# AN OCCURENCE AT THE MAHON CREEK BRIDGE

**S. C. Bachus**

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> *There's no reason why. It's an absolutely senseless murder.* -- Hayward, California, Police Chief Diane Urban, commenting on the shooting of police Sergeant Scott Lunger, July 22, 2015.

Police officers shooting unarmed citizens. Armed citizens shooting police officers as they stand in harm's way protecting their communities. The legitimate exercise of lethal force by the state and its illegal use by the citizenry has become a ceaseless subject of current news reports and media debate. It is a subject that has deep roots in both Western political theory as well as the practical considerations of making democracy work. These are not new issues. Nearly 170 years ago in the remote Alta California mission village of San Rafael, three unarmed Mexican citizens were killed by officers of the United States government under the command of U.S. Army Captain John Charles Fremont. Given the tenor of current events, this incident that occurred so many years ago bears renewed consideration.

## A Creek Runs Through It -- A Thread to the Past

San Rafael is a small suburban city lying a bit less than 20 miles north of San Francisco. It was founded in 1817 by brown-robed Franciscan missionaries as the site of the twentieth and second to last mission to be built along the El Camino Real. U.S. Highway 101 continues to trace parts of the historic Spanish king's highway, and commuters speeding along its eight lanes of concrete are provided with a fleeting vista of the small Coast Range valley in which modern San Rafael is nestled. When the missionary fathers arrived nearly 200 years ago, a seasonal stream flowed tentatively from its source in the summer-brown hills west of the mission eastward for several miles until it emptied into San Pablo Bay near the Marin Islands. The stream was named Mahon Creek by the American immigrants who later settled in the area.

Mahon Creek's course today remains much the same as it was two centuries ago, with the exception that a good portion of it now slithers its way under city streets. The stream emerges from this urban subterranean world at an old bridge just above the head of tidewater. It then flows turgidly due east and borders the outfield of the city's baseball park. On warm Sunday afternoons players from the local professional baseball team will on occasion delight fans by driving home runs over the outfield field fence and that splash into Mahon Creek's brackish water. The right field foul line of the baseball diamond closely parallels what was formerly the southern-most reach of A Street, which ended at a landing on Mahon Creek a bit downstream from the current bridge and which was terminated at its northern end by *Misión San Rafael Arcángel*. Thus, there was a direct line of sight down A Street, a dusty cart path in the 19th century, to the Mahon Creek landing. Because the creek was navigable to the head of tide water, the mission fathers and early San Rafael settlers could watch for both supplies and visitors arriving by flat-bottomed scows at high tide. With the coming of the Bear Flag Revolt in 1846, this fortuitous positioning of the mission and landing had tragic consequences. But, first, a bit of history.

**Historical Perspective**.

For 167 years, Alta California slept unfettered by Spanish colonial dominion. After Hernando Alarcon's expedition up the Colorado River in 1540, the last Spanish foot to step on to California soil belonged to Sebastian Vizcaino who explored for the first time in 1602 the territory's wild coastline between current day San Diego and Monterey. Despite Vizcaino's enthusiasm for establishing a Spanish port at Monterey, and the support of the Spanish Viceroy in Mexico City, the Spanish kings and the governors of New Spain made no further effort to colonize Alta California until the Portola expedition in 1769.

Alta California slept for 167 years because Spain slept. And, the reason Spain slept lies in the geography of the North Pacific. Driven by the coriolis effect, the North Pacific gyre is a circular pattern of ocean currents that run westwardly from Mexico just above the equator until they turn northward up to the Philippine Islands. From the Philippines the gyre's path veers north-eastward past Japan, gains strength as it undercuts the Aleutian Islands, and then streams south eastward to the form the California current which completes the circle, terminating along the western Mexican coast near Acapulco. The Spanish used this great engine of ocean currents to build a lucrative spice trade by sailing their aptly named Manila galleons between the Philippines, East Indies and Acapulco. The galleons benefitted the Spanish crown so well for the better part of two centuries that there was little reason to either explore or develop the economic resources hidden away in Alta California. Likewise, because of the length of the voyage back to Acapulco from Manila, with the trade winds at their backs, galleon captains were loathe to halt their voyages along the California coast with most of their crews suffering from scurvy. These same winds blowing out of the northwest also discouraged sailing directly up the coast of Baja to reach, what remained in many 17th century Spanish minds, a fantastical island called California.

Nonetheless, a constellation of events in the latter half of the 18th century finally shook Spain out of its lethargy and prompted the 1769 Portola expedition. Although most historians point first to increased Russian and British interests in the North Pacific, there are other factors that likely prompted Spain to move toward colonizing Alta California. Most notably, when France lost Canada to the British in 1762, the French negotiated a secret treaty with the Spanish which ceded all France's holdings in North America to Spain. Later known as the Treaty of Fountainbleau, this clandestine agreement forced Spain to recognize that it had far more at stake than merely losing its North Pacific frontier to the Russians or the British. Likewise, as historian Stephen Schwartz argues, although the Bourbon kings of Spain benefitted hugely from the profits of the New World, the Spanish economy was in a shambles reflecting the ills of a gold-based monetary system benefitting only the crown and its supporting aristocracy - a fact that also likely prompted the Spanish King, Carlos III, to renew the effort to exploit the potential wealth of resources resting in Alta California..

The settlers who came north from Mexico with the Portola expedition in 1769, and those later with the De Anza expedition in 1774, were not new to the colonial experience. Their families represented a colonial tenure in New Spain that had endured as long if not longer than their American contemporaries in New England. In this sense they brought with them the seeds of a new culture that, once planted in the rich soil of Alta California, would later sprout and grow into a culturally unique group of people who would come to call themselves *californios*. They came from families that had lived in Mexico for generations, had inter-married with native Mexican Indians and who, reflecting years of colonial neglect by the Spanish crown, had an ethos that had little in common with the values of the Catalan officers and Mallorcan fathers that led both the Portola and De Anza expeditions.

With the coming of Mexican independence from Spain in 1822, the *californio* culture was well established in Alta California. Although they had carried with them the vestiges of the complex traditional Spanish *systema de castas*, by the time of Mexican independence the social world of the

*californio* was divided simply into two classes: *gente de razon* (people of reason) and *hijo de pais* (sons of the country, i.e., the native Indian tribes that had inhabited Alta California for the preceding ten millennia). Interestingly and as observed by historian Arthur Quinn, by the 1830s the *californios* started referring to themselves as "native sons" or "native daughters" rather than the traditional "people of reason". Quinn argues this was prompted by the efforts of other *gente de razon* -- Yankee sea captains who collectively drove down the price of hides and tallow produced on Alta California *rancheros* and were traded for finished goods from New England by the shrewd sea-faring merchants.

For the *californios* and the few American settlers who joined them in the early 1840s, life was as peaceful and benign as the climate in which they all lived. By 1846 the *californio* population has been estimated at about 8,000 people. Thomas Larkin, the U.S. counsel then residing in Monterey, further estimated that in addition to the *californios* there were 1,200 foreigners - many of whom were American settlers. Although by the mid-1840s diplomatic relations between the United States and Mexican governments had deteriorated significantly, the *californio* government, headed by a Mexican governor, was generally tolerant of the foreign settlers. Many of the expatriate settlers had been awarded large land grants after marrying *californio* women. Indeed, reflecting the openess of his *californio* culture, *Commandante General* Mariano Vallejo was permitted to advocate freely the annexation of Alta California by the United States government. In summary, if not idyllic, life was peaceful, simple and good for the *californios* and the few adventurous American settlers who chose to live with them. It all ended in the summer of 1846.

**The Incident at Mahon Creek**

On May 13, 1846 the U. S. Congress with President Polk's approval declared war against Mexico. Word of the declaration did not reach the United States Counsel, Thomas Larkin, in Monterey until early August. However, the Mexican government issued a proclamation that unnaturalized foreigners could no longer hold land in Alta California, and that they were to be expelled. It was soon rumored among the American expatriate community that the *californio* military *commandante*, General Castro, was raising a force of 3,000 men to enforce the new territorial policy. In response thirty-four rebellious American settlers of variegated backgrounds seized the undefended and largely abandoned Mexican *presidio* in Sonoma on June 14. Lacking an American flag, the rebels raised a hastily crafted pennant over the Sonoma plaza. The new flag proclaimed Alta California to be the California Republic which was symbolized by a crudely drawn grizzly bear. As the new flag was raised over the plaza, several local *californios* noted that the rebels had misspelled "California". Likewise, dissension broke out among the rebels, who were now well into their cups, with some of the more artistically inclined of their number claiming that the pennant's image of the mighty grizzly bear more closely resembled a somewhat anemic pig.

On June 25, 1846 U. S. Army Captain John C. Fremont, accompanied by his guide Kit Carson and a party of 55 soldiers, arrived in Sonoma to support the rebels. It should be remembered that Fremont's original orders from the U. S. Army Command in St. Louis were to topographically map the Great Basin. But, apparently Fremont erred a bit on defining the Basin's western boundary, and had crossed over the crest of the Sierra Nevada earlier in December of 1845, half a year prior to the U.S. declaration of war on Mexico. His entry into Alta California was diplomatically unsanctioned and was a clear violation of Mexican territorial sovereignty; he was unaware war had been declared as were the *californios*. In addition to topographical survey equipment, several historians have observed that Fremont's expedition included a small canon, an instrument of limited precision in mapping contour lines. After arriving in Sonoma and securing the rebels' position, Fremont, Carson and a detachment of two-dozen soldiers proceeded down the Marin County peninsula to San Rafael in route to an expected confrontation with Mexican forces in Yerba Buena (modern San Francisco). After a day's journey the Americans arrived at the San Rafael mission, where they were quartered over night.

The next day, June 28,1846, proved to be infamous for Fremont, Carson and the Bear Flag Revolt. Accounts of the tragedy that occurred that summer Sunday along the banks of San Rafael's Mahon Creek have been varied and, according to some historians, purportedly excised. Nonetheless, sworn statements appearing in the September 27, 1856 issue of the *Los Angeles Star* prove insightful. The first is from written testimony made before the Hon. P. A. Roach by the former Sonoma *alcalde*, Jose Berryesa; it is quoted below in its entirety:

> *In reply to your question whether it is certain or not that Col. Fremont consented to or permitted his soldiers to commit any crime or outrage on the frontier of Sonoma or San Rafael in the year 1846, to satisfy your inquiry and to prove to you that what is said in relation thereto is true, I believe it will be sufficient to inform you of the following case: Occupying the office of first alcalde of Sonoma in the year 1846, having been taken by surprise and put in prison in said town in company with several of my countrymen, Col. Fremont arrived at Sonoma with his forces from Sacramento. He came, in company of Capt. Gillespie and several soldiers, to the room in which I was confined, and having required from me the tranquility of my jurisdiction, I answered him that I did not wish to take part in any matters in the neighborhood, as I was a prisoner. After some further remarks he retired, not well satisfied with the tenor of my replies. On the following day accompanied by soldiers he went to San Rafael. At the time that the news of my arrest had reached my parents, at the instance of my mother, that my father should go to Sonoma to see the condition in which myself and brothers were placed, this pacific old man left Santa Clara for San Pablo. After many difficulties he succeeded in passing (across the strait), accompanied by two young cousins, Francisco and Ramon de Haro, and having disembarked near San Rafael they proceeded towards the mission of that name with the intention of getting horses and return to get their saddles, which remained on the beach. Unfortunately Col. Fremont was walking in the corridor of the mission with some of his soldiers and they perceived the three Californians. They took their arms and mounted—approached towards them, and fired. It is perhaps true that they were scarcely dead when they were stripped of their clothing, which was all they had on their persons; others say that Col. Fremont was asked whether they should be taken prisoners or killed and that he replied that he had no room for prisoners and in consequence of this they were slain.*
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> *On the day following this event Fremont returned to Sonoma and I learned from one of the Americans who accompanied him, and who spoke Spanish, that one of the persons killed at San Rafael was my father. I sought the first opportunity to question him (Fremont) about the matter, and whilst he was standing in front of the room in which I was a prisoner, I and my two brothers spoke to him and questioned him who it was that killed my father, and he answered that it was not certain he was killed, but that it was a Mr. Castro. Shortly afterwards a soldier passed by with a serape belonging to my father and one of my brothers pointed him out. After being satisfied of this fact I requested Col. Fremont to be called and told him that from seeing the serape on one of his men that I believed my father had been killed by his orders and begged that he would do me the favor to have the article restored to me that I might give it to my mother. To this Col. Fremont replied that he could not order its restoration as the serape belonged to the soldier who had it, and then he retired without giving me any further reply. I then endeavored to obtain it from the soldier who asked me $25, for it, which I paid, and in this manner I obtained it. This history, sir, I think will be sufficient to give you an idea of the conduct pursued by Col. Fremont in the year 1846."* (Note: Fremont is referred to above as a colonel, which was his rank when the statement was made in 1856).

Berryesa's account is corroborated by a second statement made by Jasper O'Farrell, an American expatriate who in the early 1840s had settled in Sonoma County. He witnessed the murders of

Berryesa's father along with the twenty year-old de Haro twins. O'Farrell had been employed by the Mexican territorial government as a surveyor and was visiting in San Rafael at the time of the incident. He later became the temporary Military Mayor of Yerba Buena under the Americans prior to their final victory at the Battle of Cuhenga. His sworn statement, which is also quoted from the 1856 *Los Angeles Star* article, follows:

> *I was at San Rafael in June 1846 when the then Captain Fremont arrived at that mission with his troops. The second day after his arrival there was a boat landed three men at the mouth of the estero on Point San Pedro. As soon as they were descried by Fremont there were three men (of whom Kit Carson was one) detailed to meet them. They mounted their horses and after advancing about one hundred yards halted and Carson returned to where Fremont was standing on the corridor of the mission, in company with Gillespie, myself, and others, and said: "Captain shall I take these men prisoners?" In response Fremont waved his hand and said: "I have got no room for prisoners." They then advanced to within fifty yards of the three unfortunate and unarmed Californians, alighted from their horses, and deliberately shot them. One of them was an old and respected Californian, Don José R. Berreyessa, whose son was the alcalde of Sonoma. The other two were twin brothers and sons of Don Francisco de Haro, a citizen of the Pueblo of Yerba Buena. I saw Carson some two years ago and spoke to him of this act and he assured me that then and since he regretted to be compelled to shoot those men, but Fremont was blood-thirsty enough to order otherwise, and he further remarked that it was not the only brutal act he was compelled to commit while under his command.*
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> *I should not have taken the trouble of making this public but that the veracity of a pamphlet published by C. E. Pickett, Esq., in which he mentions the circumstance has been questioned—a history which I am compelled to say is, alas, too true—and from having seen a circular addressed to the native Californians by Fremont, or some of his friends, calling on them to rally to his support, I therefore give the above act publicity, so as to exhibit some of that warrior's tender mercies and chivalrous exploits, and must say that I feel degraded in soiling paper with the name of a man whom, for that act, I must always look upon with contempt and consider as a murderer and a coward*.

**Implications: Moral Responsibility and the Legitimacy of Lethal Force**

On that tragic late June Sunday in 1846 U. S. Army Captain John Charles Fremont looked down what was to become modern San Rafael's A Street, and with a superficial wave of his hand issued the order to take no prisoners. Obediently, his loyal scout Kit Carson and two other soldiers walked down the dusty rutted cart path from the mission to within 50 yards of three unarmed men and without preamble killed them. Some historians have indicated that one of the de Haro twins in fact carried a white flag, other unverifiable accounts have all three of the *californios* submissively raising their hands. Regardless of the paucity of additional verifiable evidence, this historic incident along the banks of Mahon Creek is disturbingly similar to contemporary issues in the use of lethal force by government sanctioned officers, starting with the events in Ferguson, Missouri in 2014 and continuing unabated to the present.

The legitimate monopoly of force, lethal or otherwise, by the state has long been a subject of debate among political thinkers, notably the late German scholar, Ossip Flechtheim. His ideas are important here because they address the moral consequences and subsequent legitimacy of lethal force when held in monopoly by the state. What troubled Flechtheim greatly was that the monopolization of power by the state frequently resulted in what he called *die Unmenschlichkeit und den Krieg der Menschen gegeneinander* -- inhumanity and the war of the people against each other.

Although it occurred nearly 170 years ago, Ossip Flechtheim would likely have viewed the Mahon Creek incident as he would the spate of recent events involving lethal force by both the state and its citizens. For Flechtheim the fundamental question here would remain one of moral choice, i.e., the decision to take voluntarily another human being's life and, as a consequence, the degree to which obedience to the state nullifies the responsibility of individual human beings to exercise this responsibility. This is a question that was a very real one for Kit Carson in 1846 . It remains so today for any soldier, police officer or other agent of the state-authorized lethal force. Carson chose to say, as did Adolph Eichmann at his trial in 1961, that obedience to his superior officers, and ultimately the state, nullified any personal responsibility for taking the lives of fellow human beings.

Against this well worn argument, however, there comes in contrast an apocryphal story about a squad of national guard reservists posted to the Watts Riots in Los Angeles in 1965. It was rumored that the squad under the command of a young and inexperienced 2nd lieutenant was assigned curfew duty in the darkened streets of southern L.A. Late at night while on patrol they heard some noise coming from an alley bordered by apartment houses on either side. Several times the lieutenant ordered whoever was making the noise to identify themselves. But very softly the sound of something slowly working its way through debris in the alley could still be heard. Abruptly, the lieutenant turned to the men behind him and ordered them to assume firing positions and upon his command to open fire down the alley. The squad had been issued machine pistols, each of which was capable of firing fifteen rounds of .45 caliber bullets in a devastating two-and-half seconds of ballistic mayhem. Sensing the insanity of the young officer's order, the squad checked their weapons, took their positions, and looked over pleadingly to their sergeant, an aging Korean war veteran. With his back to his men, the lieutenant was aiming his handgun down the alley in preparation for the order to commence firing. Without saying a word the sergeant covertly gestured to the squad to squeeze off a single-shot burst and to aim their weapons up and to the side, so that the rounds would fall harmlessly on the nearby rooftops. The lieutenant issued the command to fire, and in the eerie quiet that followed the volley, then ordered the sergeant to proceed down the alley and assess the effectiveness of the squad's action. The veteran NCO disappeared into the unlighted alley. Like the return of a bad dream, the men started to hear the same quiet sound of debris being moved -- then it ceased and the silence of the muggy L.A. night resumed. A few minutes passed and the sergeant reappeared. He came up to the lieutenant and presented the young officer with the results of his inspection. In his arms the sergeant cradled an unharmed but very scared kitten.

The exercise of moral responsibility and the obedience to orders may require individual human beings to make decisions of profound consequence. In this respect the account of the national guard squad in 1965 Watts Riots stands eminently in juxtaposition to Kit Carson's actions in the Mahon Creek incident of 1846. The critical factor common to both, however, is the time required for human beings to make morally responsible decisions. As he walked down that rutted cart path from the San Rafael mission, Carson had every opportunity to stop and consider what he was about to do -- an eternity in comparison to the time afforded the veteran national guard sergeant in Watts. Both men had the rest of their lives to contemplate the humanity or inhumanity of what they did.

(Note: the title of this article is suggested by an Ambrose Bierce short story similarly entitled. The statements of both Jose Berryesa and Jasper O'Farrell from the 1856 *Los Angeles Star* appear courtesy of Ron S. Filion at http://www.sfgenealogy.com/sf/history/hbbegd.htm)