflexive models of language and culture have a social life at all. And persons who live by these models (or change them) do so only by participating in these moments. (2)

Agha detailed eight areas, from reflexivity to honorific registers, concluding with “Norm and Trope in Kinship Behavior.” The chapter “Regrouping Identity” particularly touches on themes that are pertinent to this dissertation. For example, Agha asserted that a person’s identity, or identities, can change over time “through a class of semiotic processes whereby images of personhood are coupled to or decoupled from publicly perceivable signs” (233). And, that identity will shift over a lifetime. Also over time, those qualities can be “embodied in things that function as emblems” making the emblems mediators of the effect understood as figures of identity (244). Challenging or denying those emblems are, in practice, challenging the identity of that person. The conversion of the nationality, and the emblems, both personal and societal, of the inhabitants of Alta California was an aggression against their identities.

An essential concept of indexicality regards its relationship to identity. One's linguistic style is one aspect of identity, as Mary Bucholtz affirmed in "From Stance to style: Gender, Interaction, and Indexicality in Mexican Immigrant Youth Slang." Bucholtz defined "an indexical theory of style" as a matter of individual volition where the "speakers take stances, create alignments, and construct personas" (146). Bucholtz's approach does not predicate research on social categories; rather, it "demands that sociolinguists pay close attention not only to the patterning of linguistic variants but also their distribution and function in the performance of social actions within unfolding discourse." In her study, the process of indexicality occurred in a multi-directional manner regarding the Mexican American slang term *güey*. Although this translates to "dude" the author showed that, through multiple expressions, the word came to index societal alignment and also a specific style within the group of youths (147). The "linguistic construction of social identity" can and should be examined within the context of, and with an appreciation of, the choices made by subjects.

The idea of standing is important to evaluating the issues around race, language and power. As Michael Silverstein wrote in "Indexical Order and the Dialectics of Sociolinguistic Life," "'indexical order' is the concept necessary to showing us how to relate the micro-social to the macro-social frames of analysis of any sociolinguistic phenomenon" (193). The order advances sequentially – first order indexicality, second order indexicality, and so on – and also along the lines of effectiveness within its usage (194). After exploring the aspects of indexicality regarding several different subjects including the "rarefied" indexical orders involved in oinoglossia, Silverstein concluded that "an illuminating indexical analysis, as opposed to an incomplete or inadequate one, has to take account of the dialectical plenitude of indexicality in microcontextual realtime, and has to situate itself with respect to the duplex quality of language

use” (227). That is, while it is possible to analyze the indexical position of certain language it is necessary to evaluate that language as it is used within its context to gain insight into its true complexity. An example of this type of evolving complexity is examined in the work of Barbara Johnstone, Jennifer Andrus, and Andrew E. Danielson. “Mobility, Indexicality, and the Enregisterment of ‘Pittsburghese’” traced the process of subtle, barely recognized linguistic characteristics found in Pittsburgh to the enregisterment of a dialect known as “Pittsburghese” (77). They argued that, based on Silverstein’s advancing order of indexicality, linguistic features moved through the ordinal sequencing (from demographics to stereotypes) that was fueled by “social and geographical mobility during the latter half of the twentieth century, [and] driven by economic changes in the region connected with the globalizing economy” (78). This case study, which drew on historical documents, sociolinguistic interviews and ethnography, supports the value of using indexical order as a tool to examine the entangled layers of “dialect-normative practices” and not just isolated moments of linguistic choices (100).

Indexical activity can be direct or indirect; obvious through one or two examples or emergent over multiple texts. Jane H. Hill delves into the presence of “Intertextuality as Source and Evidence for Indirect Indexical Meanings,” through examining the plenitude of Mock Spanish examples available online. She argues that the presence of these “intertextual relations should be added to the various other dimensions of ‘context’ and ‘contextuality’” that qualify “as sources of regimentation” (113). The author presents multiple examples of Mock Spanish found in everyday life, from interpersonal faith discussions to television commercials, to substantiate the power of intertextuality’s presence. One example is the Taco Bell promotional series of ads in the 1990’s featuring a putative Spanish-speaking Chihuahua. His tag line was “Yo quiero Taco Bell,” but the campaign built on that adding “more and more Mock Spanish strategies ranging

from a parody of a ‘Mexican’ accent to forms like ‘loco grande’ (the name for a particular kind of taco, ungrammatical in Spanish, unlike ‘yo quiero Taco Bell’)” (115). Hill concludes that “speakers can depend on all of the meanings made available through the intertextual series in their uses of Mock Spanish.” The power of “the intertextual series constitutes not only a linguistic process, the enregisterment of Mock Spanish as a way of conveying a certain key, but also a social process as well, binding users of Mock Spanish into a community of mutual comprehension” (123). The analysis by Hill illuminated both the power of the indexical and its ability to be amplified, without an express motivating intention, intertextually.

The function of participation in a lexical form of cohering members of a community is at the heart of Norma Mendoza-Denton’s “The Semiotic Hitchhiker’s Guide to Creaky Voice: Circulation and Gendered Hardcore in a Chicana/o Gang Persona.” Building on Hill’s work, Mendoza-Denton examines the means by which “different levels of metalinguistic awareness become recurrent features of personae, and become accessible to character portrayals of these personae by other speakers” (261). The author attributes this to the pervasiveness of an intertextual series. While looking at several examples, the title of the article referenced an element of linguistic styling indexed to Chicano gangster/“cholo” speech – that of the creaky voice – and observed that the vocal quality was “enregistered as part of an intertextual series,” making it subject to being taken up, as a semiotic hitchhiker, as indexically gangster (262). As the vocal quality of the gang member is circulated, “its indirect indexicality changes from hardcore persona to Chicano masculinity in successive contexts of circulation and through intertextual serialization” (275).

Miyako Inoue, in “What Does Language Remember? Indexical Inversion and the Naturalized History of Japanese Women,” identified “the production of naturalized temporality

and its ideological effects by focusing on the semiotic process of indexical order” (39). Inoue explores the creations of narratives that become naturalized and considered indexical and, after which, served as a foundational piece to “an historical narrative that logically unfolds from the (naturalized) indexical order” (39). In Inoue’s construct, the second piece of cultural capital is an inversion of the first event. Inoue examines two historical periods and the inverse cultural treatment applied to women’s language in Japan in those eras. She identifies that women’s speech in the nineteenth century, as adolescent females were allowed to come out of their homes and continue their education, was indexed as “women’s language”; that indexing, while intended to index vulgarity, carried through to the indexing of women’s speech as something of the past that was positive and lost through women’s language exhibited in the twentieth century workplace. Per Inoue, this is a “particular semiotic process, which I call *indexical inversion*, ... ‘Women’s language’ as a linguistic ideology operates in a way that inverts the indexing and the indexed and provides a metapragmatic narrative to normalize the inversion and what it entails” (43). Rosa points out about Inoue, as pertains to raciolinguistics, that “the fact that most women do not speak ‘women’s language’ does not prevent the widespread circulation of the belief that they do as a language ideology” (7). Indexing naturalized the concept; inverse indexing burnished its truthiness. In, *Vicarious Language: Gender and Linguistic Modernity in Japan*, published two years later, Inoue referred to indexical inversion as a “trick” because it “actively constructs the very reality that it claims to be representing” (653).

Raciolinguistic ideologies place “an emphasis on the white speaking *and* listening subject” (Flores *Undoing* 152). In this dissertation, I argue that, at the beginning of California statehood, as commemorated in the records of official state proceedings, the commensurate value of different races as speaking subjects was understood as part of the raciolinguistic dynamics –

language and race mattered but did not defacto determine power; but, legal, judicial and educational power was ultimately established and maintained through raciolinguistic ideologies, bringing the particular narrative sequences of this dissertation's studies to points of raciolinguistic inversion. What was once respected if not celebrated was reevaluated into until it was disdained, eventually seen as threatening and subject to exploitation.

In subsequent paragraphs I will sketch the movement from raciolinguistic dynamics to raciolinguistic ideologies to raciolinguistic inversion in three case studies. For now, I offer an example of the raciolinguistic dynamics – a raced-based dialogue infused with the understanding that Spanish speakers are singularly identified – which attributed valorous characteristics to the Californians and not the newly arrived Anglo-Saxon population. Three years after statehood, in 1853, it was stated on the floor of the state Senate that:

[The state] Constitution was framed at a period when but few men bestowed serious thought or calm reflection upon its provisions. At that time the population, with the exception of the native Californians, was a confused mass of strangers, who had flocked to the country⁶ from all parts of the Union and every section of the world to gather gold. The determination of all was the same-to accumulate wealth as rapidly as possible, and to return back from whence they came with the glittering treasure. (20)

At the time, and for many years, this last bit of descriptor was critical to the sustainability of California. As a new state, it had many expenses but it was difficult if not impossible to tax proceeds from mining and also impossible to tax profits that were taken out of state once the

⁶ At that time it was common to use the words “California” and “country” interchangeably.

miner decided against making California their home. Long term plans were discussed on the Senate floor to convert California into an ideal agricultural center but, until that became the dominant source of revenue, concerns about miners were substantial. So, the stability and insight of the Californians was laudable. The early years of statehood, if not elevating, at least respecting Spanish speakers, is a raciolinguistically dynamic moment where the Californian population continued to have cultural standing; they had possession of lands and their opinions were considered and respected. This is not to say all races in general, or Californians in particular, were free from race-based diminishment; rather, for a brief period of time, being Spanish-speaking was better than identifying with being a member of “a confused mass of strangers.”

Yet, as Flores and Rosa identified while discussing the heritage language learner, eventually “linguistic practices are devalued not because they fail to meet a particular linguistic standard but because they are spoken by racialized bodies and thus heard as illegitimate by the white listening subject” (*Undoing* 161). My study looks at the cultural framing of Spanish speakers in raciolinguistic dynamics during the forming of a new government and the development of raciolinguistic ideologies which ultimately lead to raciolinguistic inversion in legislative and judicial arenas. During the early years of statehood, this dissertation indexes European languages as prestige-laden in the arenas of public discourse – most significantly Spanish, but also French and German – and their eventual inversion to indicating deficiencies in their speakers. In early California, it came to be the practice to dismiss or demonize heritage languages. Of course, the inversion effectuated a negative characterization of a significant part of Americans’ heritage; in these earliest moments of statehood, we see Spanish speakers taken from commendable, at least in the public record, to degraded. The content of the dissertation looks at several interactions; the first half of the enregisterment is more potent in the beginning of

statehood, the inversion is more obvious as the years proceed. For this discussion of theory, I scan the evidence of raciolinguistic moments and the inversion. Finally, coming back to Flores and Rosa's 2015 work, the eventual conditions of the founding of California can be seen as further substantiation that there is a "meritocratic myth: the idea that access to codes of power and the ability to use these codes when appropriate will somehow enable racialized populations to overcome the white supremacy that permeates U.S. society" (166).

The linkage of Spanish language and race in 1850 was made legally ambiguous by the terms of race and citizenship established in the Treaty of Guadalupe Hidalgo. Likewise, if to a much lesser degree, on a cultural level. In the twentieth-first century, it may be difficult to imagine that ambiguity. But, if it did exist then, then we can characterize the racialization of Spanish language and those who speak it as naturalized, not natural; it can be reconsidered. Choices were made and different choices can be made. Each case study is comprised of a series of narrative beats and each narrative is peopled by those who do not want to villainize or diminish Spanish speakers (and their counterparts). However, the power necessary to complete the objective of each of these narratives in a way that was not destructive and diminishing did not triumph. For example, during the convention, delegate William Gwin attempted to draw a hypothetical distinction between Californians and immigrants from the United States, claiming that the U.S. immigrants comprised four-fifths of the California population. In response, the delegate from the San Jose District, Kimball H. Dimmick, the Convention Chair, stated that "as to the line of distinction attempted to be drawn between native Californians and Americans, he knew no such distinction himself; his constituents knew none. They all claimed to be Americans. They would not consent to be placed in a minority. They classed themselves with Americans, and were entitled to be considered in the majority" (Browne 23).

Alim argues that “by adopting a raciolinguistic lens, we can work to expose how educational, political, and social institutions use language to further marginalize racialized and minoritized groups ... and, importantly, to reshape discriminatory public discourses about racially and linguistically marginalized communities” (27). And, we still don’t have what Flores and Rosa calls for but we may be able to advance our understanding:

Without an analysis of the codes of power as a raciolinguistic ideology, we are unable to scrutinize how nonracialized people are able to deviate from these idealized linguistic practices and enjoy the embrace of mainstream institutions while racialized people can adhere to these idealized linguistic practices and still face profound institutional exclusion based on the perceptions of the white listening subject. (165)

Perhaps embracing ambiguity can be helpful. I turn to the writings of the California Supreme Court in their first year’s decisions. For the Justices, it was a “matter of history that some of the wealthiest citizens of this state, at the present time, are either Indians of full or half blood. They are men of wealth, intelligence, and education” (293). In this passage, the “Indians” are almost certainly Californians. The Court, *in their first year*, gave a positive declaration which underscored the exceptional personal and occupational excellence of the Indian population.

Contemporary public behavior regarding language, race, and power informs our understanding of the past. The textbook *Mexican Americans and Language*, by Glenn A. Martínez, explored “our nation’s assimilationist ideology [which] naturalizes a false superiority of the AngloAmerican English” (4). He argued that the experience of “language panics,” (10) which are the result of concerns regarding the elevated status of monolingual citizens, can create

the counter-reaction of “language pride” (14) in multilingualism. And, throughout, Martínez encouraged the middle school student reader to be aware of any assumption they make about the valuing or devaluing of bilingualism. Jane H. Hill quoted what she referred to as Southwest Anglo Spanish in her article “Hasta la vista, baby: Anglo Spanish in the American Southwest.” Hill explored three registers of the form, identifying them as Cowboy Register, Pejorative Register, and *Nouvelle* Register, ultimately arguing that at least one effect of these registers was “a nearly invisible (at least to Anglos) symbolic dimension of racism” observing that “most attention to linguistic racism in the published literature considers only explicit and flagrant strategies” (169). Once it is the object of humor, as in the use of “Hasta la vista, baby” by a dying Terminator, the parodic insult aspect is obscured (163). It is not coincidental that “all three domains manifest significant distortions of phonology, morphology, syntax” (147).

Ana Celia Zentella traced in her article “Spanglish,” the neologism, to the use of “Espanglish” in print in 1948. Since then, the word, along with the language practices that it refers to, have been trivialized as incomplete and not standard. Zentella pointed out that, as Latinxs became the largest minority, “language discrimination intensified along with anti-Latina/o violence” (209). Although presented as an attempt to assist the person, the reality is “attacks on Spanglish reflect the ways in which negative attitudes toward diverse ways of speaking perpetuate inequities.” Zentella argued that, because the word Spanglish was being used a cudgel, Latinxs must “embrace Spanglish with open and frank appraisals of its roots and structure” (212). Zentella furthered her discussion of Spanglish in ““José, Can You See?’ Latin@ Responses to Racist Discourse.” In this article, the author identified the precursor, as experienced by Alta California natives, of today’s experience of living with “blatantly racist discourses that

construct Latin@s in the United States as stupid, dirty, lazy, sexually loose, amoral, and violent” (51). In response, the author argues for the embrace of Spanglish.

Whether it is used as a comic gloss on international languages or as a proud national flag, Spanish is the voice of home and neighbors in Latin America. In U.S. cities, it is transformed in collaboration with English. The result is both the coat of arms and armor of bilingual Latin@s—every José’s defense against bad jokes that take him for a *tonto*. When mocked with, “José, can you see?,” he can respond, “Seguro que yes, yo veo bien claro. Y tú?”

Many people could use some insight regarding the coexistence of Spanish and English. It is important to remember that, for many people, perhaps more so in the nineteenth century, a question of purity of language is part of the valuation of establishing a linguistic hierarchy. Likewise, the question of intermixing languages.

“Language Ideology and Racial Inequality: Competing Functions of Spanish in an Anglo-owned Mexican Restaurant” memorialized the language ideologies observed between monolingual English speaking managers and monolingual Spanish speaking staff. Rusty Barrett observed the interaction of managers, who spoke in English or Mock Spanish (which could be substantively unintelligible) to the Spanish speaking staff, and would become frustrated when the staff misunderstood. The managers “typically assume[d] that the Spanish speakers are responsible for incidents resulting from miscommunication” (163). For the Spanish speaking employees, Spanish was used to make covert their support of each other under those conditions. As an example of “competing functions of Spanish” the author identified Mock Spanish as “an indexical sign that entails a particular context of occurrence” while, for “Spanish speakers,

Spanish serves a more basic pragmatic function as the primary language of communication” (200). Barret concluded his article with: “The ideology of Mock Spanish is not simply a media tool for reproducing negative stereotypes of Latinos, it is a basic component in the maintenance of racial inequality in the United States” (201). In another restaurant, the Spanish speaking staff practiced a different form of discursive authority by subtly ridiculing the use of Mock Spanish by an Anglo-Saxon woman even with Latinxs who did not have non-English accents. Lauren Mason Carris described in “La Voz Gringa: Latino Stylization of Linguistic (In)authenticity as Social Critique” naming this behavior – “linguistic features associated with whiteness” – “la voz gringo” (474). The author found that the behavior “simultaneously calls into question multiple social identities, disrupts the dominant sociolinguistic ordering of white Mainstream English with respect to Latina/o language, and challenges racial/ethnic power dynamics between whites and Latina/os” (474).

Day to day behavior within the grammar of our sociolinguistic environments rests, according to Eduardo Bonilla-Silva, on “The Invisible Weight of Whiteness.” His thesis posits that “racial domination generates a grammar that helps reproduce the ‘racial order’ as just the way things are” (1). An example of the metaphorical racial grammar is that stories with white characters become understood as universal stories where stories with racialized characters become specifically about that race. Bonilla-Silva exhorted the reader to “develop an epistemology of racial emancipation as a necessary corrective to the racial grammar that fosters and reflects the ‘moral economy of whiteness’ (Gamer, 2007)” (12). And, there are other issues worthy of pursuit regarding language and its interaction with identity. Through following twelve families for two years, and additional interviews with members of the community, Norma González collected research for *I Am My Language: Discourses of Women and Children in the*

Borderlands. As the title implies, González's exploration respects the reality of an unique dynamic for women and children living in the geographic area of the shared Mexican-U.S. border. Although technically residents of the U.S., the author's subjects share a distinct sense of identity through their familiarity with the full range of life around the border. Identifying their situation as one with the "emotion of minority status" (47) Gonzalez finds a fluid aspect to the women's, and thus the children's, affect around identity and highlights language socialization as a key part of scaffolding that identity. Like Norma González, Patricia Sánchez finds positive identity building opportunities through maintaining relationships across the Mexico-U.S. border in "Cultural Authenticity and Transnational Latina Youth: Constructing a Metanarrative Across Borders." In fact, the part of the three year study presented in this article was the result of a project developed by her students in which they became autoethnographers studying their own transnational communities. They found that,

Family and community narratives are not only an iterative practice in this cross-border setting but also inscribed in certain household artifacts. This work suggests that sustained transnational contact with communities in Mexico provides linguistic and cultural resources for U.S. immigrant children that schools often overlook.

(267)

The research was conducted by second-generation Latinas who were residents of northern California and had family in western Mexico. The is not a small geographic separation. The positive effects, both linguistically and culturally, of maintaining family ties is profound regarding one's identity. In fact, the separation of languages is a false argument per Jonathan

Rosa, in “Language as a Sign of Immigration?” Rosa points us in a productive linguistic direction when he noted that,

The intimate intertwining of U.S.-based English and Spanish language practices disrupts conceptions of “English” and “Spanish” as separate linguistic categories that align with national identities in straightforward ways. These insights reflect the complexity of language socialization among U.S. Latin@s and demonstrate that language should not be viewed as a ready-made sign of assimilation or diaspora. (12)

The idea of separate languages is faulty. This error, however, can be traced back to the founding of the state.

Society at large, though, is also a profound influence on individual perceptions and identity creation. Thomas Paul Bonfiglio, in *Mother Tongues and Nations: The Invention of the Native Speaker*, takes a longitudinal look at the metaphorical, yet powerful, concept of a “mother” tongue and its sway over many cultures. Bonfiglio found allusions to “nativity and maternity ... in the locutions “native speaker,” “mother tongue,” “native language,” *lingua maternelle*, *locuteur natiuf*, *Mutterspacrache*, *Muttersprachler*, *lingua materna*, *modersprake*, and so on” (1). Then, the creation of race and the usage of language are intermixed. Along the historical exploration, recognizing the union of race and language, the author points out that “as no single first language speaker or writer has full knowledge of all the rules of a given language, his or her knowledge is at best asymptotic, approaching but never achieving full knowledge. Attempts at standardization are often purported to be value-neutral; this is, however, seldom the case” (8). Being native to a language may, in reality, be impossible.

Likewise, being a certain race may not actually be possible under longitudinal conditions. Aliya Saperstein and Andrew M. Penner wrote in “Racial Fluidity and Inequality in the United States” about data collected nationally representing two decades. Their report maps on to the experience of the early Californians. The study charts the U.S. categories of “white” and “black” showing that the expressions of those terms changed over time. “When we say that somebody changes to (or becomes) white or black, we are referring to a change in either how they are classified by others or how they identify themselves from one point in time to the next” (678). Those changes are in “response to myriad changes in social position, and the patterns are similar for both self-identification and classification by others” (676). In reality, the concept of race is a cultural expression. But, a powerful cultural expression. Margarita Machado-Casas followed three indigenous immigrant families that found, from their homes in North Carolina, the need to pass on to their undocumented children the rules of survival for transnational immigrants. “The Politics of Organic Phylogeny: The Art of Parenting and Surviving as Transnational Multilingual Latino Indigenous Immigrants in the U.S.,” an article published in a journal about issues surrounding high school children, observed the use of safe linguistic spaces for communication with children. The content of the conversations included “day-to-day realities and society’s expectations about who they are as indigenous immigrant peoples in the U.S. The ability to intentionally transmit survival type knowledge in a natural and organic way is” the author’s term of The Politics of Organic Phylogeny (86). The framing of the family narrative in such a way would have a real impact on the identity formation of the children. And, given the survival narrative, it is not unreasonable, nor unfounded, to consider the dominant culture as dangerous.

Aja Y. Martinez’s “‘The American Way’: Resisting the Empire of Force and Colorblind Racism,” brings the experience of her first year Chicano and Chicana students together with the

James Boyd White imagery of the empire of force and its dead speech. The author as a student, and her subject-students, succeeded in high school cultures that both assumed their inadequacies and, through the representation of each as the “exceptional minority,” exploited their successes. White considered the empire to be “an ideology subscribed to and maintained by a dominating presence that affects everyday life and circumstance. This ideology manipulates, destroys, and exploits those it seeks to dominate and, in essence, denies the very humanity of the subjugated” (585). The empire’s rhetoric is “dead speech” which is an “ideology that manifests itself in everyday practices of socialized notions that are integrated into meanings that make practices immediately definable and manageable.” All exists to deny the identities of the students and the influence of social justice. In reality, Martinez’s essay is a call to teachers – an exhortation that “we, as teachers and students, can strategize ways to disrespect and resist ... in order to achieve social justice” (594).

When discussing languages in school, it is not necessarily apparent that resisting the home language practices of students in school is, in itself, a commentary on the value of students’ experiences. Jaime Mejía wrote about students engagement with Tejano Arts; Mejía’s proposal might be one means of achieving Martinez’ goal. In “Tejano Arts of the U.S.-Mexico Contact Zone,” Mejía quoted James Berlin’s observation that,

by excluding reading practices that might discover the political unconscious of literary texts and by refusing to take seriously the production and interpretation of rhetorical texts that address political matters, English studies has served as a powerful conservative force, all the while insisting on its transcendence of the political. (124)

Mejía argued that, in fact, the lack of political engagement with material that is worthy of political commentary is an aspect of continuing colonial domination and exclusionary practices; the syllabi content is why “ethnic minority students, like bilinguals in the Southwest, have been left ‘unimagined’ by rhetoric and composition” (123). Finally, “bilingual and bicultural students learning to encode and decode discourses that influence the construction of their identities must no longer be limited to reading works that are not marked by the codes characteristic of autoethnographic texts like [Roland] Hinojosa's [*Miquerido Rafa*]" (134); these priorities come by way of disturbing the dynamics of exclusion (123).

While, improving the scope and engagement of reading in colleges is worth pursuing, a broader perspective reports a much larger concern. Jane H. Hill wrote in *The Everyday Language of White Racism* about recognizing the practice of White racism in the privileging of what has become considered White language:

I believe that elite White racism in the United States is the most important and influential form of racism in the world. The global power of elite White Americans means that everyone in the world must reckon with what they think and do. The forms of racism that they accomplish - and, indeed, their forms of anti-racist practice - influence how people think and act around the globe. (69)

Hill explored the use and abuse of language including linguistic appropriation. She argued that making respect, civility, and equality techniques intended to interrupt the common day to day racism of American culture can freshen empathy and challenge the “common sense of personalist logic” (2677). Ultimately, Hill argues that recognizing the history of linguistic appropriation, to which she attributes the “denigration of Native Americans as animalistic

savages” and the creation of white privilege among a long list of other examples (2590), will relegate white racism along with “slavery and official segregation[,] as a part of American memory” (2714).

Historiographic Foundation

There are two points that help frame the scope of this dissertation which analyzes the culturally embedded rhetorical exchanges of the time. The first is that, in California’s inaugural state Constitution, it was mandated that all laws generated by the state, including the Constitution itself, would be published in both Spanish and English. While the implementation of this rule faltered, the acknowledgment that citizens of the state were both Spanish language and English language users would seem to indicate an intention for parity across both languages – or, at least an interest in communicating to most citizens essential state affairs. We will see, through exchanges at the Constitutional Convention, that this was not a universal intention. (The 1849 Constitution was replaced by a new Constitution in 1879 which did not address Spanish language issues in any way. I use the dates of the first Constitution, 1849 – 1879, as parameters for the period of study I refer to as “early statehood.”) The second point is that the reality in 1850 of the state of California being a member of a union was, if taken literally, not factual; at the time of statehood the closest state was Texas – at a distance of at least 600 miles from California’s southern tip. Linguistically, Spanish or Indigenous languages represented the dominant cultures for hundreds of miles around. Although the state Constitution was drafted by delegates who referred to other state constitutions on which to model the California Constitution, physically and culturally California was far removed from the United States. As such, there was an opportunity for the citizens of California to create their own style of governance. (See the light green area in the map of the United States below, 1853):



Illustration 1: Map of the United States, 1850, Wikipedia Commons. Adapted by author.

California became the 31st state of the United States on September 9, 1850. With an influx of international gold seekers already under way, at the moment of becoming a state, over half of the state’s population had been in California for less than a year (Browne 478). To understand the political circumstances of the new citizens of California it is necessary to briefly canvass a few historical moments.



Beginning in the 1770’s Spain attempted to colonize the area referred to as Alta California. By 1834, Spain had withdrawn the system of Catholic missions dotted along the Pacific coast, thereby relinquishing their primary foothold in the area and shifting authority to the new Republic of Mexico. The Republic controlled Alta California until The Treaty of Guadalupe Hidalgo, also known as the “Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic,” was signed on July 4, 1848. The U.S. protectorate of California, along with other territories that would be ceded as states into the United States, were created out of Mexico’s Alta California. The Proclamation of the treaty argued that:

The United States of America and the United Mexican States
[were] animated by a sincere desire to put an end to the calamities
of the war which unhappily exists between the two Republics and
to establish upon a solid basis relations of peace and friendship,
[and] shall confer reciprocal benefits upon the citizens of both, and
assure the concord, harmony, and mutual confidence wherein the
two people should live, as good neighbors.

As this quote states, the intention of the treaty was one of reciprocity for the citizens affected by the agreement – all citizens. The eventual distinction of citizens based on heritage as telegraphed by language was not part of the agreement. The treaty covered many aspects of the transition of governance and directly addressed citizenship and the rights of territorial occupants. Article VIII stated:

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States. (Art. VIII)

It is important to note that the language of the treaty conferred citizenship to inhabitants of Alta California regardless of language, race or religion. Article IX stipulates that, “Mexicans ... shall

be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.” The treaty did not designate who was “Mexican” as to be distinguished from other races or ethnicities; it also did not make clear what personal qualities individuated “the character of Mexicans.”

Around the same time that the treaty was ratified the discovery of gold was altering the racial and linguistic composition of Alta California. By 1849, the first wave of thousands of miners arrived, primarily from Mexico and South America. A majority of the second wave was from the east coast of the United States, Europe, China, and Australia (see Tomás Almaguer’s *Racial Fault Lines*). The friction between the members of the Spanish speaking community and the English speaking community, the latter of which grew by thousands each month, would escalate. During this international influx, state delegates agreed “the Spanish, or the French, or the Italians ... are darker than the Anglo-Saxon race, but they are white men” (Browne 72). Once the Gold Rush became a world-wide sensation, northern California became an international destination point. In January, 1849, the population of the future state of California was 26,000: 13,000 Californians (previously citizens of Mexico), 8,000 Americans (from the East Coast of the continent), and 5,000 Foreigners (from multiple countries). In approximately nine months, between April and December of the same year, San Francisco alone received 29,000 immigrants: 22,000 Americans, and 7,000 Foreigners. While southern California received immigrants, the numbers were substantially smaller than those arriving in northern California (Browne xxii).⁷

This is all to say that, linguistically, the two halves of the nascent state had two different profiles. There is documentation that the state, in addition to its legally mandated Spanish publications,

⁷ At this time, the practice of including or excluding Indigenous people in census taking was unsettled. So, numbers in a category like “Californians” include people who identified themselves as of Spanish heritage who were citizens of Mexico; the total census numbers may or may not include Indigenous people.

printed at least one item in French and considered printing official documents in German, also. That is, for a time, it was unsettled that California should be considered a bilingual, as compared to multilingual, state.

California's provincial delegates, who had the task of drafting the first state constitution, had access to copies of other state constitutions and also a knowledge of different, attempted strategies regarding new states with populations that were substantially non-English language speaking. In Louisiana and the Midwest territories this was a constant struggle. For example, Louisiana's Constitution called for official documents to be written in English but unofficial versions in French were allowed. Subsequent laws required that official notices were made available in English and French.

While other states continued trying different approaches to communicating official business to multilingual populations, the topic in California was vetted during the constitutional convention. A resolution was proposed that a draft of the Constitution would be created with English in one column and Spanish running alongside. "After a very long debate" the alternative of having an English draft and, additionally, a Spanish version "made by the translator of this convention ... and [to] be certified by him, and both be placed among the archives of the state" dominated (*Weekly Alta* p1). One month after completing the draft, the residents of California cast their popular votes approving the document by using bilingual ballots (Rolle 122).

Geographic cohesion was a question that hung over the early days of the state. In the Constitutional convention a key question was whether to split the territory of California into two states. Although many people from Mexico moved to the San Francisco bay area, the area south of San Luis Obispo was primarily populated by former citizens of the Republic of Mexico and indigenous people – not national or international gold seekers. President Polk announced the

discovery of gold through an official statement at the end of 1848. Current historians theorize that Californians in the Constitutional delegation should have supported the establishment of two states as a means to potentially shield Mexican culture from being diluted by Anglo-Saxon culture (Acuña 136, 141). This reasoning is not reflected in the reports from the time. However, race and skin color were a part of the dialogue. In terms of census categories, people tended to opt for the category which was represented by lighter skin. By this time, rancheros “considered themselves different from the *cholo* masses...they rationalized that they had more in common with those with a lighter skin hue” (136). An exhibition of raciolinguistic inversion.

Dissertation Overview

In this chapter I outline the ways raciolinguistic analyses can be applied to the essentials of “Becoming a State.” In 1849, inhabitants of the protectorate called California came together to draft documents which would solicit either statehood or the status of territory from the United States federal government. Contemporaneous notes from the convention show that Californians, who numbered eight of the 48 elected representatives, were participating members of the six-week debate. Certain personalities emerged as likely opponents of the Spanish speaking Californians, but if their race was part of the animus, it is unstated. A Spanish/English fulltime translator was part of the proceedings from the very beginning. One day, the translator was sick. The representative discussed finding a replacement for the day or suspending proceedings but resumed without effectuating either plan. And, raciolinguistic dynamics attendant to the power of calibrating who could become a citizen was a substantial part of the convention’s agenda. Race and citizenship would be one of the most consequential subjects – a subject that touched every one of the thirty extant states to one degree or another – and was debated. But, the invocation of

raciolinguistic ideologies was introduced per Spanish language usage; the rights of Indians,⁸ as distinct from Californians, and as identified by skin color, bore out aggressive remarks from which the Californians were not necessarily spared. And, ultimately, while being a Spanish language speaker did not impact eligibility for citizenship, the convention did decide to specify in the newly crafted Constitution draft that being white was necessary; a clear moment of succumbing to raciolinguistic ideologies. Raciolinguistic inversion can be seen in the end of this analytic sequence – the legislature, on the basis of recommendations grounded in anti-Catholic and anti-Spanish sentiment, reversed itself and adopted Common Law as the new state’s system of jurisprudence over Civil Law. Those who wanted Civil Law were characterized as wanting to go back to the time of the “profligate tyrants of Rome” (1851 464) – an image associated with Catholicism and, thereby, the Spanish.

In the next chapter I study the public statements made each year to highlight the raciolinguistic aspects underlying the development of the state’s school system. In “The Governor and the Superintendent of Schools” the issues of language, race and power are present from the first days of statehood to the year of concluding the analysis, 1850-1866. In this instance, as in the others, the issue is complicated by the assertion that there were multiple, distinct or calculable races. Generically, the argument went, there were five races: black/African ancestry, brown/Malay ancestry, red/American or Indian ancestry, white/Caucasian ancestry, or yellow/Asiatic or Mongolian ancestry (*Sacramento* 6). Two things were true over the sixteen years of reports about the developing school system. The first was that almost all references to race dropped the number from five to four, leaving out references to brown/Malay; this made the

⁸ Although it is not consistent (see the passage from the California Supreme Court above), the use of the word “Indian” in the mid-nineteenth century often referred to an indigenous person. Although imperfect, but following the custom of the time, I use the word in this dissertation in the same way that it was used then.

topic of brown students ephemeral – the reports did not specifically refer to their presence yet a mention might come indirectly through the brief references to Spanish language education. Second, the schools were for white children where “white” was not necessarily determined by skin color. Children considered to be members of non-white races, when their numbers became great enough, could go to schools built for them. The threshold to build a separate school was rarely reached. Talking about polyglot white students included brown students and created reports that exhibited awareness of language, race, and power – raciolinguistic dynamics – but memorialized a lesser degree of raciolinguistic ideologies than one might expect. By the end of the Civil War, circa 1865, raciolinguistic inversion is in fine fettle. The teaching of Spanish had been rejected by the legislature for both students who wanted to learn the language and students that might have Spanish as their primary language. The prohibition was accomplished by linking government support for schools to the prohibition of Spanish language classes.

In the third case study titled “Legislative and Judicial Discursive Power” I challenge the first promise found in the primary document, the Treaty of Guadalupe Hidalgo, where land owning Californians are guaranteed continued ownership of their property under United States dominion. Senator William M. Gwin, previously a delegate to the Constitutional Convention, from the floor of the state senate, appealed to his fellow members to change the established rules of confirming land rights by asserting that such procedures in other states were burdened by “litigation superinduced by a slow, partial, imperfect, and inconclusive system of settling these claims” (Gwin vii). Thomas Hart Benton, senator from Missouri, correctly argued that Gwin’s alternative approach would lead to the loss of Californian’s rightly-owned lands. Gwin had lived in California for four months when he was elected delegate to the convention. He was an avid politician. His approach went from raciolinguistic dynamics to raciolinguistic ideologies soon

after becoming Senator; he advised the state to avoid allowing litigation that would last “not merely for the average of human life, but in numerous cases for two and three times that period.” Because his system of vetting land claims was used, a majority of Californians lost their properties but not because of faulty ownership claims; properties were foreclosed on by Californian’s lawyers or representatives, that is, their English-speaking agents, to settle the cost of defending their land. In raciolinguistic ideological fashion, this construct was accepted for decades. It is a modern moment that finds Gwin’s abhorrent system an example of raciolinguistic inversion.

In the conclusion, I outline a series of pedagogical implications for the teaching of linguistically marginalized students. Given the ways this project demonstrates the long history of raciolinguistic censure, in the conclusion, I outline how the lessons of the past can be an important tool for considering our approach in today’s writing and literacy classrooms.

Case Study One: Becoming a State

“They are, no doubt, American citizens.”

Browne 71

This chapter focuses on meetings out of which came the terms of citizenship and jurisprudence in California. They are: the convention in which the California Constitution, a necessary element in the application for statehood, was drafted; the first state Senatorial session which concluded before statehood was granted by the United States Congress; and a report generated by the first Senate’s Judiciary Committee. I use historiographic documents in rhetorical, raciolinguistic analyses regarding Californians, also referred to as Natives, in the emerging state. While sometimes subtle and sometimes overt, the raciolinguistic tensions in these discussions are crucial; the state’s foundational documents were a work product of these meetings. I include, as part of the raciolinguistic analyses, a rendering of the linguistic theory regarding registers which highlights the creation of interactions which “emerge as apparently bounded sociohistorical formation for their users” (Agha 15).

Theory

For events occurring up through the late nineteenth century, historiography relies on recorded artifacts – sometimes pictorially, sometimes textually – leaving it to visitors from the twenty-first century to conjure the reality of that time from those surviving items. Numerous scholars have considered the ways we interpret recorded artifacts, but one approach that is particularly helpful in a study of language is to consider what Asif Agha discusses as “registers” in the archival material. Agha observes that there is the “tendency of language users to adapt the resources of *langue* in heterogeneous ways within specific varieties of communicative conduct.

‘Register’ originated as a term to designate these varieties” (*Registers* 13). For this chapter, the language generated by political representatives and the legislative deliberative process, is studied as an example of different registers that can coexist in one time and place in addition to their raciolinguistic characteristics. Documents survive offering at least three repertoires of this register to explore. For example, the last scenario discussed in this chapter – a memo written to sitting legislators – could only have the type of rhetorical consequences it did in its form and within that forum. If it had been a newspaper editorial, as an alternative, it would not have had the same textual significance as the memo (as a piece of the permanent record) nor would it effectively be guaranteed an audience which included all the members of state Congress. The repertoire of a communication or document affects the social circulation and impact of its content.

The first repertoire is the debates which occurred during the drafting of the California state constitution. The second is laws and writings of the California state Senate. The third is a written report submitted to the California Congress as a position paper. Agha recognizes that, within a register, “social-semiotic regularities do exist, [and] they are identifiable only in the practices of those who treat them as a distinct register, and thereby comprise the social domain of its users (14). In these examples, the “social domain” is inherent in the function of the bodies of texts – at least the first circle of the domain. That is, each register is men attempting to shape in the legislative forum the foundation of the state and the behavior of the state’s inhabitants. They are speaking or writing in arenas in which close notes are taken and published. They each stand as representatives for specific groups of people. Consonant with the idea of register, the people involved in these discussions are identified and bounded by the electoral system through which they were selected, their racial identification (both self-generated and imposed), and their

geographic moorings. Per Agha, “the social domains of users” within a register are “the set of reflexive practices through which varied semiotic devices ... are grouped together into models of significant conduct by those whose behaviors these are, where explicit ethnographic attention to who these persons are (as a group differentiable from others) also identifies the social categories of persons in whose lives the register enables a distinctive set of social practices” (15). For these corpora, the “reflexive practices” of the statesman are at play but do, in fact, vary from one repertoire to the other, creating the three repertoires of the register. On language, Rosa cites Duranti; it is, “above all, [as] a cultural practice, that is, as a form of action that both presupposes and at the same time brings about ways of being in the world” (Duranti 1997:1)” (Rosa *Looking* 219). For this legislative language, not only is the content itself inherent in a new cultural practice but it is creating a way of being in the world for the speakers and the people they represent.

Register Model of the Legislative Deliberative Process: Three Repertoires

Here are excerpts from key documents I will be discussing in this section. These first three passages frame the inherently contradictory circumstances regarding the race of its citizens under which the state of California was established:

1824: regarding the Constitution of the Republic of Mexico:

[A]ll people in Mexico excluding slaves became citizens ... [and] slave children born in Mexico would be set free at age fourteen. After serving ten additional years, adults in bondage would likewise be set free. (Menchaca 162-163)

1848: Treaty of Guadalupe Hidalgo, Between the República

Mexicana and the United States – Article VIII in part reads that:

*those who shall prefer to remain in the said territories [Alta California], may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States. (Statutes 1850 17, emphasis added)*⁹

1849: California State Constitution – Article II, Right of Suffrage, Sec. 1 reads that:

every *white* male citizen of the United States, and every *white* male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained shall be construed to prevent the

⁹ Passages of this treaty regarding citizenship are in the Appendix of this document.

Legislature, by a two thirds concurrent vote, from admitting to the right of suffrage, *Indians or the descendants of Indians*, in such special cases as such a proportion of the legislative body may deem just and proper (*Statutes 1850 26*, emphasis added)

California Constitutional Convention:

The first example of the register model of the deliberative legislative process is the repertoire which captures that process in the meeting of the 48 provincial delegates elected to draft either a request to be granted the status of territory of the United States or to draft a state constitution; one or the other was necessary for the United States Congress to take action regarding the future of the part of Alta California that was being referred to as California. 1849 saw many attempts centered in different townships to establish a provisional government that would generate some kind of guiding civic documents (“Provisional” 1). During that year, because of the gold rush, the province’s population exploded, growing from 20,000 to 100,000 residents; most of the newcomers arrived in San Francisco via ship and made their way inland to the Sacramento and San Joaquin valleys.

The ambition of would-be legislators to establish a provisional governing body was framed by the terms pertinent to becoming either a territory or state of the United States as afforded in the Treaty of Peace (also known as the Treaty of Guadalupe Hidalgo or the Treaty at Queretaro). Through newspapers, the popular election of delegates from ten districts for the convention starting September 1, 1849, in Monterey was announced. The proclamation, issued by Military Governor, Bennet C. Riley, stated the convention would work towards “the formation of a State Constitution, or a plan of a Territorial Government” (Browne 4). Describing voters of the day, one delegate observed they “have only been in the country [California] three or four months ... on the very eve of leaving California ... [they have] the avowed intention of

digging gold to carry it away and spend their wealth elsewhere” (73). The plan was to have at least 37 delegates; on the first day they had ten. The group met two days later and ultimately convened with a total of 48 delegates. W.E.P. Hartnell would serve as translator and interpreter for the Spanish language (10). J. Ross Browne took shorthand notes which he published in 1850. His text is the primary source for this section of analysis.

The proceedings highlight both that there are certain patterns of alliances taking shape, but also that delegates referenced biographical information as a way to energize those alliances. Of the 48 delegates, six were Californians; ten were from New York; 19 had lived in California for less than three years. In terms of the geographic distribution, half of the delegates came from the gold rush swath of the San Francisco, Sacramento and San Joaquin districts, which was located well within the what was colloquially considered the northern part of the province; the north-south distinction began at San Luis Obispo being the first significant southern ciudad followed by Santa Barbara, Los Angeles, and San Diego.

Thirty-eight delegates came from the northern half of the emerging state leaving 10 delegates from the south. Throughout the proceedings, delegates note that the population and concerns in the north were very different than those in the south. Although residents throughout the state expressed anger over a federal tax that had been imposed, the other points of concern were fundamentally different. In the north, hundreds of people arrived every day from around the globe, mostly young adult men, looking for their fortune. There was a high degree of rowdiness and the dangers that came with it; for example, out of control, middle-of-the-night fires that leveled communities large and small were common. Voters wanted more regulations and the protections that came with statehood. In the south, the population remained more similar than different to pre-treaty times; according to delegate Jacob R. Snyder (from Sacramento), “nearly

the whole mass of the native Californians in the country would be included in the Southern portion [of the state]” (Browne 183). The major stakeholders were ranchers that were living on trade; a new and significant source of income was selling cattle to the northern districts. The southerners were interested in becoming a territory along with the independence that that offered (Davis ff. 107; David Samuel Torres-Rouff ff. 55). Of the six Californian delegates, four came from southern districts.

The form of the debates – the register and specifics for this repertoire – throughout the convention were explicitly sequenced colloquies with objections entered if the sequencing was not observed. Daily, the Chair, Kimball H. Dimmick, Esq., representing San Jose, would open the sessions’ proceedings. Announcements, which might include communications from the military government, were read. In the early days, committees were formed to craft language on articles they hoped to include in the final document. (The decision to craft a state constitution instead of the terms for a provisional territorial government was made early in the proceedings and is discussed below.) Once opening business was finished, the Chair would entertain resolutions or amendments to be discussed, they would be read, and delegates would comment. Discussions could generate alternative language or a suggestion to table the question so committee members could work on a nagging issue that night for resubmission. Once the items were fully vetted, a vote would be taken and the yeas and nays would be recorded for each member of the convention and the issue would be settled. Then, the Chair would move to the next item, and so on. Of course, only delegates could be recognized to speak. The parliamentary rules of “Jefferson’s Manual” were used (Browne 19).

How the notetaker, T. Ross Browne managed to take notes from morning to evening, six days a week, is unknown. But, it is possible he had help from the members themselves. A

lengthy speech, given by T. L. Vermeule, Esq. in October, 1849, to the Convention was published in the *Weekly Alta California* on December 6 of the same year with Vermeule as the apparent source. Browne's version, published in 1850, was largely identical to the newspaper version. It is possible that versions of the speech were exchanged between the two – either Vermeule had a draft that he shared with Browne or Browne gave a transcribed copy to Vermeule which was brushed up and given to the newspaper. Also, there is a formality and completeness to the language reported in Browne's book that may have been common to the time but is unusual – that is, an actual transcript of people talking and reacting would likely be filled with fractured or incomplete sentences; the notes from Browne were not.

Many delegates revealed, when arguing a point, that they were working from copies of other state constitutions as reference. The California Constitution, thereof, would ultimately be akin to those of other states. There was a tendency, especially when discussing issues around race, to turn to the Arkansas, Louisiana, and Florida Constitutions. As William M. Gwin (from San Francisco)¹⁰ stated, “the Constitutions of Arkansas, Louisiana, and Florida, [regarded] territories which were acquired under nearly the same circumstances as California” (Browne 379). Some delegates believed that, because those lands were taken through treaties with France or Spain, that is, non-English speaking countries, the experiences regarding language in the territories won from France or Spain would parallel the experience in Alta California. The point that the signers of the Alta California treaty spoke Spanish but were, in fact, Mexican – a different culture – seemed to be unrecognized.

This six-week meeting was public discourse conducted by a body of elected representatives who were aware that they were being recorded. The delegates represented

¹⁰ About two months after this congress concluded, Gwin was elected one of the first U.S. Senators representing California, along with John C. Fremont.

different geographic areas and, thus, differing concerns. The success of the future state was at stake.

Language: The Constitutional Convention could only happen as it did because the “Treat of Guadalupe Hidalgo” was ratified by the Republic of Mexico. Among other things, that treaty specified that all documents pertaining to the terms and execution of the treaty would be made available in Spanish and English. At the convention, at least six delegates were native Spanish speakers, and the translator, W.E.P. Hartnell, was present gavel to gavel. But, when he was sick, although the delegates discussed tabling work until a substitute could be found, that suggestion was never agreed to by the majority, putting the delegates who were more comfortable with Spanish in a compromised position (Browne 400). That is, protecting a bilingual¹¹ imperative was not fully championed or even adhered to by the delegates – the opinions of the Californians regarding this incident were not recorded. Once drafted, the Constitution would be printed in both Spanish and English, as would Browne’s book-form transcript of the proceedings. The driving concern expressed by the members in terms of publishing in both languages was consistently the cost; Spanish versions were argued to be an extra expense. While discussing the insertion of a requirement for dual language versions of official documents in the developing Constitution, Charles T. Botts (from Monterey) argued it was “an expense for which there will be no necessity in a few years” (Browne 163). This language barrier for Californian delegates and citizens, and the reliable challenges to producing Spanish language material, seemed to have an atmospheric quality – it infused the environment.

State or Territory: On the fourth day of the convention whether the goal was drafting a state constitution or territorial application was put up for discussion. The delegates needed to

¹¹ According to the Oxford English Dictionary Online, the word “bilingual,” in reference to written texts, was used as early as 1862. Using it in this context is, therefore, anachronistic by thirteen years.

identify, early on, which document they were working on. Various resolutions were crafted and put forward, including one from Gwin. In his version, unlike the others which asked for a simple vote in favor of one document or the other, the terms read that “if there be any objection to a State Constitution, the question of a Territorial Government is thrown open” (Browne 20); the proposal’s structure made the de facto work of the committee the drafting of the constitution and relegated territorial documents to secondary status. It may be unrelated, but the day before Gwin’s proposal José Antonio Carillo (from Los Angeles) spoke for the first time at the convention and began his remarks with he “felt a diffidence in addressing the assembly, from his ignorance of the English language” (14).¹² Carillo used the Convention’s interpreter for his own speaking and also to receive translations of the language of English speaking delegates. He chose this moment to speak for the first time to argue against the attempt to inflate the number of delegates from northern states. Gwin, who in less than a year would lobby for legislation which precipitated the loss of most Californians’ land ownership, had been part of a group that attempted to change the delegate count from 48 to 73. Although they were technically successful, only 48 delegates ended up participating (XXI). But, officially, the increase in delegates made the northern districts in control of a higher percentage of votes (Browne 12).

On this day, during debate, Carillo asserted that the first question of the whole committee should be to determine which pathway they were on, statehood or territorial status, noting that without knowing whether they were working toward statehood or territorial status made it difficult to proceed (Browne 21). O. M. Wozencraft, from the San Joaquin district, asked “what right the House had to enter into any question of that kind,” stating, incorrectly, that they had been elected to draft a Constitution and not to “give expression of opinion as to any other form of

¹² Quotations of delegates are written in the third person in Browne’s text.

government” (21). Mr. Gwin tried to foreclose further discussion by stating that he “did not think there was a member on this floor in favor of a Territorial Government” (21). A reminder was offered by the Chair; they had been elected under a proclamation calling for one or the other. While this is a quick exchange in terms of the text, it would not be unusual that members from the northern district attempted to foreclose arguments from one of the southern delegates – often a Californian.

It is possible to understand the debate between Carillo and Gwin as evidence of a difference of understanding on whether this was a discussion about statehood or territory status, but the incident is also worth considering as a demonstration of raciolinguistic dynamics. As the discussion about the state or territory choice continued, and other topics were taken up, the language used by Gwin, and other delegates that aligned with him, became more explicitly focused on racialized language. The debate regarding the choice of state or territory continued and it became apparent that there were more votes in favor of working to create a new state than territorial status. Carillo stated that,

[H]e represented one of the most respectable communities in California, and he did not believe it to be to the interest of his constituents that a State Government should be formed. At the same time, as a great majority of this Convention appeared to be in favor of a State Government, he proposed that the country should be divided by running a line west from San Luis Obispo, so that all north of that line might have a State Government, and all south thereof a Territorial Government. He and his colleagues were under instructions to vote for a Territorial organization. He took

this view, because he believed it to be to the interest of his constituents. And although a gentleman belonging to this body had stated, that it was not the object of the Convention to form a Constitution for the Californians, he begged leave to say, that he considered himself as much an American citizen as the gentleman who made the assertion. (Browne 22)

The passage is instructive in two ways. The first is that Carillo's constituency fundamentally believed that there were two Californias in play – the gold rush driven north and the ranching and farming focused south. Second, the idea of being considered as a separate entity – something other than an American citizen – was not part of his thinking. He was part of one whole even if other delegates would not see him that way.

The statement he was referring to was: "It was not for the native Californians we were making this Constitution; it was for the great American population, comprising four-fifths of the population of the country. In this report [regarding the number of delegates] that majority has been cut off from a representation in the Convention" (Browne 11). The speaker was Gwin. Gwin's response to Carillo was,

He [Gwin] had been very much misunderstood on this point. What he said was, that the Constitution which they were about to form was for the American population. Why? Because the American population was the majority. It was for the protection of the California[n] population—government was instituted for the protection of minorities—this Constitution was to be formed with a view to the protection of the minority: the native Californians. The

majority of any community is the party to be governed; the restrictions of law are interposed between them and the weaker party; they are to be restrained from infringing upon the rights of the minority. (22)

In this speech Gwin glosses over Carillo's position of there being one population by expounding on the concept that seeing a group of people as a minority situates that group to have better security. They are "weaker" but they have rights. The characterization of weakness could not be a north/south discussion; one of the Californian delegates, M. G. Vallejo, represented Sonoma, a northern district. Talk of Californians was talk, to one degree or another, about race and not one's home district. Through racial language, the Californians are put on notice that their position in California is vulnerable – conditional upon the good will of the majority. One result of having protection is the subordination of the protectee. In a room where every voting member should have been considered equal Gwin argued that delegates like Carillo were representative of a "weaker party." If Californians needed confirmation that they were seen by some as a separate group from the Americans, they had it before statehood.

Gwin's philosophy was not shared by all the non-Californian delegates. A delegate from San José, Dimmick, the Convention Chair, stated soon after Gwin's speech that "as to the line of distinction attempted to be drawn between native Californians and Americans, he knew no such distinction himself; his constituents knew none. They all claimed to be Americans. They would not consent to be placed in a minority. They classed themselves with Americans, and were entitled to be considered in the majority" (23). Gwin directly responded, arguing that "it was notorious that the citizens of the United States were known as Americans here; and when he spoke of Americans, he spoke of citizens of the old States of the Union, now in California. He

knew no distinction prejudicial to the interests of either” (23). This quote suggests that, for Gwin, the valence of the word “American” did not actually include all citizens of the new state but, rather, it referenced people from the east coast. Even while working to craft the armature of a unified state, Gwin did not accept the usage of an inclusive word used inclusively.

Race and Citizenship: The Treaty under which the delegates convened had specified that citizens of Mexico could opt into, or be compelled into, American citizenship (*Statutes* 1850 17). No racial characteristics were specified. However, making race part of the criteria for American citizenship was almost as old as the United States. As per the requirement of California’s state Constitution, the California Secretary of State maintains archives of annual publications of *The Statutes of California*, containing the state’s ever-changing laws. The first volume also contains the documents upon which the state was founded including full renderings of the Declaration of Independence, the Constitution of the United States, the Treaty of Guadalupe Hidalgo, the Constitution of the State of California, and Laws of the United States Relative to Naturalization. The key phrase, regarding naturalization, in Section 1, reads “that any alien, being a free white person, may be admitted to become a citizen of the United States...” (49). The document is dated 1802 but additional amendments bring the language forward to apply through 1849.

The group of delegates needed to put language into the California Constitution regarding citizenship and its privileges. The Committee on the Constitution as Relates to Suffrage offered on September 12, 1849, the following language for consideration: “Every white male citizen of the United States, 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, in which he claims his vote twenty days, shall be entitled to vote at all elections which are now, or hereafter may be, authorized by law” (Browne 61). The consideration of the passage is a key moment. The whole of the delegates

could have rejected racialized language out of hand because it brought race into the discussion where it had not been before – recall, the Treaty of Guadalupe Hidalgo did not mention race. The verbal wrangling that ensued engaged several strategies that are raciolinguistic exercises. It is not the case that only the Californians in the room were interested in defending their rights as new American citizens. But, numerically, that constituency was outnumbered.

Introduction of this passage with racial language for the Constitution immediately led into a discussion of race and citizenship. In response to the language that specified citizenship for “every white male,” Edward Gilbert offered an amendment that would include, “every male citizen of Mexico, who shall have elected to become a citizen...” (62). Gilbert pointed out that the “meaning of the word ‘white,’ in the report of the Committee, was not generally understood, in this country, though well understood in the United States; but that objection would be removed by the adoption of his amendment” (62). The debate that ensued demonstrated how central the question of race was to the construction of the constitution.

Over the next two days, delegates debated the term “white” as they sought to define the terms of their own document. The first aspect for debate dealt with the approach of asserting race without defining its terms. Botts argued that, whatever the determination regarding the status of citizenship, “that white citizens alone should be admitted to the right of suffrage” (63). Botts’ argument pivoted the discussion of citizenship to the right to vote. Pablo Noriega De La Guerra (from Santa Barbara)¹³,

... desired that it should be perfectly understood in the first place,
what is the true signification of the word “white.” Many citizens of

¹³ In Browne’s *Report*, at times the delegate’s name is cited as “Noriego.” In Myra K. Saunders “California Legal History: The California Constitution of 1849” (*Law Library Journal*, vol. 90:3, p 452) the delegate’s full name is cited as: Pablo Noriega De La Guerra.

California have received from nature a very dark skin; nevertheless, there are among them men who have heretofore been allowed to vote, and not only that, but to fill the highest public offices. It would be very unjust to deprive them of the privilege of citizens merely because nature had not made them white. But if, by the word “white,” it was intended to exclude the African race, then it was correct and satisfactory. (Browne 63)

While staying on the theme of voting, not citizenship, Noriega challenged the use of color as an absolute designator of race. Although, his last sentence indicates that he was not committed to a dialogue which avoided all discussions of race. In theory, Botts agreed with Noriega. He “had no objection to color, except so far as it indicated the inferior races of mankind. He would be perfectly willing to use any words which would exclude the African and Indian races ... His only object was to exclude those objectionable races – not objectionable for their color, but for what the color indicates.”

These comments from Botts and Noriega introduce various dialogues on color and race which will be discussed in the following paragraphs. However, throughout the debate, certain delegates argued for language in the new Constitution which approached race in the same way the treaty did – by not mentioning it. Gilbert, referring to the former citizens of Mexico who were the new citizens of California, stated that the treaty “does not say whether those citizens are white or black, and we have no right to make the distinction. If they be Mexicans citizens, it is sufficient; they are entitled to the rights and privileges of American citizens” (63). But, the practicalities of approaching color and race determinations dominated the thinking of many of the other delegates.

A great deal of discussion was invested in the prospect of Indians having the right to vote – more than the question of determining status by color or race. L.W. Hastings (from Sacramento) stated that “there is no distinction between an Indian here and the remote tribes. An Indian in the mountains is just as much entitled to vote as anybody, if Indians are entitled to vote. But men who have Indian blood in their veins are not for that reason Indians. There are, perhaps, many persons resident in this country who have Indian blood, but who are not considered Indians” (64). It was the thought of tribes of Indians that motivated concern. Gwin asserted that,

It was stated to him, by an officer of the army, that in California there are a hundred tribes of Indians; that a few white persons control them; and that they would vote just as they were directed. He did not wish to limit the portion of the population that was in the habit of voting—those having property qualifications—but the restriction should be distinctly understood and defined. He would be in favor of saying, “Indians, but not the descendants of Indians.”

(65)

Setting aside the impracticality of construing this statement such that it might be realistically applied, per this argument, a block of voters, a population of people identified as Indians, who were heavily covered in the newspapers as raiders and outcasts, would be kept outside the dynamics of power.

The consideration by Gwin of the political dynamics set the stage for a following argument from Dimmick:

[H]e would be very unwilling to admit the wild Indian tribes of California to the right of suffrage. He did not think such a thing was ever contemplated by the treaty.

Dimmick's statement is a surprising assertion given that the treaty was direct in its intentions to absorb Mexican citizens and, having lived in the San José area for three years, Dimmick would have been exposed to people from pre-statehood years who would be considered citizen-Indians. In fact, Dimmick would have been elected to the position of delegate by, among others, men from Mexico who were of Indian descent (4). Denying the obvious presence of Indian descendants precipitated an extreme argument from Dimmick.

Those Indians who have become civilized, and who were entitled by the Mexican Government to hold lands and pay taxes, are not objectionable. They should be allowed the elective franchise; and as for the mixed race, descended from the Indians and Spaniards, he certainly was in favor of permitting them to enjoy the right of suffrage as liberally as any American citizen. ...

Dimmick's statement would have allayed the concerns of delegates that had already asserted support for Californians.

Some of the most honorable and distinguished families in Virginia are descended from the Indian race. It was the proudest boast on the floor of Congress of one of Virginia's greatest statesmen, that he had Indian blood in his veins.

This rhetorical move situates the speaker as accepting of Indian descendants who can be considered "distinguished" by Anglo-Saxon standards. But,

At the same time, it is absolutely necessary to embody in this Constitution such a restriction as will prevent the wild tribes from voting. He believed that these Indian tribes were never Mexican citizens in the full sense of the word. (67)

To conclude this passage, Dimmick attempts to anchor his argument in the legal standing of Indians – maybe they *all* weren't full citizens. The convention decides to table the question until information can be gathered about the terms of Mexican citizenship at the time of the treaty.

Taken in context, there are elements of the above that can be analyzed through a raciolinguistic prism. Although there were variations on these arguments, the preceding quotations capture the types of objections that were offered regarding Indian suffrage. It is not known whether any of the delegates were of Indian heritage; no one stepped forward if there was. But, four days earlier, Dimmick stated “that the Indians could not vote; but that there was a portion of the population having Indian blood in their veins who were entitled to that privilege” (37). As a Californian sitting in that room, would this have felt like a comment meant to be taken personally? Was it an assurance? A threat? Looming over these rhetorical exchanges were the privileges, or the absence of privileges, associated with citizenship. It is unlikely that people considered Indian spoke English at this time; the languages of Indians would have been an indigenous language or languages and, perhaps, Spanish. The raciolinguistic triad of race, language and (civic) power were in play.

During these critical discussions it is likely that the Californians felt personally at risk in terms of both their citizenship status and voting rights. Consider rebuttals that stated,

If the principle be well founded, that we may exclude certain persons who are made citizens by the adoption of the treaty, and

hence who are entitled to be regarded as citizens, may we not, with the same propriety, exclude every native Californian? We cannot do it. We dare not exclude one human being who was a citizen at the time of the adoption of that treaty. Every man who was a citizen then, is a citizen now, and will be while he lives in California, unless he declares his intention to remain a citizen of Mexico. Our Constitution must, therefore, conform to the treaty, or it is null and void. (Hastings 65-66)

In response, Botts stated,

He granted, for the sake of argument, that these Indians are citizens of the United States, because they were citizens in Mexico.

The standard of universal citizenship in the Republic of Mexico was the same one that made citizenship possible for Californians. And, here, it is a right and guarantee that is about to be fractured and challenged...

The question is still open whether they shall be voters. There are thousands of citizens of the United States who are not voters.

Gentlemen should not confound the words. It does not follow that if a man be a citizen of the United States he shall be a voter. (66)

If there were allegiances in the room than the Californians were in the minority. Gwin supported Botts,

As the gentleman (Mr. Botts) said, we could exclude all these Californians from the privilege of voting; but that is not our intention. It would not be right or just. (66)

In fact, Botts did not say that about Californians. He said it about Indians. It seems unlikely that the Californians in the room would miss this point. For Gwin, Indians and Californians are interchangeable. Given the subject of suffrage, and because of the vulnerability of Indians in this discussion, Californians could take Gwin's sleight of hand as a threat. For Noriega, or any other Californian, to ask Gwin to retract the substitution of Californian for Indian then puts the Californians in a position of disavowing the standing of Indians, perhaps against their own self-interest. Given that Gwin was the delegate that wanted to dilute the voting power of the southern districts in the first days of the convention it is difficult to gauge what he might mean by "right or just." Even so, it seems likely to have been on the minds of the Californians.

Winfield S. Sherwood (Sacramento) argued "we do not debar the Spanish, or the French, or the Italians from voting by the use of this word. They are darker than the Anglo-Saxon race, but they are white men. He was in favor of the distinct expression 'every white male citizen,' as used in the thirty different Constitutions of the Union" (Browne 72). Moments later he asserted,

that no other construction could be placed upon the word white than this: if an Indian is more than half Indian, he is an Indian; if he is more than half white, he is white. With respect to Africans, he believed that all after the fourth generation are considered white in most of the States. Mr. Moore asked who was to determine, on the day of election, the various grades of color? (73).

Mr. Moore's question was left unanswered. The question of language regarding suffrage was tabled. The initial discussion of race issues around citizenship was postponed until the law in Mexico could be referenced, but an interesting exchange in terms of raciolinguistics occurred on the topic of Mexican law at this point in the debates. The focus of the discussion stayed on

voting and race during this run of exchanges culminating, as other series of exchanges did, in the dissection of the rights of citizenship to enable the obstruction of voting:

Mr. Gwin would like to know from some gentleman acquainted with Mexican law, whether Indians and negroes are entitled to the privileges of citizenship under the Mexican Government.

This is asked moments after Noriega and Botts made their different positions clear in their contentious exchanges. That is, after airing their personal opinions on the critical question of race and suffrage the delegates turn to determining what the standards – that of citizenship in the Republic of Mexico – are that need to be understood. Bringing this up at all makes sense in one way; the delegates were aware of the contradiction inherent to the terms of the treaty and the conditions of citizenship on the federal level and the legal details were important. But, for a group of people committed to working through a great deal of material in an efficient manner, it is odd that they did not start this conversation with being clear on the pertinent laws, both those of the Republic Mexico and the United States. It seems likely that at least some of the delegates wanted the members of the conference to air their positions on race and citizenship.

Mr. Noriega understood the gentleman from Monterey (Mr. Botts) to say that Indians were not allowed to vote according to Mexican law.

This deflection was a technique not commonly used by Noriega. His usual form was to answer questions directly. Of course, this moment came on the heels of Botts expanding Noriega's list of races that excluded Indians and African Americans from voting.

Mr. Botts said that, on the contrary, it was because he believed they were, that the [sic] had offered the amendment. He wished to exclude them from voting.

Mr. Gwin asked the gentleman from Santa Barbara (Mr. Noriega) whether Indians and Africans were entitled to vote according to Mexican law.

Mr. Noriega said that, according to Mexican law, no race of any kind is excluded from voting.

Mr. Gwin wished to know if Indians were considered Mexican citizens?

The question of the legal standing of Indians in the Republic of Mexico gets to the heart of Gwin's agenda. Up to this point in the conference he has asserted points that work to favor the polyglot society of the gold rush districts without regard for the consequences felt by the districts comprised of a greater per capita population of Californians. Leveraging the word "white" into state documents could work to at least impede both the claims to citizenship and the voting activity of the southern districts. If Indians were legitimate voters than the advantage of using whiteness as a standard – a standard that could obstruct many Californians – would be lost.

Mr. Noriega said that so far were they considered citizens, that some of the first men in the Republic were of the Indian race.

Mr. Gwin had learned from the gentleman from Santa Barbara (Mr. Stearns) that there were twenty thousand Indians in Mexico. He wished to know whether these twenty thousand Indians were allowed to vote?

Mr. Foster said that, according to Mexican law, very few of the Indian race were admitted to the right of suffrage. They are restricted by some property qualification, or by occupation or mode of livelihood. But they are considered Mexican citizens according to the Constitution. (63)

Noriega's "no race of any kind is excluded from voting" is converted to 'all races can be citizens but not all qualify for voting.' Although called for, the laws in Mexico at the time the Treaty was ratified were not brought up again in a substantive way on the question of suffrage.

The delegates revisited the topic two and half weeks later, during the evening session of September 29. Early in the evening's proceedings, in the middle of the sentence introducing the question of citizenship and suffrage, the Chair asked another delegate to preside because he was "too unwell" (Browne 304). Botts then moved for an adjournment; his motion was voted down 19 to 17.

The key passage about race being discussed that night was: "Every white male citizen of the United States, and every male citizen of Mexico (Indians, Africans, and descendents [sic] of Africans excepted) ... shall be entitled to vote at all elections which are now or hereafter be authorized by law" (305). The opening argument by H. W. Halleck (Monterey) focused on the idea that one class of persons might be excluded through this language. He continued, "if such was the case, several of the most worthy citizens of California would be excluded from exercising the right to franchise; and one of them was one of the members of this very Convention"¹⁴ (305). Other delegates pressed Halleck to specify which group might be excluded.

¹⁴ It is probable that "members" referred to other delegates. There were eight staff people supporting the Convention. Based on their sur names – Browne, Field, Hartnell, Henrie, Houston, Lyon, Marcy, and Sullivan – they were likely of Anglo-Saxon lineage on their father's side.

Interceding, Noriega took the floor with a significant speech, delivered through the interpreter, defending the Indians of the time and recalling the history of the “proud and gifted race” (305).

Noriega concluded with,

He regretted that he could not give full expression to his feelings through the services of an interpreter, but hoped he had made himself understood. If it was the will of the Convention to exclude the body of Indians, he hoped exceptions might be made, and that those who were the holders of property and had heretofore exercised all the rights and privileges of freemen, might still be permitted to continue in the exercise of those rights.¹⁵ (305)

Whether intended or not, the comment from Halleck was a threat to “one of the members” in the room. Two delegates who spoke after Halleck argued that someone from the rejected class of people, presumably Indians, was also a member of the convention. Noriega could have avoided speaking at that moment by letting Halleck respond to those two delegates. But, he took the moment to speak because to not speak would be “a very great injustice to his constituents” (305). This is a moment wherein raciolinguistic ideologies are immanent. In response to a legal and categorical threat, Noriega made a claim of humanity. He acknowledged the limitations of working through an interpreter while he rhetorically entreated parity in the verbal exchange. Additionally, there were many significant images that Noriega presented in his speech but he opted to end with imagery referring to the “body of Indians.” Although the language is that of the translator, the concept of the “body” in this convention is cited over 200 times and is mostly used to refer to themselves as individuals who are part of a group, as in “parliamentary body” (57) or

¹⁵ See Appendix for Noriega’s full speech.

“deliberative body” (180). Noriega’s use of “body” works on two levels. The first is to draw a parallel between someone considered to be Indian and the delegates in the room – they all have bodies just as they were all part of the collective body. The second is to shift the discussion of Indians as voters away from the typical argument that Indians have flawed abilities to govern themselves to Indians, independent of behavior, are present and qualified because they are embodied, just like every other citizen of California.

The final version of the Constitution carried the following pertinent passages regarding the Right of Suffrage, Article II, Sec. 1:

“[E]very *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 ... Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two thirds concurrent vote, from admitting to the right of suffrage, *Indians or the descendants of Indians*, in such special cases as such a proportion of the legislative body may deem just and proper.” (1850 Statutes 26) (emphasis added)

Ultimately, R. Semple (Sonoma), perhaps naively, identified what was and would happen. He theorized that “although we might exclude the native Indian, it was beyond the reach of this Convention to exclude those who might be descended from the Indian race. He saw no better way of settling the difficulty than by adopting the word "white" before male citizen, which is sufficiently explained in the courts of the United States” (Browne 72).

Here is the final language of the 1849 California Constitution on the matter:

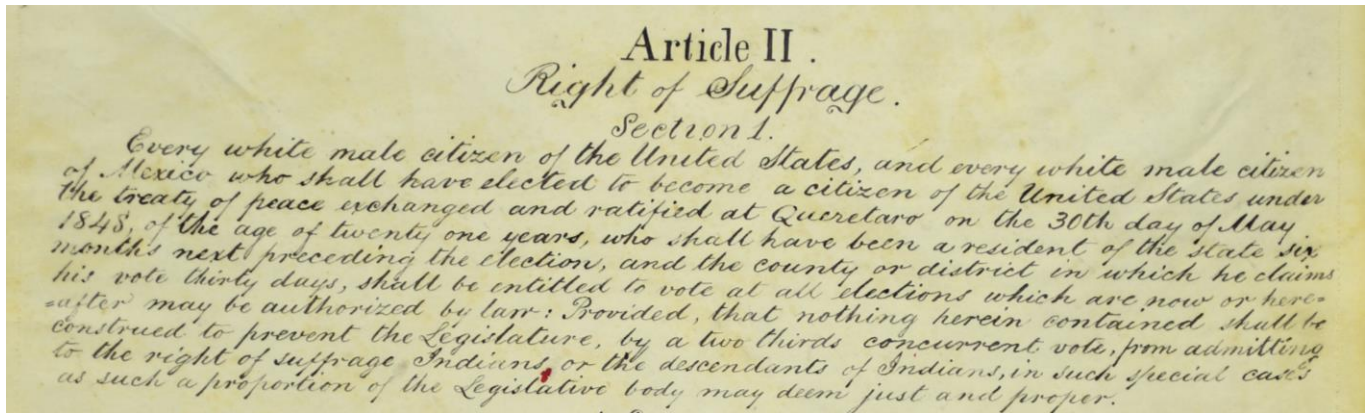


Illustration 2: Constitution 1849

Religion: The Treaty of Guadalupe Hidalgo specified in Article IX that citizens of Mexico, during the transition to citizenship, were “secured in the free exercise of their religion without restriction” (*Statutes* 1850 17). Continuing my focus on Californians, the only passage in the new constitution which directly referenced Catholicism arose while discussing what would become Article I, Declaration of Rights, Sec. 4, which stated,

The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State: and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; *but the liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.* (*Statutes* 1850 25, emphasis added)

Botts challenged this version with a passage that concluded “it is the mutual duty of all to practice Christian forbearance, love, and charity toward each other” (39). Myron Norton (from San Francisco) and Sherwood advocated for the original language while Botts thought it could be the foundation of “a declaration [that] might be made that the Roman Catholic religion is

inconsistent with the safety of the State” (39). He believed that it was possible the description about freedom of religion could be understood to exclude Roman Catholics. It is revealing that Roman Catholicism was vulnerable to this type of characterization; during 1849, although immigrants, including those attesting to Catholicism, from around the world were pouring into San Francisco, based on population the most conspicuous Catholics were Mexican. Anti-Catholic sentiment would be embodied as anti-Mexican sentiment. Ruminations on the threat that being a Catholic might exclude Catholics from enjoying full citizenship rights, presumably because of “matters of religious belief,” indicates the suspicion that was held by at least some people that the religion was dangerous. Many days later Botts risked creating “too great an excitement” by asking to revisit the text and exhorting the other members to strike the language after “belief” (the section italicized above) and use his language (292). His argument failed. It will become clear in the following analyses that Roman Catholicism was an inextricable facet of the Mexican tradition, with its Spanish language, of the time. The instated reality is that the religion of Roman Catholicism was vulnerable to negative raciolinguistic connotations just as being Mexican was.

As a legislative deliberative text, the social domain of this repertoire is multi-level. The agenda of conducting a six-week long debate put delegates in oppositional positions as a matter of form. Inevitably, since many people were working toward one conclusion, affiliations developed and were leveraged in the discussions expanding the dynamics of conflict. As one of the 48 delegates, and especially for the Californians, the stakes would have felt personal. But, that arena is nested within the greater impact on the members’ constituents. The discussions, including the race based debates and their outcomes, could impact generations beyond the state of California. The delegates lived this reality – they referenced the constitutions of some of the

thirty existing states and were well aware that other states would be carved out of former Alta California and, might, reference the California Constitution (if their bid for statehood was successful). Also, given the system of jurisprudence in place in the United States, states definitions could advance to the federal level and thus impact the country.

The draft of the Constitution was made public on October 12, 1849 and ratified through a statewide vote on November 13, 1849. The Constitution was submitted to the United States Congress "in the name of the people of California, [seeking] the admission of the State of California into the American Union" (XIV). Through the same popular vote, state government was elected and began work on December 15, 1849, in the Pueblo de San José, California (*Journal* 1850 Title Page).

Laws and Writings of California's Legislature:

In the middle of December 1849, the new legislature of California did not know if, or when, California would become the thirty-first state of the United States. Even though the Civil War was eleven years away, on the federal level,

Great excitement existed in Congress; virulent and denunciatory speeches have been made; the Union has been threatened; and the people, North and South, have been much alarmed and excited by this state of things. Each section, anxious to preserve its rights, is still desirous to preserve the Union; and the great mass are of the opinion that the only way by which the rights and interests of all are to be secured, is by a patriotic devotion to the Union. (*Daily Alta California* p2.)

The second example of the register model of the deliberative legislative process is the repertoire which captures the legislative deliberative process of the first several meetings of the

new California Legislature, comprised of the State Senate and the State Assembly. The voting population of California had ratified a state Constitution. One of the first responsibilities of the Legislature was to send the new Constitution to the Congress of the United States as part of a proposal seeking statehood.

The form of the legislative proceedings – the register and specifics for this repertoire – worked within the parliamentary framework of “Jefferson’s Manual” (*Journal* 1850 9). Focusing on the Senate, the first day only six of the sixteen state senators showed up (California). Even though they lacked a quorum, they were able to elect a President *pro tem* and a Temporary Secretary. Most of the Senators were in attendance for the second day. After voting in favor of things like ordering note paper and hiring staff, the group turned to business of governing. While “Jefferson’s Manual” is no longer a common reference for parliamentary order, the proceedings were akin to today’s legislative protocol. The president of the Senate ran each meeting, starting with a prayer led by a local cleric, the previous days journal was read aloud and approved, and then they would launch into the next item on the agenda. The head of one committee or another might present a report or the language of a resolution could be read. Then, discussion would begin. Each senator spoke in turn if they wanted to comment on the current topic and the Secretary of the Senate took minutes recording the activity. Amendments, if any, were offered and accepted or rejected through a recorded vote. Likewise, any other business needing a vote. The rules were similar in the Assembly. By Constitutional fiat, the written record of all proceedings would be archived by the Secretary of State. The new legislature, through its proceedings, generated the official civic record of the State.

For the analysis of repertoire, it is useful to identify the model of communication and also breaks in that model. In this case, given the provenance of the surviving text – the expectation of

being recorded, the notes taken by the Secretary and approved by the members, the final version printed by the State Printer – while there almost certainly were breaches of the formal model in reality, the final text does not reflect that fact. The lack of confusion and affect was part of the character of the report on the legislative deliberative process. This process then both portrayed and shaped the behavior of the people involved. The reality of the chamber, including social attitudes, is probably muted in these records. Likewise, the social range including variations in grammar, syntax and speech tokens are likely homogenized; again, characteristic of the register. The social domain, given that any manifestation of the work relied on a majority vote, was based both in geography and basic numbers in this specific repertoire; half of the Senators represented Sacramento or San Joaquin Districts, adjacent mining areas inland from San Francisco (*California Legislature* 75). That is, fifty-percent of the voting power was wielded by representatives of a small geographic area of the state. And, that area was peopled by those drawn to “the great Gold Rush of 1849 [which] lured fortune seekers from all over the globe and from all walks of life to the gold fields. The composition of the First Legislature reflects this immigration, as many of the members had recently arrived in California.” The contrast of the concerns held by new, gold-seeking, mostly single men in a foreign or remote land as compared to settled, multi-generational, largely land-cultivating family men was significant.

In many ways, this was a continuation of the Constitutional Convention. In some significant ways, it differed. Two worthy aspects of note here are, first, while the members of the Convention were elected, through the authority of the provisional, or military, government, they were creating the legislative structure and authority of the state; this inaugural group of Senators and Assemblymen were elected within the authority of the new Constitution. In fact, the first lines of the *Journal of the Legislature* in 1849 began “In accordance with the provisions of the

ninth section of the Schedule of the Constitution, ratified by the people of California” each chamber was assembled (3). This repertoire had the authority of the government and the influence of governance. The Senate and Assembly generated bills or resolutions which, once signed by the governor, would become law (*California 77*). Once generated, a law might come up before a state or federal court or be changed by the Legislature but, until then, a law would have sway over every resident of the state. The second difference is that, instead of having six Californian delegates there were only two, Pablo Noriega De la Guerra (San Luis Obispo and Santa Barbara Districts) and Mariano G. Vallejo (Sonoma District). Over the first ten years of statehood, there was sometimes one, and sometimes no, Californian in the Senate. This first session of California’s ruling body would end in April 1850, about five months before the United States admitted California into the union. Out of the session came nineteen joint resolutions and 146 bills signed by the Governor (*California Legislature 77*). Given the ambiguity over whiteness, a requirement for citizenship, and the raciolinguistic consideration of race, language, and power, what was at stake for Californians? In addition to legal standing regarding citizenship, the ability to earn money and own property is a key aspect of an autonomous life; alternatively, an effective way to undermine one’s stability and blunt their competitive edge is to deny them financial resources. Some of the enacted laws reveal significant raciolinguistic ideologies.

Making Money Without Permission: The gold rush brought tens of thousands of fortune seekers to northern California. The senate record shows concern about collecting tax from immigrants that would rush back to their homeland as soon as they found their fortune. Additionally, how to collect taxes from miners was a constant challenge (*Journal 1850 35*). Statute 7 is intended for non-citizens. It asserts that “foreigners” who are mining must buy a

license. If they don't "a posse of American Citizens" would be mustered to "forcibly prevent him or them from continuing such mining operations" (*Statutes* 1850 232). The mining tax was not imposed on citizens; effectively, this tax applied to non-whites. Statute 12 specified that "pilots for the port of San Francisco shall be American citizens" (66); again, piloting work could not be secured by non-whites. Sections 5 and 19 of Chapter 133 described that, "any person willing to hire an Indian, shall go before a Justice of the Peace with the Indian, and make such contract as the Justice may approve" (418); the fee of two dollars for the service shall be paid by the white person (420). Consequently, for an Indian to gain work from a white person, the white person had to be willing to lose two dollars or take the two dollars out of the value paid to the worker for the work; this structure made hiring an Indian a losing proposition.

Civil Standing: Certain laws were in place for nonwhite residents with no parallel for white citizens. Chapter 133, Section 3, outlines the process to be followed for,

Any person having or hereafter obtaining a minor Indian, male or female, from the parents or relations of such Indian minor, and wishing to keep it, such person shall go before a Justice of the Peace in his Township, with the parents or friends of the child, and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the child from its parents or friends, shall enter on record, in a book kept for that purpose, the sex and probable age of the child, and shall give to such person a certificate, authorizing him or her to have the care, custody, control, and earning of such minor, until he or she obtain the age of majority. Every male Indian shall be deemed to have attained his

majority at eighteen, and the female at fifteen years. (*1850 Statutes*
418)

There is no parallel language for white children that were ‘obtained’ to be given over on the word of “parents or friends.” There is language that no child, “whether white, black, or colored, or any Indian” should be abducted or the abductor “shall be deemed to have committed the crime of kidnapping” (234). But, if someone found themselves “wish[ing] to keep” a white child, with or without the parent’s approval, there is no statute authorizing that. Per Section 17 of Chapter 133, “when an Indian is sentenced to be whipped, the Justice may appoint a white man, or an Indian at his discretion, to execute the sentence in his presence, and shall not permit unnecessary cruelty in the execution of the sentences” (*Statutes* 1850 419). There is no language in the statutes of 1850 that permits a white person to be whipped. And, as will be canvassed in later parts of this dissertation, in “AN ACT concerning Crimes and Punishments ... No black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person. Every person who shall have one eighth part or more of Negro Blood shall be deemed a mulatto, and every person who shall have one half of Indian blood shall be deemed an Indian” (*Statutes* 1850 240). Effectively, a white person is insulated from the consequences of their crime if the only witnesses are non-white people; taken another way, crimes against non-white people by a white person are unlikely to be successfully prosecuted. The legislature, with the approval of the Governor, authenticated a race-based approach to applying the power of laws.

On the last day of the first session of the Senate, April 22, 1850, although documents had already been sent to the United States Congress seeking admission into the Union, the Senators decided to write one more exhortation for their cause. The preamble went, “we address you in the name of the People of California, as Citizens of a common country, to which our earliest

affection was Pledged, and the love of the patriot is now devoted; and we ask an audience such as *Americans* may ask and *Americans* will give” (*Statutes* 1850 1277, emphasis in original). This sequence of sentences captures the raciolinguistic hierarchy implicit in so much of the legislative work. Starting with the first appellation, “People of California,” the language links the authors with the addressees through “common” citizenship and loyalty to the ‘pledge’ – everyone shares in “the love of the patriot [who] is now devoted.” In fact, the first sentence could include Californians as citizens. But, we have seen that the word “American” is usually a reference to those citizens who hailed from the eastern states. While not explicit, exhibiting another aspect of raciolinguistic strategies and dynamics, the substance of the shared name “*Americans*” is, as often as not, exclusive of Californians; where do Californians stand if they are, only sometimes, included in a commonly used inclusive word? Granted, this is a very close reading of the preamble but, given the vulnerable position of Californians at the time, it is worth looking at the writing of the legislature, particularly at a time of heightened concern ... concern over becoming a state. After “the thousand-and-one evils that are daily resulting from that non-admission (instability in land titles, in currency, commercial disputes, etc.)—in view of the facts, too, that these evils are fast widening and becoming more numerous,” California joined the union September 9, 1850 (“Letter on California” 1).

This repertoire stands in contrast to that of the language and power dynamics of a report, published in the Appendix section of the first *Journal of the Senate of the State of California*, submitted by congressional committee.

“Report of Mr. Crosby on Civil and Common Law”:

A little more than a year has elapsed since we became a portion of the federal union; and in that time we see, as the result of American liberty and the science of American government, a state

springing up on the shores of the Pacific, with all the elements of greatness and good government, that would add credit to one venerated by example and the sanctity of age.

(*Journal* 1850 21) Hon. John McDougall,
Lieutenant Governor Elect and President of
the Senate

The statement was optimistic about California. Within the texts of the proceedings of the Legislature were included appendices of items which had been referred to in the Senate or Assembly. The items in the Appendix could be almost any document – letters from dignitaries, scientific data for review, or the work product of a house committee, for example. In the first session of Congress a decision needed to be made about what type of legal system the state would function under. Speaking to the joint Chambers, the Governor, Peter H. Burnett, in December, 1849, called this “among the first and most important of your duties ... This is an object of supreme importance; and it is the more so from the consideration that the action of the first Legislature will hardly be disturbed by any succeeding one” (*Journal* 1850 33). Burnett was speaking about the choice between instituting Civil Law or Common Law, but the Governor suggested a five point plan so that “these codes ... would combine the best features of both the civil and the common law, and at the same time omit the most objectionable portions of each.” A petition had been submitted by members of the San Francisco Bar endorsing the choice of Civil Law. The question went to the Committee on the Judiciary. They wrote a report on the subject, delivered to both chambers by Senator Elisha O. Crosby (Sacramento District). It was titled “Report of Mr. Crosby on Civil and Common Law,” dated February 27, 1850. There were no Californians on the Committee.

The contents of that report are the subject of the third example of the register of a deliberative legislative process. This repertoire is the appendices that are submitted to State Congress. While part of the official record, the form and tactics of proceedings are different than the content of in-chamber proceedings. In this case, where there is scant proof of anti-Catholic inclinations or beliefs in the record of the Legislative meetings, the report is not only explicit in those beliefs, it developed its arguments against Catholic thinking, not religion, with imbricated elements of a complex world view. One might say the various aspects of their theme was crafted with drama. Where communications in the Senate were usually characterized in a linear manner (i.e. a Resolution is read by one member of the chamber, another member suggests an amendment, another member calls for a vote...), and, at certain times a speech was read, the Committee Report was a crafted, continuous, in this case, twenty-one page long presentation that would be submitted uncontested into the official record. In effect, outside of the Legislature, unelected parties could have a significant impact on the contents of a Report, as we will see in this example, and the archived Report maintains legitimacy as it survives contained within a government document.

In this Report, the social range of participants is self-selecting and limited; Crosby, a lawyer, along with at least four other members of Congress, were responding both to the Governor's call to choose a legal system and also to the petition asking the Legislature to opt for the Civil Law system over the Common Law system. Whereas the in-chamber language may or may not have been oriented towards building an argument, this Report carried a decided opinion and the elements supporting that opinion. The Report, in addition to advising the Congress, stood in response to the petition seeking an opposite opinion from the recommendation of the Committee – that is, the Report stood in rebuttal to the previous argument submitted to the

Legislature via petition (*Journal* 1850 459). The social domain of the men who contributed to this Report, in terms of tracking the experience of Californians as California became a state, is significant. For the Report's authors, as residents of northern California, several things might have impacted their thinking: it is impossible to know if they had any ties to the ranching and farming culture of Californians, most robustly represented in southern California; as residents of the San Francisco bay area, they lived in a polyglot and multi-denomination society yet it was still more common to find Catholic masses (said in Latin) addressed to Spanish speakers (through homilies – a speech given in the vernacular during each mass) than Catholic masses in any other language (*Weekly Alta California*, Vol. I, 2); as lawyers, a significant concern of the potential state was the legality of Californians' ownership of granted lands, making the Californians as a group a potential object of critical opinions.

A key element of raciolinguistics is acknowledging where power resides and how it is being leveraged. Before launching into the arguments on the specific topic of which legal system to adopt, the committee established a base from which they could deploy their power. Echoing the Governor's sentiments, the committee thought the choice between a Common Law system of jurisprudence or a Civil Law system was important. The opening paragraph of the "Report of Mr. Crosby on Civil and Common Law" stated,

This choice is by far the most grave and serious duty which the present Legislature will be called upon to perform.

At this time, in terms of race and civil rights alone, it was unclear what the future held for thousands of Indians; how, if entering statehood, California would sort out being a free state regarding slavery but prohibit African Americans from coming to the state; what the specific means would be of confirming or denying the ownership of large tracts of land by Californians.

But, engaging a nineteenth century sensibility, the as yet unstate was using scrip instead of money because of a lack of financial stability; if statehood was coming there was no way to know when it would come; once statehood came, three ordinal geographic boundaries were clear but the eastern boundary was, and would be, contested ground. Of course, the ruling laws of the state would be profoundly significant but maybe not “by far the most grave” of issues.

It is, in truth, nothing less than laying the foundation of a system of
Laws, which, if adapted to the wants and wishes of the People,
will, in all probability, endure through generations to come, –
which will control the immense business transactions of a great
community, – which will direct and guide millions of human
beings in their personal relations,

At this time, the population of California was just over 100,000 people (Browne XXIII). It is, at least, grandiose to anticipate that “millions of ... personal relations” would be among the affected subjects of this determination, even if it became true over time.

– protect them in the enjoyment of liberty and property, – guard
them through life, and dispose of their estates at the hour of death.

(Journal 1850 459)

The authors were “actuated by these considerations.” The sense of drama and scale, without having yet addressed any element of their argument, was substantial. Per the official record.

Furthering their bid to establish their power the committee members leveraged their standing as elected Legislators and as lawyers. The Petition, already submitted for consideration, argued in favor of Civil Law. The Committee, in their Report arguing against Civil Law and in favor of Common Law, premised their point by stating that “your Committee is of the opinion

that the judgment of intelligent and well educated members of the legal profession upon this subject, is entitled to great weight, and should not be lightly disregarded” (460). They went on to point out that only eighteen lawyers of the one hundred lawyers in the San Francisco Bar supported the Petition and, therefore, not only did the majority of the Bar appear to be in favor of the opposite of the Petition but regarding the “real wishes of large proportion of the practicing members of the Bar in this State, we should feel bound to accord to it a very respectful deference” (461). In other words, the Legislative Committee was happy to help out the members of the San Francisco Bar by reversing their position in the Petition as a matter of superior knowledge of what the outcome should have been. This made other citizens’ opinions only a preamble, or less powerful, than what the Committee had decided was the better outcome of the question. Because, if the “question is to be affected in any way by the known and expressed wishes of the profession to which the petitioners claim to belong, it must be in favor of the Common rather than of the Civil Law” (462).

A third maneuver to infuse power to the Committee’s opinions was to build on the adverse vote of the San Francisco Bar, the outcome of which, they argued, was actually in the hands of the Committee, as representatives of the whole of California. As elected officials, they imbued the power to determine what is in the best interests of the public good in the eighty-two silent members of the San Francisco Bar:

Your Committee would further suggest that, in their opinion, the disparity existing between the number of those whose choice would be the Civil Law, and of those whose strong partialities are in favor of the Common Law, is not greater in that portion of the

profession practicing at San Francisco, than it is throughout the residue of the State. (461)

The Committee, peopled by a majority of legislators from northern California, situated in San José and in the orbit of San Francisco, here argued that they consolidated the theoretical opinion of the whole of California in one sentence. Under this consolidation, the Committee, once again, had the final say as to outcome. Another power move in what will be revealed to include anti-Catholic and, by this means, anti-Mexican raciolinguistic ideologies.

A few briefs notes on Common Law and Civil Law will set the stage for the Committees' exploration of the topic. According to John W. Head in *Great Legal Traditions*, the Common Law tradition is sourced back to eleventh century England. It was named after the idea that laws gradually gained the domain of all of England displacing local, customary laws. Laws often were based on rules generated by the judiciary (19). The Civil Law "tradition could also be referred to as 'the Romanist' or the 'Romano-Germanic' legal tradition" and started to develop around 450 BCE. Civil Law developed within the expansion of the Roman tradition into Christianity, on into the eleventh century Crusades and through to the nineteenth century, especially in Germany (19). *Institutional Competition Between Common Law and Civil Law* contends that Common Law was "the expression of the will of the ruler rather than of free citizens" (Schmiegelow vi). Thereby, Common Law is related to England, Civil Law to Rome.

When Law Systems are Characterized by Nation and Religion: The Report introduced Common Law as,

... enriched with the most valuable portions of the Civil Law,

That is, Common Law ate Civil Law for breakfast.

modified and enlarged by the numerous Acts of the English
Parliament, smoothed in its asperities and moulded [sic] into shape
by a succession of as learned and wise and sagacious intellects as
the world ever saw,

If they were seeking to parallel the value of Common Law to its use in California, by referencing the equivalent of the federal branch of government in England, the Committee was engaging a metaphor regarding a legal system by which a state – one piece of the federal system – would be elevated. But, on a less literal level, whatever was felt about the British at the time, making the “English Parliament” a body that helped to develop the legal system through “numerous” interactions, invited the idea that Parliament’s long and burnished history was part of the essence of the Common Law. Emulating the British in civic matters was aspirational.

has grown up, during the lapse of centuries, under the reformed
religion and enlightened philosophy and literature of England,
and has come down to us,

This added to the praise of England’s government the praise of English “religion” – the religion that overcame Catholicism and was the ironic author of the founding of America. Of the two religions, in this document, England’s religion won the war over eternity. This element of the culture of Californians, religion, was inseparable from the identity of Californians. For example, later in this dissertation I will canvass that Californians, when identifying aspects of Mexican culture in the new state, included appellations that were religious. For some cultures, at certain times in certain places and, then, as part of that culture’s living heritage, religion was inseparable from racial identity and infused the overt and covert nuances of language. For certain cultures, raciolinguistic power dynamics, then, included implicit or explicit religious vilification. Also, if

you wanted to know more about England's "philosophy and literature" refer to the education of any English speaker or, wait a few years, Californians, your children will also have a formative education that is based on those widespread and influential traditions. If it seems unlikely that the renegade Americans had thought of England in a positive way, one newspaper passage framed the point by opining "for a kingdom, in its green old age like England, to be reft of its pride and shorn of its strength, would call for the deep regrets of the world" (*Sacramento Transcript*, vol. 1). And, the infusion of England's religion, philosophy, and literature resided in Common Law.

amended and improved by the American Legislature, and adapted to the republican principles and energetic charter of the American people.

So, Common Law was "American," at least in those aspects that were unique to the thirty states, and hopefully the thirty first state, of the United States. In February, 1850, it was unclear whether California would be admitted as a state, be deemed a territory, or be stuck in a limbo land of non-decision. As we have seen, the word "American" at that time and place was equivalent to referencing the eastern states; it could not be claimed by Californians. California hoped to become part of the "charter." Common Law embodied and served the club this group of non-Californians hoped to join. A club that was exclusive of the pre-statehood condition.

To that system the world is indebted for whatever it enjoys of free government, of political and religious liberty, of untrammelled [sic] legislation, and unbought administration of justice.

... Under that system all the great branches of human industry – agriculture, commerce, and manufactures [sic] – enjoy equal protection and equal favor; and under that, less than under any

scheme ever devised by the wisdom of man, has personal liberty been subject to the restrictions and assaults of prerogative and arbitrary power. (464)

This was a commentary on the valor of the United States and the creation of virtuous government. The import of the statement would be sharpened if the State Legislature considered the cultural perception of some residents remembering their life as a part of Mexico. Two years before this Report was submitted, the *California Star* newspaper published an article (previously printed in the *Gazette de France*). It claimed that “Mexico is inhabited by various kinds of inhabitants who are often at civil enmity, she is annually almost a prey to the excesses of some new revolution, and is always treated as a conquered nation by the various victorious generals” (*California Star* 1). The article concluded that with the arrival of the “American army ... [Mexico] sees an end to all her difficulties, and a road opened to prosperity and greatness.” The above segment of the passage stated that the “world is indebted” to Common Lawing America. That, in combination with the phrase “political and religious liberty,” puts Californians in the subordinate position both in terms of the question of which legal system to opt for and also compared with the Americans reading the Report.

The qualities of Civil Law, one would think based on the Committee’s description, could not surpass the appropriateness of Common Law for the state’s ambitions. After identifying the authors of the Civil Law as “rough, fierce people, whose passion was war, and whose lust, conquest-received, in its progress through the various stages of civilization from barbarism to luxurious and effeminate refinement” the “crude laws” which were a “chaotic mess” the Report traced Civil Law to eventually becoming the Justinian code (464). Its roots were “from the edicts and rescripts of the profligate tyrants of Rome, until the early ages of Christianity” (464). The

Vatican, the geographic location of the organizing body of the Catholic Church, was in Rome – thus the phrase Roman Catholic. Per the Report, from its ‘barbaric’ infancy, the course of Civil Law was firmly connected to, at least, the home of the Catholic Church.

Until the final downfall of the Eastern Empire of Rome, the Justinian code furnished the guide for legal tribunals throughout the provinces subject to the Imperial sway, in all cases political, civil, and criminal, except so far as particular decisions were commanded annulled, or modified by the arbitrary will of despotic power. ...

The Justinian code, which was associated with Catholicism, was useful for supplying the justice system of an “Imperial” reign but did not stand against the pressures of “despotic power.” Civil Law was the penultimate organizing system, serviceable, yet secondary, to tyranny.

Owing to the arbitrary nature of some of its provision, as well as to the wisdom and excellence of its general features, it was seized upon with avidity by the clergy, as favorable to their spiritual authority, and by monarchs, as conducive to the support of their despotic power. ...

This passage includes an invective against the influence on the legal effectiveness of Civil Law, and the lack of influence on the monarchs, but it adds “avidity of clergy” into the mix of regrettable factors that promoted the Civil Law system. Clergy, or priests, were important during the lifetimes of practicing Catholics; to some, it would be offensive to associate the phrase “their spiritual authority” to clergy instead of the spiritual authority of the Pope. The idea furthered the possibility that one who relied on a priest, thinking they were part of a greater truth, was being

bamboozled – the hierarchy of spirituality stopped at the priest. While arguing that Civil Law was the tool of lesser people this also argued the people under Civil Law were of lesser insight and intelligence.

In a few years it became the prevailing system of laws throughout most of that portion of Europe, in which the founder of Christianity was respected, and the saints and martyrs adored. Thus, as in earlier times, the fine arts, literature, philosophy, and graceful superstitions of Greece, had captivated the rude minds and softened the stern natures of the Roman people...

Again, a distinction between Roman Catholic Europe and, presumably, Protestant Europe. This was not a positive association. Two weeks after this Report was submitted, the *Sacramento Transcript*, while discussing Roman Catholicism in New Orleans, stated that “you have seen the lofty Roman humbled to the level of the ruined monuments he would regenerate” (no. 18, p2). In terms of establishing power, the Report argued that Civil Law was not an effective means of adjudicating fairness but, also, it was part of the dominated and decayed Roman Catholic religion. In addition to the attack on the durability of Roman Catholicism, the “rude minds” phrase attacked the intellect of Catholics. This was not necessary when explicating the history of a legal system.

With the exception of England alone, the code of Justinian became engrafted upon the local institutions of each separate principality and kingdom, and constituted a general system of European law; but neither the favor of kings, the denunciations of priests, nor even the fulminations from the Papal See itself, could ever induce

the English barons, the English courts, or the English people, to receive it as a substitute for their own favorite and immemorial customs.

The way of England or the way of the failed countries? The article from the *Sacramento Transcript* described the United States, as “a young and sinewy Republic, nerved with the vigor of youth, bright with the light of intelligence, fresh as the morning from the cleansing waters of the revolution ... such a Republic, elastic bounding to a position in the world's history, for which Rome even never dared to hope” (no. 118 2). America, born of England, was alive and the old systems of other countries were never as good as America would be. A point paralleled by the inability of the Pope to have England abandon their own “immemorial customs.”

Roman or Civil Law gone hand in hand with the extended dominion of the continental nations of Europe. Thus it happens that at the present time the whole christianized [sic] world is ruled by one system or the other. England, her colonies in all parts of the globe, and the United States, with the exception of Louisiana, adhere to the Common Law. (465-466)

This passage burnished the connection between Rome and, by association, Catholicism and Civil Law, as opposed to the law of all that is not lying in ruins, Common Law.

It is conspicuous that the description of a system of law so heavily relied on religious references. As I have theorized, this could have felt personally offensive to the Catholics and non-easterners, if there had been any, on the Senate. Of the eighteen Senators comprising the audience of this Report, two were Californians and sixteen were from the eastern states (*Journal*

1850 75). In a raciolinguistic analysis, using religion as a cudgel was strategic to attacking Californians and also the history of the land.

The Way of the Catholics Means Failure: The final argument of the Report employed another exhibition of power – a threat. Although this was written only seven months before California became a state, the future of California was a source of concern. The region could become a territory of the United States, the newest state of the Union, or neither. In that last instance, “it is too evident to be denied, that should California declare herself independent, a precedent would be set, a rent would be commenced in our country which might easily widen until there shall ensue a swift and complete disruption of the United States of America” (*Sacramento 2*). Stability, achieved through membership in the United States, was a significant concern.

A system of laws always becomes inseparably interwoven and intimately blended with the character of the community, reared under and habitual to them.

This statement affirmed the stakes; the discussion was not only about a legal system for the state but also about engendering what nature the state would adopt, inhabit, and exhibit.

A substitution so great as would be that of the Civil for the Common Law, of a whole system, so radical and entire, and over a community so extensive and homogeneous as the American population of California, though often attempted, has never yet once met with success.

The predicate to this argument was that, referring to Alta California, “the California wilderness” was never fully under the rule of Civil Law, “it was governed principally by local customs”

(475). But now it is “certain that the Common Law controls most of the business transactions of the country.” It was what happened to American discoveries; “the first settlers of the United States brought with them from the mother country the Common Law, and established it in an uninhabited region. The immigrants to California have brought with them the same system and have established it in a country almost equally unoccupied.” Note that the argument of sparse populations in this quotation is consistent with idea of a community that is “homogeneous ... the American population of California” from the segment above. Both eliminated the presence of Californians or, at least, of their significance. This was a necessary strategic move to put in place the argument that Common Law was already the model under which the future state operated. If Civil Law was still the means of adjudication, then they could not make the argument that switching from one system to the other would be catastrophic as proved by history. In their introduction to Common Law they made clear that at one time Civil Law was England’s system and it gave way, successfully, to Common Law. And, although in the minority, Civil Law was used in the states – Louisiana (475). So, the Report eliminated the possible success of Civil Law leaving Common Law to persist. But, to achieve this, the governing way of life of the pre-state Californians needed to be disvalued. And, then, the comparison of the two cultures and the threat that only one can successfully occupy California,

You might as well undertake to eradicate the American character and plant the Mexican in its stead – to substitute the Catholic for the Protestant religion, by statute – to abolish the English language and sanction none but the Spanish, by legislative enactment; for the laws, not less than the character, religion, and language, constitute part and parcel of the American mind.

The raciolinguistic maneuvering of leveraging power is explicit. Beat by beat – politics, religion, language, character – the persisting cultural mind, only one of which can survive, is described. Californian vs. American. A document that argued an us-versus-them decision, offered to sixteen of us and two of them for a vote, was a threat.

We apprehend that any such attempt, if made, would in due season be answered by the people, as the bishops were answered by the sturdy barons of England at Runnymede, when a similar effort was made to impose upon them a part of this same system of Rome, "We will that the laws of England be not changed." (479)

This referenced the conflict which led to the signing of the Magna Carta and brings to the threat an historical anchor and also a callback to religion; "bishops ... were answered by the sturdy barons." That is, religion was overthrown by the secular. The Report argued that there is a binary choice and, as the children of America and the grandchildren of England, only one choice was viable.

But, there may be another aspect to leveraging power against Californians on this topic. A little more than two years before this time, the *Californian* newspaper explored the conversion of Alta California from a Civil Law system to a Common Law system. "But the main question still recurs. Can any other law prevail as a measure of justice here than the law of Mexico or the Civil Code of Rome? Certainly not so far as regards vested rights acquired under those laws. Any subsequent law or regulation impairing them would be *ese post facto*, immoral and consequently void *ab initio*" (1). That is, contracts entered into under the law of Mexico, Civil Law, were incompatible with another system of law. This dissertation will explore in the last case study the raciolinguistic stylings of federal Senator William McKendree Gwin and his

position on the validity of Californians' holding on to their property per the Treaty of Guadalupe Hidalgo. Senator Gwin, ten months after the Report, "moved to take up the bill to provide for the examination and settlement of titles and claims to land in California" by Californians (*Sacramento Transcript* vol. 2 2). Federal Senator Thomas Hart Benton, of Missouri, "found that its [Gwin's bill] effect was to violate the treaty with Mexico, to violate the laws of nations, and to violate the several proclamations of commodores Sloat and Stockton.— The subject was an important one, and the bill would despoil all the old inhabitants of California of their land." This dialogue was in reference to prime parts of the state; Gwin complained that the Mexican land grants "kept valuable and important regions of the country in an unsettled condition" – "unsettled" legally and also by new residents of the state (*Sacramento Transcript*, vol. 2, no. 126 2). The long, expensive and usually failing attempt by Californians to maintain ownership of their lands was just beginning when the Report was drafted.

It is worth noting that the negative caste of imagery and language that was applied to Roman Catholicism directly or indirectly did not engage a position regarding the religion on the level of content. Based on that point, the arguments that are posed are critical of the culture and adherents of Roman Catholicism, not the religion itself. Put another way, a person could be in favor of Civil Law without being a Roman Catholic or Common Law without being a Protestant – infusing the conversation with any religious references was not necessary on a purely logical level. At the very least, it was a choice to bring drama to the Report; drama based on the exploitation of anti-Catholic, so anti-Californian, sentiment. Stylistically, the gravity of the legislative document, combined with the freedom of working in committee, generated an appendix with elements that were unlikely to be found on the floor of the legislature.

The next case study applies raciolinguistic analyses to annual comments delivered on the floor of the state Congress by both the Governor and the Superintendent of Schools. The time period it captures is from the start of statehood, 1849, through a landmark year in terms of race in America, 1865, the end of the Civil War.

Case Study Two: The Governor and The Superintendent of Schools

All agree, that upon this mainly depends the future hopes of our beloved country, — in sustaining the great principle, that the people are capable of self-government. All the giant strength of this, with most of us, our adopted land, whatever we cherish in the future of the beautiful and rich commonwealth of California, depends upon this short sentence, “The education of all the people.”

Paul K. Hubbs

Superintendent of Public Instruction, California

(Journals 1856 10)

In January, 1851, just four months into statehood, it was declared on the floor of the California state Assembly that “the time must soon arrive when we shall bare [sic] both the families and the means to adopt and carry out such a system” that supports free schools through secondary education and also a state university (*Journal 805*). This chapter looks at primary texts and the prose the texts used regarding race and language during the process of laying the groundwork for, and conducting the first years of, California’s public school system. I focus on documents that cover an approximately sixteen-year period in which the state school system was being established and as the effects of the Civil War began to influence the perspectives of the mid-nineteenth century. I argue that a significant theory of the time which proposed that five races existed, and stripped out any indicia connected to language, allowed for many Spanish-

language speakers to simultaneously be identified as part of the dominant culture and while also marginalized.

During the period of time in which the state school system was developing, the discussions of race and language I outlined in my previous chapter had changed. Patterns referring to race and language as associated with Californians or natives increasingly obscured the discussion around Californians and the Spanish language. Although the Treaty of Guadalupe Hidalgo side-stepped the question of race and whiteness, by the time the state school system was developing, the passport to education was whiteness. And, whiteness was ill-defined. For many people it was equivalent to being from the Atlantic states or Europe. Californians or Natives, who could be dark skinned people of European descent, were considered white. However, the position at the state-level was that Spanish language speakers were not to be accommodated.

Around the time of the state's inauguration, the concept of the Californian began to give way to a more generalized idea. While those of Mexican heritage were largely considered to be white their use of Spanish language, even though it was likewise part of the Spanish tradition, was not supported by the emerging government or school system. Although I am discussing the experience of Californians, in this case study it is necessary at times to study the rhetoric which applies to different racial categories that were used at the time. The *lack* of nomenclature which would identify white, Spanish speaking people is essential to the experience of Spanish speaking, school-aged children. It was reported that,

long prior thereto ethnographers had agreed upon five distinct races of mankind, as follows: the European or Caucasian, the Asiatic or Mongolian, the American or Indian, the Malay, and the African or negro, and had classified them in regard to color

respectively as white, yellow, red, brown and black races; and it is believed that this classification still exists. (*Sacramento Daily* 6)

However, in public discourse, all of those designations were commonly used except that for brown people. In this construct of five races, talking about education, the name of geographic origin for brown people is also not employed, leaving a chasm where the descriptor would otherwise be; there is a hole in the paradigm and that puts Californians or natives in an unstable dynamic – how do you challenge an unspoken definition which is partially inclusive and partially exclusionary?

While looking at legislative and judicial documents regarding education it is worth taking a closer look at the terminology of the time regarding the construction of racial difference. The Constitution of California rested on the foundation of the Treaty of Guadalupe Hidalgo as we saw in the first case study of this dissertation. The California Supreme Court, in determining State cases, read-into their deliberations “the laws of Spain and Mexico” when appropriate (*California Reports v*). In the case of *Suñol v. Hepburn*, for example, the court referred back to the issue of race in the Republic of Mexico when it wrote that,

In the ancient laws other distinctions are made between men on account of their races and colors, and of these the principal was the one between Indians and Spaniards.

In the next passage, the court specifies that it is referencing the Plan of Iguala, which was ratified in *República Mexicana*, 1821. This contended ground, distinguishing between Indian and Spaniards, occurred during the lifetimes of at least some of the Californians – Mariano G. Vallejo, a Californian and member of the first California legislature, was born in 1807. Issues

around distinguishing Indians and Spaniards then might have a resonance even under the new state organization. The Court went on,

So odious a classification has not existed in the [Mexican] republic since it declared itself sovereign and independent, and principally since the Plan of Iguala declared all inhabitants to be equal in rights without distinction between Europeans, Africans and Indians. The 12th article of the Plan of Iguala declares, "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" (1 Col. de Dec. 4.). (*California Reports* v1 1851 292)

Under the government controlling Alta California, three categories were identified, "Europeans, Africans or Indians." And, all three were "equal in rights."

The California Constitution, the state and judiciary revealed, explicitly or implicitly, an avoidance of engaging with the race of Californians. However, there were a number of instances where race came up in state documents. Though it only showed up rarely, they used race as a descriptor for certain groups but not for "brown" or Malay people. In an appendix submitted to the 1849 – 1850 legislature, which memorialized the history of the names of California counties, chaired by Senator Mariano G. Vallejo, the word for "Sonoma" was cited as "an Indian word" and then designated as by "the aborigines" implying that both are the same group of people (*Journal* 1850 530). During the same session Governor Peter H. Burnett reminded the legislature

“the Constitution has made no provision in reference to the settlement of free people of color within our limits”¹⁶ when referring African to Americans (38).

But, usually, in the first laws of the state, three or four races were specified: “African,” “Indian,” “Caucasian,” and “Asiatic.” Throughout the documents there were also references that discussed the “mulatto” and the “Indian,” but those formulations lead back to the categories of Black and Caucasian, not “Malay.” Recall the thinking by Mr. Sherwood that was revealed during the discussions around the state Constitution; “no other construction could be placed upon the word white than this: if an Indian is more than half Indian, he is an Indian; if he is more than half white, he is white. With respect to Africans, he believed that all after the fourth generation are considered white in most of the States” (Browne 73). This construct was not voted upon – it cannot be taken as the beliefs of all delegates – but it does serve to illustrate that at least some significant figures of the time believed that, while being an Indian could disqualify a person from being a citizen, being a descendent of an Indian was a different thing. In terms of the security of Californians’, being considered white per the state Constitution while being in a culture that puts whiteness one generation away from qualifying as an Indian, is a vulnerable position. One’s ancestry could not be absolutely proven. Citizenship and its attendant rights and freedoms were at stake. That threat, calling into question a person’s race, is part of the official record.

In 1852, Governor John Bigler issued a special statement from the Executive Department. The primary subject was the “wholesale importation to this country, of immigrants from the Asiatic quarter of the globe” (*Journal* 373).

Congress, possessing the exclusive power to establish a
uniform rule of naturalization, has enacted that “every alien,

¹⁶ In these documents the terms “persons of color” or “people of color” referred to African Americans.

being *a free white person*, may become a citizen of the United State,” [sic] by complying with certain conditions. ...

Chancellor Kent remarks, that ... “this excludes the inhabitants of Africa and their descendants; and it may become a question, to what extent persons of mixed blood are excluded, and what shades and degrees of mixture of color disqualify an alien from application for the benefits of the Act of naturalization.”

(emphasis in original)

And, although it is not stated that the concept of color to determine one’s lineage is metaphorical, this passage serves to show that, when looking at “shades and degrees” to ascertain a person’s heritage, the use of skin color as determinative proof was literal.

Perhaps there might be difficulties, also, as to the copper-colored natives of America, or the yellow or tawny races of the Asiatics; and it may be well doubted whether any of them are white persons in the purview of the law. It is the declared law of New York, South Carolina, Tennessee, (and other States,) that Indians are not citizens, but distinct tribes, living under the protection of the Government, and consequently they never can be citizens under the Act of Congress” (*Senate Journal 1852* 373 - 374).

The commitment to skin color as determinant for excluding all people, except white people, from citizenship is key raciolinguistically; as we will see in this chapter, it was necessary to be a citizen to have access to the safest conditions for one’s family and a higher profit from one’s

work. Power resided in citizenship and being a Spanish-language speaker put one's race into question.

Scaffolding

Although this chapter examines education that was made available to minors in early California, some elements of the constitutional convention, the state Constitution, and foundational laws are necessary to frame the development of the school system regarding race and language.

As discussed in more detail in the previous chapter, the records from the constitutional convention show that delegates suggested that the English language was the language of the educated, the language that would be dominant throughout the adult population within twenty years of statehood. A State Translator, necessary to keep adults who were most comfortable with Spanish informed of emerging laws, was written into the Constitution with the belief by some delegates that, in twenty years, the position might be obsolete (Browne 273). In other words, Spanish as the common, long-term language in California was not anticipated by members of the new government.

However, engaging the issues associated with competing languages grew more complex every day and at an unprecedented rate. In fact, the ever-increasing polyglot society that landed in California as a result of the gold rush added to the pressure. The California legislature at times, in addition to printing all laws in English and Spanish, printed official documents in German and discussed printing items in French. Governor Peter H. Burnett delivered a message to state Congress on January 6, 1851, and argued that “we have now, or soon will have, as many citizens in the State who alone speak the French or German language as we have of those who speak the Spanish” (37). The Governor argued that having a State Translator forced the state to spend money unnecessarily; he argued that the Congress could decide which new laws needed to

be translated and distributed on a bilingual basis. Despite the Governor's opinion and practical problems, the State Translator continued to produce translations in Spanish language of new state laws per the dictates of the State Constitution. The influx of people from around the world, and the complications of that reality, were a constant topic in the chambers of the state Senate and Assembly.

The establishment of schools was also part of the state Constitution. Article IX detailed that a state Superintendent would be elected, certain monies (that which was left in probate when there was no legitimate heir) would be contributed to school funds, the legislature would organize the school system, and a university would be established. There was no comment on who the students were to be. The second session of Congress resolved in 1851 that children in California within the ages of eight to seventeen would be considered school aged (494); the state Supreme Court would include in their decrees involving children that educating a child was required of adults *in locus parentis* (187). Congress called for the Superintendent to conduct an annual statewide census to determine the number of children in each county; a certain amount of money per student would be distributed by the state to each county every year. In terms of the legislative journals of the state government, whether a student needed to be a citizen or not, or satisfy any other qualities, was not explicit. But, there was language in this plan that inflected how the school system would develop.

Recanvassing the state Constitution, Article II, Section 1, "Right of Suffrage," states "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 ..." may become a citizen (Browne 6). However, the Treaty of Guadalupe Hidalgo had Mexican citizens either voluntarily opt into or out of U.S. citizenship or, if they did not take a position, they were

assigned the affiliation of U.S. citizen (*Statutes* 1850). In other words, the Constitution required that a citizen was white, but the treaty did not use that concept as a condition of citizenship. And, neither document defined the word “white.” (Discussions during the crafting of both documents were recorded on the subject but the discussions did not have the force of law.) This ambiguity makes race significant but nebulous and the Spanish language, which is not necessarily an element of race, susceptible to becoming the outward manifestation of being not-white. These two considerations, California as polyglot-land and an incommensurate approach to race which simultaneously does and does not rely on color, are conditions of nineteenth-century racialization. This is consonant with the Flores’ raciolinguistic position that he uses “the term ‘racialized’ as opposed to terms such as ‘minority’ or ‘people of color’ to emphasize that race is ‘a social construct rather than a description based on perceived characteristics (*Ontario Human Rights Commission*, 2017, p. 15)” (30).

In terms of the state legislature and those creating the legislative texts, the governing citizens of the new state brought to the endeavor their histories that were formed mostly in other places. The state Constitution asserted that “no person shall be a member of the Senate or Assembly, who has not been a citizen and inhabitant of the State one year, and of the country or district for which he shall be chosen [sic] six months next before his election” (Art. IV, sec. 5). That is, the people creating the legislation for the new state only needed to be living in California for a year; their expertise might be in law, or medicine, or farming, or business. Between the two chambers, the first members of the legislature numbered 52 (Jones 11). The number of legislators would stay constant until a census tallied a state population of over one hundred thousand citizens (Art. IV, sec. 28). Under those circumstances, the members of the legislative branch had a great deal of sway regarding the development of the state. And, they were aware of the gravity

of this scenario; the first day of assembly, December 17, 1849, upon being voted the “Speaker of the House of Assembly,” Thomas J. White addressed the group:

From the period when this [state] by conquest became a part of American soil, there has been a ceaseless tide of *emigration* to its sunny clime, that has no Parallel in the history of the Universe. *They* came, remembering the laws and institutions they had relinquished; and feeling the importance of transplanting them, at an early period, upon a soil which their presence had made general, they hastened to complete an understanding which every citizen felt was alike necessary and important for the purpose of adequate security and protection. Wherever the American plants his foot and fixes his abode, there, too, are established the free laws and institutions under which he was nurtured. You, gentlemen, I repeat, are selected in accordance with this praiseworthy characteristic of our people, to perform the high and holy trust. It is yours to take *from semi-civilization its rude costume of barbarous custom and iniquition* to the law, and substitute instead the lessons of wisdom, the decisions of justice, and the blessings of civilization, refinement, and liberty. (578) (emphasis added)

When this speech was given the future state was still only a protectorate of the US; it would be ten months before the federal Congress ratified California into a state. The structure of Them (who are not civilized and need to be trained) and Us (who carry the essentials for an American future) would become common in legislative speeches.

Three days after the above referenced speech, Governor Peter H. Burnett said to the same group, “either a brilliant destiny awaits California, or one of the most sordid and degraded. She will be marked by strong and decided characteristics. Much will depend upon her early Legislation” (607). The pressure was on state government to succeed.

The intention of this group – a group which, per the Constitution, might increase in members (and, thereby, possibly decrease the sway of each member) – was to substantially form, through their specific registers, or individual perspectives, the state.¹⁷ These lawmakers conducted a “set of reflexive practices through which varied semiotic devices ... are grouped together into models of significant conduct by those whose behaviors these are, where explicit ethnographic attention to who these persons are (as a group differentiable from others) also identifies the social categories of persons in whose lives the register enables a distinctive set of social practices” (Agha 14). In fact, the representatives, in their attempts to shape the lives of the people of California, conformed their understandings of other places – for example, Louisiana, Michigan, Minnesota (*Journal* 32) – so as to animate “a distinctive set of social practices” and to effect the social practices of their audience – other legislators. And, in this material, while there is an impetus to promote American heritage that heritage is, clearly, not intended to be spoken or written in Spanish.

Ultimately, the following description is apt for the primary documents used in this chapter: “each such model is located in a particular time and place in social-demographic history; none of them is intelligible to all who perceive the behaviors that express it; and some among

¹⁷ Per the state Constitution (Art. IV, Sec. 28), once the census established a California population above 100,000 the number of legislators would increase. The first census was scheduled for 1852 and a subsequent census for 1855. However, on December 20, 1850, the state Congress received the returns on an incomplete census which placed the population at 117,318, a number which the Census Agent, J. Neely Johnson, Esq., estimated in his report to the Secretary of State to be “short ... from thirty-three to fifty per cent” (*Journals* 742). The number of legislators increased for the next election.

them are subject to competing valorizations by those who have stakes in such models” (Agha 27). It is a pertinent footnote to the history of California that the foundational documents for the thirty-first state were modeled on foundational texts from other states, as we have seen in the first case study’s Constitutional Convention and the Crosby memo explications. Likewise, “competing valorizations” that can be impugned to emulating other states begs the question of how essential state services, like education, could adequately be modeled on other states given the unique population of California.

In a call to write the Constitution, Brevet Brigadier General of the United States and federally appointed military Governor of California, Bennett C. Riley argued that “the people are now called upon to form a government for themselves, ... That their choice may be wisely made, and that the government so organized may secure the permanent welfare and happiness of the people of the new state” (v). His statement suggests that the military arm of the federal government passed the baton of governing to elected delegates. Through the instrument of the ratified Constitution the newly elected members of the state government were tasked with creating a new state.

How did the government conjure the public school system? The sequence of creating California’s educational system is traceable through extant government documents – within which raciolinguistic characteristics of unsupported critiques associated with Spanish language usage and the unchecked use of power to diminish the opportunities of Spanish speakers are instantiated. I am using two touchstones along the path of developing the new educational system to map the evolution. The first is the annual journals for the meetings of the state Senate and Assembly in which the Governor gives an address at the beginning of the legislative session. By referencing the Governor’s message, including his explication of certain points, it is possible

to understand at least some of the contemporaneous concerns and attitudes of the time – at least those that the Governor was willing to make public. The second resource is the congressional appendices within which are the constitutionally mandated annual reports of the state’s Superintendent of Public Instruction. Through these two serial texts, I track the rhetoric pertinent to public education, race, language and power in the state’s political arena.

Annual Reports

There were many levels at which the governing of state schools in California happened. The state Constitution required state Congress to create a school system. There was an elected Superintendent of Instruction who was the Legislature’s person in the field and was obligated to give an annual report, and each County elected their own local Superintendent and School Council who was responsible both for the running of their school or schools and for an annual report to the state Superintendent. The following texts are almost exclusively from state congressional journals or pamphlets, published annually per state law; the contributors could have no doubt that the content would be part of the durable records of the state of California. In texts like these, the complete, developing thinking of the state superintendent and a glimpse into the thinking of the county-level superintendents are possible.

Education in California had an inauspicious beginning. The members of the state Legislature collected Constitutions of “most of our sister States” looking for guidance (*Journal* 1851 64). This may have been optimistic given that during the first year “the present financial embarrassment of the State, as well as that of a considerable number of her citizens” was a concern – scrip was used in the place of money so the state could function (1563). In fact, with the admission of California to the U.S. on the horizon, the new Committee on Education in the Assembly recommended that the Bill Relating to Public Schools should be delayed because they were “convinced that it will be at least two or three years before a school fund will come into the

State Treasury”; the bill was “postponed indefinitely” (*Journal* 1850 1239). John G. Marvin was elected Superintendent of Public Instruction. The Congress voted to pay him nothing for his first year of work. They directed Marvin to collect data regarding the population of California that would be “entitled to the benefit of any ordinary system of Common Schools” (*Journal* 1850 1564); they also voted against paying for any of his business expenses (*Journal* 1851 529). That same year, the Annual Report of the Comptroller, defending the lack of pay, stated that “the Superintendent of Public Instruction appears to be a useless appendage” (529). The following year Marvin was paid for his work, and his expenses. But, in most of the Governor’s messages during the 1850’s, one of the calls to action was to eliminate the position of the state’s Superintendent of Instruction by amending the Constitution. Although there would be many speeches given that commented on the value of education it was another thing to spend state money on it.

The Congress recognized that language in California was in play. Issues involving or associated with language dominated Congressional concerns. In December, 1848, ten months after the Treaty of Guadalupe Hidalgo was signed, President Polk announced in his State of the Union that rumors of gold in the U.S. protectorate of California were true; in “the mineral district ... explorations already made warrant the belief that the supply is very large and that gold is found in various places in an extensive district of [the] country” (Polk). California became a state nineteen months later. For several years after President Polk’s announcement, gold seekers streamed primarily into one geographic corridor – the port of San Francisco and, inland from that port, the regions of Sacramento and San Joaquin – to pan for gold in terrain shared with Sutter’s Mill, the site of the precipitating discovery of gold. Up to that point, the population of Alta California was sparse and mostly settled in the areas with serviceable seaports, including

Monterey, Santa Barbara, Los Angeles, and San Diego, a majority of which are located south of San Luis Obispo. Coincident with statehood, the ever-growing majority of immigrants found work in mines or in support of miners. After a series of locations, the state capitol was settled in Sacramento in 1855. Although legislators were from every part of the state the exigencies of an international gold rush lasting an indeterminate amount of time dominated their sessions. In fact, much congressional time was taken discussing the need to, one, tax miners who presumably intended to leave the state as soon as they made money and, two, in anticipation of mining going bust, develop an agricultural economy. The legislature vetted ways to create financial and social stability.

Although the geographic destinations for new arrivals to the state eventually became more dispersed, the concerns of a constantly expanding multinational population persisted. This was not a situation the legislators wanted to change – in fact, for decades official pamphlets were published, albeit in English, encouraging immigration with promises of boundless opportunities. The experience of hearing multiple languages in populous areas was probably common. The hope of maintaining California as an appealing destination was part of the motivation of creating a strong educational system. One theme that emerged over years of legislative commentary was that there was a value to having complete families immigrate and that families were more likely to come to California if the state had an excellent reputation for education (*Assembly App 1856* 6).

The goal of the developing school was to provide free education to three populations: the first concern was a system of Common Schools which would educate children four to eighteen-years old; the second was a Normal School to educate teachers to teach in the Common Schools; the third was a university intended to produce scholars that would keep the state modern

(*Statutes* 1850 32). From the first days, additional funding for education was tied to money that would be distributed by the state but getting money into the account, which heavily relied on the sales and rentals of often contested or uncharted lands, was a fairly dismal proposal. California was well into its seventh year before most public schools could rely on state funding over charitable contributions. The school system was organized by county; each county advanced their school system development at different rates depending on many factors including the question of how many school-aged children resided there. The variation in availability and quality of education was significant. Both San Francisco and Sacramento counties provided low cost or no cost education to children from the beginning of statehood; in comparison, a year after statehood, El Dorado County, in their official report to the legislature on education in the county, submitted that there were “no schools of any sort in the country. I would suggest that our laws should be changed in relation to gaming. California should keep step with civilization. All the schools in the world would effect but little here, while our State sanctions crime [penalties for gambling], under the garb of law” (*Journal* 1852 817). It seems the El Dorado School Superintendent had other things on his mind than education. Although it was not specified, students included girls and boys; until 1860, the rolls were intended to be limited to white students but there was no penalty if non-white students attended (Swett 205).

The information up to this point should help situate the following material. The analyzed quotations (following) are almost exclusively taken from the Governor’s annual message to the Congress or the annual report by the State Superintendent of Instruction. They are presented chronologically to support tracking of the change in the issues at play in an emerging, unstable new enterprise that eventually finds itself with some stability, both financially and politically. This traces the publicly attested to concerns of government representatives. This is not an

attempt to capture every persuasive moment in terms of the forming of educational policy; these texts capture innovation, resistance and, once patterns were set, reform, on the theory that significant patterns can yield to other registers of expression – like issues surrounding civil war. For this exploration, the Governor and the Superintendent are representatives of the culture; they embody the intersection of formal thought and contemporary cultural ideas.

The following timeline extracts passages pertinent to language and race from the state legislative official record. Some authors declared that they were discussing racialized topics explicitly, some engage a much more subtle form of articulating a racialized narrative. The raciolinguistic concept of racing language is immanent throughout these selections.

1849 - 1850

The first session of the legislature met about ten months before California became a state. At this point, the gold rush had generated a considerable influx of people, sometimes numbering over a thousand people per day, into the San Francisco bay area. Representatives from the state met in the Pueblo de San José, a key city from the Alta California days (*Journal* 1850 Title Page).

Although this section is a study of the annual reports given to the state Congress by the Governor and Superintendent of Public Instruction, there are passages from other primary documents that lend perspective. The inaugural state Supreme Court felt the condition of the pre-state institutions was important enough to feature in the report of its first session. The Court noted that “all the other states of our confederacy had, previously to their admission into the union, an established government, on which their state organizations were based. The people of California, however, were driven by extreme necessity, growing out of the political and legal

chaos in which they found themselves, to the formation of a state government” (v). Into this arena, one of where “it can scarcely be said that any laws were in existence further than such as were upheld by custom and tradition” (*Reports* vi), Peter H. Burnett presented the first Governor’s address to the Congress. In it, he began the process of editing the racial agenda of the new state. Burnett presented several paragraphs that commented explicitly on slaves in California but also implicitly about other citizens of the future state. “Our Constitution has wisely prohibited slavery within the State; so that the people of California are once and for ever free from this great social and political evil. But the Constitution has made no provision in reference to the settlement of free people of color within our limits” (*Journal* 1850 38). He explains that the state Constitution excludes all but white citizens and, therefore, since this “class of population” cannot vote or participate in government, living in California would be a life of “degradation.”

Burnett’s argument that a life of partial citizenship was not a full life performs a concern for people of color. However, the passage also echoed explicitly racist sentiments, saying that “this class of persons ... [is] unhappy themselves, enemies to the institutions and the society whose usages have placed them there, and forever [they will be] *fit teachers in all the schools of ignorance, vice, and idleness*” (38, emphasis added). It is an explicitly articulated theme that people from non-white races were a bad influence on a new enterprise.

Burnett’s language focuses on people of color associated with a history of slavery, but it is important to note that the language could easily be applied to some of the citizens living in California. Recall that the Treaty of Guadalupe Hidalgo states that members of the Republic of Mexico have the right to claim U.S. citizenship and that the state Constitution specifies citizens are white. The formula is immutable. But, the details are missing. The potentially conflicting

circumstances of being a previous citizen of the Republic of Mexico and a new citizen of the United States triangulated with race is unresolved. And, how, when, and by what authority the race of a Californian or native is declared is also not identified much less codified.

But, immigrants were also a weighty reality. Burnett argued,

[W]e have a new community to organize—a new State to build up. We have also to create and sustain a reputation in the face of the misconceptions of our character that are entertained elsewhere. But we have the most ample and the most excellent materials out of which to construct a great community and a great State. The *emigration to this country from the States east of the Rocky Mountains*, consists of their most energetic, enterprising, and intelligent population; while the timid and the idle, who had neither the energy nor the means to get here, were left to remain at home. (41, emphasis added)

This concept will be recalled over the upcoming years. Immigration was happening – the best immigrants came from the best of the United States. How can you tell they are the best? They had the means and intellect to get to California so whatever they build will be great. Although, in reality, the part of the continent on which the U.S. resided was filled with people of color, this crafted the ideal immigrants as those coming from the European-settled, east coast states.¹⁸

1851

¹⁸ In looking at subsequent years in this chapter, this research will include the analyses of the Superintendent of Public Instruction; none had been generated at this point or through the next legislative cycle.

By the opening of the second session of state Congress, California had been the thirty-first state of the United States for four months. Although African Americans were again included in the Governor's speech – through an acknowledgement of California entering the Union as a non-slavery state – another group of people were featured in this address. On the topic of Indians, Governor Burnett stated that,

A war of extermination will continue to be waged between the races, until the Indian race becomes extinct, [is what] must be expected. While we cannot anticipate this result but with painful regret, the inevitable destiny of the race is beyond the power or wisdom of man to avert. (*Journal* 1851 15)

Burnett argues that the geographically identified group will eventually become all but eradicated from California, but only after residents are killed in a looming, heart-breaking war of attrition. The Governor's characterization is fairly commonplace in later discussions of indigenous people in government documents. Burnett's comments suggest that the race of "Indians" threatened the white race through war not integration. Although it is beyond the scope of this discussion to engage an analysis of the national narrative of the time associated with people under the rubric of "Indian" the concept that people who would be considered Indian isolated themselves from interacting with other cultures seems to have been the basis of the argument that Indians would not try to become a citizen in California. Indians were a group apart and ineligible for citizenship.

Later in this message, the issue of language was directly addressed. We have already seen Burnett's concern that French, German, and Spanish were equally represented among California's population. Burnett argued,

To publish all the laws in all these different languages would be almost impracticable. Besides it would be of very doubtful utility. To speak the one common language forms a strong tie between citizens of the same State, and so long as the laws are published in different languages, so long one great incentive to learn the prevailing language is taken away, [and] the causes of a separation of different classes of our fellow-citizens must continue. (22)

This section of his speech was part of a request to eliminate the work and publication of the constitutionally required State Translator. The argument that it would take twenty-years for a whole population who spoke and read in one language, Spanish, to learn English was only two-years old. Burnett would repeat this request several times, unsuccessfully, claiming budgetary concerns. This argument does not positively affirm any bias against foreign languages but it does not augur well for non-English speakers. It also makes clear that the power of the Governor's office is behind English-only official communications. From a raciolinguistic perspective, the government valued only one language thereby distancing non-English speakers from having equal access to essential information. As we have seen, the ambiguity of language held power over the standing of Californians.

1852

This was the first Governor's address that identified and discussed education directly. He stated that "education widely disseminated is a mighty means of advancing the happiness and elevating the condition of a people" (*Journal* 1852 29). The concept of "a people" – of one whole – will recur with different wording over the years. It belied the reality that, per the Governor, race would be used to try and define the citizenry of California which would not

necessarily be comprised of the whole of the state's inhabitants. But, education could entice immigrants to the state that were already citizens, that is, Americans from the other thirty states; Burnett argued that immigrants from "the other side of the continent" did not bring their families to California "prizing the education of their children more highly than their own domestic happiness" (13). A good educational system was essential to enticing the population of the east coast to California.

The first report of the Superintendent of Public Instruction revealed the bereft condition of the school system. John G. Marvin argued that the future success of the state relied on having free, available schooling throughout the state. Marvin went on to characterize the current population as substantially in need of education. He wrote that,

The mass of our *native* citizens who have families, *naturally* look to common schools as the proper seminaries for educating, or at least commencing the education of their offspring;

This argument is consonant with the impression that adult Californians were deficient in their reading and writing skills and, so, were unable to educate their children at home. The usage of "naturally" is conspicuous by its unequivocating nature; education will flow from the Americans not from the native families. This is an example of the implicit, shadow language which cast the Californians in the character of uneducated and not able to educate their children. While this argument was made explicitly about African Americans in an earlier year, it exists implicitly about "natives" in this speech.

[A]nd those children of foreign parentage, who are domiciled here- who have come to live with us and be of us [are] entitled to that instruction *which their parents cannot give them*. In a republic at

least, "knowledge is the great leveler, it is the true democracy, it levels up, it does not level down." (*Journal* 1852 804, emphasis added)

Likewise, the children of non-English speaking immigrants. There is a parallel here between Californian families and families that do not have citizenship. (Immigrants from the east coast would have been called Americans and would be presumed to already have their U.S. citizenship – they would not be “foreign.”) Californians continued to be characterized as being not-part-of the California population.

Marvin also included in this presentation responses from most of the counties regarding the statistics pertinent to their nascent school systems. The comments were revealing of the conflict inherent in the attempt of one language supplanting another language. In San Luis Obispo, the county clerk, James D. Hutton, wrote that,

With regard to schools in this County; there is not one at present. A great part of the children in this County are of American fathers, but none speak the English language; which, of course their parents are not anxious to have them learn, hence the difficulty-that of getting a teacher who understands both English and Spanish-the situation not being efficiently remunerative for a person having those acquirements. (*Journal* 1852 822)

This report-from-the-field captured key race and language issues of the time. It was common from about fifteen years previous to this time for an American man to come to Alta California and join the society by marrying the daughter of an established family (Davis 149). The man, who often came from a Protestant background, usually converted to Catholicism, became a

citizen of the Republic of Mexico, learned Spanish, and helped to run the family business – usually some type of ranch. This practice was generally embraced by Californian families – substantial families with names that survive today in the state’s geography ... Vallejo, Pico, Pendleton, Castro, Pacheco, etc. This report from San Luis Obispo showed the resistance of families to trade Spanish in for English and the practical difficulties of teaching a new language.

1853

This year a new Governor took office – John Bigler. After three years of statehood, the population had gone from fifty thousand to three hundred thousand. Immigration was a significant topic. He promoted that “we have ever been ready to welcome emigrant foreigners to our soil, who can, consistently with the Constitution and Laws of the United States, become citizens by naturalization” (*Journal* 1853 12). In terms of race, this continued the call for white citizens; per the California Constitution, which controlled the naturalization process in the only state for hundreds of miles around, only white people could become naturalized.

The report from Superintendent Marvin was comprised of some of his commentary and also statistical information from the counties. In terms of racialized thinking, what is worthy of note in this report is that, unlike the state’s first report on education, in the second report Mr. Marvin asked each county for the number of white children. The previous year, some counties reported total numbers of children regardless of race and also that some teachers or schools taught a Spanish curriculum. In response to this more specific question, reports about children of different races and schools teaching Spanish were not asked for and, thereby, were taken out of the state’s official records. The county information for upcoming years would be organized by tables; no columns were assigned to indicate schools, curriculum or children that were anything but white and English language oriented. In other words, by 1853, the school system moved from

not commenting on race and language to not acknowledging that there was race and language beyond white and English.

1854

Governor Bigler reflected a concern for the perception of education – he exhorted the “the importance of an efficient system of education, embracing in its comprehensive and benevolent design the whole people” and asserted that “the education of the masses is intimately interwoven with the first of representative duties in a government which has derived form and vitality from the intelligence of the people” (*Journal* 1854 26). This extended the imagery of the “whole people” while linking it with future security. Education was framed as essential to the survival of the state; again, a weighty responsibility.

This session marked the first superintendency of Paul K. Hubbs – author of the quotation that began this case study. He wrote, “it is evidently the desire of Congress and of the whole people of our *common country* to sustain, by all proper aid, the energies of the settler, and the means of educating the rising generation-soon to succeed them in the halls of Congress, and in the varied positions peculiar to the republic” (“Report” 1854 5, emphasis added). Given that it was common at the time to use the word “country” to refer to either the state or the nation, it is possible that this was a simple argument meant to encourage people who were established in the state to help those that were not established. If, in fact, Hubbs was referring to the nation it is possible that this is an expression that implicitly embraced white America. But, later, Hubbs will make the unexpressed foundations of his beliefs clearer.

1855

As in previous years, the idea of a society with an all-inclusive educational system was part of Governor Bigler’s message. He declared that “even as the blessings of high Heaven are

shed upon us, should we dispense the bounties committed to our care, and unseal the fountains of knowledge, that all, from the least to the greatest, may drink freely from its bright waters, and ‘without money and without price,’ partake of the rich blessings of universal, unrestricted education” (*Journal* 1855 28). At this time, the state still had not worked out a system of funding for the Common Schools which continued the scarcity of educational opportunities. Later in his address he referred to “Asiatic Immigration” as “among the most important of the subjects ... [a] growing evil” (*Journal* 1855 50). As in referring to Indians by race, the use of the name of geographic origin designation of “Asiatic” served to conceptualize the many immigrants as one, monolithic group.

Superintendent Hubbs echoed the sentiment of the Governor from the previous year that a failing school system – he estimated that three-fourths of the state’s children were “growing up devoid of learning to read or write” (“Report ” 1855 3) – forced “thousands of devoted fathers living among us ... to separate themselves from all the holy ties of the family home ... in order to educate their offspring in lands more congenial to the future prosperity of the children of their dearest hopes” (4). Inherent to offering a good education was the conversion of California from a transitory population to a stable population. Californians were, by definition, not transitory. Of course, this definition can only stand if you do not include Californians. As a group of people, every year admits Californian’s presence just a little less than the previous year.

1856

This would be Governor Bigler’s last address to Congress and he managed to fold in a great many concerns about the racial past, present, and future of California. He characterized the “first immigration, and that of several succeeding years came hither not as settlers, but as adventurers, seeking to better their condition from the rich gold fields of California, and then

speedily return to their homes on the other coast” (*Journal* 1856 21). The settlers of yesteryear, from the United States, were worthy of their own adventurers’ myths. Of course, if drawn as an image, the figure would likely be a white person, since they were from “the other coast.” The current group of settlers “are generally the most stable, enterprising and permanent of the population” (40). This passage referred to immigrants who, instead of mining for gold, were developing agricultural projects like farming, which the Governor considered important and advantageous to the state (45). Again, leaving Californians – many of whom were in ranching and farming – unacknowledged. The Governor believed, however, that the state was vulnerable to problems associated with the increasing population of Asians and pitted the narratives of Asian immigration against that of European immigration.

The printed version of the Governor’s message incorporated section headlines including one for “Asiatic Migration.” Bigler argued that “Asiatic immigrants can reach California for less than one sixth of the sum, and in much less time, too, than immigrants from any of the Atlantic States or Europe and that the departure from China of a population equal in number to that of both the great States of New York and Pennsylvania, would scarcely be missed from a people whose empire, at this time, numbers more than three hundred and eighty millions of souls” (46). He also asserted that “they will arrive and remain amongst us as aliens in such numbers as to seriously interfere with the interests of others, or outnumber the population enjoying and appreciating all the privileges conferred by a free government ... It is no part of the character of the American people to entice the stranger far from his native land by fair inducements” (47). We have already seen this strategy of referring to a group of people as if they were one, bounded, unstoppable and overwhelming impending event but, by this rendering, Asians also have an unfair competitive advantage over Europeans. This language placed Asians as encumbrances to

any future sense of security. It also, in one sentence, cast the idea that it is not American to be open to certain settlers and that settlers that should be encouraged to come to California are American, or at least an “immigrant from Europe” – “remotely or nearly descended from a common ancestry” (45). Although this is intended to apply to immigrants arriving over the Pacific Ocean, it continues the raciolinguistic and contentious construct of “the character of the American people” and, therefore, those who are not part of that character – based on where you have immigrated from. This continued the idea of the east coast, America, as the source of California’s true citizens.

The argument continued, turning its attention to naturalization. Bigler assured the Congress that the state Constitution could “prevent Asiatics from landing within her limits” (45) and acknowledged “that we need additional population in California to develop [sic] vast mineral and agricultural resources, to promote manufactures [sic] and arts, and increase the wealth and importance of the Pacific country...” (44). Moreover, “So far as Europeans are concerned, I have uniformly favored liberal enactments in relation to citizenship” Then, the comparison between Asians and Europeans was abandoned to invoke another ominous narrative;

The conceded fact that Asiatics cannot become citizens, and must on our soil forever remain as the African a distinct and separate race, with marked peculiarities and characteristics, differing essentially from our own people, without the possibility of amalgamating or uniting with us in future,

This language created a narrative that racialized groups as threats to each other. Each groups’ “peculiarities and characteristics” proved the difference of other groups. The speaker ignored the reality that it was within the power of the state to reverse the laws against citizenship for some

groups. Again, an elected official asserted the presence of the people that belong in California, this time while using a racial construct, but was not specific about how that applied to Californians.

is to my mind a sufficient reason why we should not encourage their migration hither, but by every just and proper means, endeavor to relieve our people from the hordes who have already gathered on our shores. (44)

It is not clear what is meant by the phrase “to relieve our people from the hordes” but, whatever it means, it can’t be good for those in the hordes. And, the “we” refers to probably-American, probably-considered-white residents of the state. On some level, that threatens if not excludes Californians. And, given that education in this context was a tool to tie immigrants, through their children, to California, it is unlikely that any child of the “horde” was to be welcomed into school.

Superintendent Hubbs burnished his position on the ascendancy of things Atlantic or European when he argued that “in respect to common school education, [we are] not only very far in arrear to our Atlantic brethren, but also to civilized Europe” (“Report” 1856 3). For this ascendant ideal, could Californians be considered “Atlantic brethren”? No. Could they be considered part of “civilized Europe”? Maybe, but it might be difficult to prove. Again, Californians resided under a lack of soundness and clarity in terms of standing which meant a threat to individual agency.

Hubbs continued his report to Congress, “is it necessary to refer honorable members of your body, who have aided in this great work in other States, to their own experience, in respect to the effect of popular education, upon the subsequent success of communities, and of the

nation? The representatives of the most intelligent adult population of the world, need no such monition” (“Report” 1856 5). At this time, there were no Californian Senators. Another characterization of “great work” in education that did not include natives. Californians did not have memberships in the group.

1857

The new Governor, J. Neely Johnson, invested his message to the Congress with familiar anti-Indian rhetoric (*Journal* 1857 27) but mostly discussed the need for California to continue moving toward an agricultural economy and away from mining.

Paul K. Hubbs, in his last year as Superintendent of Public Instruction, articulated his own understanding of “the past history of the *language* that now moves the machinery of our Government and enunciates her progress in scientific research, but also of that of the great Caucasian race of man; a race that has towered over all other races in the science of government, in psychological knowledge, and in the arts” (“Report” 10, emphasis in original). Here, science is inextricably linked with English language and the Caucasian race. Note the invocation of the concept of “science.” The science of a thing is not debatable, it is immutable fact. Hubbs created the image of a scientific certainty which went on to include his assessment of language and race. But, first Hubbs, as the Superintendent of Instruction, made it clear that Caucasians, also known as people who are white, soar above other races. If a Californian does not qualify as white, a qualification without standards, then they are unable to be peerless intellectually – it’s science. Hubbs expanded his point by tracing the progress of “our forefathers and the early parents of our language” through time and culminated with the ...

parent to nearly all the modern languages of Europe. The same
Caucasian man, originally emigrating from the Black or the

Caspian sea border, made for many centuries Britain the great battle-field of the race, and finally gave to us, through our Pilgrim Fathers and the settlers in the South [of England], the Anglo-Saxon, now modified into modern English language.

This is an indirect reference to the founding of America, by the Pilgrims who brought with them the heavily lineaged language of English. But this isn't just any kind of English...

At this time it is more purely spoken by the masses of our own than in any other country on the earth. It is emphatically the great language of the earth. It bears everywhere the songs of freedom and the principles of good government.

The language of eastern American Caucasians, English not Spanish, is the sign and signal of the highest good and the best future. And, it can be "purely spoken." Presumably, impurely spoken English could not reach the same heights.

It is carried on the wings of a holy faith, teaching the great responsibilities of man towards man, with his higher duty to the great Architect of the Universe. (10)

This reference to spirituality in this form is unusual: "a holy faith." When faith is referenced in legislative language it usual hews to one church or another, even if indirectly. In this sentence, Hubbs elevated Caucasian English language as the means of being connected to people and the universe. This is a statement about the power that inhered to Caucasian English language. This paradigm does not allow for the possibility of a different English, or alternative language, to be adequate much less exceptional to the endeavors of education.

Please recall Hubbs' remark at the beginning of this chapter – he stated that California's future relied on “the education of all the people.” It is worthwhile to question what Hubbs means by “all.” While Hubbs does not specify, his language in other publications consistently referred to settlers and immigrants, in addition to Caucasians and their English. It is difficult to find space in his universe that values any other group.

1858

An historical note: the issue of slavery in America had been roiling for several years. In 1856, John C. Fremont, past Senator of California, ran for President as an abolitionist Republican and lost to James Buchanan. In 1857, the federal Supreme Court affirmed slavery in their decision for *Dred Scott vs. Sandford*. Year after year the tension continued. The Civil War would begin in 1861.

In Governor John B. Weller's inaugural address, a significant shift is observable in terms of how states in the American east are characterized.

Civilization, the arts, and sciences, have for ages been making their way from the East to the West. In the meanwhile, the East has sunk into semi-barbarism, and, in the providence of God, the West is destined to send civilization and Christianity with all their countless blessings, back to the East.

The idea that the West was superior to the East, albeit temporarily, instead of striving to the high accomplishments of the East, was new. (Although it is unclear how the West would manage to restore society to the East, this passage followed an exhortation on the value of a “preliminary railroad” which would span the country (59).)

California, situated on the extreme verge of the western hemisphere, through her trade and her commercial enterprise, will contribute largely towards re-establishing in the East that religion which was originally taught in Jerusalem, but which has, for centuries past, found its chief power and most salutary influence in this hemisphere. What a glorious destiny awaits us if we are only true to ourselves, and properly use the means at our command ...

While it is outside the scope of this dissertation to delve deeply into religious traditions, religion is an aspect of Californians' identity. For example, when Mariano G. Vallejo was Chairman of the senate committee to report on the history of the names of each county, he included details that were "intimately connected with [his] family history" (*Journal* 1849 523). In that report, as a piece of history, he referred to "His Catholic Majesty" (528). Religion was also a point of discussion if not contention. For example, some book titles of the time were *Dialogues Between a Protestant and a Roman Catholic* (1840), *The Catholic Hand-Book: or Every Protestant His Own Controversialist* (1851), and *Catholic and Protestant Nations Compared* (1855). This passage referred to "Jerusalem." There is no key which indicates specifically which religion this acknowledged but, according to *Catholic and Protestant Nations Compared*, "the Faith of Rome [Catholicism] is [not] the same as that of Jerusalem" (Noel 248). In the preceding passage there is a reference to "Christianity." While the word can be applied to both Catholicism and Protestantism, given the subsequent use of "Jerusalem," it seems that the Governor is not referring to the Catholic religion. That is, in the emerging national crisis, Protestantism is being preserved in, and can be retrieved from, California. Weller did not explicitly privilege one

religion over the other with his language, but it is clear which religion is fit to save the nation. It is not the religion of most Californians.

Although geographically separated from our sister states by uninhabited mountains and boisterous seas, we feel none the less interest in maintaining that Union which has made the name of an American honored and respected in every portion of the civilized world, and secured to us at home a degree of freedom and prosperity unparalleled in the history of man.

Earlier in his speech, Weller spoke of “the difficulties in which the federal government has become involved with the ... Indians” in establishing a passage through the Rocky Mountains (58). But, for this passage, the mountains are “uninhabited.”

Under that constitution which spoke the federal government into existence, we have built up a mighty empire which now attracts the wonder and admiration of the world. It is the bounden duty of every American to brighten, and strengthen, and extend that Union, and transmit it unimpaired to posterity. (*Journal 1858 59*)

With civil war threatening, the Governor promoted the influence of an ideal California, an ideal which did not capture the reality or history of, at least, the Californians.

The new Superintendent of Public Instruction, Andrew J. Moulder, submitted a report that contained statistics but did not delve into an analysis of the schools themselves. For health reasons, he had not visited many counties (“Report” 1858 8).

1859

This year, Governor Weller's address did not engage the themes of his previous address. Regarding race and language, he referred to Indians "fast fading away ... the vices of the white men, which they readily adopt, will soon remove them from amongst us" (*Journal* 1859 35). This negative portrayal of white men, especially in juxtaposition to Indians, is unusual. It is tempting to argue that Weller might be considering some type of parity between the two groups but the federal government's involvement with Indian relations, to which he was likely privy, was complex at that time. Weller's commentary may have been more about quelling the concerns of the legislators than anything else.

Mr. Moulder, in his second year as Superintendent, was confronted with the circumstance that "in several of the Counties attempts have been made to introduce the children of Negroes into our Public Schools on an equality with the Whites" ("Report" 1859 143). He went on to explain, referring to himself in the third person (only in this section of the report), that the Superintendent...

has instructed School officers that our Public Schools were clearly intended for white children alone.... Had it been intended by the framers of the law that the children of the inferior races should be educated side by side with the whites it is manifest the census would have included children of all colors.... If this attempt to force Africans, Chinese, and Diggers,¹⁹ into our white Schools is persisted in, it must result in the ruin of our Schools.

¹⁹ The word "Digger" at the time, according to OED Online, references either a person who digs for gold and/or a member of certain North American Indian tribes. Colloquially, I have been told that the word is a racial pejorative, not accidentally similar to the pejorative slang for Negro.

Again, the speaker referred to four types of races. Where are the Malays – the brown people? Was that category too vague? Too challenging? Too substantial? Too close to home? If this was a strategy, part of the technique was to make a race uncharted and, maybe, then unproblematic?

He goes on:

The great mass of our citizens will not associate on terms of equality with these inferior races, nor will they consent that their children should do so. ... Until our people are prepared for practical amalgamation, which will probably not be before the millennium, they will rather forego the benefits of our Schools than permit their daughters—fifteen, sixteen, and seventeen years of age—to affiliate with the sons of Negroes. It is practically reduced to this, then, that our Schools must be maintained exclusively for whites or they will soon become tenanted by blacks alone. ...

The argument, that races will co-procreate, is familiar to any era where there are discussions about race relations. Although it might have been on the mind of every parent in the room, in this case I think, in addition to racializing the behavior of a group of people, it also adds rhetorical accelerant to the ultimate point of this passage. But first,

At the same time, it is not desirable ... that they should be brought up in Ignorance and heathenism. Any District may establish a separate school for the benefit of the inferior races, and apply a certain portion of the public funds to its support, provided the

citizens do not object, which it is presumed they will not do, unless for cogent reasons.

The reference to citizens served as a reminder that, ultimately, this is all in the hands of the constitutionally bracketed white population.

The State Superintendent could do nothing more than employ the influence of his official position to discourage the attempt referred to. He has no authority to punish for disobedience of his instructions. It is recommended, therefore, that power be conferred upon him to withhold the public moneys from any District that permits the admission of the children of the inferior races—African, Mongolian, or Indian—into the Common Schools. The State Superintendent disclaims any prejudice against a respectable Negro—in his place; but that place is not, in his opinion, an association, on terms of equality, with the white race. (198-199)

The request to control the state's financial contributions to the school is significant – at this point in time the schools were a very few years past begging for money from local residents. The treatment of different races in his writing has devolved; where previously you might believe the Superintendent meant to acknowledge the humanity of four races, in this passage he only “disclaims any prejudice against a respectable Negro.” It would be 1864 before the list of “inferior races,” minus brown/Malay, would be found again in the Annual Superintendent's Report. But, at this time, looking at the Governors' and Superintendents' speeches collectively, the nineteenth century racial categories of Indians, Asiatics, and Africans were not to be included in the state's education; that left only Caucasians and the unreferenced Malays.

1860

Governor M. S. Latham gave his first and last address to the Legislature on January 9, 1860. The valorization of the east coast to the detriment of California continued to slip. Latham advised the members that “the great Ruler of the Universe has bestowed upon us blessings which enable us to institute a favorable comparison with the most prosperous and gifted of our sister States” (*Journal* 1860 112). This is complimentary language where compliments were not often used. And, in terms of being second to the east, the motivation for continued work in California was refocused to the value of California statehood itself. Latham argued, regarding the advent of consolidated mail delivery through the federal government, that “such a highway would soon relieve our State of the greatest blight to her prosperity, *the want of a large permanent population*” (*Journal* 1860 111, emphasis in original). While it is unlikely that he meant to encourage non-white immigrants, the language lacks the implication that the new members of population should only be from the eastern states or Europe. He then exhorted his audience to “let it be our aim to make our State, morally and intellectually, co-equal with her physical endowments” (*Journal* 112). In fact, the value of California’s “physical endowments” were consistently lauded from the beginning of statehood but the idea that the inhabitants of California might achieve extraordinary societal goals without imitating the American way was usual. This still, however, manages to preclude the value of Californians by specifying the land’s rather than the population’s bounties.

The report that Andrew J. Moulder submitted in 1860 did not address any issues of race. This is noteworthy on its face but also for another reason. Two years previous to this, Moulder’s report was about 20 pages long. One year previous, his report was about 58 pages. This third report was 86 pages. Each year, Moulder had significantly expanded the length of his report and,

yet, other than 1859, he did not include comments about race. (In upcoming years, in Moulder's report, a few County Superintendents will submit within their individual reports observations about race.) As Superintendent, Moulder exhibited that his interest was only in white children's education.

1861

Governor John G. Downey, in his first message, spoke to the legislature in January 1861, less than four months before the beginning of the Civil War. While California entered the union in 1850 as an abolitionist state the imminent war put into question where the state's sympathies lay.

It is natural that much interest should be felt in the position that California should occupy in this unhappy struggle. The rich domain and littoral advantages of the Pacific Empire have been acquired by the blood of the common country, and purchased by the treasure alike belonging to all. Let us show them our gratitude for this inheritance by our patriotic efforts to preserve it for the enjoyment of a proud and prosperous nation. (*Senate Journal 1861* 44)

In this quotation, the Governor turns to the residents of California to protect and find honor in the state's position within the United States. This is an exhortation that only works from the state where there is a sense of cohesion if not legitimacy; this is not the purview of a society that has a lot to learn from its elders; it is a position of, at least some, power. He continued along the theme of the leveling of the east coast America with California. He stated that, regarding California, "public confidence in the different departments of the government exists, of which the oldest

commonwealth in the Union might well feel proud” (*Journal* 1861 29). This positive comparison with a “commonwealth” state stands on an equity between California and the original colonies. Further, Downey proposed the future of the United States could be held by California, as a patriotic responsibility, when he moved to “lay before you the critical position of our federal relations, and express to you, the people’s representatives, the deep solicitude I feel in the perpetuity of that Union transmitted to our care by the Fathers of the Revolution for the benefit of succeeding generations — for the security of civil and religious liberty — and the honor, glory, and power of the American name” (*Journal* 1861 42). While this might be rhetorical embellishment, attempting to make it unthinkable to join the American South or leave the U.S. all together, it is also language that celebrates all states as equal members of the union.

In previous years it would have been unlikely to hear from the Governor that “the people of California, comprising natives from all portions of the Union, and naturalized American citizens representing every section of the country and every class of society have always proven their devotion to the Union, and have always manifested a loyalty to the confederacy, which distance from the Central Government would only seem to strengthen” (*Journal* 1861 42). Again, this could have been an attempt to burnish the connection to the union – the phrase regarding the “Central Government” is conspicuous given that the sentence started on a different topic – but the idea of lauding “natives” of any kind is new. However, while this may be a weaker commentary than previous ones that can be applied to the Californians, other than referring to “Indian outbreaks,” there is no specific mention of non-white people.

Superintendent Moulder’s report this year was a similar length to last year’s and he still did not include references to non-white students. But reports from the counties did. E. Robbins, County Superintendent of Instruction, by way of explaining low attendance in the San

Bernardino County schools, wrote “in some parts, a considerable portion of the population are Spanish, who feel no great interest in the cause of education, and who moreover, are rather disinclined to patronize American Schools. Time, toleration, and contact, must mainly be relied on to correct this evil” (“Report” 252). But, T. S. Roberts from Monterey County described that,

There is quite a want of interest manifested in the County by our native population. I do not believe that in the whole County there are more than one hundred Spanish or native children attending the Public Schools.

Eventually, the word “native” will come to mean Indian. But, at this time, I argue the “or” still maps onto the common phrase of ‘Californians or natives’ referring to one body of people. Using either reading – he is referring to one group or two groups – still indicates a lack of educational opportunity or school usage by non-Anglo-Saxon children. Monterey was a significant commercial hub before the gold rush and was still, at this time, a sizable population center.

They have, however, in this city, two small private schools taught by those who I am informed teach only the Spanish language. Would it not be well for inducements to be held out to that portion of our population for the education of their children in the English language as in the course of time their native language will become, in this country, obsolete. (*Senate Appendix 252*)

Here, Spanish language is specifically referred to. As part of the race-language-power dynamic, this recommendation bolsters the planned eventuality that Spanish will become “obsolete.”

In 1861, only these two counties, out of 42, included information about non-white, school aged children.

1862

Governor Downey's second message to the legislature reflected the realities of a country at war with itself. Californians were part of the military service of the federal government (*Journal* 1862 48) and the Governor warned "our country, lately so happy in its unparalleled prosperity, so free in the enjoyment of its republican institutions, is in the midst of revolution ... The principle of Union is *life*, —the principle of Disintegration is *death* to American policy, American greatness, and American progress and civilization" (*Journal* 1862 52, emphasis in original). The imaginings of California being separate, or of the union being only partly exceptional, are missing from this speech.

Unlike last year, Downey does reference the value of free public education – at this time most of the cost of schooling is born either by the county or by parents.

It may be safely affirmed that a general system of education, whereby the children of the poor as well as the rich are afforded access to the portals of science and literature, is the most necessary of all the supports to the edifice of civil liberty.

This language invoked the idea of "safety" during a war that, even in California, presented serious perils. Using the language of "poor" and "rich" does not map easily onto race. The Californians were still in possession of a great deal of the state's prime real estate, although challenges to their land-owning status were being won regularly. Many of the Americans and Europeans who stayed in the state did not find quick riches in gold mines.

To say nothing of the philanthropy of the work of training the minds of the children of the State to the principles of virtue and the refining influences of intellectual culture, it has ever been

conceded that republican institutions depend for their existence entirely upon the virtue and intelligence of the people. (*Senate Journal 1862 36*)

I am including this passage because it is the continuation of the quotation above and it is about education. But, in terms of race and language of the time, this type of general language could be inclusive or, if there is an unspoken intent of the speaker, exclusionary, as we have seen from Superintendent Hubbs.

Andrew J. Moulder continued in the position of Superintendent of State Instruction and, once again, did not include information about any non-white children or issues in his report. The superintendents in each county also did not comment on the circumstances of non-white children.

1863

Leland Stanford,²⁰ in his inaugural gubernatorial address, acknowledged the nation's condition; "you are assembled at a serious and trying period of our nation's history. The armed conflict under which our country trembled from its centre to its extremist verge when you last adjourned, still hangs like a black cloud over the land. Our Union and our institutions are still threatened ..." (*Journal 1863 46*). The instability of civil war continued. The reason for the war may have been behind some of the state issues that Stanford included in his address.

On the first day of the present year, the President of the United States, in the exercise of his constitutional powers, as a necessary war measure, emancipated the millions of slaves held by disloyal and traitorous masters. ... On that day the freedom of four millions

²⁰ Jane Stanford and Leland Stanford founded Leland Stanford Junior University, today's Stanford University, in 1885.

[sic] of people was assured, an event which will make it memorable as the commencement of a new era in human progress.

(Senate Journal 1863 46)

The emancipation of slaves, if the north won, would ripple through laws and policies involving race in every state of the union. Stanford anticipated that change when he cited his own Attorney General as describing,

in strong language, the ill effects of denying the privilege of testifying in our Courts to certain classes because of their color, and observes that the question is not a political one but one that touches the interests and rights of all.

This reference encompassed the California law which excluded the testimony of a non-white person from bearing witness “in an action or proceeding to which a white person is a party” (*Statutes* 1851 114). The earliest federal amendment associated with slavery, the thirteenth, will not be passed until 1865, to be followed by the fourteenth amendment in 1868, and the fifteenth amendment in 1870.

This subject is one of great importance, as it pertains directly to the administration of justice and the order and peace of society; and whatever objections there may be to allow Pagans to testify, who can only be very imperfectly examined through an interpreter and without the solemnity of an oath, they do not apply to those of a Christian faith, whose language is the same as our own. (*Journal* 1863 32)

As I've noted before, a reference to religion is unusual in the annual message. In this case, it may exhibit a process of sorting through objections that might come up with a change in the laws that invoke race. The validity of testimony from someone who was not born into a culture and faith based on Christianity was part of the original debate regarding this statute. For example, one legislator, in 1849, proposed an exception to the law by allowing "Christianized Indians" whose words were "worthy of credit" to give testimony; this did not ultimately become part of the statute (*Senate* 1850 1000). The passage, which identified concerns about witnesses, echoed concerns expressed at the time regarding the testimony of non-white and non-native residents. Regarding the use of the phrase "Christian faith," it is not clear here if it is referring to Catholicism or Protestantism or both.

But, other issues of race were arising. Regarding immigrants from China, Stanford cited that "about one sixth of the population of our State is of that class" and "it is not humane – it is not in accordance with the principles of justice and of right, that we should invite or encourage the immigration of a people regarded so unfavorably by our fundamental law" (*Journal* 1863 32). Continuing on, Stanford was referring to "being compelled to taste, in part, the bitter fruits of oppression and slavery," lack of suffrage, and an inability to testify in court against "citizens. Or those who may become such." The list of three items touches on conditions that each non-white inhabitant endured to one degree or another. But, the last phrase is an interesting dance around the question of who is white. A citizen is constitutionally defined as white, no matter their skin color; likewise, "those who may become" a citizen must be white, no matter their skin color. This word choice allows Stanford to be more specific than using the language of the statute, "white." While maybe not intentionally, this language began to dissect racial assumptions of the time. In practice, Stanford described an influx of Chinese people and

encouraged that those who were already in the state stay while “giving timely notice to those who may desire to come among us” to not emigrate to California.

As did his predecessor, the Governor commented on “repeated incursions of hostile Indians” while reminding the members that Indians, “when located upon a Reservation, are beyond the reach of our State laws and authority” (*Journal* 1863 33). Over the years, the conditions of existing in California as an Indian became the bailiwick of the federal government. In 1845 there were an estimated 150,000 Indians living in the California area and, by 1870, that number was closer to 30,000 (Benavides 57).

Stanford also mentioned education. He described an upcoming influx of money into the school system that should be “cherished ... in this regard we may read with profit the history of the older States of our Union. In those communities where the system of Schools is the most perfect, and money is most freely lavished for the education of youth, loyalty and industry are the rule, and treason and indolence the exception” (*Journal* 1863 39). Here, the familiar characterization of the eastern states exhibiting excellent characteristics compared to California was again at play.

Superintendent Moulder did not comment on non-white children in his report but D. S. Woodruff, the Contra Costa Superintendent for Instruction, declared,

I think that there is not enough pains taken to entice the uneducated boys and young men of the native stock to attend the Public Schools. Many of them learn quickly when they attend school, but it requires a great effort to keep them there, and it seems to me that they are going to furnish material for a little better than banditti as they reach maturity, unless they can be persuaded to attend School

more regularly, thus filling the rich soil of their minds with good,
instead of leaving it to grow to thorns and brambles. (“Report”
334)

This is thirteen years into statehood. He went on to say that school should be mandatory for all children. Use of the word “native” combined with the faux-Spanish “banditti” would indicate that Woodruff is likely referring to Spanish speaking, Californian children. Contra Costa county is just inland from San Francisco and is, more or less, between Sacramento and San Joaquin counties. It is likely that Contra Costa, like her sister counties, was fairly diverse as a consequence of the gold rush. It is conspicuous that an area with a lower density of Spanish speakers as compared to other counties, for example in southern California, would be alone in commenting on native children.

1864

In this year’s address Governor Stanford paid homage to education by finding many positive aspects of U.S. Northern education and many negative aspects to U.S. Southern education – aspects which accrued to a determination that “the South will become assimilated to the intelligence and loyalty of the Union as soon as the result of our victories shall have dispersed the cloud of ignorance that has, with them, overshadowed the causes and consequences of the unnatural contest” (*Journal* 1864 29). That is, the North was equivalent to the Union and the South would become like the North once the war was won. He continued, “let us then, as Californians, take these lessons to ourselves, and, rather than allow our Schools to languish, take every legitimate means to elevate their standard and insure their success” ... and try to emulate the Northern states. This is a familiar argument. Stanford went on to describe the count of white children who were and were not attending school: of the children between four and eighteen-

years-old, 38,055 were registered in schools with an average attendance of twenty-five percent and 40,000 did not attend at all. No reference was made by Stanford to non-white children in the state. Making this distinction regarding the schools – specifying that he was referring to white children – was a new turn.

It is possible to link Stanford’s reference to white children specifically to the report made by the new superintendent, John Swett; the report on the state’s schools had a new component. Although for years statistics had been included in the annual message, for the first time, information about non-white children was also included:

MISCELLANEOUS STATISTICS.	
Whole number of Primary Schools	280
Whole number of Intermediate Schools.....	58
Whole number of Unclassified Schools.....	364
Whole number of Grammer Schools.....	48
Whole number of High Schools.....	2
<hr/>	
Total number of Schools.....	754
Total number of School Districts.....	684
Number of Schools for colored children.....	5
Number of colored children attending such Schools.....	162
Whole number of Negro children returned by Census Marshals.	735
Whole number of Mongolian children returned by Census Marshals.....	455
Whole number of Indian children returned by Census Marshals.....	4,522
Whole number of deaf and dumb, irrespective of age.....	81
Whole number of blind, irrespective of age.....	85
Number of male Teachers employed during the year.....	535
Number of female Teachers employed during the year.....	464
<hr/>	
Total number of Teachers employed during the year.....	919

Illustration 3: California State School Superintendent Annual Report, 1864, p 286.

Swett explained some of the data in his remarks. The use of the term “colored” referred to “Negro” children (347). “The School Law excludes Negro, Chinese, and Indian children from the Public Schools, but provides for the establishment of separate Schools for them. The number of Schools for colored children in the State is five, one in each of the following places: San Francisco, Sacramento, Marysville, San Jose, and Stockton.” In terms of the 4,522 Indian children, 2,100 lived in San Diego County. In Sacramento, by virtue of a “special law” Indian children could attend public schools.

Swett included in his report information about the state of New York having thirteen schools for Indian children (348). This would be considered a positive role model if you were to believe Governor Stanford. Swett pulled long quotations from New York State’s report on their work regarding the education of Indian children which found “the attendance and progress of the Indian children have been far better than had been anticipated by those who sought by such means to aid in their civilization.” Further, Swett included a glowing report from New York’s Superintendent of Indian Schools. This is the first positive information about educating Indian children that was presented to the Legislature in the history of the state.

In his inaugural year, Swett submitted a report that was ambitious in many ways. He argued that “the highest purpose of the Public School is to train its scholars to become good citizens of the community, the State, and the Nation. In a government where all power emanates directly from the people, and where public opinion makes and unmakes constitutions at will, the vital relation to the State of the Schools in which the vast majority of the people are educated, must be self-evident” (377). During this pivotal time regarding race in America, Swett’s language, “the vast majority of people,” leaves room to believe that he might truly mean most racial types of people.

1865

The Civil War ended in April, 1865. The following reports were presented four months later. Governor Frederick F. Low invoked the technique of using comparisons like many of his predecessors. And, as we are accustomed to, the positive side of the comparison belonged to people who would be conjured as white.:

[W]e are told that one of the earlier Governors of Virginia, in reply to questions as to the condition of his colony said: "I thank God there are no free schools or printing presses here, and I hope there will be none for a hundred years." About the time this remark was made the first steps were being taken to establish in the neighboring colony of Massachusetts the college at Cambridge, already endowed by the liberal minded and far-seeing Harvard. How Instructive is the field of reflection here opened as the mind follows for two centuries the development of these great States, started upon foundations so similar, yet developed by principles so antagonistic. Virginia's motto has been: the ignorance of the many promotes the wellbeing of the few—while Massachusetts, from her infancy, has proclaimed to the world the great truth that knowledge is power. The teachings inculcated by the experience of these two commonwealths—their relative progress in Christianity and civilization—in the sciences, and in the arts—their average wealth and intellectual advancement, unfold to our newer States no higher truth than that the public welfare is induced in no other way so

thoroughly as by judicious investments in common Schools.

(*Journals* 1865 42)

The implied race was consistent – the existing states were the model for new states. Extolling the value of education persisted. But, the inclination to avoid criticism of California as compared to the eastern states has become reliable.

John Swett, the Superintendent of Instruction, was explicit in his report about races – perhaps because, in his thinking, the war had precipitated a need for particulars. In a section titled “*Schools for Mongolians, Indians, and Negroes,*” he wrote, “a specific provision for the education in separate schools of Negro, Mongolian, and Indian children, is one required by the dictates of justice and common humanity. If all classes pay taxes on their property for the support of schools, there is no reason why the children of all classes, whether *white, black, tawny, or copper-colored,* should not be educated” (“Report” 1866 57, emphasis added). Swett’s brief statement touched on key themes. But, as was accomplished implicitly in the past, he swept by one of the five categories of race – people who are Malay, also known as brown. Recall that “tawny” or “copper-colored” when used by a different writer referred to Asians and Indians. Is this another moment where brown people may or may not be considered a race? The list of four colors he offered do not map onto the five colors that science had identified as associated with races. The elision of brown people continued. But, based on a recollection Swett shared six years later when speaking to the National Educational Society, he was very aware of Spanish-language children in the schools; “twenty years ago ... I heard of a school, [but] I had to be ‘examined’ before I could be patented to be ‘fit to teach a common school in the State of California, for one year,’ and a miserable little school of half-Spanish children at that” (Swett 175).

Conclusion

Agha writes that,

...yet since these models are unevenly distributed and variably centered in social practices, their empirical study requires attention to the processes and practices whereby performable signs become recognized (and regrouped) as belonging to distinct, differentially valorized semiotic registers by a population, and once formulated as models of conduct, undergo forms of further regrouping and reanalysis within social history, thereby yielding fractionally congruent variant models, often for distinct populations. (27)

There are other registers, in addition to the reports by the state's Governor and Superintendent of Instruction, that can be captured regarding the racialization of Californians – newspapers of the time, state and federal laws, and personal correspondences are some examples. Given that this is a phenomenon that spans time, it can be difficult to look at enough primary material to analyze and reanalyze in a meaningful way without looking too broadly and losing focus on the “congruent variant models.” But, their “processes and practices” can be captured.

The emergent theme is reliable – race is important and the ideal race has white skin and speaks English, or is called white and speaks Spanish, or has ancestors from a white country in which Spanish is spoken and which English-speakers claim heritage, etc.

In the next case study, I turn to the writings of the California Supreme Court in their first year's decisions to conclude these historical analyses.

Case Study Three: Californians

Jonathan Rosa argues “that the co-naturalization of language and race is a key feature of modern governance, such that languages are perceived as racially embodied and race is perceived as linguistically intelligible, which results in the overdetermination of racial embodiment and communicative practice—hence the notion of looking like a language and sounding like a race. Thus, race, language, and governance must be analyzed collectively” (Rosa 2). This chapter conducts that analysis through a brief framing of the discursive culture that created the state’s government, a close reading of a nationally ratified bill that wrested control of land from its owners, and observations about the consequent reality for U.S. citizens who lost their homes.

The various processes came into play before statehood. Rosa refers to the ending of the Mexican-American War in 1848 at which time “55% of Mexico’s prewar territory” was “transferred” to the United States (19) and connects that event to the “nonconsensual citizenship” experience of “the 60,000 Mexicans on whom US citizenship was imposed in 1849 following the end of the Mexican-American War and the signing of the Treaty of Guadalupe Hidalgo” (21). In anticipation of California statehood, language concerns were addressed in ways that may have, in practice, eased the experience of Spanish speakers that found themselves in a discursively English political environment. But, race became languaged as property rights were eroded through “language’s central role in the construction, maintenance, and transformation of racial and ethnic identities” (Alim 7).

In historiographic work the raciolinguistic standards that minoritized people are put under are observable through the type of unachievable or deficit qualities assigned, either explicitly or implicitly stated, in official documents and contemporaneous publications. In this case study, the character of the minoritized people is painted in an unachievable or unachieving way while their

language differences ultimately lead to loss of the power of property ownership. The loss of homes and businesses were consequent to lack of English language skills. This is the shared culture.

In July 1847, the *California Star*, a newspaper from the contested province of Mexico's Alta California, quoted the *New York Herald*:

Upper California has an area of between 5000 and 6000 square miles. Scattered over this territory is a population of some 6000. Of these, there are over 4000 of Spanish descent, about 500 Americans, and the remaining number of all nations. The resources of that country, who can estimate? As a Mexican province it would remain for years in its present semi-barbarous state. But with its resources developed by our enterprising and industrious people, with its bays and harbors thrown open to the commerce of the world, its staple products exported to other countries, and above all, the protection of our glorious free institutions and laws thrown over its people, what may it not become? Its annexation to the United States will be another step in the progress of civilization -- not that horrible mockery of civilization that burns, pillages and destroys, but of that which tends to enlighten, to humanize and to improve. (Untitled)

Although there was an influx of international gold seekers, at the moment of becoming a state a significant majority of the new citizens of the United States spoke either an indigenous

language or Spanish – that is, a majority of the state’s population communicated using the languages of a “semi-barbarous state.”

Beginning in the 1770’s Spain attempted to colonize an area referred to as Alta California. By 1834, Spain withdrew its support of its primary interest in the area, the systems of Catholic missions dotted along the Pacific coast, and relinquished authority to the new Republic of Mexico. The Republic controlled Alta California until the United States engaged in the treaty ending a territorial war, The Treaty of Guadalupe Hidalgo. The opening statement of the treaty argued that:

The United States of America and the United Mexican States
[were] animated by a sincere desire to put an end to the calamities
of the war which unhappily exists between the two Republics and
to establish upon a solid basis relations of peace and friendship,
[and] shall confer reciprocal benefits upon the citizens of both, and
assure the concord, harmony, and mutual confidence wherein the
two people should live, as good neighbors.

At the signing, the Mexican land north of the Rio Grande river and the area designated as Alta California became military protectorates of the United States. The treaty covered many aspects of the transition of governance. This section of the chapter discusses aspects of the treaty that directly impacted language in and around the geographic area that American military forces had dubbed “San Francisco.”

The treaty directly addressed citizenship and the rights of territorial occupants. Article VIII stated:

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

The treaty does not designate language, race nor religion regarding citizenship. Article IX stipulates that, until they are citizens, “Mexicans ... shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.” García observed in 2009 that “as the language of a group that was conquered ... Spanish had a much more difficult time gaining acceptance than” other languages (163). The treaty did not designate who was “Mexican” or if there were other ethnicities in the territory; these conditions did not attempt to identify language usage in the new territories.

The constitutional convention for California convened in the town of Monterey in 1849. Over previous decades, many members of the Spanish community had served in different governmental positions under the authority of the Mexican government. Of the 48 constitutional delegates, eight were members of the Spanish *ranchero* population (Acuña 136), many with political resúmenes which included being prisoners, at one time or another, of American forces.

Records of the discussions reflect that the delegates were aware of attempts in other parts of the United States to address the need for bilingual publications of official documents, for

example, in French or German (Browne 274). In the convention, there were linguistic challenges within the body. At one point, one member insults another by quoting Junius: "There are men who never aspire to hatred — who never rise above contempt." The description goes on to report that the Spanish delegates "respecting certain English words, which they did not understand . . . desired to be excused from voting" (Browne 58). This moment is unusual and conspicuous. Given the conditions — 48 people representing different interests working six-day weeks and twelve hour days for six weeks — it seems unlikely that disagreements were unusual. Yet, the report of the proceedings singled this event out. The delegates decided to vote on whether this argument would continue. Based on the report, it is not possible to know the motivation of the Spanish delegates, but one possibility, of course, is they took the opportunity to remove themselves from a contentious situation. Still, one of the difficulties of a multilingual group was captured. Delegate Noriega argued for the inclusion of a State Translator in the proposed Constitution:

I desire to put it in the Constitution for this reason: that however natural and obvious it may appear that the Legislature should take care of it, the experience of three years [as an American protectorate] has proved that such things may be neglected. The proposition may seem of trivial consequence to some; but to me, and those whom I represent, is one of very great importance. The present inhabitants of California will not learn the English language in three or four years; They cannot obey laws unless they understand them. I do not believe that in six years the adult Spanish population will be able to speak English; but in twenty

years they may; and by that time it is very probable that the present
Constitution will be altered. (Browne 273)

According to the contemporaneous notes, the discussion primarily focused on whether it was necessary to include the position of Translator in the Constitution since the necessity was obvious. The example of the past few years was a point that persuaded the Anglo-Saxon delegates to include the provision in the draft but, while agreeing by unanimous support, Mr. Botts wanted to make clear that the “government which existed here for the last three years, was not the republican Government. ... The gentleman must not judge of the character of our American institutions from that. It was a mere military, despotic government, not recognized by the people” (Browne 274). While this may or may not be accurate it exhibits a consciousness that a state government should effectively communicate with its citizens.

The participation of Spanish heritage citizens and the engagement of Spanish language in the functioning of government diminished from this point forward. Records show the first State Translator, Joseph H. Scull, was contracted for two-years at an annual salary of \$8,000 in 1850, the same amount as the State Comptroller. The highest paid positions were Governor, Chief Justice, and Associate Justices, who made \$10,000 per annum. Judges made a modest \$7,500 per year (*Weekly Pacific* 1). In 1855, the legislature temporarily suspended funding for the State Translator. The state’s new Constitution of 1879 stated “all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language” (*Constitution*).

In today’s world it can be difficult to imagine how small one’s society might have been 170 years ago. It also may be surprising how people acted regarding issues that might be considered racially prickly today. It is likely that there were many overlapping moments of

“collective identity” and contact. In 1862, Jesús María Estudillo first wrote in his journal about Alejandro Forbes, a good friend at school and sometimes travel companion (Aug. 12). In 1889, one of Estudillo’s brothers-in-law, William Heath Davis, Jr., published an autobiography in which he gave accounts of personal experiences and observations; he wrote about an acquaintance, Alexander Forbes, a British Vice Consul, and also Forbes’s son who went to Santa Clara College and became State Translator for four years starting in 1867. Davis commented that Alexander Forbes, Jr., received an extensive education in languages at Santa Clara College (Davis, 612). This particular sequence of relationships captures an interesting dynamic where race was, apparently, not an inhibiting factor. Davis, an Anglo-Saxon man, was the uncle to Jesús María and decidedly proud of the education that his nephew and his friend’s son gained at Santa Clara College. In his journals, Jesús María refers to his friend by the Spanish name “Alejandro” without hesitation or concern while the boy’s official name, per Santa Clara College’s records, was “Alexander.” In fact, it was not uncommon to find this type of transposition of Anglo-Saxon names and Spanish names, at least in the records of Jesús María’s school, which offer many examples of this type of transposition.

Rodolfo F. Acuña reports on the interactions between the Anglo-Saxon delegates and the Spanish heritage delegates. There was a criticism regarding the Spanish delegates that claimed they were “more interested in having fun” than engaging in the intellectual work which “white delegates who were in large part lawyers [and who] dominated the proceedings” were willing to do (136). The criticisms inherent in this characterization – lack of interest in working, perhaps an inability to keep pace with the Anglo-Saxon delegates, at the very least a questionable capacity for lawmaking – casts the Spanish delegates as alien to the foundational process of statehood. The dynamics of the situation reinforced what might have felt like benign alienation, but

alienation just the same. Looking forward, within one year of the founding of the state in 1850, none of the Spanish heritage delegates would be part of the State Senate; the State Assembly had a few members of Spanish lineage by the 1860s and very few public offices were held by people with Spanish surnames by the 1880s (141).

Likewise, Californians' business practices were out of step with the burgeoning gold-seeking population. The cultural and financial stability of the Californian families was founded on their lifestyle of ranching. When Alta California was ceded by the Republic of Mexico to the United States in 1848 the land was divided into several U.S. territories that would be moved at different times into statehood. The discovery of gold the same year escalated the timetable for California. (As a point of comparison, the Alta California territory of Nevada was the next to be made a state in 1864, and Arizona and New Mexico were the last Alta California territories to join in 1912.) The property rights in the new state, relied on the language of the Treaty of Guadalupe Hidalgo.

In 1851 the U.S. Congress passed The California Private Land Act. The provisions explicitly violated the conditions of the Treaty of Guadalupe Hidalgo. Under the Land Act, Spanish and Mexican land grants were easily challenged by people with no standing. Senator William McKendree Gwinn, the author of the Land Act, "later admitted that the law was designed to encourage squatters to invade Mexican ranchos and force owners off their land" (Acuña 138). By 1853, every rancho in the San Francisco bay area had squatters who claimed ownership of the land.

The burden of proof, per the law, resided with the landowners. Judges and juries exhibited racial bias and were commonly bribed to support the Anglo-Saxon squatters (Acuña 138). Hearings were held in English and the legal process was exceptionally costly. At least one

Californian, Domingo Peralta, was held hostage by settlers on his land. Horace Greeley reported that “of any miner who does not even pretend to have any rights in the premises but such as the presumed existence of gold thereon gives him ... such laws, I trust, cannot stand” (Greeley 343).

The Estudillo’s Rancho San Leandro was beset, just like the other ranchos. By 1853, because of squatters, cattle were “deprived of their pasturage” (Davis 533) and had to be moved to another property “to keep them from dying for want of grass and water.” In Greeley’s opinion the time had come for the squatters to no longer be “masters of the state.” That was the dynamic. 813 cases were brought to determine ownership of rancho land; 63% were ultimately found in favor of the Californian. Yet, because of the expenses involved in the process, a significant majority of Californians ultimately lost their land. A more complete picture will emerge with testimonies and other extant written documents in the rest of this chapter. The following is the historiographic version of a raciolinguistic language analysis. That is, with the perspective of time the momentum of raciolinguistic power leveraging can identified and put in its larger historical context.

Senator William McKendree Gwin and the Private Land Act Speech

In 1865, William McKendree Gwin began a letter to his elderly mother during a visit to Mexico,

I am learning to exercise the admirable quality of patience, which means I begin to fall into the philosophical way of taking things coolly – the best thing a man can do in Mexico, where the object of the community is to approach as nearly as possible to a state of vegetation, and to imitate in all its lively peculiarities that interesting excrescence – a knot on a tree. (Gwin Letter)

He was dejected at the time over the outcome of the Civil War. As seen in the first case study, Gwin helped to craft the Constitution of the future state of California sixteen years earlier.

Senator Gwin gave a speech on January 2, 1851, on the floor of the U.S. Senate promoting the adoption of his bill regarding private land titles in the state of California. The bill relied on asserting a hierarchy of governmental legitimacy and personal integrity. Each of these qualities, legitimacy and integrity, could be tested in different ways – ways which were dependent on the listener’s agenda. In this speech, Sen. Gwin promoted a law which would supplant the procedures agreed to in the Treaty of Guadalupe Hidalgo which adjudicated land ownership for residents of Alta California that became citizens of the U.S. in the state of California. As a U.S. senator, Gwin embodied the power of the government while he conjured a narrative about California landowners – past, present, and future – which culminated with the image of an ideal landowner – an image that could not be embodied by someone who lived in the area before statehood.

In the early years of California, in a polyglot land exploding with newcomers arriving every day, the way in which people were identified was evolving. In this close reading of Gwin’s speech, certain words have specific meanings: as we have seen, “Californians” or “people of California” were people that lived on the newly colonized land for decades before California statehood and were almost always of Mexican or Spanish descent or one who married into a Mexican or Spanish family. An “American” was someone who came from a state of the “confederacy,” or “eastern states.” Additionally, “Mexican” referred to a person whose claim to land ownership was staked sometime after the Spanish withdrew from the territory and the Republic of Mexico took governmental control, around 1824 (although this is functionally an approximate date for Gwin’s discussion) (116). “Spanish” or “Spaniard” referred to those whose

claims to land dated from the late 1700's to around 1824. And, in flourishes, sometimes the state of California was referred to as "a new country" (90). Gwin invoked these identifiers while creating a hierarchy of governments and peoples.²¹

Race, Language and Power: Elements of the Senator Gwin's Private Land Bill: By the time California became a state, the United States had drafted several treaties over different colonized territories which were more or less successful in settling land claims – Gwin argued those treaties made land claims over:

French, Spanish, and British titles, ... a living witness of the difficulties, distress, and litigation superinduced by a slow, partial, imperfect, and inconclusive system of settling these claims. They have been held in suspense over the public lands, not merely for the average of human life, but in numerous cases for two and three times that period, and have kept valuable and important regions of country in an unsettled condition; thus checking the prosperity of the State (vii).

His system, he argued, "would forever settle within a few years, every private land title in California" (vii) by avoiding "the old system, [which] was defective, by Congress withholding the power to settle, summarily and finally, all land claims" (35). Although history would ultimately prove him incorrect, Gwin promised a quick and decisive system to adjudicate private land grant claims.

To bolster his claim in front of the U.S. Senate, Gwin invoked the two California representatives in the US House of Representatives, Edward Gilbert and George Washington

²¹ Throughout the text of the speech, Senator Gwin refers to a speech given by Senator Thomas Hart Benton of Missouri which was against Gwin's bill.

Wright, and claimed their support while acknowledging the other senator from California, John C. Fremont, had a competing bill under consideration. Claiming the support of the three lawmakers helped to lay a foundation that Gwin, therefore, had the advocacy of his California constituents since all three politicians had campaigned on the issue of expeditiously settling private land claims (9) and that landholders “desire[d] this mode of giving them a final and speedy adjustment of their claims” (10). Gwin’s bill eliminated a brief procedure detailed in the Treaty of Guadalupe Hidalgo which required a certain, proscribed set of documents to secure an uncontested land claim and replaced it with a series of hearings and judicial engagements. When he argued that landowners supported his approach, it is unclear which landholders he was referring to. However, it was easy to anticipate that some key elements of the bill would be a burden for those claiming land as a result of a Spanish or Mexican grant. For example, the right of appeal was guaranteed to both sides of the issue with the result that almost every claim of the Californians, many of which were successful in the first stage of the process, was challenged by the state government on appeal. That is, each successful claim had at least two rounds of being heard in court (74). Additionally, the explicit and unique agenda of the bill, was the “important provision granting both the claimant and the United States the right of appeal for final adjudication to the Supreme Court of the United States” (9). This created a third round of attending court which was a costly and time consuming commitment that entailed travel by steamer to the other side of the continent. All of which would occur in English (9). Although the “full benefits of the treaty of Guadalupe Hidalgo” were promised with the assurances from Gwin that he was not “the representative of any separate portion of the people of California” the bill overrode the mechanisms of the treaty to the decided disadvantage of the Californians (13).

At the advent of statehood the official policy, as reflected in the Treaty of Guadalupe Hidalgo and the state Constitution, was to acknowledge the need for a bilingual approach in official matters. Yet, Gwin's bill relied on multiple visits to the English language courthouse. This discursive and judicial orientation created linguistic quicksand for Spanish speaking claimants who had been assured that their property rights would be preserved by the new state government. There were over 800 families that were referred to as Californians. While Gwin's law technically protected the right to claim property the practice of the law made the fight almost untenable as evidenced by the fact that the dominant language practices in a majority of the court cases, at least indirectly, eventuated the loss of property. This was described by William Heath Davis, a son-in-law of the Californian Estudillo family, who wrote in 1889, "the treaty of Guadalupe Hidalgo recognized the rights of the Californians to their lands under the Mexican titles; but by subsequent legislation of Congress they were required to prove their titles before the United States Land Commission and the Courts ... this was an unnecessary hardship imposed on them" (277). There is more detail about the hardships experienced by the Estudillo family later in this chapter. But, this repeated sequence of eventual judicial success and attendant loss of property is common to the Californian narrative.

One other trailing reality of the bill blighted the lives of the Californians. Settlers, often referred to by the more negative appellation of squatters, made day to day life on the ranch dangerous. This was more problematic in California than other new states because of the steady stream of gold-seekers. The Private Land Bill of 1851 wielded power by implicitly allowing the presence of settlers until the disposition of a land claim was settled. In other words, under the auspices of eventually laying claim to a piece of land if it became public and which they then successfully purchased from the government, settlers could build their homes, ranches,

goldmining flumes, etc., on that land. Settlers were so dense on the Estudillo property, Rancho San Leandro, the area became known as “Squattersville.” The intention of Sen. Gwin to support this practice of settlers was made explicit two years later, in 1853, in a proposed law wherein “Senator Gwin, ... [gives] an undoubted right to settle on Spanish claims.” The article quotes Gwin as stating that “any settler who has settled or may settle on lands heretofore reserved on account of claims under French, Spanish or other grants, which have been or shall hereafter be declared by the Supreme Court of the United States to be invalid, may have a pre-emption right” in the eventuality of the land coming up for sale (*Daily* 22). In effect, until the rights to the foreign grant had been affirmed or denied, a settler could exercise a right to preemptive ownership.

Squatters in early statehood could “dig up a man’s fenced garden, or dig down his house, in quest of gold, [which] is the legal privilege” (Greeley 343). This liberality as pertains to property rights led to “the deplorable confusion and uncertainty of land titles, which has been, and still is the master-scurge of this state” (340). Settlers regularly brought legal actions, often as a group, so as to make a clear claim to a specific parcel of land in case a Californian’s grant was disallowed. Like proving the validity of a grant, the rights of squatters to challenge land possession often led to many years of costly adjudication in English. Defending against litigation from both causes – protecting a land grant and thwarting multiple settlers’ claims – often ran in parallel to each other. But, while predictable, those issues would be problems only after the 1851 law passed. To promote the ratification of his law, Gwin painted a respectful, if not appealing, picture of settlers which stood in contrast to the images of the lives associated with Californians. Gwin encouraged action noting that “emigration to the country has been immense, and the demand for land for cultivation great” – he cast doubt on whether Californians would engage in

making such agentive choices, as will be shown in subsequent paragraphs (34). Gwin continued that, without satisfying the demand, “there is constant danger of collision between the land claimants and settlers; and, if we wish to prevent the shedding of blood in that country, [California], we must act speedily, summarily, and finally on this subject.” Throughout his speech, Gwin transformed the figure of the settler from that of vexing itinerant to the noble man representing America’s manifest destiny – in one scenario paralleling them to “the great mass of honest settlers seeking titles from our Government in the public lands” (55). Later, Gwin referred to “bona fide settlers” as compared to Californians who claimed land “notoriously” (61). In effect, given that the group of people who were considered settlers were comprised of those who were “American, English or French” (99), a pro-settler stance could be considered an anti-Spanish or anti-Mexican stance.

Hierarchy of Governmental Legitimacy and Personal Integrity: A brief timeline is necessary to understand the hierarchy that Sen. Gwin relied upon in his oration. (All dates are taken from his speech and will be contextualized in the following sections.) The geographic area of the eventual state of California was “discovered” in 1542 by the Spaniard Cabrilla but no attempt was made to settle the land until 1769, while putatively under Spanish control (101). In the year 1824 “the sovereignty of the province passes from Spain to Mexico” (116). Following this event, the control of the missions in Alta California was ceded to the Mexican government which, in turn, secularized the sites making them available for private ownership. The mission sites – which were, to be clear, established by the Spanish government and sold off by the Mexican government – “were selected with great judgment by the priests who were sent out to found them” (33). In 1846, Per Gwin, the United States, or Americans, became the likely colonizers of the land. After 1851, the year of Gwin’s speech, theoretically a new idealized

citizen would become the typical resident of the state. In this analysis of Gwin's speech aspects of ethnic identity, as communicated through comments on government policies and racial characteristics imbedded in that commentary, combine to render a profile of individual qualities in Californians that is incommensurate with the qualities embodied by the hoped-for, ideal citizen. I argue that Gwin creates a hierarchy of individual's agentive qualities using the periods of control by different national governments as markers of the different hierarchical levels.

Spanish Government, Mexican Government and the People: Per Gwin's narrative, the government that controlled Alta California from the early 1820's to the late 1840's was the least capable in the land's history, as were the people. Not surprisingly, again per Gwin's narrative, the less stable and more egregious land grants were illegitimately or semi-legitimately cobbled into being in that period.

One category of land held in highest regard by Gwin in terms of location (and, inextricably, value) were the mission sites. Beginning in the early 1770's, Franciscan priests, under the orders of the Spanish government, founded twenty-one missions in Alta California. Mission properties consisted of a church, housing, and land for cultivation (Shea 92). By 1834, Spain withdrew its support of the missions leaving their futures to the Republic of Mexico; the Republic of Mexico decreed that the sites would be treated as secular (112). Although, in reality, most mission properties had been given by the Republic of Mexico, through grants, to individuals as a means to encourage ranching, Gwin did not characterize the process as an ordered and well-documented event – more like a shell game played by the Mexican government on the eventually-appearing United States population. He asked, “who is to settle the question as to what missions are or are not secularized?” referring to a political moment seventeen years before this speech was delivered. Gwin goes on to correctly state that most of the missions were

secularized (with a few reverting back to the stewardship of local priests) but ignores the fact that many of those secularized missions had already been transformed to privately owned ranchos by the time of the treaty with the United States. Essentially arguing that the Mexican government was inept and fallow Gwin, regarding the conversion of sacred land to secular, wrongly stated that “no power [was] given to any one to do it. According to the public records, it seems that all of these missions were ... subject to the control of the State authorities. Still they were secularized and belonged to the State, and by the treaty with Mexico became part of the public domain of the United States” (62). With one, sweeping lie – the secularized mission sites remained in the government inventory – Gwin impugned the competency of the Republic of Mexico and the ethics of anyone claiming a grant from the Republic of Mexico.

However, even if it had correctly handled the secularized missions as part of the land holdings, the Republic of Mexico had other, delegitimizing, tendencies, per Gwin. As reported by Gwin, “colonization scheme” was cultivated amongst high ranking officials of the Republic of Mexico which generated many faulty documents and revealed the government’s corrupt processes if not character. While describing a land grant which was incomplete at the time of the treaty, Gwin writes that a “scheme” was “often alluded to, [and] happily frustrated [during] the consummation of that grant, and it became, as it now is, absolutely *forfeited, void, and of non-effect*” (96, emphasis in original). “It is the recent grants ... where the property is now assessed at tens of millions of dollars, and daily becoming more valuable – claims about the validity of which there is great difference of opinion, and fierce and bloody collisions have grown out of these different opinions” (21) which have been inherited by the state and that consume what should be public lands. Suspected lawlessness during the period of the Republic of Mexico on a governmental level and the foundations for unearned claims could, Gwin warned, lead to

violence in the new state. It is worthwhile noting that Gwin juxtaposed the lack of reliability of the Republic of Mexico land grants against the argument that this is, don't forget, about land that is ever increasing in value; he explicates the greed of previous peoples but sweetens his argument by appealing to the nation's interest in a rich, new state. Californians are greedy, Americans productive.

Gwin's casting of the attempt to close a land grant as a "scheme" portrays the whole system of Mexican governance as manipulative and craven. He urges his audience to remember, even if they are fond of their Californian neighbor, that they did not have the independent will to move to the state:

These people have lately been incorporated into the Union. The act of cession was consummated without consulting them, and without their knowledge or consent. They are not familiar with our institutions or form of government. They have been subjected to the iron rule of military governors, and as yet are ignorant of the constitutional guaranties by which their property is protected under our Government. They may be stimulated to revolt against our Government... (25)

Gwin's comments position Californians as undesirable citizens who have no knowledge or consent regarding their government, who are ignorant of property rights, and who are unlikely to be committed to staying in the US. In the end, he suggests that these characteristics do not align with the values of Anglo American citizenship. And, the circumstance of having flighty Californians as neighbors is remedied by Gwin's Private Land Bill which, when passed, will "put them [Californians] on the same favored footing with the citizens of the other States of the

Union” (26) and “increase rather than weaken their attachment to the Union” (28). The difference in standing between Californians and Americans cannot be reconciled by the Californians. Whether they claim land or not they are not the same as people who chose to move their lives and take up residence in the state of California.

Linking Californians to the Republic of Mexico allowed delegates like Gwin to characterize Californians as un-American, unworthy of being grouped with American power politics, and people that are not accountable in the same way as American citizens. He argued that the situation of pre-existing land grants was forced on the new residents of the new state; otherwise, they would not be burdened with the question of sorting out another government’s property rights issues. The quality of this burden is heightened by Gwin identifying the properties with the highest financial and military value as under the control of opportunistic with alien values. “In a new country like California, rich in the precious and other metals, with new cities and towns springing up, as if by the touch of Aladdin, what a temptation is presented to the corrupt and designing to seek for titles to fasten them upon its most important places – its commercial points, its mines, its city and town sites – its sites for defence [sic], depots, and lighthouses?” (90). There are the people who are “corrupt and designing” as they continue to yield to temptation and people who rightfully belong as part of a new, civic endeavor.

Californians are distinct and lesser than Americans. A hierarchy exists.

But, if there still remains a question as to the potency of the claims from Mexico that can only be blamed on the Republic and its people – which, in the following issue also includes Spanish governance – a few details undermined the potential soundness of any grant. According to Gwin, “land titles in California [were] inchoate and imperfect and needed some further act from the Mexican or Spanish Governments to make them ‘*legal*, or, perfect titles’” (40, emphasis

in original). While arguing that his bill would establish a fair procedure to determine ownership of certain land claims Gwin asserted that “there is not a single law, either of old Spain, or Mexico, which dispenses with a *survey* as a step indispensable to the *completion* of a title” (118, emphasis in original). In other words, because of the lack of reliable Spanish and Mexican procedures neither the old governments nor the newest U.S. citizens could be clear on what property was at stake.

Where governance by the Republic of Mexico was characterized as a den of thieves, the relationship of Spain, from the early 1770’s to 1834, was presented as paternal. In the description of Spanish colonization, occupants of Alta California were characterized as not-quite-adults. In arguments by delegates, Californians were understood to have been under colonial influence because they lacked agency. Sen. Gwin argued that “the administration of the country ... on account of the remoteness from the seat of authority, [was] less energetic, regular, and certain in all that related to real estate and the disposal of the royal domain” (101). Yet, spinning paternalism into a natural and intentional disaster, Gwin subtly extended the metaphor when he argued that Spain was the “*paternal* Government of Spain – a Government which has swept like a pestilence over the fairest portions of America; whose officers were the robbers of this continent; who spread devastation by fire and sword every where they went” (19, emphasis in original). By invoking the image of the paternal figure and violent engagements, Gwin creates an argument which implies that it is impossible for Californians to reject their violent, inherited nature.

The pamphlet that contains Sen. Gwin’s speech has three parts. An introductory letter from Gwin, the speech, and a collection of appendices. Across the first two sections, Gwin uses a version of the word ‘induce’ twelve times (“induced,” nine times; “induces” once,

“inducements” twice). Oxford English Dictionary defines the verb as “*transitive*. To lead (a person), by persuasion ... that acts upon the will” and the noun is “something attractive by which a person is led on.” In Gwin’s first use, in his introductory letter which is addressed to “The People of California” (iii), he referred to “renewed inducements [which] will be held out for emigration” (ix) once his bill is successfully implemented and land titles are reliably settled. That is, before the actual speech, Gwin assured his audience that the state of California would become a destination for Americans who want all that is associated with owning property.

The next time Gwin used the word was in his speech to the Senate while quoting Senator Thomas Hart Benton, of Missouri, the author of a competing private land bill. Gwin claims to quote Benton while spanning a full page of text. In his rendering of Benton’s speech, the verb “induced” is used five times and the noun “inducements” once. Put a different way, half of the twelve uses in the 125-page pamphlet appear in these three paragraphs. Even if the text is an accurate report of Benton’s speech, it is still the case that Gwin’s motivation in including this specific language is to advocate for the success of his own proposed bill.

In this extended passage Gwin buttressed the concept that Spain is paternalistic by invoking the word “induce” – a word lacking in agency as pertains to the object of its influence. When he described the “people of California, who were *induced* by the most liberal assistance on the part of the Crown of Spain to go there and accept these lands as a gracious gift” he conjured people, under the sway of royalty, who were paid to gain what Americans struggled towards and claimed for themselves. Lest the reader missed his point, he directly followed with: “The people were *induced* to go there, sir, and accept these lands as a gracious gift; they were offered great *inducements* to accept of them. Now, sir, these people, after having been *induced* to accept these lands as a gracious gift, after having been paid to accept them....” This reinforcement is

interrupted by pointing out that, when Californians argue for the validity of a land grant, they are initiating “trials ... to take away the lands which they were *induced* to accept from the Crown of Spain.” The passage is concluded by bringing up, again, that Californians are defending “the land which the King of Spain *induced* them, and paid them, to accept three quarters of a century ago” (emphasis added). That is, the people who planned to sue their neighbor to hold onto land that was “equal to four States as large as the State of Ohio” (16) happened into their claims after being led to them; while “Spain, by munificent donations, induced colonists to settle upon her public domain” (21), Americans have “the enterprise and energy of our people [who] will found new cities, enlarge existing ones, establish new commercial depots, develop the resources, and extend the trade and commerce of the State, and soon will vindicate the claims of California to the first rank among the members of the confederacy, and of the other States of the world, in all that adorns civilization and contributes to human happiness” (ix). Gwin’s people will not be induced by, or the recipients of, free stuff. Like Californians.

Additionally, Gwin instructed that even after the gift of land had been given, the new Californians did not conduct their lives as independent people. Once in Alta California, soldiers were told to marry “the baptized Indian girls,” and given a homestead, necessary materials, municipal infrastructure, and monetary bonuses for five years (17, 18). Induced behavior, not agentive behavior. To give over any part of the state would be devastating. Per Gwin, after having passively gained land grants, considering the “interests of these original inhabitants of California, we have a system urged upon us which, in my opinion, would do more than any other that human ingenuity could contrive to bankrupt, ruin, and destroy them; to keep the country in uproar and confusion; to check, retard, and prostrate its vital interests. It would open the door to fraud, perjury, speculation, and speculation” (99). While the Republic of Mexico land grants were

illegitimate, Spanish land grants were held by people born to people who did not have the agency to choose their own livelihood. In this description, Californians are not made of the same stuff as new, non-Californians are. While the character of the individuals in a new state are important, so is the character of the governing bodies.

American Government and the People: And then there is the American government and American people – above the Mexican government and people, above the Spanish government and people, at the top of the hierarchy. Speaking from Washington, DC, Gwin invoked California residents as “the enterprising and active people, the present population, who have gone there to erect and strengthen the pillars of the Republic on the shores of the Pacific” (100). Land ownership was believed to be central to the development of the new state. What was public land and therefore available for civic development and what was private land and available for newcomers to put down both literal and figurative roots? The gold rush added to the frenzy, Gwin argued, that “since that time the emigration to the country has been immense, and the demand for land for cultivation great” (34). Throughout the speech, Sen. Gwin extended certain assurances which would appeal to the sensibilities of people who believed in their well-running government. He repeatedly canvassed some version of the statement that his “law for the adjustment of land titles, by its summary provisions and requirements, will bring to a proper test, and forever settle within a few years, every private land title in California” (vii). Under this new age, state residents would not be slothful or irresolute; on the contrary, “every man in California will feel like going to work in earnest, and renewed inducements will be held out for emigration from the older portions of the Union. We shall have farmers, mechanics, and business men, in every department of life, coming in among us, not merely in pursuit of valuable minerals, but of the exhaustless agricultural wealth of the country” (ix). And, the future of California and the

United States was incommensurate with the qualities of previous governments and their people.

Gwin argued in favor of a different race of people than the Californians:

Then California, the thirty-first star of the American constellation, now beaming upon the waters of the Pacific, will shine with a lustre [sic] not eclipsed by any of her sister lights in the political firmament. Our State, rich in the precious metals, and with exhaustless resources in other respects, will be among the foremost in the march of civilization ... and, under the impulse of the spirit of enterprise peculiar to our race, human sagacity cannot foresee the altitude of her future greatness, nor the imagination of man predict the grandeur of her destiny. (125)

The effect of this law was correctly anticipated by some of California's newspapers. One identified that the bill was "intended to take from the original holders the domain which they have possessed for years, ... reverse the whole course of human institutions, and commit a wanton outrage and tyrannical robbery" (*Daily* vol. 3 2). The *Sacramento Transcript* asserted that "the subject was an important one, and the bill would despoil all the old inhabitants of California of their land" ("Congressional" 2). In fact, by the 1870's, most Californians had lost the rights to most of their lands. Referencing William Heath Davis, it was not because they lost in court. The process of defending their land grant to the state and also against squatters:

... was an unnecessary hardship imposed upon them, and involved them in litigation and expense, which was a new and perplexing experience, even if no unfair advantage had been taken of them. They did not understand our language, and in order to be properly

represented before the commission and the courts, they were obliged to employ American counsel. Many of these lawyers were quite unscrupulous, and took advantage of the Californians (277).

The experience with counsel referenced in the quotation was reflective of the experience of many Californian families, including the Estudillo's, who are discussed later in this chapter.

Race, Language and the Power of the California Supreme Court

Rosa, in 2019, discussed the concept of “raciolinguistic enregisterment (i.e., looking like a language and sounding like a race) ... drawing attention to the ways that American society is hyperracial and hyperracializing” (217). This is clear in the narratives about race that the California Supreme Court inculcated into their decisions – decisions which defined the parameters of power while limiting the use of language (written and spoken) based on race. Flores and Rosa's term “‘raciolinguistic ideologies’ ... describe[s] ideologies that ‘produce racialized speaking subjects who are constructed as linguistically deviant even when engaging in linguistic practices positioned as normative or innovative when produced by privileged white subjects’” (150). This could also serve as the definition of the approach the California Supreme Court, and thereof the state, took regarding contracts and testimony, two items reliant on language. Over the thirty-year arc of time in this dissertation's study, the Court's approach, like the legislators, would be influenced by national events.

California was a new state but it did not rely on new ideas for its jurisprudence. The use of language, based on race, as limited by the legislature, was an object of concern from the first year of judicial proceedings in 1851. In *Suñol vs. Hepburn*, the question at hand regarded land that Hepburn developed but Suñol and two other plaintiffs, Sansevaine and Naglee, claimed as their own (*Reports* vol. 1 259). Justice Nathaniel Bennett, writing the majority opinion of the court, determined that Suñol's co-plaintiffs did not belong in the case and “perhaps I ought to

leave the case here, without reviewing the other points made on the argument; but a consideration of the magnitude of the interests depending, immediately and remotely, on the result of this case, induces me to proceed in the investigation” (261). Put another way, the single, key question of the case was determined but the associated, non-essential but interesting-to-an-avid-crowd issues would be explored. Up to this point, the underlying issue was identified as either a question of physical possession or of holding a land title; the decision relied on the determination that this case revolved around possession, not questions of title. Even though this case relied on a question of possession, at this juncture, Justice Bennett started an exploration of issues pertinent to land titles. The issue the judge explored was between Suñol and the previous resident, “Indian Roberto”²² (273). Even though this was the first session of the new Supreme Court of the new state of California, to explicate these issues the Court relied on the laws of other countries in previous times, in addition to the laws of the United States.

For the rest of the decision Bennett canvassed points of law from Spain, Mexico, England, France and the United States (267, 280) as he discussed issues around land ownership and Indians. He referenced those other, previous legal decisions made by the U.S. and other countries when he could have limited his references to a report drafted by U.S. Army Captain Henry Halleck, March 1, 1849, in anticipation of California becoming a state, which detailed land claims made under Spanish and Mexican rule, and the conditions of those claims (Gwin 17). Bennet invoked that report when he cited Halleck’s statement that “the emancipated Indians were to assist in the cultivation of the common lands of the new pueblos, but were prohibited from selling any of the lots or stock assigned to them. All contracts with them were declared void if they died without heirs, [and] their property reverted to the nation” (*Reports* vol. 1 274). If an

²² A discussion of the term “Indian” follows in this section.

Indian in possession of a land grant wanted to sell their land they were required by the terms of the grant to have the approval of the government. This was the common practice of both the Spanish and Mexican governments.

Per Halleck, these practices were in place “in order to prevent ignorance and thoughtlessness [of Indians] from being led into folly by superior knowledge and prudence and sagacity.” The Court asserted:

Its whole tenor [of the conditions associated with Indian land grants] abundantly proves, that its main purpose was the advancement of great measures of national policy in respect both to temporal and spiritual affairs — that it was a series of continued efforts to obviate the hurtful consequences resulting to society from having in its midst a population destitute of habitations and the means of subsistence, and consequently vicious, vagrant, and easily seduced into the commission of crime. (278)

And furthermore, a lot of governing bodies also employed this approach because they exhibited reason; “It will be seen, that the Mexican law, ... does not differ materially from the laws of France and Louisiana, ... the possession by the mind or intention or will, [is] not actual and corporeal, and readily manifest to all people, but one which is to be made out through a deduction of title and by a process of reasoning” (*Reports* vol. 1 267). So, it was through a “process of reasoning” that land ownership for different races was conducted under different terms. To challenge the unequal agency associated with land ownership, under this theory, cannot be done reasonably. Assigning an intermediary to manage land ownership for some races and not for other races is a type of raciolinguistic estrangement from agency; the construct if

non-independent land ownership is also a raciolinguistic enregisterment in that it makes being Indian inextricable from a limited ability to create contracts unrestrained, as compared to the dominant culture which is uninhibited, or at least much less inhibited, in its ability to create contracts.

The reasoning behind these terms of ownership is also imported from the proceedings of other countries. Roberto, who signed his land title over to Suñol, owned the land but “the very instrument under which he acquired his rights, the grant from the governor of [Alta] California, declares, in express terms, that he shall not have the power to alienate or mortgage the land, or impose upon it any charge or incumbrance whatsoever” (274). This treatment is supported by generalizations about the ability for a person categorized as an Indian to responsibly enter into contracts. Per the Supreme Court, whether discussing Mexican or American law, the foundational argument is about “capacity to contract — a capacity in the grantor, to convey — and a capacity in the grantee, to receive” property. After asserting that “in some instances, as in the case of minors, there may be a qualified capacity to contract” the Justice stated that, regarding Roberto, “there was lacking, in every respect, the capacity to transfer the land, which he held as a gift from the government.” Where raciolinguistics makes verbal language essential to the discussion of (lack of) access to power, when written language is disallowed on the basis of race, there is also a textual hyperracialization. While under cover of reason, it seemingly cannot be countered by reason – “a contract with an Indian partakes rather of the nature of a contract with *un niño*, or *undemente*, than of a contract with a person, who, though not having attained full age, has nevertheless passed the bounds of childhood” (283). In this case, the Court found that Roberto did not have the “power to convey” his property without approval from the government. While these are only “some of the provisions of Spanish and Mexican law, touching

the disability of Indians to transfer their lands” (278) the majority opinion was that the land ending up in the hands of someone other than the title holder (either Roberto or his assignee, Suñol) was correct; “That the title of the plaintiffs is defective and void on its face ... there can be no pretence [sic]” (*Reports* vol. 1 274). This determination is soundly founded on historical conventions of the time, which was a choice on the part of the court.

Chief Justice S.C. Hastings²³ wrote a dissenting opinion. Hastings acknowledged the law of previous years and, by definition, governments, which asserted “the idea that an Indian could not convey land” was “intended for the protection of those Indians who formed separate communities, and lived in the Pueblos, as the mere occupants of the lands from which they had never been ejected, and the title to which was in the crown. That this is the object of those laws is apparent from their perusal” (290). The Chief Justice “believed that there is a manifest distinction between such cases and that of a grant by the government to an Indian as a settler or citizen” (292). Regarding this case, “it is argued with much plausible reasoning, the correctness of which cannot well be controverted, that the grantee, Roberto, was a Mexican citizen according to the terms of the constitution; that it was only as a Mexican citizen that such a grant could be made to him, ... and that the grant was made by the competent authority, whose acts are to be presumed to be valid” (292). In this reading of the facts, citizenship, not race, determined where power resided.

What right or authority had the governor to impose such an odious
incumbrance on a grant? ... Yet it is said that a Mexican citizen,
because he happens to be of Indian blood, or an emancipated
Indian, shall not, and cannot, transfer his property in real estate,

²³ This is not the same person who was on the committee that drafted the state constitution in the previous year. That person was L.W. Hastings.

without permission, and under the direction of a judicial officer, as if he were an insane person, lunatic, or infant. It appears evident that to be a citizen, enjoying equal rights with other citizens of the Republic, the Indian must enjoy the right to alienate his property without restraint — the right to think and act for himself. It is a matter of history that some of the wealthiest citizens of this state, at the present time, are either Indians of full or half blood. They are men of wealth, intelligence, and education. (293)

As a philosophy, the approach of the majority in this decision is a raciolinguistic ideology – the language, which limits the rights of property ownership, is leveraged based on race and using the power of the judiciary; it denies a group of people, defined by race, of the authority to make contracts as pertains to buying and selling their own property. This ruling almost immediately framed similar justifications for similar racially based verdicts; the opinion of this case was cited, in the same judicial session, regarding cases where newcomers claimed land ownership – to the detriment of the racialized party. These results would not have been a surprise to Justice Bennett; he concluded his opinion in *Suñol vs. Bennett*, “as for myself so far as I legally may, I am determined to protect the actual possessor, until some person can oust him by virtue of superior title. This is reasonable; this is common law; and it is indispensably necessary that the rule should be applied and enforced in the existing condition of things in this state” (*Reports* vol. 1 311). The finding of Hastings challenged that conclusion. Three years later the Supreme Court again approached their deliberations through considerations of race instead, as did Hastings, through questions of citizenship.

In *People vs. Hall*, in 1854, the Court explored the elements of statutory law – specifically Section 394 of the Civil Practice Act and Section 14 of the Criminal Act. Each act was established in 1850 and served to frame what would and would not be admissible in civil proceedings and criminal proceedings respectively. In 1854, each act had language which regarded race; the Civil Practice Act stated that “no Indian or Negro shall be allowed to testify as a witness in any action in which a White person is a party” and the Criminal Act said that “no Black, or Mulatto person, or Indian shall be allowed to give evidence in favor of, or against a White man.” As part of the stipulations of the process the Court held that “the words, Indian, Negro, Black and White, are generic terms, designating race. That, therefore, Chinese and all other people not white, are included in the prohibition from being witnesses against Whites” (399). This case received the attention of the Supreme Court as a means to determine whether, in fact, the testimony of a non-white person could be relied upon against a white person. In this case a white man, George W. Hall, was convicted of murder based solely on the testimony of a Chinese witness (*Reports* vol. 4 399). Chief Justice Hugh C. Murray and Justice Solomon Heydenfeldt wrote the majority opinion.

As in *Suñol vs. Hepburn*, the Court relied on the narratives of long-past societies to support the new laws in the new state. To come to decisions about race, part of the findings canvassed the foundation of racial designations as understood at the time. Giving a brief synopsis of the theoretical migration of people around the globe, and relying on such scientific information as “the similarity of the skull and pelvis, and the general configuration ... the remarkable resemblance in eyes, beard, hair, and other peculiarities” as they compared certain races (401), the court relied on this information – “these facts were before the Legislature that framed this Act, and have been known as matters of public history to every subsequent

Legislature” (405) and once a definition was used in the law, “its meaning then became fixed by law” (*Reports* vol. 4 402). What was considered true in the past made it true in the present.

The court also explored the definition of each race. The civil statute referred to the category of “Negro” and the criminal act to that of “Black”; “Black” was considered, without explanation, “more broad and comprehensive in its exclusion” (399). Having resolved that point, the Court moved on to explore the idea of “Indian”:

We have adverted to these speculations for the purpose of showing that the name of Indian, from the time of Columbus to the present day, has been used to designate, not alone the North American Indian, but the whole of the Mongolian race, and that the name, though first applied probably through mistake, was afterwards continued as appropriate on account of the supposed common origin. That this was the common opinion in the early history of American legislation, cannot be disputed, and, therefore, all legislation upon the subject must have borne relation to that opinion. (402)

So, taken all together, the justices determined that, in effect, there were “but three distinct types of the human species” which, subsequently, “subdivided into varieties or tribes” (401) – White, Black and Indian. The three categories were to be considered as generic and not specifying a particular group of people (*Reports* vol. 4 400). Five years later, in 1859, the case of *Speer vs. See Yup Company* clarified the language regarding the Civil Practice Act; “the term ‘Indian,’ as used in the statute, included the Chinese or Mongolian race” (*Reports* vol. 13 73).

The effect of these statutes applied to non-natives; “It can hardly be supposed that any Legislature would attempt this by excluding domestic Negroes and Indians, who not unfrequently have correct notions of their obligations to society, and turning loose upon the community the more degraded tribes of the same species, who have nothing in common with us, in language, country or laws” (403) – a reference to a majority of the people in the state at that time. Yet, in a seeming contradiction, the ruling stated that “the apparent design [of the statutes] was to protect the White person from the influence of all testimony other than that of persons of the same caste. The use of these terms must, by every sound rule of construction, exclude every one who is not of white blood” (403) and that the listing of races “must be taken as contradistinguished from White, and necessarily excludes all races other than the Caucasian” (*Reports* vol. 4 404). It seems, within this examined construction, that incongruities could go unexamined.

But, the justices had more on their agenda than determining the outcome of a case. Their awareness of the legislative system is revealed when they comment about the intricacies of definitions so that “to argue such a proposition would be an insult to the good sense of the Legislature” (404). As they explored the topic of race, they referred to the state Constitution and summarized that “none but white males can become electors, except in the case of Indians, who may be admitted by special Act of the Legislature. On examination of the constitutional debates, it will be found that not a little difficulty existed in selecting these precise words, which were finally agreed upon as the most comprehensive that could be suggested to exclude all inferior races.” They went on to write:

We have carefully considered all the consequences resulting from
a different rule of construction, and are satisfied that ever in a

doubtful case we would be impelled to this decision on grounds of public policy. The same rule which would admit them [non-Whites] to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls. This is not a speculation which exists in the excited and over-heated imagination of the patriot and statesman, but it is an actual and present danger. (*Reports* vol. 4 404)

This clearly states the racial divide which the various branches of the government accommodated. The concern expressed in the passage is evidence of raciolinguistics' foundational point – for someone who is minoritized to assert themselves verbally is a threat to the existing balance of power that those in power will obstruct.

The conspicuous comment that the laws would not exclude “domestic negroes and Indians” is left to be resolved. One possible explanation for this might be consideration for an unstated population – those who were born in Alta California, were of Spanish heritage, and might be a few generations into their residency. In his speech Senator Gwin summarized census information by referring to “Spanish whites and mixed bloods” in addition to “American, English, and French” as comprising the “*white* population” (99, emphasis in original); his calculations excluded the category of “Indian.” That is, people with Spanish blood, as distinct from solely Indian blood, would be qualified to assume all the rights of citizenship – rights guaranteed through the Treaty of Guadalupe Hidalgo and the state Constitution. (And, as we have seen, rights which were in fact abridged.)

The testimony of the unnamed “Chinese witness” in *People vs. Hall* was set aside and the manslaughter conviction against the defendant was reversed (*Reports* vol. 4 405). In effect, given that only a white person could give evidence against a white person, everyone else could be denied their legal rights if the perpetrator of an otherwise unwitnessed crime was white. This rendered testimony from non-whites useless against whites and useful only against non-whites thereby blocking the power of sworn testimony based on race.

Constructs of racial hierarchies were challenged by effects of the outcome of the American Civil War (1865) as was acknowledge by the California Supreme Court. The following case is an example that the letter of the law does not immediately overcome the momentum of raciolinguistic enregisterment. The question raised on appeal in *People vs. Brady*, 1870, was whether testimony from a Chinese person could stand when indicting a white person – a twin of *People vs. Hall* sixteen years earlier. Justices Jackson Temple and Royal T. Sprague wrote the majority opinion in which they began their arguments by asserting the validity of Section 14 of the California Civil Rights Act unless “it is rendered inoperable in whole or in part by a clause in the Fourteenth Amendment to the Federal Constitution” (207). Within the legal brief they quote the full, first section of the amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any within its jurisdiction the equal protection of the laws. (207)

They then presented the central consideration:

It is claimed that the statute which denies to the Chinaman the right to testify against a white man is in conflict with this amendment, because it deprives the Chinaman of some degree of legal protection which it accords to the white man. That is to say, the ability to testify is a protection, because it tends to deter from crime against the person, by adding to the probability of conviction and punishment. (*Reports* vol. 40 208)

That is, the phrase in the Fourteenth amendment which asserted that no “State shall deprive any person ... due process of law,” independent of whether they are citizens or not, may have challenged California’s statute.

The justices were left with the question of unequal treatment in the legal system based on racial differentiation. In the decision, they made the surprising claim that “all general laws operate more or less unequally — not on account of the partial provisions of the law, but from the various circumstances in which those upon whom they operate are placed” (210). In effect, that a law is inequitable but not necessarily unreasonably so because “this is always accidental and not the necessary consequences of the provisions of law.” One of the examples they offered was the theoretical event of a Chinese person working for a white man. If the former witnessed a crime by a white man against his white employer he could not testify on the behalf of his employer. The white employer was, given these circumstances, “less protected; but this is the accident of his circumstances, and not the partiality of the law.” This is the equivalent of intellectual contortionism. When a majority of the state’s Supreme Court justices do not see the

logical problems with a law that differentiates the ability to testify – to use language – that is based on race and not competency then we need to look beyond their logic.

The decision identified that the statute under review was drafted by the state’s legislature, not the Federal government. The justices wrote that “the Legislature of every State in the Union, so far as I know, and certainly of nearly everyone, has continuously asserted and exercised this power during its entire history. To declare who shall be competent to testify and to regulate the production of evidence has always been considered a proper exercise of legislative power” (210). “Now, in passing these laws, the Legislature does not act arbitrarily” – a statement which, while true, does not address the true reasons for the decision to uphold the hyperracializing California statute which disallowed testimony of non-white people against a white person.

The Estudillo Family

The study of raciolinguistics looks at “the co-constructing of language and race in ways that frame the language practices of racialized communities as inherently deficient” (Flores 53). For many of the English speaking citizens, beginning in pre-statehood, and throughout the period being researched in this dissertation, the use of Spanish by U.S. citizens is associated with a group of people who were racialized in ways that inhibited their ability to successfully navigate the legal challenges made regarding possession of their private land.

Earlier in this dissertation, I referenced the Estudillo family as typical Californians experiencing things like navigating the mix of Spanish and Anglo Saxon nomenclature or surviving the blight of squatters overwhelming their ranch. Their story, though, also helps to highlight the practical consequences of Gwin’s Private Land Act. Like many Californians, the Estudillo’s were second and third generation Alta Californians. José María Estudillo came to Alta California, circa 1775, to serve in the Spanish army and received compensation including a land grant. His son, José Joaquín Estudillo, was born in Monterey, Alta California, in 1800, and

followed in his father's professional footsteps. By the time of José Joaquín's death in 1852, he and his wife, Juana María, had eleven children and had established Rancho San Leandro across the bay from the city of San Francisco. Six of the children were male, five female; the oldest child at the time of their father's death was twenty-eight years old and the youngest was eight-years old. After statehood in 1850, the lives of the Estudillo's were deeply impacted by the gravity exerted through the cultural conception that Spanish speakers were ineradicably deficient.

At this time, it was not unusual for Californians to marry their daughters to Anglo-Saxons – meaning English speakers often from the U.S. east coast, England or Ireland – to their daughters. Most Californians were not proficient in English and it was typical that these marriages were arranged with men who had legal or business experience. The Estudillo family followed this pattern. Of the five Estudillo daughters, one died in 1850, and the others were married, through arrangements of their father (Davis 277), to Anglo-Saxons who participated in the running of Rancho San Leandro and its legal defenses. The last wedding, in 1864, initiated the following journal entry by the youngest sibling, Jesús María:

I felt so unwell like perhaps the approaching event about Lola's marriage was the cause. My only remaining sister unmarried and the business-like manner in which it seems to me that [the bridegroom] Cushing has acted in this delicate manner. All coincide to make me feel unwell. I have lost any appetite and this evening at home I was still worse than ever. (12 Aug. 1864)

The discomfort that Jesús María describes in his journal suggests that the marriage was solely organized around the status of the groom. Given the power dynamics of language that I have

described throughout this dissertation, it is worth considering how a marriage in part determined by a groom's English proficiency might be understood as an exhibition of raciolinguistic enregisterment. As referenced earlier in Flores and Rosa, with raciolinguistic enregisterment "we expect a person identified in a particular way to ... assign identities based on the perception of those [linguistic] features (Rosa, 2018)" (149). The marriage of women to men on the basis of the language skills that the men could bring to the family's economic survival is a disturbing facet of the reaction to and use of language power (see Miroslava Chávez-García's *Negotiating Conquest: Gender and Power in California, 1770s to 1880s*).

The pressure on the Californian families during this historical moment was significant. The series of legal engagements mandated by Sen. Gwin's Private Land Act included at least three, full court proceedings including an expensive and hazardous trip via steamer to the Federal Supreme Court in Washington, D.C. Additionally, well into statehood, "the depredations of the squatters continued" (Davis 275) which entailed living on embattled land – there are common reports of squatters menacing land owners and subsequent bloodshed – and the multiple court cases fought against squatters claiming possessory rights. Ranch owners often could not pay "ready money for the legal services which were charged at a high rate" so the lawyers demanded promissory notes levied against the ranchos (277). By the mid-1870's, a majority of Californians had lost their lands to debt and not to judicial rulings. The Estudillo's were not an exception.

The first child, María Concepcion, married John B. Ward, an immigrant and businessman from Ireland, in 1852. He, along with some of the other sons-in-law, worked as a ranch manager and business partner. When the elder Estudillo died, his wife gained half ownership of the ranch and the other half was split between the children. A court document from 1866 suggests, though, that two of the sons-in-law may have taken advantage of the situation. Ward and Charles H.

Cushing were subject to a legal action brought by Juana María Estudillo and most of her children against the two daughters, María Concepcion and Dolores and their husbands (Ward and Cushing). The court documents suggest that all the children were “inexperienced in the transaction of business” (“In” 3), and that because Ward spoke English and Spanish (3) “his motives and purposes were supposed by the family to be good and such as they should have naturally been in a son-in-law and brother-in-law representing the interests of the family of which his own wife was the eldest child” (4). The suit argued that there was a fifteen-year process wherein Ward incrementally shifted the title for Rancho San Leandro to himself while taking that value and unsuccessfully leveraging it in multiple boondoggles. The family realized his activity and sued him within a month of discovering the issues.

By the time of the suit, the Estudillo’s had endured financial damage because of three ongoing issues. The first was defending against the Private Land Act, which they eventually won; the second was many lawsuits from squatters, which they eventually won; and the third was a loss of title, which they eventually won. The first and second were expensive, but the third left the family with land holdings that had been seized by Ward’s debtors and no money to reconcile the issues. (The Estudillo’s borrowed money in an attempt to reset their ownership but ultimately could not maintain their finances.) While some of the particulars of this family’s downfall might be unique the outcome was common – a loss of land and financial stability. In this case, the lived reality of relying on someone who could navigate the intricacies of an English language business and legal culture, when the owners of the land did not yet have sufficient English language skills to protect their own interests, led to the loss of their land. For other Californians, the arcane legal process mandated by Sen. Gwin’s Private Land Act took a different path for the same outcome; for a majority of Californians, the costs to fight challenges from the state and from squatters

required that they sign over the rights to their land to their attorneys (see Rodolfo F. Acuña, *Occupied America: A History of Chicanos*). This was directly at odds with the spirit of the Treaty of Guadalupe Hidalgo.

Although it is impossible to know how all Californian families would have fared in a new state, and it is not true that all families had a son-in-law that managed things in a fraudulent manner, it is clear that the circumstances of the Estudillo's reflect the ways language impacted the stability and future of Spanish language speaking citizens. Flores and Rosa argue that there is a "meritocratic myth: the idea that access to codes of power and the ability to use these codes when appropriate will somehow enable racialized populations to overcome the white supremacy that permeates U.S. society" (166). In fact, the Estudillo's were a well-established, landowning, law abiding family that could not overcome the vulnerability of not having sufficient English language skills. On a larger scale, so went many of the other Californians. For the Estudillo family, and many other Spanish speakers, the myth proved false.

Jonathan Rosa stated that:

Ethnicity emerges as a category of difference that, while marked and susceptible to stigmatization, involves a comparatively legitimate position in relation to the nation-state. Ethnicization thus describes a process in which groups are portrayed as contributors to the nation. Racialization, on the other hand, is a problematic process in which groups are figured as impossibly different and unassimilable. It is important to note here that each of these processes plays closely on ideas about the potential for class mobility and the imagination of the conventional American. Thus,

the effort to unpack the relationship between ethnicization and racialization becomes a key way to understand the management of political and economic power within the nation-state. (87)

Taking these definitions and applying them to early California statehood, there is evidence from the text of the Treaty of Guadalupe Hidalgo and the first state Constitution that the new state engaged a process of ethnicization that could have created a society of contributors, not conquerors. Perhaps, if the question of race and citizenship had been set aside before statehood, as it would be as a result of the Civil War sixteen years later, there would have been a sense of parity between the citizens gained from the Republic of Mexico and California's other citizens. From that single acceptance of parity other domains could be affected including the legal, judicial and education systems. But, instead, California followed the lead of preceding states. These events are at the heart of "the management of political and economic power within the nation-state."

Coda

This work is inspired by my overlapping scholarly and pedagogical interests in students that feel out of place or undersupported in postsecondary English courses and how their experiences in such courses could be improved. Upon discussing these interests with historian Gerald McKevitt, S.J., I was directed to the journals of Jesús María Estudillo, born in 1844, to a Californian family. Estudillo was born on his paternal family's ranch, Rancho San Leandro, and raised in the vernacular of the Republic of Mexico. He was six-years old when his home became the thirty-first state of the United States. A handful of his journals, dating from 1861, survive. The journals telegraph the daily experiences of a fifteen-year-old multilingual student working to achieve academically in an English speaking school while still going home to his Spanish speaking family. Estudillo's journals led me to explore the time in which he lived and earnestly worked at his studies. I cannot report that he would identify himself as feeling "out of place" in his English classes, though I can report that his circumstances were incredibly complex. Jesús and the Estudillo family led me to this raciolinguistic study.

Cyclorama Space

The second component of a raciolinguistic perspective draws attention to the constructed socio-historical nature of raciolinguistic perception, and the fact that ideologies of difference single out racialized groups as distinctive in comparison to the unmarked white norm. In particular, it draws attention to the white perceiving subject and the ways that this subject position, shaped by centuries of colonialism, over-determines the language practices of racialized communities to be deficient and in need of remediation. Importantly, this white perceiving subject position is not simply inhabited “by white individuals but rather by whiteness as an historical and contemporary subject position that can be situationally inhabited both by individuals recognized as white and nonwhite” (Rosa & Flores, 2017: 8). (Flores *Bilingualism* 125)

This conclusion chapter of the dissertation is about the uses of power. There are many raciolinguistic discussions pertinent to the history of early California statehood. It is hopeful news that while the study and exploration of raciolinguistics advances so does the theory’s insights into pedagogy at all academic levels, types of students, and learning environments. Certainly, one lesson we can learn from the raciolinguistic analysis of early California statehood is that denying people their own testimony in our textually based culture is to deny them their prerogative to design and construct their own, personal corner of the world. For the conclusion to

this dissertation, I look at what historiographic lessons might be applicable to pedagogy, specifically that of literacy and writing, in U.S. two- and four-year college classrooms.

For this discussion, it is necessary to establish my experience as a student. I identify as white. I am the daughter of two medical doctors; growing up my parents clearly believed that their parents, my grandparents, were the smartest people they knew – their opinion was untroubled by the fact that between the four of my grandparents, three did not finish grade school and it was unclear if one had finished high school. I grew up in northern California in a Roman Catholic family; Latinx surnames, I believe, were as common as Irish and Italian surnames in the church roster. I was perceived in turns as academically bright and academically limited. Both were true. So far, this minibiography does not auger well in terms of having some understanding of the pressures that many minoritized students feel. And, I will not claim my experiences are in any way similar to the burden minoritized students carry. What I do claim are the difficulties and successes of my long academic journey and the lessons that I continue to learn.

From childhood, although I could take standardized tests well, I had a raft of undiagnosable, at the time, learning issues. Any failures in school were attributed to me being lazy or intentionally unengaged. That is when the teachers knew me by name. Beginning in grade school, and well through my first attempt at college, when a teacher did not know my name, they would be confused, or outright resist, when I would try to claim a test or paper with a top grade – it made more sense to them that I was trying to steal someone else’s paper than to shift their opinion of me and believe I might get an “A.” Likewise, professors would advise me on future courses by steering me toward the less-advanced areas of study. In my first attempt at college composition,²⁴ in a ten week quarter, the requirement was to produce five rough drafts,

²⁴ Based on personal experience, and the experience of my students, it is not unheard of for a Junior or Senior to take what has commonly been referred to as “freshman” or “first-year” composition. It does not matter why Juniors and

and five substantially edited final drafts of five-page-essays, one essay draft each week. While I had been considered a strong writer in high school, I could not keep up the pace in this course.

I went to student psychological services to figure out why I was not producing work that I thought I could do. I described my behavior – difficulty paying attention in class, easily distracted from studying, irregular sleep patterns, lack of a sense of time – and the psychologist said “Well, I don’t know. But is there anything else you want to talk about?” I said no, he repeated the question. He seemed to want a different answer. I said I wished I spent more time with my friends but I really wanted to figure out my problems with school work. He pressed for other problems. I said I wished I was less homesick. He pressed for more. I answered with a few other things I cannot remember now. He pressed for more. As the sixth or seventh item I said I would like to lose weight. His face lit up, he pulled out some blank forms, said he was doing a study on female college students and diets and that I should fill out the paperwork and see him in a week. I asked what that had to do with writing essays and he responded that we would see. I never went back to him. Later, I sought advice from an academic counselor, explaining my patterns to her, and she recommended I drop out of college and try to earn a typing certificate “somewhere” so at least I could secure a job.

I recognize now that I described to both counselors, in accurate detail, Attention Deficit Hyperactivity Disorder but it would be about eight years before the medical community acknowledged that ADHD could present commonly in both females and adults. (I am now reticent to find credible most gender distinctions as “scientific.”) After a very painful series of

Seniors take a class designed for the first few terms of a four-year education. It does matter that institutionally the course has been misnamed in such a way that students in good standing must take an inaccurately titled course. This institutional nomenclature is one example of a diminishing shadow (both in terms of how professors see the students and how the students see themselves) that can be cast over a student’s image if that student does not finish a bachelor’s degree in a conventional way.

quarters, I failed out of college for the first time. Although I wanted to get a post-secondary education, I was left with apparently irrefutable evidence that I lacked the ability to do so. Favorite professors were disappointed in me or, worse, embarrassed for me. I loved education but I felt the sting when handing in late assignments or lagging comprehension was seen as a character flaw when, in fact, it was more accurately a work-flow and confidence problem. I was not distressed in a lasting way by the negative consequences of falling behind; I was very distressed in a lasting way by criticisms about me as a person that went along with those consequences.

It would be eight years before testing showed that I have ADHD. At that time, very little was known about adults managing their symptoms. I tried a few more times to finish college but fell short each time. After a while, I was tested again as I tried college again, and discovered that the specialty of identifying learning disabilities had advanced. New tests showed, in addition to ADHD, that I have learning issues that make certain cognitive activities, including reading (an essential activity for studies in English programs), very slow going. My experiences as a student in post-secondary programs were difficult; yet the moments when someone in authority leveraged their power as a response to my vulnerability have left the most lasting negative consequences. My experience, and the raciolinguistic work of the dissertation, points this discussion to the dynamics of power. And, again, although my experience is not the same as a minoritized student, I endeavor as an instructor to have insights into my own academic difficulties and successes and to stage²⁵ a learning environment which shifts the power in the raciolinguistic triad to be more equitable.

²⁵ I use the word “stage” to continue the theme of “Cyclorama” – both words are used in television and film production to indicate a specific space which is dedicated to the creation of a new artistic endeavor – a new world.

School is difficult, I think, for almost everyone.²⁶ I bring up these experiences because I know the burden of respected academics, thinking they are doing the right thing for the student, adding to the student's problems. For myself, as a teacher, my job is to understand what a student wants and encourage their strengths. When working with a student I need to defend against the idea that a student is weak – or lazy, or slow, or too emotional, or not engaged, etc. – simply because, whatever the appearance, those things may not be true and those evaluations do not further the efficacy of the student. And, if those characteristics *seem* to be present, they may be symptoms not characteristics – for example, to take a preschool experience, it is difficult to be enthusiastic about the alphabet when, at best, it appears to be letter soup. Too often this kind of moment led to me being derogated as an individual instead of coached as a student. I have never been an ideal student, but no one deserves labels that identify academic struggles as faulty elements of their character. And, while I can name some of my learning differences now, moving forward, and especially as a teacher, I am clear that there are myriad unidentifiable and/or unfindable learning differences in our world that might be part of my students or my skill set. Our job, as teachers, is to work with the goals and concerns of our students and help them find their own way toward those goals while managing their concerns. Our job is to understand differences as, perhaps, simply characteristics and, perhaps, strengths. Our job is not to claim weaknesses for our students.

My experience is not the experience of students who have labored in a racist culture. Yet, it is the experience I, from the position of the “white perceiving subject,” can bring to bear with students in a writing course who have grown up in a raciolinguistic environment. In looking at the raciolinguistic triad of race, language and power, the power in the writing and literacy

²⁶ I understand that anyone who reads this is likely to be an academic. If you question that school is a difficult experience, I encourage you to ask someone who did not choose academia as their life's work for their opinion.

classroom resides most significantly with the instructor.²⁷ This is true in terms of grading but also in terms of the tacit institutional gate-keeping inherent in most two- and four-year colleges through the requirement of passing composition to advance or graduate. Put another way, a student can be extraordinary in a particular field of study but cannot get a college degree without passing a composition course. This makes the actual stakes of passing composition a college degree. The power of the instructor is significant.

In reality, the goals of writing and literacy instruction are moderated by influences in the specialty and dictated by each institution; that is, the instructor's power is tacitly situated within the community's power. For the purposes of this Conclusion, I highlight considerations from the three case studies that can be addressed by the instructor when they create the staging for their class. An overarching theme in the first case study is the manipulation of arguments based on a lack of familiarity with an new group of people. This is evident in the entrenched assault on the Californian delegates during the Constitutional convention and the assumptions about Catholics in Mr. Crosby's report. In each example, the premises of the arguments which minimized the agency of Californians went mostly unchallenged; if there had been a dialogue regarding the premises of these arguments, perhaps some of the abuse of power could have been, at least, addressed. In the second case study, the fifteen years of comments from Governors and the Superintendents of Instruction, one idea regarding power suffuses the narratives. That is, classroom culture can respond to local culture and does not have to mimic the broader culture. In the third case study, which looks at legislative and judicial procedures where it was argued that certain groups of people were not as capable as the dominant culture, the power of the state is

²⁷ I opt to use the word "instructor" instead of "professor" as a nod to the significant population of writing and literacy educators that are referred to as such.

expressed as assuming the least possible personal agency. A teacher can create an environment which invites the highest level of agency.

At this point, I have comparatively few classroom-hours as an instructor. With that reality in my mind, my goals for my students are: to accept that their personal skillset is to be respected and allowed to inform their writing; to ease them into thinking of themselves as college writers; to practice engaging challenging college writing assignments with multiple analytical strategies until they have a sense of what to write; to embolden reaching out to others – other students, campus support, professors – as a practice instead of an emergency measure; to understand writerly panic as a phase and not A Sign.

Along with the conventional parameters associated with treating students with respect, I do not force students to reveal any personal aspect of their lives. If a writing prompt asks for personal information there is always an alternative prompt that does not. This is observed for three reasons. The first is that a student should not feel they have to choose between their right to privacy and the possibility of getting a good grade. The second is that I believe the exercise of choosing how much of oneself to divulge is good writerly practice. The third reason is also a strategy – if a student can trust that they will not be coerced to reveal what they are thinking then they are more likely to bring up their own concerns at a point that is productive for them.

How do you make the Instructor's power, which inheres to the structure of the university, more amicable and, therefore, create a more productive space for students to achieve those goals? This question conjures the metaphorical image of a cyclorama space; OED's second definition of cyclorama is "a large backcloth or wall, frequently curved, at the back of a stage, used esp. to represent the sky." In special effects work for contemporary media, a cyclorama is a neutral background (sometimes a green screen or a blue screen) onto which one can project their

own visual compositions; its edges are designed so the creator can opt to extend the image into infinity. The space, including the cyclorama, can have stage dressing which, in combination with the images on the cyclorama, can create the dimensional setting of any world that can be imagined. That is, a dedicated space in which you can create your own world. I understand that in Nicaragua there is a saying that translates to ‘each mind is a world.’ This idea is useful regarding the power of the Instructor and their relationship to the student. I hope each student will reveal something about their thinking – their world – through their work. To do so is abetted by a sense that the Instructor invites the student’s choices in their cycloramic narrative – a narrative that they author throughout, from edge to edge of their writing. But, what are the practical ways to introduce this into pedagogy?

Rhetoric and Composition literature in combination with personal experience point toward several possibilities. I will approach the question at three levels, all of which effects the culture of the classroom. First, a perspective on language and writing in general. Second, a classroom-level approach to vetting the classroom community’s ideas. And third, choices that impact communication between individual students and the instructor.

In those first days of the term when the Instructor sets expectations through the syllabus, class lectures, and activities, state clearly that we all communicate through an imbrication of ideas and images from many cultures. As Sara Alvarez describes, “college classroom spaces necessitate that instructors pay close attention to the relationships and power dynamics of language and writing between the global, the local and the in-between of students’ linguistic agency and ‘timespace’ (Vigouroux 2009)” (160). It may be a new concept to the students that they have “linguistic agency.” Situating that agency as part of the encompassing tradition that every member of the classroom can claim an historical stake in can give license to a writer to

write. Offering concrete examples, which incorporate school and local demographics, and also including cultures and traditions which don't represent a piece of the local pie, can be done in class by the instructor with words, pictures of local businesses or places of worship, or a descriptive narrative. Through this, the Instructor telegraphs inclusiveness. Part of the class discussion can be an invitation to expand the list. Alvarez cites Rachel C. Jackson as referring to "the locality of language in a global context, as she argues for a 'transrhetorical' turn in the writing classroom" (157). Whether students are surprised, unimpressed, or something in between by contextualizing language and writing in this way, it shows them that the class culture finds value their narrative.

One interesting approach to going beyond standard written English and motifs to recognize global languages is through multimodal work. (See Laura Gonzales, "Multimodality, Translingualism, and Rhetorical Genre Studies." *Composition Forum*, 31, Spring 2015.) The theme of recognizing the value of multiple traditions by embracing non-textual or peri-textual activities to support means for sorting out and expressing one's ideas can be compelling. I have had very positive responses from students regarding the following. When I am asking for free writing or brainstorming, I give students the option of completing the assignment in any language, or mix of languages, they choose. I explain that I do not expect polished work – I am looking for their ideas. If they submit a document that is not in English, I will put it through Google translate. If I have any problems with Google's translation I'll be sure to talk to the student. And, finally, and always in writing, I promise their grade will not be affected at all by the choice of language or languages they use. Most often this option is used by international students; generally, students who try it once continue the practice.

Establishing an inclusive culture within the classroom facilitating each student creating their own narrative in their own way is the second aspect I am detailing of the writing experience. The students need to enter into the classroom dynamics in the way and degree that they are comfortable. Stating early on that we (not me, not they) will support each other sets the expectation; modeling it creates the reality. This is not a new concept. Steven Alvarez wrote in *Composition Studies* about “Latinx and Latin American Community Literacy Practices *en Confianza*.” While talking about field work, Alvarez asserts that:

Confianza translates literally as “confidence,” but in practice *confianza* means reciprocating a relationship where individuals feel cared for (Bartlett and García). The sense of *confianza* is a feeling that translates between Latinxs and Latin Americans, as it means the same in Spanish across regions. *Confianza* is a humanizing process centered on local communities, which involves exchanging mutual respect, critical reflection, caring and group participation. (220)

Importantly, he adds: “*Confianza* also requires literacy researchers and teachers to be participants in public communication practices and to learn from student writers” (221). That is, while the Instructor still carries the power of their position, the reality created in the classroom is one where every person participates in a common relationship – a community that includes many accepted modes of communication.

This culture can be established and maintained through the daily choices of the Instructor. I have had success in my classes through structuring group work with inclusive guidelines. I remind them I don’t grade on a curve even though the work that comes out of groups is almost never graded; if I think a grade is essential, I arrange for group work with individual assignments. When groups are developing analyses, I ask for two answers, each with supporting

arguments – three if they have them. I point out that this means that there is no one, correct answer. I argue that logic is a great tool for finding answers but so is emotion – they both can yield insights (which need to be supported by arguments.) And, when members of the group are making a presentation, no one will be stranded – the other members of the group and also the class will help speakers out. With patience, luck, and the willingness of students, it is possible for students to adopt inclusive behavior. Ultimately, as Juan C. Guerra advises, “educators [should] invite students to consider how an understanding of cultural diversity in particular enhances their ability to write” (298). *Confianza* can be contagious.

But, in my experience, the student’s direct interaction with the Instructor can have significant and alienating effects. The third aspect of writing class addressed in this conclusion is communication with individual students. The facet I am focusing on is something that I could not have identified as a student; it is my experience on both sides of the podium that draws my attention to this. It is an abuse of power to assume the motive behind any aspect of a student’s discourse. *Black’s Law Dictionary* defines motive, in part, in the following way: “That feeling which internally urges or pushes a person to do or refrain from doing an act is an emotion, and is of course evidential towards his doing or not doing the act. [But when] that evidential fact comes in turn to be evidenced...” (1034). That is, motive is a feeling that is separate from behavior; once an event takes place, someone’s feeling can be used to impugn or exonerate them from being culpable for the act.

In real life, we often reverse the process. We see a behavior and, perhaps colored by our own life’s experiences, conjure a motive that we believe explains that behavior without considering that there might be motives beyond our framing of the incident. For example, I was present when one academic decided that, because a student did not want to be away from her

mother's home for extended periods of time, that the student was too immature to be included in an advanced program, even though there was no question that the student could fulfill the requirements of the program; I saw one professor, when sorting out her response to a student's situation, say derisively: "two words, organize childcare"; one instructor, speaking about international students, declared, although he was teaching a writing class, public speaking is a good thing to know and the extra work should not be problem. Each of these instances had academics deciding that negative motives were behind a student's behavior. Each of these instances involved students of color.

Not assuming a motive is an extension of acknowledging that language and writing has been shaped globally (beyond our limited world view) and we can function in a way consistent with *confianza*. When I decided to teach rhetoric and composition, I looked for teaching models that I believed were especially positive regarding language skills and that had been around a while. While there are a few traditions that satisfy those parameters, I decided to research the pedagogical practices of educators that had a four-hundred year track record, the Jesuits.²⁸ It is part of the foundation of Jesuit training to take and, later, administer a series of meditations referred to as *The Spiritual Exercises*. A passage, referred to as The Presupposition, presents a four step process for working with someone else as they make their way through the course of meditations. I have found the sequence useful as a protocol for working with students. The first point is that I "ought to be more eager to put a good interpretation on a neighbor's statement than to condemn it." The second advises that "if one cannot interpret it favorably, one should ask how the other means it." The third point is "if that meaning is wrong, one should correct the person

²⁸ The formal name for Jesuits is The Society of Jesus. They are priests in the Roman Catholic Church and the order has been teaching since the late 1500's. Their curriculum, the *Ratio Studiorum*, was codified in 1599 and stayed constant until the mid- to late-1900's.

with love.” And, the fourth recommends that “one should search out every appropriate means through which, by understanding the statement in a good way, it may be saved” (Ignatius 436).

(Obviously, this approach is implemented in a style appropriate to today’s academic culture.)

The implicit meaning of this structure relies on the student being seen as an individual; it creates a supportive and dialogic use of power; it allows for both parties to have different understandings. And, it does not allow for the Instructor to project what the students motives might be.²⁹ It is possible that a student may not want to engage in this kind of dialogue and it cannot realistically be forced. But, as I quoted earlier in the dissertation:

[T]he organization of social life is shaped by reflexive models of social life, ...
These moments of being made, grasped, and communicated are the central moments through which reflexive models of language and culture have a social life at all. And persons who live by these models (or change them) do so only by participating in these moments. (Agha *Language 2*)

By creating an environment where sincere inquiry is the norm a student has the opportunity to share their mind and their world – to develop their own cycloramic narrative in their own cyclorama space.

²⁹ Please note that this is not akin to the Socratic method. It does not assume that the student is completely lost and that the interlocutor has the one and only correct answer.

Appendix

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT,

BETWEEN THE UNITED STATES OF AMERICA AND THE MEXICAN REPUBLIC.

DATED AT GUADALUPE HIDALGO, 2d February, 1848.
EXCHANGED AT QUERETARO, 30th May, 1848.

RATIFIED BY THE PRESIDENT U. S., 16th March, 1848.
PROCLAIMED BY THE PRESIDENT U. S., 4th July, 1848.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall 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 of their liberty and property, and secured in the free exercise of their religion without restriction.

Illustration 4: Source: *Statutes of California* 1850, p 14.

Speech given by delegate Pablo Noriega De la Guerra (San Luis Obispo and Santa Barbara) at the Constitution of California Convention, 1849, p 305:

Mr. NORIEGO addressed the Convention through the interpreter. The Convention was now treating upon a point of very great importance to himself and to California—a question as interesting as it was important ; and he should be doing a very great injustice to his constituents, did he not speak upon the subject. By the proposed amendment, all Indians were excluded, while at the same time it allowed all foreigners who might choose to come to California and reside for a few years, to become citizens. You allow the Kanaka to come within your territory and admit them to citizenship, when he is as ignorant and as foolish as any Indian in California. And yet you exclude the native Indians from enjoying equal privileges with him. It had been asserted by some members that Indians are brutal and irrational. Let those gentlemen cast their eyes back for three hundred years and say who were the Indians then. They were a proud and gifted race, capable of forming a government for themselves. If they were not so much enlightened as now, it was not for want of natural gifts, but because the lights of science were not then so bright as now, even in Europe ; and they could fall but dimly upon the natives of the soil. And he would say to those gentlemen who had sneered at the Indian race, that there might still be Indians in the Territory of California who were equally as rational and gifted as highly by nature as those who had depreciated them. He would not carry their recollections back three centuries, but bid them look back but for half a century. All the work that was seen in California, was the work of Indians led by some foreigners. If they were not cultivated and highly civilized, it was because they had been ground down and made slaves of. They were intelligent and capable of receiving instructions, and it was the duty of the citizens to endeavor to elevate them and better their condition in every way, instead of seeking to sink them still lower. He regretted that he could not give full expression to his feelings through the services of an interpreter, but hoped he had made himself understood. If it was the will of the Convention to exclude the body of Indians, he hoped exceptions might be made, and that those who were the holders of property and had heretofore exercised all the rights and privileges of freemen, might still be permitted to continue in the exercise of those rights.

Illustration 5: Source: Browne, John Ross. *Report of the Debates in the Convention of California, on the Formation of the State Constitution, in September and October, 1849.*

Works Cited

- A Territorial History of the United States*. <https://www.the-map-as-history.com/timeline/Usa/#>, Accessed 10 Jan. 2020.
- Acuña, Rodolfo F. *Occupied America: A History of Chicanos*. 8th Ed. Pearson, 2015.
- Agha, Asif. *Language and Social Relations*. Cambridge University Press, 2007.
- Agha, Asif and Frog, editors. *Registers of Communication*. Finnish Literature Society, SKS, 2015.
- Alim, H. Samy and Angela Reyes. "Complicating Race: Articulating Race Across Multiple Social Dimensions." *Discourse & Society*, vol.22, no. 4, Sage Publications, July 2011, pp. 379-384.
- Alim, H. Samy, John R. Rickford, and Arnetta F. Ball, editors. *Raciolinguistics: How Language Shapes Our Ideas About Race*. Oxford University Press, 2017.
- Almaguer, Tomás. *Racial Fault Lines: The Historical Origins of White Supremacy in California: with a New Preface*. Berkeley, Calif: University of California Press, 2009.
- Alvarez, Sara P. "Composition Rhetoric Translingual Turn: Multilingual Approaches to Writing." *International Journal of the Sociology of Language*, August 2016, pp 155-161.
- Alvarez, Steven. "Latinx and Latin American Community Literacy Practices *en Confianza*." *Composition Studies*, 45.2, 2017, pp 219-221.
- Anzaldúa, Gloria. *Borderlands/La Frontera*. 4th ed., San Francisco, CA: Aunt Lute Books, 2012.
- Aparicio, Frances R. "Of Spanish Dispossessed." *Language Ideologies*. Edited by Roseann Duenas and Ildikó Melis, National Council of Teachers of English and Lawrence Erlbaum Associates, Inc., 2000, pp. 227-275.
- Barillas-Chón, David. W. "Oaxaqueño/a Students' (Un)welcoming High School Experiences."

- Journal of Latinos and Education*, vol. 9, no. 4, Routledge Taylor & Francis Group, Sept. 2010, pp. 303–320.
- Barrett, Rusty. “Language Ideology and Racial Inequality: Competing Functions of Spanish in an Anglo-owned Mexican Restaurant.” *Linguistic Faculty Publications*, vol. 10, Linguistics at UKnowledge, 2006, pp. 163-204.
- Black, Henry Campbell, 1860-1927, and Bryan A Garner. *Black's Law Dictionary*. 7th ed., St. Paul, Minn., West Group, 1999.
- Benavides, José Luis. “Californios! Whom Do You Support?” ‘El Clamor Público’s’ Contradictory Role in the Racial Formation Process in Early California.” *California History*. vol. 84, no. 2, University of California Press, Winter 2006/2007.
- Bonfiglio, Thomas Paul. *Mother Tongues and Nations: The Invention of the Native Speaker*. De Gruyter Mouton, 2010.
- Bonilla-Silva, Eduardo. “The Invisible Weight of Whiteness.” *Michigan Sociological Review*, Fall, vol. 26, Michigan Sociological Review, 2012, pp. 1-15.
- Browne, John Ross. *Report of the Debates in the Convention of California, on the Formation of the State Constitution, in September and October, 1849*. John T. Towers. 1850.
- Buriel, Raymond, William Perez, Terri L. DeMent, David V. Chavez, and Virginia R. Moran. “The Relationship of Language Brokering to Academic Performance, Biculturalism, and Self-efficacy Among Latino Adolescents.” *Hispanic Journal of Behavioral Sciences*, vol. 20, no. 3, Sage Publications, Inc., Aug. 1998, pp. 283-96.
- Bucholtz, Mary. “From Mulatta to Mestiza: Passing and the Linguistic Reshaping of Ethnic Identity.” *Gender Articulated: Language and the Socially Constructed Self*, Edited by Kira Hall, and Mary Bucholtz, Routledge Taylor & Francis Group, 1995, pp. 351-373.

Bucholtz, Mary. "From Stance to style: Gender, Interaction, and Indexicality in Mexican Immigrant Youth Slang." *In Stance: Sociolinguistic Perspectives*, edited by Alexandra Jaffe, Oxford University Press, 2009, pp. 146–70.

Bucholtz, Mary. "Sociolinguistic Nostalgia and the Authentication of Identity." *Journal of Sociolinguistics*, vol. 7, iss. 3, Blackwell Publishing Ltd., Sept. 2003, pp. 398-416.

California Secretary of State. "Record of Members of United States Senate from California 1850–2019." 4 Feb 2019, <https://secretary.senate.ca.gov/sites/secretary.senate.ca.gov/files/United%20States%20Senate%201850%202019%202.pdf>

California Star, "Old Europe and Young America," vol. 2, no. 11, 18 March 1848, p 1.

Californian, vol. 2, no. 26, 10 November 1847, p 1.

Chávez-García, Miroslava. *Negotiating Conquest: Gender and Power in California, 1770s to 1880s*. University of Arizona Press, 2004.

"Congressional." *Sacramento Transcript*, 8 Feb. 1851, p. 2.

Constitution: 1849. Secretary of State, <https://archives.cdn.sos.ca.gov/pdf/1849-california-constitution-for-website-9-16-18.pdf>.

Constitution: 1879. https://en.wikisource.org/wiki/California_State_Constitution_of_1879. Accessed 20 Sept. 2014.

"cyclorama, n." *OED Online*. Oxford University Press, March 2021. Web. 01 April 2021.

Daily Alta California, "Mr. Gilbert's Correspondence," vol. 1, no. 111, 8 May 1850, p 2.

Daily Alta California, vol. 3, no. 156, 5 June 1852, p 2.

Daily Alta California, vol. 4, no. 22, 3 January 1853, p 1.

Daily Alta California, vol. 4, no. 205, 5 August 1853, p 1.

- Davis, William Heath. *Sixty Years in California*. Press and Bindery of A.J. Leary. 1889. Kindle.
- “digger n.” *Oxford English Dictionary*. Oxford, England: Oxford University Press, 2002.
- Estudillo, Jesús María. *Journals*. The Bancroft Library. University of California, Berkeley. Berkeley, California. Accessed 21 Aug 2014.
- Flores, Nelson L. “Translanguaging Into Raciolinguistic Ideologies: A Personal Reflection on the Legacy of Ofelia García.” *Journal of Multilingual Education Research*, vol. 9, no. 5, Fordham Press, 2019, pp. 45-60.
- Flores, Nelson and Jonathan Rosa. “Bringing Race Into Second Language Acquisition.” *The Modern Language Journal*, vol. 103 (supplement), National Federation of Modern Language Teachers Association, 2019, pp. 145-151.
- Flores, Nelson and Jonathan Rosa. “Undoing Appropriateness: Raciolinguistic Ideologies and Language Diversity in Education.” *Harvard Educational Review*, vol. 85, no. 2, Harvard Educational Publishing Group, 2015, pp. 149–171.
- Flores, Nelson, Amelia Tseng, and Nicholas Subtirelu. *Bilingualism for All? Raciolinguistic Perspectives on Dual Language Education in the United States*. Bristol, Blue Ridge Summit: Multilingual Matters, 2021.
- García, Ofelia. *Bilingual Education in the 21st Century: A Global Perspective*. Wiley-Blackwell, Wiley ebook, 2009.
- González, Gilbert. *Culture of Empire: American Writers, Mexico, and Mexican Immigrants, 1880–1930*. University of Texas Press, 2004, Kindle.
- González, Norma. *I Am My Language: Discourses of Women and Children in the Borderlands*. University of Arizona Press, 2005.
- Greeley, Horace, and Charles T. Duncan. *An Overland Journey from New York to San Francisco*

- in the Summer of 1859.* (1860). Alfred A. Knopf, 1964.
- Gutiérrez, Ramón A. “Foreword.” *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890*, Berkeley: University of California Press, 1998, pp. vii-xii.
- Gwin, William McKendree. *Letter to His Mother*. 16 May 1865. Microfilm F858.C21 v. 30. “Message of the President of the United States,” The Bancroft Library. University of California, Berkeley, Berkeley, California, Accessed 21 Feb 2019.
- Gwin, William McKendree. *Speeches of Mr. Gwin, of California, in the Senate of the United States, on Private Land Titles, in The State of California*. Washington: Gideon & Co., Printers, 1851.
- Head, John W. *Great Legal Traditions: Civil Law, Common Law, and Chinese Law in Historical and Operational Perspective*. Carolina Academic Press. 2011.
- Hill, Jane H. *The Everyday Language of White Racism*. John Wiley & Sons, Ltd., 2008. Kindle.
- Hill, Jane H. “Hasta La Vista, Baby: Anglo Spanish in the American Southwest.” *Critique of Anthropology*, vol. 13(2), Sage Publications, Inc, 1993, pp. 145–176.
- Hill, Jane H. “Intertextuality as Source and Evidence for Indirect Indexical Meanings.” *Journal of Linguistic Anthropology*, vol. 15, no. 1, Wiley on behalf of American Anthropological Association, June, 2005, pp. 113–24.
- Ignatius, and George E. Ganss. *Ignatius of Loyola: the Spiritual Exercises and Selected Works*, Edited by George E. Ganss, with Parmananda R. Divarkar, Edward J. Malatesta, and Martin E. Palmer, Preface by John W. Padberg, Paulist Press, 1991.
- “In the District of the Twelfth Judicial District of the State of California, in and for the City and

- County of San Francisco.” The Bancroft Library, F863 .6 E7 v.1, University of California, Berkeley, Berkeley, California, Accessed 21 Feb 2019.
- Inoue, Miyako. *Vicarious Language: Gender and Linguistic Modernity in Japan*. Berkeley: University of California Press, 2006.
- Inoue, Miyako. “What Does Language Remember? Indexical Inversion and the Naturalized History of Japanese Women.” *Journal of Linguistic Anthropology*, vol. 14, no. 1, University of California Press, 2004, pp. 39–56.
- Jaspers, Jürgen. “Linguistic Sabotage in a Context of Monolingualism and Standardization.” *Language & Communication*, vol. 25, Elsevier B.V. Ltd., 2005, pp. 279–927.
- Johnstone, Barbara, Jennifer Andrus, and Andrew E. Danielson. “Mobility, Indexicality, and the Enregisterment of ‘Pittsburghese.’” *Journal of English Linguistics*, vol. 34, no. 2, Sage Publications, 2006, pp. 77–104.
- Jones, Herbert C. *The First Legislature of California*. Senate of the State of California, December 10, 1949.
- Journals of the Legislature of the State of California, Fifth Session*. Witkin State Law Library, California State Library, L500.J7, Sacramento: B.B. Redding, state printers, 1854.
- Journal of the Fourth Session of the Legislature of the State of California, Begun on the Third Day of January, 1853, and Ended on the Nineteenth Day of May, 1853, at the Cities of Vallejo and Benecia*. Published by Authority. San Francisco: George Kerr, State Printer. 1853.
- Journals of the Legislature of the State of California, First Session*. Witkin State Law Library, California State Library, L500.J7, San Jose, Calif: J. Winchester, State Printer, 1850.
- Journals of the Legislature of the State of California, Fourth Session*. Witkin State Law Library,

California State Library, L500, San Francisco: George Kerr, state printers, 1853.

Journals of the Legislature of the State of California, Second Session. Witkin State Law Library, California State Library, L500.J7, San Jose, Calif: Eugene Casserly, State Printer, 1851.

Journals of the Legislature of the State of California, Sixth Session. Witkin State Law Library, California State Library, L500.J7, B.B. Redding, state printers, 1855.

Journals of the Legislature of the State of California, Third Session. Witkin State Law Library, California State Library, L500.J7, San Francisco, Calif: G.K. Fitch & Co., and V.E. Geiger & Co., state printers, 1852.

Journal of the Proceedings of the Eighth Session of the Senate of the State of California. Witkin State Law Library, California State Library, L500.J7, Sacramento: James Allen, State Printer, 1857.

Journal of the Proceedings of the Eleventh Session of the Senate of the State of California. Witkin State Law Library, California State Library, L500.J7, Sacramento: C.T. Botts, State Printer, 1860.

Journal of the Proceedings of the Fifteenth Session of the Senate of the State of California. Witkin State Law Library, California State Library, L500.J7, Sacramento: O.M. Clayes, State Printer, 1864.

Journal of the Proceedings of the Fourteenth Session of the Senate of the State of California. Witkin State Law Library, California State Library, L500.J7, Sacramento: Benj. P. Avery, State Printer, 1863.

Journal of the Proceedings of the Ninth Session of the Senate of the State of California. Witkin State Law Library, California State Library, L500.J7, Sacramento: John O'Meara, State Printer, 1858.

Journal of the Proceedings of the Seventeenth Session of the Senate of the State of California.

Witkin State Law Library, California State Library, L500.J7, Sacramento: D.W.

Gelwicks, State Printer, 1868.

Journal of the Proceedings of the Seventh Session of the Senate of the State of California. Witkin

State Law Library, California State Library, L500.J7, Sacramento: James Allen, State

Printer, 1856.

Journal of the Proceedings of the Sixteenth Session of the Senate of the State of California.

Witkin State Law Library, California State Library, L500.J7, Sacramento: O.M. Clayes,

State Printer, 1866.

Journal of the Proceedings of the Tenth Session of the Senate of the State of California. Witkin

State Law Library, California State Library, L500.J7, Sacramento: John O'Meara, State

Printer, 1859.

Journal of the Proceedings of the Thirteenth Session of the Senate of the State of California.

Witkin State Law Library, California State Library, L500.J7, Sacramento: Benj. P.

Avery, State Printer, 1862.

Journal of the Proceedings of the Twelfth Session of the Senate of the State of California.

Witkin State Law Library, California State Library, L500.J7, Sacramento: C.T. Botts,

State Printer, 1861.

Kearney, Michael. "Transnational Oaxacan Indigenous Identity: The Case of Mixtecs and

Zapotecs." *Identities Global Studies in Culture and Power*, vol. 7, no. 2, Routledge

Taylor & Francis Group, 2000, pp. 173-195.

León, David J., and Dan McNeill. "A Precursor to Affirmative Action: Californios and Mexicans

in the University of California, 1870-72." *Perspectives in Mexican American Studies*,

- vol. 3, 1992, pp. 179-206.
- “Leroy Transcript on Appeal.” *In the Supreme Court of the State of California, Transcript on Appeal*. The Bancroft Library, F 863 .6 L26 v.1, University of California, Berkeley, Berkeley, California, Accessed 21 Feb 2019.
- “Letter on California.” *Sacramento Transcript*, vol. 1, no. 101, 28 August 1850, p 1.
- Machado-Casas, Margarita. “The Politics of Organic Phylogeny: The Art of Parenting and Surviving as Transnational Multilingual Latino Indigenous Immigrants in the U.S.” *High School Journal*, vol. 92, no. 4, University of North Carolina Press, 2009, pp. 82–99.
- Martinez, Aja Y. “‘The American Way’: Resisting the Empire of Force and Colorblind Racism.” *College English*, vol. 71, no. 6, 2009, pp. 584-595.
- Martínez, Glenn A. *Mexican Americans and Language*. University of Arizona Press, 2006.
- Martínez, Ramón Antonio. “‘Spanglish’ as Literacy Tool: Toward an Understanding of the Potential Role of Spanish-English Code-Switching in the Development of Academic Literacy.” *Research in the Teaching of English*, vol. 45, no. 2, National Council of Teachers of English, Nov. 2010, pp. 124-149.
- Mason Carris, Lauren. “La Voz Gringa: Latino Stylization of Linguistic (In)authenticity as Social Critique.” *Discourse & Society*, vol.22, no. 4, Sage Publications, July 2011, pp. 474–90
- Mejía, Jaime. “Tejano Arts of the U.S.-Mexico Contact Zone.” *JAC*, vol. 18, no. 1, JAC, 1998, pp. 123–135.
- Menchaca, Martha. *Recovering History, Constructing Race: The Indian, Black, and White Roots of Mexican Americans*. University of Texas Press, 2001.
- Mendoza-Denton, Norma. *Homegirls: Language and Cultural Practice Among Latina Youth*

- Gangs*. Blackwell Publishing, 2008.
- Mendoza-Denton, Norma. "The Semiotic Hitchhiker's Guide to Creaky Voice: Circulation and Gendered Hardcore in a Chicana/o Gang Persona." *Journal of Linguistic Anthropology*, vol. 21, no. 2, Wiley on behalf of American Anthropological Association, 2011, pp. 261–80.
- Molina, Natalia. *How Race Is Made in America*. University of California Press. 2014.
- Noel, Baptiste, Hon. And Rev. *Catholic and Protestant Nations Compared*. Sheldon, Lamport and Company, 1855.
- "pachuco, adj. and n." OED Online, Oxford University Press, March 2021, www.oed.com/view/Entry/135793. Accessed 9 Feb. 2021.
- Pitt, Leonard. *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890*. Berkeley: University of California Press, 1998.
- Polk, James K. "Fourth Annual Message." Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <https://www.presidency.ucsb.edu/node/200618>. Accessed 2 September 2019.
- "Provisional Government." *Weekly Alta California*, vol. I, no. 12, 22 March 1849, p1.
- "Report of the Superintendent of Schools." *Journals of the Legislature of the State of California, Fifth Session*. Witkin State Law Library, California State Library, L500, B.B. Redding, state printers, 1854.
- "Report of the Superintendent of Schools." *Journals of the Legislature of the State of California, First Session*. Witkin State Law Library, California State Library, L500.J7, San Jose, Calif: J. Winchester, State Printer, 1850.
- "Report of the Superintendent of Schools." *Journals of the Legislature of the State of California*,

- Fourth Session.* Witkin State Law Library, California State Library, L500, George Kerr, state printers, 1853.
- “Report of the Superintendent of Schools.” *Journals of the Legislature of the State of California, Second Session.* Witkin State Law Library, California State Library, L500.J7, San Jose, Calif: Eugene Casserly, State Printer, 1851.
- “Report of the Superintendent of Schools.” *Journals of the Legislature of the State of California, Sixth Session.* Witkin State Law Library, California State Library, L500, B.B. Redding, state printers, 1855.
- “Report of the Superintendent of Schools.” *Journals of the Legislature of the State of California, Third Session.* Witkin State Law Library, California State Library, L500, San Francisco, Calif: G.K. Fitch & Co., and V.E. Geiger & Co., state printers, 1852.
- “Report of the Superintendent of Schools.” *Journal of the Proceedings of the Eighth Session of the Assembly of the State of California.* Witkin State Law Library, California State Library, L500.J7, Sacramento: James Allen, State Printer, 1857.
- “Report of the Superintendent of Schools.” *Journal of the Proceedings of the Eleventh Session of the Assembly of the State of California.* Witkin State Law Library, California State Library, L500.J7, Sacramento: C.T. Botts, State Printer, 1860.
- “Report of the Superintendent of Schools.” *Journal of the Proceedings of the Fifteenth Session of the Assembly of the State of California.* Witkin State Law Library, California State Library, L500.J7, Sacramento: O.M. Claves, State Printer, 1864.
- “Report of the Superintendent of Schools.” *Journal of the Proceedings of the Fourteenth Session of the Assembly of the State of California.* Witkin State Law Library, California State Library, L500.J7, Sacramento: Benj. P. Avery, State Printer, 1863.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Ninth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: John O’Meara, State Printer, 1858.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Seventeenth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: D.W. Gelwicks, State Printer, 1868.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Seventh Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: James Allen, State Printer, 1856.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Sixteenth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: O.M. Claves, State Printer, 1866.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Tenth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: John O’Meara, State Printer, 1859.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Thirteenth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: Benj. P. Avery, State Printer, 1862.

“Report of the Superintendent of Schools.” *Journal of the Proceedings of the Twelfth Session of the Assembly of the State of California*. Witkin State Law Library, California State Library, L500.J7, Sacramento: C.T. Botts, State Printer, 1861.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. 4, San Francisco: Bancroft-Whitney, 1906.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. 13, San Francisco: Bancroft-Whitney, 1906.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. 40, San Francisco: Bancroft-Whitney, 1906.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. I, San Francisco: Bancroft-Whitney, 1906.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. II, Philadelphia: T. & J.W. Johnson, 1854.

Reports of Cases Determined in the Supreme Court of the State of California. Witkin State Law Library, California State Library, Vol. III, Philadelphia: T. & J.W. Johnson, 1855.

Rolle, Andrew and Arthur C. Verge. *California, A History.* 8th Ed, John Wiley & Sons, Inc., 2015.

Rosa, Jonathan. "Language as a Sign of Immigration?" *American Anthropologist*, vol. 116, no. 1, American Anthropological Association, 2014, pp. 11-14.

Rosa, Jonathan. "Learning Ethnolinguistic Borders: Language and Diaspora in the Socialization of U.S. Latinas/os." *Diaspora Studies in Education: Towards a Framework for Understanding the Experiences of Transnational Communities*, edited by Rosalie Rolón-Dow and Jason G. Irizarry, Peter Lang, 2014, pp. 39–60.

Rosa, Jonathan. *Looking Like a Language, Sounding Like a Race: Raciolinguistic Ideologies and the Learning of Latinidad.* Oxford University Press, 2019.

Sacramento Daily Union, "Supreme Court Decisions." vol. 28, no. 4239, 21 October 1864, p 6.

Sacramento Transcript, "Review of Affairs in the States," vol. 1, no. 18, 11 May 1850, p 2.

Sacramento Transcript, "The Present Junction in Californian Affairs," vol. 1, no. 118, 17

- September 1850, p 2.
- Sacramento Transcript*, vol. 2, no. 90, 8 February 1851, p 2.
- Sacramento Transcript*, vol. 2, no. 126, 22 March 1851, p 2.
- Sánchez, George J. *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945*. New York: Oxford University Press, 1993,
<https://hdl.handle.net/2027/heb.01788>. Accessed 6 Feb 2021.
- Sánchez, Patricia. “Cultural Authenticity and Transnational Latina Youth: Constructing a Metanarrative Across Borders.” *Linguistics and Education*, vol. 18. nos. 3–4, Elsevier Inc., 2007, pp. 258–82.
- Saperstein, Aliya and Andrew M. Penner. “Racial Fluidity and Inequality in the United States.” *American Journal of Sociology*, vol. 118, no. 3, University of Chicago Press, 2012, pp. 676–727.
- Schmiegelow, Michèle and Henrik Schmiegelow, Eds. *Institutional Competition Between Common Law and Civil Law*. Springer Science+Business Media, 2014.
- Shea, John Gilmary. *History of the Catholic Missions Among the Indian Tribes of the United States: 1529-1854*. Edward Dunigan and Brother. 1855.
- Silverstein, Michael. “Indexical Order and the Dialectics of Sociolinguistic Life.” *Language and Communication*, vol. 23, nos. 3–4, Elsevier B.V. Ltd., 2003, pp. 193–229.
- Silverstein, Michael. “The Whens and Wheres—As Well As Hows—of Ethnolinguistic Recognition.” *Public Culture*, vol. 15, no. 3, Duke University Press, 2003, pp. 531-557.
- Statutes of California Passed at the First Session of the Legislature*. Witkin State Law Library, California State Library, RBRC, San Jose: J. Winchester, 1850.
- Swett, John. *History of the Public School System of California*. San Francisco: A. L. Bancroft

- and Company, 1876.
- Torres-Rouff, David S. *Before L.A.: Race, Space, and Municipal Power in Los Angeles, 1781-1894*. Yale University Press, 2013.
- Vargas, Zaragosa. *Crucible of Struggle: A History of Mexican Americans from Colonial Times to the Present Era*. Oxford University Press, 2017.
- Velasco, Patricia. "Indigenous Students in Bilingual Spanish-English Classrooms in New York: A Teacher's Mediation Strategies." *International Journal of the Sociology of Language*, vol. 206, Walter de Gruyter, 2010, pp. 255–71.
- Villanueva, Victor, Jr. *Bootstraps: From an American Academic of Color*. Urbana: National Council of Teachers of English, 1993.
- Villanueva, Victor. "On the Rhetoric and Precedents of Racism." *College Composition and Communication*, vol. 50. no. 4, June, 1999, National Council of Teachers of English, pp. 645–661.
- Weekly Alta California*, 8 March 1849, p1.
- Weekly Alta California*, vol. I, no, 33, 16 August 1849, p 2.
- Weekly Pacific News*, 1 July 1850, p2.
- Wikipedia Commons. "United States Public Domain Map" (adapted by author).
<https://commons.wikimedia.org/wiki/>. Accessed 10 January 2021.
- Wilson, E D, and Brian S. Ebbert. *California's Legislature*. Sacramento: California Legislature, Assembly, 2006.
- Zentella, Ana Celia. "'José, Can You See?' Latin@ Responses to Racist Discourse." *Bilingual Aesthetics*, edited by Doris Sommer, Duke University Press, 2003, pp. 51-66.
- Zentella, Ana Celia. "Spanglish." *Keywords for Latina/o Studies*, edited by Deborah R. Vargas,

Nancy Raquel Mirabal and Lawrence La Fountain-Stokes, NYU Press. 2017, pp. 209-212.