

Indians for Sale: Bound Labor in 19th Century California

By Evan Tucker

“The Legislature has done much blowing concerning the Indians in this country, but every Act hits them harder. They are held here as slaves were held in the South; those owning them use them as they please, beat them with clubs and shoot them down like dogs...”

-The Sacramento Union, August 19, 1865¹

In 1858 enslaved African American Archy Lee refused to return with his owner to Mississippi, claiming that after living in the free state of California he was no longer a slave. Sacramento police arrested Lee and brought him before Sacramento County Judge Robert Robinson. Over the protests of Lee’s owner, Robinson found his status as a slave to be invalid in the state of California.² Nevertheless in 1862, while the US fought a war over slavery, Judge Robinson would order an Indian child indentured without pay to a white man, until the age of 30.³

Robinson was not alone in this ruling. From 1850 until at least 1863 judges and justices of the peace indentured and leased roughly 20,000 Native American men, women and children to whites throughout the state of California.⁴ This despite the fact that California’s constitution prohibited slavery and the state enthusiastically stayed with the union when the Civil War began. This codification of involuntary servitude evolved from the coercive labor practices of Mexican California and the cruel customs of American chattel slavery. In the words of historian James Rawls, “although forced recruitment and Indian peonage were part of life at the missions and ranchos, the actual buying and selling of California Indians was an American innovation.”⁵ California’s own peculiar

institution proved to be an appealing way for settlers and landowners to deal with the labor shortage created by the gold rush.⁶

Though California had no tradition of enslaving African Americans, slavery of Native Americans had been practiced in California since the Mission Period. Before the arrival of Europeans, California was one of the most densely populated and linguistically diverse places in North America. In 1769 Spanish priests and soldiers settled in California and began constructing a system of 21 missions. In this distant outpost of the Spanish empire, California Indians became the main productive labor force on these missions. But many of the Indian laborers were not working voluntarily nor were they financially compensated for their labor. In 1821 Spanish rule came to an end and the new government of Mexico ceased to operate the missions.⁷

Though the missions were no longer operational, the oppressive labor conditions that they embodied were perpetuated by the Mexican land grant holders. In the words of historian Albert Hurtado, “In the 1840s Indians were practically the sole source of agricultural labor and whites used every possible means to obtain their services. Slavery, debt peonage, and wage labor all had a place in Mexican and Anglo California.” The Indian Act of 1850 would allow this system of forced labor to carry over once again as California became part of a new nation.⁸

After the US victory in the Mexican-American War and the signing of the treaty of Guadalupe Hildago in 1848, California became a territory of the United States.⁹ The discovery of gold that year caused a massive wave of migration, the likes of which California had never seen.¹⁰ In 1849 California petitioned congress for statehood,

launching a showdown between slave states and free states over who would have a majority in congress. ¹¹

This crisis was resolved through the Compromise of 1850 which allowed California to be admitted to the union as a free state. Prior to that, a constitutional convention was called and the delegates ratified a constitution prohibiting slavery. However, four months before being admitted to the Union, the California legislature passed a law that would enslave thousands of native people throughout the 1850s and 1860s. ¹²

This law was entitled *An Act for the Government and Protection of Indians* and was enacted by the legislature in August of 1850. The law created a process called “indenturing” that allowed whites to take native children as apprentices and make them work without pay. It also allowed for native people who were charged with vagrancy to be arrested and have their bond sold at a public auction. The term of forced labor was determined by a judge at the time of purchase. Though described as “indenturing” this practice was different than other forms of indentured servitude because it targeted a specific racial group and was rarely entered into voluntarily. ¹³

Due to pressure from agricultural interests the legislature passed a more draconian version of the law in 1860. ¹⁴ This updated version of the Indian Act allowed children of a certain age to be held as “apprentices” until they reached the age of 30. The updated Indian Act also allowed those same children to be indentured without parental permission, if a claim was made that their parents were dead. This legislative change increasingly led whites to fraudulently claim that Indian children were orphaned and even murder native adults in order to indenture their children. ¹⁵

Several months after President Lincoln issued the emancipation proclamation in 1863, the California Legislature repealed the section of the Indian Act regarding apprenticeships. April 27th of 2013 marked the 150th anniversary of this momentous occasion.¹⁶ The rest of the law would later be superseded by the federal Anti-Peonage Act of 1867¹⁷ but would officially remain on the books in California until 1937.¹⁸ Despite these earlier legislative changes, some indentures continued after 1863 and Indians who were already indentured continued to be held as slaves. One example is 12 year-old La-Ache who was indentured in 1862 in Fresno County and not released until 1874, long after this practice had stopped being legal.¹⁹

In advocating for these laws, settlers in California drew on the American tradition of bureaucratic administration of racial exploitation, to maintain systems of unfree labor. These settlers created an elaborate legal system that marshaled the power of the state government, the militias, law enforcement and the local courts to subjugate the productive power of an entire race of people to their white masters. Farm labor historian Richard Steven Street suggest that the Indian Act required, “Controlling and coercing work in much the same way that the Black codes compelled freed black slaves to labor in the fields of the post-Civil War American South...”²⁰

Though the period of time in which this law exercised power over Indian-White labor relations was relatively brief in terms of California’s history, its impact was significant. A report prepared in 2002 for the California legislature on the history of state Indian policies asserts that the Indian Act, “... facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages and cultures.”²¹ Historian Michael Magliari has argued that this

law resulted in the forced labor of 20,000 Native Californians. Magliari has also pointed out that many of the native people who were enslaved were women and children. This was caused in part by the lopsided gender distribution in the state that was the result of the enormous influx of men into California during the Gold Rush. By 1850 the non-Indian population of California was a staggering 90% male.²²

White farmers appropriated Native American women and children in an effort to replicate the productive value of the family, the primary economic unit of 19th century agriculture. This process proved extremely detrimental to Native American's actual families who historian William Bauer Jr. describes as experiencing, "the historical trauma of unfree labor relations and the tearing of community bonds."²³ Bauer points out that by 1860 white settlers held 236 children from the Round Valley Reservation alone, which represented half of the reservation's captive population.²⁴ Magliari points out that the fate of these involuntary unions was that they, "typically ended with white men discarding their Indian 'wives' as soon as white females became more available"²⁵

The white prospectors that poured into California beginning in the late 1840s were far from desirable from the perspective of agricultural employers. Workers were in high demand in California during the 1850s and 1860s and white men commanded high wages and experienced extreme mobility. According to historian Richard Steven Street white men could choose their work and, "Having left the East largely to escape the drudgery of agricultural labor, they now avoided it like the plague." The abundance of a people considered racially inferior and the unusual power commanded by the white working class created the conditions for a racialized system of forced labor.²⁶

The Indian Act not only legalized unfree labor but also created a cover for an illegal, but widely tolerated Indian slave trade. Robert Heizer, and Alan Almquist, some of the first scholars to study Indian slavery in California argued, “This act... opened the door... to the white slave dealers who did a thriving business providing ‘apprentices’ to farmers and miners, who in turn legitimized these indentures by obtaining the local justice court’s permission as provided through these laws.” This slave raiding often occurred when groups of whites followed around the California militias and descended upon recently attacked Indian villages to sweep up the survivors and sell them into slavery.²⁷

All of this took place in the context of a demographic collapse for Native Californians. From 1845 to 1870 the population of native people in the state plunged from 150,000 to 30,000.²⁸ This was in part the effect of a campaign of genocide, waged by settlers and supported by the state government. A year after the Indian Act was passed Governor Peter Burnett told the California Legislature, “That a war of extermination will continue to be waged between the races, until the Indian race becomes extinct, must be expected.”²⁹ This genocidal mindset together with the economic motivations of California’s white settlers is what created this truly peculiar institution in a state that claimed to repudiate the evils of slavery.

In the words of scholars Heizer, and Almquist, “We can only conclude one thing from this survey of the indenture act of 1850... namely, that this was a legalized form of slavery of California Indians. No other possible construction can be made of these facts.”³⁰ Yet this idea represents a departure from our traditional understanding of slavery in America. Native American involuntary servitude is often not recognized as

slavery because unlike the slavery of the American South it was theoretically limited in time and not hereditary. Yet both systems subjected members of a specific racial group to a cruel system of compulsory, uncompensated labor. But there is one more significant distinction. Unlike the institution of slavery in the South, Native American slavery in California operated as the handmaiden of genocide.

The synthesis of factors in mid-nineteenth century California that shaped the Golden State's own peculiar institution cannot be understood without examining California's unique history. The Mexican-American War, the Gold Rush and the Compromise of 1850 all set the stage for the emergence of this system. Yet this system also required the intertwining labor practices and racial ideologies of Mexican California and the American South in order to blossom into a full fledged system of legalized slavery.

¹ Heizer and Almquist, *Other Californians*, 58

² Burg, *Sacramento's K Street*, 26-28

³ Indian Indentures Collection

⁴ Magliari, "Free Soil, Unfree Labor", 353

⁵ Rawls, *Indians of California*, 96

⁶ *Ibid.*, 109

⁷ *Ibid.*, 3-21

⁸ Hurtado, *Indian Survival*, 211

⁹ Rawls, *Indians of California*, 81

¹⁰ Magliari, "Free State Slavery", 157

¹¹ Magliari, "Free Soil, Unfree Labor", 349

¹² *Ibid.*

¹³ Johnston-Dodds, *Early California Laws*, 5-12

¹⁴ Street, *Beasts of the Field*, 145-147

¹⁵ Smith, *Freedom for California's Indians*,

¹⁶ *Ibid.*

¹⁷ Magliari, "Free Soil, Unfree Labor", 386

¹⁸ Johnston-Dodds, *Early California Laws*, 5

¹⁹ Street, *Beasts of the Field*, 147-149

²⁰ *Ibid.*, 119

²¹ Johnston-Dodds, *Early California Laws*, 1

²² Magliari, "Free State Slavery", 167

²³ Bauer, *We Were All Like Migrant Workers Here*, 31

²⁴ *Ibid.*, 45

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- ²⁵ Magliari, "Free State Slavery", 184
²⁶ Street, *Beasts of the Field*, 118
²⁷ Heizer and Almquist, *Other Californians*, 40
²⁸ Magliari, "Free Soil, Unfree Labor", 387
²⁹ Johnston-Dodds, *Early California Laws*, 15
³⁰ Heizer and Almquist, *Other Californians*, 57

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