Jesuit effort in an aura of perfection engendered by the idealistic, unattainable rules and precepts. To reenforce this impression the author selects the testimony (pp. 56, 57) of a newly arrived *Europeo cerrado* bishop less than six months in his new diocese, Pedro Tapiz (the author spells it Tapis but the bishop writes Tapiz). While in Mexico City, Tapiz had spurned the well-known skills of the Mexican iron workers and occasioned many raised eyebrows there by ordering all iron adornments of his new cathedral of Durango from Seville (José Ignacio Gallegos, *Historia de la iglesia en Durango* [Mexico City, 1969], pp. 221-24). So now, he praises the work of the largely European Jesuits and downgrades that of the Mexican Franciscans, especially their lack of language skills—a part of the pattern?

One wonders why the author relies so heavily on suspect sources such as the Rules and Precepts, the testimony of an apparently thoroughly *gachupín* bishop and does not use the reliable reports from the field of the Jesuit Visitors. I have some and I must presume that the author has access to more. They are factual, precise and informative. However, they tend to differ from the picture created by the Rules and Precepts and Bishop Tapiz. Thus, Jesús Manuel Aguirre, vice-provincial for the Sonora missions and himself an experienced missionary, in reporting on the native language skills of nineteen Jesuit missionaries, whom he had tested personally, reported to the Mexican Provincial, Francisco Ceballos (Bacadéhuachi, February 18, 1764) that twelve did not know the native language well enough to preach, he was doubtful about two, and only five, including himself, did know the language. He singles out Carlos Roxas, missionary at Arizpe. He had come to Arizpe when 25 years old, had now been there nearly 40 years, yet could not preach to his Opatas in their language. Is this a typical report? I do not know but the author should.

Finally, it is surprising that the author does not mention the royal decree of July 13, 1573, which outlawed the expansion of the frontier through the armed *conquista* and the granting of new *encomiendas*. Instead, the king substituted the *conquista pacífica:* priest, miner, rancher, trader and so on. In other words, in the very year in which the Jesuits began to work in Mexico after their unfortunate experience in Florida, 1573, the rules for the conversion of the frontier were changed. For the Jesuits, this was an opportunity. Newly arrived, with fresh perspectives, and, as yet, without substantial commitment of their personnel, the Jesuits were free to assess the new problems posed by the conversion of the rim of Christendom, as Bolton so aptly named this area (in 1662, there were only 45,129 Indians in all the Jesuit Mexican missions, [p. 18] compared to the many millions still cared for by the older religious orders [1523-1573] in the Mexican heartland).

It is to the glory of the Jesuits that they did find a method which enabled them to work effectively under the new rules of 1573. Later on, the Franciscans through their Mission Colleges would join them in this work. Certainly, the Jesuits pioneered the method. Unfortunately, this volume does not tell us how they did so.

Academy of American Franciscan History ANTOINE TIBESAR, O.F.M.

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NEW MEXICO HISTORICAL REVIEW

MAR 12 1979
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THEME ISSUE:
CULTURAL CONFLICT
IN THE SPANISH BORDERLANDS

OCTOBER 1978

GUEST EDITOR: NECAH STEWART FURMAN

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AROUND THE STATE

THOMAS E. CHAVEZ
Museum Coordinator
Museum of New Mexico

A very valuable collection for New Mexico social history is housed by the Telephone Pioneer Museum in Albuquerque. This museum, under the direction of Stanley J. Bartles, has many historical documents including personal letters relating to the experiences of phone company employees. Also included are old phone directories, a phone company public relations archive, old photographs and audio tapes.

The Museum of Albuquerque has embarked on a project to collect old photographs of the Middle Rio Grande District. This program, the information of which will be put on computer, will prove valuable to the area's history.

Another little-known library is that housed by the National Atomic Museum at Kirtland AFB. This small but surprising library has government publications, military records, and current environmental impact reports.

Many documents and old photographs of the Four Corners area are housed in the Farmington Historical Museum. These uncatalogued items could be a key in providing a history of an area of our state that at times seems overlooked.

Another fine addition to the collection of the History Library, Manuscripts section of the Museum of New Mexico (MNM) has been made. Sculptress-painter Eugenie F. Shonnard's donation of her correspondence, photograph collection, business records and notebooks is an excellent addition to the Library's rapidly expanding collections. Also, a beneficiary is the Fine Arts Division of MNM. They received Shonnard's art works as well as her library of volumes on art.

The Historical Society of New Mexico has finalized plans for its annual meeting in Taos next April 20, 21, and 22. On the agenda are formal sessions, tours, entertainment, book sales, banquets, etc. All are welcome to attend.

The Colonial New Mexico Historical Foundation at the Old Cienega Museum has published a beautiful 8½ by 11 inch, 48 page souvenir guide book entitled *Rancho de Las Golondrinas: Spanish Colonial Life in New Mexico*. This fine organization will be conducting a membership drive that will go a long way in sustaining its museum.

LAND GRANT PROBLEMS IN THE SOUTHWEST: THE SPANISH AND MEXICAN HERITAGE

IRIS WILSON ENGSTRAND

AN INVESTIGATION of the literature concerning land grants in the Southwest includes a review both of historical monographs and of court litigation over attempts to confirm legal claims or to prove fraud. Such a study shows the difficulties of superimposing an Anglo-American system of land law upon a Spanish and Mexican system, which was basically dissimilar and could not easily be absorbed into the new pattern. It necessarily explains and either justifies or condemns land speculation resulting from Anglo-American frontier expansion during the post-conquest period. Because of the complexities involved, land grant historians have disagreed with each other and even with their own former views. Increased knowledge provided by recent research and a greater understanding of Hispano and Indian land use and ownership have made historical revision possible. Nevertheless, the cultural conflict between Anglo and Hispano or Indian communities in New Mexico today is still very deep and the issue of land ownership, especially for the Hispano, has not been satisfactorily resolved.

The recent upsurge in scholarly investigation and the holding of a symposium entitled "Spanish and Mexican Land Grants in the Southwest" at the 1974 annual meeting of the Western Social Science Association illustrate the timeliness of this problem. As Mark S. Knowlton, the symposium's organizer, pointed out, "An intermittent controversy has punctuated New Mexican political and intellectual life for several generations between those who claim that the United States violated the provisions of the Treaty of Guadalupe Hidalgo and those who take the opposite view."[1] On

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the one hand are those who argue that Mexican and Spanish land grantees lost their land "through force, fraud, and the imposition of strange and alien political, economic, and social systems," whereas on the other hand are those who feel "that Spanish Americans who lost land to the Anglo-Americans did so through the natural workings of the market place and not through violence and force." Even though somewhat late, the United States did set up legal and judicial mechanisms to confirm land grant titles and attempted to rule fairly. Whatever the truth may be, Professor Knowlton states, "large numbers of Spanish-Americans continue to believe that they were deprived of their landholdings by illicit and illegal methods." He lists eleven major areas which need further study and analysis in order to reduce misunderstanding.[2]

The long-lasting difficulties in New Mexico have led some writers to categorize the California grant situation as less complicated than elsewhere since a commission to investigate and settle land claims was established soon after statehood. But California land specialist Paul Gates would no doubt take exception to that view considering his conclusion that "the decade of controversy over titles had wrought much havoc in California and left in its wake bitterness against the Land Act of 1851 which was incorrectly held responsible for the plight of the landowners and contempt for legal institutions."[3] It also widened a definite cultural gap between Anglos and descendants of Mexican families in California. It is fair to state, however, that California did not have to wrestle with many Indian claims. This thorny problem in New Mexico has led state historian Myra Ellen Jenkins to call it "one of the oldest and most complicated questions in New Mexico history."[4] It is no wonder that an inquiry into the applicable law has been termed "legal archaeology,"[5] while it is acknowledged that land grant scholars are still "trying to unravel the threads of a very tangled skein in Southwestern history."[6] Because Texas experienced differences both in the nature of its land grants—primarily *empresario*—and in its historical development, this state adds a further dimension in trying to assess the rights and wrongs of an imprecise situation.

In order to understand the complexities of land grant problems in the Southwest, certain fundamental factors must be considered.

First, a knowledge of Spanish land laws and colonization procedures is crucial to understanding the pattern of settlement. Second, it is necessary to trace actual occupation of the lands as the process involved Indians and Spaniards in military, missionary and civilian roles. Third, it must be realized that the brief Mexican interlude from 1821 to 1846 had far-reaching implications, especially in view of the land grants made just prior to the Anglo-American conquest. Finally, the differences in United States policy arising out of California's immediate acceptance for statehood in contrast to New Mexico's long period of territorial status cannot be overlooked. In California, the board of land commissioners did act upon claims, although at times with agonzing slowness—usually within a few years. In New Mexico it was not until 1891 that a Court of Private Land Claims was even established.[7]

The purpose of this study is not to analyze individual land claims in depth since there are many specialists who have labored extensively in this field. Instead Spanish legal heritage of land grants will be the focal point, an area which has been somewhat neglected in favor of the more recent controversial issues. Several writers have felt that in the settlement of land grant controversies by either land commissions or the courts, commissioners and judges lacked adequate knowledge of the Spanish and Mexican laws. Although some studies were made available, such as Gustavus Schmidt's *The Civil Law of Spain and Mexico* (New Orleans, 1851),[8] there was no interpretation of the application or administration of those laws. Therefore, at least in New Mexico's land claims, it is doubtful that "any of the justices clearly understood either Spanish or Mexican law relating to grants and land titles."[9] Nevertheless, several United States Supreme Court cases do show that some justices did understand Spanish and Mexican land laws and applied them to the best of their ability.[10] But others did not.

Backgrounds of Spanish Law

Since the first expedition of Columbus was authorized and financed as a venture of Queen Isabella, its benefits accrued to the state of the ruling monarch of Castile. The laws of this kingdom, rather than those of Aragon, prevailed in the New World. Shortly

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after Columbus returned from his first voyage, Isabella chose a member of the Council of Castile to take charge of all matters relating to the newly discovered lands. After 1508 he was assisted by other members of the Council and, with the death of King Ferdinand in 1516, a separate council emerged. Charles V, successor to the Spanish throne and Holy Roman Emperor, established the Council of the Indies with full administrative and judicial authority on August 1, 1524.[11]

Laws relating to the administration, taxation, and settlement of the American dominions were prepared and dispatched by the Council of the Indies with the approval of the king and in his name. No important local project of government nor colonial expenditure could be put into operation unless first submitted to the council. It had much the same power as the Council of Castile within the peninsula, and its influence extended into every sphere of government, including legislative, judicial, financial, military, ecclesiastical, and commercial. The Council of the Indies received its power directly from the king.[12]

Legislation concerning the Indies, therefore, maintained the spirit and intent of the laws of Castile. The principles inherent in these laws were influenced by customs and traditions of the Iberian peninsula and by laws concerning the use of land and town founding introduced by the early conquerors of Spain. By the third century of the Christian era, Roman law dominated within the peninsula and became the norm for establishing settlements. As Frank W. Blackmar indicates, "from the moment of the conquest, Romans appropriated all of the royal domain and frequently part of the common lands; and in some instances they appropriated the whole territory of the conquered."[13] The inhabitants held these lands as tenants of the state and were obliged to pay property taxes. Even though they were Roman citizens they could not own the land which they occupied but held it as a fief from the state. Lands within the colony were eventually subdivided into small tracts called *sortes*, from which comes the Spanish *suertes* for farm lands. The lots were apportioned with houses to colonists according to rank.[14]

Another class of Roman towns resulted from the establishment of protective frontier garrisons. There was a gradual development of civilian towns from these military centers or *presidia*. The

soldiers married persons from the countryside, cultivated the soil, and became permanent settlers. Retired veterans were given lands in payment for services or as pensions. This exact system, utilized effectively by Christian Spaniards during the seven centuries of the Reconquest, was transferred almost intact to the New World. The period of Roman dominance gave Spain a legal heritage specifically adaptable to a colonial land use situation and a tradition of legalism which has endured until the present day.[15]

THE LAWS OF THE INDIES OF 1680

The *Recopilación de leyes de los reynos de las Indias*, or *Laws of the Indies*, was not a special code issued for the Indies but a compilation of all laws and regulations promulgated by the Spanish crown for its American provinces from the time of discovery through 1680. Ordered by Carlos II, the compilation contained nine books of royal laws and *cédulas* (ordinances) covering ecclesiastical, military, and civil administration in America.[16] Book II, Title I, Laws 1 and 2 provided that only the laws actually set forth in the *Recopilación* would apply in the Indies, although in matters for which no provisions were made, the laws of the Kingdom of Castile were to be observed. These latter laws were principally contained in the *Nueva Recopilación de las leyes de España* of 1567 and in *Las Siete Partidas*, the code of Alfonso X sanctioned in 1348.[17] New Laws promulgated in Castile could not be enforced in the Indies except by special royal decree issued by the Council of the Indies.[18]

Throughout the entire period of Spanish control in the Indies, few changes were made in the basic legislation concerning land use. Despite dynastic changes and individual differences of ruling monarchs, early laws dealing with the American provinces generally followed the traditions of Castile. Primitive juridical usages and customs of the Indians were also respected insofar as these were not in contradiction to the crown's supreme interests.[19]

RIGHTS OF INDIANS

Despite the promulgation of such early codes as the *Laws of Burgos* (1512-1518) and the *New Laws of Carlos V* (1542), the

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most comprehensive body of law concerning Indian rights is found in the *Laws of the Indies.* These laws showed a paternalistic "preoccupation with the well-being of the indigenous population" and detailed the relationship between the new settlers and the natives.[20] For example, Book IV, Title 5, Law 6 provided that towns should be established without prejudice to any Indian pueblo or private person. Book IV, Title 7, Law 1 stated that: "In these and other inland towns, the site selected shall be from those that are vacant, and by our disposition can be occupied without prejudice to the Indians and natives, or with their free consent," and Law 23 ordered that "the settlers will establish their settlement without taking what belongs to the Indians and without doing them more harm than what is necessary for the defense of the settlers." In Book IV, Title 12 there are several other laws concerning Indian rights:

> Law 5
> In the distribution of lands, waters, watering places . . . the viceroys or governors . . . shall make the distribution . . . and that to the Indians should be left their lands, cultivated lands and pastures . . . for sustenance of their homes and families. . . .
>
> Law 9
> We command that estates and lands which are given to Spaniards shall be without prejudice to the Indians, and that those given to their prejudice and injury be returned to whomever they rightfully belong.
>
> Law 18
> Indians are left in possession of all that belongs to them, both individually and as communities, and the waters and irrigated lands and the lands through which they have built irrigation canals, or any other improvement . . . are in the first place reserved to them, and in no circumstance shall these be sold or alienated.[21]

Generally, property for the grazing of livestock had to be located far enough from the towns and cultivated fields of the Indians so as not to cause them damage.[22] Farms for cattle and horses were to be a league and a half from Indian villages and farms for sheep and goats at a distance of half a league.[23] The idea

of common lands and waters is contained in the basic laws of Book IV and, while extending the same general principles applicable in the Spanish peninsula, reflected an additional concern for the rights of Indians. Title 17, Law 5 provided that "the pastures, woods, and waters be common in the Indies," and Law 7 commanded that "the woods, pastures, and waters of the settlements and the woods contained in grants which have been made . . . in the Indies must be common to the Spaniards and Indians." Law 9 instructed the viceroys and *audiencias* to enforce these laws regarding water and to render justice among parties who might appeal to them. Law 11 stated that "the same system which the Indians had in the division and apportionment of water be observed and practiced among the Spaniards to whom lands have been distributed and assigned." Book VI, Title 3, Law 9 provided that even though the Indians were relocated in settlements, they were not to be denied lands and cultivated areas which they held before. Law 14 commanded that the settlements of Indians had to contain "land, water and pastures," and, if it were necessary to take such things from them, they were to be compensated in another area.[24]

Laws for Founding of Towns

In 1573, Philip II issued an extensive body of legislation concerning the founding and government of Spanish towns. These royal ordinances, later incorporated into the *Laws of the Indies*, Book IV, Titles 5 and 7, controlled almost every aspect of municipal organization: choice of site, planning, construction, assignment of lands, governmental administration, and the subservience of local to the central government. Royal decrees also determined the requirements for townsites—a healthful environment, a clear atmosphere, pure air, and weather without extremes of either heat or cold. The land had to be suitable for farming and ranching; there had to be mountains and hills with an abundant supply of stone and wood for building materials and an adequate source of water for drinking and irrigation. Waters inside the town were to be held for the common benefit of the inhabitants, but the source of supply was to be common to all persons. For purposes of commerce and defense, towns needed easy access and withdrawal. The

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site could not be too high because of winds, nor too low because of danger from disease. It was to be located on a navigable river, but not too close to the sea where there might be danger of pirates and where the people might be drawn away from cultivation of the soil. For itself, the crown reserved seaports which could not enjoy municipal status without special authorization from the king.[25]

Viceroys, *audiencias*, and governors were empowered to found settlements but could not grant titles to cities without approval of the Council of the Indies and confirmation by the king.[26] Lands, lots, and waters were to be given to settlers in the name of the crown, according to the resources of the land without prejudice to third parties.[27] After the local municipal council was set up, it supervised the apportionment of lands and waters made by the viceroys and governors.[28] Other laws stipulated the number of settlers required, the time in which they had to take formal possession (three months) and that settlers of one city could not abandon their residences in order to move to another place.[29]

Each *vecino* or head of a family received a *solar* or town lot and a certain number of *suertes* for farming.[30] The number depended upon the availability of water for irrigation and the suitability of the land for raising non-irrigated crops or as pasture. Both the *solares* and *suertes* were distributed by drawing lots. The *propios* or revenue lands were selected from unassigned areas and were to be either worked in common or rented to bidders so that the income could be used to defray town expenses.[31] The *ejidos* were lands ideally surrounding the town on all four sides, but within the designated limits. They were for the common convenience and benefit of all settlers—an area to which persons could bring grain for threshing, pasture a few cows or goats, tether a horse for protection from wild animals, or come for recreation. Since the *ejidos* were for the common benefit of all settlers, the land could not be alienated except by royal order.[32] Another tract of common land lying generally beyond the *ejidos* were the *dehesas* or pasture lands, and finally, still further out, were the *baldías* or uncultivated lands.[33] Under ideal circumstances, then, the *ejidos*, *dehesas*, and *baldías* surrounded the plaza and town lots. Nevertheless, adjustments were made according to the conditions of the land, especially for a river, but all areas were located within the exterior boundaries of the town.[34]

The *Laws of the Indies*, highly detailed with regard to town founding, were designed primarily for the attainment of political stability and royal control while the process of conversion and civilization of Indians was carried out. With the *vecinos* forbidden to alienate their land, committed to a program of agricultural and industrial development, and subject to a uniform system of government, the king could reasonably expect that those parts of his dominions newly populated would rest safely in his control.

Rancho Grants

In addition to grants of land within towns, there were certain larger grants made outside of settled areas in order to raise livestock and develop agricultural resources. In the Borderlands region these grants were generally made to retired soldiers as a reward for services and to insure an alternate food supply for the presidios. Ranchos, which were also called haciendas and estancias in different areas, were to be granted without prejudice to missions, Indian pueblos, or Spanish towns.[35] The earliest grants were made on the Island of Hispaniola, and the procedure was continued throughout the Americas.

The first step in obtaining a rancho grant was the submission of a petition containing the name, religion, residence, occupation, family size, and available livestock of the applicant. The petition also included a description of the vacant lands or *realenga* and a *diseño* or map of the property. Descriptions were usually vague since the land was essentially unoccupied, and there was little need for accurate measures. Boundaries generally were those of other grants, Indian villages, rivers, hills, piles of stones, trees, or even an aging skull. The next step was to present the petition to the appropriate granting authority, which varied among the governor, intendant, commandant general, audiencia, viceroy or a special subdelegate for that purpose. Sometimes the procedure was simple as in California in 1784 when Governor Pedro Fages approved the first three large rancho grants.[36] Nevertheless, the opinion of attorney general Galindo Navarro rendered to Commandant General Jácobo Ugarte y Loyola in 1785 indicated compliance with the *Laws of the Indies* and assured the protection of Indian and other rights.[37]

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The land to be granted was visited by a commissioner to see that all qualifications had been met. After securing the necessary approval, the grant was issued either as a separate document or as a marginal note on the petition with the signature of the granting official. The grantee had to remain on the land at least four years in order to receive title in fee simple. In California, the land grant procedure did not violate laws protecting Indians since there were few settled villages such as in New Mexico. On the other hand there were extensive and nearly contiguous mission holdings which could not be prejudiced. The Franciscan padres jealously guarded the lands of their neophytes. Only two pueblos of lasting significance—San José and Los Angeles—were founded during the Spanish period from 1769 to 1821. Even though considerable land was available for ranchos in the interior, the majority of persons living in California during the Spanish period settled around the presidios or lived in the pueblos. Only twenty private rancho grants were issued. After secularization of the missions in 1835-1836, during the Mexican period, most of California's grants (some 800 as claimed and 600 as confirmed) were made.[38]

Land Grants in New Mexico

The situation in New Mexico was considerably different. Exploration and settlement prédated that of California by two centuries, and colonists encountered a large, sedentary, agricultural Indian population. In addition, the productivity of the land varied considerably throughout the area. Colonization of New Mexico in the late sixteenth century generally continued the northward movement of explorers, traders, missionaries, miners, and cattle ranchers who had established Zacatecas in 1546, Durango in 1563, and moved into the silver mining regions to the north before 1580. Both the possibility of new mines and the reported agricultural potential attracted applicants for a colonization venture. Don Juan de Oñate received the contract to colonize New Mexico over other bidders and began to recruit prospective settlers. About half of the soldier-colonists were born in Spain, especially in the Basque country, and the others were natives of

New Spain. Nahuatl-speaking Mexicans, who were numerous enough to establish a separate Barrio de Analco in Santa Fe by 1610, acted as servants.[39]

Unlike California, which was essentially a missionary venture, the colonization of New Mexico was primarily economic with military overtones. Soldier-colonists not only had to remain in the settlement, they were legally deserters from the army if they left. The early century (1598-1692) was characterized by imposition of Spanish colonial institutions, resistance by Pueblo Indians, the Pueblo Revolt of 1680, and Spanish reconquest in 1692. Despite the mass of legislation designed to protect the Indians in their lands, white encroachment became "the most serious problem of the New Mexico pueblos."[40] Governors ignored the laws and officials appointed to protect Indians not only neglected their duties, but in extreme cases exploited the Indians themselves. The major contributing factor was no doubt the reality that the Pueblo Indians occupied the best lands in northern New Mexico.[41]

The later Spanish colonial period showed changing motives for colonization. Defense measures directed both toward nomadic Indian tribes and foreign interlopers, primarily the French, made the province a buffer area. Colonial officials used the unique community land grant to place settlers on the frontier and made provisions for both detribalized *genízaros* and Pueblos to live in these towns.[42] As a result, there emerged a certain amalgamation of Pueblo and Spanish village land tenure and cultural patterns in the Rio Arriba area even though people often refused to live close together for defense. Settlements in the Rio Abajo region still exhibited the earlier pattern of private ranchos or haciendas.

Despite official encouragement for settlement in towns, New Mexico remained essentially "a rural province dominated by a rural population living in dozens of small communities."[43] No municipality attained the rank of *ciudad* (although neither did any in California), and there were four given the rank of *villa*.[44] Although poorly organized and not set out according to the grid pattern prescribed by the *Laws of the Indies*, these towns at least had a central plaza. Santa Fe even had a *plaza mayor* fronting on

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the governor's residence and perhaps a secondary plaza to the west of San Miguel church. Rather than live close together according to plan, however, the residents wished to live close to their fields which were scattered along the narrow valley of the Santa Fe river.

In New Mexico Spanish ranchos were generally referred to as *poblaciones*, or if grouped closely together for mutual defense, as *plazas*. The term plaza then could mean a town or village. A rancho consisted of one or more Spanish households adjacent to agricultural lands. These were often long and narrow as a result of the Spanish custom of subdividing among all the heirs. Because of the scarcity of water in many areas, land grants were made along stream fronts and occupied irregular strips. The ranchos of frontier zones were not always legally established, but if they were prosperous and survived Indian attacks, "the original settler or his descendants could apply for a formal grant."[45] With increasing pressure of Indian raids during the latter part of the eighteenth century, residents of isolated rural ranchos had to band together for protection and construct a wall reminiscent of the early Spanish fortresses on the Iberian peninsula. According to historian Marc Simmons, "the fortified plazas and haciendas in varying degrees conformed to the royal ordinances which laid down measures to be taken for defense."[46] Nevertheless, a Spanish official remarked in 1776 that the New Mexico settlements "are scattered and badly defended . . . and quite exposed to entire ruin. Because . . . the force of the settlers is divided, they can neither protect themselves nor contribute to the general defense of the country. This, in consequence, results in the abandonment of their weak homes."[47] Therefore, Simmons concluded, "settlement patterns in this province during the period of Spanish rule were shaped primarily by economic needs of rural folk and only secondarily by considerations of defense."[48]

Dispersion of the population probably characterized most of northern New Spain, but may have been more pronounced in New Mexico because of greater isolation and looser enforcement of governmental decrees. On the other hand Pueblo Indians before the Spanish conquest were concentrated into even larger communities, which were closely integrated and carefully organized for defense. They, therefore, remained strongly united in villages, while the Hispanic population did not. Both of these situations created problems for Anglo-American settlers during the later era.

THE MEXICAN PERIOD

With the Mexican war for independence and the expulsion of peninsular Spaniards from the administrative hierarchy, certain changes took place. During the historical period from 1821 to 1846, foreign traders—primarily fur trappers and merchants—began to enter the areas of New Mexico and California. After several upheavals in the governmental structure of Mexico, a federal constitution for the Republic was adopted in 1824, and two significant land laws were passed.[49] The first and most important was the colonization law of August 18, 1824, which not only made it possible but encouraged foreigners to establish themselves in Mexican territory. Article One offered security to newcomers provided they subjected themselves to the laws of the country, while Article Six stated there should be no duties imposed on the entrance of foreigners who came to colonize for the first time before 1828. The general congress was not to prohibit the entrance of foreigners to colonize prior to 1840.

One of the most significant clauses limited the amount of acreage available to one person to one square league (5,000 varas) of irrigable land, four of non-irrigable land, and six of grazing land, or a total of eleven square leagues amounting to some 48,000 acres. Empresario grants were much larger, but these were unimportant in New Mexico and California. The next decree relating to land was that adopted November 21, 1828, which, in accordance with the land law of August 18, 1824, ordered the government to proceed with the colonization of the territories of California and New Mexico. This act authorized the governors to grant vacant lands to empresarios, families, or private persons, whether Mexicans or foreigners, who solicited them for inhabitance and cultivation. The conditions for receiving the land grants were much the same as during the Spanish period and involved a

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petition, description, *diseño*, and proof of occupation. In addition, during the Mexican period, each new colonist, after having cultivated or occupied the land according to his stipulation was ordered to prove the same before the municipal authority in order that the necessary record could be made and forwarded in a quarterly report to the supreme government.[50] In California, secularization of the missions after 1835 made much land available for colonization and accounts for the substantial increase in the number of land grants made. In New Mexico, of the 197 land grants made after 1598, 69 were made in the nineteenth century, and 23 during the period from 1840 to 1847. The total land involved in the latter grants exceeded nine million acres.[51] In some areas, however, land grants had been established, abandoned, and then re-established.

THE AMERICAN PERIOD

According to Michael Rock, who has written extensively about the legal background of communal lands, there were in excess of sixty community land grants in existence in New Mexico at the time of the American conquest. Title to many hundreds of thousands of acres of common lands "passed to the United States government, but that title was subject to the right of usufruct. This was the legal condition of the property that the United States pledged to respect in the Treaty of Guadalupe Hidalgo, in its protocol of May 26, 1848, and in the more restricted pledge of the treaty of December 30, 1853 [affecting the Gadsden Purchase]."[52] The Treaty of Guadalupe Hidalgo provided that property rights of Mexicans would be respected, and certain congressional acts created the machinery to carry out this pledge of the United States government. The Land Act of 1851 sponsored by California Senator William Gwin set up the lengthy procedures by which land titles in that state would be ascertained and confirmed. In 1854 the office of Surveyor General was created in New Mexico to survey the public domain and investigate Spanish and Mexican land claims. Because of the difficulties in examining the claims and the suspicion that some may have been fraudulent, Congress finally established the Court of Private Land Claims in New Mexico by an Act of 1891.

During the interval from 1854 to 1891, many New Mexico land grant documents were lost or misplaced. In addition, grant claimants, unable to press their claims for various reasons or gain access to appropriate legal representation, did not appear before the court. Nevertheless, according to Richard Bradfute, "in spite of its difficulties and its lack of adequate knowledge concerning Spanish and Mexican land law, the decisions of the court were relatively fair."[53] This court, however, could not determine private ownership rights, so it lacked the power to settle the land grant issue completely.

A further problem, arising out of lands finally confirmed and patented to an individual, concerned the rights of residents on common lands.[54] Rock summarizes the matter as follows:

> Because it was considered a real property question, it was left to the New Mexico courts to translate the right of usufruct into common law terms, that is, to define the interest the residents of land grants have in their common lands as opposed to the interest of the patentees. In general, the New Mexico Supreme Court has decided on very narrow legal grounds that the patentees have complete title to the common lands. As a result, the rights of community land grant residents have been damaged and, in some cases, extinguished.[55]

The Tierra Amarilla Grant was a community grant that was patented to an individual, Francisco Martínez. By viewing it as an absolute conveyance, the Supreme Court of New Mexico denied that the Tierra Amarilla residents had a right of usufruct upon the common land. The court decided "that if land is patented to an individual, all rights are vested in him and no one else. The nature and history of the grant [would] not be considered."[56]

Conflicts over land between Hispano Americans and Anglo Americans in the Southwest, therefore, have centered upon the establishment of the validity of the land grants by which Hispanos held land in the former Mexican territory. In order for Anglos to settle and undertake economic activities in California and New Mexico, it was necessary that land holdings prior to 1848 be determined and confirmed by some legal proceeding and unceded areas

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defined. Because of language difficulties, differences in title concepts, indefinite boundaries, suspected fraud, and other related problems, this proved to be an extremely complex issue which caused irritation in California and led to outright conflict in New Mexico. The procedures adopted for clarifying land claims made any kind of fast and consistent action nearly impossible, kept the matter open for an unreasonable length of time, and left room for corruption. Pressures exerted by American economic aims, especially in the California Gold Rush period, also led to political and legal maneuvering which at time worked against a just settlement. In New Mexico, the delay in establishing a Court of Land Claims, the proportionately larger Hispano population, and the resident Indian population added to the difficulties and provoked even greater cultural conflicts.[57]

The attitude of the Anglo Americans towards land and the legal procedures which they introduced to establish claims encompassed precise delineations of private property. The Spanish and Mexican land grant system received from the parent Hispanic-Roman civilization did not fit easily into Anglo-American concepts of 640-acre sections in a neat grid-iron pattern. The conditions of life in the Southwest prior to American sovereignty, especially in sparsely settled areas, did not require clear-cut boundaries in land, and lack of water resources made orderly settlement impossible. The wide use of communal land for grazing, resulting from the grants of public domain in the form of *dehesas* and *ejidos*, also created problems.[58]

Since Hispano-Americans emphasized use and occupancy rather than ownership in fee simple and promoted communal use of land, misunderstanding and resentment resulted when the Anglo-Americans introduced their own standards for the adjustments of land claims in California and New Mexico. On the other hand, the Anglo-Americans had great difficulty in giving legal definition to situations based in part on traditions concerning land use and ownership which were foreign. They respected their own legal procedures and verification of claims through authorized documents rather than accepting forms of traditional occupancy. Many decisions, therefore, worked to the disadvantage of the Hispano Americans. The adjustment between the groups was an accommodation insofar as the claims of both

groups were considered and physical conflict, generally, was avoided. Nevertheless, the Anglos did impose their own standards and the results, for many reasons, turned out to be highly favorable to that group.[59] All of these circumstances combined to produce a deep-rooted cultural conflict and basic misunderstanding about land ownership between Anglos and Hispanos. Indian rights also served to complicate the picture. Future decisions about land will, it is hoped, reflect a more thorough analysis of the problem, thereby lessening the distrust among the various parties involved.

NOTES

1. Clark S. Knowlton, ed., "Spanish and Mexican Land Grants in the Southwest: A Symposium," *The Social Science Journal* 13 (1976):4.
2. Knowlton, "Land Grants," p. 5. Issue (6) "the reasons why legal and judicial mechanisms developed by the American government as well as by existing state and federal court systems found it so difficult to resolve land grant issues or confirm land grant titles" is particularly pertinent to this study.
3. Paul W. Gates, "California's Embattled Settlers," *California Historical Society Quarterly* 41 (1962):124. See also Paul W. Gates. "The California Land Act of 1851," *California Historical Quarterly* 50 (1971):395-430.
4. Myra Ellen Jenkins, "The Baltasar Baca 'Grant': History of an Encroachment," *El Palacio* 48 (1961):47.
5. W. A. Keleher, "Law of the New Mexico Land Grant," *New Mexico Historical Review* 4 (1929):350.
6. Harold H. Dunham, "Discussion (of Howard R. Lamar's 'Land Policy in the Spanish Southwest, 1846-1891: A Study in Contrast')," *Journal of Economic History* 22 (1962):522.
7. David J. Weber, *Foreigners in Their Native Land: Historical Roots of the Mexican Americans* (Albuquerque, 1973), pp. 154-60, gives an excellent comparison of land problems throughout the Southwest. See also Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904* (Albuquerque, 1975).
8. Keleher, "Land Grant Law," p. 353. An early compilation was made by Joseph M. White called *A New Collection of Laws, Charters and Ordinances of the Governments of Great Britain, France and Spain . . . Together with the Laws of Mexico and Texas . . .* 2 vols. (Philadelphia, 1839). Two important later works were Frederic Hall's *The Laws of Mexico* (San Francisco, 1885) and Matthew G. Reynolds's *Spanish and Mexican Land Laws* (St. Louis, 1895).
9. Bradfute, *Court of Private Land Claims*, p. vii.

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10. See, for example, *United States v. Santa Fe*, 163, U.S. 675 (1897); *San Francisco v. United States*, 21 Federal Cases 365 (1864).

11. José María Ots Capdequi, *El Estado Español en las Indias* (Mexico City, 1941), pp. 9-10; C. H. Haring, *The Spanish Empire in America* (New York, 1947), p. 102.

12. Haring, *Spanish Empire*, p. 107ff.

13. Frank Wilson Blackmar, *Spanish Institutions of the Southwest* (Baltimore, 1891), p. 19.

14. Blackmar, *Spanish Institutions*, p. 20.

15. Blackmar, *Spanish Institutions*, pp. 22-23.

16. *Recopilación de leyes de los reynos de las Indias. Mandadas imprimir, y publicar por la magestad católica del rey Don Carlos III nuestro señor*, 4 vols. (Madrid, 1756).

17. With the hope of maintaining the simplicity and comprehensive scope of Justinian's code, Alfonso X of Castile ordered a full and complete code to be drawn up which would resolve all the contradictions in existing codes. *Las Siete Partidas*, completed during the years from 1256 to 1263, was based upon Roman and Canon Law and upon the laws and customs of Castile. It was given royal sanction by the *Ordenamiento de Alcala* in 1348. The *Nueva Recopilación* of 1567 was promulgated by Philip II to establish a general code for the former individual kingdoms, now called provinces, of a unified Spain. See Thomas W. Palmer, *Guide to the Law and Legal Literature of Spain* (Washington, D.C., 1915) and John T. Vance and Helen L. Clagett, *Guide to the Law and Legal Literature of Mexico* (Washington, D.C., 1945).

18. Ots Capdequi, *El Estado Español*, p. 18.

19. Ots Capdequi, *El Estado Español*, pp. 11-19.

20. William B. Taylor, "Land and Water Rights in New Spain," *New Mexico Historical Review* 50 (1975):191.

21. Jenkins, "The Baltasar Baca 'Grant,' " pp. 48-49, discusses Indian rights under the *Recopilación*.

22. *Laws of the Indies*, Book IV, Title 23, Law 12.

23. *Laws of the Indies*, Book IV, Title 3, Law 20.

24. See Andre F. Rolle and Iris H. Wilson, "A Study of Laws and Customs Pertaining to the Use of Water in California Under Spain and Mexico," Defendents' Exhibit I, City of Los Angeles v. City of San Fernando et al., 1966.

25. *Laws of the Indies*, Book IV, Title 5, Laws 1 and 2; Book IV, Title 7, Laws 1, 3, 4, 5 and 6; Book IV, Title 17, Laws 5 and 7.

26. *Laws of the Indies*, Book IV, Title 8, Law 6; Book IV, Title 7, Law 2.

27. *Laws of the Indies*, Book IV, Title 12, Law 4.

28. *Laws of the Indies*, Book IV, Title 12, Law 5.

29. *Laws of the Indies*, Book IV, Title 7, Law 18.

30. *Laws of the Indies*, Book IV, Title 12, Law 1.

31. *Laws of the Indies*, Book IV, Title 13, Laws 1 and 6.

32. *Laws of the Indies*, Book IV, Title 7, Law 7.

33. *Laws of the Indies*, Book IV, Title 7, Law 14.

34. See Appendix A in Blackmar, *Spanish Institutions*, Fig. 1, p. 167, for a graphic representation of "An Ideal Pueblo after the Laws of the Indies."

35. *Laws of the Indies*, Book IV, Title 12, Laws 1-13.

36. Robert C. Cowan, *Ranchos of California* (Fresno, 1956).

37. Galindo Navarro to Jacobo Ugarte y Loyola, Chihuahua, October 27, 1785, California Archives 52, 809-13. The Bancroft Library, Berkeley, California.

38. Gates, "California's Embattled Settlers," p. 99. See also Ogden Hoffman, *Report of Land Cases Determined in the United States District Court for the Northern District of California* (San Francisco, 1861); Cowan, *Ranchos of California*.

39. Roxanne Amanda Dunbar, "Land Tenure in Northern New Mexico: An Historical Perspective" (Ph.D. diss., University of California, Los Angeles, 1974), p. 51. See also George Hammond and Agapito Rey, *Don Juan de Oñate and the Founding of New Mexico* (Albuquerque, 1927).

40. Jenkins, "The Baltasar Baca 'Grant,' " p. 52.

41. Dunbar, "Land in Northern New Mexico," p. 126. See also Marc Simmons, *Spanish Government in New Mexico* (Albuquerque, 1968), p. 79.

42. Simmons, *Spanish Government*, p. 151. *Genízaros* were detribalized Indians who had been educated as Christians by the Spaniards. They served the Spanish military in various capacities.

43. Marc Simmons, "Settlement Plans and Village Patterns in Colonial New Mexico," *Journal of the West* 8 (1969):12.

44. Spanish towns according to the *Laws of the Indies* were designated as follows: *lugar* (literally place) for the smallest settlement or town; *villa* as an intermediate town having achieved a certain rank and a coat of arms; and finally *ciudad* (city) as the highest ranking municipality usually the seat of the viceregal government (e.g., Mexico City and Lima). The word *pueblo* was at first generally applied to Indian towns although it came to be applied to small mixed settlements.

45. Simmons, "Settlement Plans and Village Patterns," p. 13.

46. Simmons, "Settlement Plans and Village Patterns," p. 14.

47. Letters of Antonio de Bonilla quoted in Simmons, "Settlement Patterns and Village Plans," p. 17.

48. Simmons, "Settlement Patterns and Village Plans," p. 19.

49. See Vance and Clagett, *Guide to the Law and Legal Literature of Mexico*; John W. Dwinelle, *Colonial History of San Francisco* (San Francisco, 1866), Appendices; and Frederic Hall, *Laws of Mexico*, p. 150.

50. This comprised the Jimeno and Hartnell Index of Land Concessions in California from 1830-1848, a basic source for land grant information in that state.

51. Howard R. Lamar, "Land Policy in the Spanish Southwest, 1846-1891," *Journal of Economic History* 22 (1962):500.

52. Michael J. Rock, "The Change in Tenure New Mexico Supreme Court Decisions Have Effected Upon the Common Lands of Community Land Grants in New Mexico," *The Social Science Journal* 13 (1976):55.

53. Bradfute, *The Court of Private Land Claims*, p. viii. He admits that "in its thirteen years of existence, the court heard claims for 248 grants totaling over thirty-five million acres (but) only 88 grants for about two million acres, were

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confirmed" (p. vii). He adds that confirmation of only 30 percent as compared with 75 percent confirmation in California resulted "in charges of bias against grants, but no direct evidence of such bias exists" (p. 214).

54. See Olen E. Leonard, *The Role of the Land Grant in the Social Organization and Social Processes of a Spanish-American Village in New Mexico* (Albuquerque, 1970), pp. 90-117.

55. Rock, "The Change in Tenure," p. 56.

56. Rock, "The Change in Tenure," p. 58.

57. Awareness of these problems is not new. Carolyn Zeleny's *Relations Between the Spanish-Americans and Anglo-Americans in New Mexico* written over thirty years ago as a doctoral dissertation (Yale, 1946) discussed the origins of conflicts over land (pp. 142-45). Her work has been published with slight revisions by the Arno Press (New York, 1974) in a series on the Mexican-American edited by Carlos E. Cortes.

58. C. Lynn Reynolds, "Economic Decision-Making: The Influence of Traditional Hispanic Land Use Attitudes on Acceptance of Innovation," *The Social Science Journal* 13 (1976):27-29; Zeleny, *Relations*, p. 144.

59. Zeleny, *Relations*, p. 145.

THE QUEST FOR EDUCATIONAL OPPORTUNITY: ACCESS TO LEGAL AND MEDICAL EDUCATION IN NEW MEXICO

LEO M. ROMERO

ACCESS of minority group members to higher education is one of the burning social and legal issues of our time. The issue centers around two problems: first, how can the number of minority students in higher education be increased, and, second, can it be done in a way that does not abuse the constitution? As institutions of higher learning, both medical and law schools have been the focus of this issue, primarily due to the intense competition among applicants for the limited number of positions available.[1] In addition, medical schools and law schools have been the recent targets of lawsuits challenging the constitutionality of special admissions programs. It should be emphasized, however, that this issue is not peculiar to professional schools, but presents itself whenever a school of higher education with limited positions available attempts to increase minority enrollment.

The nature of the problem can be traced to the fact that many minority group members were excluded from higher education by forms of overt discrimination. The "separate but equal" doctrine is an example of such a bar to Blacks prior to 1954.[2] By the beginning of the 1960s, however, virtually all vestiges of overt discrimination in admission to schools of medicine and law had been removed. Instead, admissions criteria were largely objective, relying on standardized tests and undergraduate grade-point averages. Law schools developed a test called the Law School Admission Test (LSAT) designed to measure aptitude for law study, and the medical schools developed a similar test called the Medical

0028-6206/78/1000-0337$1.00/0
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