Land Grants and Lawsuits in Northern New Mexico

MALCOLM EBRIGHT

NEW MEXICO LAND GRANT SERIES
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Dedicated to my mother and the memory of my father

One can learn a great deal about something only if he loves it.
LUIS GONZALEZ
San José de Gracia: A Mexican Village in Transition

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least any major changes in policy should be a slow process rather than to suddenly discontinue consideration of the poorer dependents.[180]

This is exactly what happened. A gradual change did take place after World War II, which saw the Forest Service favoring large timber sales to the wood products industry instead of managing its resources for the benefit of the local villagers.[181]

The U.S. Forest Service has often failed to manage former land grant lands with sensitivity to their historic ownership and use patterns or to the responsibility imposed on the service by land grant purchases. We will see an example of this failure in Chapter 7 concerning the Las Trampas grant.

It is necessary to acknowledge the error of earlier court decisions if there is to be any hope for justice in current litigation with the government (state or federal) concerning land and water rights in New Mexico. The U.S. Supreme Court has been wrong before. In 1896, a year before it decided the *Sandoval* case, the Supreme Court upheld racial segregation in public schools in *Plessy v. Ferguson*, a decision that was overruled in 1954.[182] Recently Congress recognized another mistaken Supreme Court decision during World War II upholding the segregation of Japanese-Americans in internment camps.[183] Now similar attention needs to be paid to the Hispanic land loss problem in the Southwest.

The basic injustices of land grant adjudication and wrongheaded Forest Service administration will not be simply forgotten. It is more likely that controversies and disputes will continue to surface. New Mexico is primarily a rural state with many people still living close to the land. To many Hispanic residents, the land grant story is the story of a passionate and continuing struggle for the land their ancestors were promised when they became citizens of the United States in 1848, not simply a fading part of New Mexico's history. May that promise someday be kept.

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Lawsuits, Litigants, and Custom in Hispanic New Mexico

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The path of the history of New Mexican land grants is marked by controversy and by often heated litigation over rights to land and water. Struggles over these important resources in New Mexico, and before that in Spain and central Mexico, have been characterized by a fierceness and determination that contain all the elements of good drama. The records of this litigation, reveal men locked in elemental struggles over their very survival. Sometimes the outcome of such a battle is taken out of the hands of the parties to the conflict and is determined by providential forces, as in the following Taos case.

Here is what happened. After a decade and a half of controversy over water from the Río Lucero between the settlers of Arroyo Seco, on one side, and Taos Pueblo and the settlers of El Prado, on the other side, matters were coming to a head. In 1838 the Rio Lucero was running particularly low, and when the two factions could not get their problems resolved through New Mexico's legal system, they decided to take matters into their own hands. They agreed on a date for a physical confrontation, whereby the water right issues would be decided in a trial by combat. When the day arrived, each side marched to the Arroyo Seco headgate, armed and ready to do battle. But before the shooting started, an unexpected thunderstorm forced both sides to seek cover from the rain. When it cleared, the two sides discovered that the Rio Lucero had flooded, making moot the issue of how to divide scarce water.[1]

We see in the facts of this case, a drama so tinged with magical realism that it might have sprung from the pen of Gabriel García Márquez.[2] It is as if a higher power, watching over the struggles of the *vecinos* from Arroyo Seco, El Prado, and Taos Pueblo, brought the rain after the traditional ceremonies had failed, because it was apparent that these people were serious, and could hurt one another if left to their own devices.

The study of such lawsuits and of the land grants with which they are connected reveals an important and little-studied part of the historical record. These lawsuits often illuminate social values in a community and contain the means of determining rights to land and water, not only at the time of the lawsuit, but also today. Above all, we see the major importance of custom in the working out of disputes over land and water in New Mexico.

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The records of land and water litigation, and of land grants themselves, are one of the richest sources for the history of New Mexico.[3] The historical record is often full of gaps. Although land grant documents may reveal a grant being made at a certain location, knowing when that grant was settled and by whom is often difficult to determine from the grant documents alone. This information can be quite important in water rights adjudications, and many times the testimony in a lawsuit will provide the missing link. For example, the 1837 grant documents for the Guadalupita grant in Mora County do not reveal when and by whom the grant was settled. But testimony in an 1866 lawsuit between Guadalupita residents establishes that the grant was settled in 1837, abandoned in 1842, and resettled in 1851.[4]

Lawsuits relating to land and water can also tell us much about the community where the lawsuit originated. J. A. Pitt-Rivers uses a water rights lawsuit in the village of Alcalá de la Sierra in twentieth-century Spain as a means of showing the dynamics of friendship and authority in action in that community.[5] Another scholar made use of a lawsuit that lasted almost 130 years in fifteenth- and sixteenth-century Toledo, Spain, to explain the social relationships within the Spanish nobility, and the judicial relationships between the king and the nobility. This one case, containing 34,000 pages of transcript filling forty-five bundles of documents in Toledo's municipal archives, generated enough material for a Ph. D. dissertation.[6] Finally, a recent book also based on litigation (this time a charge of transatlantic bigamy) illuminates society in sixteenth-century Spain and her colonies, as it describes the details of complex legal maneuvers of lawyers and their clients, and the decisions of such prestigious courts as the Council of the Indies.[7] Scholars who have studied Spanish and Mexican Period lawsuits and land grants in New Mexico include: Emlen Hall and Daniel Tyler,[8] Janet Lecompte,[9] Rosalind Z. Rock,[10] Ramón Gutiérrez,[11] Robert J. Torrez and Charles Cutter,[12] Michael Meyer,[13] William Taylor,[14] and John Baxter.[15]

The issues decided by Spanish and Mexican period lawsuits are still with us today. What happened two or more centuries ago in a particular case can still determine the outcome of current land and water rights litigation. For example, recent water rights adjudications in New Mexico require the court to establish priority dates (the dates when ditches were first established) for all the *acequias* on a particular stream system. The determination of these dates is based primarily on the historical evidence found in early

land and water rights lawsuits, land grant and deed records, actions to probate wills or settle estates, census and church records, and governmental communications.

The chapters that follow discuss two kinds of land grant related lawsuits. The first group are lawsuits that took place under the Spanish and Mexican government before the Americans arrived in New Mexico; these are the lawsuits treated in this chapter. The second group of lawsuits were tried in United States courts after the United States occupied New Mexico and signed the Treaty of Guadalupe Hidalgo and the Gadsden Treaty with Mexico. These include adjudications of land grant claims by tribunals such as the Court of Private Land Claims, as well as lawsuits tried in state and federal courts in New Mexico dealing with land and water rights. These two kinds of lawsuits are often directly connected because those suits decided when New Mexico was governed by Spain or Mexico can be used as a basis for decision in those cases adjudicated in U.S. courts after the Treaty of Guadalupe Hidalgo. For example, when land grants were adjudicated in the middle and late 1800s, one of the questions to be answered was the validity of land grants under Spanish and Mexican law. A Spanish- or Mexican-Period lawsuit might provide the answer to that question.[16]

In frontier New Mexico, Spanish and Mexican law was more often found in New Mexico's lawsuits than in Spanish law books. To understand the procedural aspects of New Mexico lawsuits, it will be helpful to compare them with the lawsuit in sixteenth-century Castile on the eve of the Columbus voyages to the Americas. In Chapter 1 we dealt with the substantive law under which the monarchy attempted to unify Spain. Now we need to look at the courts where this law was applied to resolve disputes and the lawyers who practiced in those courts. We also must examine the regional customs known as *fueros*.

The *fuero* had two meanings in the Spanish judicial context. In the context of substantive law a *fuero* was a set of customs and local usages that applied only to a specific community or region. Often these customs differed from royal law, and the courts had to decide which would prevail.

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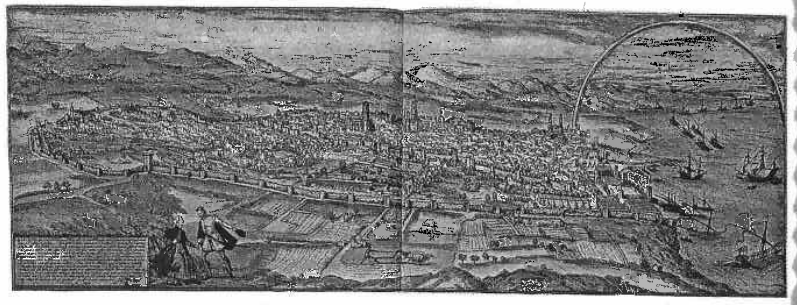
When judges applied local *fueros* to a dispute they might rule "in favor of the ancient custom of this valley," as opposed to a conflicting statute.[17] In 1598 a noted jurist stated that "customs defeat the statute and have more force than law."[18] The other meaning of *fuero* is a jurisdiction for privileged groups like the military, the church, and the nobility, or for specific areas.

The complex web of customs and laws through which a litigant had to



2.2 The city of Barcelona was the most important port on the western Mediterranean under the Romans and was the capitol of the Visigoths in the fifth century. In 1258 the city issued the Consulado del Mar, *a maritime code that became the accepted law for European maritime states. John Goss,* Braun & Hogenberg's The City Maps of Europe: A Selection of Sixteenth Century Town Plans and Views *(London: Studio Editions, Ltd., 1991).*

maneuver in Castile was compounded by a court system that was equally tangled and overlapping. In addition to municipal *alcalde* courts and the local *fueros*, the system of royal courts was rather advanced. On the first level were trial courts presided over by the king's *corregidores* and other municipal judges, on the next level were the five regional *audiencias* that heard appeals from the first level, and the top tier consisted of the council of Castile, similar to a royal supreme court. In practice this neat hierarchy broke down as each tribunal tried to increase its jurisdiction at the others' expense.

Lawyers in sixteenth-century Castile made use of this confusion regarding what law to apply, what the law meant, and what jurisdiction the litigants should invoke, resulting in a bewildering array of possibilities that often led to confusion and distrust on the part of the litigant. There were

three types of lawyers: the *abogado* (advocate), the *procurador* (attorney), and the *solicitador* (solicitor). Each had different functions, and they often fought among themselves regarding their overlapping duties. The *abogado* researched the law, wrote the briefs required, and orally presented his clients legal arguments to the judge. The *procurador* had direct contact with the client from the time he took the case and was given authority to represent his client in court. This attorney did most of the leg-work in preparing the case, including the interviewing of the witnesses and the preparation of routine documents.[19] Finally there was the *solicitador*, whose functions were not clearly spelled out in the documents. This may have been because some of those duties were illegal, such as arranging for bribes and other payoffs intended to further the client's case. The *solicitador* had to be aware of everything that might affect the case, like changes in royal policy, impending legislation, and just plain court gossip. He was not unlike a modern-day influence peddler whose job was to keep the complex machinery of litigation well oiled, even if he had to grease a few palms to do so.[20] It is not surprising that there was a certain distrust of lawyers in sixteenth-century Spain, as illustrated in the picaresque novel *Lazarillo de Tormes* where lawyers are characterized as "being attracted to money like flies to a honey pot."[21]

In frontier New Mexico where few could afford a lawyer and where the niceties of Roman law were of little use, the legal system was simpler, with similarities to the Spanish system of customary law. With few trained lawyers, and a scarcity of law books, it was the basic skill of persuasive communication that was most effective in New Mexico, and people like don Manuel Martínez, who successfully represented himself in a lengthy ditch dispute in Abiquiú (discussed in Chapter 3), acquitted themselves quite well in this respect.

One of the few lawyers in New Mexico during the Mexican period was Antonio Barreiro who was sent from Mexico City to act as *asesor*, or legal advisor.[22] He played an important role in several lawsuits, including an 1832 dispute involving the San Joaquín grant (discussed in Chapter 5), but he stayed in New Mexico for only three years. The central government in Mexico City notified Governor Manuel Armijo in 1829 that an *asesor* would be sent to advise litigants and judges about the law but the first lawyers assigned to the post resigned and Licenciado Barreiro did not arrive in Santa Fe until 1831. The government in Mexico City sent Barreiro not only as legal advisor but also to provide a check on local authorities for the

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Mexico City government.[23] In practice, the opinion of the *asesor* was sought on a wide range of questions. For example, in a dispute over a house in Santa Fe in 1832, one of the parties wanted the *alcalde* who had presided over the *conciliación* proceedings to be summoned to identify his signature. Asked whether this was proper, Asesor Barreiro said it was. Then, the same *alcalde* notified the parties that he would seek Barreiro's advice on how to decide the dispute. When one side objected, the *alcalde* told the parties that he planned instead to consult a lawyer in Chihuahua at their expense. Within a few weeks' time the parties had settled the case.[24]

New Mexico's legal system during the Spanish and Mexican administrations was rudimentary and informal. The closest New Mexico ever got to a formal legal system during this period was when Juan Estevan Pino recommended to New Mexico's *diputación* in 1829 that a new court of justice be established that would provide a district judge, an attorney general, a clerk, and a constable as a skeletal legal system. Even though the Mexican government had provided funds for the salaries of these officials, the plan failed because no trained lawyers were to be found in New Mexico at this time.[25] A few lawyers later appeared in New Mexico, but generally, if New Mexican litigants wanted lawyers to represent them they hired them in Chihuahua or Durango.

Legal representation was provided to the Pueblo Indians, particularly in land disputes, by an official called the *Protector de Indios.* The office was established in Mexico as an idealistic measure aimed at protecting indigenous rights. There the protector often had considerable legal training, and was supported by an annual assessment levied on the Indians. This has been characterized as an early form of compulsory legal insurance, a kind of government sponsored legal aid.[26] In New Mexico the office of *Protector de Indios* was vacant for long periods of time, the officials who did serve lacked legal training, and there was no assessment imposed upon the Indians.[27] Nevertheless the protector did provide a valuable service in a litigious, but almost lawyerless New Mexican society.

The virtual absence of trained lawyers was somewhat compensated for by the process of *conciliación.* This procedure was required by the law of 23 May 1837 and probably earlier by the constitution of 1836.[28] Instead of lawyers, each party would appoint an *hombre bueno,* a good man who acted as a lay representative and whose job it was to recommend a fair settlement to the *alcalde* hearing the case. Under this simplified procedure, the *alcalde* would summon the parties to appear, together with their documents if the

2.3. A portion of the 1771 Nicolas de Lafora map showing parts of Nuevo Mexico, Nueva Vizcaya, and Sonora as redrawn by Ynez Dunnford Haare. Courtesy New Mexico State Records Center and Archives.

case involved land, at a specific time and place. In some cases additional representatives of the parties, called *apoderados,* would also be present. The *alcalde* would ask each side to state their position and then request the opinions of the *hombres buenos.* If the *hombres buenos* agreed on a settlement then the alcalde would adopt their agreement, but if they disagreed the alcalde had to make the decision himself. If it was accepted by the parties to the dispute that would end the matter.[29] In Mexican-Period California, where *conciliación* was also followed, the *hombres buenos* agreed on a settle-

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ment recommendation in almost 90 percent of the cases.[30] If one of the parties did not agree with the decision in *conciliación* the *alcalde* could give the parties more time to accept the proposed settlement. If they still did not agree then they could embark on a more formal procedure, based on written statements rather than on oral argument.

The first step in such a procedure was be the filing of a certificate that *conciliación* had been attempted and failed. After a petition was filed by the plaintiff stating his case, the defendant was given an opportunity to reply in another written statement. This procedure often continued with one or two more statements being filed by each party. In many instances these statements are like well organized legal briefs with arguments persuasively made, but one also finds a good deal of repetition, self-serving statements, and name-calling in these documents. For example, in a 1703 suit between the powerful *alcalde* Diego Arias de Quiros and the sisters María and Juana Griego over land in Santa Fe, Arias argued that he should prevail because of "the loyalty with which I have served his majesty . . . and on account of the good nobility of my blood . . . and of my way of living." On the other hand the Griego sisters said that they should win because

> being poor women and alone, we started out at the time of the insurrection of this Kingdom on foot . . . persevering in the face of innumerable hardships, awaiting the time to return to our patrimonial land, so that there might again be established our Holy Catholic faith . . . at the time when the said Capt. Diego Arias . . . probably did not know what was New America.[31]

Just as lawyers were rare in New Mexico, so were trained judges. Since there was little formal education in New Mexico at this time,[32] it was difficult enough to find a judge who could read and write, let alone one trained in the law. An 1812 decree of the Spanish Cortes required that judges learned in the law (*jueces letrados*) be available even for small communities.[33] However, this law was not followed in New Mexico — in some cases New Mexico judges were so unlearned that they had to hire someone else to perform part of their duties.[34]

There were also few lawbooks in New Mexico,[35] and specific laws were referred to more often by the litigants than by the judges. In 1828 Domingo Fernandez cited two provisions of the 20 January 1813 decree of the Spanish Cortes,[36] and in 1840 Matías Ortiz cited the *Nueva Recopilación* for

the proposition that *regidores* (members of an *ayuntamiento*), could not make land grants without first obtaining a license. Other laws cited were *Las Siete Partidas*, the Novissima Recopilación, the Law of 9 November 1812, the law of 9 October 1812, the law of 4 January 1813, the law of 20 January 1813, the law of 25 March 1813, and the law of 23 June 1813, the constitutions of 1824 and 1836, and the *Bases Organicas*.[37] Though books of procedure did exist in other jurisdictions, there is no evidence that they were used in New Mexico though in at least two estates, law books were listed in the inventories.[38]

In addition to civil courts, provision was made for military and ecclesiastic courts in New Mexico, as in Spain and central Mexico. These *fueros* provided certain privileges for those in the military or those accused of a crime by the church. Under this system the trial would be by a military or ecclesiastic court, but there were few such trials in New Mexico. In 1842 Mexican President Santa Anna reestablished the military *fuero* and Governor Manuel Armijo attempted to prosecute a case in accordance with that law. When several members of the Vera Cruz Squadron, sent to New Mexico to help put down the 1837 Rebellion, were accused of a vicious assault and robbery of Santa Fe merchant Amado Pierotin, the governor attempted to prosecute the case in a military court. But Armijo found that he lacked the number of officers necessary to form the court.[39]

Political officials and bodies — the *alcaldes* and *ayuntamientos* — acted as trial courts, with appeals handled by the governor. From this procedure, however, there was a great deal of deviation.[40] For instance, the question of who had jurisdiction over a lawsuit in the first instance was handled in every conceivable way in New Mexico. Sometimes an *alcalde* would refer a petition directly to the governor for a decision, and on other occasions, when the governor received a petition directly he would refer it back to the *alcalde* for a hearing. On rare occasions, the governor would seek an opinion from a jurist in Chihuahua or elsewhere before deciding a case himself. Pragmatic considerations often determined which procedure would be followed. Sometimes it was apparent that any decision in a particular case would be certain to make enemies for the unlucky official who had to decide the case. Since the official was primarily a politician and secondarily a jurist, the inclination was to "pass the buck."

An example of this was an 1815 lawsuit between Taos Pueblo and the settlers of what is today the town of Taos. The case was started when Taos Pueblo petitioned the local *alcalde* asking him to measure the land that the

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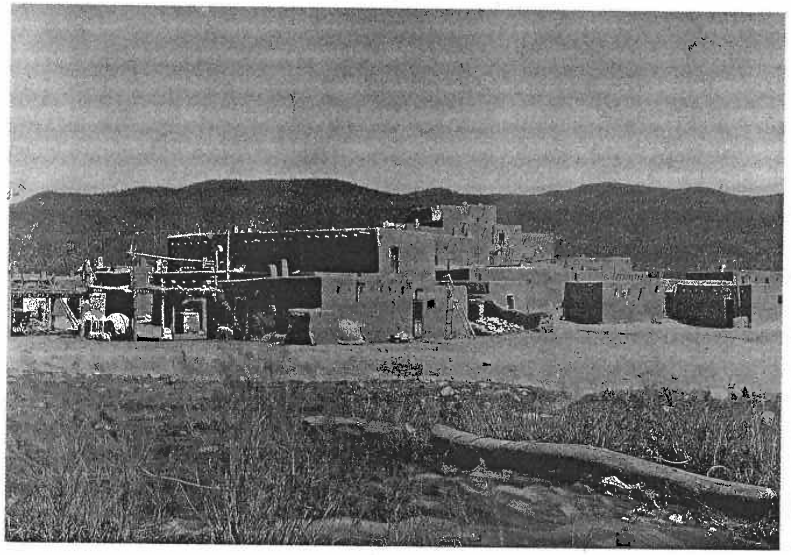

2.4. Taos Pueblo with the Rio Pueblo in the foreground, ca. 1925. Lanning Collection #50276. Courtesy New Mexico State Records Center and Archives, Santa Fe

Pueblo was entitled to—four square leagues, or five thousand varas measured in the four directions from the cross in the cemetery (approximately seventeen thousand acres).[41] Since this would include much of the Spanish settlement in the area, the *alcalde* referred the petition to Governor Alberto Maynez, knowing that the Spanish settlers would oppose the request. Governor Maynez decided in favor of the Pueblo's right to their four square leagues, and he referred the case back to the reluctant *alcalde*, directing him to measure the Pueblo's league and then try to work out a settlement.[42] In the end, the governor hedged his final decree by stating that he did not want any more written documents in the case, and that unless a verbal settlement was worked out, he would be forced to refer the matter to the royal *audiencia* "to whom the decision belongs because of its seriousness."[43] This insistence on verbal proceedings is reminiscent of the Spanish monarchs who preferred unwritten laws so they would not be bound by a particular decision.

In a similar 1763 decision by Governor Vélez Cachupín, the governor

referred the case to a higher authority, (the magistrate for the villa of Chihuahua), not for decision, but for an advisory opinion, which was adopted by the governor as his decision. By doing this, Governor Vélez Cachupín took some of the pressure off himself, where the explosive issue was the same as in the Taos case: Spanish encroachment on Indian lands.[44] Another example of referring a lawsuit to a higher court was a 1713 murder case where the results were not as successful from the government's standpoint. There the governor decided that the *sala del crimen* (Viceregal Criminal Court) should hear the case. However, the defendant was able to escape while being escorted in chains to Mexico City and received sanctuary in a church in Chihuahua. His escort continued on to Mexico City, delivering copies of the case and a letter to the Viceroy, but not their prisoner.[45]

The New Mexican legal system was not a system based on rigid procedural rules and it sometimes lacked the virtue of consistency. For example, Governor Manuel Armijo often referred petitions back to the local *alcaldes* or prefects for decision, but in some cases he made the requested decision himself.[46] Sometimes Governor Armijo told petitioners who appealed a decision to him that they must first appeal to the local prefect,[47] but in other cases he informed petitioners that they had to appeal to the supreme court, presumably in Guadalajara, Chihuahua, or Mexico City.[48] When an *alcalde* had a conflict of interest, or was related to the petitioner, the governor might appoint another official to hear the case, as in a 1840 Taos dispute involving "el *estranjero* Branch(e),"[49] or he might order the *prefect* to decide which judge should hear the case. The latter course was followed in an Abiquiú case where it was alleged that the complainant and the initial judge were unfriendly on account of quarrels and disagreements.[50] In 1833 the governor told an *alcalde* that the governor did not have the power to advise the *alcalde* on questions about the administration of justice and that he should ask an attorney for the answer.[51] It is apparent from these examples that there was a great deal of flexibility built into the Spanish and Mexican judicial system in New Mexico. In the absence of lawyers, trained judges, and lawbooks, this legal system was one based primarily on custom.

Customary law has a long tradition in Spanish jurisprudence, as we saw in Chapter 1. In Spanish law custom is defined in *Las Siete Partidas* as the usage and practice of the majority of the people in a particular locality over a period of time.[52] Customary law in New Mexico governed both the

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substantive rules and the procedures followed by judges. Decisions of *alcaldes*, *ayuntamientos*, and governors seldom mentioned a specific procedural or substantive law, but would often simply state that the particular result was "according to law." In procedural matters custom often dictated the practice followed, as when an *alcalde* was told by the governor in 1833 that in charging fees he should follow the custom most in use as long as it was not contrary to the law.[53]

Governor Manuel Armijo's decrees rendered in the early 1840s provide examples of the use of customary law in the administration of justice in New Mexico at that time. In his directions to local *alcaldes* or prefects, Armijo often orders these officials to "decide whatever he believes to be just," and to "administer prompt and complete justice."[54] Besides these vague pronouncements, Governor Armijo sometimes set forth a legal principle, without citing any legal authority for the principle. Thus he declared in 1841 that, "no person shall be put in jail for not having property," and "none of those contracting matrimony can be compelled to live together if sufficient causes for divorce are set forth."[55] Since no law is cited by Armijo the burden is placed upon the *alcalde* to reach a decision based upon consensus and common sense—that is, upon custom.

When governor Rafael Sarracino was asked by the *alcalde* of Jémez about the proper method of measuring the Jémez Pueblo league, and the amount of fees to charge for doing it, the governor told the *alcalde* to ask an attorney about the measurement and if he did not agree with the answer, the "the only thing to do is to administer perfect justice." As to the fees the *alcalde* was told to follow the custom most in use. In another case involving a complicated probate of an estate, Governor Tomás Vélez Cachupín asked the *abogado de la real audiencia* to review the actions of the co-executors of the estate which were being questioned by the heirs. After reviewing the case the lawyer advised the governor to proceed with equity and moderation instead of applying the full force of the law. Here a lawyer accustomed to the stricter rules of the royal court, in effect waived these requirements for places like New Mexico which, according to the lawyer, "lack all due formalities."[56]

Additional evidence of custom as an important basis for New Mexico legal decisions under Spain and Mexico is the petition on behalf of Isleta Pueblo, objecting to the Ojo de la Cabra grant to Juan Otero. The Pueblo argued in 1845 that "it has been a fully accepted custom . . . with the force of law," for the Pueblo to use the land in question as common pasture, sharing

it with other communities. It did not object to the sharing arrangement, but did strongly oppose the privatization of the land. After lengthy litigation that was appealed by Otero to the superior tribunal of justice in Chihuahua, the Ojo de la Cabra grant was annulled. Not only was the customary use of the land upheld, but the *ayuntamiento* was censured for reporting that the land did not belong to anyone, when the grant was first made, and Prefect Francisco Sarracino was suspended "on account of the malice with which he acted."[57]

Civil law uses law codes as the main source of its rules, while Anglo-American common law, on the other hand, looks primarily to the decisions of judges for precedents to govern its jurisprudence. Customary law is found in both systems, but in New Mexico it played a larger role under the Hispanic system. Another important difference between the civil and the common law procedures was the nature of the hearing. Under Anglo-American common law the parties had the right to confront witnesses against them in a trial, usually before a jury, whereas under Spanish and Mexican civil law there were no juries, and most of the proceedings were by written statements presented to the judge. In New Mexico and in California, these differences in procedure, and the perception by foreigners that the administration of justice was corrupt, led to many complaints by foreigners about the Hispanic system.[58]

The problem was due not simply to the differences in legal procedure, but was primarily a conflict between divergent legal and social values of the two cultures. The Anglo common law at this time emphasized individualism displayed in an adversarial struggle between the opposing parties leading to a decisive outcome, with clear winners and losers. In contrast, the Spanish and Mexican system of justice relied heavily on compromise and conciliation as a means of reaching an outcome where each side got something of what they wanted. Under such a system, whether the *alcalde* knew the law was not as important as whether he was considered by the community to be a fair judge. In fact, the *alcalde* was generally a respected member of the community whose decisions were obeyed. Under the Hispanic system of justice, any dispute represented a wound in the community's body politic, and healing that wound was the desired outcome. So the two systems represented a clash between the old society's community values and the new society's individual values.[59] With these sharp differences, it is not surprising that the civil law system and the common law system dealt differently with issues presented to them.

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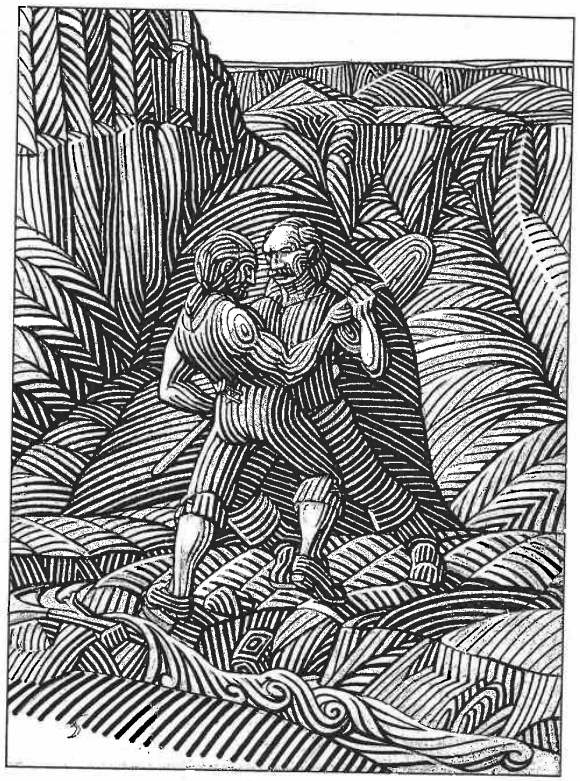
The test of how this conflict would be resolved came when the United States occupied New Mexico in 1846, acquired New Mexico and the rest of the southwest under the Treaty of Guadalupe Hidalgo and the Gadsden Treaty, and adjudicated land grants from 1854 to 1910. As seen elsewhere in this book, the conflict between the Spanish-Mexican and Anglo-American legal systems was an important cause of land loss to Hispanic land grant heirs.

Three
Manuel Martínez's Ditch Dispute: Mexican-Period Custom and Justice



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