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# From Guadalupe Hidalgo to the Free Trade Agreement: A Review Essay

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GEORGE BAKER

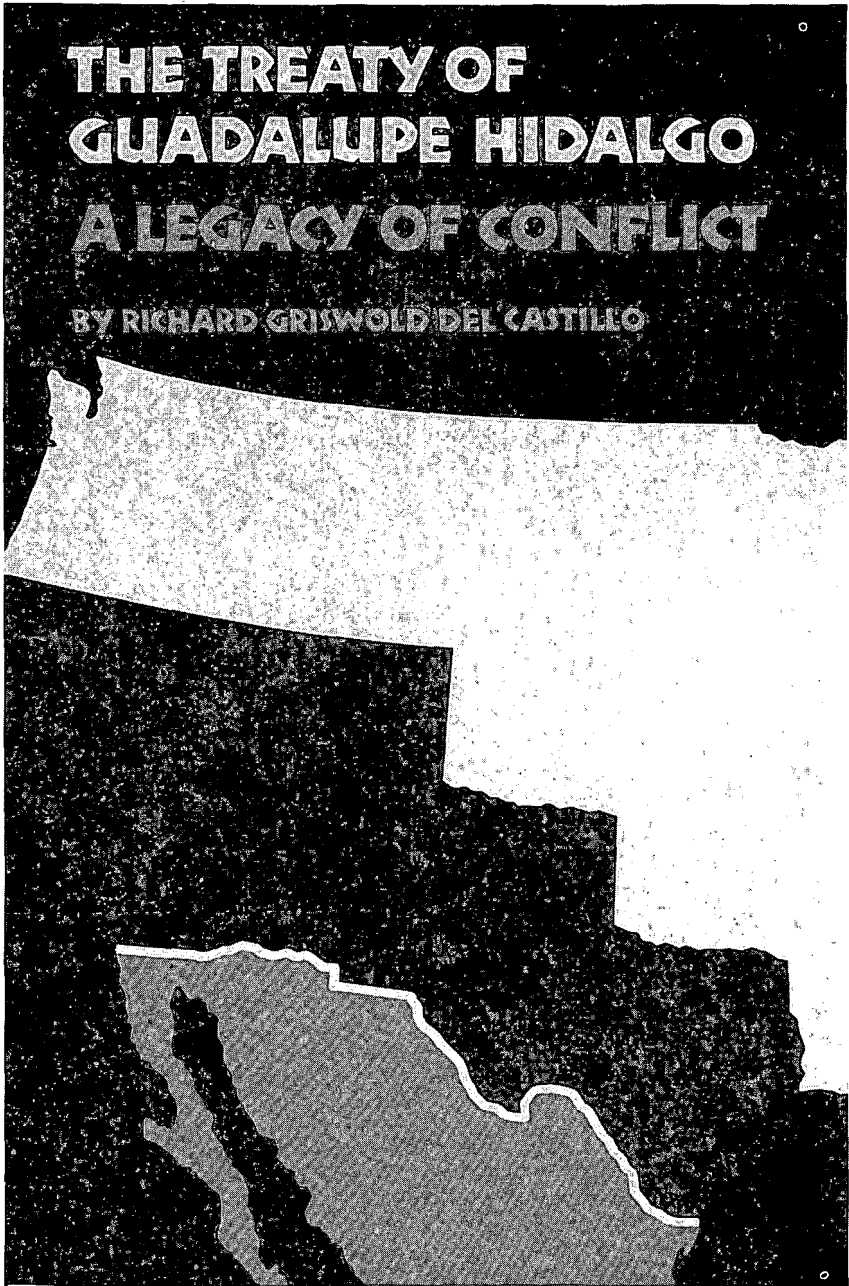
In Richard Griswold del Castillo's study the Treaty of Guadalupe Hidalgo is seen as an instrument that, equally, put an end to one thing while marking the beginning of another. It put an end not to the war between the United States and Mexico (which, as far as military activity was concerned, had ended in mid-September 1847) but to the U.S. military occupation of central Mexico and Baja California.

The treaty was also a beginning: on the dark side the signing of the treaty was the beginning of a long period of exploitation of a conquered people—the Mexicans and their descendants who chose to remain in the territories to be ceded to the United States.

Looked at in a positive light, the treaty was an attempt to build a viable infrastructure for the economic and political development of the border region. The attempt was flawed in numerous places, but not necessarily because of limitations in the visions of the negotiators of the treaty. The defects in the treaty arose from conflicts between its precepts and the surrounding economic, political, and legal realities

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*The Treaty of Guadalupe Hidalgo: A Legacy of Conflict.* By Richard Griswold del Castillo. (Norman: University of Oklahoma Press, 1990. xv + 251 pp. Illustrations, maps, appendixes, notes, bibliography, index. \$22.95.)

at a given point in its nearly 150 years of *vigencia* (effective influence). For example, the hysteria of the Gold Rush of 1848–50 swept away many of the property rights of the old-line Californios—and no mere international treaty would make things different. Nevertheless, in broad terms, the treaty gave the border region a basis for long-term political, economic, and military stability. The discussions that began in 1990 regarding a Free Trade Agreement between the United States and Mexico represented—on the plane of border infrastructure—the first major revision of the Treaty of Guadalupe Hidalgo.

This study, by a student of Mexican American affairs at San Diego State University, concerns the long shadow that the Treaty of Guadalupe Hidalgo has had on U.S.-Mexican relations as well as on domestic policy in the United States. The author's aim is to provide a scholarly discussion of the instrument that, according to Chicano social theory, provides Mexican Americans (and, in general, minorities) with a special bill of rights, or *fuero* (privileged status defined by law), in American society.

The study covers three topics: the treaty as a product of diplomacy and military action; the treaty as an (imperfect) instrument of state, federal, and international law; and the treaty as an element in the development of U.S. ethnic politics. As Griswold notes in Chapter 7, dedicated to the historiography of the U.S.-Mexican war, the treaty has been studied extensively from the point of view of its diplomatic origins (the making of the treaty), but not, to any extent, from the point of view of the impact of the treaty on U.S. and Mexican relations and domestic politics (the aftermath of the treaty).

Chapters 1–4 concern the diplomacy associated with the negotiation and ratification of the treaty. Griswold makes the general claim that in 1846–1848 the U.S. and Mexican governments simultaneously pursued military and diplomatic solutions to their points of difference—the U.S. government, all the while, keeping its eye on its goal of acquiring the territories of California and New Mexico.

Chapter 7 is a discussion logically related to Chapters 1–4 that concerns how studies of the U.S.-Mexican war and the Treaty of Guadalupe Hidalgo have been relegated to the back seat of nineteenth-century American historiography (the Civil War occupies the front seat). Further, he notes that only a handful of such studies mention the central point behind his book, namely, that the treaty failed to protect the Mexican population left in the ceded territories.

Chapters 5 and 6 concern the several legal imperfections in the treaty itself. Regarding the boundary line, the treaty contemplated neither the possibility of major errors in the Disturnell map of 1847

(the treaty's reference map) nor how the two sides would respond to changes in the course of the Río Grande. Chapter 9 concerns a number of controversies associated with the treaty, the most well known of which is the El Chamizal dispute, which was settled in 1964 after a century of Mexican diplomatic persistence.

For Griswold, the heart of the Treaty of Guadalupe Hidalgo lies in Articles IX and X that concern the economic, religious, and civil rights of Mexicans who choose not to "preserve the character of citizens of the Mexican Republic." Griswold convincingly makes the case that a major fault in the treaty was its lack of a verification and compliance mechanism that would hold U.S. federal and state governments accountable for the ways in which the rights of former Mexican citizens (not automatically U.S. citizens) were upheld (p. 175). Griswold skillfully draws on the claims and findings of U.S. court cases. (Appendix 3 lists court cases from 1850 to 1986 that interpreted the treaty.) The major legal issues concerned the citizenship and property rights of the 100,000 Mexican citizens who remained within the Mexican territories ceded to the United States.

Arguing (p. 107) that the treaty "has not effectively protected and enlarged the civil and property rights of Mexican Americans," Griswold in Chapter 8 discusses aspects of the Chicano political movement in the 1960s and 1970s. For some Chicanos (and Native Americans) the Treaty of Guadalupe Hidalgo was their guarantee of special respect and protection by the U.S. government. Griswold argues that the treaty "gives Mexican Americans a special relationship to the majority society (p. 173). . . . Mexican Americans continue to have a historical claim on the collective moral conscience of America."

Griswold concludes with observations about how the "constituents of the Treaty of Guadalupe Hidalgo have not allowed it to become an antiquarian artifact." He mentions the activities of several Chicano and Native American groups that have sought to obtain hearings before international bodies such as the United Nations Commission on Human Rights.

*Does the Chicano interpretation of the Treaty of Guadalupe Hidalgo hold water?* The conclusion to this book, namely, that the treaty confers a special legal status to Mexican Americans and Native Americans, was written before any research on the events of 1846-1848 was undertaken. This conclusion, in turn, is based on an interpretation of Article IX of the treaty (in either its original or modified forms) that requires that the protections and guarantees to be accorded to the Mexican population that would remain in the ceded territories (approximately 100,000 Mexican citizens) also apply to their descendants, whose num-

bers might have been in excess of one million in 1992. A related point is the status of another nine million Mexican immigrants who arrived in the twentieth century. Strangely, Griswold does not take up this crucial point as an issue for argumentation; he assumes this framework as part of the backdrop of his story.

The reader, however, is free to question this assumption. The question is, do the rights and protections offered to the original group of 100,000 Mexicans also apply to their descendants? This question, in turn, may be rephrased to focus on the issue of whether *any* right survived the original group. Article X addressed the question of the rights of Mexicans who lawfully had been awarded land grants in the ceded territories but who, for whatever reason, had been unable to fulfill the terms of the land grant. Article X proposed that the time period for performance be started over: the clock would start with the exchange of ratifications of the treaty. Had Article X remained (it was stricken by the U.S. Senate), it is imaginable to conceive of the case in which the original land grantee had died prior to the exchange of ratifications, and in which case, the beneficiary of the special protection clause of Article X would apply to the grantee's son or grandson. In this case Article X would have granted that person a period of time in which to fulfill the terms of the original Mexican land grant.

Article X, however, was deleted, as just indicated. The language of Article IX says that persons who will not remain Mexican citizens will be "protected in the enjoyment of the liberty, their property, and the civil rights now vested in them according to the Mexican laws." The article says nothing about the descendants of such persons; nevertheless, were it the case that a Mexican American population existed in the 1960s (and beyond) that had neither Mexican nor American citizenship (which would have been the case had those persons never been "incorporated into the Union of the United States"), then it would be reasonable to apply the precepts of Article IX to issues relating to their economic, political, and civil rights.

There is no such population, however. The descendants of the Mexican Americans who remained in the ceded territories are U.S. citizens, and their rights, privileges, and obligations are defined by reference to their character as citizens of the United States, not by reference to the character of their ancestors as persons who chose not to keep Mexican citizenship. It follows, therefore, that there is no constituency of the Treaty of Guadalupe Hidalgo made up of U.S. citizens. This condition may not be true of citizens of Mexico living in the United States.

In 1988 (after the presidential elections of July 6), I had the op-

portunity to speak with senior officials of the then-FDN (Frente Democrático Nacional), led by former Governor Cuauhtémoc Cárdenas. The topic concerned the issue of the right to vote by Mexican citizens living in the United States—a right currently denied by the PRI-Government machine. I made the suggestion that the Treaty of Guadalupe Hidalgo might provide an international legal framework in which the FDN (subsequently the PRD, Partido Revolucionario Democrático) might force the government to extend suffrage to Mexicans living abroad. Thanks to Griswold's study, I see now that my suggestion would have been more viable had the original text of Article IX been preserved. The original text read, regarding Mexicans who choose to retain their Mexican citizenship (p. 179), "they shall be maintained and protected in the enjoyment of their liberty, their property, and the civil rights now vested in them according to the Mexican laws." Since such citizens were living in Mexican territory, they clearly had the right to vote according to Mexican laws. Therefore, one could argue, in retaining Mexican citizenship while living in ceded territories *they would continue to have the right to vote in future Mexican elections*. Further, this right would outlive the first generation of beneficiaries—and would continue to the present day.

In the fall of 1992 I received a request from former Governor Cuauhtémoc Cárdenas, head of the PRD, for a copy of Griswold del Castillo's book; shortly thereafter I delivered a copy to Cárdenas, inscribed with a personal message from Griswold del Castillo.

In May and June 1992, I made a list of points for U.S. oil industry executives for conducting business in Mexico. Of some twenty points, three of them were as follows:

1. The locus of policy decision making in Mexico is always hidden. Beware of relying on any one official, office, or political institution for the attainment of business objectives in Mexico.
2. Do not play to the presumed sleaze factor in any Mexican government agency.
3. Be alert for signs of culture shock in Mexico-assigned staff. One sign is a premature clarity about how the political system in Mexico behaves.

Continuing with my reading of Griswold's study of the diplomacy and protracted aftermath of the Treaty of Guadalupe Hidalgo, I was struck by the relevance of the three above-listed caveats to the diplomacy of the war:

*Relying on a single government official.* To hear Griswold tell the story, U.S. government, shaped by President James K. Polk and Secretary of State James Buchanan, relied on a single individual, General Antonio

López de Santa Anna (president and commander-in-chief) from mid-January to mid-September 1847. Thereafter the U.S. Commissioner relied on the Moderado Party.

*Playing to the sleaze factor.* In July 1847, General Winfield Scott, taking his cues from Santa Anna, agreed to supply Santa Anna with a "consideration" of \$10,000 (and a promise of \$1 million more) in order to help him convince certain unnamed members of the Mexican congress to agree to holding peace discussions.

*Culture shock: the case of Trist.* From July through December Polk's presidential commissioner, Nicholas P. Trist, who had arrived in Mexico in early May, was busy writing his government memoranda explaining how the Mexican political system worked. There were, Trist insisted, three political parties in Mexico: the *Puros* (the War Party), the *Monarquistas*, and the *Moderados* (the Peace Party). The *Puros* wanted the war to continue until it resulted in the desired annexation of all of Mexico to the United States. (Only in this way, Trist explained, could the *Puros* accomplish the aim of eradicating the political evils, such as corruption in office, inherited from the Spanish colonial system.) As for the *Monarquistas*, they wanted the war to continue until it forced the intervention of a European power who would sponsor a pro-Catholic, monarchical system for Mexico. According to Trist, only the *Moderados* offered any hope for the attainment of U.S. policy objectives. Trist was persuaded of this fantastic political typology by members of the British legation in Mexico, who had their own reasons for wanting Trist and the U.S. government to stick to policies that would result in the continued independent existence of the Mexican state.

For a second edition the book will be enriched by a qualitative discussion of the sources, published and archival, for the study of the treaty and what may loosely be called its aftermath (not just a list of titles). As for the period 1846–1848, some discussion of the relative value of the published and microfilm versions of U.S., Mexican, and British diplomatic correspondence would be helpful—but this step may be beyond Griswold's interest in the topic. Regarding the aftermath of the period, Griswold has plowed new ground in his reasearch into U.S. court cases, and an introduction to this material would be helpful to the traditional diplomatic or military historian. It would be helpful to have a table that listed each of the articles of the original treaty in 1848 along with an indication of the status of these articles in current international law. For example, I was surprised to learn that Article V, which described the basic boundary between the two countries, had been superceded by another agreement in 1971 (a bibliographical citation to which, however, was not provided). A second useful table



would be a chronology of the major turning points in the interpretation and evolution of the precepts of the treaty. Finally, the manuscript needs another careful reading to weed out nuisance errors and omissions; for example, in one place (p. 7) Mexico City falls to the Americans in December 1847, but in another place (p. 36) Mexico City surrenders on September 14. (I seem to recall that it was September 15.) Ethan Allen Hitchcock was a lieutenant colonel, not a general, during the invasion of central Mexico, and the surname of the editor of his diaries was Croffut, not Coffert.

It seems fair that someone should raise a basic philosophical question about the occurrence and meaning of war in human affairs, a question in relation to which Griswold's study provides ample material. Historians, almost by definition, are willing to treat war as an extension of policy, as merely another instrument of diplomacy. Griswold offers such a rationalist perspective: "Modern policymakers," he writes (p. 15) "tend to view warfare as part of a bargaining process in the international arena. The actual signing of the peace is the final striking of a bargain." The Mexican negotiators also echoed this point of view: "The treaty," they wrote afterward, "was not shaped at the negotiating table, it was shaped on the battlefield."

This commonplace framework, however, has something wrong with it; unfortunately, what is wrong cannot be expressed very easily without sounding moralistic. The deliberate destruction of human life is like an oxymoron—it seems to make sense but it does not (like "cruel kindness"). For the sake of argument, let us call war an irrational act—a deliberate veering off the highway by a motorist going at a high speed. What is puzzling is that some of the consequences of such an act seem to conform to the expectations of the motorist at the beginning of his journey. Thus, we can imagine President Polk reflecting, twenty years after the signing of the Treaty of Guadalupe Hidalgo (had he, Polk, lived that long), "Well, going to war with Mexico cost roughly \$100 million in hard cash and a few thousand lives—but we did get California and New Mexico. Of course, the acquisition of those territories did contribute to the destabilization of the North-South balance, so, part of the cost of the Civil War in lives and treasure should also be charged to the war with Mexico." Had Polk lived another 150 years—long enough to read Griswold's book—he would have had to allocate, in addition, a large part of the cost of the century and a half of bad feelings and mutual suspicion and recrimination between the United States and Mexico to the War of 1847 (as it is known in Mexico). Thus, a full historical accounting of the cost of the war might show that it cost hundreds of times more than its original "price" in current dollars

of 1848. At some point in this process of assigning a fully burdened charge to the cost of the U.S.-Mexican war, Polk's original rejoinder, "but we got California and New Mexico," fails to sound convincing. The critical mind will have the distinct impression not that the war was not "worth it," but that the rationalist reconstruction that conceives of war as an element of diplomacy fails to make sense. Until a full tally of the cost of the war is prepared—including the costs of which Griswold complains (the marginalization of the Mexican American population)—the historical mind is likely to be satisfied by such geographical and materialistic reductionisms.

The traditional Latin Americanist or diplomatic or military historian will not have done what is at the heart of Griswold's valuable study, namely, an examination of U.S. court cases, follow-up diplomacy, and political movements that invoke, interpret, or update a treaty between the United States and a Latin American nation.

I do not think that Griswold has made the case that the Treaty of Guadalupe Hidalgo has any legal bearing on present-day Hispanics or Native Americans. The oft-cited Article XXI identifies the two central governments whose actions, in case of disagreement, should be governed by third-party mediation, if necessary; the article, in other words, does not allow for private parties (such as Chicano activists) to seek mediation on behalf of their own causes.

Finally, I do not see any logical, historical, or intuitive relationship between the story of the diplomacy of the 1840s and the story of minority social movements of the 1960s and 1970s. That Chicano activists often used the term "Treaty of Guadalupe Hidalgo" does not thereby establish that relationship.