

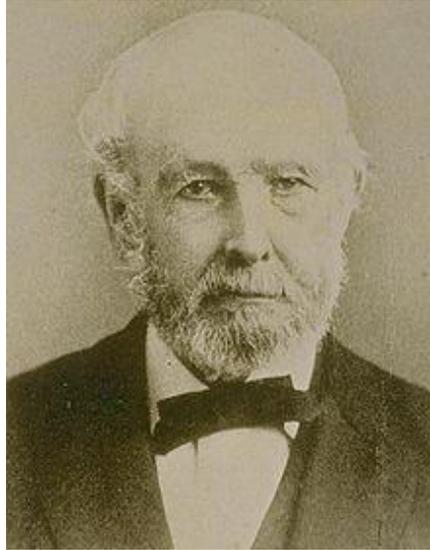
## **Special Feature: Did You Know...?**

By Clem Dougherty

...that California's first Governor, Peter Burnett, was elected and functioned as governor approximately 10 months before California was admitted to the Union? Yes, it is true. You may recall that the Gold Rush began on January 24, 1848 with the discovery of gold at Coloma on the American River; that the last military governor Brigadier General Bennett Riley called for an election to be held on August 1, 1849 for the election of delegates to a convention to be held on September 1, 1849; that 48 delegates so elected met at Monterey during September and October, 1849 and drafted a state constitution. You may also recall that on November 13, 1849 California voters approved the state constitution and elected the first legislature and the first governor Peter Burnett, and that Brigadier General Riley, the last military governor, subsequently transferred power to Mr. Burnett, (the new civil governor) on December 20, 1849. Thus Peter Burnett was elected and functioned as governor approximately 10 months before California was admitted to the Union on September 9, 1850.

By way of biographical background, Peter Burnett was born in Tennessee on November 15, 1807. He was married and had three children. Burnett had a variety of occupations including one as a lawyer. None of his careers provided him with financial security, and unpaid debts plagued him for much of his adult life. Some historians have commented that in jumping from occupation to occupation, Peter Burnett demonstrated a character flaw by simply quitting when faced with difficulty. However that may be, in an attempt to start anew, Burnett traveled to Oregon in 1843 and soon became involved in Oregon politics. Oregon was in the process of forming a territorial government. Burnett was elected to the nine-member 1844 Legislative Committee of Oregon which created a new territorial government consisting of an executive, a legislature, and a judiciary. The Oregon experience proved valuable to Burnett in that he learned firsthand the problems of starting a new government and made many contacts with Oregonians who would later move to California during the Gold Rush. Some historians credit Burnett's victory as governor in California to those former Oregonians who held the balance of power in the successful election of Burnett.

Upon gold being discovered in California, Burnett left Oregon to strike it rich in California where he arrived on the Yuba River on November 5, 1848. He actually spent one month panning for gold when in December 1848. Burnett met John Sutter, Jr. who hired Burnett as agent and attorney for selling Sutter lots in Sacramento. Once again, Burnett became involved with politics in both Sacramento and San Francisco where he joined local organizations pressing for the creation of a government for California. Thus, by the time the election for governor was held in California one year later on November 13, 1849, Burnett was known in California as a person well versed in the organization of government.



**Gov. Peter Burnett**

However, governing Gold Rush California was not easy matter. In prior “Did You Know” articles appearing in the *Clarion*, we saw how lawlessness during the 1850s gripped the new state, that law enforcement officials and the courts were unable to control crime, that vigilance committees arose throughout the state, that the Squatter’s Riot of 1850 brought bloodshed to Sacramento, that the Napa Valley Massacre of 1850 brought further bloodshed to other parts of Northern California, and that there was no money to pay law enforcement officers and to build jails. Over all these problems, further uncertainty gripped the new state in the question of the legitimacy of a functioning state government not yet admitted to the Union. Also the fact that the state capital was moved six times between 1849 and 1854 before it finally settled in Sacramento undermined any confidence in the stability of the new state.

To address the problem of lawlessness, Burnett recognized the problems faced by courts in the administration of justice, and he recommended solutions for speeding up the prosecution of crimes. Indeed the Legislature in 1851 adopted several proposals to correct defects in the administration of justice that had been created by the prior state Legislature of 1849-1850. These corrections came too late, because the state’s citizens had already turned to vigilantism to address the increasing crime. Burnett also advocated the death penalty for grand larceny and robbery until jails could be built – a proposal the Legislature rejected. Burnett did act decisively when he called out the state militia to quell two Indian uprisings (one in El Dorado County and the other along the Colorado River) and to quell the Squatter’s Riot in Sacramento (the militia arrived in Sacramento after the violence stopped).

Burnett proposed that the basic law for California be an ideal constitutional and statutory law based upon an extensive study of those laws of other states and adopting the best provisions of those other codes. The Legislature rejected Burnett’s proposal and instead adopted as the basic law for California the English common law except where modified by the U.S. Constitution, the State Constitution, and statutory law. The approach taken by the Legislature in 1849-1850 remains the basic approach to California law today. Lawlessness was not the only problem Burnett faced. The lack of money to fund government was just as daunting. The usual way of financing government in early

California was by issuing bonds, by imposing a poll tax on all male citizens of the state, by imposing a foreign miners' tax aimed at individual ethnic groups such as the Mexicans and the Chinese, and by imposing taxes on real property and personal property. Income taxes did not arrive in California until the state imposed an income tax on corporations in 1910 (Hiram Johnson, governor) and an income tax on individuals in 1937 (Frank Merriam, Governor). During the 1850s-1860s the real property and personal property tax was to be divided among the state, counties, cities, and school districts. Accordingly the Legislature imposed for state purposes a 30 cent tax on every \$100 of real and personal property. But getting the tax money from real and personal property was easier said than done. The state depended upon county officials such as the Assessor and Treasurer of each county to appraise the real and personal property of each county and to collect the state taxes. All of this took time, and explains why there was so little money available for governmental purposes during Burnett's administration. In fact, Burnett himself was being paid with scrip – an IOU which has raised its ugly head again in recent California politics.

Burnett was elected for a two year term from December 20, 1849 to December 20, 1851. On January 7, 1851 Burnett sent a message to the Legislature which was coldly received by that body. Interpreting the Legislative response as a slap in the face, Burnett abruptly resigned as governor. Again, while admitting that the reasons for Burnett's resignation are not exactly clear, some historians describe the resignation as further evidence of that earlier character flaw attributed to Burnett of quitting when faced with opposition. A much more fair explanation may be that when crime was increasing in the new-found state; when the regular courts were being ignored and vigilance committees were rising in their place all over the state; when there was no money to pay law enforcement officials and to build jails; when state control over the tumultuous situation just described appeared tenuous at best; when his own personal debts were becoming more pressing; and when he was being paid with scrip only, the snub by the Legislature may have been the straw that broke the proverbial camel's back. In any event, Burnett never completed his term.

Once Burnett left government, matters took an upswing for him personally. Governor J. Neely Johnson appointed Burnett to the California Supreme Court where he served from 1857 to 1858. In 1863 Burnett became the president of the Pacific Bank of San Francisco -- the city where he lived until his death on May 17, 1895, at the age of 88. Peter Burnett's tenure as governor may be looked upon in two ways. On the negative side, Burnett's abrupt resignation as governor may be interpreted as representative of the uncertainty and instability of the Gold Rush era. On the positive side, Burnett's involvement in the organization of government in both Oregon and California demonstrated a broader American characteristic of ordinary citizens coming together to form governments for the well-running of society here in the United States – a characteristic found in the Mayflower Compact; the United States Constitution itself; state constitutions including California's constitution; the agreements made by pioneers to govern wagon trains crossing the American plains; and the mining district agreements made by miners to govern mining claims during the California Gold Rush. However we look at Peter Burnett, we can agree that he helped to launch the new state on its way to becoming the mega-state of the 21st Century.

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Sources: The Governors of California, author unknown, found in the Volunteer Library Room B-27, CA State Capitol; Rawls and Bean, California, An Interpretive History, 9<sup>th</sup> edition; Rice, Bullough, and Orsi, The Elusive Eden, a New History of California, 3<sup>rd</sup> Edition; J.A.

Grenier: Golden Odyssey-John Stroud Houston-California's First Controller and The Origins of State Government; and Governors Who Made a Difference, Their lives, Their Challenges, Their Places in History by Clement Dougherty found in the Volunteer Library, Rm. B-27, State Capitol.

Author's Note: The foregoing article on Peter Burnett is the last article in a series entitled "California: The Formation of the New State." In a subsequent issue of the **Clarion** we will start a new series - "California: The Spanish/Mexican/Mission Period"