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The Southern American Border: A History of Political and Legal Upheaval

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Abstract :

In addition to the root cause for which the Treaty of Guadalupe Hidalgo was drawn up, which was the demarcation of new borders between the United States and Mexico after the Mexican-American War came to an end, the same treaty has resulted in the incorporation of more than 115,000 Mexican citizens into the American society. This community that came to be known as Mexican-Americans was basically the inhabitants of Mexican lands that became part of the United States as a result of this treaty. This new situation created by this treaty would, whether for the new inhabitants or for the United States as a homogeneous community known historically with its Anglo-Saxon character, constitute a challenge. Thus, this paper will investigate the political legacy rooted in the aforementioned war, and that still to this day stands out from time to time at the level of the United States politics including of late what came to be called Trump's border wall.

Keywords: border wall; immigration; Trump; Guadalupe Hidalgo Treaty; expansion

1- Introduction

A simple overview of the history of the United States during the nineteenth century was not only featured but overwhelmed by territorial expansion; however, this prominent historical event, cannot be studied in isolation from its cultural and societal contexts, nor can it be limited in time within that era only. In other words, there is an urgent need for a more comprehensive approach in terms of range at the level of both topic and time. Hence, the method of analysis adopted in this paper is to investigate current legal and political issues in relation to historical events. Today, the political, cultural, and particularly the identity scene in the United States that manifested itself more than ever during Trump's presidential period as well as the momentum that accompanied it, especially with regard to the position of the southern border of the United States shows an unprecedented legal and political turmoil. Accordingly, I do hypothesize that this chaos is nothing but another manifestation of the legacy of territorial expansion that the United States experienced during the nineteenth century. With this in mind, my objective will be more of elucidating the legal and political tribulations drawn against the inhabitants of the southern border area as a result of the Treaty of Guadalupe Hidalgo in the 19th C and as a result of the Trump's border wall in the 21st Century.

2- The Border Area Inhabitants:

2-1- A Source of Bewilderment:

The inhabitants of the border area between USA and Mexico have long constituted a source of bewilderment to Americans. This is due to the fact that Mexicans have a multilayered identity that dates back to the *Mezatzaje* process whereby there occurred the amalgamation of the indigenous people with the European and African races. Hence, Mexicans came to be viewed as a hybrid race of an indigenous lineage as well as European (precisely Iberian) and African races. In other words, the *mestizaje* process that had fused Indians, Europeans, and Africans throughout three hundred years of Spanish colonization to Mexico made of Mexicans a very special race (William, p. 119). This distinctiveness, however, had been even deepened by being subject to various classifications namely under the Spanish racial order and later the American racial order.

2-1-1- In the Spanish Racial Order:

The Spanish racial order was based on white supremacy. However, this system was highly stratified based on the racial mixture resultant from interracial marriages among Spaniards, Indians, Africans and the various mestizo derivatives. Meanwhile, the Mexican community was generally stratified as follows: Spaniards at the top, Indian-Spanish mestizos in the middle and Indians and Blacks at the bottom.

Even more importantly, the most significant feature of the Spanish racial order was the fact that it had not been only a system of classification but a complete and perfected ideology per se. In Anthropologist Ana Alonso's words, there is detailed description on the logic behind this system of classification:

In this [system], somatic distinctions in skin colour, eye shape, hair quality, and the like became the visible indexes of what were constructed as natural inequalities of social being. Ontological differences, constructed in terms of a series of homologous oppositions in which pure-impure was a core distinction, underpinned the honour of Spanish conquerors and the infamy of conquered Indians and enslaved blacks. A hermeneutics of descent, based on a calculus of types and mixtures of pure and impure blood, specified the quality (calidad) of social subjects and endowed them with a differential value that defined their place in society. Religion, colour, blood and descent became fused in the calculation of status and in the determination of class membership....[t]hrough this logic of racial difference, power was personified and embodied; relations of domination and exploitation were produced, naturalized and legitimated. . . (Gomez, Off-White in an Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in New Mexico, 2004, pp. 1-40)

Notwithstanding, this system of classification did not last long. It has soon collapsed on its own weight as it was overwhelmed by the new hybrid races resultant from the interracial marriages that featured this system. By the early 19th century, the Spanish racial order became almost full of mongrel races, namely mestizo population at the expense of pure races including Spaniards and Indians. In other words, the fact that the majority of the population was constituted of mestizo turned this system from a rigid stratified system into a classless system. Thus, the Spanish racial order lost its importance and became out of fashion in favour of series of legislations made by the Spanish

government to correct the situation and improve the position of mestizos and Indians. By 1812, the Spanish racial order known as the regime of castes was put to an end through the Law of Cadis which was enforced after the Mexican independence in 1821 with the “plan de Igala” which declared all Mexican citizens equal. (Gomez, Off-White in an Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in New Mexico, 2004, p. 16)

2-1-2- In the American Racial Order:

Upon the integration of some thousands of Mexicans into the American society as a result of the Mexican Cession and the subsequent signature of the Treaty of Guadalupe Hidalgo, Americans were surprised at the fact that those inhabitants who would be Mexican Americans did not constitute a homogenous community. The fact that those inhabitants included Indians, Spaniards, Blacks and other mongrel races represented mainly in mestizos has become a source of bewilderment and confusion for Americans. Actually, the treaty has resulted in the integration of 115000 Mexicans including pure races such as Spaniards and Indians, however, it was the mestizo constituent that counted about 60000 inhabitants that bewildered Americans most: “Here”, the Anglo-American scholars described them, “was a second blending of blood and a new union of races, the Spaniard Moor and the aboriginal were united in one and made a new race, the Mexicans.” (Gomez, Manifest Destinies: The Making of the Mexican American Race, p. 61)

The United States inherited the Spanish racial order as a result of territorial expansion at the expense of Mexico according to the Treaty of Guadalupe Hidalgo. These Mexican residents, the inhabitants of the lands that Mexico ceded to the United States, were subject to the classification of a Spanish racial system inherited from the Spanish colonial era, which developed to coincide with the era in which Mexico extended its sovereignty over its lands after independence from Spain. After the Mexican cession, however, this same segment of population of the southwest came to be subjected to a new classification yet it was Anglo-American this time as it became part of the population of the United States under the Treaty of Guadalupe Hidalgo. In other words, these inhabitants had been subject to an intersection of different racial orders: a Spanish racial order, a temporary Mexican racial order and a newly established Anglo-American racial order. (Horsman, 1981, p. 175)

The inclusion of this segment of the Mexican population which was ethnically different from the mainstream American society known for its Anglo-Saxon origins, as a result of the Treaty of Guadalupe Hidalgo, has not only led

to the emergence of the challenge of integration and what entails of linguistic and cultural barriers for this segment of the population, but it has also prompted the emergence of more urgent issues and immediate challenges for the United States as a unified nation and homogeneous whole entity. Evidently, the most prominent of those issues that came to be brought even forward within the context of this treaty were those of immigration, citizenship, loyalty, language and identity.

2-2- Legal and Political Upheaval:

2-2-1- At the Political Level:

The would be American citizens according to the treaty of Guadalupe Hidalgo had received strong assurances from the United States to protect their property and protect their religion even before the Treaty of Guadalupe Hidalgo was signed. General Stephen Watts Kearney (1794-1848), a United States Army officer known for his great contributions in the Mexican-American War, especially the conquest of California, addressed the people of Las Vegas on August 15, 1846, saying:

Mr. Alcalde, and people of New Mexico: I have come amongst you by the orders of my government, to take possession of your country, and extend over it the laws of the United States. We consider it, and have done so for some time, a part of the territory of the United States. We come amongst you as friends not as enemies; as protectors not as conquerors. We come among you for your benefit not for your injury. (qtd. in Weber D. J., 1992, p. 161)

This speech came within the framework of sweetening the minds of the people of the Mexican lands that have become part of the population of the United States; however, the American inhabitants of those parts along the ancient border remained in an ambiguous position and the Treaty of Guadalupe Hidalgo remained a mere ink on paper.

The inhabitants of what is now called the Southwest had a distinct culture, different from the mainstream American culture. They spoke Spanish, and they followed the Catholic doctrine, and above all, they were different in appearance and skin colour from the inhabitants of the United States; therefore, it was impossible to classify them and consider them as typical English-speaking

Americans, Protestant and bright-skinned. What's more, many of them were still loyal to their home country, Mexico. Accordingly, it is possible to understand the confusion that American politicians have witnessed towards this community, even though the Treaty of Guadalupe Hidalgo sought to preserve their political, religious and property rights.

In fact, the Treaty of Guadalupe Hidalgo on its political level promised Mexicans " the enjoyment of all rights of citizens of the United States according to the principles of the Federal Constitution " (Gutiérrez D. G., 1995, p. 17) yet, their situation remained for a long time almost as obscure as that of the Southwest, the lands on which they lived, as a result of their mixed origins and their peculiarities, as I mentioned earlier. Neil Foley writes in this regard:

As a mixed-race group, Mexicans, like Indians and Asians, lived in a black and white nation that did not consider them to be neither black nor white. Although small numbers of Mexican Americans - usually fair-skinned and middle-class Mexican Americans - claim to be white, the vast majority of whites in Texas consider Mexicans to be a "mixed" race of Indian, African, and Hispanic ancestry. In Texas, unlike other parts of the South, whiteness did not mean only black, but also did not mean Mexican. (Foley, 1997, p. 5)

Thus, the federal citizenship instead of the state citizenship was proposed to them because they did not belong to any of the states that existed at the time. New Mexico and the rest of the lands that were taken from Mexico were not states yet, but just a territory that did not enjoy the status of a state. Accordingly, Mexican Americans found themselves in a position different from the ordinary citizens who hold the citizenship of the state (Weiner, 2006, p. 6).

Upheaval here, one can say, perhaps manifests itself more dramatically because the human subject was the last thing the expansionists thought of when they annexed those lands. And here is the patchwork solution represented by federal citizenship seems not to respond to the aspirations of an entire population of more than one hundred thousand. The provisions of the treaty that sought to grant residents of the Southwest region full citizenship rights did not achieve its overarching goal of granting federal citizenship to this community. In fact, granting federal citizenship was not a departure from the terms of the treaty, but it ushered another clear indication of the confusion among those

expansionist politicians who made their sights on annexing the land but closed their eyes on the people of that land.

In spite of the fact that Mexican Americans were the owners of the land and did not immigrate like other immigrants to the United States, their situation has become more similar to those of ordinary immigrants who immigrated directly from Europe (Gutiérrez D. , 1989, p. 17). In fact, the irony was that while white European American men could easily be naturalized and held both federal and state citizenship, non-white ethnic groups, including Mexican Americans, remained only captive of federal citizenship. It can be argued, then, that the criterion of race during that period was decisive in denying thousands of Mexicans the rights of full citizenship.

Indeed, the Treaty of Guadalupe Hidalgo provided federal citizenship to Mexican Americans under which they became citizens, but with what could be described as second-class citizens; however, that citizenship was still desired because it was the only option available to them. On the other hand, this option, i.e. federal citizenship, came at a time when only white men could obtain American citizenship.

2-2-2- At the Constitutional Level:

The advantage of granting the inhabitants of the ceded lands federal citizenship was short-lived. Just a year after the Treaty of Guadalupe Hidalgo was signed, a hot debate raged at the California Constitutional Convention over the terms of the treaty that appeared to conflict with a section in the state's draft constitution that limits voting to "white male citizens." In other words, the issue of granting Mexicans American citizenship seemed to contradict the granting of federal citizenship to Mexicans because the historical policy of most American states at the time was to require "whiteness" as a condition for obtaining citizenship (Glenn, 2004, p. 146). Thus, the confusion that was confined to the federal level because of that treaty was evident at the state level by taking different and sometimes contradictory positions regarding the citizenship of Mexican residents. Texas, for example, has extended suffrage to all former citizens of Mexico regardless of any ethnic or physical differences between those citizens. On the contrary, California exempted the bulk of the Mexican population, which consisted mainly of Indians and hybrids, by restricting suffrage to "whites" and former "white" citizens of Mexico only. So did Arizona, whose territorial constitution of 1863 restricted the privilege to white

Mexican men. In contrast, it was only after the territorial constitution of New Mexico, also known as the Organic Act of 1850, made the spirit of the Treaty of Guadalupe Hidalgo effectively to materialize through granting the rights of full citizenship to all citizens of Mexico who inhabited the ceded lands. However, it was not until after it became a state in 1910, i.e., more than sixty years after the Treaty of Guadalupe Hidalgo, that all forms of discrimination on the basis of race were expressly prohibited (Glenn, 2004, p. 159). And here it is today resurfacing and evoking memories, and with it evoking the historical upheaval that accompanied it characterized this time in Trump's policy of the border wall.

Against the desires of Euro-Americans who sought to declare Mexicans ineligible for naturalization because they were not white, Judge Sheldon Maxey took into account the 1836 Constitution of the Republic of Texas and the Texas State Constitution of 1845. The first document granted citizenship to all men except for "Africans, their descendants, and Indians," indicating that Mexicans were eligible for citizenship by default. As for the Texas Constitution, it included every Mexican citizen living in Texas regardless of racial manifestations. Even though, it was still believed that some Mexicans were not pure Mexican or white enough to be citizens of Texas due to their mixed-race character (Menchaca, 2001, p. 228). Likewise, even the Treaty of Guadalupe Hidalgo contained more than 115,000 Mexicans and did not per se contain any racial restrictions, the constitutions of some states created on the ceded lands contained some racial requirements. (Weber D. J., *Foreigners in their Native Land*, 1996, p. 148)

Even more importantly, the American government showed different attitudes towards Mexicans on the basis of the ideology of the American racial order; and the case known as the *In re Rodriguez*, May 1897 provided a clear illustration of this fact. *In re Rodriguez*, decided by a federal judge in Texas in 1897, constituted the only precedent-setting legal case according to Laura E. Gomez which was based on the collective naturalization of the inhabitants of the ceded lands in 1848 as a proof that Mexicans are white; otherwise they would not have been naturalized at a time when the law restricted naturalization to white persons only (Gomez, *Manifest Destinies: The Making of the Mexican American Race*, p. 139). So, while granting Mexican citizenship to white mestizos and denying them the Indian Pueblo and Mexican mulatto, the American racial order tore apart the Mexican race. Thus, the case of *In re Rodriguez* encouraged many Mexican Americans to distance themselves from

blacks and Indians (Gomez, *Manifest Destinies: The Making of the Mexican American Race*, p. 142). Meanwhile, the public discourse in the United States at the turn of the twentieth century sought to exclude Mexicans from the racial order of the United States and thus deny New Mexico statehood. In this regard, Indiana Senator Albert Beveridge conducted whistle hearings in 1902 in several New Mexico cities in order to demonstrate that the Mexican population in the territory of New Mexico were ethnically and linguistically unfit to statehood. While Oklahoma was accepted on the basis of a small fraction of its Indian population, New Mexico was denied statehood on the grounds that "[its white] population was too small to warrant the territory's admission as a state." (Gomez, *Manifest Destinies: The Making of the Mexican American Race*, p. 146)

3- Upheaval in Trump's Border Wall:

The upheaval, which was evident and clear in Trump's policy towards illegal immigrants in general and Mexicans in particular, cannot be considered as an isolated phenomenon from the legal and historical context represented in the aforementioned expansionist era. Hence, the rest of the paper will see how that upheaval manifested itself in relation to the constitutional level as well as the bureaucratic level.

3-1- At the Constitutional Level:

The most prominent aspect of the turmoil was evident at the constitutional level: a group of sixteen states requested a federal court in California to intervene to put the construction of the wall off along the border between the United States and Mexico based on the fact that Congress had not explicitly approved the funding of the project (Hurley, 2019). Meanwhile, the aforementioned project faced another legal challenge at the level of a Supreme Court in Washington, when landowners and environmental and wildlife groups including the Center for Biological Diversity, the Animal Legal Defense Fund, Defenders of Wild Life and the Southwest Environmental Center filed for lawsuits regarding the wall (AP News, 2020).

On the other hand, both border states: California and New Mexico filed a lawsuit on two grounds:

- 1) The first was that building the wall without making an accurate assessment of how it will affect and/or damage plant and animal life along its path on the border is a violation of the Federal Environmental Protection Act.

2) Failure of federal administrative agencies tasked with building the wall to abide by specific state laws is also a violation of federal law and the constitution. (Denniston, 2019)

The main constitutional problem included in the wall construction project, however, was the extent of the constitutionality of the president's undertaking to build the wall, despite the fact that Congress has not explicitly approved its funding. (Stewart, 2019)

Likewise, the extent to which the construction of the wall seemed to violate the constitution can be summarized in three main points:

- 1) The president's decision violates the Constitution's principle of separation of federal powers.
- 2) It violates federal laws requiring no federal money to be spent without the express consent of Congress.
- 3) Bypassing the federal agencies and the President without congressional approval is considered an infringement and exceeding the powers of their jurisdiction. (Denniston, 2019)

3-2- At the Bureaucratic Level:

The president's haste and insistence to proceed toward the construction of the wall as soon as possible was another aspect of the turmoil that this issue has witnessed. The president could have declared a national emergency that would give privilege to the construction of this wall, but the president's unquenchable desire to carry on the completion of this wall made him close the eye on the declaration of the national emergency case. That is, he chose the fastest way to achieve this goal, even if that was at the expense of the law (Denniston, 2019). On the one hand, the President has deliberately resorted to this method as a maneuver in order to cut the way to any possible proposal by democratic legislators against his project, despite he could use the right of veto against him. (Rascoe & Montanaro, 2019)

There is also a third reason, in fact, that made Trump hesitate to declare a state of national emergency which is a law that was issued in 1976. The latter had enacted measures to limit the authority of presidents in case there was a declaration of state of national emergency (Legal Information Institute, 2007). This made President Trump reluctant to declare a state of national emergency on the belief that such a law might tie his hands completely and possibly even undermine his plan from the ground up to proceed with the construction of the

border wall. Last but not least, the absence of an actual and real state of emergency along the border with Mexico to the extent that justifies the declaration of a national state of emergency under the 1976 law made such a declaration an unconstitutional measure; and that the construction of the wall along the border would not lead to any protection of national security, but rather it would be just a waste of public money and may harm the public safety, the environment, and the well-being of the residents of the border states. Hence, one can understand the position of the sixteen states that filed the lawsuit against building the wall.

4- Conclusion:

It is taken for granted that the expansionist trend that characterized the nineteenth century has resulted in the acquisition of more lands by the United States by mean of a variety of ways. The latter ranged from establishing treaties and agreements with European countries claiming those territories, purchase as happened in Louisiana, or annexation as was the case of Texas, or even war as happened with Mexico. However, what seemed to be peculiar about the Mexican War was that the annexation of a portion of Mexican land to the United States' geography went beyond the integration of quite a few of the Mexican population that used to reside in that part of Mexico to become overnight part of the population of the United States. It can be said, therefore, that the United States territorial expansion in the nineteenth century has once and forever changed the demographics of the United States.

Even more importantly, the Mexican cession prompted more Mexicans to immigrate to the lands that were ceded to the United States according to the Treaty of Guadalupe Hidalgo that concluded the Mexican War. This was due to the fact that those new annexed lands became a haven for other Mexican immigrants willing to improve their economic and social positions in the United States. Actually, the economic boom represented in the gold mining industry which was prevalent in the Southwest and particularly in California at the time as well as the construction of the railways in the Southwest during the nineteenth century have all provided an encouraging motive for most Mexican immigrants who were spurred by poverty in their homeland and decided to live in the Southwest.

This has, since then, constituted a dilemma for the United States, especially with the escalation of the phenomenon of illegal immigration across the southern border of the United States. This is best evidenced in the fact that illegal immigration through the southern border has always been an obsession

for successive US federal governments including of late the administration of Donald Trump that embarked on an unprecedented policy that culminated at building a wall between the US and Mexico in hope that this policy would contribute to curb illegal immigration in the southern border areas.

However, the project has, as the Treaty of Guadalupe Hidalgo had, elicited some severe constitutional as well as bureaucratic turmoil. The latter was apparent at the individual level manifesting itself in the position of pressure groups concerned with the natural life and related directly to the lives of ordinary citizens; while it manifested itself at the statehood level in the position of the bordering states that called on the court to recognize the unconstitutionality of the president and executive branch deeds. Subsequently, these states summoned an order to prohibit any construction on the wall along the border without congressional approval of the funds allocated for that reason. In the same vein, they longed for the issuance of an order prohibiting the transfer of any funds already approved by Congress and earmarked for other projects or programmes in favour of the wall.

Thus one can say that this lawsuit came to block the way to Trump's alternative plan as, based on information reported by the president's aides, who said: "They plan to pay for the construction of the wall by diverting up to \$ 6.7 billion of current funds from other programs or projects." (Denniston, 2019). It is worth note, however, that Congress has explicitly refused to approve any money to build the wall, even though it has approved less than \$ 2 billion for barriers that have been already constructed and might constitute parts of the intended wall.

Indeed, the constitutional lawsuit was filed within hours of President Trump's statement of his plans to declare a national emergency and use other sources of funding for the wall at a press conference on Friday afternoon in the Rose Garden in the Green House.

Interestingly, however, this lawsuit intersected with that contained in the one of the 16 states, which established their lawsuit on two grounds, too:

- 1) The absence of a constitutional authority to declare a state of emergency.
- 2) Lack of authority under federal law to transfer money to the wall. (Kamarck & Stenglein, 2019)

These constitutional dilemmas brought about by Trump's border wall find similarities with those brought about by the Treaty of Guadalupe Hidalgo in the

nineteenth century. That treaty also had resulted in a political and constitutional upheaval constituting a challenge for the federal government and the bordering states at the time, and perhaps the most prominent of those commotions were those related to the American inhabitants of the border strip. Like the prevalent political and constitutional turmoil of today, turmoil at the time was even more apparent at the level of citizens' privileges of identity and citizenship and the case known as *In re Rodriguez*, which was discussed above, was only a realistic and concrete illustration of the turmoil that touched a large portion of the Mexican Americans at the time.

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