

# **Unexpected Histories**

Volume 2

## **The First Silicon Valley Unicorn Startup**

Edward Barnard

# Unexpected Histories

## Volume 2: The First Silicon Valley Unicorn Startup

Edward W. Barnard

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# Chapter 1. The Bigger They Come

The little-known “checkerboard land grants” may prove key to antitrust action against the tech giants of Silicon Valley. The history is fascinating! Since “big tech” affects so much of our day-to-day lives, I think it’s important to learn this history. We’ll be better able to appreciate future events as they play out.

Deputy Attorney General Jeffrey Rosen shared the U.S. Department of Justice [plan to investigate big tech over antitrust concerns](#). Rosen cited one and only one specific court case, *Northern Pacific Railway v. United States*, decided by the U.S. Supreme Court in 1958. Rosen also explained, in that context, that “we should be students of history.”

We’re talking about the law. How do we keep it fun for the rest of us? There’s the “bringing down bro tech—hard” part, which sounds delightful to me, but I’ll also tell you about one of the most awesome—and recursive—lawyer tricks ever.

The [Farlex Dictionary of Idioms](#) defines “the bigger they come, the harder they fall” as:

Those who are exceptionally large, powerful, or influential will have more to lose when they fail, and their failure will be all the more dramatic or spectacular because of it. ... This expression is believed to come from boxing and gained currency when boxer Robert Fitzsimmons used it in a 1902 newspaper interview before fighting the much heavier James J. Jeffries. It was probably derived from similar adages, such as “The bigger the tree, the harder she falls.”

## Modern Hiking Trails

Congress “owned” the land from coast to coast and that’s how it would fund the transcontinental railroads. This, by the way, complicates *current* law. You have probably seen various bike and hiking trails that have been built in the last 30 years, often using old abandoned railroad right-of-ways.

2014 saw a Supreme Court decision regarding those rights-of-way. The Court decided in favor of raw greed with Justice Sotomayor the lone dissent. We’ll mention that case later; it comes back to the same railroad decision named in the Rosen’s Silicon Valley Takedown speech.

The American Bar Association published [A New Era of Lavish Land Grants: Taking Public Property for Private Use and Brandt Revocable Trust v. United States](#). I’m no lawyer but I’ve seen my share of flame wars. I know a nine-page rant when I see one. This rant is actually useful in that law professor Danaya C. Wright does an excellent job of explaining why the railroad stuff matters, and why it is so complicated.

Where are we going with this? [Checkerboard land grants](#). You see, the transcontinental railroads were different from the eastern-seaboard railroads. The eastern states had long been settled by colonists before the railroad.

The Great Plains, on the other hand, were not settled—except, of course, by the Native Americans who had been there for thousands of years. Congress “owned” the land.

Congress granted the railroads (which only existed on paper) great swathes of land. They were granted every-other section of land, to sell off and raise cash. Thus railroads sold off the land in a checkerboard pattern of alternating sections.

## Checkerboarding

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## Trolling the Bar Association

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