

Gold, Souls, and Wandering Clerics:¹ California Missions, Native Californians, and LatCrit Theory

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We came here for the single purpose of doing them good and for their eternal salvation, and I feel that everyone knows we love them.²

“You can take your Christianity I don’t want it.”

— Cosumne Tribe member Lorenzo Asisara to a Franciscan friar.³

INTRODUCTION

In line with past LatCrit objectives regarding the relationship between our Latina/o communities and religion,⁴ this Essay considers

¹ “Gold, then, and souls, were the objective of the vanguard of conquerors. Gold for the chests of their majesties, and for their private pockets; souls of the flock of His Holy See and the Mother Church.” ERNESTO GALARZA, *THE ROMAN CATHOLIC CHURCH AS A FACTOR IN THE POLITICAL AND SOCIAL HISTORY OF MEXICO* 17 (1928). Not unlike the conquest of Mexico *antigua*, Hispanic conquerors sought dominion and control of the California region for its natural resources, labor, access to the souls of the Indigenous population and its territorial land base. For case law reference involving the search for gold and silver and a contested mine encompassing all three periods of the conquest of the region see *United States v. Castillero*, 67 U.S.(2 Black) 17 (1862).

* Professor of Law, Northern Illinois University, College of Law. Caution: I am not a theologian, a scholar of religious studies, or a practicing Catholic, and, thus, am not here with an evangelical cap but rather with my scholastic cap. The intent of this Article, moreover, is not to advocate religion one way or another. With much appreciation I thank David Cruz and the LatCrit IV committee for organizing this panel and Berta Hernández-Truyol and Elvia Arriola for their support and encouragement.

² JERRY STANLEY, *DIGGER, THE TRAGIC FATE OF THE CALIFORNIA INDIANS FROM THE MISSIONS TO THE GOLD RUSH* 42 (1997) (quoting Father Serra).

³ Mission neophyte Lorenzo Asisara’s response to the use of a *cuarta de hierros* (a horse whip tipped with iron) used by the friars to “control” recalcitrant neophytes. See Steven W. Hackel, *Land, Labor, and Production: The Colonial Economy of Spanish and Mexican California, in CONTESTED EDEN, CALIFORNIA BEFORE THE GOLD RUSH* (Ramón Gutiérrez & Richard J. Orsi eds., 1998) [hereinafter *CONTESTED EDEN*].

⁴ See, e.g., Elizabeth Iglesias & Francisco Valdes, *Religion, Gender, Sexuality, Race & Class in Coalitional Theory: A Critical and Self-Critical Analysis of LatCrit Social Justice Agendas*, 19

the role of California missions⁵ as sacred architectures of conquest and colonization.⁶ An additional objective is the consideration of whether Native responses specific to the transformation of their religious and social structures can emerge. Whether this history permits lessons toward promoting the sustainability of the LatCrit enterprise comprises the last goal of this Essay.⁷

Although much is written on Spanish missions, the particularities of Native Californians' responses to the conquest remain primarily obscured.⁸ In contrast, Catholicism and its theoretical foundation,

CHICANO-LATINO L. REV. 503 (1998); Reynaldo Anaya Valencia, *On Being an "Out" Catholic: Contextualizing the Role of Religion at LatCrit II*, 19 CHICANO-LATINO L. REV. 449 (1998).

⁵ "Mission settlements" were ecclesiastical foundations in California established by "monks or padres of Franciscan Order." *City of San Diego v. Cuyamaca Water Co.*, 209 Cal. 105, 125, 287 P. 475, 485 (1930). While the emphasis here is California missions, the Spaniards also established missions throughout the Americas. There is case law regarding missions in Texas. *See, e.g.*, *Taylor v. Hoya*, 29 S.W. 540, 540 (Tex. Civ. App. 1895) (referencing 1716 mission in Nacogdoches and discussing its use as presidio during dispute between Spain and France, and, after Louisiana purchase). *See generally* RANDY LEE EICKHOFF, *EXILED, THE TIGUA INDIANS OF YSLETA DEL SUR* (1996); THE REV. XAVIER DONALD MACLEOD, *HISTORY OF ROMAN CATHOLICISM IN NORTH AMERICA 147-48* (1866); TIMOTHY M. MATOVINA, *TEJANO RELIGION AND ETHNICITY, SAN ANTONIO, 1821-1860* (1995).

⁶ The first expeditions in the region took place in 1542. *See* W.H. HUTCHINSON, *CALIFORNIA, TWO CENTURIES OF MAN, LAND, AND GROWTH IN THE GOLDEN STATE* (1969). There are many accounts of California's early history. *See, e.g.*, E.S. CAPRON, *HISTORY OF CALIFORNIA FROM ITS DISCOVERY TO THE PRESENT TIME* (1854); JAMES J. RAWLS, *INDIANS OF CALIFORNIA, THE CHANGING IMAGE* 25 (1984). There are also instances of case law discussing California history:

Prior to May 14, 1769, the date of the arrival in the territory now comprised in the State of California of one of the first exploring expeditions of the Kingdom of Spain by way of Mexico, the Indians in the state lived in their primitive and aboriginal condition, divided into many separate and distinct bands, tribes and rancherias, enjoying the sole use, occupancy and possession of all the lands in the State of California, undistributed by any European power."

Indians of California v. United States, 98 Ct. Cl. 583 (1942).

⁷ Spain employed a trio of settlements: the presidio (military post), the missions, and civilian settlements in its conquest of Indigenous America. "A mission was more than just a church and included a wide network of outlying structures." WARREN A. BECK & YNEZ D. HAASE, *HISTORICAL ATLAS OF CALIFORNIA* 12 (1974) ("A few friars could erect mission installations and control potentially dangerous natives at far less cost than could the military."). For examples of mission structures, photographs, survey plats, drawings and architectural renditions see *Architectural Features*, in *MEXICAN CALIFORNIA* 45 (Carlos E. Cortés ed., 1976) [hereinafter *Architectural Features*].

⁸ Native Californians confronted three forms of sustained contact. Each moreover, obligating separate investigation and unclocking. Beginning with Spanish governance, in the late 1700s and lasting until 1821, as the first, and Mexico's independence from Hispanic governance in 1821 comprising the second period of occupation. The United States's invasion and conquest of the Mexican province in 1848 thereafter consisted of the third and last conquest of native California.

canon law, dominates Christianity's published record on California missions.⁹ Textbook dogma, like mission records, also suggests that Native Californians did not resist conversion from their Native religiosity,¹⁰ but to the contrary remained passive actors in the conquest of their former territories.¹¹ Notwithstanding this record several key issues surface.

Long before Spanish priests roamed the area in their quest for souls, religion comprised "an integral part of California Indian life"¹² with "its own coherent and internal logic."¹³ The Costanoan, for example, accompanied their prayers by "blowing smoke to-

⁹ See James L. J. Nuzzo, *The Rule of Saint Benedict: The Debates over the Interpretation of an Ancient Legal and Spiritual Document*, 20 HARV. J.L. & P. POL'Y 867 (1997) (discussing canon law as subset of civil law system). "Church law is that body of canon law, statutes, and doctrines promulgated by competent authority within the Roman Catholic Church to govern the social and pastoral activities of the Church and its members." *Id.* Church law encompasses both universal law and particular law. "Unlike church constitutions, charters, and contracts, canon law is unmistakably theological in all its aspects. It represents the codification of church theology into canonical or legal language." Church law in the Americas is differentiated from the type of Christianity practiced in Europe. See generally Florence C. Shipek, *Californian Indian Reactions to the Franciscans*, in NATIVE AMERICAN PERSPECTIVES ON THE HISPANIC COLONIZATION OF ALTA CALIFORNIA 174 (Edward D. Castillo ed., 1992) [hereinafter NATIVE AMERICAN PERSPECTIVES]. Finally, canon law is also differentiated from royal law.

¹⁰ See generally Rev. Father Juan Caballeria, *History of San Bernardino Valley History of San Bernardino Valley from the Padres to the Pioneers, 1810-1851*, in MEXICAN CALIFORNIA, *supra* note 7, at 33. "The mission Indian was naturally docile and submissive. After a few years of training at the mission, the unclothed, degraded savage, living a life of sloth and immorality was transformed into an industrious Christian with fair ideas of religion and morality." *Id.* In California monocultural accounts dominate the literature and are "considered standard works." Edward D. Castillo, *Introduction to NATIVE AMERICAN PERSPECTIVES*, *supra* note 9, at xix. Within the law, the focus of literature on religious and ethnic identities considers primarily European history and identity thereby presenting a false norm. As such it presents incomplete investigations on the role of religion and its relationship with marginalized groups.

¹¹ See *Arenas v. United States*, 322 U.S. 419 (1944). The *Arenas* Court noted that:

Long ago the Franciscans converted them to Christianity, taught them to subsist by good husbandry and handicrafts. Under the Treaty of Guadalupe Hidalgo, Feb. 2, 1848, 9 Stat. 922, their ancestral lands and their governance passed from Mexico to the United States. During the gold discovery days they were too gentle to combat the ruthless pressures of the whites and came to lead a precarious and pitiable, but peaceful, existence.

Id. at 427.

¹² See, e.g., HENRY K. NORTON, *THE STORY OF CALIFORNIA* (1913); Paul Farnsworth, *The Economics of Acculturation in the California Missions*, at 186 (1987) (unpublished Ph.D. dissertation, University of California (Los Angeles)) (on file with author).

¹³ Castillo, *supra* note 10, at xxi ("Native religions were not just different religions, but different types of religion."); see also Raymond White, *Religion and Its Role Among the Luiseño*, in NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 355.

wards the sky.”¹⁴ Tribal members, in contrast to Church dogma, recognized men and women with “particularly strong rapport with spirits that in turn imparted distinctive abilities to their human allies, such as the power to cure or to cause illness or death.”¹⁵ To their detriment, Native religiosity did not correspond with European ideas on religion. Indigenous social and political structures and Native land use practices also clashed with European ideology. The race and culture of tribal groups¹⁶ thereby conflicted sharply with European notions of white superiority.¹⁷

While control of superior weapons offers an “easy” explanation of the Spanish conquest, how did small groups of “traveling clerics” infuse this brand of Roman Catholicism¹⁸ and in the process complete so much fragmentation of a distinct ethnicity, culture, and religiosity? What role did law play in ensuring such drastic changes in the Indigenous populations, both in respect to Native society and religious cosmos, not only in California but in Mexico as well?¹⁹ Although absolute answers refuse to surface, the role of the state in the conquest of Indigenous America offers a potential “template” for the LatCrit enterprise.

As observed, “the maintenance and regulation of relations of production in the interest of the dominant class is the primary goal of legal ideology in the hands of the holders of state power.”²⁰ In

¹⁴ Farnsworth, *supra* note 12, at 186.

¹⁵ M. Kat Anderson et al., *A World of Balance and Plenty, Land, Plants, Animals, and Humans in a Pre-European California*, in *CONTESTED EDEN*, *supra* note 3, at 16; see also RAWLS, *supra* note 6, at 10.

¹⁶ JACK D. FORBES, *APACHE, NAVAHO, AND SPANIARD* (1994).

¹⁷ The terms dominant population, Euro-American, and European-American reference individuals of European descent. See generally *In Re Camille*, 6 F. 256, 257 (C.C.D. Or. 1880) (referencing members of the dominant population as “Europeans or white race”).

¹⁸ See Caballeria, *supra* note 10, at 26 (“In taking up the work in Alta California, these missionaries brought minds single to one purpose, and that purpose the sowing of the seed of Christianity.”).

¹⁹ Subsequent to their arrival in Mexico the Spaniards stated that “[t]here are so many Indians that they are like stars of the sky; so that they cannot be counted.” Yet in the Mexican interior in one quarter of a century thousands of their temples were reduced to dust (approximately 80,000) and eight million natives converted. See GALARZA, *supra* note 1, at 23.

²⁰ MICHAEL E. TIGAR & MADELEINE R. LEVY, *LAW & THE RISE OF CAPITALISM* 287 (1977). In this Article the definition of law is borrowed from Tigar and Levy’s book. See *id.* The authors define law:

As used by the protagonists in the struggle we describe it means at different times (a) the rules made by the powerful; (b) the rules that some group or class thinks ought to be made in a godly, or at least a better, society; (c) the customs and habits of a people, which have been observed immemorially; (d) the manifesto of a

looking to Spain's actions in California a template emerges. Outside of European notions of religious and racial justifications of the conquest, Spain feared encroachment from competing European nations. In seeking to protect its hold on the region and keep its rivals at bay, Spain appropriated Native Californians for their labor and land base. In line with past successes of conquest in Mexico Antigua and with very little financial effort, Spain also relied on its crusaders for Christianity. Christian evangelism, with its long history of displacing the spiritual and religious world of Indigenous America and in California allowed Spain to accomplish many of its defined goals.

The friars Spain sent to California were educated men and retrained a world view perspective. When they were converting the Indigenous populations, the Age of Enlightenment had emerged,²¹ as well as the United States Constitution, allowing individuals "inalienable rights."²² Yet the Spanish friars "saw Indians as errant children who could become model Christians only with stern guidance and constant supervision."²³ This interpretation facilitated their identification of Indians as "heathens" or "subhuman beings who were easily domesticated."²⁴ Saving souls for Christianity, therefore, as apologists of the period argue, did not allow the friars to see the brutality of the whippings, floggings, incarceration and the violence of forced acculturation that erupted with this evangelism.²⁵ The resulting deaths from disease, inhumane treatment and discrimination, nonetheless, provide evidence of the harshness of this form of Catholicism.

revolutionary group; (e) the rules that some group makes for its own internal governance.

Id. at 6-7.

²¹ Several friars and priests participated in early expeditions of the region even before establishing formal mission structures. Friars served as mariners, navigators, and joined early explorations charting out passageways into the region. Their diaries are reprinted in a number of texts offering English translations. See generally *Junipero Serra Reports on The Missions of California*, in A DOCUMENTARY HISTORY OF THE MEXICAN AMERICANS 131 (Wayne Moquin & Charles Van Doren eds., 1971).

²² See generally Michael J. González, "The Child of the Wilderness Weeps for the Father of Our Country": *The Indian and the Politics of Church and State in Provincial California*, in CONTESTED EDEN, *supra* note 3, at 153-54.

²³ Castillo, *supra* note 10, at xxii.

²⁴ See *id.* at xviii; see also ROBERT F. HEIZER & ALAN F. ALMQUIST, THE OTHER CALIFORNIANS, PREJUDICE AND DISCRIMINATION UNDER SPAIN, MEXICO, AND THE UNITED STATES TO 1920, at 5 (1972).

²⁵ See generally Castillo, *supra* note 10, at xxii.

During the historical period, the removal of the Jesuits by royal order defined the boundaries of relations between the Franciscan friars and Spain. Notwithstanding the banishment of the Jesuits from New Spain, forced conversion witnessed the friars as active agents of the state in dispossessing Native communities of their material, social, and spiritual world throughout Indigenous America.²⁶ This issue bears directly on the jurisprudence of LatCrit theory.

In connecting this concern to the present, attorneys sign oaths and make ethical promises as conditions subsequent to securing a license that establishes our relationship with the state. A refusal to obey certain rules brings forth possible state enforced sanctions obligating allegiance. In some instances we are permitted "safe" spaces in our profession only where the status quo remains unchallenged.²⁷ Can this relationship disallow law's impact on the subaltern and also establish reciprocal relationships with those communities held hostage to the arbitrary whims of the state and treatment of the marginalized?

Finally, the effects of blanket essentialism regarding the treatment of Native Californians and in some instances, their Chicana/o descendents, also presents an immediate issue. Specifically, Spain's rivals seeking access to the region condemned the Spaniards for their treatment of Indigenous America. Accordingly critics of Spain "vigorously criticized the most conspicuous institution of their colonization, the mission"²⁸ for their own personal gain. Drawing from the negative stereotypes of Mission Natives and the friars' treatment of them, "La Leyenda Negra" (the Black Legend) allowed such characterizations that marked the "Spaniards and Mexicans as unworthy of California." That a few *padres*

²⁶ "It is important that the development of Spanish California be viewed, not in isolation, as it so often is, but as the final expression of Spanish colonial expansion in the New World." Farnsworth, *supra* note 12, at 21. The form of Christianity imposed on native groups in North America is differentiated from European Christianity and from popular religiosity. See STANLEY G. PAYNE, SPANISH CATHOLICISM, AN HISTORICAL OVERVIEW 3-11 (1984) (giving historical account of Spanish Catholicism as practiced in Europe).

²⁷ The denial of tenure of several in the LatCrit teaching communities emphasizes this point.

²⁸ RAWLS, *supra* note 6, at 42; see also Deena J. González, *The Widowed Women of Santa Fe: Assessments on the Lives of an Unmarried Population, 1850-1880*, in UNEQUAL SISTERS: A MULTICULTURAL READER IN U.S. WOMEN'S HISTORY 43 (Ellen Carol Dubois & Vicki L. Ruiz eds., 1990) (commenting on assumptions that U.S. government could relieve Spanish-Mexicans of the pressure and oppression imposed on them by powerful Catholic priests, "a belief uniformly shared by territorial officials").

protected some California Natives facilitating their survival underscores this point.²⁹ Nonetheless, a wide realm of negative stereotypes thereafter facilitated the United States conquest of Alta California for the treatment of Indigenous California under Spanish governance and its “failure” to industrialize the region’s natural resources. This followed Mexico’s independence from Spanish governance.³⁰ Displacement of Native and Chicana/o landowners from their property and ownership of natural resources thereby became grounded in culturally based negative stereotypes.

The primary documents, and more specifically, the narratives of Native Californians, permit Native populations a “space” in the present. Moreover, the “lessons” derived from the experiences of Native Californians allow for the application of LatCrit theory, thus benefiting LatCrit jurisprudence. Accordingly, Part I presents a brief historical overview of Native California. Adversely affected tribal groups in the region witnessed the degradation and loss of their land base and fractionalization of their religious cosmos and societal values. Within the realm of the Hispanic conquest, however, conflicting evidence also shows that several individuals attempted to help the Indigenous population and accordingly introduces a complex array of issues. Part II therefore addresses the impact of Hispanic religious “enthusiasm” and foreign contact with Native California. The consequences of this form of imperialism, however, are not limited to the ancient past. The ongoing struggle over the rich natural resources of Indigenous communities and legal efforts to curtail Native religiosity serve as reminders.³¹ While

²⁹ The Bishop Bartolomé de Las Casas’s criticism of the violent treatment of the Indigenous population in Mexico provides an example. The role of priests in their advocacy for social justice and liberation theology also provides an example of this contradiction. Also, that a number of Native Californians volunteered to join the Spanish missionaries also presents a historical conflict. See MARTHA MENCHACA, *THE MEXICAN OUTSIDERS, A COMMUNITY HISTORY OF MARGINALIZATION AND DISCRIMINATION IN CALIFORNIA* (1995). At least one commentator has addressed the internal struggle of San Franciscan Native Californians regarding whether or not to join the mission complex. See RANDALL MILLIKEN, *A TIME OF LITTLE CHOICE, THE DISINTEGRATION OF TRIBAL CULTURE IN THE SAN FRANCISCO BAY AREA 1769-1810*, at 205 (1995) (explaining that Native Californians “struggled with mixed feelings, hatred and respect, in a terrible, internally destructive attempt to cope with external change beyond their control”).

³⁰ See generally Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: “On the Edge of a Naked Knife,”* 4 MICH. J. RACE & L. 39 (1998) (analyzing property disputes in defense of Mexican owned property deriving from Mexican period).

³¹ Anderson, *supra* note 15, at 12 (California has environmental diversity and richness unparalleled anywhere in the world.”); see also JOSEPH P. SÁNCHEZ, *SPANISH BLUECOATS, THE CATALONIAN VOLUNTEERS IN NORTHWESTERN NEW SPAIN 1767-1810*, at 39 (1990) (describing

the role of missions and their relationship with Native Californians presents a contested paradigm that calls for further critical reflection, Part III contemplates several lessons drawn from mission evangelism.

I. PRECONTACT: INDIGENOUS CALIFORNIA

The Native Californians were not simply in California; they were California. They were an integral and essential agent in the creation of a balance of land, vegetation and animal life.³²

Prior to Hispanic entry, estimates of Native Californians range from 310,000 to 700,000 people situated throughout the region.³³ With over 1000 individuals occupying the larger locations, Native Californians grouped into villages, *ranchería*, or as band peoples.³⁴ That Native Californians engaged in a close relationship with their natural surroundings is seen through tribal classifications. The Bullfrog people, for example, identified the Central Sierra Miwok of Tuolumne County, who resided near water. The Bluejay people characterized the Miwok residing away from bodies of water.³⁵

Several tribes occupied various portions of California. The Wintun resided west of the Sacramento River while the Maidu occupied the eastern side of the river. The Cosumnes occupied the Sierra foothills and the Miwok lived in the Merced (except Lake and Coastal Miwoks). The Yokuts resided in the San Joaquin Valley, and the Costanoan tribe inhabited the area south of San Francisco.³⁶ The Pomos, recognized for their basketwork, occupied

landscape "as arbored and filled with fragrant plants like sage, rosemary, and roses, among other wild plants in flower and animal life"); William Claiborne, *Furor over Hog Farm*, STAR TRIB., Apr. 7, 1999, at A7 (describing story of large agricultural enterprise purportedly seeking to evade federal and state law restrictions on hog farming operations by seeking to erect large hog operation on Native American reservation).

³² Anderson, *supra* note 15, at 16.

³³ See RAWLS, *supra* note 6, at 13. While missionaries concentrated their efforts on native groups occupying coastal regions Native Californians, nonetheless, existed throughout the State in various regions. Friars categorized those in missions as "tame" Indians, "useful and hostile Indians" classified some outside mission walls, while still others were classified as "wild." See *id.*

³⁴ Farnsworth, *supra* note 12, at 25.

³⁵ See *id.* at 67.

³⁶ Some estimate a lower population. See generally BECK & HAASE, *supra* note 7, at 11 (providing 133,000 on low end).

Sonoma, Lake, and Mendocino counties.³⁷ The Chumash, skilled navigators and fisherman, inhabited the southern Coastal Ranges, and the Yumans the southeastern portion of the state and along the Colorado River.³⁸

The basic unit of political organization encompassed the village community, or *tribelet*, comprising several small villages, ranging from an acre to two hundred to three hundred square miles.³⁹ Territorial assertions of their geographic land base are also documented. Although principally food-gatherers, several of the tribes relied on fishing and small game hunting for subsistence with others agriculturally based. Throughout the region, Native groups spoke approximately 135 different Indian languages deriving from twenty-one or twenty-two linguistic families. After foreign entry, demands from outsiders sought to eliminate their race, ethnicity, religiosity, and culture.⁴⁰ What was lost directs the forthcoming lessons for the jurisprudence of the LatCrit enterprise.

II. FOREIGN CONTACT: HISPANIC CONQUEST AND IDEOLOGY: 1769-1821

By the royal order of August 22, 1776, the northern and northwestern provinces of Mexico were formed into a new and distinct organization, called the Internal Provinces of New Spain. This organization included California.⁴¹

With over two hundred years of colonial experience during the conquest of Mexican Indians, Spanish law and policy fully prepared its explorers and crusaders heading for the California coast.

³⁷ To the present, Pomo basket weavers are recognized for their "variety of design and technique" as "unequaled among indigenous peoples." GREG SARRIS, KEEPING SLUG WOMAN ALIVE, A HOLISTIC APPROACH TO AMERICAN INDIAN TEXTS 51 (1993).

³⁸ Yet other tribal groups included the Shoshonens, Monos, Tuba-tulabal, the Panamint, Ute, Chemehuevi, Serrano, Gabrielino, Luiseño Cahuilla, the Penutians, and Hokans. BECK & HAASE, *supra* note 7, at 11; *see also* NATIVE CALIFORNIANS, A THEORETICAL RETROSPECTIVE (Lowell J. Bean & Thomas C. Blackburn eds., 1976) [hereinafter NATIVE CALIFORNIANS].

³⁹ *See* RAWLS, *supra* note 6, at 9 ("All of the California tribes had complex socio-political systems with numerous specialists or shaman managing specialized knowledge which contributed to the survival and welfare of each band or tribe.")

⁴⁰ *See, e.g.*, NATIVE CALIFORNIANS, *supra* note 38; THOMAS D. HALL, SOCIAL CHANGE IN THE SOUTHWEST 1350-1880, at 37 (1989); ANTONIO RIOS-BUSTAMANTE & PEDRO CASTILLO, AN ILLUSTRATED HISTORY OF MEXICAN LOS ANGELES, 1781-1985 (1986).

⁴¹ United States v. Peralta, 60 U.S. (19 How.) 343 (1856).

While external international events mobilized the Spaniards to protect its territories, its invasion of the region also constituted a joint religious/military enterprise as witnessed by Spain's mission structures.⁴²

A. *Mission Evangelism*

Catholicism has been the official religion of Spain since time of the Visigoths. As far as the church in Spanish-America was concerned, the King of Spain was supreme patron.⁴³

Considered "*reducción*" or "*congregación*," mission structures⁴⁴ adopted from earlier colonization of Indigenous America in the California region extended from the Mexican border to the north.⁴⁵ Two Franciscan friars headed each mission complex, one charged with temporal affairs, and the second directing spiritual affairs. The theory underscoring the mission complex charged the friars with "training" the Indigenous population "to be good Catholics and loyal subjects of the Spanish crown"⁴⁶ and holding mission land in trust for the neophytes (converts). Once deemed "acculturated," the friars were to release mission Indians into "white society." The missionization of Native Californians was to last in some cases at least ten years. Thereafter secularization of the missions for distribution to the neophytes subsequent to their "assimilation" into Hispanic culture was to follow next.⁴⁷ Land

⁴² See generally SÁNCHEZ, *supra* note 31, at 32.

⁴³ *Municipality of Ponce v. Roman Catholic Church in Porto Rico*, 210 U.S. 296, 314 (1908).

⁴⁴ RAWLS, *supra* note 6, at 14, 16 ("By various means the Indians were congregated around the missions, where they were 'reduced' from their 'free undisciplined' state to become regulated and discipline members of colonial society.") (citations omitted).

⁴⁵ The northern section held eleven missions with a land base of approximately 11,000 square miles and an original population of about 26,000. The central section that included four Santa Barbara missions involved a land based of about 5000 square miles and an original population of about 8500. Last the southern section with missions from San Fernando comprised 20,500 square miles with a native population estimated at around 20,000. See BECK & HAASE, *supra* note 7.

⁴⁶ See, e.g., NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 117-19; Douglas Monroy, *They Didn't Call Them Padre for Nothing*, in BETWEEN BORDERS: ESSAYS ON MEXICANA/CHICANA HISTORY 435 (Adelaida R. Del Castillo ed., 1990) [hereinafter BETWEEN BORDERS] ("Fearful of encroachment from other powers, especially Russia, Spain sought to transform the native population into loyal subjects of His Catholic Majesty, the King of Spain.")

⁴⁷ See RAWLS, *supra* note 6, at 19.

awarded for missionary work was thus not made to the "Church per se."⁴⁸

1. Roman Catholicism and Indigenous California

Not unlike its control of Indigenous communities in ancient Mexico, Spain also depended on the intimate relationship between the soldiers and priests to effectuate its hold of Indigenous California. The use of missions and friars in the conquest "illustrate[s] the unique blend of church and crown, of secular and spiritual matters, in the Spanish empire."⁴⁹ This relationship, a combination of the spiritual and the military resulted, in part, from the small number of Spaniards compared to the extensive number of Indigenous communities but also from the required use of weapons and military tactics to defend mission holdings.⁵⁰ Working in conjunction with each other allowed the friars to rely on the soldier and the "edge of his sword" to control dissident tribal groups and hunt down runaways seeking to escape mission evangelism.⁵¹

While mission records provide accounts of the large numbers of neophytes converted to Catholicism, the act of conversion did not comprise a meaningful one but consisted in a number of cases of simply sprinkling water on the neophyte. Having baptized the neophytes, the friars changed the names of the neophytes. Losing their independence, freedom, and unique religiosity, the neophytes became the legal wards of the friars.⁵² Through attendance at religious services, the friars required the neophytes to learn new forms of worship and spirituality. Soldiers with bayonets guarding entryways disallowed the escape of converts from Church rituals. Bailiffs, using whips, canes, and goads "to preserve silence and maintain order, and what seemed more difficult than either, to

⁴⁸ For a court's interpretation of this relationship see *Niebili v. Redman*, 6 Cal. 325 (1856), explaining that church structures in California were political establishments.

⁴⁹ RAWLS, *supra* note 6, at 14.

⁵⁰ In describing the Spanish conquest of Mexico, Ernesto Galarza asserted that "mailed armour accompanied Gregorian chants." GALARZA, *supra* note 1.

⁵¹ The testimony of those who ran away from Mission Dolores in San Francisco in 1797, but were subsequently returned to the missions, informs us that they left because of, among other things, floggings, fear in seeing their friends flogged, hunger, incarceration, and beatings for other infractions. See generally HEIZER & ALMQUIST, *supra* note 24, at 9.

⁵² See James A. Sandos, *Between Crucifix and Land, Indian-White Relations in California, 1769-1848*, in CONTESTED EDEN, *supra* note 3, at 205-06; see also CYNTHIA RADDING, WANDERING PEOPLES (1997).

keep the congregation in their kneeling posture,”⁵³ also held Native Californians hostage to Church rituals. In a number of instances, soldiers physically harmed the neophytes, and accounts of soldiers raping Native women in some missions is well-documented in historical investigations.⁵⁴ This relationship caused some to assert that the Spaniards offered the neophytes the “crucifix or the lance,” leaving them, in the words of an Indian leader, “no room to choose between Christ and death.”⁵⁵ While not all Native Californians experienced conversion and displacement, this Christianity nonetheless also extended beyond mission infrastructures by its effect on tribal society and gender relations.⁵⁶

2. Labor, Gender, and Mission Structures⁵⁷

Establishing Spain’s colonization of the region required extensive labor and the full force of its statehood on Indigenous California. Spain leaned on former tribal members in a number of instances to erect mission complexes and perform agricultural labor on mission lands adjoining the complexes. The friars, particularly during earlier periods, did not hesitate to employ harsh measures causing injury to the new neophytes. Forced to work from early morning after prayer services until late evening, Native Californians had little time to spend with their families, friends, and former networks. Some historians contend that the “coercive meas-

⁵³ STANLEY, *supra* note 2, at 44 (quoting British scientist Frederick Beechey describing Sunday mass in Mission San Francisco in 1816).

⁵⁴ Compare Antonia Casteneda, *Engendering the History of Alta California, 1769-1848, Gender, Sexuality, and the Family*, in CONTESTED EDEN, *supra* note 3, at 230, with William Mason, *Indian-Mexican Cultural Exchange in the Los Angeles Area, 1781-1854*, 15 AZTLAN: INT’L J. CHICANO STUD. RES. 123, 124-26 (1984). “Contrary to the opinions of some writers, there was relatively little sexual abuse of Indian women by settlers, if the archival references are any indication. Despite the notoriously lax situation that existed at San Gabriel in 1772-73, when the frequency of rape of Indian women by Spanish Mexican soldiers provoked a revolt, later infractions were punished if discovered.” Mason, *supra*, at 126. Nonetheless, the record shows that Native men were killed in defending native women captured by Spanish soldiers. See Monroy, *supra* note 46, at 435 (asserting that “[t]he Spanish acquired converts at Mission San Gabriel with the soldiers that pursued them to their rancherías, where they lassoed women for their lust and killed such males as dared to interfere”).

⁵⁵ Sandos, *supra* note 52, at 196, 205.

⁵⁶ See NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 27 (providing that even those residing outside of mission structures were required to contribute one-tenth of their agricultural produce to missions).

⁵⁷ See Caballeria, *supra*, note 10, at 32 (“The missions were conducted on the patriarchal plan. The inmates lived as one large family, their interests general and identical. Separation of the sexes was rigidly enforced from the beginning.”).

ures that Franciscans employed to enforce their labor regime provided both psychologically and physically damaging” effects and thus rendered much harm to them.⁵⁸

Threatening tribal survival, Franciscan ideology also contradicted the complementary gender relations practiced by Native Californians.⁵⁹ Although some women learned other skills, domestic work such as sewing clothing, working in laundry rooms, cooking and cleaning the missions dominated the tasks assigned to Native women. Mission *monjerías* (nunneries),⁶⁰ moreover, kept the women apart from men “to preserve their chastity.”⁶¹ In contrast, with few exceptions, men built the missions, performed fieldwork, became blacksmiths, carpenters, artists, and accomplished training in other trades. Children under this regime also performed tasks such as weeding to ensure that “birds did not damage vegetable gardens.”⁶²

Until the population became too large, the complex mission life regulated worship, labor; meals, rest, and play.⁶³ Rather than to

⁵⁸ Hackel, *supra* note 3, at 123; see also Shipek, *supra* note 9, at 181 (discussing Kumeyaay responses to Franciscans and narratives of run-a-ways who told of “great grandmothers being whipped if they dallied over the work or were too slow for the overseers”).

⁵⁹ See generally Antonia I. Casteñeda, *Engendering the History of Alta California, 1769-1848*, in CONTESTED EDEN, *supra* note 3, at 230-34.

⁶⁰ Sandos, *supra* note 52. In his report as president of the missions, Father Lasuén asserted that “[t]he girls and the unmarried women (wrongly called nuns) are gathered together and locked up at night in their quarters.” *Architectural Features*, *supra* note 7, at 179-81.

⁶¹ See, e.g., Monroy, *supra* note 46, at 435. The room at Santa Barbara housing the women is described as encompassing:

17 *varas* [a vara equals roughly a yard] long by 7 wide, is of brick and has a high, wide window for light and ventilation. It has its sewer for corporeal necessities during the night. Along the walls is a platform, 20 *varas* long by 2 1/4 wide, with two stairways of brick and mortar at the ends for those who ant to ascend and sleep upstairs. In the evening they have a fire for heat and every night they are given a tallow candle to illuminate the room.

The Indian Versus the Spanish Mission, in NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 127.

⁶² Hackel, *supra* note 3, at 123.

⁶³ After some point in time the missions became overly populated, causing the friars to permit the neophytes to visit their communities and in some instances reside near the missions. The fact that some converts were not mistreated physically, and that in some instances the friars protected some native women from Spanish soldiers (although at some point soldiers were encouraged to marry native women) presents contradictory evidence in need of further unpacking. It nonetheless obscures the basic point that former Native societies became fractionalized and restructured according to Hispanic interpretations of property ownership and gender relations.

honor cycles revolving around nature and life cycles,⁶⁴ a large bell or bells signaled prayer with smaller bells indicating work periods.⁶⁵ Failure to perform required tasks resulted in scolding and at times whipping or imprisonment at the hands of Christian friars, with soldiers keeping former tribal members hostage to this Christianity.

3. Catholicism and Restructuring Tribal Societies

We are familiar with the history of California. We fully appreciate that the missions are reminders of a past filled with poesy and romance.⁶⁶

Regardless of the side of the conquest on which one fell, Christianity introduced significant changes to Native California. In exchange for Catholicism and its attendant forced acculturation, the friars prohibited Native initiation ceremonies, dances, and songs, and, as some assert, "sought to destroy the ideological, moral and ethical systems that defined native life."⁶⁷ The evidence of such assertions demonstrates the loss of rituals, ceremonies, and other attributes of Native culture and religious cosmos. The transformation in their own beliefs and political and religious systems additionally resulted in a rigid caste system.

As in Mexico, the Spaniards imposed on the Indigenous population a caste system in which they declared themselves purebreds (*peninsulares*). In this system whites (the Spaniards) self-identified as "*gente de razon*" (people of reason), and occupied the highest positions of power privileged by their place in society. In contrast, the Spaniards identified those born with a mixture of Indian and Negro blood as *castas* who, along with imported African slaves, occupied the bottom of Spanish society.⁶⁸ *Mestizaje*, yet another

⁶⁴ Castillo, *supra* note 10, at xvii (commenting that "traditional Indians did not share linear time concepts with the Euro-Americans they confronted in 1769" but rather their "world view was organized around a yearly cycle of renewal ceremonies and acts."); *see also* Caballeria, *supra*, note 10, at 33 ("Mission life was one of industry. At day-break the whole place was awake and preparing for labor.").

⁶⁵ NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 27.

⁶⁶ *Froliger v. Richardson*, 63 Cal. App. 209, 218 P. 497 (1923).

⁶⁷ Monroy, *supra* note 46, at 435.

⁶⁸ It is well established that early settlers to the Los Angeles region were also of Indian and African descent. *See, e.g.*, J. Gregg Layne, *The First Census of the Los Angeles District, Padron de la Ciudad de Los Angeles y Su Jurisdiccion*, 19 Q. HIST. SOC'Y S. CAL. 81 (1937); Mason, *supra* note 54, at 135. For a review of *mestizaje* and class definitions of Mexican society, see Dennis

Spanish division of the races, resulted from the pairing of Spanish and Indian parents. Notions of cultural superiority facilitated by demands that the Native population assimilate into a Hispanic view of a cultural norm dominated the period.⁶⁹

Yet another significant change affecting tribal society was a patriarchal ideology in which Catholic rituals and practices redefined social and sexual relations between men and women.⁷⁰ The ceremony of marriage, for example, introduced sexual repression, and by their division of labor in church rituals, the friars also lowered the status of Indian women. With Hispanic arrival and its emphasis on marriage came heterosexual privilege replacing tribal societal values. In their place, Antonia Casteñeda asserted that gender hierarchy, male domination, and heterosexuality became the “exclusive organizing principles of desire, sexuality, marriage and the family.”⁷¹

The friars also accelerated the demise of former tribal societies by aligning themselves with individuals to control the non-Hispanic population. In Mission San Luis Rey de Francia, Luiseño neophyte Pablo Tac wrote, “the Fernandino Father is like a King, having his pages, Alcaldes Y Mayordomos [Spanish overseers,] Musicians, and Soldiers.”⁷² These friars undermined “traditional Indian village chiefs’ authority” and “represented a sharp break from the tribal kinship groups.”⁷³

En el nombre de Dios, Native cultures witnessed degradation and discrimination with demands of “filial obedience.”⁷⁴ On an 1816 Pacific expedition to a California mission, artist M. Louis Choris wrote: “I have never seen one laugh. I have never seen one look

Nodín Valdes, *The Decline of the Sociedad de Castas in Mexico City* (1978) (unpublished Ph.D. dissertation, University of Michigan) (on file with author) (examining people of mixed descent including but not limited to mestizos and mulattos).

⁶⁹ For a present example of the influences of Spanish characterizations with linkages into the present see Kevin R. Johnson, “*Melting Pot*” or “*Ring of Fire?*”: *Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997), 10 LA RAZA L.J. 173 (1998).

⁷⁰ See WILFRID HARDY CALLCOT, *CHURCH AND STATE IN MEXICO, 1822-1857*, at 20 (1965).

⁷¹ Casteñeda, *supra* note 59, at 230-32.

⁷² Sandos, *supra* note 52, at 206; *see also* Castillo, *supra* note 10, at xxiv.

⁷³ During the Mexican period *alcaldes* functioned as mayors of a given area. Ultimately American males became *alcaldes* following the United States conquest of the region.

⁷⁴ Castillo, *supra* note 10; *see also* RICHARD GRISWOLD DEL CASTILLO & ARNOLDO DE LEON, *NORTH TO AZTLÁN, A HISTORY OF MEXICAN AMERICANS IN THE UNITED STATES* (1996).

one in the face.”⁷⁵ Gone was their right to own land, self-governance, Native languages, communication,⁷⁶ and their religious cosmos, which Native polytheism was displaced by a religiosity characterized by Vine DeLoria as an angry theology.

B. *Analyzing the Mission Evangelism*

What many apologists for the Spanish mission system have in common is an extreme low and disparaging attitude toward the Indians of California. Their reasoning appears to suggest that whatever befell the native peoples of Alta California during the mission era, it was preferable to their native culture, and in fact, somehow uplifting.⁷⁷

Did the friars succeed in establishing Spain’s presence in California with the assimilation of Native tribal members into the dominant group? The mission infrastructure and its economic success provide a measure of the friars’ performance. Holding some of the best geographical base in the region,⁷⁸ the use of Indigenous labor in building and supporting mission infrastructures and its enormous gardens, not only furthered the material and economic success of mission structures, but the state as well.⁷⁹

Together with the production of capital and labor, the friars garnered spectacular economic success for the missions. Mission revenues generated from the production of agricultural commodities and goods such as wool, leather, tallow, beef, wheat, maize, and barley greatly enhanced its economic coffers. Mission surpluses, moreover, facilitated supplies to the Mexican interior and expe-

⁷⁵ Castillo, *supra* note 10, at xvi; see also Robert H. Jackson, *Gentile Recruitment and Population Movements in the San Francisco Bay Area Missions*, in NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 199, 201 (discussing failure of royal officials to apply Spanish laws that were contrary to their interests, and how missionization, contrary to established historical accounts, “involved a degree of force”).

⁷⁶ See Castillo, *supra* note 10, at xxi (explaining that Spanish policy forbade teaching Christian doctrine in native languages).

⁷⁷ NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 423.

⁷⁸ See, e.g., BECK & HAASE, *supra* note 7, at 9-10 (“[T]he fauna of California is as diverse as its climate and topography.”); Anderson, *supra* note 15, at 12 (“California has environmental diversity and richness unparalleled anywhere in the world.”).

⁷⁹ The struggle to control Native labor also surfaced during the Mexican governance of the province after 1821. Throughout this period, Native Californians argued for independence from mission governance. See generally González, *supra* note 22, at 147-49.

dited trade and export with foreign nationals.⁸⁰ Some estimates of mission wealth place their value at \$78 million in 1834 prior to secularization.⁸¹ Notwithstanding mission/state wealth, Native Californians did not share equally with the state or the mission friars, much less witness the fruit following secularization of the mission infrastructure. Edward Castillo emphasized that “this end goal was never reached.” The denial of their meeting “assimilation standards” led by state and mission definitions as false norms disallowed Native Californians the full attributes of Spanish society.

While some former tribal members received plots of mission land, the majority did not.⁸² Edward Castillo asserts that:

Despite legal and Christian moral arguments put forward by Franciscan historians and others, the Spanish Crown/Franciscan empire benefitted only a handful of natives. The vast majority of California mission Indians were simply laborers in a larger quest for worldwide domination by that eighteenth-century empire. It seems important to the majority of the descendants of these mission Indians that a voice be raised in their defense concerning the alleged benefits Indians received under the empire.⁸³

The friars’ declarations that the Indigenous population was not ready to assimilate accordingly disallowed distribution of mission lands to the neophytes.

Beyond these considerations still other external events also impacted Native Californians’ status. Led in large part by Padre Hidalgo’s *grito*, Mexico gained its independence from Spain following three hundred years of Spanish governance. Mexico’s independence changed the status of mission Indians by providing them citizenship status and ownership to some land tracts.⁸⁴ And while Roman Catholicism did not leave with the Spaniards, competition from civilians not benefiting from the natural resources of the re-

⁸⁰ See Farnsworth, *supra* note 12, at 73 (“Economically the California Missions were a complete success.”); see also NORTON, *supra* note 12, at 59.

⁸¹ See Farnsworth, *supra* note 12, at 108.

⁸² But then in some instances thereafter, these Native Californians were confronted with charges that they lacked ownership status of that interest. See generally *Serrano v. United States*, 72 U.S. (5 Wall.) 451 (1866).

⁸³ See NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 423.

⁸⁴ See generally *United States v. Wilson*, 66 U.S. (1 Black) 267 (1861) (providing background on plots of land regarding Huerta de Ramualdo adjoining Mission San Luis Obispo).

gion ultimately led to the secularization of the missions.⁸⁵ Their disbanding also resulted in part from charges that the Franciscans were ineffective in “civilizing” the neophytes, and from the fact that as citizens under Mexican law they were now equal with whites.⁸⁶

While some Native Californians received land, to the detriment of Native Californians most of the mission’s land base was transferred to non-Native groups.⁸⁷ Many mission Natives left to work on Mexican ranches and with their labor also brought material success to ranch holders and facilitated the settlement of California’s major cities.⁸⁸ With secularization, a number of church officials were also purportedly reduced to impoverished conditions.⁸⁹ Notwithstanding their changed legal standing under Mexican law as citizens, yet another conquest erupted and confronted Indigenous California.

The United States, seeking to connect its eastern coast with the West and access to California’s natural resources initiated, a war with the Mexican Republic. In a number of circumstances, de-

⁸⁵ See BRIGADIER GENERAL JOSÉ FIGUEROA, A MANIFESTO TO THE MEXICAN REPUBLIC (C. Alan Hutchinson ed., 1978) (discussing his interpretation of events leading to secularization of missions).

⁸⁶ See Hackel, *supra* note 3, at 136 (summarizing opening of California to international trade, Colonization Act of 1824, Supplemental Regulations of 1828, and Secularization Act of 1833 all manifested unforeseen political transformations).

⁸⁷ See, e.g., *Luco v. United States*, 64 U.S. (23 How.) 515, 521-22 (1859) (commenting on importance of protecting settlers from “barbarous tribes”); *United States v. Ritchie*, 58 U.S. (17 How.) 525, 540 (1854) (describing Indians and their “degraded condition . . . and ignorance generally”). Ejectment actions also confronted the population. See generally *Byrne v. Alas*, 68 Cal. 479, 9 P. 850 (1886). In some instances recognizing the inequities nonetheless required facing legal struggles over their property. In *Byrne*, the court allowed reopening affidavits because as the court wrote they were “ignorant and unacquainted with modes of judicial proceedings may be reopened on affidavits of merits made by counsel.” *Id.*

⁸⁸ See generally George Harwood Phillips, *Indians in Los Angeles, 1781-1875: Economic Integration, Social Disintegration*, in NATIVE AMERICAN PERSPECTIVES, *supra* note 9, at 395 (recognizing historians disregard of economic relationship between settlers and Indians).

⁸⁹ Some mission holdings were sold to aid the Mexican government’s efforts to “keep California out of the hands of the United States.” Helen S. Giffen, *Some Two-Story Adobe Houses of Old California*, 22 Q. HIST. SOC’Y S. CAL. 1, 9 (1938) (noting sale of 121,542 acres of former mission land sold to raise funds in war effort for \$14,000 to Eulogio de Celis). The writings of mission visitors report on the decaying of mission buildings. “In October 1836, the United States ship ‘Peacock’ stopped at Monterey on its way from the Orient where Mr. Edmund Roberts as special agent of the United States government had been engaged in a diplomatic mission.” *Architectural Features*, *supra* note 7, at 32-34. During his stop he visited Mission San Carlos mission. “At this time there are twenty-one missions in Upper California, all of which are in a state of decay. I visited that at Carmelo which I found in ruins, and almost abandoned.” *Id.*; see also *Den v. Den*, 6 Cal. 81 (1856) (involving lease of Mission Santa Barbara for nine-year term).

meaning stereotypes and the Black Legend advanced the conquest of the region. After the conquest, the United States, through the Treaty of Guadalupe Hidalgo, promised to recognize the citizenship of Indigenous groups and protect their property interests.⁹⁰ Yet even more so than under the Mexican period, the United States by its breach of the Treaty also brought forth additional disbursement and loss of Native land and citizenship status.⁹¹ The legal rights permitted pueblos under Mexican law were rejected, with pueblos or individuals losing their land and access to its natural resources.⁹² Furthermore, judicial actors held that California cities could access the natural resources denied from those previous rejections.⁹³

Benefiting from the Black Legend Native Californians confronted Manifest Destiny resulting in yet further disbursement and harm.⁹⁴ The American regime's demand for their labor used law to entrench its hold on Native Californians.⁹⁵ In the early American

⁹⁰ See Treaty of Peace, Friendship, Limits, and Settlement with the United States of America and the Republic of Mexico, Treaty of Guadalupe Hidalgo, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922, 930 [hereinafter Treaty of Guadalupe Hidalgo]. There is ample case law on land formerly belonging to California missions and/or affecting Native Americans. See, e.g., *Barker v. Harvey*, 181 U.S. 481, 482 (1901); *United States v. Workman et al.*, 68 U.S. (1 Wall.) 745 (1863) (involving ex-mission San Gabriel and purported conveyance of mission from Father Jose Prudencia Santillan for two hundred thousand dollars); *White v. United States*, 68 U.S. (1 Wall.) 660 (1863); *United States v. Bolton*, 64 U.S. (23 How.) 341 (1859) (involving purported grant to secular priest, subsequent conveyance, and determination as to validity of successor in interest); *United States v. Ritchie*, 58 U.S. (17 How.) 525 (1854); (involving Mission Indian's claim of right to permanent occupancy); *Chunie v. Ringrose*, 788 F.2d 638, 644 (9th Cir. 1986) (holding Chumash Indians had lost their right to California islands for failure to assert claims in California land confirmation proceedings); *Mora v. Foster*, 17 F. Cas. 720 (C.C.D. Cal. 1875); *Harvey v. Barker*, 126 Cal. 262, 58 P. 692 (1899) (regarding claims of successors of mission Indians); *Byrne v. Alas*, 68 Cal. 479, 9 P. 850 (1886); see also ALBERT L. HURTADO, *INDIAN SURVIVAL ON THE CALIFORNIA FRONTIER* (1988).

⁹¹ For an interpretation of U.S. impact on the region, see MENCHACA, *supra* note 29. For a review of the annexation of the former Mexican province see NEAL HARLOW, *CALIFORNIA CONQUERED, THE ANNEXATION OF A MEXICAN PROVINCE, 1846-1850* (1982).

⁹² See *Los Angeles Farming Milling Co. v. City of Los Angeles*, 217 U.S. 217, 218 (1910) (regarding litigation over riparian rights).

⁹³ See *id.*

⁹⁴ George Harwood Phillips, wrote that in 1851 for example, an "Anglo-American visitor to California claimed that the extreme indolence of their nature, the squalid condition in which they live, the pusillanimity of their sports, and the general imbecility of their intellects, render them rather objects of contempt than admiration." Phillips, *supra* note 88, at 383.

⁹⁵ Native Californians outside of the mission complex supplied labor around Los Angeles for civilians and in the presidios. See generally Mason, *supra* note 54, at 124-25. Mason wrote:

period, for example, new laws facilitated the use of former tribal members and their descendants as a labor force. In one instance, this even caused an American reverend to observe that: "In the vine-growing districts they were usually paid in Native brandy every Saturday night, put in jail the next morning for getting drunk, and bailed out on Monday to work out the fine imposed upon them by the local authorities."⁹⁶ The new region also allowed illegal Indigenous ceremonial practices, rituals, and dances.⁹⁷ Rules, for example, prescribed punishment for certain actions identified as "Indian offenses," constituting in one case, the "sun, the scalp and the war-dance, polygamy," as well as "the usual practices of so-called 'medicine men.'"⁹⁸

In contrast to the Mexican period, Anglo-American law, furthermore, denied Native Californians citizenship status and disallowed private ownership of land in a number of repeated circumstances.⁹⁹ The Black Legend and the demeaning stereotypes it facilitates allowed American settlers to believe that the Natives were neither deserving nor industrious, and stymied the assimilation of Native Californians.¹⁰⁰ Courts, moreover, used the status as mission

The Indian's economic and social role in Los Angeles was important. Rancheros around Los Angeles were using Indian labor at least by the 1790s. Vinyardists considered them indispensable. Most agricultural tasks were done on a contract basis by Indians. Both military authorities and missionaries felt that the Indians were major factors in Los Angeles agricultural production.

Id. at 124.

⁹⁶ MACLEOD, *supra* note 5, at 161.

⁹⁷ See GEORGE E. TINKER, *MISSIONARY CONQUEST: THE GOSPEL AND NATIVE AMERICAN GENOCIDE* 7 (1993).

⁹⁸ *United States v. Clapox*, 35 F. 575, 576 (D. Or. 1888) (involving arrest of Minnie, Umatilla tribal member, for "offense of living and cohabiting" with "an Indian other than her husband"). This also exemplifies the dominant culture imposing its own values on a culture that in many instances regarded spousal relations as the domain of the male.

⁹⁹ Mexican law, in contrast to the new American regime, recognized the Indigenous population as possessors, and not merely occupants, of their property interests. See, e.g., *Arenas v. United States*, 322 U.S. 419, 427 (1944).

¹⁰⁰ As an example, in violation of the Treaty of Guadalupe Hidalgo, Congress promulgated yet further legislation obligating all holders in interest to defend their property holdings. See *An Act to Ascertain and Settle the Private Land Claims in the State of California*, Ch. 41, 9 Stat. 631 (1851) (obligating "[e]ach and every person claiming lands in California to present documentary evidence and testimony to support claim of ownership"). Attempt to reconcile Article IX of the Treaty of Guadalupe Hidalgo with the results of land dispossession, providing:

[T]he sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for its' [sic] being settled by citizens of the United States; but

Indians as a false standard in comparing the claims of nonmission Indians reasoning that those not residing in missions were “uncivilized.”¹⁰¹ This new “standard” permitted the rejection of claims of land ownership through ever increasing use of shifting and arbitrary definitions of what and who qualified as “civilized.”¹⁰² Later their disbursal and continued tribal fragmentation resulting from such rejections precluded their meeting ever elusive federal definitions of who qualified for tribal status and federal benefits. For Native Californians, now removed from their natural habitat and former tribal structures, yet greater difficulty and onerous circumstances arrived. Without their land or access to natural resources, and with the fracturing of their previous political and socioeconomic structures, Native Californians were reduced to yet further disintegration.

In sum, Native Californians continued to serve as state forming agents ensuring the economic success of the state but with very little granted in return. Could anything they received in exchange compare to what they lost by way of their land base, natural resources and in many instances, their forced labor? Moreover, the denial of their meeting “assimilation standards” led by state and mission definitions of false norms disallowed the full attributes of Spanish society. By the mid-1900s only 15,000 remained in the former province.

on the contrary special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

Treaty of Guadalupe Hidalgo, *supra* note 90, at 932; *see also* United States v. Candelaria, 271 U.S. 432, 442 (1926).

¹⁰¹ *See Arenas*, 322 U.S. at 427. The *Arenas* Court commented:

Long ago the Franciscans converted them to Christianity, taught them to subsist by good husbandry and handicrafts. Under the Treaty of Guadalupe Hidalgo . . . their ancestral lands and their governance passed from Mexico to the United States. During the gold discovery days they were too gentle to combat the ruthless pressures of the whites and came to lead a precarious and pitiable, but peaceful, existence.

Id.

¹⁰² *See e.g.*, United States v. Klamath, 304 U.S. 119 (1938); Cramer v. United States, 261 U.S. 219 (1923); Thompson v. United States and Klamath Indians, 44 Ct. Cl. 359 (1909); Jo Carrillo, *Identity as Idiom: Mashpee Reconsidered*, 28 IND. L. REV. 511 (1995).

III. "LESSONS"

The connection between law and the standing of Native Californians obligates us to draw forth several points from the relationship between Indigenous groups and those holding state power. Within this conceptual framework a few "lessons" are considered.

Lesson One: Dr. Jekyll/Mr. Hyde. Throughout history one sees two systems of law — one applying to "civilized" peoples (Christian-European) and the other applying to the so-called "backwards races."¹⁰³ Native Californians faced a European dual system in which white Europeans proclaimed themselves *gente de rason* (people of reason) and further disallowed Native Californians legal authority. Backed by the state, mission evangelism diminished the stature of Natives to "heathen" status and devised tactics that disallowed Native Californians from joining Spanish society. By the interpretations of a select few, the conquest ensured that Native Californians lacked legal standing and real authority. Dating from the earliest of Spanish law, officials selectively ignored a compilation of Spanish laws granting protection to Native peoples.¹⁰⁴ The *Recopilación de las leyes de los reinos de las Indias*, ("Compilation of the Laws of the Kingdom of the Indies") disallowed the mistreatment of Indians.¹⁰⁵ In New Spain, however, many of its tenets and principles were misapplied and or ignored.¹⁰⁶

The lesson underscored here questions Spain's disregard of the *Recopilación's* basic tenets, simultaneously telling Native Californians they were not ready to enter white society. Accordingly the neophytes became landless, and the disruption of the regions'

¹⁰³ See generally JAMES E. FALKOWSKI, *INDIAN LAW/RACE LAW, A FIVE-HUNDRED-YEAR HISTORY* 2 (1992); see also NANCY M. FARRISS, *CROWN AND CLERGY IN COLONIAL MEXICO 1759-1821, THE CRISIS OF ECCLESIASTICAL PRIVILEGE* (1968); D.A. Brading, *Government and Elite in Late Colonial Mexico*, 53 *HAHR* 389 (1973).

¹⁰⁴ Donald Juneau, *The Light of Dead Stars*, 11 *AM. INDIAN L. REV.* 1, 2 (1983). Juneau argues that: "Not only does the *Recopilación* afford a basis for establishing ownership in property derived from immemorial aboriginal possession, it can be used to reclaim property wrongfully dispossessed of an Indian tribe that has used and occupied the lands for a long period of time." *Id.*

¹⁰⁵ See, e.g., CHARLES R. CUTTER, *THE LEGAL CULTURE OF NORTHERN NEW SPAIN, 1700-1810* (1995); Charles Sumner Lobingier, *Siete Partidas (Las) in full English Dress*, 9 *HISPANIC AM. HIST. REV.* 529 (1930). For precedent referencing *cedulas* and the *siete partidas* exists in law, see *Late Corp. of the Church of Jesus Christ of Latter-Day Saints, v. United States*, 136 U.S. 1 (1890), and *United States v. Cervantes*, 59 U.S. (18 How.) 553 (1855).

¹⁰⁶ GALARZA, *supra* note 1, at 45-6.

natural habitat ultimately harmed their ability to support themselves with a forever changed environment.¹⁰⁷

*Lesson Two: Siamese Twins.*¹⁰⁸ While Spain charged the Franciscan order with control of the missions, “every aspect of Spanish activities in California, the structure of the province, and the laws and regulations that controlled her development and functioning, were authorized by the King of Spain, acting through his representative, the viceroy in Mexico City.”¹⁰⁹ Its consequences yielded a resultant blurring of jurisdiction between religion and civil matters with parallel reasoning in the present.¹¹⁰ Traditionally the dominant society closely identifies with a certain religious form, and by that relationship proscribes the vast range of acceptable differences based on moral, evil, and/or other grounds.¹¹¹ For religiosity deemed incompatible with those defined norms, history shows law used to facilitate the demise of outsider religiosity.

One example in our time shows politicians and other religious “advocates” arguing for a return to the values, morals, and religious beliefs of the eighteenth and nineteenth centuries. A new law school, for example, declares an emphasis on teaching what the Catholic Church sees as moral truths according to its definitional standards.¹¹² The forces of the extreme religious right and other advocates are also arguing for deference to religious precepts in

¹⁰⁷ See generally Chester King, *Chumash Inter-Village Economic Exchange*, in NATIVE CALIFORNIANS, *supra* note 38, at 289.

¹⁰⁸ See, e.g., GALARZA, *supra* note 1; LAWRENCE J. MOSQUEDA, CHICANOS, CATHOLICISM AND POLITICAL IDEOLOGY 33 (1986). For an analysis of Spain’s political jurisdictions and governing bodies in New Spain, see PETER GERHARD, COLONIAL NEW SPAIN, 1519-1786: HISTORICAL NOTES ON THE EVOLUTION OF MINOR POLITICAL JURISDICTIONS, in HANDBOOK OF MIDDLE AMERICAN INDIANS, 63, 66 (1967) (commenting that “the church in America was part of the Spanish state, and control of it through the papal concession known as patronato real was a privilege jealously guarded by the Spanish kings”).

¹⁰⁹ Farnsworth, *supra* note 12, at 21.

¹¹⁰ See, e.g., *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929) (stating that it “is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them”); Theresa J. Fuentes, *Title VII, Religious Freedom and the Case of the Nontenured Nun*, 65 GEO. WASH. L. REV. 743 (1997).

¹¹¹ See, e.g., Guillermo X. Garcia, *Catholics Are Split on Bishop’s Letter to Sanchez*, ORANGE COUNTY REG., July 10, 1998, at A17 (discussing Bishop’s criticism of Rep. Loretta Sanchez’s position on abortion rights and whether she should be “banned from visiting churches during her re-election campaign”); Vincent J. Schodolski, *Catholic Policies Inconsistent on Rape Victim Care*, CHI. TRIB., Aug. 29, 1999, at A1.

¹¹² *Magnate Plans Catholic-view Law School*, CHI. TRIB., Apr. 9, 1999, at A18 (noting creation of new law school to produce lawyers who “will consider the moral consequences of the law from a Roman Catholic point of view”).

courts¹¹³ closely identified with the interests of the state. These efforts, with striking similarities to the past, obligate closer scrutiny and calls for answers as to the proper relationship between religion, law, and the polity. Spain practiced the antithesis of this with great resultant harm to Indigenous America. Documents exist outside the legal record in which to examine the relevant periods and allow yet further lessons.¹¹⁴

Lesson Three: Historical Amnesia. With the secularization of the missions, critics assert that the friars failed in their efforts to “assimilate” Native Californians. The evidence demonstrates that very little was granted them in exchange for taking their property interests. Further study of Indigenous history therefore obligates us to look not only for those legal forces that disallowed their full integration but also for the mechanisms used that precluded their full participation into Spanish society.¹¹⁵

Additionally, much of the credit for the “founding” of California’s cities does not go to the Indigenous population, with distortion of the public record dominating the status quo.¹¹⁶ Narrow readings disregarding the diverse human condition, although quite possibly shaped by the events of the time, also link the past to the present. Law students are taught the principles of law yet, as others have long emphasized, receive little exposure to “social, religious, historical, and other dimensions.”¹¹⁷ The consequences ensure a less than precise history of the country’s origins and its legal history.

For example, following the various conquests, several Native members, not unlike the Gabrieleños, married Mexicans with their offspring becoming some of the nation’s earliest Chicanas/os.¹¹⁸

¹¹³ See generally Marianne Perciaccante, *The Courts and Canon Law*, 6 CORNELL J.L. & PUB. POL’Y 171, 208 (1996) (arguing for “consistent deference to religious law in the courts” aside from legal constraints imposed by Free Exercise and Establishment Clauses).

¹¹⁴ See e.g., Helen Lara-Cea, *Notes on the Use of Parish Registers in the Reconstruction of Chicana History in California Prior to 1850*, in BETWEEN BORDERS, *supra* note 46, at 131; Carmen, Ramos Escandon, *Alternative Sources to Women’s History*, in BETWEEN BORDERS, *supra* note 46, at 200.

¹¹⁵ See Brenda Norrell, *Examine Ugly History, We Can All Heal from It*, INDIAN COUNTRY TODAY, Nov. 2, 1998, at A1; see also Buckner F. Melton, Jr., *CLIO at the Bar: A Guide to Historical Method For Legalists and Jurists*, 83 MINN. L. REV. 377 (1998).

¹¹⁶ See generally MENCHACA, *supra* note 29, at xiv.

¹¹⁷ See Harold J. Berman, *Toward an Integrative Jurisprudence: Politics, Morality, History*, 76 CAL. L. REV. 779 (1988).

¹¹⁸ See, e.g., RIOS-BUSTAMANTE & CASTILLO, *supra* note 40, at 22; Mason, *supra* note 54, at 135 (“After about 40 years of missionization, when a few neophytes were selected to leave the

Their descendants experienced a number of legal mechanisms that disallowed into the present their full participation in society. The Chicano Blowouts in which the protests against the disproportionate high numbers of Chicanos drafted into the Vietnam combat represents an example. While a large number of Chicanas/os were physically assaulted during the protest, police actions resulted in the death of newspaper reporter Ruben Salazar. Ruben Salazar had authored a number of articles emphasizing the disparate treatment of California Chicanas/os. His death continues to generate much criticism over the use of law in curtailing Chicana/o voices. Without studying our history, other evidence suggests insufficient analysis in demonstrating the extent to which law established our communities as outsiders.

The Black Legend in which conquerors exploited mission actions for their own gain also hinders a precise historical and legal record. Each region throughout the State and the country experienced the conquest in different ways. The effects of California missions differed from Texas missions as in New Mexico and throughout Latin America. Because of the different historical time frame and circumstances, Native experiences confronting them differed. In many instances this facilitated blaming the culture for its purported "failure" to "assimilate" without regard to the direct causation and events leading to that marginalization.

The Black Legend perpetuated simplistic assertions that blamed the friars and/or Roman Catholicism without considering whether some actually protected mission neophytes.¹¹⁹ In the present, priests working in Indigenous communities to protect Native resources and communities and facing death for their efforts emphasizes the complexities of the relationship between the Church and

missions and seek homes among the Mexican settlements, some of the women in Los Angeles and nearby ranchos married men who had recently been released from the missions."). Mason also asserts that contrary to some accounts this branch of Native Californians did not completely disappear: "Evidence of a few descendants of Gabrielinos, heavily mixed with the Mexican descendants of *gente de razon*, are frequently found." *Id.* at 141.

¹¹⁹ CALLCOT, *supra* note 70, at 10-11 (asserting that priests were "the real friends of the natives and did all in their power to assist them and to protect them from oppression"). There is some merit to her argument as represented by Las Casas, the "Apostle of the Indies" designed to "protect the Indians from the evils of what, in practice, was a species of slavery." *Id.* Additionally, Mexico won its independence from Spain in large measure from the actions of Father Miguel Hidalgo y Costilla. See generally MOSQUEDA, *supra* note 108, at 38. The role of priests working with the Mayan and Zapatista liberation movements also involved the work of religious actors throughout Indigenous America.

Indigenous peoples.¹²⁰ Without studying the historical and religious linkages with law our silence accordingly leaves “standard texts” founded on Black Legend stereotypes as privileged, with false records standing as irrefutable universal truths. Accordingly, this lesson requires investigation of the historical and legal record.

*Lesson Four: God Is “Red.”*¹²¹ Once “converted” the descendants of Native California could not attend mass without being forced to sit in the back of churches or in basements away from the dominant culture.¹²² At times when Indigenous ceremonies were recognized and practiced, European priests new to the region disallowed Natives’ participation or ordered removal of Native paintings from churches.¹²³ From the colonial period, suppression of Indigenous religious practices continues, with hostility directed towards ceremonies and rituals.¹²⁴ This lesson therefore calls for protection of Native religious practices and examining involvement of the Church with state measures that also repress Latina/o communities.

Lesson Five: The Untouchables. Wherever the Spaniards conquered new worlds, legal and religious authority facilitated the transforma-

¹²⁰ See THE MEXICO PROJECT, HARASSMENT OF HUMAN RIGHTS DEFENDERS IN MEXICO, THE MEXICO PROJECT, MINNESOTA ADVOCATES FOR HUMAN RIGHTS 7 (1994) (citing media criticism against Bishop Ruiz, Dominican priest Pablo Romo Cedano and human rights advocates for supporting Zapatistas in Chiapas in their struggle for land and human rights).

¹²¹ VINE DELORIA, JR., GOD IS RED, A NATIVE VIEW OF RELIGION (1994). Closely related to this issue is the threat to native land by way of environmental degradation and or removal from their land base. See, e.g., THE STATE OF NATIVE AMERICA, GENOCIDE, COLONIZATION, AND RESISTANCE (M. Annette Jaimes ed., 1992); Todd Howland, *United States Law As A Tool of Forced Social Change: A Contextual Examination of the Human Rights Violations by the United States Government Against Native Americans at Big Mountain*, 7 B.C. THIRD WORLD L.J. 61 (1987) (discussing “removal of Hopi and the Navajo from a portion of their homeland”).

¹²² The Church’s stance on homosexuality, women’s rights, and absence of diversity in the operations of church structures provide a few examples of its limitations. See JOSE E. LIMÓN, DANCING WITH THE DEVIL, SOCIETY AND CULTURAL POETICS IN MEXICAN-AMERICAN SOUTH TEXAS (1994) (comparing Catholic Church’s emphasis on existence of evil but noting that it says “nothing about the evident evil expressed in the social treatment of the barrios it ostensibly served” yet also recognizing positive features of Catholicism).

¹²³ MOSQUEDA, *supra* note 108, at 33.

¹²⁴ See generally Allison M. Dussias, *Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases*, 49 STAN. L. REV. 773 (1997); see also Jorge A. Vargas, *Freedom of Religion and Public Worship in Mexico: A Legal Commentary on the 1992 Federal Act on Religious Matters*, 1998 BYU L. REV. 421 (noting “history of distrust between Catholic Church and government” in Mexico). Closely connected is the issue of prisoners disallowed from practicing their native ceremonies. See, e.g., Karen L. Testerman, *Former Inmate Asked to Return to State Prison*, INDIAN COUNTRY TODAY, Dec. 21, 1998, at B2.

tion from Indigenous communities to Hispanic colonies.¹²⁵ This left in its wake changed transformation of Native cultures supported by state privileges such as control of education with Spanish friars targeting Native children for conversion, which, in turn, also brought in their parents. Catholic missionaries and the Euro-American educational system went to great lengths to “denaturalize or deculturalize” Native peoples through their children.¹²⁶

Canon law recognized the personal immunity of ecclesiastics and disallowed remedies for Indigenous groups. Although changed somewhat *fueros* responded to claims for almost anything deemed “distasteful or injurious to the interests of the Church.”¹²⁷ Three principal *fueros* included local, real, and personal prerogatives or exemptions,¹²⁸ from taxation or other forms of contribution, personal service, or public duties. Along with positive immunities the right to trial by ecclesiastical courts permitted privileges to a select few.

Special courts, presided by clerical judges ruled by canon law, heard and tried cases involving clergymen with an end result from very early on leading to abuse and “created a class of untouchables — a class elevated above the rest, that none of the means of social control or civic sanction could reach.”¹²⁹ The separation of religion from state legal authority in principle disallows the reach of several legal precepts and rules, and must be examined to ensure that subordination of our communities does not linger.

Lesson Six: Monja Alert. In the contemporary period, previous versions of papal privilege exist that continue to marginalize women both within and outside church institutions. For example, the denial of tenure to nuns and others advocating greater freedoms for women creates a special elite by limiting the involvement

¹²⁵ See, e.g., FARRISS, *supra* note 103, at 6; GALARZA, *supra* note 1, at 52; Perciaccante, *supra* note 113.

¹²⁶ This is a well-documented issue. See, e.g., Antonia Casteneda, *Language and Other Lethal Weapons: Cultural Politics and the Rites of Children As Translators of Culture*, 19 CHICANO-LATINO L. REV. 229, 238-39 (1998) (commenting on assimilationist strategy of targeting children). Catholic missionaries and the Euro-American educational system went to great lengths to “denaturalize or deculturalize” native peoples through their children. See Lorne M. Grahams, “The Past Never Vanishes,” *A Contextual Critique of the Existing Indian Family Doctrine*, 23 AM. INDIAN L. REV. 1, 10 (1998) (“[E]ducation became one of the most pernicious methods used to separate American Indian children from the influences of family and community and assimilate them into mainstream society.”).

¹²⁷ GALARZA, *supra* note 1, at 57.

¹²⁸ See CAPRON, *supra* note 6, at 3; FARRISS, *supra* note 103, at 6.

¹²⁹ GALARZA, *supra* note 1, at 57.

of women as key principals in Church law and teachings.¹³⁰ Additionally, the separation of religion from state legal authority in principle disallows the reach of several legal precepts and rules.¹³¹

Lesson Seven: Toyipurina Alert and Insurgency. Throughout history numerous examples show that with division comes conquest. The Spaniards in the conquest of Mexico benefited from the highly centralized and stratified nature of the Aztec, Maya and Inca Empires. Within tribal society, California Natives did not speak of themselves as “individuals/the self and society” but instead identified as “the self in society.”¹³² Nonetheless, more recent accounts attribute women leaders as seeing more clearly than others exactly what their gender would lose in Spanish civilization, and serves as an example.¹³³ Toyipurina, a shaman leader from the Japchavit ranchería, for example, led a pan-tribal movement against Mission San Gabriel.¹³⁴ At her trial she declared her purpose was to drive the foreigners from her land.¹³⁵

¹³⁰ The records kept by mission priests also provide information on the role of women in some church ceremonies. See Lara-Cea, *supra* note 114, at 131, 139 (explaining that women performed baptisms and served as lay ministers); see also Margarita Gonzalez De Pazos, *Mexico Since The Maya Uprising*, 10 ST. THOMAS L. REV. 159, 171 (1997) (“The Catholic Church continues promoting peace in Chiapas and denouncing the situation of the Indians.”). Some Catholic priests, whose links are with Indians in the area controlled by the Zapatistas, continue to pay a high price for helping the Mayans. See Matt Kantz, *Mexican Archdiocese Withdraws Theology Document*, 35 NAT’L CATH. REP. 9 (Feb. 19, 1999) (criticizing Indigenous theology employed at San Cristobal de las Casas, Mexico).

¹³¹ Perciaccante, *supra* note 113; see also *City of Boerne v. Flores*, 521 U.S. 507 (1997); Joanne C. Brant, *Our Shield Belongs to the Lord: Religious Employers and a Constitutional Right to Discriminate*, 21 HASTINGS CONST. L.Q. 275 (1994); Rev. Edward L. Buelt & Charles Goldberg, *Canon Law & Civil Law Interface: Diocesan Corporations*, 36 CATH. LAW. 69 (1995); Nicholas P. Cafardi, *Discovering the Secret Archives: Evidentiary Privileges for Church Records*, 10 J.L. & RELIGION 95 (1993-1994).

¹³² William S. Simmons, *Indian Peoples of California*, in *CONTESTED EDEN*, *supra* note 3, at 48, 63.

¹³³ Sandos, *supra* note 52, at 210.

¹³⁴ See generally Thomas Workman Temple, II, *Toyipurina the Witch and the Indian Uprising at San Gabriel*, in *NATIVE AMERICAN PERSPECTIVES*, *supra* note 9, at 326. Temple wrote:

As a sorceress, medicine woman, witch; or whatever we call her as she first appears, full-blown and in all the wild majesty she possessed and exerted over her Gabrielino tribesmen, she deserves to be remembered. She is the only Indian woman in the colonial records of Alta California, known to have led a revolt against the padres and soldados of a mission.

Id.

¹³⁵ Other women also called for revitalization movements. “In their preoccupation with Indian sin, priests blinded themselves to something more fundamental and important: Indian resistance and the continuance of native culture within the mission compound.” Sandos, *supra* note 52.

Covert actions also show Native resistance against the status quo but which until recently remained hidden history. In the Stations of the Cross in Mission San Fernando for example, the faces of Jesus's tormentors along the Via Dolorosa are Indian faces as carved by Native Californians. Graffiti is also found in early layers of whitewash on mission walls and several altars, choir lofts and opposite the pulpit also containing hidden Indian designs. Native resistance offers viable examples, not only for restoring their role during the period of conquest, but also in managing turbulent times generally, serving as a tool in the present.

First, it shows resistance to inclusion of marginalized groups even when promises were made such as releasing mission lands to the neophytes and or permitting entry into white society. These differing and shifting forms of what qualifies as assimilation arise in cycles through time and demand further study. Second, they offer evidence that the Indigenous population in California resisted against Church structures, and provide immeasurable accounts of their reasoning skills in contrast to monocultural accounts of the conquest.

Lesson Eight: Human Rights. Indigenous groups receive greater recognition of their nation status and assertions of sovereign status outside the realm of domestic law.¹³⁶ These gains must be studied for application into domestic law.¹³⁷

Heterosexual privilege arrived with the European conquerors, and the discrimination against gays and lesbian as a primary example requires vigilance. The linkages between law and its use to curtail individual freedoms needs drawing out to ensure women are not further dominated by patriarchy as imposed by this form of Christianity.

Lesson Nine: Environmental Relationships. In contrast to European agricultural practices, Native law, custom and practices, reveal a greater relationship with nature. The resultant environmental

¹³⁶ See Dean B. Suagee, *Human Rights of Indigenous People: Will the United States Rise to the Occasion?*, 21 AM. INDIAN L. REV. 365 (1997); Karyn I. Wendelowski, *A Matter of Trust, Federal Environmental Responsibilities to Native Americans Under Customary International Law*, 20 AM. INDIAN L. REV. 423 (1996); Robert A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 1990 DUKE L.J. 660, 673-74.

¹³⁷ See generally John A. Onorato, *Saving Grace or Saving Face: The Roman Catholic Church and Human Rights*, 8 DICK. J. INT'L L. 81 (1989).

degradation, following the conquest shows the loss of the nation's rich biodiversity and reveals the legacy of those differences.¹³⁸

Greater study of the Property Clause giving Congress the power "to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States" is therefore required in each region throughout the nation. The unlawful takings of Native property and overly intrusive governmental controls offer intellectually challenging constitutional takings questions and analysis regarding the control of the nation's natural resources in the present. This awareness delineates the need to promote local knowledge between states and its impact on Indigenous and Latina/o communities.¹³⁹

Lesson Ten: Mestizos and Law. The conquest of Indigenous America included the creation of new societies and ethnic groups.¹⁴⁰ Colonizing Los Angeles, for example, included a number of *mestizos* from the Mexican interior and their role and relationship with the state also remains relatively unknown.¹⁴¹ The intersection of law with identity deriving under and from the mission period thereby calls for further study.¹⁴² This links to the methods in which the nation-state identified and labeled the blending of *inter alia*, Spaniards with Indian, Indian with Black, Indian with other foreign nationals, and accordingly could provide analytical tools to dissect the state's treatment of people of color.

*Lesson Eleven: Cultural Memory/Tonantzin Me Socorra!*¹⁴³ The region's history of contradictions and conquest did not eliminate Roman Catholicism in California. To the contrary, it remains a

¹³⁸ See, e.g., Carl H. Johnson, *Balancing Species Protection with Tribal Sovereignty: What Does the Tribal Rights-Endangered Species Order Accomplish?*, 83 MINN. L. REV. 523 (1998).

¹³⁹ This applies with equal force to the issue of environmental racism in native and Latina/o communities. See, e.g., Nancy B. Collins & Andrea Hall, *Nuclear Waste in Indian Country, A Paradoxical Trade*, 12 LAW & INEQUALITY 267 (1998); Kaylee Ann Newell, *Federal Water Projects, Native Americans and Environmental Justice, The Bureau of Reclamation History of Discrimination*, 20 ENVIRONS ENV'T. L. & POL'Y J. 40 (1997).

¹⁴⁰ See generally DAVID R. MACIEL & ISIDRO D. ORTIZ, *CHICANAS/CHICANOS AT THE CROSSROADS* (1996); John A. García, *The Chicano Movement: Its Legacy for Politics and Policy*, in MACIEL & ISIDRO, *supra*, at 83.

¹⁴¹ Layne, *supra* note 68, at 81.

¹⁴² Racial classifications continue to raise significant criticism and debate. See Angel Oquendo, *Re-Imagining the Latino/a Race*, 12 HARV. BLACKLETTER L.J. 93 (1995). For case law examples, see *de Baca v. United States*, 36 Ct. Cl. 407 (1901), and *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897), and *Otero v. State*, 17 S.W. 1081 (Tex. Ct. App. 1891), involving case of "Mexican Pete."

¹⁴³ The Nahautl and the Spanish translates into La Virgen/Tonantzin Keep Me Safe. It is used in this context to emphasize the nature of syncretism in the Latina/o culture.

viable institution with much influence over some Native and Latina/o communities. Catholicism in Chicana/o and Native religiosity is heir to Indian and Spanish religious legacies with many practices kept alive from generations past.

One layer of this issue extending into the present includes the rejection by younger generations of the patriarchy imposed on women. They, in a number of instances, are returning to Indigenous interpretations and rejecting the patriarchy of Church structures. Nowhere is this more evident than worship of the Virgen de Guadalupe the Aztec Princess who spoke to Juan Diego following the conquest of the Aztec Nation.¹⁴⁴ The "Official/Hispanicized Version" of the Virgen de Guadalupe has long obscured her Indigenous cultural context and was used to promote the subordination of women in church structures.

Her importance in Native cultures is something long passed from generation to generation not only by worship and adoration, but also by tradition. Jeannette Rodriguez, scholar on the Virgen, has told us that cultural memory ensures her Indigenous survival in Latina America. Rodriguez has contended that "the people carry a memory and the memory is also a carrier" not unlike language, images, ideas, ideals and other traditions sustaining culture. While the institutional Church remained a "Spanish Church subjectively for the Indian there was now a Native and national symbol."¹⁴⁵

Throughout Native America and in Latina/o communities many are asserting a return to their Indigenous heritage. Newer interpretations of La Virgen are causing some Chicanas of the present to assert that "she represents a blend of culture, nationalism and politics" with deeply non-religious meanings as well as being a sym-

¹⁴⁴ Before Christianity forced him to change his name, his Indian name was Cuauhtlatotzin ("one who talks like an eagle"). See THE STORY OF GUADALUPE, T. LUIS LASO DE LA VEGA'S HUEI TLAMAHUIXOLTICA OF 1649 (Lisa Sousa & James Lockhart eds., 1998). For a translation of the Nahuatl rendition of the Virgen de Guadalupe into English, see JEANNETTE RODRIGUEZ, OUR LADY OF GUADALUPE, FAITH AND EMPOWERMENT AMONG MEXICAN-AMERICAN WOMEN (1994). The author emphasizes the Virgen's impact on the Indigenous population: first, "it was the foundation of Mexican Christianity and second, it provided a connection between the indigenous and Spanish culture." *Id.* at 45. She asserts that the "Aztecs adapted Catholicism to their own religious concepts by a process of fusional syncretism." *Id.*; see also GODDESS OF THE AMERICAS/LA DIOSA DE LAS AMÉRICAS: WRITINGS ON THE VIRGIN OF GUADALUPE (Ana Castillo ed., 1996).

¹⁴⁵ RODOLFO ACUÑA, OCCUPIED AMERICA, A HISTORY OF CHICANOS (3d ed. 1988); MAURICE HAMINGTON, HAIL MARY? THE STRUGGLE FOR WOMANHOOD CATHOLICISM (1995); MOSQUEDA, CHICANOS, *supra* note 108, at 35.

bol.”¹⁴⁶ Representing the feminism of Catholicism in newer revisions is promoting the rejection of the Church’s patriarchal teachings.

The lesson highlighted here emphasizes that, notwithstanding the contradictory role of religion in our cultures, the importance of popular religiosity as different from universal canon law and church dogma cannot be refuted nor denied, and requires yet further investigations in the LatCrit enterprise.

The above lessons are offered as potential corridors through which to examine race, class, gender and other categories of analysis inside a most complex and painful history. They seek to emphasize that in their absence law is constrained and limited by the dominant discourse.

Yet, in a number of instances law has blended various jurisprudential philosophies towards meeting social goals and contemporary values. The integration of three jurisprudential philosophies as found in *MacPherson v. Buick Motor Co.*,¹⁴⁷ and, as Harold Berman emphasized, provides an example as to law’s vitality. In *MacPherson*, Justice Cardozo relied on “the holdings of previous decisions (positivism), the equities of the case (natural law), and the social and economic evolution of the United States during the previous half-century (historical jurisprudence).”¹⁴⁸ As a form of insurgency this opinion therefore permitted a new doctrine of manufacturers’ liability. In short, this demonstrates not only law’s capacity but a measure of its ability to promote justice in harsh and inequitable circumstances.

CONCLUSION

We are a people in the making within a larger nation-state. Most of what we produce is taken beyond our reach, and we get back from the larger society much less than what we contribute to

¹⁴⁶ JAY P. DOLAN & GILBERTO M. HINOJOSA, *MEXICAN AMERICANS AND THE CATHOLIC CHURCH, 1900-1969* (1994); ADA MARÍA ISASI-DÍAZ & FERNANDO F. SEGOVIA, *HISPANIC/LATINO THEOLOGY CHALLENGE AND PROMISE* (1996); MOSQUEDA, *supra* note 108, at 35; William Madsen, *Religious Syncretism*, in 6 *HANDBOOK OF MIDDLE AMERICAN INDIANS*, at 369 (Robert Wauchope ed., 1964-1976).

¹⁴⁷ 217 N.Y. 382 (1916).

¹⁴⁸ For other intersectionalities *see generally* Iglesias & Valdes, *supra* note 4.

it. Law and order are defined and imposed from outside of our culture, communities, and control.¹⁴⁹

In introducing this Essay, I included the query as to whether an alternative theoretical lens can provide a protective measure of space regarding a legal and religious relationship long obscured by the writing of the conqueror.¹⁵⁰ If so, can a more precise rendering lead to potential legal remedies and relief for long impoverished and marginalized communities? Our relationship with the state as attorneys coupled with the invisibility in law of the Native Californians and in some instances their Chicana/o descendants allows nothing but a response in the affirmative. Within mainstream law, legal theory has advanced jurisprudence on the basis of hybrid cases, thereby revealing that the blending of jurisprudential “thought, process, and reasoning permit integrations” as legal scholar Harold Berman argues are long cloaked with the mantle of “real law.”¹⁵¹

Drawing from the lessons of the various periods shows not only what was lost, but also yield evidence of power relations where one voice dictated over the voice of the majority. In spite of the inhumane actions and legal record imposed on Native Californians, the strength of their Native identity and religious identities, and their refusal to disappear make evident their response to aggressive evangelism, the Black Legend, and other forms of conquest. As state-causing actors California’s Indigenous population and the country’s earliest Chicanas/o received very little in exchange for their labor and immeasurable sacrifices.

The LatCrit enterprise even in its infancy can and should continue in its commitment to change in law. Failing to uncover long neglected truths and inaction allows textbook dogma to stand as a false record, guarantees the continued assault on our culture, religion, ethnicity and other cultural attributes and categories without receiving parity with those holding positions of power. The task for the LatCrit community is to reach those communities long serv-

¹⁴⁹ Otto Maduro, *Notes Toward a Sociology of Latina/o Religious Empowerment*, in *HISPANIC/LATINO THEOLOGY, CHALLENGE AND PROMISE* 164 (Ada María Isasi-Díaz & Fernando F. Segovia eds., 1996).

¹⁵⁰ In this context I am speaking specifically about the relationship between Native Californians and Chicanas/os along with other Latinas/os throughout the Americas.

¹⁵¹ For an analysis of *MacPherson*, 217 N.Y. 382, 111 N.E. 1050 (1916), see Berman, *supra* note 117.

ing as primary state causing actors, but receiving little in exchange for their labor while losing their land and access to natural resources. Recognizing native resistance against state linked actions imposing false norms of “assimilation standards” beyond their reach while despoiling their land base can influence LatCrit theory in the present and into future generations, therefore allowing one last “lesson.”

“We are a people who honor our dead”¹⁵² — “*sangre llama a sangre*” (blood cries out to blood) and the legal and historical realities of Native Californians and our *antepasados* (ancestors) are calling.”¹⁵³ Through the LatCrit enterprise can we do anything but respond?

¹⁵² Yolanda Leyva, *A People Who Honor Our Dead*, 11 LA VOZ DE ESPERANZA 3 (1998).

¹⁵³ Leyva elaborated: “I come from a people who honor our dead by remembering. We are the keepers of memories that link us to the ones who came before. In our world are places that are sacred and powerful, places that allow us to remember; they call us to remember.” *Id.*; see also Brenda Norrell, *Examine Ugly History, We Can All Heal from It*, INDIAN COUNTRY TODAY, Nov. 2, 1998, at A1.