DE-EVOLUTION: INDIVIDUAL PROPERTY RIGHTS, COMMUNAL PROPERTY RIGHTS, AND MEXICAN LAND GRANTS IN CALIFORNIA AND NEW MEXICO, 1821-1925

by

Daniel T. Curry
A Dissertation
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DEDICATION

This project is dedicated to the memory of Karen Curry. A loving mother who showed me that the secret to a successful life is love, compassion, courage, and hard work.

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I would like to thank my family for standing by me through this seven-year odyssey. I am grateful to my wife Kristy whose support and understanding made it possible for me to complete this project. I am also grateful for her timely encouragement which helped me push through many low points over the years. I also want to thank my two daughters who were always ready to provide me with a much-needed play break and put up with a daddy who was sometimes distracted, grumpy, and preoccupied when he should have been playing, talking, and just being present in the moment.

I would also like to convey my great appreciation for two mentors who had a profound impact on my professional development as a historian. I first want to thank Dr. Sue Schulze whose formal adherence to critical thinking and use of analytical forms was the foundation this project was built on. I also want to thank her for being a friend who was always willing to strike up a conversation (or an argument) on a moment's notice whenever I needed a sounding board. Second, I want to thank Dr. Paula Petrik who helped me develop the skills to combine evidence from primary sources and proper historical context to derive meaning. Walking into her "Historian as Detective" class in 2011 was my first (and most significant) step towards becoming a true historian. In addition, I want to thank my father, Robert Curry, for all the late-night philosophical discussions and my father-in-law, Ross Branstetter, for his assistance with finding sources and taking the time to be a sounding board for a legal novice.

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ABSTRACT

DE-EVOLUTION: INDIVIDUAL PROPERTY RIGHTS, COMMUNAL PROPERTY RIGHTS, AND MEXICAN LAND GRANTS IN CALIFORNIA AND NEW MEXICO, 1821-1925

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George Mason University, 2021

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The standard narrative of Spanish and Mexican land grants in California and New Mexico concludes that after the Mexican-American War the U.S. federal government deliberately, consistently, and systematically dispossessed non-Anglo land grant claimants in an inherently corrupt and racist process. This dissertation complicates this narrative through an analysis of judicial and economic outcomes for Anglo, Hispanic, and Pueblo land grant claimants; and a case study analysis of selected individual and communal (ejido) land grants. Also, a discussion of trans-national connections between the U.S. and Mexico regarding land grant legislation and the influence of anti-corporate utilitarian thought on liberal legal philosophy provides important context.

This dissertation explores the importance of timing on the judicial and economic success of land grant claimants in California and New Mexico. Placing events and outcomes concerning land grants into three separate eras between 1850 and 1925 reveals an evolving judicial philosophy that explains significant differences in the success of land

grant claimants in each period. The first era takes place between 1850 and 1877. During this period, the success or failure of land grant claims were based on the validity of legal contracts between the grantee and the Spanish or Mexican government, local Mexican custom, perceived intent of the Mexican government when issuing land grants, and oral testimony. Hispanic, Anglo, and Pueblo land grant claimants whose land grants were adjudicated during this period were generally successful in receiving confirmations to their claims and generally achieved long term economic success.

The second era takes place between 1877 and 1897. During this period, the success or failure of land grant claims were based on the validity of legal contracts between the grantee and the Spanish or Mexican government and a strict interpretation of the terms of the grant. While confirmations were more difficult to obtain during this period, contract supremacy remained central to court rulings. This was a period of transition as a more complex version of white supremacy, anti-corporate ideology, and anti-monopolist ideology were adopted at the local, state, and federal levels of government. All three sentiments favored the rejection of remaining Spanish and Mexican land grant claims. However, the federal judiciary continued to protect the property rights of Anglo, Hispanic, and Pueblo individuals and communities by minimizing the impact of increasingly racist and anti-corporate state and federal legislation.

The third era takes place between 1897 and 1925. During this period, the U.S. federal court adjudication of land grants was increasingly influenced by anti-corporate utilitarianism. This led to the rejection of both individual and communal (ejido) land

grant claims that disproportionately disadvantaged Hispanic land grant claimants. After 1897, U.S. federal courts also no longer provided legal protection from state and local level regulation that specifically targeted multiple minority groups attempting to achieve economic success through land ownership.

INTRODUCTION

If Hollywood wanted to capture the emotional center of Western history, its movies would be about real estate. John Wayne would have been neither a gunfighter nor a sheriff, but a surveyor, speculator, or claims lawyer. The showdowns would occur in the land office or the courtroom; weapons would be deeds and lawsuits, not six-guns. Moviemakers would have to find some cinematic way in which proliferating lines on a map could keep the audience rapt.[1]

- Patricia Limerick

Juan Manuel Vaca and Juan Felipe Peña migrated from New Mexico with their families to Solano, California in 1843. Upon arrival, they jointly petitioned and were granted a 44,000-acre rancho from the Mexican government and named it Los Putos. Their rancho thrived through the Mexican American War which ended in 1848 when the Treaty of Guadalupe Hidalgo ceded much of northern Mexico, including California, to the United States.[2]

After the war, the California Land Commission was established by Congress to review the legitimacy of all claims to property ownership originating from Spanish and Mexican land grants in the new U.S. state of California.[3] The creation of a commission in

[1] Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton & Co., 1987), p. 55.

[2] David Vaught, "A Tale of Three Land Grants on the Northern California Borderlands." *Agricultural History,* Vol. 78, No. 2 (Spring, 2004), pp. 144-145.

[3] All owners asserting a claim to ownership had to bring their case before the commission within two years of its formation in 1851. Lawyers working for claimants and the U.S. Attorney General were employed to find documents in Mexican archives for claimants not possessing copies of the original grant. For the oldest land grants, oral testimony by long-time residents was often accepted as proof of ownership in lieu of missing documents. The commission's findings could be appealed by the claimant or U.S. Attorney General to the appropriate U.S. District Court (Northern or Southern District Courts) of

1851 was necessary for several reasons. First, the imprecise methods used to create Mexican land grants led to disputes between adjacent grant holders. Second, fraudulent claims for property belonging to legitimate land grant holders were common. Third, a number of grantees who failed to meet the occupation standards dictated by Mexican law during the Mexican Period attempted to illegally reassert abandoned claims after statehood.[4] Along with both their Hispanic and Anglo neighbors, Vaca and Peña filed claims to the land grants that were legally theirs according to Mexican law.[5] The claim was originally rejected by the land commission in 1853 primarily because Peña used his step father's name (Armijo) on the original grant which prompted the land commission to suspect a fraudulent claim. Despite the initial set back, Vaca and Peña received confirmation of their grant upon appeal in 1855.[6]

After their grant was initially rejected by the land commission, Vaca and Peña hired the lawyer John Moore Currey to assist in the defense of their claim. However, due to a feud between the partners and co-owners of Los Putos, two additional lawyers were

California and the U.S. Supreme Court. The majority of claims were appealed to the district courts for multiple reasons. (Fritz, pp. 140, 150-162)

[4] Christian G. Fritz. *Federal Justice in California: The Court of Ogden Hoffman, 1851-1891* (Lincoln: University of Nebraska Press, 1991), pp. 134-145.

[5] Californio, Hispanic, Anglo, Yankee, and Pueblo are all terms used throughout this dissertation. A Californio refers to a white person of Mexican descent who was either granted or had ancestors who were granted land in California by the Spanish or Mexican government. A Hispanic is a term for white people of Mexican descent (and their direct descendants). In the chapters dealing with New Mexico, this usually refers to those who resided in New Mexico or California prior to 1848. This term is also used to refer to migrants from Mexico to the U.S. in the late-nineteenth and early twentieth century whose progeny are sometimes referred to as chicano. Yankee specifically refers to white and non-Hispanic U.S. citizens. The term Anglo is sometimes used interchangeably with Yankee, but also refers to a group that may or may not hold U.S. citizenship. Pueblo people or Pueblo Indians refers to individuals who belong to one of the 20 Pueblo communities of New Mexico. This is not to be confused with the term pueblo which refers to a corporate community formed during Spanish or Mexican rule.

[6] Vaught, "A Tale of Three Land Grants on the Northern California Borderlands." pp. 144-145.

hired to assist with the claim. Peña hired S.C. Hastings as his primary counsel and Vaca hired John Frisbie as his primary counsel for their appeal to the Northern District Court.[7] The two new lawyers' sole purpose was to prevent the need for any interaction between Vaca and Peña while John Currey did the majority of the work needed to defend the claim on Los Putos. Vaca and Peña each promised to pay their lawyers one tenth of their land after receiving both confirmation and patent. After two years of work, Currey secured a confirmation from the Northern District Court and then successfully defended the title before the U.S. Supreme Court and secured a patent for his clients prior to 1861.[8]

As a result of the costly feud between the two families, Juan Manuel Vaca and most of his children and extended family left Solano in the early 1850s.[9] Only a few family members are listed on the Solano County census as laborers for other farmers including the Peña family after 1850. Despite no longer residing in Solano, the Vaca family continued to own land until 1860. Before their exodus, the Vacas sold 14 parcels of land between 1848 and 1852 to non-Hispanics. Juan Manuel conveyed his remaining share of Los Putos to twelve family members between 1851 and 1855. Between 1859 and 1863, these family members sold 37 separate parcels and had no significant agricultural land holdings in Solano after 1859.[10] In contrast to the Vacas, the Peña family continued

[7] The feud between Vaca and Pena started as a result of Juan Manuel Vaca selling 5,769 acres of land to William McDaniel to secure the name "Vacaville" for the new town started by McDaniel. In addition to having the town named after him, Vaca also received $3,000 and 1,044 lots in the new town (Kristin Delaplane, "Family Feud rocks Lagoon Valley Settlers.")

[8] John M. Currey."Spanish Land Grants in Solano." *The Solano Historian,* Vol. VI No. 2 (December 1990), p.7.

[9] Kristin Delaplane. "Family Feud Rocks Lagoon Valley Settlers." Downloaded from http://www.solanohistory.org/501 on 1 Mar 15.

[10] "Solano County Archives Deeds Index." Downloaded from http://www.rootsweb.ancestry.com/~cascgsi/deedpelper.htm on 1 Mar 15.

farming in Solano. In 1850, Juan Felipe Peña owned 20,000 acres of land with a value of $25,000. He maintained 50 horses, 6 mules, 12 milk cows, 16 oxen and 750 cattle.[11] Between 1850 and 1860, Juan Felipe sold 18 parcels of land to non-Hispanic settlers. Between 1859 and 1861 he distributed 27 separate parcels of land to eight adult family members.[12] After his death in 1863, he left the family home to his daughter Nestora who continued to live there with her mother.

Three individuals from the Peña family continued actively farming in Solano while the other six family members sold their land to non-Hispanics between 1860 and 1869. [13] In 1870, Demetrio Peña, Juan Felipe's oldest son, owned 2,000 acres of land valued at $50,000. On it he maintained 8 horses, 2 milk cows, and 50 pigs. Peña also grew 4,000 bushels of wheat and 2,000 bushels of barley.[14] Demetrio's younger brother, John Peña, owned 286 acres of land valued at $4,000 dollars. On it he maintained 4 horses and 1 milk cow. He also grew 1,300 bushels of wheat and 200 bushels of barley in

[11] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1850" Downloaded from Ancestry.com on Feb 4, 2015. An analysis of the population and agricultural schedules of the U.S. Census, and summaries of deed transfers will compare economic outcomes between Anglos, Californios, and Hispanics in New Mexico throughout this dissertation. Unfortunately, agricultural schedules for California were only completed until 1880 and were often not comprehensive (ie: Juarez's agricultural production was not listed for 1870 and Demetrio Pena agricultural production was not listed in 1860). The only agricultural schedule completed for New Mexico was a territorial schedule in 1885 so economic analysis comparing agricultural production over decades is not possible for New Mexico as it is in California. Because agricultural schedules were not completed after 1880, case study comparisons are used to draw more general conclusions regarding economic success for individuals in the early twentieth centuries.

[12] "Solano County Archives Deeds Index." Downloaded from http://www.rootsweb.ancestry.com/~cascgsi/deedpelper.htm on 1 Mar 15.

[13] "Solano County Archives Deeds Index." Downloaded from http://www.rootsweb.ancestry.com/~cascgsi/deedpelper.htm on 1 Mar 15.

[14] To understand the importance of wheat to the economy of California and the economic success of farmers during the last half of the nineteenth century, read *After the Gold Rush: Tarnished Dreams in the Sacramento Valley* by David Vaught. See Table 1 on page 61 to compare Pena's wheat production (which is very substantial) with other Hispanic and Anglo farmers in the area.

1870.[15] This large amount of wheat (when compared to their Anglo neighbors) produced by both Demetrio and John at the height of the northern California wheat boom indicates that both men were successful economically.[16] By 1880, Demetrio still owned 2,000 acres of land and produced 16,000 bushels of wheat. His younger sister, Nestora Peña, owned 500 acres of land and produced 4,000 bushels of wheat.[17] Nestora lived on the family rancho until her death in 1922. Her estate, worth $26,000 was distributed to family, a church in Vacaville, and the Dominican Sisters of Benicia. A portion of her land was conveyed to the City of Vacaville to build a park. The remaining land was passed on to family members who maintained ownership until 1957 when the original adobe and the surrounding land were donated to the City of Vacaville.[18]

What conclusions, if any, should be drawn from the story of Los Putos? Many historians studying California land grants would likely conclude that Los Putos was another example of the standard narrative of Hispanic property dispossession through legal, economic, and political corruption motivated by racial and ethnic bias. For example, historian David Vaught uses John Moore Currey as an example of a lawyer who charged an excessive amount for legal services because he and his fellow lawyers obtained 4,500 acres of land from Vaca and Peña near the banks of the Putah Creek. In his 2004 article titled, "A Tale of Three Land Grants on the northern California

[15] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1870" Downloaded from Ancestry.com on Feb 4, 2015.
[16] Chapter 5 details the fate of Demetrio and John Pena's family in the early twentieth century.
[17] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880" Downloaded from Ancestry.com on Feb 4, 2015.
[18] "Maria Nestora (Pena) Rivera." *Old Spanish Trail Association.* Downloaded from https://oldspanishtrail.org/maria-nestora-pena-rivera on 1 June 2020.

Borderlands," Vaught asserts that this was an excessive charge for his legal services because of the amount of land and its prime location on the river. He concluded that this legal debt was a detriment to the future success of these two families.[19]

Vaught convincingly places the story of Los Putos within an extensive historiography portraying dispossession resulting from Anglo-American animus for Hispanics in the Mexican Cession. The dispossession narrative became the centerpiece of academic works about the history of California land grants in 1966 when Leonard Pitt published *The Decline of the Californios: A Social History of the Spanish-Speaking Californians 1846-1890*. Pitt's work is often used and cited by twenty first century historians researching California. However, Vaught's analysis of legal fees charged by Currey overlooks Pitt's detailed description of fair legal fees for defending a land grand in California during the 1850s. In his description of the legal work of Henry Halleck, Leonard Pitt explains in detail that charging between 5-10% of the value of unimproved land was a fair and minimal charge for legal services.[20] Since Los Putos was 10 Leagues in size (approximately 45,000 acres), 4,500 acres is about 10% of the land. The location also made sense because, as Vaught described in his own article, Vaca and Peña improved the southern portion of Los Putos and had no intention of moving to the northern section of their grant which was unimproved due to its proximity to John Wolfskill's Rio de los Putos. Also, if Vaca and Peña had not insisted on obtaining

[19] Vaught, "A Tale of Three Land Grants on the Northern California Borderlands." p. 146.
[20] Leonard Pitt, *The Decline of the Californios: A Social History of Spanish-Speaking Californians, 1846-1890* (Los Angeles: University of California Press, 1966), pp. 91-94.

separate counsel due to their personal feud, they might have been charged less for legal services.

The economic fate of the Vaca and Peña families is also open to interpretation. While the Vaca family eventually sold their entire portion of Los Putos and the Peña family only maintained eight percent of their original grant, does this mean that they were dispossessed?[21] In 1880, Demetrio Peña owned a farm over seven times as large as the average farm owned by Anglo-Americans in Solano County.[22] In 1880, He also produced the same astounding amount of wheat as John Wolfskill, who was a well-known leader in Solano County agriculture.[23] During the period between the late 1860s and late 1880s, wheat was the primary crop used by northern California farmers to obtain economic success.[24] The large wheat harvests of the Peña family between 1860 and 1880, is a strong indicator that they were among those who achieved this success.

The Vaca and Peña family members who did not hold on to their inheritance sold their portion of Los Putos during a real estate boom. The fact that they quickly secured a patent for the grant along with the exponential increase in land value between 1850 and 1870 put them in a strong position over potential buyers. While all 20,000 acres of Los Putos owned by Juan Felipe Peña was worth $25,000 in 1850, only 2,000 acres of Los

[21] The goal of the Mexican government when issuing grants was that they would be subdivided and sold in order to encourage population growth in sparsely populated regions. Mexicans in northern California, to include Mariano and Salvador Vallejo, complied with this intent.
[22] See Table 2, "Farm Size in Napa and Solano Counties" at the end of Chapter 1.
[23] See Table 1, "Cayetano Juarez and John Wolfskill Agricultural Production between 1850-1880" at the end of Chapter 1.
[24] David Vaught. *After the Gold Rush: Tarnished Dreams in the Sacramento Valley* (Baltimore: John Hopkins University Press, 2007), p. 6.

Putos was valued at $50,000 in 1870.[25] It was during this period of steep increase in land values that members of the Peña and Vaca families sold portions of Los Putos long before land values began to decline in 1880. [26]

Is the true narrative of land grants in the Mexican Cession, including the often-studied grants in California and New Mexico, as simple as ethnic conflict typified by Anglo corruption, theft, and racism as Leonard Pitt and other historians claim? According to a number of historians studying Spanish and Mexican land grants in both California and New Mexico, this was the case in both regions. This accepted narrative portrays nineteenth-century Hispanics in the Mexican Cession as the hapless victims of American Manifest Destiny and greed who were unable to succeed in an economic and political system intentionally stacked against them. Despite examples of economic success by Hispanic land owners such as Nestora, John, and Demetrio Peña, few historians dispute the idea that the Hispanic elite of California lost their land in the decades following the Mexican-American War because of corrupt U.S. legal and political systems designed to rob them of their land and end their isolated, ideal, and halcyon existence.[27]

The often-unquestioned acceptance of this perspective is commonplace in late twentieth and early twenty-first century historiography. In 2000, Susan Lee Johnson described the Congressional Land Act of 1851, which outlined the process for the

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23 U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1870" Downloaded from Ancestry.com on Feb 4, 2015.

[26] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880" Downloaded from Ancestry.com on Feb 4, 2015.

[27] This dissertation will refer to different groups as follows: Yankees (non-Hispanic U.S. citizens of European descent), Anglos (non-Hispanics of European descent), Californios (Hispanic citizens and their progeny residing in California prior to 1848), Hispanics (Former Mexican citizens of New Mexico and migrants from Mexico and other Latin American countries migrating to California after 1848).

confirmation of Spanish and Mexican land grants in California, as "best known for the role it played in the dispossession of the Spanish Mexican elite in California."[28] In 2003, Joshua Paddison placed the blame squarely on the lawyers when he stated that, "many once-proud Californio families [went] bankrupt from attorney's fees" as a result of the Land Act of 1851.[29] In 2013, D. Michael Bottoms concluded that "Californio landowners had been bankrupted and displaced when they were forced, in a hopelessly corrupt process, to defend their titles in American courts."[30]

These scholars are the latest in a long line to contribute to a 150-year historiography that consistently maintains the narrative that the history of California land grants was centered on racial conflict between Yankee and Californio land owners. These conclusions draw from works dating back to the late nineteenth century that started with the books titled, *History of California,* by Hubert Howe Bancroft and *California: From the Conquest in 1846 to the Second Vigilance Committee in San Francisco* by Josiah Royce. Both works provide a narrative where the morality of the family, church, and school could triumph over the immoral and greedy settlers of the gold rush. To support their arguments, Bancroft and Royce were sympathetic to Mexican grantees and portrayed them as victims of the "particularly pernicious form of lawlessness" brought by the American squatter that could only be thwarted by the migration of civilized American families.[31]

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[28] Susan Lee Johnson. *Roaring Camp: The Social World of the California Gold Rush* (New York: W.W. Norton & Company, 2000), p. 265.
[29] Joshua Paddison. "Capturing California." *California History* (No. 3, 2003), p. 129.
[30] D. Michael Bottoms. *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850-1890* (Norman: University of Oklahoma Press, 2013), p. 82.
[31] Donald J. Pisani. *Water, Land, and Law in the West* (Lawrence: University Press of Kansas), p. 62.

These themes were reinforced in 1966 by Leonard Pitt in his book titled *The Decline of the Californios: A Social History of the Spanish-Speaking Californians 1846-1890.* Pitt built on and modified the earlier nineteenth century narrative of Bancroft who "guided the direction" of his research.[32] Instead of dividing Yankees into evil squatters and moral settlers, Pitt accentuated ethnic division by portraying Yankees as a single land hungry migrant group. He squarely identified the California Land Law of 1851 as the primary tool Anglo-Saxons used to take ranchos from the Hispanic Californians. His book described how "the Californios pleaded their cases before the Land Commission, [while] the Americans watched and waited."[33] This interpretation painted a clear picture of a corrupt U.S. legal and political system designed to steal land from Hispanics and give it to undeserving Yankee intruders.[34]

Taking Pitt's conclusion a step further, Kim David Chanbonpin made very specific claims regarding the legal adjudication of California land grants in his 2005 article titled, "How the Border Crossed Us: Filling the Gap between Plume v. Seward and the Dispossission of Mexican Landowners in California after 1848." Chanbonpin used

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[32] Pitt, p. xv.

[33] Pitt, p. 83.

[34] The influence of Leonard Pitt's *Decline of the Californios* is unmistakable by its prominence in the footnotes of twenty-first century scholarship. His direct influence can be found in books such as *Roaring Camp: The Social World of the California Gold Rush, An Aristocracy of Color: Race and Reconstruction in California and the West, 1850-1890;* and journal articles such as "Capturing California." These and other works draw on ideas directly from Pitt's work and accept the conclusion that the Mexican elite of California lost their land in the decade following the Mexican-American War because of corrupt U.S. legal and political systems designed to rob them of their land. Despite Pitt's general narrative and arguments, his work sometimes softened his hard-edged argument by providing examples of other reasons Hispanics lost much of their land after 1851 to include a more competitive economy, gambling debts, agreeing to high short-term loans, and insisting on supporting an aristocratic lifestyle beyond the means of most Californio families. These observations by Pitt are often ignored in 21st Century scholarship using Pitt as a reference.

Critical Race Theory to argue that "the lynchpin of the federal government's plan to take away privately held lands was the legal process… [because the] federal government was under tremendous pressure to make these western lands available for Anglo homesteaders."[35] He summarizes the results of the land commission and court appeals by saying that because of the "unworkable burdens to prove that their property rights should be recognized… [it was only] on rare occasions when the Board found for Mexican claimants." He continues to explain that even on the rare occasions when the land commission found for a Mexican claimant, higher courts usually reversed any favorable rulings on appeal. Chanbonpin concludes that the system for validating California land grants was a prime example of "race-based discrimination in the land grant adjudication process… [and that] instances of preferential treatment for Anglo claimants abound." Using the land case of John C. Fremont as evidence, Chanbonpin asserts that while "the burden of proof for documentation for Mexican claimants was stringent, Anglo claimants somehow evaded these burdens."[36]

While the narrative focused on legal and political corruption based on race and ethnicity is still widely used in recent publications such as *Aristocracy of Color* by D. Michael Bottoms and *Roaring Camp* by Susan Lee Johnson, there is a growing corpus that looks to complicate these straight forward conclusions. Questioning of the standard California land grant narrative began in the late-twentieth century with Paul Wallace

[35] Kim David Chanbonpin. "How the Border Crossed Us: Filling the Gap between Plume v. Seward and the Dispossession of Mexican Landowners in California after 1848." *Cleveland State Law Review,* Vol. 52, No. 1 (2005), pp. 299 and 314. Chapter 1 will show that Chanbonpin's assertions are fundamentally flawed and highly inaccurate because they rely on unproven assumptions and secondary sources based on the works of Bancroft and Royce to make his point.

[36] Chanbonpin, p. 314- 315.

Gates, who was one of the first historians to directly refute the assumption that the 1851 Land Act was designed to rob Californios of their land.[37] In his 1971 article, "The California Land Act of 1851," Gates criticizes the conclusions of both Bancroft and Pitt. In response to Bancroft's assertions, Gates states that:

> The Act of 1851 was not 'in reality a violation of the Treaty of Guadalupe Hidalgo,' nor was it 'an instrument of evil' or a 'devil's instrument.' There was no such thing as 'needless persecution of the grant holders' by the Attorney General and the courts, and it was not the Land Acts which 'stripped' from the California rancheros their property. Neither were the claimants 'considered guilty until they had proved them innocent.' Bancroft's 'spoilation of the grant-holders' is sheer nonsense, and his insistence that 'it would have been infinitely better to confirm promptly all the claims, both valid and fraudulant' is evidence of the unreasoned and unjust condemnation of the land law which so long characterized elite California opinion.[38]

In the same article, he characterizes Leonard Pitt's work as showing "considerable confusion" in regards to the land grant litigation process.

Gates supports this criticism with two points. First, he describes in detail the complexity and uncertainty brought about by fraudulent grants, floating grants, and improper administration of grants during the Mexican period.[39] Gates argues that these

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[37] Gates wrote fifteen articles and one book that analyzed the study of California land grants. Despite his expertise and detailed analysis of many topics related to California land grants, he is rarely referenced in recent historical work related to California land grants.

[38] Paul W. Gates. "The California Land Act of 1851." *California Historical Quarterly,* Vol. 50, No. 4 (Dec., 1971), pp. 404-405.

[39] A floating grant, according to the *Judicial and Statutory Definitions of Words and Phrases,* is a "term applied to a grant of land by the [Mexican] government, the land not having been specifically selected; that is, a general grant of a certain amount of land, which is to be selected in the future by the grantee" (p. 2850). Several claims brought before the Land Commission were found to be fraudulent. Examples of fraud include the submission of antedated documents, counterfeit documents, and the testimony of individuals inaccurately stating that certain grants were larger than what was documented or occupied within the standards set in the original grant. Improper administration of a grant includes the sale of land not within the original grant, the inability to produce mandatory supporting documentation, and the "unreasonable delay [of the grantee] to fulfill the conditions of the grant, and as such as to raise the presumption that he had abandoned his claim" (Hoffman, p. 139).

complexities made a more in-depth process to confirm grants absolutely necessary and any simple process that assumed legitimacy of grants impossible. Second, he points out that during the Mexican period, 133 grants were initially given to non-Mexicans. Moreover, an additional 213 grants were sold to non-Mexicans by the time the Land Commission began assessing claims.[40] This meant that 42% of the claims adjudicated by the California Land Commission and federal courts were for property owned by non-Mexicans. Because of this simple fact, Gates claims that any injustice or persecution "bore on Americans and other non-Mexican grantees or assignees with equal severity."[41]

More recently, Tamara Venit Shelton provides a history of California land grants from the perspective of the squatters in her 2013 book, *A Squatter's Republic: Land and the Politics of Monopoly in California, 1850-1900.* Unlike Pitt and Chanbonpin, Shelton does not portray squatters as a land hungry mob motivated by greed and racism. Instead, she provides a convincing argument that squatters were motivated by a class-based land reform ideology designed to protect the natural rights of "small proprietors and producers in an era characterized by increasing consolidation and large-scale industrialization." Her analysis also diverges from the dispossession narrative by showing that U.S. courts and

[40] Gates, "The California Land Act of 1851," p. 426.

[41] Gates, "The California Land Act of 1851," p. 410. The argument Gates put forth specifically focused on the general fairness of the courts which expertly countered this part of Pitt's argument. However, it did not invalidate Leonard Pitt's argument that ideas of racial supremacy and Manifest Destiny influenced events outside the court system which contributed to the decline of Hispanic landowners. According to Pitt, these factors included legal expenses, new property taxes, racist state legislators, and destructive squatters to properly assess the validity of this part of Pitt's argument, the economic success or failure of Mexican and American landowners who were not associated with family tragedies, corrupt land claims, gambling, alcoholism, mental illness, or poor business practices in California need to be analyzed.

land laws "favored monopolists, speculators, and landlords [many of whom were Californios] while trampling all over agrarian republican ideals [of squatters]."[42] Her book clearly outlines a tension between the California state legislature advocating for anti-monopolistic land reform and courts on the state and federal levels advocating for land consolidation through private ownership of land based on the right of property and contract.[43]

The historiography of New Mexico has many similarities to that of California in its focus on white supremacy, Manifest Destiny, and corruption by U.S. courts and political appointees. Unlike California historiography, the historiography of New Mexico has relatively little tension between competing interpretations of events between contemporaries writing on the subject or between the historiographies of different eras. In fact, the narrative of a corrupt territorial system overseeing New Mexico land grants is so uncontested and generally accepted, that it was prominently displayed as the context for Clint Eastwood's 1972 movie titled *Joe Kidd.*[44] Historians from the late nineteenth century, mid-twentieth century and late twentieth century all seem to agree that land grant litigation in New Mexico was inherently corrupt and unfair to the rightful Hispanic and

[42] Tamara Shelton. *A Squatter's Republic: Land and the Politics of Monopoly in California, 1850-1890* (Berkeley: University of California Press, 2013), pp. 179-180.
[43] Shelton analyzes California land grants from the point of view of 19th century Agrarian Populism. While she does not use the terms, her argument supports the concept that squatters in California embraced a utilitarian philosophy in opposition to the state and federal court defense of individual property and contract rights. Chapter 3 and 5 will look at this point of view in more detail.
[44] https://www.rottentomatoes.com/m/joe_kidd/

Pueblo Indian owners of land grants in New Mexico to the benefit of Anglo businessmen, lawyers, and government officials.[45]

Just as with California, New Mexican historiography also begins with Hubert Howe Bancroft. His 1889 publication titled, *A History of Arizona and New Mexico* is a valuable source and starting point for many current inquiries into the U.S. southwest because of the wealth of detailed political, judicial, and economic information regarding the early history of Arizona and New Mexico.[46] Because Bancroft's work was written in 1889, it predates the infamous 1897 precedent setting *Sandoval* decision which was often the focus of future historical works regarding New Mexican land grants. However, Bancroft's summary of the history of New Mexico up to 1889 seems almost prophetic of events to come when he describes and criticizes the slow and inefficient action of the U.S. government to settle land claims in New Mexico. He warns that this inaction would most likely lead to "serious troubles, including the success of fraudulent claims and defeat of just ones."[47]

Other than the memoirs of lawyers and businessmen, little was written about New Mexican land grants between Bancroft's 1889 history and the 1960s. But in the 1960s and 1970s, a plethora of works were published as a result of the growing Chicano

[45] Much of the analysis, contextualization, and summaries throughout the remainder of this dissertation will summarize and build off of the already accepted narrative of New Mexican land grants after 1877. However, it will challenge the assumption that land grant litigation in New Mexico was based on an unchanging political, economic, and social environment that was essentially the same before and after 1877.

[46] The tables Bancroft used to summarize the results of land grant claims through 1885 are a key part of the analysis in Chapter 2.

[47] Hubert Howe Bancroft, *History of Arizona and New Mexico* (Middletown: First Rate Publishers, 2016), pp. 647-648.

movement in the U.S. and more specifically as a result of the activism of Reies Tijerina who publicly lobbied for the return of communal land grants designated as National Forests to their rightful owners. These publications record and interpret what Bancroft only feared might happen half a century earlier. Their analysis creates a narrative of a "simple conflict resulting from cultural differences" between Mexican Americans who acted as a single group of "racialized ethnics" and a monolithic block of Anglos obsessed with "white hegemony."[48]

Although historians such as Rodolfo Acuña and Peter Nabokov provided an oversimplified narrative, they revealed an area of the history of the western U.S. in need of further investigation. In the 1980s, historians such as Malcolm Ebright and Joseph McKnight complicated the narrative of land grants in New Mexico. Instead of a simple narrative of ethnic and racial conflict, they present a more in-depth analysis of judicial and economic motivations for the devastating actions that led to the dispossession of New Mexican land claims. Their works, such as Malcolm Ebright's *Land Grants and Lawsuits in Northern New Mexico,* analyze the fate of land grants in New Mexico by exploring several factors that go beyond ethnic and national differences. These factors include the conflicting ideals of Spanish legal traditions and Anglo-American common law, the U.S. government's inability to understand the basis of communally owned lands, complications resulting from informal Hispanic regional traditions regarding land ownership, and complications resulting from Hispanic and Anglo land speculators. They

[48] Mary Romero, "Class Struggle and Resistance Against the Transformation of Land Ownership and Usage in Northern New Mexico: The Case of Las Gorras Blancas," *Chicano Latino Law Review* 26 no. 1(2006): 88-91.

also acknowledge the difficulty U.S. officials faced when trying to fairly adjudicate many claims based on grants that did not fully conform with Mexican law or were created with vague and indefinite boundaries.[49] After adding this more thorough and complex information to the narrative of New Mexican land grants, their conclusions, like their predecessors, support the idea that despite confusing legal principles that were in conflict with U.S. land law, "Hispanic property rights were not adequately protected [and] the perception of injustice held by many land grant heirs is largely justified."[50] However, this conclusion added nuance and context to the earlier conclusion of a government led conspiracy to steal Mexican property.

Most recently, Catherine Benton-Cohen added further complexity to the corpus of publications regarding Hispanics in the American Southwest. Although her focus is on labor history and not land grants, her 2012 book *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* is extremely important in fully understanding the history of land grants in this region due to her detailed description of changing racial attitudes over time in the U.S. Benton-Cohen argues that "in the mid-nineteenth century, 'Mexican' and 'white' were overlapping categories, not opposite poles in a regional racial system."[51] Racial categories during this period were "blurry and unimportant" in areas where Mexicans owned ranches and farms. However, as industrial mining operations began to dominate the area in the early twentieth century, an unfair dual labor

[49] Malcolm Ebright, *Spanish and Mexican Land Grants and the Law* (Manhattan: Sunflower University Press, 1989), pp. 5-11.
[50] Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994), pp. 51-52.
[51] Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge: Harvard University Press, 2009), pp. 7-8

structure supporting the mining industry based on race eventually evolved into a well-defined racial hierarchy by the early twentieth century. This hierarchy defined Mexicans as "aliens" and groups such as Italian and Slavic immigrants as "white."[52] Her work emphasizes that racial and ethnic perceptions in the U.S. southwest were not static and changed significantly between the mid-nineteenth century and the dawn of the twentieth century. Benton-Cohen's description of changing perceptions of race and ethnicity during the late nineteenth century is essential to accurately understanding the outcomes of New Mexican land grants because this perspective is lacking or minimized in many works regarding New Mexican land grant history.

In addition to Hispanic land grant claimants, Pueblo Indian claimants are also a focus of study in New Mexican land grant historiography. Unlike the majority of works focused on Hispanic land grants, the historiography of Pueblo land grants highlights the importance of changing policies regarding land grants and racial constructs in the U.S. These changes are described in several books to include *Pueblo Nations: Eight Centuries of Pueblo Indian History* by Joe Sando and *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933* by G. Emlen Hall. Both works describe the long and varied struggle for survival of the Pueblo Indians of New Mexico during Spanish, Mexican, and U.S. rule. Sando and Hall provide a detailed description of changing circumstances that includes the symbiotic cooperation between the Spanish and Pueblo Indians after the 1680 Pueblo revolt; the increasing threat to Pueblo land from growing Hispanic communities during Mexican rule aided by the Plan of Iguala; the initial protection the

[52] Benton-Cohen, pp. 8-9.

U.S. provided to Pueblo land from encroaching Hispanic communities through the actions and decisions of the New Mexico surveyor general and U.S. federal courts; and the eventual loss of Pueblo independence to U.S. government dominance in the first two decades of the twentieth century.[53] The detail of changing legal perspectives and racial constructs found in Pueblo historiography needs to be more directly applied to works regarding Hispanic land grant claimants in New Mexico in order to gain a greater understanding of these events.

Despite a growing corpus of land grant historiography, there is a startling lack of comparative analysis in the land grant historiographies of New Mexico and California. Very little has been written directly comparing the fate of California and New Mexican land grants. The disparity between the success rates of land grant confirmations between the two regions begs for a deeper comparative analysis than is currently available in the land grant academic corpus. 76% of claims in California were successful and adjudicated quickly. California confirmed 618 claims out of 813 brought into adjudication by 1856.[54] In stark contrast, only 22% of claims in New Mexico were successful. New Mexico confirmed only 46 claims out of 205 brought into adjudication by 1886. Many more claims were slowly, inefficiently, and inconsistently adjudicated as the twentieth century

[53] Joe S. Sando. *Pueblo Nations: Eight Centuries of Pueblo Indian History* (Santa Fe: Clear Light Publishers, 1998).
G. Emlen Hall. *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933* (Albuquerque: University of New Mexico Press, 1984).
[54] R.H. Allen. "The Influence of Spanish and Mexican Land Grants on California Agriculture." *Journal of Farm Economics (*Oct 1932), p. 679.

began.[55] Current publications don't definitively explain why there was such a stark difference in success between these two regions.

In 1962, Howard Lamar unsatisfactorily addressed this question in his essay titled, "Land Policy in the Spanish Southwest, 1846-1891: A Study in Contrasts." In this article, Lamar compares California and New Mexico. Lamar argues that the different outcomes between California and New Mexico came about primarily as a result of "an American land system run[ning] into an older and highly different Spanish-Mexican one."[56] He explains the successful litigation of California land grants as the result of the fact that these claims were mostly individual grants which were more or less agreeable with the American understanding of individual property ownership. The failure of claims in New Mexico came about primarily due to the communal nature of many grants (ejidos). This system granted individuals small lots associated with a larger common area collectively owned by an entire family, tribe, or community. Ejidos made up 90% of many land grants in New Mexico created during Spanish rule. The grants stipulated that the "ejido" could not be sold by the grantees. Lamar concludes that the collective ownership aspect of ejidos was incompatible with American land policy and therefore was the reason for the lack of success in New Mexico when compared to California.[57]

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[55] Phillip Gonzales. "Struggle for Survival: The Hispanic Land Grants of New Mexico, 1848-2001." *Agricultural History* (Spring 2003), p. 303.

[56] Howard Lamar, "Land Policy in the Spanish Southwest, 1846-1891: A Study in Contrasts." *The Journal of Economic History* (Dec 1962), 498.

[57] Lamar, p. 515. There are two key differences that are not taken into account in Lamar's comparison. First, New Mexican land grants are somewhat more complicated due to much older grants which included both individual and communal grants/ejidos. Second, most land grant claims in New Mexico were adjudicated at the end of the nineteenth century and beginning of the twentieth century unlike in California where claims were settled by the mid-1860s.

In his 1994 book titled, *Land Grants and Lawsuits in Northern Mexico.*, Malcolm Ebright revisits Lamar's conclusion that negative outcomes of New Mexican land grant litigation was a result of two incompatible systems. Ebright points out that "common ownership of land and common use rights in the land of others existed in England and… was remarkably similar to the Spanish system of commons found in Spain and New Mexico."[58] This system in England only ended in the early 1800s after the Enclosure Act of 1801 completed the process of privatizing land that had been previously recognized as communal. Despite the short period of time between the legitimacy of communal holdings in English common law and adjudication of New Mexican ejidos, Ebright supports Lamar's thesis when he concludes that "the common lands concept was out of favor in United States law [which prompted] American judges [to be] unsympathetic toward Hispanic common lands ownership as defined by Spanish and Mexican Law."[59]

The comparison between the fate of land grants in the U.S. and Mexico after 1848 is an analytical perspective that is almost completely ignored. While both topics have been exhaustively studied individually, little has been written comparing the two closely related topics taking place in both countries. However, there is a large corpus dedicated to the fate of land grants in Mexico due to the connection between the Mexican Revolution of 1910 and nineteenth century Mexican government legislation regarding ejidos and the mid-century land reform movement in Mexico. These important intersections were

[58] Malcolm Ebright. *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994). P. 267.
[59] Ebright. *Land Grants and Lawsuits,* p. 268. While this dissertation agrees with Lamar and Ebright's conclusions when studying litigation after 1877, it will show that communal land was readily recognized by the New Mexican surveyors General and the U.S. Congress prior to 1877.

analyzed in detail in Steve Sanderson's 1981 book, *Agrarian Populism and the Mexican State: The Struggle for Land in Sonora*. Sanderson explores how emerging industrial agricultural systems, class networks, regional networks, and cultural traditions in late nineteenth-century Mexico interacted with legislation, land reform, political movements, and private ownership of land in the state of Sonora which produced the conditions for the 1910 Mexican Revolution.[60]

Mexican Liberalism in the Age of Mora, 1821-1853 by Charles Hale also provides important context in regards to the fate of Spanish and Mexican land grants in Mexico. While Hale primarily focuses on analyzing Mexican political thought, his book addresses both land grants and the more general intellectual, political, and judicial context impacting land grants in Mexico. Hale expertly narrates how Mexican political thought evolved throughout the nineteenth century. According to Hale, major intellectual movements in Mexican political thought became dominant in three distinct eras. First, constitutionalism dominated Mexican political thought in the 1820s. Constitutionalists tried to balance individual rights and legislative power in the newly independent republic. Second, anti-corporatism came to prominence in the 1830s as the Mexican government increasingly worked to dismantle the power of both the Catholic Church and ejidal communities made up of Hispanics and Native Americans in Mexico. Third, systemic adoption of legal positivism based on utilitarian ideals of Jeremy Bentham in the 1850s

[60] Steven Sanderson, *Agrarian Populism and the Mexican State: The Struggle for Land in Sonora* (Berkeley: University of California Press, 1981).

became the basis of the 1857 Mexican Constitution which established a system to transform communal property into individually owned property in Mexico.[61]

The current historiography of New Mexico and California is lacking a more wholistic and periodized diachronic analysis of land grants that considers the connections and similarities between events in the Mexican Republic, California, and New Mexico. In order to influence this direction of analysis, my dissertation complicates the established narrative of Spanish and Mexican land grants in the U.S. in three ways. First, it conducts a detailed statistical analysis that compares the judicial outcomes of land grant claimants for both individual and communal land grants. Unlike other works, this dissertation specifically compares confirmation rates of Anglo and Hispanic claimants and periodizes results into eras that reflect changes to the federal judiciary as a result of legislative guidance and evolving judicial philosophy. Second, this dissertation provides detailed case studies of Hispanic families, Anglo families, and land grants that track the economic success of communities, grantees, and their progeny over generations through analysis of data from U.S. Census agriculture and population schedules. These case studies place individual actions, choices, and economic success into the larger context of national and trans-national political, economic, social, and juridical trends in Mexico and the U.S.

[61] Charles Hale, *Mexican Liberalism in the Age of Mora, 1821-1853* (New Haven: Yale University Press, 1968). The events related to Spanish and Mexican land grants in California and New Mexico will be much better understood as a result of an exploration of trans-national connections and comparisons between events in Mexico and the United States and their impact on land grant claimants. While this dissertation touches on this comparison briefly in chapters 3 and 4, the comparison between events related to Spanish and Mexican land grants in both the U.S. and Mexico needs a separate independent study in order to properly synthesize these predominantly independent and separate historiographies.

Third, this dissertation looks at the precise language of Mexican legislation, U.S. legislation, and U.S. court cases concerning individual and communal land grants. The language of these documents provides insight into changing philosophical views of the federal judiciary that may help explain changing land grant confirmation rates over time. Although the judicial shift away from classical liberalism at the end of the nineteenth century has complex origins, this dissertation suggests that the associated shift away from contract rights to federal legislative and administrative solutions was at least partially influenced by political and juridical actions in Mexico after 1848. Specifically, this dissertation connects the 1897 *Sandoval* decision by the U.S. Supreme Court and the subsequent dismantling of ejidos in New Mexico at the beginning of the twentieth century to the Mexican Ley Lerdo of 1856, 1857 Mexican Constitution, and subsequent dismantling of ejidos in Mexico that started in the late 1850s. This connection is not discussed, analyzed, or recognized in the current historiography regarding community land grants in New Mexico.

This dissertation nests and contextualizes the conclusions of these three analytical strategies regarding Spanish and Mexican land grants in California and New Mexico into a larger historiography of diverse academic works focusing on political, economic, and social change in the U.S. during the late 1890s. This larger corpus includes the work of Martin Sklar's analysis of economic change in the U.S. that took place between Reconstruction and the first decade of the twentieth century; Eric Yellin's analysis of the rise of institutional racism in the executive branch of government between Reconstruction and the first decades of the twentieth century; D. Michael Bottoms'

analysis of the rise of a new social construct of race that developed between Reconstruction and the first decades of the twentieth century; Rachel St. John's analysis of the increasing racial othering of Hispanics along the Mexico-U.S. border that developed in the 1890s; Charles Postel and Tamara Venit Shelton's independent works on nineteenth century populism which both conclude that U.S. citizens moved away from the supremacy of individual liberty and towards a goal of equality of condition; and legal scholars Brian Tamanaha and Christian Fritz who analyze the change in judicial philosophy that took place between the end of the Civil War and the first decades of the twentieth century. Although researching vastly different topics, these historians and this dissertation all identify a common theme of a government shift in priority from protecting individual rights to improving society and solving problems through legislative and administrative solutions.

The next five chapters complicate and add to the standard narratives of California and New Mexico by challenging two assumptions. First, this dissertation adds to the work of historians Karen Clay, Tamara Venit Shelton, and Paul Wallace Gates by challenging the general assumption that Hispanic land grant claimants in California were illegally dispossessed of land that they rightfully owned and were excluded from avenues of economic success provided to their Anglo counterparts. Second, this dissertation challenges the conclusion of the larger New Mexico land grant corpus that the U.S. government refused to recognize the legitimacy of communal property owned by both Hispanic and Pueblo Indians in New Mexico. While this is true after 1897, communal rights were recognized by the U.S. government prior to 1897. The corrections to these

generally accepted conclusions are supported by the comparative analysis of judicial and economic results between Anglo, Hispanic, and Pueblo land grant claimants. They are further supported by analysis of primary documents that determine where and, more importantly, when the race and ethnicity of Hispanics and Pueblo Indians influenced judicial decisions and economic opportunities for land grant owners and their progeny.[62]

In his book, *Golden Rules: The Origins of California Water Law in the Gold Rush*, Mark Kanazawa warns of the tendency to oversimplify events taking place in the Mexican Cession when he states that:

> there is so much evidence available for scholars to consult and evaluate…The sources of information are many, and the information they provide is rich and detailed, almost an embarrassment of riches. But not all of the available evidence seems to be conveying the same message: indeed, sometimes different bits of evidence seem to be saying very different things. Like the blind men of the parable, every… scholar runs the danger of drawing the wrong conclusions by sampling the wrong evidence.[63]

In order to gain an accurate understanding of the history of land grants in California and New Mexico, the comprehensive and dynamic background of the region needs to be taken into account. This background includes the complex political, social, and economic context that changed over time; regional idiosyncrasies; trans-regional connections; and trans-national connections. To accomplish this, the following study utilizes a "systems" approach to link the micro-level individual case studies to macro-level topics. In the case

[62] This dissertation is NOT arguing that the U.S. was less racist before 1877. Instead, it was differently racist. The following chapters support the conclusion of D. Michael Bottoms that the racial construct in the U.S. evolved from a binary understanding of race to an aristocracy of color. This dissertation asserts that Californios remained at the top of the new spectrum with Anglos into the twentieth century, while Pueblo Indians were considered white in the older binary system, but were considered Indians as the aristocracy of color became generally accepted in the U.S.

[63] Mark Kanazawa, *Golden Rules: The Origins of California Water Law in the Gold Rush* (Chicago: University of Chicago Press, 2015), p. 2.

of California and New Mexico land grants, this study analyzes the individual systems of: 1) the pre-1848 regional political, social, legal, and economic traditions of New Mexico and California which were based on Spanish, Native American, and Mexican precedent; 2) the developing U.S. political, social, legal, and economic systems and their influence on California and New Mexican land grants after 1848; 3) the evolving Mexican legal system and its influence on Mexican land grants in both Mexico and the United States after 1848; and 4) the developing social systems (constructs) of class, race, and ethnicity in the U.S. By analyzing these systems and how they interacted with one another, this study more accurately reveals the motivations of individuals and more comprehensively analyzes the judicial and economic outcomes related to Spanish and Mexican land grants in California and New Mexico.

The following chapters will attempt to answer the question: Why were the results of land claims and the economic fortunes of land grant owners so much better for petitioners in California than New Mexico? In the most general terms, the answer to this question is a temporal one. California land claims (and a number of land claims in New Mexico) were adjudicated in the 1850s and settled prior to the start of the Civil War in 1861. The majority of New Mexican land claims were adjudicated much later between 1891 and 1904. The political, legal, economic, and social structures found in the U.S. from the 1850s to the end of Civil War Reconstruction evolved into distinctly different systems by the end of the nineteenth century. This evolution led to very different fates regarding land grant claims depending on when they were adjudicated.

Although changes in the economy due to the industrial revolution and evolving racial constructs are all contributing factors, they are both directly influenced by the evolution of the dominant judicial philosophy in the U.S. between 1850 and 1910. During this timeframe, U.S. jurisprudence was initially a system that prioritized classical liberalism, English common law, and contract rights through the end of Reconstruction in 1877. However, a transition took place between 1877 and 1897. By the turn of the twentieth century, the federal judiciary shifted to a form of liberalism that was influenced by a utilitarian focus on legislative and administrative solutions that were anti-corporate and anti-monopolist.[64] The rationale used by the U.S. Supreme Court to adjudicate land grant cases evolved from the primacy of rights based legal theory associated with classical liberalism and English common law to the primacy of legislative based legal theory associated with utilitarianism.[65] This shift in philosophy directly impacted land grant adjudication and economic outcomes of the legitimate claimants of Spanish and Mexican land grants.

During the 1850s and 1860s, when all California land claims and a small percentage of New Mexican claims were adjudicated, the federal courts upheld John Marshall's precedent regarding contract rights. This led to favorable outcomes for

[64] In his book, *The Making of Modern Liberalism,* Alan Ryan describes this distinct difference between British thought (Classical Liberalism) from thought emanating from the European continent (Utilitarianism). Depending on the author, utilitarian influence on liberalism has also been described as "social liberalism" or "new liberalism." An example of these terms can be found in Brian Tamanaha's 2004 article titled "The Dark Side of the Relationship between the Rule of Law and Liberalism." Because utilitarianism was a major influence in Mexican legislation dealing with land grants and works using the term social liberalism or new liberalism often deal with issues specific to the twentieth century, the term utilitarianism will be used throughout this dissertation.

[65] Brian Tamanaha, "The Dark Side of the Relationship Between the Rule of Law and Liberalism," *NYU Journal of Law and Liberty,* Vol 139 (2004).

legitimate land claims made by Hispanic, Anglo, and Pueblo Indian claimants. However, after 1897, when the majority of New Mexican land claims were adjudicated, the federal courts upheld a liberal standard of law influenced by utilitarianism that led to unfavorable outcomes to any claimant who was deemed unworthy of land ownership or whose possession did not support the perceived greater good of the country. Different political factions had different ideas of what was considered the public good. Because of the impulse of the federal judiciary to look beyond contract and property rights in favor of legislative and administrative solutions to the land grant question, more extreme programs of dispossession based on white supremacy filtered into the rationale of court opinions. As a result, racial bias towards working class Hispanics and all Pueblo Indians became a significant factor in court decisions and legislation that created a racial disparity regarding land grant litigation and economic success after 1897.

Based on the temporal shift in legal precedent, this dissertation argues that Spanish and Mexican land grant adjudication and economic outcomes of claimants in California and New Mexico indicates that the United States economic, political, social, and legal philosophy was influenced by the waning influence of classical liberalism in favor of anti-corporate and anti-monopolist utilitarian principles which influenced land law between the Civil War and the turn of the twentieth century. Before 1877, jurisprudence based on English common law provided some level of protection for non-Anglo ethnic groups from local populist movements influenced by white supremacy. Because of the focus on individual contract rights during this period, the race and ethnicity of Hispanic and Pueblo claimants were not significant factors in the outcome of

land grant adjudication and associated economic success of claimants.[66] After 1877, race and ethnicity became a significant factor in the outcome of land grant adjudication and the economic success of claimants because of the growing influence of utilitarian philosophy on land grant adjudication. Utilitarian influence provided political space for white supremacist ideology to encourage federal courts, state courts, and federal agencies within the executive branch to use racist stereotypes to rationalize decisions regarding the best use of land grants regardless of legitimate individual and communal claims to ownership.[67]

This philosophical shift and its impact on Spanish and Mexican land grants are analyzed from multiple perspectives through the following chapters. Chapter 1 provides a summary of land grant history in California up to 1877. It introduces individual case studies that analyze land grants through the lens of the intellectual, economic, political, social, and judicial systems of Spain, Mexico, and the U.S. up to 1877. These case studies follow the fate of the family members associated with land claims granted to the Vaca,

[66] This dissertation is NOT arguing that the U.S. was less racist before 1877. Instead, it was differently racist. The following chapters support the conclusion of D. Michael Bottoms that the racial construct in the U.S. evolved from a binary understanding of race to an aristocracy of color. This dissertation asserts that Californios remained at the top of the new spectrum with Anglos into the twentieth century, while Pueblo Indians were considered white in the older binary system, but were considered Indians as the aristocracy of color became generally accepted in the U.S.

[67] A secondary argument (addressed in Chapters 3 and 4) is that the shift to utilitarian philosophy was not a uniquely U.S. phenomenon. This evolution took place forty years earlier in Mexico due to the political legacy left by the Spanish Cortes of Cádiz and the influence of Jeremy Bentham on the leaders of the Republic of Mexico. Because the legal precedent to use utilitarian arguments to dismantle communal property rights in Mexico had direct bearing on Spanish and Mexican land grant adjudication in the U.S., the U.S. Supreme Court used this Mexican precedent in the 1897 *United States vs. Julian Sandoval et al.* decision. This and other decisions by the turn of the century U.S. Supreme Court established utilitarian philosophy as the basis for law that would significantly influence twentieth century land grant jurisprudence (Not coincidentally, in the same year-1897- the U.S. Supreme Court began using the Sherman Anti-Trust Act as a basis for their decision in *United States v. Trans-Missouri Freight Association et al.* Chapter 3 will discuss this shift in more detail.

Juarez, Vallejo, and Wolfskill families who all owned large land grants in Solano and Napa counties in California. The case studies recount how these families navigated the confirmation process in the 1850s and the massive economic change in 1860s and 1870s northern California. After comparing these case studies with other events taking place locally in California and nationally in the U.S., this chapter makes two conclusions. First, Spanish and Mexican land grant claims made by Anglo and Hispanic petitioners were fairly adjudicated by the California Land Commission and the U.S. federal court system prior to 1877 regardless of the ethnic make-up of the claimant. Second, Hispanic land owners were economically successful if they were able to adapt to the changing economy of California in the two decades between 1860 and 1880.[68]

Chapter 2 provides a detailed summary of land grant history in New Mexico up to 1877. It introduces individual and communal case studies analyzed through the lens of the intellectual, economic, political, social, and judicial systems of Spain, Mexico, and the U.S. up to 1877. These case studies follow the fate of the twenty Spanish land grants obtained by the Pueblo Indians from Spain during New Mexico's colonial period and the fate of the San Miguel del Vado grant and several of the individual and communal grants that were created as a result of the growing Hispanic population of San Miguel in northern New Mexico. This chapter provides clear evidence that Hispanic, Anglo, and Pueblo communal land claims in New Mexico, that were established in accordance with Mexican law and adjudicated in the U.S. prior to 1897, were considered legitimate by the

[68] This chapter also acknowledges the subordinate status of Native Americans in California who were either subjugated as peons or subject to violence and genocide under both Mexican and U.S. control of California.

federal courts, the New Mexico surveyors general, and the U.S. Congress regardless of the race or ethnicity of the claimant due to a classically liberal focus on individual contract rights and English common law.

Chapter 3 provides a summary of the massive intellectual, political, economic, social, and judicial changes that took place in the U.S. during the second half of the nineteenth century. It reviews the intellectual struggle between classical liberalism and utilitarianism that took place in both Mexico and the U.S. in regards to Spanish and Mexican land grants. It also shows how the increased influence of utilitarianism in the U.S. after 1877 led to an economic shift from proprietary capitalism to corporate capitalism, a political shift toward legislative dominance of the judiciary, and a social shift from a binary understanding of race to what D. Michael Bottoms termed an "Aristocracy of Color." Through the summary of the arguments of several historians including Martin Sklar, D. Michael Bottoms, Eric Yellin, Charles Hale, and Rachel St. John; this chapter argues that a fundamental shift in politics, economics, jurisprudence, and social constructs took place in both the U.S. and Mexico which led to the systemic use of race and ethnicity as a consideration in law, legislation, politics, and jurisprudence.

As a result of the waning influence of classical liberalism and the growing influence of utilitarianism on land law that took place after 1877, chapter 4 continues the case study narrative in New Mexico from the end of Civil War Reconstruction into the early twentieth century. It shows that Hispanic communal land claims like the San Miguel del Vado Grant and Pueblo Indian land claims recognized by the federal system prior to 1877 increasingly came under attack in the last two decades of the nineteenth

century. In the name of progressive reform, multiple injustices were enacted on Hispanic and Pueblo Indian land grant owners. These actions were justified by the dubious rationale that the government was doing what was best for all of society to include Anglos, Hispanics, and Native Americans. This "help" included transferring control of Pueblo land previously adjudicated and held in fee simple by the Pueblo people to the Department of the Interior and turning over ejidal property owned by Hispanic communities to the U.S. Forest Service or selling it as part of the Homestead Act. Both actions were executed by the U.S. government despite legitimate contracts which had prevented these actions prior to 1877. These two government agencies then conspired with corporations to exploit the land and natural resources that had rightfully belonged to Hispanic and Pueblo communities. Once they lost their land, these same claimants had no choice but to work in low wage jobs for the same corporations in the name of what was best for the country, the economy, and the local population.[69] The fate of claims for the San Miguel del Vado Grant made by former U.S. Vice-President Levi P. Morton and Julian Sandoval provide evidence regarding the change in jurisprudence used by the U.S. after 1877.

Chapter 5 continues the narrative of the case studies of California's Spanish and Mexican land grants. Despite having successfully defended their land grants, Hispanic claimants in California had to navigate both a volatile economy and a hegemonic Anglo-

[69] Although both the environmental movement and grantees briefly joined in the fight against government and corporate exploitation of former communal land in the twentieth century, they soon became bitter rivals when it became clear that environmental leaders wanted to keep communal land under control of the government in accordance with utilitarian beliefs and grantees wanted communal land returned to the rightful owners in accordance with classically liberal beliefs.

American culture increasingly hostile to immigrants from Asia and Latin America. Prior to 1877, the federal court system provided protection of the property rights for both Anglo and Californio land grant owners by upholding individual contract rights in the struggle against a state legislature dominated by anti-monopolist land reformers. By the turn of the century, Hispanic Californios navigated a new social landscape in California based on a racial spectrum D. Michael Bottoms termed an aristocracy of color and a political and legal system influenced by a utilitarian philosophy that subordinated individual contract rights in favor of legislative and administrative solutions. While property rights of Anglos and Californios were impacted by this new system, Anglo and Hispanic Californios maintained the right to own property and achieve economic success due to their apex status in the aristocracy of color. In contrast, the property rights and economic opportunities of other ethnic and racial groups, such as Chinese residents and recent Hispanic immigrants, were severely limited. This chapter makes the conclusion that because of increased utilitarian influence on land law at the end of the nineteenth century, Californio land grantees in California were still considered white while more recent Hispanic and Chinese immigrants were placed lower on the spectrum known as the aristocracy of color.

The political, social, and economic history of nineteenth century California and New Mexico is complex and significant attention needs to be paid to change over time. This is the case not only because of changes in racial constructs and changes in the economy; but also because of conflicting and evolving philosophies regarding what government actions were considered fair, moral, and in the best interests of the U.S.

nation state and citizens. In addition to this, individuals and groups at the local level struggled internally between conflicting visions of what the future of the United States and the American southwest should look like and how land should be administered. Only through the wholistic analysis of the intellectual, economic, political, social, and judicial histories of multiple groups in the Mexican Cession and by contextualizing them within the influence of national and international trends can one properly understand the history of Spanish and Mexican land grants in California and New Mexico.

CHAPTER ONE: SPANISH AND MEXICAN LAND GRANTS IN CALIFORNIA PRIOR TO 1877

There was, of course, a contemporaneous Old West on both the French and the Spanish frontiers. The formation, approach and ultimate collision and intermingling of these contrasting types of frontiers are worthy of a special study.[1]

- Frederick Jackson Turner

Few historians dispute the idea that the Mexican elite of California lost their land in the decades following the Mexican-American War because of corrupt U.S. legal and political systems designed to rob them of their land. While these conclusions draw from a historical narrative dating back to the late nineteenth century, a comprehensive analysis of court records and economic data concerning California land grants between 1840 and 1880 reveals a very different narrative in California. This analysis complicates the accepted and over-simplified conclusions that often go unquestioned by many modern historians. In contrast to the standard narrative, not all California land grant owners were Hispanics and not all Hispanic land grant owners were destined to be the inevitable economic and judicial losers after California became a U.S. state. Also, not all land speculators were Yankees destined to be the inevitable economic and judicial winners under U.S. control. In California, the transformation to a society and economy based on growing crops on smaller land holdings and the lucrative business of land speculation by Californios was already well under way in the decade prior to the Gold Rush and continued in the decades after U.S. statehood. While external factors were important in

[1] Frederick Jackson Turner, *The Frontier in American History* (New York: Henry Holt and Company, 1921), p. 125.

this transformation, internal pressure within Hispanic society to fundamentally change the California economy and culture also played a significant role in the transformation of the region between 1840 and 1880.

Through a detailed analysis of judicial, economic, and political events taking place in California between 1840 and 1880, this chapter makes three conclusions. First, economic success for both Hispanic and Anglo farmers in California depended on an ability and willingness to adapt agricultural practices in a changing regional economy. The retention of large land holdings was not connected to economic success and using the size of land holdings as the sole measure of wealth by historians is highly problematic. Second, the lenient system established to adjudicate land claims for all land grant holders led to equitable judicial outcomes for Californio and Anglo claimants. This statistical fact reveals a major flaw within the commonly accepted historiography of land grants in California. Instead of a corrupt process, a thorough analysis of court records reveals a sincere attempt by the U.S. Judiciary to protect the individual property rights of both Hispanic and non-Hispanic land owners against abuses by an anti-monopolistic state legislature and opportunistic individuals. Third, the assumption made by historians that all California land grants were primarily used as long held ranchos by Hispanic families is questionable. Many land grants, especially in northern California, were acquired by Californios in the last years prior to the Mexican-American War and were highly valued as real estate investments to be sold and not as family ranchos to be retained.

To prove these arguments, this chapter relies primarily on economic and judicial comparisons between Yankees and Californios who acquired Spanish and Mexican land

grants in California. An analysis of the findings by the 1851 California Land Commission, Northern and Southern District Courts, and U.S. Supreme Court will be used to compare judicial outcomes between Anglos and Californios during the period of study. Because these documents provide detailed information regarding the history, ownership, and sale of specific land grants, they are also important in proving that economic change began in California during the decade prior to the Gold Rush. An analysis of the population and agricultural schedules of the U.S. Census, and summaries of deed transfers will compare economic outcomes between Anglos and Californios. Personal memoirs, newspapers, and secondary sources will add additional detail.

The dominance of church holdings during Spanish rule was particularly important in the development of regional land law and property holdings in California. During the colonial period, the Spanish crown worked diligently to keep large land holdings out of the hands of the Catholic Church. Despite this, the church became the largest land owner in Mexico by the time of Mexican independence in 1821.[2] Prior to 1821, the Franciscans owned most land in California. When the Franciscans established their missions, they made 15,000 Native Americans their wards while the remaining independent Native American groups in California subsisted on the edge of the California frontier while in the midst of a catastrophic demographic decline due to disease and attacks by Mexican soldiers.[3] Interspersed among the Spanish missions were twenty-five individual land

[2] Guillermo F. Margadant, "Mexican Colonial Land Law." In *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Yuma: Sunflower University Press, 1989), p. 94.

[3] Brendan Lindsay estimates a population of approximately 150,000 Native Americans lived in small autonomous villages at the time of the Mexican-American War. While some were former missionized Indians, many others never lived among Europeans or had even seen a White person before (Brendan

grants that the crown gave primarily to retired military officers near the end of Spain's colonization efforts in the New World.[4] Despite the presence of these individual grants, the church missions continued to dominate the economic and political domains of Spanish California.

After winning independence, the Republic of Mexico decisively attacked the power of the Catholic Church in California. They did this in order to "cut the last cord still linking California to its Spanish 'mother'" and to attract new settlers to the sparsely populated state of California. The weapon used in California to decimate the power of the church was the individual land grant. The government promoted land speculation by secularizing the valuable and cultivated monastery lands, dividing them into large land grants, and giving them to individuals requesting land. [5] While the secularization policy successfully weakened the Catholic Church and shifted land ownership into the almost exclusive domain of individual ownership in California, the land remained sparsely populated by Californios and a few Anglos well into the 1840s.[6] The Native Americans who had worked so diligently on former mission land became a landless underclass that labored in established Spanish pueblos and the rapidly growing ranchos, or retreated to the interior outside of Mexican control. Unlike New Mexico, secularization led to a clear

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Lindsay, "Humor and Dissonance in California's Native American Genocide." *American Behavioral Scientist* (Vol, 58, 2014, p. 100)

[4] Iris Engstrand, "An Enduring Legacy: California Ranchos in Historical Perspective." in *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Yuma: Sunflower University Press, 1989), pp. 36-39.

[5] Leonard Pitt, *The Decline of the Californios: A Social History of Spanish-Speaking Californians, 1846-1890* (Los Angeles: University of California Press, 1966), pp. 7-11.

[6] Howard Lamar. "Land Poicy in the Spanish Southwest, 1846-1891: A Study in Contrasts." *The Journal of Economic History* (Dec 1962), p. 499.

belief in California that Native Americans generally did not possess the qualifications for full citizenship and therefore were given no significant land holdings in California. [7]

Leonard Pitt describes the secularization of land in California and the "revolutionary social and economic transformation" that resulted from it as California's "most important event before the discovery of gold."[8] The secularization of land also simplified California land claims brought before the California Land Commission and U.S. courts in several important ways. First, the majority of land grants were less than twenty years old by 1850. This made it easier for land owners to prove ownership because grant documents were relatively easy to find and local citizens had a living memory of ranchos being established by grantees.[9] Second, land ownership was mostly monopolized by individuals of European decent. Most grants were given to Mexican citizens who were not of mixed heritage with a smaller number given to migrants from a multitude of countries in Europe and regions in the U.S. Native American traditions and interests were only a minor factor in California land law by 1848. Power and wealth were transferred exclusively to a small number of Mexican families who obtained adjacent and individually owned parcels that in some cases grew to over 300,000 acres.[10] Third, California land grants were based almost entirely on the increasingly influential ideal of individual ownership.

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[7] Pitt, p. 10.
[8] Pitt, p. 8.
[9] Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term, 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert, 1862), Appendix A, pp. 1-109.
[10] Pitt, p. 10

Despite the singular system of individual grants that developed in California, there was internal struggle between Hispanic citizens in the last years of Mexican rule regarding the future of California. On one side were the patriarchal heads of elite Californio families who benefitted from the new social order established after secularization. They resisted major changes to this new order. On the other side were a more metropolitan class of wealthy Californios looking for ways to modernize, populate, and connect California to the rapidly advancing world where the U.S. was becoming increasingly influential.

During the first two decades of the Mexican period in California, the primary occupation of land owners was the raising of cattle, sheep, and horses. Little was done to improve the quality of the stock of these animals that were permitted to "run wild through the year, save when they were brought together at the annual rodeo for the branding of young stock and the slaughtering of the more mature animals."[11] The Mexican cattle in California were notoriously "wild, wiry, and tough."[12] The only demand for horses was to support the cattle business and the small military force in California. There was little demand for beef outside of the immediate needs of the rancho. Almost the sole source of income for rancheros was the sale of cattle hides and fat, which was made into tallow. These products were exported from California to New England, Europe, and Mexico.[13] The value of hide and tallow was low, so ranchers needed to sell large quantities to

[11] Paul W. Gates, *California Ranchos and Farms 1846-1862* (Madison: The State Historical Society of Wisconsin, 1967), p. 4.
[12] Gates, *California Ranchos and Farms,* p. 4.
[13] Gates, *California Ranchos and Farms,* p. 4.

maintain a profit. Rancheros maintained large, mostly unimproved ranchos to maintain large herds of cattle. Most of the largest and best stocked ranchos were located in southern California and included the De la Guerra family who cumulatively owned 488,329 acres, the U.S. immigrant, Abel Stearns, who owned 200,000 acres, and Joaquin Estrada who owned 70,000 acres.[14]

These and other patriarchal elites of California had a vested interest in keeping this system in place. Approximately 46 "men of substance, influence, or political power" controlled most of the land and society.[15] Unlike in New Mexico, the social and economic structure in California did not depend on the village. Instead, it depended on the family. A large extended family depended on the patriarchal owner of the rancho. This family included children, in-laws, more distant relatives, Indian servants, and others not related by blood. According to Leonard Pitt, the patriarch's authority:

> ran so deep that he could even legally flog his married children who already had their own offspring. In the more traditional households of Santa Barbara, youngsters solemnly kneeled and kissed papa's hand before filing off to bed at night, and no son, not even one in his sixties, dared smoke, sit, or wear his hat in his father's presence without asking permission.[16]

Given this total patriarchal power over economy, society, and politics in California; it makes sense that many of the Californio elite had little motivation to change the economic or social structure of California and resisted attempts to change this system at the end of the Mexican era.[17]

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[14] Gates, *California Ranchos and Farms,* pp.6- 7.
[15] Pitt, p. 10.
[16] Pitt, pp. 11-12.
[17] Pitt's *Decline of the Californios* has many examples of prominent patriarchs who refused to adapt and lost economically because of this inability to change. Some of these include the Sepulvada, Moraga, Arellane, and Verdugo families.

However, not all Californios were satisfied with this underdeveloped and unique socio-economic structure. The most famous of these individuals was General Mariano Guadalupe Vallejo. While a young man, Vallejo and revolutionary Mexico in general were highly influenced by both Enlightenment ideas and the American Revolution. When Mexico won its independence, "her leaders identified with the U.S. system."[18] In addition to the influence of U.S. political thought, Vallejo was impressed with the ambition of U.S. immigrants to California. As a result, "from the 1840s on, his desire to make California a part of the United States became his most urgent political goal… because the United States would offer California the best opportunities for cultural and economic development." Unlike other patriarchal leaders in California who lived in the present, Vallejo oriented on the future by constantly looking for ways to bring innovation to California. [19]

One avenue of innovation that many Californios actively engaged in by the 1840s was land speculation which threatened to alter the economic and social structures of the patriarchal ranchero system. This speculation entailed both the sale of entire grants and the division of grants into smaller subdivisions for sale. One of these early land speculators was Mariano Vallejo's brother, Salvador Vallejo, who received the 11,000-

[18] Alan Rosenus, *General M.G. Vallejo and the Advent of the Americans* (Albuquerque: University of New Mexico Press, 1995), p. xiv.
[19] Rosenus, p. xiv.

acre Napa land grant in 1838.[20] A second land speculator was Nicolas Higuera, who received a 4,500-acre grant for Entre Napa in 1836.[21]

Higuera was a Mexican soldier stationed in San Francisco from 1819-1823. Once he received his land grant, Higuera became a ranchero and built up a stock of 2,000 cattle and 3,000 horses.[22] Higuera eventually sold his livestock and subdivided his rancho into 13 separate plots and sold these plots to mostly American settlers by 1847.[23] Despite being the original grantee, Nicolas Higuera never brought a claim before the U.S. Land Commission because he no longer owned land that was part of a Mexican Land Grant after 1847.[24] Similarly, the Californio businessman Salvador Vallejo divided his land grant of Napa into 29 separate plots and, like Higuera, sold them to American settlers prior to 1851. Vallejo did defend the 3,178-acre portion of his Napa grant which he retained along with several other land holdings in northern California.[25]

After the war, the U.S. Congress established the California Land Commission to review the legitimacy of all claims to property ownership originating from Spanish and

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[20] Although Salvador shared his brother's vision of a more metropolitan California, he was much less enthusiastic about annexation by the U.S.

[21] Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term, 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert, 1862), Appendix A, pp. 1-109. Both men received grants in exchange for military service to Mexico. This benefited Mexico since they were actively trying to encourage immigration to California and providing soldiers with land was an effective method. Salvador Vallejo was a famous "Indian fighter" in California prior to his transition to business.

[22] "History of Napa County and the City of Napa" downloaded from http://wordpress.napahistory.org/wordpress/?page_id=1107 on 7Apr15.

[23] Hoffman, Appendix A, pp. 1-109.

[24] However, the 1850 U.S. census lists Higuera as having real estate totaling $10,000. This indicates that he acquired more land through the real estate market separate from his original grant which was not subject to land grant confirmation. (U.S. Census Bureau. "Free Inhabitants in the County of Napa in the State of California: 1850." Historical Schedule I).

[25] Hoffman, Appendix A, pp. 1-109.

Mexican land grants in the new U.S. state.[26] The creation of a commission was necessary for several reasons. First, the imprecise methods used to create Mexican land grants led to disputes between adjacent grant holders. Second, fraudulent claims for property belonging to legitimate land grant holders were common. Third, a number of grantees who failed to meet the occupation standards dictated by Mexican law during the Mexican period attempted to illegally reassert abandoned claims after statehood.[27]

Salvador Vallejo was very successful in defending the claim for his remaining portion of the Napa grant. His claim was confirmed by the California Land Commission in 1854 and this confirmation was confirmed by the Northern District Court in 1856. A second appeal to the U.S. Supreme Court was dismissed in 1857 at the end of Caleb Cushing's tenure as attorney general.[28] Although he successfully defended his remaining land in court, Vallejo suffered from attacks by squatters on his 3,178-acre rancho. When his crops were burned by squatters after his land was confirmed, Vallejo sold his ranch in Napa for $160,000 and moved to San Francisco. [29] Over the next decade and a half,

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[26] All owners asserting a claim to ownership had to bring their case before the commission within two years of its formation in 1851. Lawyers working for claimants and the U.S. Attorney General were employed to find documents in Mexican archives for claimants not possessing copies of the original grant. For the oldest land grants, oral testimony by long-time residents was often accepted as proof of ownership in lieu of missing documents. The commission's findings could be appealed by the claimant or U.S. Attorney General to the appropriate U.S. District Court (Northern or Southern District Courts) of California and the U.S. Supreme Court. Most claims were appealed to the district courts for multiple reasons. (Fritz)

[27] Christian G. Fritz. *Federal Justice in California: The Court of Ogden Hoffman, 1851-1891* (Lincoln: University of Nebraska Press, 1991), pp. 134-145.

[28] Hoffman, Appendix A, pp. 1-109.

[29] Pitt, pp.96-97. Salvador Vallejo was not alone in dealing with squatters. All of the large land holders in Solano County had issues with Squatters. His Yankee brother-in-law, Jacob Leese, lost land to squatters in the vicinity of Telegraph Hill in San Francisco (McKittrick, p. 318). Squatters also "ousted Captain A.A. Ritchie from the entire Suisun Ranch… and squatted extensively on the Ranch of Vaca and Pena… on the ranch of Wolfskill… and on the Suscol Ranch claimed by General Vallejo, and portions of it claimed by his grantees." John Moore Currey described the squatters as "particularly bitter against Captain Ritchie." He

Salvador Vallejo was successful in business and also served as a major in the U.S. Civil War.[30] His success continued until three years before his death when he lost much of his fortune during the Panic of 1873.[31]

Most of the 42 Anglo claimants who bought land from Higuera and Vallejo hired the law firm of Halleck, Peachy and Billings to present their claims to the Land Commission and the Northern District Court.[32] Although Leonard Pitt describes Halleck and his law partners as hard workers who "refrained from taking [their] 'pound of flesh' from the Californians as compensation," Paul Gates describes Halleck in a different light.[33] Gates states that Halleck "charged fees that were substantially higher than those of his less successful competitors and, indeed, were all that the traffic would bear."[34]

According to Gates, Halleck took into consideration that the Napa and Entre Napa claims were well-developed land that held a real estate value far greater than the "lightly used ranchos" when dealing with the U.S. settlers owning parts of Napa and Entre Napa. Despite the fact that his legal work for one claim within Napa and Entre Napa verified all the other claims, he charged each claim equally and made no concession to the cost of

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also described how squatters gained a majority in the state legislature and secured passage of laws for "their benefit and advantage" but were thwarted by rulings in the state and federal courts. Just like Salvador Vallejo, despite legal victories, Captain Archibald Ritchie eventually left the Suisun Rancho due to squatters. To escape the problems with squatters, Ritchie purchased a small, 150-acre farm in Napa where he would no longer come into conflict with squatters. This small farm was where he lived until 1857, when he was killed in an accident involving a horse. (Currey, p. 5).

[30] Pitt, p. 230.

[31] Pitt, p. 282.

[32] Paul W. Gates, "Adjudication of Spanish and Mexican Land Claims in California." *Huntington Library Quarterly* (May 1958), p. 234.

[33] Pitt, p. 93.

[34] Gates, "Adjudication of Spanish and Mexican Land Claims in California," p. 234.

fifty cents per acre on plots that ranged from 100 to 640 acres despite not having to do any additional work for individual claims falling under the same land grant. [35]

Salvador Vallejo and Nicolas Higuera were just two of many Hispanic land speculators in Mexican California. The summary of land claims in California published as an appendix in *Reports of Land Cases Determined in the United States District Court for the Northern District of California* also lists the original grantee, the date of the original grant, and the 1851 claimant for all 813 land claims. An analysis of this data shows that many of the grants in northern California were part of a growing trend of land speculation in the northern part of the state during the 1840s.[36] Land speculation included the sale of entire recently secured grants and the division of grants into smaller subdivisions for sale.

The original grantees or heirs of the original grantee submitted 182 (43%) of the claims made in northern California. This means that 57% of northern California claims to the land commission were not owned by the original grantee (or his/her heirs). Of the original grantees making claims, 34 were non-Hispanic (19% of non-Hispanic claims) in 1851 which shows that most original grants were not given to Anglos, but a significant number of land sales by Hispanics to non-Hispanics took place prior to1851.[37] The actual dates of grants in northern California are also revealing. Of the 813 claims made in

[35] Gates, "Adjudication of Spanish and Mexican Land Claims in California," p. 234.
[36] Ogden Hoffman's summary also provides data for southern California. While instances of land speculation can be found in southern California, it is significantly less common than what took place in northern California during the same period. In general, ranchos that remained in specific families were common in southern California and subdivision and sale of land grants were common in northern California during the 1840s.
[37] Hoffman, Appendix A, pp. 1-109.

California, 453 were lodged between 1841 and 1846 while 277 of these came about between 1844 and 1846.[38] Of the 428 total claims made in northern California, only eleven claims concerned land grants received during Spanish rule. All of these older grants were made by Hispanics and eight claims were made by the heirs of the original grantee. This indicates that these claims were in keeping with the traditional historical narrative of working ranchos long held by families who attained the land between 1795 and 1821. However, these eleven claims only constitute 2% of the total claims made in northern California.[39]

The remaining claims occurred after the mission system was ended by the Mexican government and mission lands were redistributed. During this period, land grants increased significantly with 170 grants given in northern California between 1831 and 1840. Of these grants, twelve were granted to non-Hispanics and eight of these twelve submitted claims in 1851. The remaining 158 grants were given to Hispanics.

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[38] Paul W. Gates, *California Ranchos and Farms 1846-1862* (Madison: The State Historical Society of Wisconsin, 1967), p. 7.

[39] Hoffman, Appendix A, pp. 1-109. California between 1840 and 1880 was in the midst of a radical and complex transformation politically, economically, and socially. I limit my analysis to northern California in order to provide a more in-depth study. Analysis of northern California is especially important because changes came about quickly and the causes of success and failure are clearly identifiable because of the political and economic stress associated with the rapid population growth. Changes in southern California were generally more gradual and therefore, cause and effect may be harder to identify. The end of traditional ranching culture in southern California was much more gradual while change was almost immediate in northern California. All of the statistical data for this chapter was taken from Ogden Hoffman's appendix that summarizes all relevant information regarding every grant claim in California. Because Hoffman's appendix provides detailed information regarding the history, ownership, and sale of specific land grants, the information is important in proving that economic change began in northern California in the decade before the Gold rush. By looking at when the grant was created and how many of the original grantees retained their land, it is possible to conclude how grantees intended to use their land as a rancho to be kept or an investment to be sold. Hispanic and non-Hispanic claimants were determined by surname. Hispanicized Anglos were counted as non-Hispanic. Names that were not clearly Hispanic or non-Hispanic were checked by referencing information about parents on census.

However, by 1851, only 84 Hispanics made claims on grants issued between 1831 and 1839 in northern California. The other 86 claims were made by non-Hispanics which indicate that much of this land was valued primarily as a real estate investment and had never been substantially used as a rancho by the original grantee for any significant period of time if at all.[40]

The majority of northern California claims made to the California Land Commission in 1851 had been granted in the 1840s. In the last six years California remained under Mexican control, 247 grants (58% of claims made in northern California) were issued in northern California. Of these late grants, only 43% of the original owners still owned the land in 1851.[41] This is significant because it shows that in less than a decade, 58% of these grants were sold or conveyed to others shortly after being obtained from the governor. As a result of so much land being sold, half of these later grants were owned by non-Hispanics in 1851 although 77% of the grants were originally issued to Hispanics.[42] This indicates that these late grants were overwhelmingly seen as an investment by Hispanic land speculators selling land mostly to non-Hispanics.[43]

The sale of land during this tumultuous period was potentially very lucrative. An article titled "Inflation and Reaction" in the April 19, 1851 issue of *The California Gazette* published in Benicia discussed this potential. The article calls 1845-1850 a "golden era" due to the "unexampled rise in real estate" which included the sale and

[40] Hoffman, Appendix A, pp. 1-109.
[41] 77% of these recent grants were given to Hispanics while 23% were granted to non-Hispanics.
[42] Hoffman, Appendix A, pp. 1-109.
[43] This also creates complications for the Land Commission because it was often unclear if the required improvements and occupation requirements were met to validate these grants by the original grantee or the subsequent owner of the grant.

rental of land. The article goes on to lament the fall in the value of land due to litigation started as a result of the 1851 California Land Act which was passed the month prior to the publication of this particular article. The author recounts how individuals (mostly but not exclusively Hispanic) who sold land during this period made a great deal of money, but individuals (mostly but not exclusively non-Hispanic) who bought land at high prices in the hopes of selling it for a profit were struggling to remain solvent as a result of depressed land values brought on by the 1851 Land Act.[44] Interestingly this article makes no mention of race or nationality in relation to land or complications caused by the 1851 Land Act.

Unlike Salvador Vallejo and Nicolas Higuera, who used land speculation to obtain economic success from their land grants, Cayetano Juarez and John Wolfskill found success by farming on their land grants. Cayetano Juarez obtained his land grant from the Mexican government as a result of his successful military service in the Mexican Army. In return for his loyal service, he obtained an 8,865-acre land grant in Napa County, California in 1841. With this land grant, Juarez established Rancho Tulucay and quickly began profiting from the established market for cattle hides and tallow (fat) that supplied tanneries in the Eastern U.S. and Europe. [45] His success continued through the Mexican American War and the transition to U.S. statehood in 1850.

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[44] *California State Gazette,* No. 2, 19 April 1851.

[45] Ogden Hoffman. *Reports of Land Cases Determined in the United States District Court for the Northern District of California, June Term 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert), Appendix A, p. 18.

Juarez successfully defended his land grant before the California Land Commission in 1853 and the Northern District Court in 1856 and received a patent for his grant soon after. By 1860, Juarez still owned 3,000 acres of his original land grant and was already beginning to make the transition to a crop-based form of farming. Juarez was married and had seven children who all lived at home. His oldest son worked on the farm while two other adult sons worked as laborers. A fourth son worked as a salesman. His two younger sons and younger daughter were listed as "at home," but most likely still assisted with farm work as they grew older.[46] Census and Agricultural schedules show that there were no other full-time laborers on his farm other than himself and his oldest son. They did however hire temporary labor for a total of 26 weeks a year.[47]

In addition to owning 100 horses, 25 milk cows, 12 oxen, 125 cattle, and 120 sheep, Juarez also produced 80 bushels of Corn, 40 tons of hay and 50 bushels of barley in 1860.[48] By the time Juarez was 70 years old in 1880, he had almost fully altered his operation from a livestock-based farm to a crop-based farm. In 1880, he owned 1,100 acres of his original grant. He still owned 8 horses, 9 mules, 8 milk cows, 8 cattle, and 8 calves. This precipitous decline in livestock was counterbalanced by an exponential increase in crops. In 1880, Tulucay produced 70 tons of hay, 160 bushels of corn, 2,920 bushels of Barley, 1800 bushels of potatoes, and 700 bushels of wheat.[49]

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[46] U.S. Census Bureau, "Inhabitants in the County of Napa in the state of California: 1870."
[47] U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1870."
[48] U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1860."
[49] U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1880." Juarez's son, Dolores, owned a farm next to his father in 1880 with his wife and two-year-old son Roy. Unfortunately, he was not listed on the 1880 Agriculture Schedule so there is no way to determine how much acreage his father deeded to his son by 1880 and how productive Dolores was as a farmer (U.S. Census for Napa, Napa California: 1880).

Despite the accepted narrative that Californios were dispossessed of their land, Cayateno Juarez successfully adapted farming methods and products to the changing economy of the late nineteenth century and survived any damage done by squatters in the 1850s. His success continued until his death in 1883. While he had less land than in 1841, this was not because he had been expropriated. Rather, he made the self-interested decision to sell unneeded land when he transitioned from raising cattle to growing crops to include wheat. By the time Juarez was 70 years old in 1880, he had almost fully altered his operation from a livestock-based ranch to a crop-based farm. Although Cayetano Juarez only maintained 12.5 percent of his original claim, a cursory analysis of his economic output and estate value reveals a highly successful farm that was larger and more productive than most other farms in Napa County throughout the first thirty years of California statehood (see Table 2 for comparison of farm size).[50] His ability, foresight, and willingness to adapt and participate in the "great bonanza" of the wheat era in northern California from the late 1860s to the late 1880s along with protection of his individual property rights in U.S. federal court ensured his economic success.[51]

During the same time period, John Wolfskill maintained acreage on a similar scale to that of Cayetano Juarez. But, instead of transitioning from cattle to crops, Wolfskill diversified his agricultural exploits by adding a crop-based farm and fruit orchards to his pre-existing cattle business in neighboring Solano County, California.

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[50] U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1850-1880" Downloaded from Ancestry.com on Feb 4, 2015.

[51] David Vaught, *After the Gold Rush: Tarnished Dreams in the Sacramento Valley* (Baltimore: The Johns Hopkins University Press, 2007), p. 6. Despite Juarez's success, his wheat production was only a fraction of his Californio counterpart Demetrio Pena, in neighboring Solano County, who produced 4,000 bushels of wheat in 1870.

Originally born in Kentucky, John Wolfskill was not eligible to receive a Mexican grant due to his non-Mexican citizenship.[52] In 1842, he asked his brother William Wolfskill, who was a Mexican citizen, to petition the Mexican governor for a grant. Although not the owner, John occupied, improved, and developed the grant of Rio de los Putos while William retained ownership. John eventually bought 8,700 acres from William in 1849.[53] When the claim went before the California Land Commission in 1854, he had a strong case which was easily confirmed.[54] Throughout the 1850s, John sold parts of his grant to family members and a multitude of unrelated individuals.[55] There are also many examples where members of the Wolfskill family bought land from others during this period and resold the land at a later date. The Solano County Deeds Index lists 86 different deed transfers involving the sale or purchase of land by the Wolfskill family between 1849 and 1868.[56]

John married his wife in 1858 and they lived on the farm with four children who became adults in the 1880s.[57] In 1850, Wolfskill owned 8,700 acres where he maintained 200 horses, 7 mules, 20 milk cows, 10 oxen, 150 cattle, and 50 pigs. He produced no

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[52] Although John Wolfskill lived for a decade in New Mexico and a decade in southern California, he never applied for Mexican citizenship like his brother William. One possibility is that he did not seek citizenship due to the requirement to convert to Catholicism.

[53] Kristin Delaplane. "Echoes of Solano's Past: Wolfskill Family Set Tone for Solano's Future." Downloaded from http://bellavistaranch.net/suisun_history/wolfskill-konti.html on 15 Apr 15.

[54] Vaught, "A Tale of Three Land Grants," p. 144.

[55] "Solano County Deeds Index." The sale of land to other family members included William Wolfskill selling four deeds totaling 8,700 acres to John Wolfskill in 1849, four deeds to his brother Mathius in 1856; John Wolfskill selling two deeds to Mathius in 1853 and 1858 and one deed to Milton in 1860. S.C. Wolfskill worked and lived with John in 1860 but owned land which he sold to Milton Wolfskill in 1860

[56] "Solano County Deeds Index."

[57] The 1860 Census also lists S.C. Wolfskill and his family and 7 farm laborers as living with John Wolfskill. Wolfskill had a common-law wife named Carmelita Knight who died in 1852. He raised their child Edward along with the three girls named Belinda, Jenny, and Frances who he had with Sarah Cooper Wolfskill whom he married in 1858.

crops in 1850.[58] By 1860, John Wolfskill owned 6,600 acres of his original grant where he owned 250 horses, 5 mules, 20 milk cows, 2 oxen, and 175 cattle. But, in addition to his livestock, he also produced 1,000 bushels of wheat, 15 tons of hay, 200 pounds of butter, and 120 bushels of buckwheat.[59] By 1870, John Wolfskill reduced his land holdings to 5,000 acres. By 1880, he had a very diverse farm that grew slightly to 5,200 acres where he maintained 5 milk cows, 111 cattle, and 1,800 sheep. In addition to this livestock, Wolfskill's ranch produced 300 bushels of barley, 16,000 bushels of wheat, 1,100 bushels of peaches, and 100,000 pounds of grapes.[60] Similar to Juarez, Wolfskill took advantage of the wheat "bonanza" from the late 1860s to late 1880s and benefited from the protection of individual property rights provided by federal courts. In addition, he set his family up for inter-generational success by starting orchards and vineyards prior to the northern California "fruit boom" in the 1890s.[61]

Between 1850 and 1880, both Cayetano Juarez and John Wolfskill were economically successful farmers who maintained two of the three largest farms in Solano and Napa counties (see Table 2 for comparison of farm size). Both men significantly reduced their land holdings between 1850 and 1880 from an initial starting size of about 8,800 acres. In 1860 Juarez owned 3,000 acres of improved land. His sale of 2,000 acres over the next 20 years must have been profitable as a result of these improvements and the security that came with his patent. In 1860, Wolfskill owned 6,600 acres of which

[58] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1850."
[59] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1860."
[60] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880."
[61] Vaught, *After the Gold Rush,* p. 209

only 1,500 acres were improved. Over the next 20 years, he would sell 1,400 acres but invested in the improvement of the remaining land so that all 5,200 acres he owned in 1880 was improved land. By 1880, there was a marked difference between the two men in regards to total land owned. But it is undeniable that both prospered economically between 1850 and 1880 despite the insecurity resulting from the 1851 Land Act, issues with squatters, and taxes.[62]

These adaptations by both men made sense when looking at the economic change in California after 1849. Because of the significant increase in population due to the Gold Rush, the demand for cattle of any quality temporarily rose between 1848 and 1857. Rancheros sold cattle for high prices. Cattle that were only worth two or three dollars prior to 1848 often sold for anywhere between twenty-five and fifty-two dollars in the 1850s. The established ranchos in southern California met this demand by driving cattle north between 1851 and 1854.[63] However, they began meeting competition from Yankees driving cattle from Texas, Arkansas, and Missouri which began to lower cattle prices by the end of the decade in California. Individual ranchers began replacing native longhorns with stronger stock from the East. Complicating matters, the number of cattle in California grew from 262,659 head in 1850 to 1,233,937 in 1860. This combined with a sustained drought from 1854-1863 caused major issues with overgrazing and the loss of cattle for all ranchers in California. Those ranchers who survived these troubled times concentrated on improving the quality of their stock while simultaneously reducing the

[62] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880."
[63] Gates, *California Ranchos and Farms,* p.17.

number of cattle owned to a number that could be sustained by the environment and reserves of hay.[64]

Nicolas Higuera, Salvador Vallejo, Cayetano Juarez and John Wolfskill had two significant successes in common. First, all men prospered economically after California became a U.S. state as a result of their land grants from the 1840s into the 1870s.[65] Second, like all land grant claimants, they had to successfully navigate the land grant confirmation process established by the U.S. Congress following the Mexican American War. In order to succeed in court, all claimants needed to overcome the complications that resulted from the way in which the Mexican government issued grants.

There were several complications and confusion for the 1851 California Land Commission when adjudicating land grant claims. First, the authority to issue grants was delegated to individual governors who were limited to issuing grants consisting of no more than 48,712 acres. However, impresarios, such as John Sutter, received much larger grants for specific colonization purposes.[66] Second, once a governor issued a grant, he was supposed to send the grant to the ayuntamiento for confirmation.[67] But this step was often ignored in California during Mexican rule. Understanding this local administrative abnormality, the California Land Commission recognized grants without legislative approval if the grantee improved the land within one year of the issue date and used it for a total of five years. Even this occupation requirement was often overlooked at the end of

[64] Gates, *California Ranchos and Farms,* p. 22-26.
[65] Higuera was only successful to the end of his life as he died sometime between 1850 and 1860.
[66] William Morrow. *Spanish and Mexican Private Land Grants* (San Francisco: Bancroft-Whitney Company, 1923), p. 16.
[67] The ayuntamiento was the local municipal government/city council.

Mexican rule because many improvements in California were never verified officially until a claim was made before the 1851 U.S. Land Commission.

Third, grants were technically required to include a basic map as part of the petition, but very general verbal descriptions were often accepted during the Mexican era in lieu of a map. As a result, surveys were rarely conducted in California during Mexican rule and surveys made after 1851 were often contested by land owners of adjacent grants. Fourth, many grants were made without complete evidence of the title given to the petitioner and no consistently formal system of recording titles was established in California. Fifth, many grants were issued as "floating grants."[68] These legitimate grants only defined the size of a grant whose boundaries would later be established within a larger area and did not specify the exact location. These floating grants would be the cause of a great deal of land grant litigation because of disputes between owners of separate floating and standard grants within the same general area.[69]

Although Articles VIII and IX of the Treaty of Guadalupe Hidalgo included a guarantee of "full and complete protection for all property rights of Mexicans," the vague and imprecise methods of distributing land grants during the Mexican Period called into question general legitimacy of many grants. Grants that were found to be legitimate often left no precise way to determine size and boundaries which led to disputes over valuable land between grant holders.[70] The most problematic grants were those granted hastily in

[68] A floating grant, according to the *Judicial and Statutory Definitions of Words and Phrases,* is a "term applied to a grant of land by the [Mexican] government, the land not having been specifically selected; that is, a general grant of a certain amount of land, which is to be selected in the future by the grantee" (p. 2850).
[69] Morrow, pp. 17-18.
[70] Morrow. pp. 4-5.

the two years prior to the Mexican-American War.[71] These grants often lacked proper written proof of ownership, were fraudulently claimed with antedated documents signed by former Mexican alcaldes, exceeded maximum size according to Mexican law, or failed to meet the standard requirements for occupation by the owners within the required time period. Because of these complications, the U.S. Congress established a three-person commission to review California land grants in 1851.[72]

The findings of the California Land Commission were preliminary. Both grant holders in California and the U.S. Attorney General could appeal the decisions of the commission to one of two district courts in California and if necessary, to the U.S. Supreme Court. Once the courts confirmed a claim, the land needed to be surveyed before a patent could be issued. This was a difficult process because, according to Henry Halleck's 1849 report, many land grants were "at least very doubtful, if not entirely fraudulent." This was because of the "inchoate nature of titles, sketchy boundaries, and the failure of grants to conform to requirements of Mexican Law."[73]

Both the California Land Commission and the Northern and Southern District Courts initially focused on "strict observance of Mexican law" to ascertain whether a claim was to be confirmed or rejected.[74] In the ruling on the Cruz Cervantes land claim, land commissioner Harry Thornton reviewed the "foundations" of any opinion given by the Land Commission. In his summary, Thornton stressed that the commission's

[71] By 1846, there were approximately 500 ranchos in California. Half of these ranchos were granted after January 1840 (Fritz, p. 141).
[72] Morrow, p. 12.
[73] Christian G. Fritz. *Federal Justice in California: The Court of Ogden Hoffman, 1851-1891* (Lincoln: University of Nebraska Press, 1991), p. 137.
[74] Fritz, p. 134.

jurisdiction was limited to "any obligations imposed by treaty stipulation… concerning private property of the inhabitants… derived from the Spanish or Mexican Government… [and that] such duty ought to be most punctiliously performed." Thornton also stressed that "no distinction is noticed between different classes of claimants."[75]

However, in addition to formal Mexican Law, both the land commission and district courts took into account the informal nature of grants in California as well as local custom outside the letter of the law. This leniency manifested in two major breaks with formal Mexican Law concerning land grants. First, neither the California Land Commission nor the Northern and Southern District Courts rejected claims lacking legislative approval. If a grant was signed by the alcalde during the Mexican period, it was considered a valid title despite the fact that Mexican Law required the approval of the local legislature.[76] Second, both the land commission and district courts "gave wide scope for oral testimony to buttress or even substitute for a lack of documentation on the part of the claimants."[77]

This leniency was apparent in Mariano Vallejo's appeal to the Northern District Court for his claim to Rancho Yulupa. Vallejo acquired the claim from the original grantee, Miguel Alvarado, who received the grant in 1844. The California Land Commission initially rejected the claim because no evidence was presented to show that the land had been "improved" through construction of buildings or use for agriculture or

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[75] Harry Thornton. *Opinions Delivered by Harry I. Thornton, as one of the Commissioners of the Board to Ascertain and Settle Private Land Claims, in the State of California, under the Act of Congress of the 3rd of March 1851* (San Francisco: Francis A Bonnard, 1853), pp. 6-7.
[76] Fritz, p. 144.
[77] Fritz, pp. 142-144.

the actual location and boundaries of the grant. However, in his appeal to the Northern District Court in 1856, Vallejo provided the court a witness named Julio Carillo. Carillo testified that "he has known the lands of Yulupa since 1838… [and] that Alvarado built a house on the land, and occupied it with cattle and horses in 1843 or 1844." Carillo's testimony also outlined the boundaries of the rancho. Although there was no sign of any improvements made to the land in 1856, Judge Hoffman ruled that the testimony of Carillo "sufficiently… removes the only objection urged to a confirmation of the claim." Hoffman also accepted the boundaries described by Carillo because they did not conflict with surrounding land grants.[78]

This leniency was extended even further after 1855 when the U.S. Supreme Court ruled on appeals for Las Mariposas by John C. Fremont and Rosa Morada by Cruz Cervantes. Both claims were rejected by Ogden Hoffman because he saw "a 'total neglect' on the claimant's part to comply with any of the conditions (including habitation on the land within one year) for at least five and possibly eight years after the concession."[79] In Hoffman's opinion, this constituted abandonment of the grant which breached the contract between the grantee and the granting alcalde.

However, the U.S. Supreme Court majority opinion written by Chief Justice Roger Taney disregarded the previous precedents from Florida and Louisiana land grant cases used by Hoffman in his rulings and set a new precedent for California grants. Taney overturned Hoffman's rulings and supported the confirmation of the Fremont and

[78] Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term, 1853 to June Term 1858, Inclusive,* pp. 174-175.
[79] Fritz, p. 147

Cervantes claims. Taney supported his decision by explaining that California land grants were mostly rewards for military service. Because of this, the requirements for occupation and improvement outlined by the Mexican government did not invalidate the grants.[80] The Fremont and Cervantes cases together were used as the precedent for future land claims made in the district courts and U.S. Supreme Court.[81]

U.S. Attorney General Caleb Cushing did not agree with the lenient precedent established by the U.S. Supreme Court and appealed an overwhelming number of cases between 1852 and 1856. However, a limited number of prosecutors unable to handle the large case load and associated archival research led to the dismissal of many of Cushing's appeals because of a failure of the government to prosecute the cases. In an effort to show some progress in the resolution of land claims, Cushing began dismissing cases

[80] Fritz, p. 150. The leniency applied to land claims due to the ruling of the Taney Court did not guarantee confirmation of all claims when fraud was suspected. An example of this are the claims of the Americans Henry Teschmaker, Joseph Thompson, George Howard, and Julius Rose. These Anglo men made a claim to the California Land Commission for La Lugana de Lup-Yomi in Napa. Their claim was supported by testimony from both Mariano and Salvador Vallejo. Teschmaker's grant was initially rejected by the California Land Commission on the grounds that the grant was abandoned according to Mexican law. But, after the Supreme Court rulings of the Fremont and Cervantes cases, the Northern District Court approved the claim to abide by the new Supreme Court precedent. However, the U.S. Attorney General appealed this ruling to the U.S. Supreme Court due to suspected fraud. The U.S. Supreme Court ultimately rejected the confirmation because of the conflicting testimony of Mariano and Salvador Vallejo between their statements to the land commission and district court, evidence that signatures on the grant were ante-dated, and the "remarkable" absence of any mention of the grant in official documents of the Mexican government. This example is an example of two aspects of California land grant litigation in the 1850s. First, it shows the political and financial cooperation between elite Californios and Anglo speculators. Second, it shows that the U.S. court system did not give special preference to Anglo land grant claimants (*U.S. v. Henry Teschmaker, Joseph P. Thompson, George H. Howard, and Julius K. Rose.* U.S. 22 How. 392 (1859)).

[81] Fritz, p. 148-149; Hoffman specifically references the Fremont Case as precedent in claims by Charles Weber, Anastasio Chobolla, Antonio Maria Pico, Janes Noe, Andres Pico, and Sebastian Nunez. Although not specifically cited in other cases, the precedent is clear in his rulings after 1855. Several summaries of cases confirmed by Hoffman state that Hoffman personally felt the claim should be rejected but he was forced to confirm them due to the U.S. Supreme Court precedent established by the Fremont and Cervantes cases (Hoffman, Appendix A, pp. 1-109).

confirmed by the California Land Commission and district courts in his last year serving as attorney general. By March 1857, Cushing dismissed 434 of the 515 cases he had appealed to the district courts and U.S. Supreme Court.[82] Caleb Cushing's successor, Jeremiah S. Black, also worked towards a goal of having many of the remaining 81 California land grant cases rejected. Unlike Cushing, Black did not dispute the precedent of leniency established by the U.S. Supreme Court. Instead, Black focused on exposing fraud, forgery, and perjury in California land titles. Using this strategy, Black more successfully obtained rejections by the courts between 1857 and 1860.[83]

In total, the U.S. courts confirmed 618 California claims out of 813 brought into adjudication.[84] In northern California, 428 total claims were made to the Land Commission.[85] Out of this total, 218 were made by non-Hispanic claimants, 208 by Hispanic claimants, and two by Native Americans. The initial rulings of the land commission slightly favored Anglos over Hispanics in northern California. Of the initial land commission rulings, 49% of Non-Hispanic claims were rejected while 58% of Hispanic claims were rejected. Although severely over-stating the different initial

[82] Fritz, pp. 158-163.
[83] Fritz, p. 163-164.
[84] R.H. Allen. "The Influence of Spanish and Mexican Land Grants on California Agriculture." *Journal of Farm Economics* (Oct 1932), p. 679.
[85] This number excludes claims for pueblos which includes communal grant claims for Sacramento, San Francisco, Sonoma, and Sonora. They also excluded claims for six city lots. I excluded these numbers for two reasons. First, they represent a relatively small acreage. Second, I did not want them to skew numbers since all were either confirmed or withdrawn by the claimant. A separate study of city lots and their adjudication on the state level is important to understanding the philosophical struggle between those who based property ownership on the Lockean philosophy supporting pre-emption versus those who believed in contract supremacy. This issue will be addressed in chapters 2 and 4 with the discussion of New Mexico ejidos. Also, I use the term "claims" as opposed to "grants" because there are a much greater number of claims because many original grants had been subdivided and sold prior to 1851.

outcomes between Hispanics and non-Hispanics, Kim David Chanbonpin is most likely correct that this discrepancy was due to Hispanics hiring unqualified lawyers, having issues with language, and not fully understanding U.S. court procedures. But, in direct conflict with Chanbonpin's assertion that higher courts overturned even the few confirmations given to Hispanics, the actual data reveals that the Northern District Court reversed twenty-two cases rejected by the commission for non-Hispanics and thirty-three cases rejected by the commission for Hispanics.[86] When looking at the status of land grants after appeals were completed to the Northern District Court, 34% of non-Hispanic claims were rejected while only 33% of Hispanic claims were rejected.[87]

Another assertion made by Chanbonpin that completely misinterprets actual events is the influence of the land claim by John C. Fremont. The ruling on the Las Mariposas land claim was not an example of how the courts treated non-Hispanics in a different manner than Hispanics as Chanbonpin argues. A more careful reading of court rulings shows that the U.S. Supreme Court ruling in the Fremont case set a precedent for the courts to be lenient regarding proof needed to confirm a claim for both Hispanics and non-Hispanics. Hoffman specifically references the Fremont Case as precedent in claims by Charles Weber, Anastasio Chobolla, Antonio Maria Pico, Janes Noe, Andres Pico, and

[86] See Introduction (California Historiography) for a summary of Chanbonpin's argument.
[87] Ogden Hoffman. *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert), Appendix A, pp. 1-109. Appeals to the U.S. Supreme Court were also favorable to the claimants. In total, the U.S. Supreme Court rejected 32 claims totaling 700,000 acres. Of these 32, 18 were appeals initiated by either Attorney General Cushing or Black for cases confirmed by the District Courts. Of these 18, the U.S. Supreme Court ruled in favor of the original claimant in 16 of the 18 cases (Pitt, p. 118).

Sebastian Nunez. Although not specifically cited in other cases, the precedent is clear in all his rulings after 1855.[88]

By 1861, 32 (16%) Hispanic owned claims were patented and 33 (15%) non-Hispanic claims were patented and the status of the overwhelming majority of cases had been settled by the courts.[89] The similarity in results between Hispanic and non-Hispanic land claims by the California Land Commission, Northern District Court, and U.S. Supreme Court does not support the widely accepted assertion of a corrupt court system motivated by racial bias found in the work of D. Michael Bottoms, Susan Lee Johnson, and Kim David Chanbonpin.

Instead, the initial standard set by Ogden Hoffman to rule in accordance with Mexican law and the terms of the grant was in keeping with John Marshall's belief in contract supremacy.[90] Hoffman's rulings are clearly influenced by the precedent set by John Marshall in that Hoffman saw the land grants as a contract between the Spanish or Mexican governments and the original grantee. If all obligations within the contract were upheld, Hoffman confirmed the claim and discounted the interests of any party without a legal stake in the contract/land grant. Chief Justice Roger Taney went beyond the precedent of the contract clause in his ruling on the Las Mariposas land grant. In his decision, he embraced the ideal of protecting individual property rights by looking beyond the contract to the intention of the Mexican government making grants as

[88] Hoffman, pp. 1-451. The claim by Cruz Cervantes was very similar to the Fremont claim and was sent through the adjudication system simultaneously with the same result. Several of the early cases looked as if they were paired up (one Anglo and one Hispanic claim) and sent through the appeals system simultaneously with similar results for both.
[89] Hoffman, Appendix A, pp. 1-109.
[90] See Chapter 3 for detailed discussion of contract supremacy.

payment for military service. This ruling is clearly influenced by a classically liberal belief in protecting individual rights that stretches the intent of the contract clause.

In his resistance to the confirmation of so many grant claims, Attorney General Caleb Cushing showed that he shared a similar point of view with Ogden Hoffman and his use of the contract clause in the U.S. Constitution. Cushing's actions indicate that he personally felt that only claims that had lived up to the obligations within the contract/land grant should be confirmed. Attorney General Jeremiah Black's actions seem to share Justice Taney's belief that individual rights were paramount in the interpretation of land grants for two reasons. First, he did not dispute Taney's precedent of prioritizing the intention of the grant over the specific details of the contract. Second, his focus on exposing fraud, forgery, and perjury in California land titles most likely derived from his belief that he was protecting the individual rights of the legitimate grantees (and squatters making improvement on what should be public land) over those trying to infringe on their rights through illegal acts. Despite the debate and legal battles over California land grants, the officials on the congressionally appointed California Land Commission, the district court judges, the U.S. Supreme Court, and two U.S. attorneys general all argued within a framework based on classical liberalism and the supremacy of individual rights over other more communal interests at the local, state, and national levels.

In addition to securing successful claims in court, all land grant owners, regardless of ethnicity, faced the issue of squatters. A significant number of individuals and families who came to California during the Gold Rush eventually transitioned to

farming by the last half of the 1850s. Because many of the land grants were still under adjudication by the land commission and federal court system, only a small portion of land in California was available for sale as small and mid-scale farms. The status of most arable land in the 1850s was unknown because final decisions had not yet determined what land was in the public domain and what land was owned privately. Other land was left unused by absentee owners (speculators) waiting for the best conditions to sell. Those who wanted to start farming simply "squatted" on unoccupied land that was in dispute or neglected by an absentee owner and hoped for a favorable outcome in the courts. In the years before a final decision on confirmation, squatters built homes, built farms, and made other improvements on what they considered unused land.[91]

Squatter violence against land owners was also not uncommon. All of the large land holders in Solano County had issues with squatters such as those who "ousted Captain A.A. Ritchie from the entire Suisun Ranch… and squatted extensively on the Ranch of Vaca and Peña… on the ranch of Wolfskill… and on the Suscol Ranch claimed by General Vallejo, and portions of it claimed by his grantees." John Moore Currey described the squatters as "particularly bitter against Captain Ritchie." He also described how squatters gained a majority in the state legislature and secured passage of laws for "their benefit and advantage" but were thwarted by rulings in the state and federal courts. Just like Salvador Vallejo, Captain Archibald Ritchie won the legal battle for his grant, but eventually left the Suisun Rancho to escape the problems with squatters. Ritchie purchased a small, 150-acre farm in Napa where he would no longer come into conflict

[91] Pitt, pp. 83-96.

with squatters. This small farm was where he lived until 1857, when he was killed in an accident involving a horse.[92]

Because of their large numbers, representatives supporting squatter rights quickly gained a majority in the state legislature.[93] One pro-squatter bill that was passed into law by the California legislature in 1856 ordered that all land grants still pending a decision in the federal courts were to be immediately converted into public land controlled by the state of California. Despite popular support by California's anti-monopolist squatters, this law was struck down by the California State Supreme Court the next year.[94] This example aptly shows the rising grass roots, anti-monopolist sentiment which was over ruled by the state courts, federal courts, and U.S. Attorney General in the late 1850s in defense of the individual rights of all land grant owners regardless of ethnicity. These unelected state and federal entities upheld the classically liberal belief in the "sanctity of contract" and the Marshall Court understanding of property rights.[95]

Although not prominent, there were some Native American land claims that were adjudicated in California. Just as they had for Anglo and Hispanic claimants, the

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[92] John M. Currey. "Spanish Land Grants in Solano." *The Solano Historian,* Vol. VI No. 2 (December 1990), p.5.

[93] Currey, p. 4.

[94] Pitt, pp. 117-118. At almost the same time, the U.S. Attorney General dropped all appeals to the U.S. Supreme Court challenging land grant claims already confirmed by the land commission or federal district courts which essentially ended the long wait for confirmation of most grant claims.

[95] While the court system protected the individual rights of land grant owners prior to 1877, Henry George and other future Populists used their failures in the fight over land monopoly in California to develop a more potent and successful strategy based on organizing politically at the national level after 1877. Access to the battleground of national politics and control of national law was the only way to fight corporate monopolies dominating the economy through politics during the late nineteenth century. The struggle between the anti-monopolist Populists against both land and business monopolies would propel many interest groups throughout the country to embrace the philosophy of utilitarianism (See Chapter 3).

California Land Commission, the district courts in California, and the U.S. Supreme Court recognized Native American individual contract rights when adjudicating land grants claims in California. There were four claims made either by or on behalf of Native Americans. The first claim was made by Archbishop Joseph Sadoc Alemany on behalf of the "Christianized Indians formerly connected with the Missions of Upper California."[96] In addition to submitting claims for the substantially reduced mission lands owned by the church after Mexican secularization, which were all confirmed, Alemany made a claim for one league of land in each of the 21 missions to be given to Native Americans who worked on the missions prior to Mexican secularization. Because there was never any legal contract between the Native Americans living on the missions and the Mexican government or the Catholic Church before or after secularization, there was no legal precedent to confirm the claims without breaching the agreement regarding Mexican property in the Treaty of Guadalupe Hidalgo. Therefore, the California Land Commission rejected the archbishop's claim in 1855 in accordance with the Treaty of Guadalupe Hidalgo and Mexican land law.[97]

Three other more standard claims involving Native Americans were made to the California land commission. Two were confirmed and one was rejected. John Sutter successfully submitted a claim for four leagues in Sacramento County on behalf of the Moquelumne Indians. Also, an individual Native American named Simeon successfully claimed a small plot of land in Los Angeles County. However, a claim for 1 league in

[96] Hoffman, p. 323.
[97] Ogden Hoffman. *Reports of Land Cases Determined in the United States District Court for the Northern District of California, June Term 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert), p. 323.

Marin County presented to the land commission by Timothy Murphy on behalf of the San Rafael tribe was rejected.[98]

Although not involving a Native American claimant directly, a fifth case had a much larger impact on the status of Native American individual property rights than the previous four. In 1852, Archibald Ritchie made a claim for a four-league grant named Suisun. Suisun was originally granted to Chief Solano, a Native American, in 1837. Solano sold the grant to Mariano Vallejo in 1842, who then sold the grant to Captain Ritchie in 1850.[99] Ritchie's claim was initially confirmed by the California Land Commission. In successive appeals, the Northern District Court and U.S. Supreme Court each confirmed the original ruling. In their summary of *U.S. v. Ritchie*, the question the Supreme Court considered was whether or not Chief Solano could hold, own, and sell real property given that he was Native American.[100] The court ruled to confirm Archibald Ritchie's claim because they believed that "By the laws, usages, and customs in California, all persons, without any distinction between races [to include Native Americans], had a capacity to take and alienate lands" as any other citizen could at the time the grant was made.[101] The court specifically referenced the Mexican Plan of Iguala that "recognized an equality amongst all the inhabitants, whether Europeans, Africans, or

[98] Hoffman, Appendix A. pp. 1-109.
[99] *U.S. v. Ritchie.* 58 U.S. 17 How. 525 (1854), p.537.
[100] This is a clear example of the binary understanding of race during the 1850s. The court was trying to decide which side of the binary (white or black) Chief Solano should be placed. See Chapter 3 for a more detailed discussion of evolving racial constructs in the U.S.
[101] *U.S. v. Ritchie*, p. 529

Indians" and the Mexican decree of 1824 which "recognized the citizenship of the Indians, and their right to hold land."[102]

In addition to referencing Mexican laws regarding the citizenship of Native Americans, the Supreme Court also noted that U.S. treaties with "different tribes of Indians" allowed Native Americans and their descendants to "take individually" land in "fee-simple" in the United States.[103] The court also asserted that there was a general equality of Indians to Europeans by stating that Indians possess "the natural rights of holding, acquiring, and alienating property, real and personal, including the rights of marriage and descent" in the U.S. As an example, they highlighted the descendants of Pocahontas and John Rolfe whose "descendants have held and now hold places of honor and profit, and large estates, real and personal."[104] The opinion of the court strongly supports the belief that all Native Americans in 1850 should be considered citizens in regards to property rights.[105]

Although this case set a precedent regarding Native American individual property rights, it did not settle questions regarding Native American communal land such as Pueblo land in New Mexico. Because Suison was owned individually and Pueblo lands in New Mexico were owned communally, the Supreme Court specifically stated in

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[102] *U.S. v. Ritchie*, p. 525. The Supreme Court also placed a high value on the Plan of Iguala by comparing its importance to that of the Declaration of Independence of the United States (U.S. v. Ritchie, p. 540).
[103] *U.S. v. Ritchie*, p. 530.
[104] *U.S. v. Ritchie*, p. 530.
[105] The Supreme Court of the Territory of New Mexico revisited the Ritchie case in 1869 in the U.S. v. Lucero majority opinion. In this opinion, Justice Watts wrote that the Ritchie case showed that "These solemn declarations of the political power of the government had the effect necessarily to invest the Indians with the privileges of citizenship as effectually as had the declaration of Independence of the United States of 1776 to invest all those persons with these privileges residing in the country at the time, and who adhered to the interest of the colonies." (*U.S. v. Lucero,* 1 N.M. 422. Jan 1869*).*

the *Ritchie* case that "the lands in question [Suisun] do not belong to the class called 'Pueblo lands,' in respect to which we do not intend to express any opinion, either as to the power of the authorities to grant or the Indians to convey."[106]

Unlike Hispanic claimants, there is no indication in the census or agricultural schedules that Native Americans participated in the economic success of both Hispanics and Anglos between 1848 and 1877 in California despite generally fair rulings regarding land claims. Instead, the few Native American grantees sold their grants out of necessity while all Native Americans either subsisted through menial labor in towns and ranchos or lived independently outside the control of the new state of California where, according to Hubert Howe Bancroft, they became the victims of one of "the last human hunts in history".[107]

Despite legal success in court, economic success was not guaranteed for Hispanic Californio and Yankee land claimants. One tragic example of this is the Las Tolenas Grant. Like the Vaca and Peña families, the Armijo family moved from New Mexico to California in the last decade of Mexican rule. José Armijo received a floating grant in Solano County of approximately 13,000 acres called Las Tolenas in 1840.[108] Tragically, José and his wife died suddenly from pneumonia in 1849 leaving their oldest son Antonio to take care of the rancho and his younger siblings who ranged in age from 11-23. In 1850, Antonio still owned all 13,000 acres of the original grant worth $15,000. On this

[106] U.S. v. Ritchie. p. 541.
[107] Bottoms, p. 27. Benjamin Madley's book titled *American Genocide: The United States and the California Indian Catastrophe* provides a detailed analysis and summary of events of the treatment of Native Americans in California under Mexican and U.S. rule.
[108] Hoffman, Appendix A, pp. 1-109.

land he maintained 25 horses, 15 mules, 7 milk cows, 20 oxen, 725 cattle, 26 sheep, and 25 pigs.[109] Only a year after the death of his parents, tragedy struck again when Antonio also suddenly died leaving the four remaining children to fend for themselves.[110] Not surprisingly, there is no further evidence of agricultural production by the Armijo's on Los Tolenas after 1850. But, much like the other land owners in Solano County, they received a relatively quick and favorable decision in the courts. After the Land Commission rejected the Las Tolenas grant claim in 1853, the Northern District Court confirmed it in 1856 and it was not challenged any further.[111] But this good news had little benefit to the Armijo children.

Because of their youth, it is likely true that they were vulnerable to unscrupulous, immoral, and opportunistic lawyers. According to an article published by the Solano County Historical Society, "The honest, trusting Armijos pinned too much faith in their attorney and as a result of his lethargy and love of his fishing tackle – and some say his bottle – lost much of their land and livestock."[112] A review of the Solano County Deeds Index supports this view. When looking at the real estate transactions of the Vacas, Peñas, and Wolfskills, there was a large volume of buying and selling land by these

[109] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1850."
[110] Sabine Goerke-Shrode. "Mystery of His Wealth Outlives Armijo." Downloaded from Historical Articles of Solano County Online Database on Feb 16, 2015 http://www.solanoarticles.com/history/index.php/weblog/more/mystery_of_his_wealth_outlives_armijo/
[111] Hoffman, Appendix A, pp. 1-109.
[112] Sabine Goerke-Shrode. "Mystery of His Wealth Outlives Armijo." Downloaded from Historical Articles of Solano County Online Database on Feb 16, 2015 http://www.solanoarticles.com/history/index.php/weblog/more/mystery_of_his_wealth_outlives_armijo/

families. In contrast, the Armijo children only sold land between 1849 and 1868. In a twenty-year period, the Armijo children sold off 62 separate parcels of land while their lawyers most likely benefitted from the loss of land by the Armijos.[113]

The continued corruption associated with Las Tolenas after the Armijo claim was confirmed might more rightly be attributed to unscrupulous lawyers than the Armijo children. Because Las Tolenas was a floating grant, there was a continued controversy over its boundaries. The original grant gave the Armijo's the right to select three leagues (approximately 13,000 acres) within a larger 30 league area. Prior to the Northern District Court ruling in 1856, the General Land Office sold 500,000 acres within the 30-league area to eleven Anglo settlers who began farms, submitted surveys for patenting, and thought their ownership was unquestioned. However, the lawyers working in the name of the Armijos claimed the land of these eleven Yankee settlers in their survey of Las Tolenas. With the improvements the farmers had made, the land was much more valuable than it had been previously. The Armijo's received their patent in 1868 and immediately evicted the farmers who had previously received patents for land that they had purchased from the government.[114] Tellingly, the Solano Archives Deeds Index shows that the Armijos sold no land between 1861 and 1867, but sold six parcels in 1868. In total, the events surrounding the confirmation of the Armijo claim proves that there were unscrupulous and immoral people in California who would take advantage of anyone, Hispanic or non-Hispanic, if there was enough of an opportunity.

[113] "Solano County Archives Deeds Index."
[114] Gates, "The California Land Act of 1851," p. 406-407.

Including the claims of Vallejo, Juarez, Vaca, Peña, Wolfskill, and Armijo, 65 land grant claims from Solano and Napa Counties were brought before the Land Commission between 1852 and 1853. Of these, only 11 claims were made by Hispanics. Almost all of the 54 Anglo claimants had bought land from Nicolas Higuera, Salvador Vallejo, or Mariano Vallejo who all came from traditional Californio families and profited from the planned sale of their grants. The only cases from Solano and Napa that were not resolved on the district court level and were appealed to the U.S. Supreme Court were the claims of the non-Hispanic owners H.F. Teschemacher and A.A. Ritchie, and the Hispanic co-owners Juan Manuel Vaca and Juan Felipe Peña.[115] The majority of the other land claims were resolved by 1857 without having to go to the U.S. Supreme Court. All landowners had to deal with the uncertainty of their land grants, squatters, taxes, and anti-monopolist state legislation favoring squatters. But they also received support for the removal of squatters once land grants were confirmed and state financial aid for modernizing farming techniques for both livestock and crops.[116] Despite many difficulties, survival and success depended on an ability to adapt economically to the decline of large-scale ranching based on cattle and had very little to do with the court system adjudicating land claims.

There is no doubt that many individual tragedies like the ones the Armijo family and the eleven Yankee settlers on Las Tolenas experienced came about due to the turbulent environment in California resulting from the Gold Rush, diverse population

[115] Hoffman, Appendix A, pp. 1-109.
[116] Gates, *California Ranchos and Farms,* p. 74.

growth, and adjustment to U.S. rule. Individual stories like the Armijo saga are undeniably numerous during this period in California. But, the presence of unscrupulous land speculators and lawyers is not evidence of a corrupt legal process designed by the U.S. federal government to take land from Hispanics in California as many historians assume. If anything, court results on the state and federal level reveals a classically liberal tendency to defend property rights over other political and cultural concerns in California prior to 1877. The California State Supreme Court showed this when they declared the 1856 land law passed by the California legislature unconstitutional.[117] The California district courts and U.S. Supreme Court also showed this tendency with their extremely lenient standards applied to land claims for both Hispanic and non-Hispanic claimants based on the terms and intent of the contracts they made with the Mexican Government prior to the Treaty of Guadalupe Hidalgo.

An economic comparison between similar Hispanic and Anglo landowners in California also indicates that there were many significant obstacles to economic success. But these obstacles were not insurmountable for Hispanic and Anglo landowners in California. Hispanic land speculators began selling newly acquired land in large quantities in the 1840s. The owners actively encouraged migration into California for their own financial benefit with the result of changing the small, traditional, and pastoral society early nineteenth century California was known for. Those Hispanic and Anglo farmers willing to adapt to a rapidly changing economy were successful and maintained large land holdings over multiple decades. Both groups reduced their land holdings

[117] Pitt, p. 118.

significantly in California because it was both economically beneficial to sell land and it was also necessary to remain economically viable in an agricultural economy increasingly centered on crops such as wheat, barley, grapes, and other fruits. Ranchers could also survive, but they also had to adapt to a more densely populated state, increased competition from the U.S. mid-west, and limited water and grazing resources in California.

The second-class status and dispossession narrative associated with Californio families is highly questionable prior to 1877. Californio families befriended Anglos, married Anglos, formed business partnerships with Anglos, were elected to state wide offices, and were listed as "White" on the U.S. Census.[118] Landless settlers who squatted on vast land grants, despised large land owners, pushed the California state legislature to implement property taxes designed to break up large land holdings, and championed anti-monopolism were a major problem for both Californio and Anglo land owners. A truly accurate account of events in California can only be told through a combination of perspectives that most definitely includes race and culture. But these factors need to be accurately combined with changing economic conditions and a comprehensive analysis of primary documents associated with the 1851 Land Commission, federal district courts of California and the U.S. Supreme Court in order to gain a more accurate understanding of events in California before 1877.

[118] The racial status of Californios on the census is important to this argument because it was not until the end of the nineteenth century that a more complex racial construct developed in the U.S. that placed some groups of Hispanics (often based on class) in a lower caste than Anglos in the U.S. It could be argued that Hubert Howe Bancroft and some twentieth century historians assume that the racial construct D. Michael Bottoms terms the "Aristocracy of Color" existed prior to 1877 when the racial construct of the time was generally understood as binary.

Table 1:Juarez, Peña, and Wolfskill Agricultural Production between 1860-1880
This chart summarizes the production of the Juarez, Peña, and Wolfskill farms. All three men drastically changed the types of goods they produced over a twenty-year period in order to remain successful in a rapidly changing economy. From the mid-1860s to the mid-1880s, wheat was a very lucrative cash crop which was the primary investment in northern California Agriculture during these decades.

Asset/ Production	Cayetano Juarez (1860)	John Wolfskill (1860)	Demetrio Peña (1870)	Cayetano Juarez (1880)	John Wolfskill (1880)	Demetrio Peña (1880)
Acres	3,000 Acres	6,600 acres	2,000 acres	1,100 acres	5,200 acres	1,800 acres
Horses	100	250	8	8	0	0
Mules	0	5	0	9	0	0
Milk Cows	25	20	2	8	5	1
Oxen	12	2	0	0	0	0
Cattle	125	175	0	8 (+ 8 Calves)	111	0
Sheep	120	0	0	0	1,800	0
Pigs	0	0	50	0	0	30
Corn	80 Bushels	0		160 Bushels	0	0
Hay	40 Tons	15 Tons		70 Tons	0	0
Barley	50 Bushels	0	2,000 Bushels	2,920 Bushels	300 Bushels	0
Potatos	0	0		1,800 Bushels	0	0
Wheat	**0**	**1,100 Bushels**	**4,000 Bushels**	**700 Bushels**	**16,000 Bushels**	**16,000 Bushels**
Grapes	0	0		0	100,000 lbs.	0
Peaches	0	0		0	1,100 Bushels	0
Butter	0	200 lbs		0	0	0
Buck Wheat	0	120 Bushels		0	0	0

Sources: U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1860 and 1880" and U.S. Census Bureau, "Productions in Agriculture in the county of Solano in the state of California: 1860, 1870, 1880." All data for this table was taken from U.S. Census Agricultural Schedules. The reason I don't list Peña's data for 1860 is that agricultural schedules were not comprehensively completed between 1850 and 1880. There is no data for Peña in 1860 and no data for Juarez in 1870.

Table 2: Farm Size in Napa and Solano Counties (1880)

The loss of property (measured in acres) is the metric most often used to prove the dispossession of Hispanic land owners after California became a U.S. state. This is an inaccurate measure since the Mexican government always intended for the large grants to be subdivided and sold. A metric that provides another point of view is a comparison of property holdings between Hispanics and non-Hispanics during the thirty years after California became a state. This comparison reveals that land holdings for Hispanics were comparable to non-Hispanics which supports the argument that a changing economy was the major reason for loss of property. It is also revealing to note that both Cayateno Juarez and Demitrio Peña were able to maintain land holdings well above the average for Napa and Solano Counties

1860 Napa, Napa Township	Average Farm Size: 769 acres	Average Hispanic Farm Size: 607 acres	Average Anglo Farm Size: 803 acres	Cayateno Juarez Farm Size: 3,000 acres
1880 Napa, East Napa Township	Average Farm Size: 284 acres	Average Hispanic Farm Size: 302 acres	Average Anglo Farm Size: 282 acres	Cayateno Juarez Farm Size: 1,100 acres
1880 Solano, Vacaville	Average Farm Size: 286 acres	Average Hispanic Farm Size: 845 acres	Average Anglo Farm Size: 268 acres	John Wolfskill Farm Size: 5,200 acres Demetrio Peña Farm Size: 1,800 acres Nestora Peña Farm Size: 500 acres
Source: U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California, 1880" and U.S. Census Bureau, "Productions in Agriculture in the county of Solano in the state of California, 1880." Hispanic and non-Hispanic claimants were determined by surname. Hispanicized Anglos were counted as non-Hispanic. Names that were not clearly Hispanic or non-Hispanic were checked by referencing parents place of birth on census.				

Table 3: Napa County Land Claims Divided by Decade of Original Grant

The example of Napa County shows the large trend of land speculation in Northern California prior to 1851. The table shows that the Mexican government only granted land in Napa during the last years of Mexican rule and that these late grants were quickly conveyed to non-heirs who were mostly non-Hispanic mainly due to the sale of land by Nicolas Higuera and Salvador Vallejo.

Age of Napa County Land Claims in 1851	Total Land Claims for Period	Claimant	Ethnicity of 1851 claimant	% of claims by non-grantee/non-heir	% of claims by grantee or family	% of all claims in Napa County
1-10 Yrs (Granted 1841-1850)	10	Grantee/heir: 5 Other: 5	Hispanic: 5 Non-Hispanic:5	50%	50%	19%
11-20 yrs (Granted 1831-1840)	44	Grantee/heir: 2 Other: 42	Hispanic: 4 Non-Hispanic: 40	95%	5%	81%
21-30 yrs (Granted 1821-1830)	0	Grantee/heir: 0 Other: 0	N/A	N/A	N/A	N/A
31 yrs and older (Granted prior to 1821)	0	Grantee/heir:0 Other:0	N/A	N/A	N/A	N/A
Total	54	Grantee/heir: 7 Other: 47	Hispanic: 9 Non-Hispanic: 45	87%	13%	N/A

Source: Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term, 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert, 1862), Appendix A, pp. 1-109. California between 1840 and 1880 was in the midst of a radical and complex transformation politically, economically, and socially. Napa County was selected as a case study because of its rapid population growth and transition to wheat and fruit production. Analysis of Napa and other surrounding counties in northern California is especially important because changes came about quickly and the causes of success and failure are clearly identifiable because of the political and economic stress associated with the rapid population growth. All of the data for this table was taken from Ogden Hoffman's appendix that summarizes all relevant information regarding every grant claim in California. By looking at when the grant was created and how many of the original grantees retained their land, it is possible to conclude how grantees intended to use their land as a rancho to be kept or an investment to be sold. Hispanic and non-Hispanic claimants was determined by surname. Hispanicized Anglos were counted as non-Hispanic. Names that were not clearly Hispanic or non-Hispanic were checked by referencing information about parents on census.

Table 4: Northern California Land Claims Divided by Decade of Original Grant

This table shows that 58% of land grants in northern California came in the last years of Mexican rule indicating that only 11 of 428 grants were used as long held family ranchos. The majority of the most recent grants were conveyed to non-family members (most of whom were non-Hispanic) in the short time between the original grant and the claim made before the 1851 land commission which indicates that the grant was seen as a real estate asset that was intended to be sold by the original grantee.

Age of Northern California Land Claims in 1851	Total Land Claims for period	Claimant	Ethnicity of 1851 claimant	% of claims by non-grantee/ non-heir	% of claims by grantee or family	% of all claims in Northern California
1-10 yrs (Granted 1841-1850)	247	Grantee/heir:107 Other: 140	Hispanic: 113 Non-Hispanic: 134	57%	43%	58%
11-20 yrs (Granted 1831-1840)	170	Grantee/heir: 67 Other:103	Hispanic: 84 Non-Hispanic: 86	60%	40%	40%
21-30 yrs: (Granted 1821-1830)	4	Grantee/heir:4 Other:0	Hispanic: 4 Non-Hispanic: 0	0%	100%	.93%
31 yrs and older (Granted prior to 1821)	7	Grantee/heir: 4 Other:3	Hispanic: 7 Non-Hispanic: 0	43%	57%	1.6%
Total	428	Grantee/heir: 182 Other: 246	Hispanic: 208 Non-Hispanic: 220	57%	43%	N/A

Source: Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California. June Term, 1853 to June Term 1858, Inclusive* (San Francisco: Numa Hubert, 1862), Appendix A, pp. 1-109. California between 1840 and 1880 was in the midst of a radical and complex transformation politically, economically, and socially. I limit my analysis to northern California in order to provide a more in-depth study. Analysis of northern California is especially important because changes came about quickly and the causes of success and failure are clearly identifiable because of the political and economic stress associated with the rapid population growth. Changes in southern California were generally more gradual and therefore, cause and effect may be harder to identify. The end of traditional ranching culture in southern California was much more gradual while change was almost immediate in northern California. All of the data for this table was taken from Ogden Hoffman's appendix that summarizes all relevant information regarding every grant claim in California. By looking at when the grant was created and how many of the original grantees retained their land, it is possible to conclude how grantees intended to use their land as a rancho to be kept or an investment to be sold. Hispanic and non-Hispanic claimants was determined by surname. Hispanicized Anglos were counted as non-Hispanic. Names that were not clearly Hispanic or non-Hispanic were checked by referencing information about parents on census.

CHAPTER TWO: SPANISH AND MEXICAN LAND GRANTS IN NEW MEXICO PRIOR TO 1877

Human society is not static. Changes occur in social relations as conditions change… Economic pursuits and changes in economic modes dictate changes in societal structure, and such changes in social relationships brought about by nontraditional forms of economy are evident.[1]

- Joe Sando

Like historians of California, historians of New Mexico claim that Hispanic and Pueblo Indian landowners lost, and Anglos won the legal and economic battles over land grants. They argue that this outcome resulted from an inherently corrupt and unfair system that worked against the rightful Hispanic and Pueblo Indian land owners in favor of Anglo businessmen, lawyers, and government officials. Malcolm Ebright's conclusion that "Hispanic property rights were not adequately protected [and] the perception of injustice held by many land grant heirs is largely justified" summarizes the undisputed narrative of land grants in New Mexico.[2]

Through a detailed analysis of judicial, economic, and political events taking place in New Mexico between 1840-1880, this chapter acknowledges that the standard narrative was accurate after 1877. However, it will make three conclusions not acknowledged by the standard narrative. First, the individual rights of Hispanic and Pueblo Indian claimants in New Mexico were recognized and defended by the New Mexico surveyors general, the U.S. court system, and U.S. Congress prior to 1877.

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[1] Joe Sando, *Pueblo Nations: Eight Centuries of Pueblo Indian History* (Santa Fe: Clear Light Publishers, 1998), pp. 5 and 35.
[2] Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994), pp. 51-52.

Second, the recognition of individual contract rights supported the efforts of Hispanics and Pueblo Indians to successfully continue their traditional social and economic systems in New Mexico prior to 1877. Third, the New Mexico surveyors general, the U.S. court system, and U.S. Congress readily recognized the legitimacy of communal property ownership prior to 1877.

To prove these arguments, this chapter relies on comparisons of judicial outcomes in land grant claims between established Hispanic communities, established Pueblo communities, established Anglo communities, and individual claimants in New Mexico. To do so, this chapter analyzes the findings of the New Mexico surveyors general and the actions of the U.S. Congress.[3] An analysis of several case studies and federal court cases will be used to prove that traditional Mexican and Pueblo political, economic, and social systems were protected by the U.S. government prior to 1877.

In order to properly understand the events in New Mexico during this period, it is important to identify both the similarities and differences of local circumstances regarding land grants between the two former Mexican states of California and Mexico. Similarities included the fact that land grants in both areas were mainly made up of rural ranching communities. Both territories also attracted a plethora of lawyers and speculators looking for any opportunity to make money because they were vulnerable to

[3] Unlike in California, land grant claims in New Mexico were originally not designed to include the federal court system. Instead of a land commission with the exclusive responsibility of confirming or rejecting claims which could be appealed in district court and possibly the U.S. Supreme Court; Congress legislated that the surveyor general's office of New Mexico would make preliminary decisions regarding the legitimacy of claims regarding ownership of Spanish and Mexican land claims in New Mexico. The surveyor general's decisions were then sent to the U.S. Congress which would make a final decision on whether to confirm or deny a grant claim.

corruption. Finally, in both California and New Mexico, land grant litigation caused tension between the former Mexican citizens who owned much of the land, Hispanic and Yankee squatters, and businessmen interested in the newly acquired territory.[4]

There are four key differences between land grants in New Mexico and California. First, New Mexico had older communities whose members mostly owned land communally (ejidos) while California had much more recently established communities whose members owned land individually at the time of the Treaty of Guadalupe Hidalgo. Second, California's population boomed as a result of the Gold Rush and California became a U.S. state just two years after the Mexican-American War ended. As a result of this development, the primary economic commodity of California shifted from cattle to wheat during the second half of the nineteenth century and land grant claims were settled quickly as a result of statehood. In contrast, New Mexico remained as a territory for over 60 years with little change in its subsistence economy based on cattle and communal land holdings in rural areas outside of the robust economies of Santa Fe and Albuquerque. As a result of this political, economic, and demographic stability, most land grant claims in New Mexico were not fully adjudicated until the beginning of the twentieth century.

Third, there was a distinct difference between the percentage of successful claims for Spanish and Mexican land grants between California and New Mexico. In total, 76% of land grant claims in California were successful and adjudicated quickly. California

[4] Squatters were primarily Anglo-American in California. However, in New Mexico most squatters were Hispanic squatters on Pueblo lands. Land speculators in both California and New Mexico were a combination of Anglo and Hispanic individuals.

confirmed 618 claims out of 813 brought into adjudication.[5] In stark contrast, only 22% of claims in New Mexico were successful by 1886. New Mexico confirmed only 46 claims out of 205 brought into adjudication by 1886 and those claims adjudicated after had almost no chance of a fully successful outcome.[6] Fourth, there were also social, ethnic, and racial differences between the typical land grant claimant in California and New Mexico. In California, claimants were made up of mostly individual Hispanic and Anglo ranchers and farmers who initiated claims in the 1850s.[7] In New Mexico, claimants were made up of Hispanic ranchers who owned land communally, Pueblo Indian communities, and Anglo and Hispanic speculators buying land (or making fraudulent claims) in the hopes of reselling it for a profit.[8]

The unique local understanding in New Mexico regarding property law developed with the influence of three distinct legal traditions. The first is early Spanish Castilian land law that developed as a result of the Reconquista in Spain. This was the basis for the property law that developed in the Spanish colonies in America. The second is the Native American influence of both Camanche domination of the area and Pueblo Indian traditions. The third is the influence of the U.S. legal and economic system. These three

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[5] R.H. Allen. "The Influence of Spanish and Mexican Land Grants on California Agriculture." *Journal of Farm Economics* (Oct 1932), p. 679.

[6] Phillip Gonzales. "Struggle for Survival: The Hispanic Land Grants of New Mexico, 1848-2001." *Agricultural History* (Spring 2003), p. 303 Claims adjudicated after this date were even less likely to succeed due to the 1897 Sandoval Supreme Court decision.

[7] While California did have many speculators, they were not as well established, organized or ruthless as those in New Mexico.

[8] Schemes by land speculators didn't not begin in earnest until the late 1860s. Fraudulent claims, such as the Mora land Grant, were not confirmed by Congress despite initial recommendations by later surveyors general who were often part of the scheme. However, dubious unclaimed paperwork claiming ownership were often sold by speculators to other speculators (Ebright, *Land Grants and Lawsuits)*.

influences combined to form a uniquely local system regarding land law that developed with informal precedents made without the benefit of trained lawyers.[9] As a result, land grants were issued based on local circumstances by officials with only the most basic understanding of Spanish law which led to local idiosyncrasies within New Mexico.

Spanish colonial traditions that contributed to land law in New Mexico were based on the system that developed in Spain at the conclusion of the Reconquista on the Iberian Peninsula. The Reconquista gave Spanish monarchs considerable power through the right of eminent domain. In order to settle newly conquered territory on the Moslem frontier, four types of land ownership were established in Spain. First, the monarchy offered large and small private land grants to nobles and commoners willing to move. Ownership of this type of land was clear cut and difficult to contest. However, in many areas of Spain, private land still maintained a communal character in that the public had the right to graze livestock on private grain fields after harvest. Second, land that wasn't distributed through royal decree remained in the hands of the crown. However, this land was initially opened to the public for hunting, fishing, pasture, firewood, and limited agriculture. Many of those who used the land, considered the land to be in the public domain despite its ownership by the Spanish crown.

A third type of land ownership was municipal land ownership. The crown gave land to municipalities but land was also often acquired when towns usurped adjacent royal property without permission from the monarchy. No matter how it was acquired,

[9] Joseph P. McKnight, "Law Books on the Hispanic Frontier" in *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Yuma: Sunflower University Press, 1989), pp. 74-75.

municipal lands were divided into two categories. The first was commons, which were reserved for free use by citizens of the town without regard of rank or class. The second was propios. This land was rented out by the municipality to finance the town treasury. Both were often used for the same purposes. Commons were also sometimes shared by two or more towns that made a common agreement to share land specifically identified as either commons or propios.[10]

Despite the official classification of these different types of land ownership, the communal system was under continual attack in Spain during the sixteenth and seventeenth centuries by all classes of society. Commoners who habitually used common lands for private purposes gradually privatized land that they used exclusively over an extended period of time; large landowners used prestige to grant others the rights to common lands that were not under their control; and the monarchy and municipalities also imposed rents on formerly free commons to raise money in financially difficult times. However, the communal system remained relevant in Spain into the nineteenth century due to tradition and legal precedent. This "muddled tradition" of tension between private ownership and communal rights went with the conquistadores to America "where the colonists embellished them with variations of their own."[11]

Native Americans influenced this Spanish tradition in New Mexico. While Native Americans were only a small footnote given little consideration in the development in

[10] David E Vassberg. *Land and Society in Golden Age Castile* (New York: Cambridge University Press, 1984), pp. 5-64. The distinct differences between types of communal land was not clear with ejidos established in New Mexico.

[11] David E. Vassberg. "The Spanish Background: Problems Concerning Ownership, Usurpations, and Defense of Common Lands in 16th Century Castile." In *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Yuma: Sunflower University Press, 1989), pp. 12-21.

California land grants, they were a major factor in New Mexico's development of land grants.[12] When the first Spanish settlers arrived in New Mexico in the early 1600s, their governor established the encomienda system, long used in the rest of Spanish America.[13] An encomienda was not a grant of land, but a grant of the fruits of Indian labor in a particular town or area.[14] These initial Hispanic settlers were not interested in farming, but instead were intent on living off of Indian labor and tribute. Over time, Hispanic settlers in New Mexico began asking for and receiving widely scattered and large land grants which they used for farming and cattle alongside encomiendas. In 1680, the Pueblo Indians of New Mexico successfully revolted against the oppression of the encomienda and expelled the Spanish from the region.[15]

The Pueblo eventually allowed the Spanish to return to New Mexico but, as a result of the Pueblo Revolt, the Spanish and the Pueblo peoples formed a much more equitable relationship at the start of the eighteenth century. This new relationship was based on a formal alliance defending against the raids of nomadic Indians such as the Pawnee, Apache, and Comanche; and the development of a new pattern of land use to replace the encomienda system. Spanish colonial governments in New Mexico allowed

[12] This is not to say that Native Americans had no impact politically, socially, or economically in California. Unlike New Mexico, most Native American groups in California were not included in the developing land grant system after the end of the Catholic missions. Instead, they either lived independently beyond Spanish communities or worked as semi-feudal laborers for California's rancheros and Anglo new comers. In his book titled *American Genocide: The United States and the California Indian Catastrophe, 1846-1873,* Benjamin Madley describes how the Native American population of California dropped from 150,000 to 30,000 between 1846 and 1873 due to genocide perpetrated by the citizens of California.

[13] Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press), p. 22.

[14] Ebright, *Land Grants and Lawsuits*, p. 14.

[15] Ebright, *Land Grants and Lawsuits*, p. 22.

the continuation of Native American legal customs because they did not have the hegemonic power in their territories to change them and needed strong alliances to defend against hostile Native American groups. This partnership encouraged a distinct division of control between Spanish settlements and Native American Pueblos in New Mexico. Although the Spanish asserted that all land in the American colonies was technically the property of the Spanish crown, Spain considered Native Americans as a privileged corporate class through the understanding that land could not theoretically be taken away from Native Americans who were not members of "wild tribes (barabaros chichimecas, indios de Guerra)."[16]

The land controlled by the Pueblo tribes of New Mexico was broken into three categories which included private lots, communal land, and family lots. The private and communal holdings were similar to those in Spain. But family lots were located inside communal holdings and were reserved exclusively for a specific family in perpetuity.[17] Pueblo land holdings were not controlled by the Spanish. Instead, they retained traditions and values that were recognized by the dominant Spanish rulers of New Mexico.

Pueblo communities were led by a theocratic leader known as a cacique. Subordinate to the cacique was the war chief who enforced rules, regulations, and

[16] From the point of view of the Spanish, all land in the colonies belonged to the crown. However, from the point of view of Native Americans, this was not the case.

[17] Guillermo F. Margadant, "Mexican Colonial Land Law." In *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Yuma: Sunflower University Press, 1989), pp. 85-90. Although legally protected, some communal and family holdings originally owned by Native Americans did transfer into Spanish hands due to native demographic decline which led to the formation of blended and more centralized Indian settlements and the abandonment of former communal Indian property. Also, the actual protection of Indian lands by the Spanish crown eroded in the eighteenth and nineteenth centuries as Spain became more focused on settlement through individual land ownership which decreased the motivation to defend legitimate Indian land claims.

ordinances of the theocratic system. War captains working for the war chief supervised traditional social activities which included ceremonial and social dances, recreational rabbit hunts, competitive footraces, and hunting game animals. In terms of the land, war captains were also responsible for managing farmland and domestic animals to ensure that domestic animals were separated from farmland throughout the community during the growing season.[18] Farming was managed through cooperation of extended families under the guidance of the war captains. Community members weeded corn fields collectively twice a year while individual families tended smaller gardens.[19]

The Spanish introduced the concept of a governor which the Pueblo incorporated into the traditional governing organization in a subordinate position to the cacique. The primary role of the Pueblo governor was to protect Pueblos from foreign intrusion. The governor and his aides also conducted all tribal business with the outside world to include coordinating with the Catholic Church for burials and maintenance of church property. The governor was also responsible for supervising, coordinating, and maintaining irrigation systems.[20] During droughts, officials under the governor supervised the irrigation of priority areas by tasking families to irrigate and clean community irrigation ditches.[21]

The governors of the Native American Pueblos represented their communities in the Pueblo Council which "guides the affairs of the whole people." According to oral

[18] Sando, pp. 12-14.
[19] Sando, p. 37.
[20] Sando, p. 15.
[21] Sando, p. 37.

history and Pueblo legends, the Pueblo council existed as far back as 1598 when the council met with Juan de Onate.[22] Key decisions of the council included allowing the return of the Spanish after the Pueblo Revolt of 1680, forming a defensive alliance with the Spanish against other raiding Indian tribes, and accepting the Spanish four square league land grants for each Pueblo at the end of the seventeenth century to deter encroachment by growing Spanish communities.[23] Despite initial attempts by the Spanish to force the Pueblo people into slave labor, the Pueblo economy and autonomous government persisted throughout the time of Spanish domination.[24] Also, historian and Jemez member Joe Sando explains that as a result of their post-1680 alliance, the Pueblo and Spanish "eventually became compassionate compadres; and the shared culture of the Pueblos and Spanish ultimately became the basis for the New Mexican culture as we know it today."[25]

After the Pueblo Revolt, Hispanic settlements were made up of small ranchos strung along the Rio Grande and its tributaries. Many of the first post-revolt grants were issued by Governor Vargas to individuals who had pre-revolt grants and wanted to resettle. The majority of these eighteenth-century grants were individual grants. It was not until the nineteenth century that community grants for Hispanics became prevalent in

[22] Sando, pp. 14-16. Despite documents appearing to be signed by Governor Domingo Jironza Petriz de Cruzate in 1684, there appears to be no evidence that land grants to the Pueblo were made prior to 1689. This caused some confusion in the adjudication of grant claims. While the Cruzate documents were proven inauthentic, other authentic documents from the same period supported the assertion that these grants were made by the Spanish empire.
[23] Sando, p. 108.
[24] Sando, p. 43.
[25] Sando, p. 166.

New Mexico.[26] However, Spanish authorities never formally codified land grant regulations. This only happened after Mexican Independence when the new republic passed the Colonization Law of 1824. [27] Malcolm Ebright explains that as a result of the lack of codification, there was confusion regarding ownership and disposition of New Mexican land grants. Many land grants seemed to be hybrids of an individual grant and ejido. Often as settlement progressed on a private land grant, its character would shift to become more like a community grant.[28]

Under Spanish rule in the late 1700s, most Pueblo and Hispanic settlers in New Mexico made a living by growing crops and raising cattle. This continued into the Mexican period and despite significant demographic decline, the Pueblo Indians remained a significant part of the land owning New Mexican population (approximately 33%) after 1821.[29] However, Native American groups, such as the non-sedentary Pawnee and Comanche tribes, were not interested in crops or cattle. Raids by these tribes constantly threatened settlements in New Mexico and prevented them from becoming an interlocking community directly connected to a national capital in Mexico City which was trying to assert more authority over New Mexico.

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[26] This is the case for Hispanic land grants. However, Pueblo communities were run communally prior to the arrival of the Spanish and continued to do so throughout both Spanish, Mexican, and U.S. rule.
[27] Ebright, *Land Grants and Lawsuits,* pp. 23-24.
[28] Ebright, *Land Grants and Lawsuits*, p. 25. Land grant documents did not define a grant as either private or communal. They also did not define the type of communal land that was owned by communities. This became another problem that N.M surveyors general and U.S. courts had to deal with in the adjudication process of land grants in New Mexico.
[29] Andres Resendez, *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850* (Cambridge: Cambridge University Press, 2004), pp. 9 and 32.

Pekka Hamalainen describes the Comanche as the "dominant people in the Southwest… [who] manipulated and exploited the colonial outposts in New Mexico… [in order to] extract resources and labor … through thievery and tribute…" from 1750 to 1850.[30] In an attempt to combat this dominance, local Mexican officials used land grants as enticements for settlers willing to move to contested areas where they would act as buffers between older communities and hostile Comanche and Pawnee tribes. The San Miguel del Vado grant is a good example in that it produced at least a dozen new settlements for this purpose.[31]

From the late eighteenth century until Mexican independence, there were workable, yet tenuous peace agreements between the Comanche and Spanish settlements throughout northern Mexico.[32] This peace was often kept through the practice of Spanish colonies in the north giving annual gifts, supplied by the Spanish crown, to Comanche delegations. However, this peace was shaken after 1821 when, in order to assert their authority in the region, the newly independent Mexican government ended gifts to the Comanche. The end of gift giving led to Comanche raids in New Mexico that were increasingly devastating. In response to a decade of raids by the Comanche, the Mexican government ordered the cutting of all commercial ties with the Comanche in 1830.

Fearful of a full-scale war, New Mexican politicians began pulling away from the central Mexican government by continuing to raise funds, bestow gifts, and continue

[30] Pekka Hamalainen, *The Comanche Empire* (New Haven: Yale University Press, 2008), p. 2.
[31] Resendez, pp. 33-34.
[32] Brian Delay, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (New Haven: Yale University Press, 2008), p. xv.

trading with the Comanche. As a result, the Comanche maintained good relations with New Mexico while simultaneously raiding other Mexican provinces such as Texas, Coahuila, and Chihuahua for horses and mules, which were then traded in New Mexico. New Mexicans often used Comanche horses to defend against raids from other hostile Native American tribes in northern New Mexico.[33] Essentially, the New Mexicans "resigned themselves to purchasing peace from the Comanches, even if it meant inflicting death and suffering for the rest of northern Mexico."[34]

The ability of New Mexicans to raise the necessary funds for gifts to the Comanche, independent of the central Mexican government, came from the growing trade with U.S. merchants as a result of the opening of the Santa Fe Trail. Under Spanish rule, a growing class of artisans began to flourish in both Albuquerque and Santa Fe in the late eighteenth and early nineteenth centuries. After independence in 1821, Mexican authorities lifted the Spanish ban on trade with U.S. merchants and markets. This resulted in Albuquerque and Santa Fe becoming the largest and most powerful settlements in northern Mexico during the Mexican era as a result of their economic connections with both the U.S. and the Comanche Empire.[35] According to Brian Delay, as New Mexico began to pull further away from Mexico politically, economically, and socially; its Hispanic residents began to ask questions such as: "Who was a Mexican? What did Mexicans owe local, state, and national governments, and what did these governments owe them? What did Mexicans owe each other?... The violence ate away at fragile

[33] Hamalainen, pp. 209-210.
[34] Hamalainen, p. 210.
[35] Resendez, p. 9.

connections that bound Mexicans to one another at local, state, regional, and national levels."[36] This lack of connection promoted regional differences between the different states of northern Mexico.

Economic aspirations, disagreements with the policies of the central government, and regional instability due to the struggle with hostile tribes drew New Mexicans and U.S. businessmen together. However, New Mexico was temporarily shielded from the ideology of U.S. Manifest Destiny due to its relative isolation and large Hispanic population which deterred large scale American immigration. But these factors did not stop U.S. entrepreneurs, who anticipated the eventual U.S. annexation of New Mexico, from moving to and investing in New Mexico. Many U.S. citizens with economic aspirations moved to New Mexico, married into prominent Mexican families, and established business partnerships with in-laws and Hispanic friends. Throughout the Mexican period, New Mexico worked independently from the rest of Mexico. New Mexicans made a profit by trading with the Comanche for goods stolen from other Mexican provinces, openly defied federal orders from Mexico City, and combined their economic, social, and political capital with Americans.[37]

These circumstances, especially the opening of the Santa Fe Trail, drastically altered land grants issued in New Mexico. During the Spanish era, land grants in New Mexico were usually no larger than one league and the intention was for the recipient to settle, improve the land, and make a living as a rancher. In contrast, the main objective in

[36] Delay, p. xvii.
[37] Hamalainen, p. 213.

issuing land grants during the Mexican era was to develop areas north and east of Santa Fe and Albuquerque in order to colonize along the critical trade routes with Missouri (and the greater U.S.) and provide defense against hostile Indians. Under Governor Manuel Armijo's leadership in the 1830s and 1840s, New Mexico issued the largest land grants in New Mexico history. Two of the largest measured over 1 million acres and 1.7 million acres respectively. Not only were the grants larger than those issued by the Spanish, but more were issued. Of the grants issued in New Mexico since 1598, sixty-nine were issued after 1800 and one third of these were issued between 1840 and 1847.[38] The recipients of these later grants, which were approved by the governor and the legislature, were often Anglo-American and French entrepreneurs working alone or in partnership with local Hispanics. New Mexican officials used these land grants to "attract enterprising foreign settlers, to promote industry and agriculture, and above all facilitate New Mexico's commercial exchange with the United States by developing areas along the trading routes."[39]

In the 1830s, one of the first to take advantage of the new land grant strategy in New Mexico was the Mexican, Don Jose Martinez who secured a 500,000-acre grant along the Chama River. He was soon joined by countrymen such as Jose Tapia, who received a large grant along the Mora River, and the Baca family who obtained land in Las Vegas, New Mexico. However, by the 1840s, the largest grants were located in Taos, where eleven large grants were issued in just six years, mostly to foreigners. Examples

[38] Lamar, p. 500.
[39] Resendez, pp. 35-37.

include the 1841 grant made to the Canadian fur traders, Charles Beaubien and Ceran St. Vrain, who schemed with the governor of New Mexico and his secretary, Guadalupe Miranda, to acquire several million acres. In 1843, the Missouri born speculator, Luis Lee, was awarded the million-acre Sangre de Cristo grant. As Governor Armijo continued to award large grants with vague boundaries, the land grants soon began to overlap each other and older Spanish grants to Hispanics and Pueblo Indians, and encroach on established Indian hunting grounds. These issues led to an increasing competition between land speculators and older grant holders who were all looking to gain favor with the governor and other key political officials in order to influence the decisions regarding the fate of disputed grants and who would receive grants in the future.[40]

The Las Vegas grant provides a good example to understand the complexity, competition, and confusion regarding land grants in New Mexico. The story of the Las Vegas Grant starts with the San Miguel Del Vado communal (ejidal) grant which was issued in 1794 along the Pecos River and was growing steadily by 1815. The surplus population moved north along the Pecos River where two additional grants were established by portions of the growing San Miguel population with the permission of the San Miguel del Vado Alcalde. After completing his term as Alcalde in 1821, Cabesa de Baca, one of the wealthiest and "most notable men of his time" according to Malcolm Ebright, requested an individual grant located east of San Miguel del Vado named Las Vegas Grandes. The purpose of this grant was to provide pasture for the sheep and cattle

[40] Lamar, pp. 499-501.

of the already wealthy Cabesa de Baca. Instead of petitioning his replacement and new alcalde of San Miguel del Vado, Cabesa de Baca instead made the petition through the alcalde of the more distant Durango settlement.[41]

As Cabesa de Baca anticipated, the San Miguel alcalde objected to the grant because they would cut off San Miguel cattle from grazing land that was essential to the livelihoods of San Miguel ranchers. Baca's request was the subject of periodic debate between the territorial governor, the alcalde of Durango, and the alcalde of San Miguel. After much debate, the governor ordered several succeeding San Miguel alcalde's over multiple years to formally convey the grant to Baca and his sons in 1825. But none of the alcalde's complied and the task was never completed. By 1835, Baca had died and his sons occupied Las Vegas without formal documentation of ownership that needed to come from the San Miguel alcalde. Although maintaining a presence on the land, they struggled to develop the grant significantly due to regular attacks by Indians.[42]

The confusion of ownership of the Las Vegas grant became even more complicated when the alcalde of San Miguel requested that new settlements be established in Las Vegas to relieve the overpopulation of San Miguel and reduce the risk of Indian attacks along the Santa Fe Trail. Ignoring the claim and approval of the governor for the request of Cabesa de Baca, the Santa Fe ayuntamiento created an initial communal grant in Las Vegas in 1835 and another in 1841. This grant empowered the

[41] Ebright, *Land Grants and Lawsuits.* Pp. 174-175.
[42] Ebright, *Land Grants and Lawsuits.* pp. 175-178. Tecolote was also a community grant that was initially settled in 1824 by six individuals but began to flourish after 69 new allotments were handed out to new settlers in 1838.

San Miguel ayuntamiento to manage and develop communities in Las Vegas. Although the Cabesa de Baca family occupied Las Vegas, the newest grants marked the beginning of robust development on the land as the surplus population from San Miguel resettled these new communities. However, these communities were not settled until three years after the initial 1835 grant because of the fear of Indian attacks which were prevalent in Las Vegas and the hope of potential settlers to receive an allotment in another, more secure, and closer settlement called Tecolote.[43] Once the allotments in Tecolote were settled in 1838, the Las Vegas grant began to flourish and by the time New Mexico was transferred to U.S. sovereignty, there were eight established communities within the Las Vegas grant.[44]

The story of the Las Vegas grant reveals three key facts. First, the legitimacy and boundaries of land grants in New Mexico were far from clear. Did the Baca family own Las Vegas or did the community recognized by the ayuntamiento of San Miguel? The Baca family occupied the grant and received approval from the governor, but never officially received possession of the grant due to the refusal of the San Miguel alcalde to follow the order of the governor. The San Miguel ayuntamiento eventually received possession of Las Vegas from the Santa Fe ayuntamiento, but failed to ensure the grant was settled within one year of issue. According to Mexican law, this nullifies the grant. Without knowing which grant is legitimate, the boundaries of Las Vegas are also in question. The stated boundaries in the 1825 and 1835 petitions for Las Vegas were

[43] Ebright, *Land Grants and Lawsuits,* p. 174.
[44] Ebright, *Land Grants and Lawsuits.* pp. 178-183.

significantly different. This caused overlap with other adjacent grants in the area that had similar legal ambiguity to Las Vegas due to multiple claims and multiple boundary designations. This caused "overlaps within overlaps" of grants in northern New Mexico.[45] Five other grants overlapped with Las Vegas. They included the Sanguijuela grant, the Tecolote grant, the Manuelitas grant, the John Scolly grant, and the Santiago Bone grant. Within each of these grants were claims to the same land that often pitted large, wealthy individual claimants against communal claims.[46]

The second key fact is that there was a great deal of corruption and nepotism in the issuing of land grants. Often, wealthy individuals would protest the issuing of large grants to others of a similar class, but then once in a position to do the same, work to secure a large individual grant for themselves. An example of this is Santiago Ulibarri who signed an 1825 protest against the large land grant to Juan Estevan Pino which competed with a communal claim for the same property. However, once becoming an elected official, he used his office to obtain a similarly large private grant nearby. Manuel Antonio Baca worked with Ulibarri as a private citizen to ensure Pino did not receive his claim. But, once elected to public office, he prevented the competing communal grant from becoming legitimate in hopes of taking the grant for himself. The many examples of corruption and power struggles over land in New Mexico during the Mexican period came about because land was the major source of wealth in northern Mexico. [47] Private

[45] Ebright, *Land Grants and Lawsuits*. p. 189.
[46] Ebright, *Land Grants and Lawsuits*. p. 189.
[47] Ebright, *Land Grants and Lawsuits*, p. 189.

ambition, corruption, and greed were already well established in New Mexico well before the arrival of the U.S. Army in 1846.

The third key fact is that land ownership in New Mexico reflected an evolving process and philosophy regarding property that was still changing when sovereignty was transferred to the U.S. After the Pueblo revolt, the Spanish government favored the creation of individual grants for soldiers who assisted in the reconquest of New Mexico. As the population of New Mexico increased in the nineteenth century, the land grant model switched to an emphasis on community land grants while still recognizing and creating a large number of individual grants. However, these communal grants were supported by powerful families who became settlers themselves. As communal grants, such as Las Vegas, developed; new struggles emerged over who controlled the common lands of a grant and what purpose they should serve in these rapidly growing communities.[48] Although there were many interest groups concerned with the common lands, the main struggle was between the state government in Santa Fe and the multiple competing local municipal governments within the grant that often shared common lands.[49]

In 1854, the U.S. government created the Office of the Surveyor General of New Mexico to adjudicate this complex system of individual and communal land grants. Unlike in California, the federal court system was not part of initial land grant

[48] The specific type of ejido (commons, propios, state controlled, or Royal/Federal land) was almost never outlined in communal grants during the Spanish or Mexican period. This created a great deal of room for interpretation for all involved parties.
[49] Ebright, *Land Grants and Lawsuits*, pp. 194-195.

adjudication in New Mexico. Instead of a land commission with the exclusive responsibility of confirming or rejecting claims which could be appealed in district courts and possibly the U.S. Supreme Court; Congress legislated that the surveyor general's office of New Mexico would make preliminary decisions regarding the legitimacy of claims regarding ownership of Spanish and Mexican land claims in New Mexico. The surveyor general's decisions were then sent to the U.S. Congress which would make a final ruling on whether a grant claim was confirmed or denied.[50]

This was a much less efficient system than the one implemented in California for several reasons. First, a system to resolve land claims in New Mexico was not even created until 1854, six years after the Treaty of Guadalupe Hidalgo. This period of inaction discouraged the submission of claims as grantees just continued on with their lives in the assumption that ownership of their land was recognized. Second, instead of a commission dedicated to researching and adjudicating claims, land grant claim research and adjudication in New Mexico was only one of many tasks given to the surveyor general. The surveyor general did not have the time or staff to effectively research and litigate the claims he received. In addition to researching, holding hearings, taking testimony, collecting documents, and translating documents regarding land grant claims with no staff and no budget; the surveyor general's primary duty was to extend the federal public land system. This involved surveying and establishing townships, surveying public land, and overseeing distribution of public land through the Homestead

[50] Ebright, *Spanish and Mexican Land Grants and the Law,* p. 62.

Act and other laws.[51] The first surveyor-general, William Pelham, arrived in New Mexico in December 1854. His multiple duties, including adjudicating land claims and surveying land, was made more difficult due to a lack of staff, small and inconsistent appropriations from Washington, large distances to travel between public lands and settlements requiring survey, and the dangers of travel in remote areas known for Native American hostility.[52]

In addition to an overworked surveyor general, whose main priority was not adjudicating Spanish and Mexican land claims, a third complication was that the Hispanic population of New Mexico was hesitant to file land claims at all. This hesitancy came from the fact that there was no requirement to file a claim since there was no limitation on when a claim could be submitted in New Mexico. This made adjudication more difficult than in California where it was mandated that, in order to be considered, all claims needed to be submitted no later than 1853.[53] Without a deadline to make a claim, Hispanic land owners were hesitant to risk taking a claim to court due to a general mistrust of the U.S. government so recently at war with their former country. Many legitimate grant holders never even bothered to submit claims until others began to challenge their holdings at the end of the nineteenth century.[54] While some early claims were hastily adjudicated by the surveyor general and confirmed by Congress, many

[51] Ebright, *Land Grants and Lawsuits*, pp. 38-39.
[52] Bancroft, *History of Arizona and New Mexico,* p. 646.
[53] Hubert H. Bancroft. *History of Arizona and New Mexico, 1530-1888* (San Francisco: The History Company Publishers, 1889), p. 646.
[54] This caused issues decades later because the surveyor general made decisions based on testimony and evidence provided by the claimant. Unlike in California, there was no mechanism in the surveyor general system for those with a conflicting claim to appeal a decision until the CPLC was established in 1891.

others lingered unresolved for decades.[55] Unlike in California, where all land claims were resolved by the start of the Civil War, the New Mexican confirmation process left the status of land grants unresolved for decades.

Between the creation of the office and the mid-point of the Civil War in 1863, the surveyor general received 82 claims for land grants in New Mexico.[56] However, before considering these claims, the surveyor general first prioritized adjudicating 19 communal grants given to the Pueblo Indians by Spain. 18 out of 19 Pueblo grants were approved by Pelham in 1856. All 18 of these were confirmed by Congress in 1858 and another was adjudicated by Pelham's successor and confirmed by Congress in 1869.[57] After the Pueblo grants were confirmed, Pelham focused on the 82 claims. Fourty-four of the claims made to the surveyor general's office were for communal grants. Seven of these were made by Anglo communities and 37 were made by Hispanic communities. Combined with the Pueblo grants, 93% of the communal grants that were adjudicated by the surveyor general prior to 1863 were confirmed by Congress. The Pueblo grants had a 95% success rate, Hispanic claims had a 95% success rate, and Anglo claims had a 100% success rate if they were adjudicated before 1863. However, 19 of the early communal claims that were not adjudicated until after the Civil War had very little chance of success once they were adjudicated in the last decade of the nineteenth century.[58]

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[55] Bancroft. *History of Arizona and New Mexico*, 765-766.
[56] Bancroft, *History of Arizona and New Mexico,* pp. 758-764
[57] Charles Briggs and John Van Ness, *Land, Water, and Culture: New Perspectives on Hispanic Land Grants* (Albuquerque: University of New Mexico Press, 1987), p. 97. The Zuni Pueblo was given reservation status in 1877.
[58] See Table 1 on page 101.

The 38 individual claims during this same period were made by 28 Hispanics and 10 Anglos.[59] Of the 10 Anglo claims, 9 were approved by the surveyor general but only 7 received congressional confirmation by 1886. One of the Anglo claims was still not adjudicated by 1886. Of the 28 Hispanic claims, 5 were not adjudicated before 1886. Of the 23 that were adjudicated, all but one was approved by the surveyor general and 14 were confirmed by Congress. The claims not confirmed by Congress were all adjudicated by the surveyor general in the 1870s and 1880s. The success rate for all individual claims adjudicated by the surveyor general prior to 1863 was 88%. Hispanic individual claims adjudicated before 1863 had a 96% success rate while Anglo individual claims had a 78% success rate.

Comparing both individual and communal grant claims by Hispanics and Anglos up to 1863 is revealing. First, they show a fundamental difference in land use between California and New Mexico. While many land grants in California were used for real estate speculation and had changed hands prior to the confirmation process, 90% of land grant claims made prior to 1861 in New Mexico had never been sold. Second, 78% of claimants in New Mexico were Hispanic unlike in California where 58% of claimants were Hispanic.[60] Third, there was great success for communal grant claims considered by the surveyor general and Congress which had a 93% success rate prior to 1863.[61]

[59] Four of the Anglo individual claims were made after purchasing land from the original grantee and two of the Hispanic individual claims were made after purchasing land from the original grantee.
[60] Paul W. Gates. "The California Land Act of 1851." *California Historical Quarterly,* Vol. 50, No. 4 (Dec., 1971), p. 410.
[61] Bancroft, *History of Arizona and New Mexico,* pp. 758-764.

This success directly refutes the over-generalized assertion by Malcolm Ebright that communal grants were not recognized by the U.S. government.[62] Instead, the contract (in the form of a land grant) between the grantee(s) and the specific Mexican alcalde and ayuntamiento authorizing the grant was recognized by both the surveyor general of New Mexico and the U.S. Congress prior to 1863. The U.S. government was also respectful of the binding nature of the contract with Mexico made by the Treaty of Guadalupe Hidalgo. This is in keeping with John Marshall's legal precedent regarding contract supremacy and the classically liberal framework that holds individual rights and the supremacy of the contract above competing interests. The generally successful claims of Anglos, Pueblo Indians, and Hispanics also indicates that race, ethnicity, or national origin were not deciding factors in New Mexican land grant cases adjudicated prior to 1863. Instead, individual rights of citizens and the details within individual grants were the deciding factor.

As in California prior to 1877, Hispanics fell squarely into the category of white citizenship in the dominant binary racial system of the time.[63] Because of this, Hispanics were able to maintain their legal and economic standing in New Mexico prior to 1877. Unlike many other Native American communities during this period, the Pueblo Indians were also considered to have the property rights of citizens and the U.S. Supreme Court considered the Pueblo "Indians only in features, complexion, and a few of their habits."[64]

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[62] Ebright makes this conclusion for the entirety of the period. While this is a correct conclusion for claims adjudicated after 1877, it is not correct for those few adjudicated prior to 1877.

[63] Chapter 3 will provide detail regarding the dominant racial construct prior to 1877 and the dominant racial construct after 1877 in the U.S.

[64] *U.S. v. Lucero,* 1 N.M. 422. Jan 1869.

Pueblo land grant claims in New Mexico were communally owned. In order to secure their land under U.S. rule, Pueblo Indians defended their claims as former Mexican citizens who, as a result of the Treaty of Guadalupe Hidalgo, were guaranteed the "free enjoyment of their liberty and property" in the U.S. The Pueblo argued that, as citizens of Mexico, their claims should be confirmed based on their legal contracts established with the Spanish Empire and recognized by the Mexican government. [65] Hubert Howe Bancroft described this strategy by the Pueblo as "anomalous and perplexing" given the additional protection the federal government could provide if the Pueblo pressed their rights as domestic dependent nations. He explained that the Pueblo were "jealous of interference, especially with their land, sometimes even declining to receive gifts from the government for fear of incurring a debt that might lead to a loss of their titles."[66] Despite this resistance, the acceptance of the Pueblo as U.S. citizens provided protection of both Pueblo land and community traditions until the first decade of the twentieth century. Once the official policy of the U.S. government changed from treating Pueblo Indians as citizens who could own land to giving them the status of domestic dependent nation (like other Native American groups), the Pueblo became more vulnerable to potential abuses encouraged in the name of Progressive Era reform and

[65] Joe S. Sando. *Pueblo Nations: Eight Centuries of Pueblo Indian History* (Santa Fe: Clear Light Publishers, 1998), p. 86. The Pueblo people continuously occupied their territory in New Mexico for approximately 10,000 years (Sando, p. 1).

[66] Bancroft, *History of Arizona and New Mexico,* p. 673. He contrasted the Pueblo and other Native American groups who either placed themselves at the mercy of the "regulations of the interior department" or remained openly hostile to the U.S and had to "be taken in hand by the military."

executed through Congressional legislation such as the Enabling Act, and the creation of the Pueblo Lands Board.[67]

Because of the extreme circumstances of the Pecos Pueblo in the nineteenth century, it serves as a clear example of the legal philosophy used by Mexico and the U.S. when adjudicating land grant disputes between former Mexican Hispanics and Pueblo Indians. The Pueblo Indian community as a whole struggled to maintain control of its long-held lands since the arrival of the Spanish in New Mexico. They were originally subjugated under the Spanish encomienda system until the Pueblo Revolt of 1680 expelled the Spanish from New Mexico. Nine years later, the Spanish returned to the region under the leadership of Domingo Jironza Petriz de Cruzate who issued four square league sized land grants to each Pueblo community followed by the establishment of a much more equitable relationship between the Spanish and the Pueblo people. The Pueblo allowed the return of the Spanish due to the protection the Spanish provided from increasingly devastating raids by the Apache and Navajo along with assurances that the Spanish crown would protect Pueblo land from Hispanic encroachment. By 1692, the Spanish were firmly reestablished in New Mexico and had implemented a peaceful partnership and semi-independent relationship with the Pueblo that would last until Mexican Independence in 1821.[68]

Immediately after the Pueblo Revolt, Pecos was one of the more successful Pueblo Indian settlements in New Mexico. In 1706, the Pecos population was a little

[67] This will be discussed in Chapter 4.
[68] Sando, pp. 59-75.

more than 1,000 inhabitants.[69] However, Pecos was located at the extreme edge of Pueblo country and was the most significantly impacted by Comanche and Apache raids. These raids, combined with disease and a declining birth rate, led to a devastating loss of population in the Pecos Pueblo. The population of Pecos dropped to 125 by 1803 and dwindled to only a "handful of Pecos Indians" by 1838.[70]

In 1794, during the height of this demographic decline, Pecos leaders approved the boundary of the newly created Hispanic settlement known as San Miguel del Vado located south of Pecos.[71] By 1803, the San Miguel grant was expanding and a new settlement of San Jose was established directly on the southern boundary of the four square leagues owned by Pecos Pueblo.[72] While San Jose was not directly on Pueblo land, it presented a threat due to its proximity to the Pecos boundary and the prospect that the only direction a growing population could expand was north along the Pecos river and into the land of the floundering pueblo.

By 1812, Hispanics in Mexico increasingly believed that it was legal to settle on unoccupied Indian land contractually owned by the Pueblo people because of the labor theory of land ownership and increasingly popular utilitarian principles used by squatters to justify dispossession.[73] The Cortes of Cádiz legitimized this philosophy when Napoleon imprisoned the Spanish monarch during the French occupation of Spain.

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[69] G. Emlen Hall. *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800-1933* (Albuquerque: University of New Mexico Press, 1984), p. 5.
[70] Malcolm Ebright. *Four Square Leagues: Pueblo Indian Land in New Mexico* (Albuquerque: University of New Mexico Press, 2014), p. 197; Hall, p. 5.
[71] Hall, p. 4.
[72] Hall, p. 5.
[73] See Chapter 3.

Without a monarch, the Spanish resistance formed a new imperial parliament known as the Cortes of Cádiz. Heavily influenced by Enlightenment thought, the Cortes officially created a constitutional monarchy in 1812 that recognized the Cortes supremacy over the monarch and provided equal laws for all parts of the empire.[74] Under the Cortes, the Spanish began to measure property rights by both need and use instead of paper title. Along with this, a debate ensued in Spain regarding "antiquated communal holdings" as the individual property rights became more popular within both the Spanish and British Empires.[75]

In 1812, the Cortes authorized the local New Mexican government to redistribute unused Pueblo communal land, called sobrantes, to needy Hispanics in the hopes of creating a land-based middle class in New Mexico. But this plan was never implemented. Once Napoleon's army was ousted from Spain in 1814, the reestablished Spanish monarch repealed the authorization in an attempt to assert his supremacy over the Cortes and uphold the crown's responsibility to Native American dependents. However, Spanish citizens in the New World were fully engaged in the Enlightenment debates concurrently taking place in Europe and the United States.[76]

Just as Enlightenment ideals inspired the American Revolution, they also inspired the successful effort of Mexican independence from Spain.[77] Once Mexico gained its

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[74] Christon Archer. *The Birth of Modern Mexico 1780-1824* (New York: Rowman and Littlefield Publishers, Inc*., 2007),* pp. 207-208. While inspired generally by the Enlightenment, they were especially influenced by utilitarian principles promoted by Jeremy Bentham.

[75] Hall, p. 15. Chapter 3 will provide a more in-depth discussion of the philosophical influence of the Cortes on land policy in pre-1848 Mexico.

[76] Hall, pp. 16-17. See Chapter 3 for a detailed description of the Enlightenment debate.

[77] Leonard Pitt. *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890* (Los Angeles: University of California Press, 1998), p. 3. For more specific information regarding

independence, the pressure to dispossess the Pueblos of their land intensified exponentially due to the dominant revolutionary Mexican philosophy regarding citizenship and property. The drop in population of the Pueblo Indians that began during the Spanish era continued into the 1840s.[78] A quickly growing Hispanic population looking for usable land pressured the Mexican government for new grants inside of Pueblo land. Because grant seekers concluded specific lands owned by the Pueblo people were abandoned and would be of better use to them, Hispanic grant seekers cited the Spanish Cortes 1812 legislation regarding sobrantes to legitimize their argument as they pressured the new government to approve their grant requests.[79]

Under Spanish rule, the Pueblo Indians enjoyed the benefits of their status as wards to the crown. However, the newly independent government of Mexico announced the Plan of Iguala, which made the Pueblo Indians full citizens "with the right to own and dispose of real property without government protection or interference."[80] This new equality of individuals and disregard for any community (corporate) membership beyond Mexican citizenship also made the Pueblo responsible for continuous use of their land to prevent its return to the public domain. In 1824, the governor of New Mexico confirmed the land claims of Hispanic squatters who established communities on abandoned land that was not cultivated in both the San Felipe and Santo Domingo Pueblos. However, the new government seemed to be conflicted regarding land ownership philosophy. In the

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specific Enlightenment influences on Mexico, see "The Mexican Declaration of Independence" by Josefina Zoraida Vazquez published in the *Journal of American History*, Vol. 85, No. 4 (March 1999), p. 1362.

[78] David M. Brugge, *The Navajo-Hopi Land Dispute: An American Tragedy* (Albuquerque: University of New Mexico Press, 1994), pp. 20-21.

[79] Hall, pp. 14-15.

[80] Hall, p. 32.

same year, the government denied a petition by Hispanics for abandoned Pecos land by referencing the contract embodied in the Cruzate grant giving the Pecos people a contractual right to the land.[81]

Despite this denial of ownership, the Hispanic petitioners continued to squat on unoccupied Pecos land. Some of these squatters formally purchased land from the few remaining native inhabitants of Pecos. The next year (1825), the New Mexico legislature contradicted the governor when they informed the Pecos people that, "just as their ancient duties have ceased, so to their ancient privileges have ended, leaving equal, one to the other, all the additional citizens who with the Pueblos form the great Mexican family."[82] The legislature then began approving grants to Hispanics inside Pecos which were in conflict with the governor's 1824 decision, the claims of the Pecos people, the claims of the squatters, and the ownership of land by Hispanic individuals who purchased land from the Pecos people. The result left the remaining 10 Pecos Indian families with approximately 200 acres of land in their direct possession and a confused patchwork of overlapping and conflicting claims by grantees, squatters, and those who had directly purchased land from the Pecos people.[83]

In 1829, the march north into Pecos by the growing population of San Miguel continued when "Hispanic settlers moved sixteen miles upriver into the heart of the Pecos Pueblo grant" and settled the agriculturally valuable Cienago. Although the Cienago was rich farmland, it had gone unused by the almost non-existent Pecos population for half a

[81] Hall, pp. 38-44.
[82] Hall, p. 44.
[83] Hall, p. 39-42.

century.[84] Finally, in 1838, the few remaining Pecos Pueblo survivors abandoned their land and permanently joined the Jemez Pueblo.[85] In stark contrast to Pecos, the Jemez Pueblo had a growing population and checked Hispanic expansion through the acquisition of land beyond their Pueblo League by successfully petitioning for additional land grants from the Mexican government for grazing needs and the private purchase of land from neighboring Hispanic communities.[86]

Like Pecos, several other pueblos experienced significant demographic decline during the three decades under Mexican rule. This loss of population made dispossession of traditionally held land much more likely because the Mexican government, unlike its Spanish predecessor, no longer considered the Pueblo Indians as a protected corporate class based on their status as the original inhabitants of New Mexico. More importantly, Mexico as a whole was in an intellectual struggle between those who believed in classically liberal ideals of contract rights and those who believed in the utilitarian ideal of legislative action unchecked by private contracts to ensure the best outcome for citizens.[87] Influenced by the European Enlightenment, the Mexican government pressed for citizenship and an equality of all persons, to include Native Americans, which did not recognize a special status for the Pueblo Indians. The government also overwhelmingly embraced John Locke's philosophy identifying labor as the basis for property rights

[84] Hall, pp. 4-7.
[85] Sando, p. 40. The Pecos and Jemez peoples still remain a combined group today. However, they maintain some cultural differences. The Pecos celebrate a separate feast day for their patron saint.
[86] Ebright, *Four Square Leagues,* pp. 190-194.
[87] Chapter 3 will discuss this struggle and its relationship to land grants in detail. For a more detailed description of the influence of Utilitarianism on Mexican liberalism, see Charles Hale's book title *Mexican Liberalism in the Age of Mora, 1821-1853.*

which was embodied in the 1812 Spanish legislation regarding sobrantes. Armed with this intellectual rationale, Hispanic squatters and grantees continued to establish settlements on abandoned Pueblo land in Pecos and other declining Pueblos throughout the 1830s and 1840s. Much like their Anglo counterparts who squatted on Hispanic land in California during the 1850s, Hispanics in New Mexico argued and believed that the unoccupied land contractually owned by the Pueblo people was abandoned and therefore reentered the public domain. [88]

When sovereignty was transferred to the U.S. after the Mexican American War, many questioned what status the Pueblo people would be given under U.S. rule. Unlike Mexico; which believed that Native Americans were citizens of Mexico and had no other loyalties, obligations, responsibilities, or privileges; the U.S. recognized Native American tribal sovereignty as "domestic dependent nations" independent of the U.S.[89] This status supposedly protected Native American land and people from encroachment by U.S. citizens and state governments through formal treaties signed by tribal leaders and the U.S. government.[90] The only entity legally entitled to interact with Native American tribes inside the U.S. during the mid-nineteenth century was the U.S. federal government.

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[88] Ebright, *Four Square Leagues,* pp. 237-238. This settlement was seen as legitimate squatter rights to unoccupied land which had become public domain due to abandonment by previous owners. Tamara Venit Shelton discusses this philosophy in detail in her book titled, *A Squatter's Republic: Land and the Politics of Monopoly in California, 1850-1900.*

[89] The U.S. policy towards Native American groups was similar to the Spanish in some ways. The Spanish crown viewed the Pueblo Indians as both wards and vassals to the Spanish crown. As vassals, the Pueblo were entitled to own and purchase real property (*U.S. v. Richie* confirmed this right to individual Indians, but not a communal right). But, as wards, the Pueblo had limited autonomy under the Spanish in that their property received special protection from the Spanish Empire and could not be sold to non-Indians without the express supervision and approval of the Spanish government (Hall, p. 12)

[90] While this was the written intension of treaties, obligations of the U.S. government were often ignored and treaties were broken throughout the nineteenth century.

The legal restrictions on individual citizens and states were articulated in legislation and court decisions to include the 1834 Indian Trade and Intercourse Act, the 1823 Johnson v. M'Intosh Supreme Court decision, the 1832 Worcester v. Georgia U.S. Supreme Court decision, and the Northwest Ordinance of 1787.[91]

Hispanic squatters and grantees on Pueblo land did not want the Pueblos treated as domestic dependent nations. They wanted Pueblo people treated as citizens in order to give their claims to Pueblo land a valid legal argument based on preemptive squatter rights. Hispanics living within the boundary of Pueblo grants believed they had a right to ownership of Pueblo land. They argued that the special consideration and treatment of native tribes was in direct conflict with the Treaty of Guadalupe Hidalgo which bound the U.S. to uphold property rights of Mexican citizens in accordance with Mexican law. The Mexican Plan of Iguala, which predated Guadalupe Hidalgo, stated that all inhabitants of Mexico were citizens regardless of race and "thus erased all legal distinctions between the Pueblo Indians and the Mexicans and that the Pueblo people understood this."[92]

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[91] Sando. p. 253. In ***Johnson v. M'Intosh,*** the Supreme Court ruled on a title dispute between settlers who purchased land from the Piankeshaw Indians and another party who had a patent for the land from the U.S. government which acquired the land from the tribe after the earlier sale. The Marshall Court ruled that the earlier sale of land between settlers and Piankeshaw was void because the federal government held a monopoly on land transactions with Indian tribes. In ***Worcester v. Georgia,*** a white missionary was found guilty by a Georgia court for entering Cherokee territory (to protest the forced removal of the Cherokee by the state) without obtaining a state license. In their decision, the Marshall Court rejected the idea that a state had any authority over Indian people or land. He specifically stated that the federal government had exclusive jurisdiction over Indian Affairs. The Northwest **Ordinance of 1787** stated that Native American tribes would be treated in accordance with international law in that their property rights and liberty was recognized and that "they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them." The 1834 **Indian Trade and Intercourse Act** banned white settlers from settling on Indian Territory, and were also banned from selling guns and alcohol to Indians (Ebright, *Four Square Leagues,* pp. 238-239).

[92] Ebright, *Four Square Leagues,* p. 241.

Because of this, Hispanics believed the Pueblo League should be a subordinate consideration to Mexican land grants overlapping Pueblo land and Hispanic communities established by squatters on abandoned Pueblo land. They argued that John Marshall's decision in the 1823 Johnson vs. M'Intosh did not apply to the Pueblo people because the Pueblo were Mexican citizens. Hispanics argued that because of this, abandoned Pueblo land returned to the public domain and squatters had the right to settle the land, improve it, and have first rights to purchase the land from the federal government.

However, the Pueblo argued that contract rights should be the primary consideration regarding land claims. They believed that because their contract with the Spanish empire granting them the Pueblo league pre-dated the Mexican grants made to Hispanics on their land, the Pueblo grants were valid and the Hispanic grants were invalid.[93] James S. Calhoun, the first Indian agent for New Mexico, believed that the Pueblo were Indians and should be treated as domestic dependent nations. After surveying the situation in New Mexico, he recommended to Congress that the Pueblo people be given federal protection as Native Americans from "the depredations of non-Indians" in New Mexico. He noted that "'the wrongs to which the Pueblo Indians are subjected, are inconceivable, and ought to be remedied without a moment's delay.'"[94] Calhoun negotiated a treaty with ten pueblos, but Congress never acted on this treaty which was based on Native American status as domestic dependent nations. Instead,

[93] Ebright, *Four Square Leagues,* p. 247. *Johnson vs. M'Intosh* recognized that Native Americans were the "original inhabitants" of North America and were the "rightful occupants of the soil." The only way that the U.S. could extinguish this right was through the legal purchase of the land or conquest.
[94] Ebright, *Four Square Leagues*, p. 243.

Congress appointed William Pelham as surveyor general, and tasked him with resolving the Pueblo land question.[95]

Surveyor General Pelham approved eighteen communal grants claimed by the Pueblo Indians.[96] Pelham used three methods to confirm Pueblo land claims. First, he argued for the legitimacy of the "Pueblo league" as the basis of measure for established Pueblo lands.[97] The Pueblo league was well documented in several Spanish edicts and ordinances after 1684.[98] Through the use of this measurement established during Spanish colonial rule, the U.S. Congress confirmed an area of four square leagues (17,350 acres) around established Pueblo villages.[99] Second, Pelham argued that subsequent grants received by specific Pueblo communities from the Spanish and Mexican governments for additional lands were legitimate and should be confirmed. The third was the submission of standard claims made by Pueblo villages that acquired additional land through the purchase of land from Hispanic neighbors during the Mexican period.[100]

Pelham assumed that the Pueblo League was still legitimate when he submitted recommendations for confirmation of Pueblo lands. However, he did not do this using

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[95] Ebright, *Four Square Leagues*, p. 243.

[96] Nineteen of twenty Pueblo grants were eventually confirmed with eighteen confirmations in 1858 and one confirmation in 1869. The Zuni Pueblo was given the status of a reservation in 1877, However, the specific freedoms, restrictions, and real property rights attached to each confirmation period were significantly different due to the transition of the judiciary from a classically liberal point of view to a utilitarian point of view and how the Pueblo fit into the evolving perception of race in the U.S.

[97] The Pueblo League was based on the recognition of the Cruzate grants issued by the Spanish crown in recognition that the Pueblo Indians were the original inhabitants of New Mexico and that this gave them special rights to land.

[98] Sando, pp. 110-112. The most famous documents referencing the Pueblo League were collectively known as the Cruzate grants. These were the primary document used by Pelham to confirm the Pueblo grants. However, the CPLC proved the Cruzate grants to be fabrications in the 1890s. Despite this, the plethora of other legitimate Spanish documents made the Cruzate forgeries a moot point (Sando, p. 112).

[99] Ebright, *Four Square Leagues,* pp. 6-7.

[100] Ebright, *Four Square Leagues,* p.7.

Calhoun's recommendations to Congress to treat the Pueblo as domestic dependent nations. Instead, Pelham based his decision using the contract supremacy clause established by John Marshall through citing the pre-existing agreements each Pueblo community had made with the Spanish empire and not based on the status of Native Americans as domestic dependent nations. Pelham recognized communal grants belonging to communities based on contracts made with the Spanish empire. But he considered these communities to be corporate entities made up of citizens and not independent Indian nations. In doing so, he subordinated Hispanic claims that traced titles to the 1825 grants given to them by the New Mexican legislature.[101] As a result, Pueblo claims, including the abandoned Pecos Pueblo, were confirmed using the Pueblo League measurement and conflicting Hispanic claims were rejected.[102] The ten Pecos families, who the U.S. considered the rightful owners of Pecos in 1858, had not lived or worked on Pecos land in over twenty years at the time of confirmation, did not submit a claim for Pecos, and had no intention of leaving their homes in Jemez to return to Pecos.[103]

The Hispanic settlers of San Jose and the Cienago, who had established and built multi-generational farms on Pecos territory, were horrified that pre-existing Spanish era contracts with the Pecos Indians were taken as legitimate proof of ownership over

[101] Hall, p. 65.
[102] Two other grants of note are Isleta and Santa Ana. The Isleta grant was confirmed by Congress in 1858. Although they had no corroborating documents, this Pueblo claimed lands far beyond the Pueblo League (17,350 acres). Instead, their claim was for 110,000 acres which was confirmed by Congress despite having nothing but the word of the Pueblo leadership to support the claim. Due to a mix up in the paperwork of Surveyor General Pelham, the Santa Ana claim was not adjudicated until the tenure of Pelham's replacement, John Clark. Clark used the same rationale and process for the eventual congressional confirmation of a Pueblo League (17,350 acres) for the Santa Ana Pueblo.
[103] Hall, p. 65.

Mexican era grants to their communities. From the Hispanic point of view, Pecos was an extreme example of injustice by the U.S. government. Hispanic squatters believed that the surveyor general and Congress recognized a contract between the Spanish empire and a community that no longer existed while ignoring the claims of individuals who were part of established communities that had flourished for decades prior to U.S. acquisition of New Mexico. Despite the loss of legal ownership, little changed in regards to who occupied Pecos in the first decades of U.S. rule over New Mexico. The Pecos families continued to build lives over generations as part of the flourishing Jemez Pueblo and the Hispanic communities inside of Pecos continued to flourish despite not holding any recognized title to their land.[104]

However, the legal status of the Pueblo people continued to be debated in federal courts. The exact racial status of the Pueblo people became a major point of debate in non-intercourse cases struggling whether to classify the Pueblo as Indians or U.S. citizens. Pelham and his successor John Clark used the rationale based on contract law to confirm Pueblo land claims. This rationale was firmly based in a classically liberal philosophy focused on contract rights that considered the Pueblo Indians U.S. citizens. The surveyors general did not recognize the "Pueblo League" because of their status as "domestic dependent nations." Instead, their land ownership was confirmed because of the pre-existing agreement/contract the Pueblo people had entered into with the Spanish empire prior to Mexican Independence. Although the surveyors general and the U.S. Congress gave land back to the Pueblos that were previously granted to Hispanics during

[104] Hall, p. 168.

the Mexican era, the U.S. government did not grant federal protection to the Pueblo people as they did with other Native American tribes because the Pueblo were increasingly considered citizens in the eyes of the U.S. government and courts. As a result, Pueblos were free to sell, lease, or abandon their land as any other property owner could in the U.S.

One of the more detailed examples of how the Pueblo people were legally considered U.S. citizens is the 1869 ruling of the United States v. Lucero. This case was an appeal brought to the Supreme Court of the Territory of New Mexico and the majority opinion was written by Chief Justice Watts. The court was tasked to decide whether Jose Juan Lucero was obligated to pay a $1,000 fine for not adhering to the 1834 Indian Trade and Intercourse Act. His alleged violation was that he established a trading post on lands owned by the Cochiti Pueblo and began to sell liquor to the inhabitants. To render judgement, the court was compelled to answer the question of whether or not the Pueblo peoples were Indians and therefore subject to the regulation outlined in the 1834 Act which was "designed and intended to regulate the trade and intercourse of civilized man with wandering tribes of savages" who did not "adhere to the interest" of the country.[105]

To answer this question, Judge Watts first focused on the nature of the Pueblo people. As a point of comparison, he first described the Indians that necessitated the creation of the 1834 Intercourse Act. He described how these Indians had proven to be "wandering savages, given to murder, robbery, and theft… and unwilling to follow the pursuits of civilized man." As a result, he believed they were "unsuited to the intelligence

[105] *U.S. v. Lucero,* 1 N.M. 422. Jan 1869.

and justice of this age or the natural rights of mankind." Watts then turned to a description of the Pueblo Indians. In contrast, he described the Pueblo as "peaceful, quiet, and industrious people, residing in villages" since before the arrival of the Spanish. He continued to explain that the Pueblo people only resorted to violence when they were subjugated by the Spanish. He then recounted his own observations since the shift of New Mexico to U.S. control. Watts explained that "this court has known … that you may pick out one thousand of the best Americans in New Mexico, and one thousand of the best Mexicans in New Mexico, and one thousand of the worst pueblo Indians, and there will be found less, vastly less, murder, robbery, theft, or other crimes among the thousand of the worst pueblo Indians than among the thousand of the best Mexicans or Americans in New Mexico." Watts concluded that the Pueblo people are Indians in "features" and "complexion" only.

After establishing the civilized nature, according to Watts' own definition, of the Pueblo as a people, Watts turned to contract law and the obligations of the U.S. government to the Pueblo communities. He explained that after the 1680 Pueblo Revolt, the Spanish entered into a contract with each of the 19 Pueblos and "acknowledged their title to the land… and a written agreement was executed and delivered to them." These titles were subsequently recognized by the U.S. government as a result of the approval of the New Mexico surveyor general and the U.S. Congress which "shall only be construed as a relinquishment of all title and claim of the United States" to Pueblo land. Due to this formal relinquishment of ownership, Watts concluded that the U.S. government and the Indian department is:

> "without authority… [to] transfer eight thousand of the most honest, industrious, and law-abiding citizens of New Mexico to the provisions of a code of laws made for savages [and any such action] will never be assented to by congress or the judicial tribunals of the country so long as solemn treaties and human laws afford any protection to the liberty and property of the citizens." [106]

In addition to property rights, Watts also asserted that:

> by the express terms of the eight articles of the treaty, they [Pueblo Indians] became citizens of the United States… [and] shall be incorporated into the union of the United States, and be admitted at the proper time (to be judged of by the congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.[107]

This statement had several potential ramifications. In terms of purchasing alcohol from outsiders like Lucero, the court believed that the Pueblo had the same right as "other citizens of the United States… to commit suicide in this pleasant, agreeable, and legal mode of self-destruction." In regard to the right to vote, the court believed that this legitimate right would be "admitted at the proper time - to be judged by the congress of the United States." In terms of individual rights, Watts stated that it was "the right and

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[106] *U.S. v. Lucero,* 1 N.M. 422. Jan 1869. To further affirm this ruling, Justice Watts compared the contractual differences between the Pueblo Indians and the Chippewa in a similar case. He explained that the Cochiti Pueblo have "never had any treaty with the United States… [and] a treaty with a sister republic made the people of the pueblo of Cochiti, citizens of the United States." "Had there been no treaty with the United States and the Chippewas… and no annuity received by them; and had Otibsko been made a citizen, not of the state of Michigan, but of the United States, by treaty with Mexico; and had it been shown the Otibsko lives on his own land, granted to his father's father by a foreign grant in 1689… and that Holliday sold him a quart of liquor at his own house on his own farm, the opinion… would have been that it was no violation of the United States laws" (*U.S. v. Lucero,* 1 N.M. 422. Jan 1869). Because Justice Watts mentions annuities received by the Chippewa, it is important to note that Hubert Howe Bancroft specifically noted that the Pueblo generally were "jealous of interference, especially with their land, sometimes even decling to receive gifts from the government for fear of incurring a debt that might lead to a loss of their titles" (Bancroft, *History of Arizona and New Mexico,* p. 673).

[107] *U.S. v. Lucero,* 1 N.M. 422. Jan 1869.

duty of the courts to see that every citizen of the territory of New Mexico, in conformity with the ninth article of the treaty of Guadalupe Hidalgo, 'shall be maintained and protected in the free enjoyment of their liberty and property." He further explained that all the Pueblo communities were officially incorporated and "a full and ample remedy is given them to protect and defend title to their individual and common lands."

Finally, Watts explicitly stated that the Pueblo have the right to sell property since the federal government has no legal ability to interfere in Pueblo affairs. To show how this right is in accordance with Mexican law, Watts cited the example of the Cochiti Pueblo selling the land that would become the town of Peña Blanca and the county seat of Santa Ana County during the Mexican era. The sale was "confirmed by the Supreme Court of the Republic of Mexico despite its location within the limits of the grant to the pueblo of Cochiti." Chief Justice Watts clearly considered the Pueblo Indians to be U.S. citizens and did not fall under the protection of the federal government as other Native American "savages" should.[108] By 1872, the commissioner of Indian Affairs agreed with this assessment when he described the Pueblo as, "scarcely to be considered Indians in the sense traditionally attached to that word, and … regarded as part of the ordinary population of the country."[109]

The opinion given by Judge Watts in the Lucero decision is fully legitimized by the U.S. Supreme Court in its 1876 United States vs. Joseph Supreme Court decision which affirmed the status of the Pueblo as U.S. citizens regarding Pueblo lands. This case

[108] *U.S. v. Lucero,* 1 N.M. 422. Jan 1869.
[109] Hall, p. 121.

began when Thomas B. Catron, the infamous land speculator and new U.S. Attorney, filed suits against non-Indian settlers who had purchased land in both the Pecos Pueblo and Taos Pueblo lands in New Mexico. His prosecution of these cases was a direct refutation to the growing belief that the Pueblo Indians held the property rights of U.S. citizens.[110] Catron argued that the U.S. had a responsibility to oversee and protect Native American land, to include Pueblo land, from encroachment.[111]

The defendants whose claims depended on the results in the Joseph case all occupied established ranches on either the completely abandoned Pecos Pueblo or unoccupied areas of the Taos Pueblo which they had purchased.[112] Martin Kozlowski settled on Pecos in 1858 where he claimed to own a 600-acre ranch. He was far from the only non-Indian claiming land inside the Pecos league. His ranch was south of the growing settlement on the Los Trigos Grant and north of the growing Hispanic town of Las Ruedas.[113] The second defendant accused of illegally residing in the Pecos grant was Manuel Varela. At the time, he was a sitting representative in the New Mexico territorial

[110] Hall, pp. 121-138.

[111] The historical consensus is that Thomas Catron did not bring suit out of a sense of responsibility for the U.S. to protect Native American rights or a higher philosophical belief. Catron was first and foremost a land speculator. The defendants in both the Pecos and Taos cases were competitors of Catron in the realm of politics and New Mexican land speculation. Although Catron loses this case (and fails to harm his enemies), he used the precedent set by the Joseph decision to his advantage in his real estate dealings for the remainder of the nineteenth century and into the early twentieth century (Hall, p. 138).

[112] Antonio Joseph was a business man who was almost as active a land speculator as Catron. His purchases of several tracts of land within the boundary of Taos Pueblo is what prompted this suit. While Joseph is the only defendant in the case taken to the Supreme Court, several other land speculators who made similar purchases were also being prosecuted by Thomas Catron. The outcome of Joseph would have direct ramifications for the success or failure of their cases in federal court (Hall, pp. 120-128).

[113] Hall, pp. 121-123. These communities based their claims on the Mexican land grants created in the late 1820s in direct conflict with the much older Spanish grants to the Pueblo Indians. Unlike the defendants, these towns based their claim on a Mexican land grant. The defendants based their claim on a legal purchase of land sold to them by the Pueblo Indians.

assembly where he had fought with Catron over non-Indian intercourse with the Pueblos in the 1860s. Catron argued that local Indian agents needed to enforce non-intercourse with Pueblo Indians and Varela argued that non-intercourse did not apply to the Pueblo people. Varela's opinion most likely came out of self-interest given that he had bought land from Pecos descendants inside the Pecos Pueblo boundary in 1855, 1857, and 1862.[114]

The lawyers for Varela, Kozlowski, and Joseph argued that the Non-Intercourse Act did not apply to Pecos or any other Pueblo community because the U.S. patented the land to the Pueblo people, who had been citizens of Mexico and became U.S. citizens as a result of the Treaty of Guadalupe Hidalgo. The fact that they were Native Americans was irrelevant given their status as citizens of Mexico at the time of the Treaty of Guadalupe Hidalgo. The district court judge and the U.S. Supreme Court agreed and ruled in favor of Varela, Kozlowski, and Joseph.[115] Both the lower court and the U.S. Supreme Court affirmed the perspective that the Pueblo were U.S. citizens in the Joseph case when it ruled that the Pueblo Indian lands were not under the protection of the government and the Pueblo could use or dispose of their land as any other U.S. citizen or incorporated town.

The Joseph decision temporarily protected the Pueblo from Congress as Progressive Era utilitarianism allowed white supremacy into political and legislative

[114] Hall, pp. 125-126.
[115] Hall, p. 127.

decisions at the end of the century.[116] While the courts were still firmly basing their decisions on contract rights, the executive branch was beginning to fall under the influence of utilitarianism by 1877. In this year, President Rutherford Hayes created a 250,000-acre reservation for the Zuni Pueblo, whose claim had not been confirmed by Congress with the 19 other Pueblos due to a clerical error. [117] At first glance, this action would seem to make Zuni less vulnerable to dispossession due to the federal restrictions against the sale or loss of land which did not apply to the other Pueblos who received fee simple patents to their land. However, confirmation of the fee simple ownership held by other Pueblos as a result of Joseph, shielded them from increasing federal intervention such as the impact of the Dawes Act of 1887 which devastated other Native American groups and left Zuni land vulnerable to the whims of what the U.S. government thought was best for the Pueblo.[118]

For the Hispanic squatters of Pecos who received grants from the Mexican government in 1825, the Joseph decision left them in a legal limbo since their claims within the boundary of the Pecos league were now illegitimate; but no Pecos Pueblo

[116] See Chapter 3 for an in-depth discussion of the transition from classical liberalism to utilitarianism and the transition from a binary understanding of race to the aristocracy of color.
[117] Ebright, *Four Square Leagues.* p. 226.
[118] Regis Pecos, the Director of Office of Indian Affairs in New Mexico states that the stated goal of the Dawes Act was to improve poor tribal economies. But the true goal was to "bring Indians into non-Indian culture, and to destroy tribal traditions and influence." Despite Indian held land going from 138 million acres in 1887 to 48 million acres in 1934, the Pueblos "escaped allotment, and today we continue to hold our land in fee simple for the community." (Regis Pecos in *Pueblo Nations: Eight Centuries of Pueblo Nation History,* p. xii). Flannery Burke also describes how the Pueblo avoided allotment unlike the neighboring Navajo and other reservation Indians in the area (Flannery Burke, *A Land Apart: The Southwest and the Nation in the Twentieth Century* (Tucson: The University of Arizona Press, 2017), p. 104.

members asserted a claim to the land.[119] Instead, land speculators betting on the coming of the railroad, bought and sold a dubious 1868 deed for all of Pecos' 17,350 acres. This deed was secured by John Chapman from the descendants of the Pecos families living in Jemez. The existence of this and other claims touched off a legal battle between multiple speculators and the long time Hispanic inhabitants of Pecos whose Mexican grants were seen as illegitimate as a result the confirmation of Pecos by the surveyor general and Congress. The Chapman deed passed from one speculator to another hoping to profit from the sale of the deed and not from any actual plans do develop or settle Pecos land. As a result, the Hispanic Pecos communities had "nothing that guaranteed their presence there. But no one actively threatened them either."[120] Up to the late 1880s, Pueblo land was controlled (if not legally owned) either by the Pueblo communities or by multi-generational Hispanic settlers on abandoned Pueblo land despite uncertainty and ongoing litigation in courts.

By 1877, little had changed in New Mexico for the long-time residents. Pueblo Indians still controlled their communities and property independent of the U.S. government. Hispanic communities located in the heart of Pecos Pueblo, who in the view of the U.S. were squatting on Pueblo land, remained in place and continued to argue that Mexican grants in unused Pueblo land gave them legitimate claim to the lands they had been cultivating for over forty years. Hispanic land grant claims outside of Pueblo land were either confirmed by the New Mexico surveyor general and U.S. Congress or were

[119] Hall, p. 171.
[120] Hall, p. 196.

left all or partially unadjudicated with no outsiders challenging the occupation of the long time Hispanic residents. In the case of the San Miguel del Vado Grant, the ejidal leaders submitted a claim to the N.M. Surveyor General in 1857. It sat unadjudicated until it was approved by the surveyor general in 1880. However, it was never confirmed by the U.S. Congress which left its fate up to the newly created Court of Private Land Claims in 1891. [121] As a result, it became the central court case whose fate would determine the future of all the other unadjudicated communal land claims in New Mexico when the claim went to the U.S. Supreme Court on an appeal in 1897. However, the period of relative calm and stability for San Miguel del Vado and other grants in New Mexico continued until events taking place after 1877 brought massive change to the traditional political, economic, and social systems in New Mexico.

[121] Bancroft, *History of Arizona and New Mexico,* p. 119.

Table 5: New Mexico Land Claims 1855-1885

The purpose of this table is to show that both communal and individual grants were successfully confirmed under the surveyor general system between 1855 and 1863. The table also shows that the chances of confirmation and rejection were not tied to the race of the claimant. As D. Michael Bottoms explains, the racial construct of the U.S. during this time was binary in nature. Because of this, both Hispanics and to some extent Pueblos were considered white (This concept would change by the end of the century). The community grants consisted of Pueblo Indian grants, Hispanic grants and Anglo grants. Just as in California, Anglos migrated to New Mexico in the 1840s. Some community grants were given directly to groups of Anglo groups by the Mexican government. Other grants allowed Anglos to settle as part of the ejido. In some cases, Anglos assimilated and became part of the local community. In other cases, Anglo migrants came to dominate smaller communities.

Sources: The data for this table was derived from Hubert Howe Bancroft's summary of New Mexico land grant cases under the surveyor general system on pages 758-764 in his book titled History of Arizona and New Mexico. Hispanic and non-Hispanic claimants were determined by surname. Hispanicized Anglos were counted as Anglo.

**Nineteen of twenty Pueblo grants were eventually confirmed with eighteen confirmations in 1858 and one confirmation in 1869. The Zuni Pueblo was given the status of a reservation in 1877. The original Zuni claim was not confirmed by Congress due to a clerical error. Instead, President Hayes created a 250,000-acre reservation for the Zuni Pueblo in 1877. This placed Zuni in a separate status (under control of Department of Interior) from other Pueblo lands which were held in fee simple.*

***4 of 5 communal Hispanic claims not confirmed by Congress were adjudicated by the S.G. in the 1870s. Success rate of Hispanic claims adjudicated before 1863 was 95%.*

****All 9 individual Hispanic claims not confirmed by Congress were adjudicated by the S.G. in the 1870s and 1880s. Success rate of Hispanic claims adjudicated before 1863 was 96%.*

*****Congress did not approve or reject any surveyor general recommendations after the Civil War. Claims not adjudicated prior to the Civil War were left in limbo until the creation of the Court of Private Land Claims (CPLC) in 1891.*

	Claims submitted between 1855-1863					1864-1885				
Communal Claims in New Mexico	**Ethnicity**	**Approved by NMSG**	**Confirmed by Cong.**	**Not Adjudicated by SG as of 1886**	**% Success**	**Ethnicity**	**Approved by NMSG**	**Confirmed by Cong.**	**Not Adjudicated by SG as of 1886**	**% Succe**
	Pueblo	18/19	18/19	0	95%	Pueblo	1/1	1/1*	0	100%
	Hispanic	22/24	19/24**	13	79%/51%	Hispanic	27/30	0	4	0%
	Anglo	5/5	5/5	2	100%/71%	Anglo	12/12	0	5	0%
Individual Claims in New Mexico	**Ethnicity**	**Approved by NMSG**	**Confirmed by Cong.**	**Not Adjudicated by SG as of 1886**		**Ethnicity**	**Approved by NMSG**	**Confirmed by Cong.**	**Not Adjudicated by SG**	
	Pueblo	0	0	0	NA	Pueblo	0	0	0	NA
	Hispanic	22/23	14/23***	5	61%/50%	Hispanic	48/55	0	11	0%
	Anglo	9/9	7/9	1	78%/70%	Anglo	6/6	1	2	0%

Source: Hubert Howe Bancroft, *History of New Mexico and Arizona, pp. 673, 758-764.*

CHAPTER THREE: THE ENLIGHTENMENT STRUGGLE BETWEEN CLASSICAL LIBERALISM AND UTILITARIANISM

The protean and omnipresent character of utilitarianism makes it a difficult matter to discuss in relation to Mexican liberalism; and yet to omit it would distort our understanding of political thought and policy, and leave inexplicable liberal actions in the socioeconomic sphere.[1]

- Charles Hale

The year 1877 in U.S. history is known for the infamous compromise which allowed the Republican Rutherford B. Hayes to win the presidency. His political win came in exchange for the end of Reconstruction in the South and the full integration of the former Confederate states and their antebellum leaders back into the U.S. He achieved this by rolling back the rights of formerly enslaved people who were recognized as U.S. citizens. Historian Charles Postel explains that before his presidential campaign, Hayes had "doubts about federal protections of black rights." [2] After becoming President, "Hayes and other Republican leaders in Washington… abandon[ed] their earlier commitments to protect the freedoms and equal rights claims of the former slaves" because business and political elites "came to distrust the black vote in the South in much the same way as they were alarmed by rising farm and labor movements making use of the ballot box to push for Granger laws and other 'class legislation' to check corporate power."[3] The U.S. government's abandonment of protection for the individual rights of former slaves in Southern states and communal contract rights of Spanish and Mexican

[1] Charles Hale, *Mexican Liberalism in the Age of Mora, 1821-1853* (New Haven: Yale University Press, 1968), p. 148.
[2] Charles Postel, *Equality: An American Dilemma, 1866-1896* (New York: Farrar, Straus and Giroux, 2019), p. 104.
[3] Postel, *Equality,* p. 105.

land grant claimants are two indications of a turning point in the dominant intellectual philosophy of the U.S. from one based on classical liberalism to one based on utilitarianism at a national level after 1877.

A change in the dominant intellectual beliefs and the use of new political, economic, and social constructs occurred in the U.S. during the last half of the nineteenth century. The decisions regarding whether or not to confirm Spanish and Mexican land claims in California and New Mexico after the Mexican-American War and the Treaty of Guadalupe Hidalgo directly reflect the political, economic, and social upheaval taking place during this time period. To properly see this connection, one has to keep in mind U.S. reaction to the economic changes resulting from the Industrial Revolution and the change of the dominant racial construct resulting from the 14th Amendment. Prior to 1877, the California Land Commission and the Office of the Surveyor General of New Mexico overwhelmingly confirmed Spanish and Mexican land grants, whether individual or communal.[4] After 1877, the successful confirmation of a grant claim remotely similar to the original size of the grant was almost impossible to achieve.[5] This was the case because the adjudication of Spanish and Mexican land grants reflected larger social, economic, and political changes which influenced jurisprudence in the late nineteenth century U.S.

[4] Land grants in California were adjudicated through the California Land Commission and confirmed by the Federal Court System and land grants in New Mexico were adjudicated through the Surveyor General of New Mexico and confirmed by the U.S. Congress.

[5] New Mexico land claims in the 1890s were adjudicated by the Court of Private Land Claims (CPLC) which was established to alleviate the overwhelming workload of the New Mexico Surveyor General who was responsible for ruling on land claims prior to the establishment of the CPLC by Congress.

To understand how this change in political philosophy came about, it is important to understand the struggle between the two competing intellectual Enlightenment philosophies of classical liberalism and utilitarianism. Dorinda Outram explains that the Enlightenment was not a single "unitary phenomenon." Instead, it was "a series of interlocking, and sometimes warring problems and debates… [which grew into] a group of capsules or flashpoints where intellectual projects changed society and government on a world-wide basis."[6] One of these major Enlightenment debates was between followers of classical liberalism and utilitarianism.

In the U.S., the rights-based theory of classical liberalism dominated jurisprudence prior to the Civil War. This theory was based on John Marshall's interpretation of the liberalism of the English Enlightenment and English common law. Advocates of classical liberalism believed that it was *not* the role of government "to seek great ends or to educate people for service to the common good." Instead, the role of government was to protect individual liberties in order to allow individuals to pursue personal goals such as commercial success.[7] Classical liberals believed the government should "champion the protection of property, liberty of contract, the free market, and limited government."[8]Alan Ryan describes the history of liberalism as "the history of a concern to protect individual liberty against a succession of threats. Religious liberty, the security of person and property, and perhaps the ability of those with no resources but

[6] Dorinda Outram. *The Enlightenment* (Cambridge: Cambridge University Press, 2005), p. 3.
[7] Richard Brisbin Jr. "John Marshall and the Nature of Law in the Early Republic." *The Virginia Magazine of History and Biography,* Vol. 98, No. 1 (Jan, 1990), pp. 60-61.
[8] Brian Tamanaha, "The Dark Side of the Relationship Between the Rule of Law and Liberalism," *NYU Journal of Law and Liberty,* Vol 139 (2004), p. 519.

their labor to organize to defend themselves…might all be counted among the liberties that the defense of freedom requires."[9]

This belief grew out of an Enlightenment tradition which included John Locke who wrote the *Second Treatise on Government* during the events leading to the Glorious Revolution in England. Locke argued for a limited constitutional government which would support the individual natural rights of life, liberty, and property.[10] He argued that society is made up of free and equal individuals who are "self-interested and contentious enough to need a powerful state" to protect individual rights. However, Locke asserted that government and society are not entitled to interfere with the natural rights of individuals and therefore no government should be created with absolute or irrevocable power.[11]

This limitation became the cornerstone of the Anglo-American legal world from the late eighteenth through the nineteenth century when William Blackstone compiled, organized, and rationalized English common law in his 1769 work titled *Commentaries on the Laws of England*. He warned that the legislature was the place where "absolute despotic power" could reside in government because "legislation…[is] subject to capture and abuse by passion and special interests." To thwart this threat, Blackstone pushed for

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[9] Alan Ryan, *The Making of Modern Liberalism* (Princeton: Princeton University Press, 2012), p. 10.
[10] C.B. Macpherson (ed..), *John Locke, Second Treatise of Government* (Indianapolis: Hackett Publishing Company, Inc., 1980), p. vii.
[11] Macpherson, p. xxi. The other early giant of classical liberalism was Adam Smith. Smith stated in *Wealth of Nations* that "The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations; though the effect of these obstructions is always more or less either to encroach upon its freedom, or to diminish its security" (Tamanaha, p. 532).

members of the British Parliament to "build on the common law but not tamper with or significantly alter it."[12] In his defense of common law, Blackstone "extolled the supreme right of property… [which] fed into and informed U.S. constitutional analysis up to the turn of the twentieth century."[13] The primary individual responsible for Blackstone's influence on U.S. jurisprudence was U.S. Supreme Court Chief Justice John Marshall who served from 1801-1835. In the U.S., Marshall established a legal precedent where individuals were guaranteed a "human right" to own property and enter into contracts without state intervention.[14]

John Marshall was a key figure guiding the transition of U.S. jurisprudence into the classical liberal framework from ideas "drawn almost entirely from liberal political discourse."[15] His most influential mark on precedent regarding property was considerably influenced by a classically liberal framework. Marshall was a staunch believer that the government needed to uphold the "vested right of property." However, he understood that the U.S. Constitution was written for a broad electorate that went beyond just an association of property owners. Because of this, he interpreted property rights through the lens of the contract clause of the U.S. Constitution which states, "No state shall…pass

[12] Tamanaha, p. 526.
[13] Tamanaha, p. 530
[14] In his book titled *The People's Welfare: Law and Regulation in Nineteenth Century America,* William Novak explained that "jurisprudential thinking of the most abstract sort… formed an important intellectual template for general nineteenth century policy making." Blackstone (and Marshall) believed that the right of contract "existed outside of society" and therefor law was obligated to "protect and preserve that presocial right." On the other hand, utilitarians believed that "all contracts are made by persons who are already members of society" and therefor the "obligation of the contract is that only, which laws make it to be" (Novak, p. 48).
[15] Brisbin, p. 61.

any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts."[16] By doing this, he departed from a belief in any communal power over individual property and departed from John Locke's belief that property ownership was limited to owning as much property "as anyone can make use of to any advantage of life before it spoils."[17] Instead, John Marshall interpreted the sale or granting of property as a form of contract that was only limited by the details of the agreement between the parties involved in making the contract.

Marshall believed that the right to contract was not "given by society, but [was] brought into it." This made the right of contract an intrinsic right and not a right granted by law.[18] This interpretation of contracts made government regulation or limitation of property owners very difficult.[19] With this precedent firmly established in the decade prior to the Civil War, Spanish and Mexican land grant claimants received overwhelmingly favorable rulings when their claims were adjudicated by U.S. federal courts in the 1850s.[20] While rights based classical liberalism guided legal adjudication of California land grant claims in the 1850s, by the late 1890s classical liberalism was

[16] U.S. Constitution, Article I, Section 10, Clause 1.
[17] MacPherson, pp. 20-21. Despite this limitation, Locke does allow for expanded property rights when labor was exchanged for money (p. xvii).
[18] Isaacs. p. 424-425.
[19] Nathan Isaacs argued that Marshall was "not concerned… with the ideal of individual liberty, but rather with the sanctity of contract; not with the right of the citizen, but with his duty." (p. 426)
[20] See Chapters 1 and 2 for a more detailed description of favorable land claim adjudication before the Civil War.

influenced in the federal courts by utilitarian philosophy which guided the legal adjudication for the majority of New Mexican land grant claims. [21]

The philosophy of utilitarianism eventually adopted by U.S. courts at the turn of the twentieth century originated in the continental philosophy of cameralism, the French Enlightenment philosophy of Jean –Jacques Rousseau, and the utilitarian philosophy of Jeremy Bentham whose ideas were extensively used by the Spanish Cortes of Cádiz, and the Mexican Republic in their effort to end communal property rights. Cameralism was a philosophy that emphasized the "importance of a state's wealth, and emphasized the importance of a strong government" led by an enlightened despot. Cameralism argued that "rulers should attempt to regulate the lives of their subjects in detail to obtain the vital economic objectives of a strong, healthy, numerous, and loyal population." This would be achieved by making social regulation and social welfare the objectives of government.[22] Cameralism provided governments with the rationality to enact reform without the consent of traditional and powerful corporate factions within society. This was accomplished by appealing to "the elites' sense of belonging to an enlightened section of society" which would give a centralized government enough power to "disregard particularism and local rights."[23] For example, most Catholic states adopted some version of cameralism as a way to counter the corporate power of the Catholic

[21] Several New Mexican land grant claims were also adjudicated prior to the Civil War with similar results to claims in California. However, most New Mexican claims adjudicated in the 1890s and early 1900s did not meet with the same success.
[22] Outram, p. 35.
[23] Outram, p. 36-38.

Church. In France, the physiocrats worked to reform land and agriculture using cameralism's belief in enlightened absolutism as a rationale to their actions.[24]

Jean Jacques Rousseau, a contemporary of the physiocrats in France, had a distinctly different opinion than the cameralists regarding authority. Instead of espousing the idea that sovereignty was held by a centralized government ruled by an enlightened absolutist, Rousseau believed that in the social contract, "man surrenders all his rights without becoming a slave."[25] Rousseau believed this to be the case because "the body to which the individual yields his natural rights is not the government but society." Like the cameralists, Rousseau was anti-corporate. He "vehemently opposed any associations, lay or clerical, that might impose obligations on individuals and thus divide their loyalties."[26] Without this divided loyalty, an individual can "place his person and all his power in common under the supreme direction of the general will." The general will is the sum of all individual free will in a society where "each member is an indivisible part of the whole." In this system, the collective general will directs the state to the objective of the "common good." This common good can only be achieved when "each private individual's right… is always subordinate to the community's right to all, without which there could be neither solidity in the social fabric nor real force in the exercise of sovereignty."[27]

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[24] Outram, p. 40.
[25] Donald Cress (ed.), *Jean Jacques Rousseau: The Basic Political Writings* (Indianapolis: Hackett Publishing Company, 1987), p. xv.
[26] Cress, p. xvi.
[27] Cress, pp. 152-153. Benjamin Constant described this subordination without being a slave by using ancient Sparta as an example. In *La Liberte des anciens,* he described how the "Spartans were collectively their own masters, but individually at the mercy of their fellows." (Ryan, p. 12)

Rousseau's theories are often associated with the devastation of both the French Revolution and the resulting "Reign of Terror" in France.[28] Alexis de Tocqueville explained that once "catapulted into practical politics after 1789, the philosophes… had been unable to provide any ideological bulwark against the progress of political terror which had carried on the progress of centralization."[29] Building from the lessons learned during the French Revolution, utilitarian thinkers supported the cameralist belief in centralized power but abandoned Rousseau's belief that sovereignty was found in the general will guiding that power.

The utilitarian thinker Jeremy Bentham blamed French Enlightenment thought (including Rousseau's ideas) for the terror in France when he explained that "The bloody excesses of the Terror" came about as a result of the "'abstract and slippery nature of natural and imprescriptible rights, which he famously dismissed as 'nonsense on stilts.'"[30] Instead of looking for ethereal "natural rights," Bentham embraced rational thought in his 1789 book titled *An Introduction to the Principles of Morals and Legislation.* In this and other works, Bentham argued against competing ideas such as

[28] Robert Wokler, "Contextualizing Hegel's Phenomenology of the French Revolution and the Terror." *Political Theory* 26, no. 1 (1998), p. 35.

[29] Outram, p. 129. Writing in 1856, DeTocqueville also worried about authoritarian trends in France in the mid-nineteenth century. He believed that the increasing power of the centralized state in France "continued unabated between Old Regime and Revolution." Because of this, he advocated for classical liberalism as the basis for law.

[30] James Crimmins, "Jeremy Bentham, *The Stanford Encyclopedia of Philsophy* (Summer 2019) Edition, Section 1. Downloaded from https://plato.stanford.edu/archives/sum2019/entries/bentham on 1 March 2019. While Bentham and deTocqueville agree that General Will was a major cause of the Reign of Terror in France, de Tocqueville advocated for individual rights while Bentham advocated utilitarianism as the true solution to the issues in revolutionary France.

moral sense, common sense, natural justice, and natural equity. He concluded that these were "empty phrases" that did not represent reality.[31] Instead, he theorized that:

> Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do… The principle of utility recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law... the more consistently [utility] is pursued the better it must ever be for human kind.[32]

Bentham directly criticized William Blackstone's adherence to an unchanging common law focus on individual rights. In his rebuttal of Blackstone, Bentham argued that "law is an instrument to serve human purposes" and because of this, true sovereignty should be placed in the legislature. [33] He explained that the courts should be directly subordinate to the lawmaker so that legislatures were strong enough to ensure that laws evolved to reflect the public's changing attitude. Through the legislative power to change law, a country could pursue a legal and political philosophy based on the idea that "'it is the greatest happiness of the greatest number that is the measure of right and wrong.'"[34] Bentham believed a strong, rational, and intelligent legislature should use the knowledge of pleasure and pain to bring about happiness even if this infringed on the protection of individual rights.

Bentham explained how this could be done through the use of "legal positivism" which does not make any direct connection between law and morality. Instead, moral

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[31] Crimmins, Section 2.
[32] Jeremy Bentham, "The Principle of Utility" in *The Portable Enlightenment Reader*, ed. Isaac Kramnick (New York: Penguin Books, 1995), pp. 306 and 314.
[33] Tamanaha, p. 526. This is a primary difference between each of the major continental philosophies. Cameralists believed sovereignty belonged to the enlightened despot, Rousseau believed sovereignty belonged to the general will and Bentham believed sovereignty belonged to the legislature.
[34] Crimmins, Section 1.

laws are whatever legal officials "declare as law" because sovereignty is found in the power to legislate and the will of the sovereign "cannot be illegal [but only limited by] its capacity to compel obedience."[35] Once the empty words of morality are discarded, the legislature is in the best position to move the community towards increased happiness. Bentham conceded that individuals can judge what is in their own interests to some degree, but he concluded that often times they may not judge wisely. An individual might mistake what they only think is in their best interest for what is truly in their best interest. Because of this, the legislators' objective is to further the "real" interests of individuals and the larger community by making decisions that a person would make "if they were fully rational and informed."[36]

To do this, Bentham encouraged legislators to use indirect law to produce the most happiness and help move individuals in the direction that would most benefit the aggregate whole. He described indirect law as "'a secret plan of connected and long-concerted operations to be executed in the way of a stratagem or petite guerre.'"[37] The legislature carries out this stratagem in two steps. First, the legislature determines a course of action which will work towards the ends of security, subsistence, abundance, and equality for the community. [38] Then they determine the aggregate balance of pleasures over pains "'which is the sole end which the legislator ought to have." [39] To do this, they calculate pain and pleasure for all the sub-groups it represents by quantifying

[35] Tamanaha, p. 529
[36] Crimmins, Section 3.1.
[37] Crimmins, Section 3.1.
[38] Crimmins, section 6. Bentham believed that unless there was a specific logical reason, utility would be best served by equal distribution
[39] Crimmins, section 3.

intensity, duration, certainty, proximity, and the total number of persons affected by specific pleasures or pains. [40]

According to Bentham, after the plan is completed and adjusted to take into account aggregate pleasures and pains for sub-groups, the legislature considers how individuals, making individual choices, will react using the pleasure and pain principle. The legislature then provides legal motives using knowledge of deliberate pains and pleasures to "divert their (peoples') desires into channels best designed to serve the public interest… [and] divert people from inclinations damaging to themselves and others." Legislators would do this by "providing individuals with motives to pursue courses of action beneficial to the community." [41] This included government manipulation of property rights which Jeremy Bentham and his followers believed were granted by the government and only exist through state coercion and were not a vested right as John Marshall believed.[42]

Bentham's publications were particularly popular in Spain and Portugal by 1810. Between 1814 and 1822, members of the Cortes in Spain and Portugal as well as other European legislative bodies published testimonials detailing the effectiveness of Bentham's ideas.[43] By the 1820s, his popularity had spread to Spain's former colonies in Latin America. Yet, in countries such as the United States, where law was based on

[40] Crimmins, section 3.3. Bentham further explained that when choices came up regarding whether to give additional increments of pleasure to a rich man or poor man, more happiness will result from giving it to the poorer of the two who will receive more happiness than a rich man who is already happy. If additional increments of pain are needed to accomplish a utilitarian goal, it should be given to the rich man because he will feel the pain less than a poor man would.
[41] Crimmins, Section 3.1.
[42] Tamanaha, p. 522-523.
[43] Crimmins, section 1.

liberalism grounded on natural rights, "Bentham's political prescriptions made little impact…" during his life time.[44]

His lack of influence in the U.S. would not be permanent. John Stuart Mill, whose father co-founded the utilitarian movement with Bentham, developed a revised version of utilitarian theory which introduced the idea of higher pleasures and addressed the criticisms of majoritarian excesses associated with utilitarian thought. By the late nineteenth century, this brought about a new generation who incorporated utilitarian thought into a new liberal discourse.[45] They began to convince U.S. citizens that rights based liberalism was a barrier to democracy and placed unneeded and anti-majoritarian Constitutional restraints on legislation.[46] Because of the belief that liberalism restrained the progress and power of the country, many politicians and jurists began looking towards this new utilitarian interpretation of law which was popular on the European continent and in Latin America.[47]

The movement from classical liberalism to utilitarianism and its associated shift from common law to legislation took place "during several decades on either side of the turn of the 20th century."[48] This changed the basic framework of politics from questions based on "classical liberalism to questions based on modern 'social' or 'imbedded'

[44] Crimmins, section 10.
[45] Crimmins, section 10.
[46] Tamanaha, p. 517.
[47] Ryan, p. 9.
[48] Tamanaha, p. 529. Obviously, neither system was purely one or the other. Prior to the twentieth century, common law was the main influence in England and America. However, legislation influencing law existed alongside common law for centuries and had ebbs and flows of influence. However, legislation remained secondary in influence to common law in England and the U.S. "in standing, bulk, and scope" until the twentieth century when legislation gained primacy in regards to legal influence (Tamanaha, p. 524).

liberalism." This political shift encouraged federal courts to reconsider the primacy of English common law as the source of law in favor of legislation as the primary source of law. During the late nineteenth century, "leading liberals openly expressed contempt for and fear of… the perceived threat [this shift]… posed to property rights."[49] They envisioned a narrow and limited role for government focused on the protection of life, health, liberty, and private property and considered anything that went beyond that as an evil. [50]

Liberal's fears were realized in the 1890s when their opposition to the utilitarian influence on the judiciary was overwhelmed as federal courts embraced the new legal precedent. In this last decade of the nineteenth century, it became a common belief among legal scholars that the right of contract was "neither a constitutional nor a common law right." Instead, it was accepted that the state was exempt from the law of contracts and could overturn legitimate contracts through legislation if it was for the good of the larger society.[51] This precedent was clearly articulated in 1908 by the legendary and highly influential Harvard jurist Roscoe Pound. He spoke for the dominant legal scholars of his era by echoing Jeremy Bentham in two articles written in the *Columbia Law Review* and the *Harvard Law Review.* In these articles, Pound criticized the few remaining liberal judges who continued to rely on abstract concepts, such as liberty of contract, "that originated in a bygone day."[52] Pound insisted that law, "as a means toward

[49] Tamanaha, p. 518.
[50] Tamanaha,pp. 520-521.
[51] Isaacs, pp. 426-427.
[52] Tamanaha, p. 528.

an end, … must be judged by the results it achieves, not by the niceties of its internal structure; it must be valued by the extent to which it meets its end, not by the beauty of its logical processes…"[53] In support of legal positivism, Pound argued that "We do not base institutions upon deduction from assumed principles of human nature; we require them to exhibit practical utility, and we rest upon them a foundation of policy and established adaptation to human needs."[54] According to Brian Tamanaha, Pound "placed his considerable prestige squarely on the side of legislation as the best way to provide a new basis for the common law."[55] This transition from the dominance of classical liberalism to the dominance of utilitarianism in the U.S. came about as the result of a change in the understanding of race and the economic transition from proprietary capitalism to corporate capitalism in the U.S. This shift in philosophy fundamentally changed the role of and relationships between the executive, legislative, and judicial branches of the U.S. government.

White supremacists advocating for a new racial construct used utilitarian theory to popularize their ideas in U.S. society and government. The successful transition of U.S. societal understanding of race was directly tied to the unintended consequences of post-Civil War Reconstruction on the Mexican Cession. With the classically liberal focus on individual rights dominating the federal government during and immediately after the Civil War, there was overwhelming support for Reconstruction in the South. The goal of this initiative was to transform Southern culture in a way that would allow the

[53] Roscoe Pound, "Mechanical Jurisprudence." *Columbia Law Review*, Vol. 8, No. 8 (Dec., 1908), p. 605.
[54] Pound, 609.
[55] Tamanaha, p. 528

implementation of the thirteenth, fourteenth, and fifteenth amendments (The Reconstruction Amendments) in the former Confederacy.[56] In his book, *An Aristorcracy of Color: Race and Reconstruction in California and the West, 1850-1890*, D. Michael Bottoms explains that Reconstruction was implemented during a period when the dominant racial construct was a binary understanding of race in the U.S. Either you were White or you were Black. Reconstruction was the attempt by abolitionists to overcome this racial division by focusing on individual rights of men regardless of race.[57] This ideal was initially accepted by many in the Northeastern U.S. because the population of the region was so overwhelmingly white that negating race from the equation was not a threat to the social order. However, this was far from the case in California (and the South) where the population was much more diverse and demographic trends of the time made it seem to many that the white population might lose hegemony if minorities were to gain voting rights.[58]

Bottoms explains that the fourteenth and fifteenth amendments had unanticipated consequences in California. Because they were "designed to expand the rights of racial

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[56] Allen C. Guelzo. *Reconstruction: A Concise History.* (New York: Oxford University Press, 2018), p. 12. The Thirteenth Amendment abolished slavery and involuntary servitude. The Fourteenth Amendment gave citizenship and equal protection under the law to former slaves. The Fifteenth Amendment prohibited discrimination in regards to voting based on race, color, or previous condition of servitude.

[57] Reconstruction after the Civil War is divided into three eras. The first era, known as Presidential Reconstruction, took place from 1862-1865. During this period, the U.S. government attempted to "curtail the liberties of the freed slaves and return ex-Confederates to Washington as members of Congress." The second era, known as Congressional Reconstruction, took place from 1867-1870. During this period, the U.S. government "established, beyond a doubt, the legal equality of all Americans under the banner of citizenship." The third era, known as the Overthrow of reconstruction, took place from 1870 -1877. During this period, "the first Democratic regimes were elected to 'redeem' the southern states from Republican control" (Guelzo, pp. 12-14).

[58] D. Michael Bottoms. *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850-1890* (Norman: University of Oklahoma Press, 2013), pp. 5-6.

minorities," the political and social dominance of Anglos in more racially diverse states and territories such as California were threatened.[59] In order to protect Anglo hegemony, a complex racial hierarchy developed which put the full diversity of race and ethnicity on a spectrum with white Anglo-Saxons on top and Native Americans on the bottom for the supposed good of all groups. [60] This new construct then spread back to the eastern United States where increasing internal migration of African Americans from the South and external migration from southern Europe threatened the status quo. Non-whites were also influenced by this construct which did not encourage cooperation between individual minority groups. Instead, it encouraged a "destructive competition in which each group embraced the principles of racial difference and sought to elevate its own status at the expense of the others."[61]

Starting out as a new social construct in 1850s California, the aristocracy of color infiltrated national politics and policy by the turn of the twentieth century. In his book, *Racism in the Nation's Service: Government Workers and the Color Line in Woodrow Wilson's America,* Eric Yellin describes how the Wilson administration's management of the executive branch was the culmination of a trend that "combined institutionalized racism with progressive reform in a way that devastated… the very foundation of full citizenship for African Americans."[62] In his summary of the decreasing opportunity and citizenship rights of African Americans at the turn of the century, Yellin describes a

[59] Bottoms, p. 7.
[60] Bottoms, pp. 205-206.
[61] Bottoms, p. 8
[62] Eric Yellin. *Racism in the Nation's Service: Government Workers and the Color Line in Woodrow Wilson's America* (Chapel Hill: University of North Carolina Press, 2013), p. 2.

similar time line to that of the transition from classic liberalism to utilitarianism and from the binary racial construct to the aristocracy of color.

Yellin recounts how after Reconstruction ended in 1877, the Republican party maintained an egalitarian ideal regarding African Americans. As white southern Democrats regained control of former Confederate states and resisted implementation of the reconstruction amendments; the federal government acted as a point of refuge for many African Americans who were given opportunities to work both in Washington D.C. and around the country in federal positions such as postmasterships. The federal recognition of African Americans as citizens and the subsequent political and economic power wielded by African American political leaders and government employees encouraged the potential for social mobility of all African Americans in Washington D.C.[63] However, Yellin's narrative continues by describing how Republican egalitarian ideals began to weaken with the Progressive Era administrations of Roosevelt and Taft. Once Wilson, the third of the "progressive presidents," took office; he allowed white supremacists to systematically segregate federal offices, eliminate opportunities for African Americans within the federal system, and formally institutionalize racial discrimination in the federal government.[64]

Eric Yellin's narrative provides an important case study that supports the larger evolution of racial constructs in the late nineteenth century U.S. He convincingly reveals how individuals within the progressive movement were able to rationalize segregation as

[63] Yellin, pp. 4-6.
[64] Yellin, p. 115.

a utilitarian tool for ending perceived chaos and restoring order in the country which they argued was beneficial to all citizens. It is a prime example of how the subjugation of individual rights in favor of utilitarian philosophy in both policy and jurisprudence can encourage negative outcomes for specific groups. Because of the subordination of individual rights during the Progressive Era, Woodrow Wilson was able to "bless the marriage of progressive politics and state-sponsored racism as necessary for good government" and to benefit the nation.[65]

Racial discrimination based on the aristocracy of color was also felt far from Washington D.C. and by groups other than African Americans. The evolution of policies regarding the U.S.-Mexico border is also a concrete indicator of this transition and how it affected the racial categorization of Hispanics. In her book, *Line in the Sand: A History of the Western U.S. – Mexico Border,* Rachel St. John explains that prior to 1890, Hispanics were essentially considered white and were not seen as a threatening "other" to U.S. society. Once Mexico and the U.S. wrested control of their mutual border from the Comanche and Apache, the border transformed in a way consistent with the older binary racial understanding where both Hispanics and Anglos were considered white. St. John describes how ranchers, miners, investors, laborers, railroad executives, and others "integrated the border into an emerging transnational economy and began to create binational communities on the boundary line" by the 1880s.[66] Mexican nationals could cross the border at will and towns such as Nogales and twin border cities such as El Paso

[65] Yellin, p. 3.
[66] Rachel St. John. *Line in the Sand: A History of the Western U.S.-Mexico Border* (Princeton: Princeton University Press, 2011), p. 10.

and Juarez were not only essential to trade between the U.S. and Mexico, but became "social hubs of binational borderlands communities."[67]

This was not to last into the twentieth century. As the aristocracy of color replaced the older binary system in the U.S., Hispanics were increasingly seen as inferior and border policy reflected this change. St. John explains that it "was only at the beginning of the twentieth century that the boundary line [embodied]…the stark divide between the United States and Mexico" and acted to protect "American morality" and restrict Mexican immigration.[68] The U.S. built fences between border towns as part of a "burgeoning border control apparatus" that defended the border by force and regulated U.S. "public morality."[69] The border enforcement goal of defending American public morality fits perfectly into the utilitarian philosophy that extended its influence into all branches of the federal government at the turn of the century because it places the perceived happiness of the people over the individual rights to trade and interact on the border.

In addition to advocates for a new racial construct using utilitarian theory to champion their cause, both corporate industrial leaders and Populist farmers embraced utilitarianism to gain leverage in a changing economy shaped by the Industrial Revolution. Martin Sklar describes the economic change of the nineteenth century as a transition in the U.S. from the "proprietary-capitalism" that dominated prior to 1890 and the "corporate-capitalism" of the late 1890s and twentieth century. Proprietary-capitalism

[67] St. John, p. 83.
[68] St. John, pp. 4-5.
[69] St. John, p. 6 and p. 10.

was primarily competitive and unregulated domestically. Individuals made private contracts with one another and the role of government was to ensure those contracts were upheld to protect individual rights.[70] In this type of economic structure, most enterprises and property were owned and run by an "owner-manager" who had no control over the price of goods. This price was determined almost exclusively by the supply provided by competing enterprises and the demand of the existing market.[71]

Corporate-capitalism was significantly different. As most would assume, the typical business structure and ownership of property in corporate-capitalism was "dispersed" among shareholders who were distinct from those running the complex enterprise through "bureaucratic-administrative methods involving a division, or a specialization, of managerial function, and an integration, or at least a centralization, of financial control." Because individuals enter into these agreements voluntarily, this falls within a classically liberal frame protecting individual rights.

But, the structure of the dominant business model was only one difference from the earlier proprietary model. Corporate-capitalist structure came about due to a societal anti-competitive consensus between manufacturers, bankers, farmers, workers, and reformers. These different interests used utilitarian philosophy to influence government regulation which decided what kind of regulation of the market "could be left to

[70] Similarly, Edward O'Donnell labels the ideology of this period as "Entrepreneurial republicanism" which "championed absolute private property rights, freedom of contract, and individualism (distinct from the more communal virtue based classical republicanism that dominated during the Revolutionary period), and it utterly repudiated any suggestion that American society was divided into conflicting social classes" (O'Donnell, p. 6).

[71] Martin J. Sklar. *The Corporate Reconstruction of American Capitalism, 1890-1916: the market, the law, and politics* (New York: Cambridge University Press, 1988), pp. 4-17.

arrangements among private parties in the market, and how much and what kind might by assigned to government" in order to do what was best for all citizens and the nation.[72] Individual rights were subordinated as complex contractual relationships typified this new system of capitalism where only "the idiot or the powerless goes into the market without a lawyer, and without political clout."[73]

This tumultuous period of transition is often described through the rise of railroads and the corresponding backlash manifested in the form of nineteenth century populism. In *Railroaded: The Transcontinentals and the Making of Modern America,* Richard White explains that in the supposed interests of the country, "the railroads smudged the line between corporate competition and federal regulation." But, instead of altruistic motivation, corporations used their influence on Congress "to punish rival corporations while gaining advantages for themselves. They made politics a realm of private competition." Instead of competing in the free market place, railroad magnates competed in the U.S. Congress to gain an advantage over their competition, their labor force, and their clients to include western farmers dependent on the railroads. [74]

While those in power talked of all they were doing for the "public good;" those not in power began to feel the negative effects of increasing monopoly where railroad leaders controlled both price and product. The many diverse groups unable to compete due to a lack of power, wealth, and political connection would soon organize under the

[72] Sklar, p. 17.
[73] Sklar, p. 88.
[74] Richard White, *Railroaded: The Transcontinentals and the Making of Modern America,* (New York: W.W. Norton & Company, 2011), p. xxix.

banner of anti-monopolist populism in the hopes of gaining influence in state legislatures and the U.S. Congress who were increasingly consolidating national power. Ironically, they would do this by shaping "the weapons of protest out of the modern materials of technological, organizational, and ideological motivation."[75] According to Robert C McMath, this meant that "the Pops tried to beat the captains of industry at their own game."[76] In *Equality: An American Dilemma, 1866-1896*, Charles Postel explains that many Americans rejected the supremacy of individual liberty for a goal of "equality of condition."[77] Along with equality for citizens, Populists also "tended to embrace visions of progress, modernity, and the advance of civilization. And they understood that the pursuit of equality served as a lever for the realization of freedom, good government, and progress."[78] In order to attempt to attain their goal, Populists had to enter into a struggle with "corporations and other business interests… in electoral campaigns, court room deliberations, legislative negotiations, and newspaper and pamphlet wars…"[79] In other words, Populists and corporations embraced utilitarianism when they waged a "petite guerre" for control of state and federal legislatures to enact their "stratagem" based on

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[75] Postel, *Populist Vision*, p. viii

[76] Robert McMath, "Another Look at the 'Hard Side' of Populism." *Reviews in American History,* Vol. 36, No. 2 (June, 2008), p. 209.

[77] Postel, *Equality*, pp. 4 and 10. Postel explains that this transition away from individual rights happened in the years after the Civil War. He explained that for "many White Americans" the status of the former slaves "was put to rest with emancipation and… with the constitutional amendments of 1868 and 1870." However, growing inequality after the war promoted a new definition of equality based on equality of opportunity and equality of condition (Postel, *Equality*, p. 9).

[78] Postel, *Equality,* pp. 11-12. Robert Wiebe describes a similar shift in his book titled *The Search for Order, 1877-1920* when he summarizes the Populist Era as "the breakdown of this society [based on local autonomy] and the emergence of a new system [based on bureaucratic order which] "assigned far greater power to government- in particular to a variety of flexible administrative devices- and it encouraged the centralization of authority." (p. xiii-xiv)

[79] Postel, Equality, p. 10.

legal positivism to bring what they believed would be the most happiness for the country.[80]

This new system embraced by both corporate capitalists and populist cooperatives had a direct impact on jurisprudence. This was possible due to the close connection between the economy and law In the U.S. In *Democracy in America*, Alexis de Toqueville described lawyers as "the surrogate aristocracy" in America who were integral to politics.[81] Martin Sklar expands on this connection when he states that "the spirit and language of the law permeated the entire society."[82] He describes the connection between the law and the economy in the U.S. when he asserts:

> The law, in sum, is not some "reflection" of, or "superstructure" hovering above, capitalist property and market relations; it is an essential mode of existence and expression of those relations. When those relations are undergoing substantial change, so will the law, resulting in an evolutionary course of development, or, if change in the law is obstructed, in lawlessness and political disruption, if not in revolutionary upheaval… The law becomes a major terrain of contest, as existing property and market relations come into conflict with emergent property and market relations… in this case, the United States in 1890-1916, between proprietary-capitalist and corporate-capitalist property and market relations.[83]

Due to the interwoven nature of the law and the economy in the U.S., this new power of the legislature needed to gain acceptance in a federal court system initially hostile to legislative dominance. The judicial understanding of law based on classical liberalism, which dominated all but the last decade of the nineteenth century, was

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[80] Postel points out that "decades that brought forth herculean efforts to overcome the economic inequality of corporate capitalism… witnessed the extreme inequities of Indian dispossession, Chinese Exclusion, Jim Crow, disenfranchisement, and lynch law." (p. 4) How and why this dispossession occurred will be looked at in Chatpers 4 and 5.

[81] Martin J. Sklar. *The Corporate Reconstruction of American Capitalism, 1890-1916: the market, the law, and politics* (New York: Cambridge University Press, 1988), p. 88.

[82] Sklar, p. 88.

[83] Sklar, p. 89.

codified by the precedents set by the early nineteenth century U.S. Supreme Court and its leader John Marshall who served as Chief Justice from 1801-1835. Marshall was a staunch believer that the government needed to uphold the "vested right of property." However, he understood that the U.S. Constitution was based on popular sovereignty and not the classical republican idea of an association of property owners. Because of this, he interpreted property rights through the lens of the contract clause of the U.S. Constitution which states, "No state shall…pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts."[84] John Marshall interpreted the sale or granting of property as a form of contract that was only limited by the details of the agreement between the parties involved in making the contract.[85] He believed that the right to contract was not "given by society, but [was] brought into it" thereby making it an intrinsic right and not a right granted by law.[86] This interpretation of contracts made government regulation or limitation of property owners very difficult.[87] This strong precedent "establishing a liberal conception of the relationship between the state and individual" was put in place by several land mark cases adjudicated by Marshall and his fellow justices.[88]

One example that contributed to the precedent of contract supremacy is the 1819 case *The Trustees of Dartmouth College v. Woodward.* In this case, the state of New

[84] U.S. Constitution, Article I, Section 10, Clause 1.
[85] This idea would legitimize absentee ownership and speculative acquisition of large tracts of property in both California and New Mexico.
[86] Isaacs. p. 424-425.
[87] Nathan Isaacs argued that Marshall was "not concerned… with the ideal of individual liberty, but rather with the sanctity of contract; not with the right of the citizen, but with his duty." (p. 426)
[88] Morton J. Horwitz, "Republicanism and Liberalism in American Constitutional Thought," *William and Mary Law Review* Vol. 29, No. 1 (October 1987): p. 68.

Hampshire attempted to revise Dartmouth's charter to transform the university from a private to a public institution. New Hampshire argued that the college was a public institution and its corporate charter granted by King George III in 1769 was no longer valid. As a result, the power to regulate the college transferred to the state legislature. Daniel Webster, the lawyer for the Trustees of Dartmouth College, argued that the school was a private corporation and not subject to alteration by the state. The Marshall Court ruled that because Dartmouth College was a private corporation and the state of New Hampshire was not a party to the original contract, they had no power to alter the contract.[89] This precedent setting case greatly strengthened the contract clause in the U.S. Constitution by recognizing the legitimacy of a contract between a U.S. institution and the King of England even after gaining independence as a result of the Revolutionary War.[90]

Another example is the 1810 case, *Fletcher v. Peck* where the Marshall court ruled on the validity of land grants received by the Yazoo Land Company from the Georgia legislature. After the newly elected legislature discovered the fraud, graft, and corruption associated with the transaction of the previous state legislature, they overturned the law enabling the sale. However, the Marshall Court ruled that retroactively invalidating the sale of land by the Georgia legislature was unconstitutional

[89] George Thomas, "Rethinking the Dartmouth College Case in American Political Development: Constituting Public and Private Educational Institutions," *Studies in American Political Development,* 29 (April 2015): pp. 25-27.
[90] George Thomas, "Rethinking the Dartmouth College Case in American Political Development: Constituting Public and Private Educational Institutions," *Studies in American Political Development,* 29 (April 2015): pp. 25-27. This case was also important to the concept of separation of church and state. However, the main precedent it set was in regards to contract supremacy.

due to the contract clause. Although controversial, this decision helped protect contracts from being changed or altered after the fact through popular pressure. Both *Dartmouth v. Woodard* and *Fletcher v. Peck* contributed to the strengthening of the contract clause. Not only did they legally protect the individual right of property, they also imposed a moral obligation on the federal government, the state government, and individuals to respect the legitimate property of others.[91]

Once interest groups such as the populists and corporate capitalists began using utilitarian principles, the courts were pressured to do the same. The intellectual framework of utilitarianism grew in popularity during the Progressive Era and justified the corporate-capitalist economic framework. This new framework still believed in a market economy, but also believed that the role of government was to address, through regulation, economic and social issues in a way that could infringe on individual rights when the good of the larger society was prioritized. John Stuart Mill explains this in his explanation of the utilitarian ideal of the "Greatest Happiness Principle." This principle holds that, "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."[92] This new framework did not see upholding contracts as a moral act. Instead, Progressive Era courts came "to realize that freedom of contract in the sense of a right to make whatsoever contract one sees fit, regardless of the interests of society, is neither constitutional nor a common law right."[93] It was increasingly accepted that the state was exempt from the law of contracts and

[91] Brisbin, p. 67.
[92] John Stuart Mill. *On Liberty and Utilitarianism* (New York: Bantam Books, 1993), p. 144.
[93] Isaacs, p. 426.

could overturn legitimate contracts through legislation if it was for the good of the larger society.[94] Max Weber described this as a shift to "Modernity." He believed "Modernity was synonymous with order imposed by impersonal large-scale organizations. The local yielded to the national, the premodern to the modern, individualism gave way to bureaucracy, and temporary disorder gave way to more lasting order."[95]

There was considerable pressure on the U.S. Supreme Court to yield to the legislature given that by 1890, twenty-one states had added statutes to their state constitutions against the private restriction of trade.[96] These state legislatures believed that the consolidation of capital by corporations "was destroying individual opportunity." Their influence on the U.S Congress was evident with the near-unanimous passage of the Sherman Anti-Trust Act in 1890…"[97] However, the U.S. Supreme Court rejected this new push for legislative dominance by consistently finding against plaintiffs between 1890-1897 who sued corporations that they believed were restraining trade through monopoly. In cases such as *United States v. Greenhut et al.*, *United States v. E.C. Knight Company*, and *Kidd v. Pearson*, the U.S. Supreme Court consistently found that the Sherman Act did not apply because the cases showed "'no restraint of trade, such as would be unlawful at the common law.'"[98] Many judges throughout the federal judiciary considered the Sherman Act "'new and experimental legislation'" whose 'constitutional

[94] Isaacs, p. 427
[95] White, p. xxxi.
[96] Sklar, p. 93.
[97] Arnold Paul. *Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1895* (Ithaca: Cornell University Press, 1960), p. 2.
[98] Sklar, pp. 117-124.

validity' had been considered 'doubtful' by many members of Congress at the time of its enactment.'"[99]

However, as the composition of the Supreme Court changed and lower court precedent in anti-trust cases increased, the U.S. Supreme Court reversed the trend concerning monopoly in its 1897 five to four decision in *United States v. Trans-Missouri Freight Association et al.* The case dealt with a Kansas based freight association that consisted of fifteen member railroads who were accused of fixing noncompetitive uniform rates and regulations at the expense of its agrarian customers. The Eighth Circuit Court found for the defendants in 1892, but the U.S. Supreme Court reversed this decision in 1897.[100] In its majority opinion, The U.S. Supreme Court recognized no distinction between "reasonable and unreasonable restraints of trade." In effect, from 1897-1911, the U.S. Supreme Court had a "pro-small-producer majority" that declared any contract restraining trade illegal "not only procedurally but substantively as well."[101] As a result, corporations, labor unions, agrarians, and politicians in the early twentieth century would now compete with one another in the halls of Congress and the voting booth over specific issues.[102] The judicial debate and evolution regarding the Sherman Anti-Trust Act was a clear indicator of the judicial transition from one understanding of how the law and the economy interacted based on classical liberalism to a distinctly different understanding influenced by utilitarianism.[103]

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[99] Sklar, p. 124.
[100] Sklar, p. 120.
[101] Sklar, pp. 92, 127-128.
[102] Sklar, p. 90.
[103] The period from 1880-1937 is collectively known as the "Lochner Court." Critics of this era criticize the Supreme Court of using "excessive activism" for "unjustifiably frustrating the majority will expressed in

In terms of shifting from a classically liberal framework to a utilitarian framework, 1897 was an important year for the U.S. Supreme Court. Not only did the court use the Sherman Anti-Trust Act to rule against corporate monopoly in *United States v. Trans-Missouri Freight Association et al.*, but the court also ruled against what they perceived as a land-monopoly in *The United States v. Sandoval et al. Morton v. United States* in 1897.[104] With a clearly defined temporal marker of 1897 that divides the intellectual, legal, and economic frameworks used by the U.S. Supreme Court to adjudicate Spanish and Mexican land grant claims, the seeming inconsistency between legal success by claimants in California and legal failure by claimants in New Mexico becomes an example of the shifting economic, intellectual, and legal frameworks taking place in the United States in the late nineteenth and early twentieth centuries.

Because the contracts of Spanish and Mexican land grants in the U.S. were based on Mexican law, the changing legal philosophy taking place in nineteenth-century Mexico also provides important context to understand the Supreme Court's logic in the 1897 *Sandoval* decision and the legal fate of ejidal land grants in New Mexico after 1897. Historians concluding that the dispossession of Hispanic and Pueblo land in New Mexico

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legislation" until 1937 (Phillips, pp. 457-458). However, the acceptance of the Sherman Anti-Trust Act after 1897 and Clayton Anti-Trust Act after 1914 contradict this narrative. In his article titled "The Progressiveness of the Lochner Court," Michael Phillips supports the idea the Supreme Court during the Lochner Era "rejected considerably more substantive due process claims than it granted… and upheld a great deal of progressive social legislation against substantive due process attacks" (Phillips, pp. 489-490). Philips concludes that the Lochner Court "was more progressive than is commonly imagined" and has been unfairly "attacked as, either by ignorance or by design, a consistent opponent of government regulation, champion of business, and foe of the disadvantaged." (Michael J. Phillips, "The Progressiveness of the Lochner Court," Denver University Law Review Vol. 75, no. 2 (1998): pp. 502 and 505).

[104] This court case involving the communal Spanish land grant of San Miguel del Vado will be discussed in Chapter 4.

and California was the result of a U.S. legal system that did not recognize or understand Hispanic law seem to be overlooking the fact that ejidal and individual land grants that came under the control of the U.S. were recognized by the U.S. judiciary and Congress prior to 1877 (See Chapter 2). These arguments also seem to ignore events taking place in Mexico during the same period where ejidal land was confiscated and transformed into individually owned land by the Mexican government starting in the 1850s. This led to the dispossession of 90% of the land owned by indigenous communities in Mexico by the late nineteenth century.[105]

Although many nineteenth century historians advocated the idea that emerging countries in the Western Hemisphere stood "in special relationship to one another which sets them apart from the rest of the world," there were significant philosophical and demographic differences between the U.S. and Mexico.[106] Philosophically, the assumptions and popular theories regarding governance in the U.S. and Mexico were fundamentally different. The 1824 and 1857 constitutions of Mexico had their roots in Spanish and French Enlightenment philosophies based on utilitarian writers while the U.S. Constitution and judicial precedent set by John Marshall was most influenced by the English and Scottish Enlightenment.[107]

Father Mier, one of the most respected figures of the Mexican National Constituent Congress came to this conclusion after years of experience and study both

[105] Dan Klooster, "Community Forestry and Tree Theft in Mexico: Resistance or Complicity in Conservation?" *Development and Change,* Vol. 31 (2000), p. 291.
[106] Hale, p. 191.
[107] Hale, p. 151.

abroad and in Mexico.[108] After years of promoting a Mexican government based on U.S. values, Father Mier concluded that liberalism would not work in Mexico. He believed that liberalism worked in the U.S. because the population was more "homogenous" and not as divided by dominant corporate entities with their own specific interests. In contrast, Mier believed that Mexicans were an old and heterogenous people "impaired by the vices of three centuries of slavery."[109] The evolving opinion of Father Mier is a microcosm of the brief consideration of classic liberalism in an independent Mexico which was soon drowned out by the argument for utilitarian rule based on positive liberty in Mexico.

Competing philosophical ideals and corporate interests led to much of the instability which typified Mexico's early history after independence. While John Locke, John Marshall, and Adam Smith were the dominant political thinkers influencing the development of U.S. government institutions; Jeremy Bentham and the early nineteenth century Spanish Cortes "had considerable influence among Mexican constitutionalists" who both based their philosophy on French physiocrat theory.[110] French and Spanish enlightenment philosophers "always assumed an enlightened despot in their system of 'perfect liberty.'" Mexican constitutionalists also embraced "the utilitarian sprit that permeated Spanish thought and policy under Charles II" and the legislation of the

[108] Father Mier's international travel began as a result of his excommunication from the Catholic Church in 1794 for publicly questioning the tradition of the "Virgin's appearance," Mier first moved to France in 1801 where he associated with "ex-revolutionaries" and fought against Napoleon as an officer in the French Army. He then spent significant time in Great Britain and the U.S. before returning to Mexico to oppose the rule of Emperor Iturbide.
[109] Hale, p. 197.
[110] Hale, p. 155.

Spanish Cortes which Bentham "took a lively interest in."[111] However, instead of monarchic authoritarianism, Mexican constitutionalists envisioned a system of "democratic authoritarianism."[112] The influence of Jeremy Bentham and utilitarian theory was found throughout the 1824 constitutional debate taking place after deposing Emperor Iturbide. Jose Maria Luis Mora, one of the leaders of the constitutionalists asserted that "' the glory of the legislator does not consist in being an inventor, but in guiding his subjects towards happiness."[113] Jose Maria de Jauregui stated that "'In Mexico he [Bentham] has enchanted the intellectuals, who have read him with pleasure and have consumed all the copies [of his books] that have arrived.'"[114]

The popularity of utilitarian thought in Mexico is understandable due to the socio-economic situation in which the newly independent Mexico found itself. Bentham believed that the "spirit of corporation" was the greatest obstacle to the "general interest of society."[115] Constitutionalists such as Mora identified the social and cultural "customs and habits" focused on corporate interest groups left over from the colonial period were at "variance with our liberal theories of government."[116] The habits Mora refered to are the social, economic, and political divisions based on a "multitude of privileged bodies" that included the church, the army, the mint, the guilds, Indian communities, and the university. Mora explained that these corporate bodies exercised "a kind of tyranny over their members, which inhibits personal independence and the development of a

[111] Hale, p. 151 and 156.
[112] Hale, p. 154.
[113] Hale, p. 155.
[114] Hale, p. 155.
[115] Hale, p. 158.
[116] Hale, p. 113.

community of citizens enjoying equal rights and responsibilities."[117] In order to transform Mexican society from the old order controlled by colonial nobility to the new order controlled by individual citizens, Mora and others believed utilitarian reform was necessary.

After independence, there were three basic factions trying to shape and influence the new government of Mexico. Liberals hoped to create a government based on protecting individual rights through the enforcement of laws, contracts, and a well-defined constitutional construct similar to what was found in the U.S. Utilitarians were also concerned with protection of individual rights, but saw this protection coming from positive and centralized actions that deliberately broke down corporate factions despite any prior contracts, laws, and individual decisions that supported this old system. The debate between these two philosophical groups was a struggle over whether government should give preference to "the extension of individual rights to all members of the community" or "the right of the people as an organic whole to govern itself."[118] In terms of property, the fundamental difference between liberals and utilitarians was that liberals wanted the government to uphold pre-existing contracts regarding individual and communal land holdings, but give no special protections to large land holders. Utilitarians, on the other hand, believed the government should take positive action to reduce all unoccupied land to private property, regardless of prior grants, acquisitions, or contracts.[119]

[117] Hale, p. 114.
[118] Hale p. 52.
[119] Hale, p226.

While the third group, commonly known as conservatives, were not thrilled with the liberal approach, they saw the utilitarian goals as a direct threat. Conservatives consisted of Creole families who made fortunes as mine owners who purchased large estates from the Jesuits, upper clergy who controlled the missions on behalf of the church, the military elite who received large land grants, and the aristocratic elite who received large grants. Like the utilitarians, conservatives were advocates of centralized power, but believed centralization should come under an enlightened despot who protected the rights and privileges of elite corporate interests such as the church, military, and aristocracy while ensuring stability in the traditional structure Mexico had developed as a colony under Spain. [120]

After the overthrow of Iturbide, who had upset all three factions in the Mexican government, Mexico formed a republican government with the Constitution of 1824 which set up a federal system with most power residing in the states. The Constitution relied heavily on the 1812 Cortes legislation as a model with the exceptions of a republic replacing a monarchy and a less centrist framework. Despite these differences, the 1824 Constitution maintained the corporate distinctions within society by maintaining a central Government Council to operate during recesses of the legislature, the guarantee of Catholicism as the official religion, and the recognition of ecclesiastical and military corporations or fueros (privileges and legal system specific to a specific corporate group). Despite the recognition of these elite fueros, utilitarian delegates were generally hostile to Native American corporate ejidos. They were unsuccessful in enacting any federal

[120] Hale, p. 45

legislation outlawing corporate ejidal lands, but under the federal system, they gave power to govern ejidos to the states, which began attacking this institution locally. In many areas, the Native American population lost the collective corporate rights as Native Americans which they maintained under Spanish rule, but retained rights as specific towns made up of citizens to maintain communal property just as other towns made up of non-native Mexican citizens.[121]

According to historian Charles Hale, the Constitution of 1824 started a "Golden Age" that only lasted until mid-1827. According to Mora, this peace came about due to a temporary subordination to laws in accordance with classically liberal ideals. However, "conspiracy, factional scheming, and personalist politics" led to the end of this Mexican golden age just a few years after it began. As stability began to unravel in Mexico in 1827, the classically liberal intellectuals of Mexico pushed for a "determined constitutionalism" and believed "the salvation of the republic must… depend on... the undisturbed supremacy of the laws."[122]

This fight for rule of law gained prominence with the growing issue over expulsion of Spaniards from Mexico in 1827. In *El Observador,* Mora argued a very unpopular opinion in Mexico. Mora vigorously argued against expulsion of Spanish residents from Mexico because such an action was a threat to the "basic principles of constitutional liberalism." Mora did not define the Spanish living in Mexico as anything other than individual Mexican citizens with natural rights guaranteed in the Treaty of

[121] Hale, pp.226-228.
[122] Hale, p. 98.

Cordoba, the Plan of Iguala, and individual legitimate contracts that Spanish citizens of Mexico had entered into. Mora believed that popular utilitarian sentiment infringed on the rights of Spanish citizens who like any native of the Republic of Mexico should receive government protection from "being molested in their persons, rights, and properties, and equality before the law…"[123] After the arbitrary arrest of several high profile Spanish citizens, Mora editorialized that "Calm and rational deliberation had given way to passion, and once again individual rights had been abridged in the name of general will." In addition to Mora's lament that utilitarianism had eclipsed classic liberalism in Mexico, Francisco Molinos del Campo published a series of articles in Mora's *El Observador* warning of the dangers the country faced due to the lack of an independent Mexican judiciary which instead, was guided by the will of public authority in accordance with utilitarian ideals.[124]

The structure of the Mexican judiciary made this subordination to public authority especially easy since a "marked absence of judicial independence in the relationship between the executive and judiciary" existed throughout Mexican history.[125] Pilar Domingo explains that the Mexican Supreme Court "has been traditionally… subservie[nt] to the will of the executive, in a system which has concentrated most political power, both formal and de facto, in the hands of the presidency."[126] This lack of an independent judiciary came about in Mexico as a result of the political and

[123] Hale, p. 100.
[124] Hale, p. 100.
[125] Pilar Domingo, "Judicial Independence: The Politics of the Supreme Court in Mexico." *Journal of Latin American Studies,* Vol. 32, No. 3 (Oct 2000), p. 705.
[126] Domingo, p. 706.

philosophical tradition inherited by independent Mexico. The judicial system also was taken directly from the 1812 Cortes of Cádiz where there was an inherent problem of separation of powers and separation of the judicial matters from administration. The ideas of Jeremy Bentham "permeated the juridical discussions" leading to the Constitution of 1824. Bentham believed that the judiciary should be subordinate to the legislature and had no power to declare a law unconstitutional or interpret laws. Instead, laws should be codified by the legislature and courts simply execute decisions based on these codifications. [127] This utilitarian view of court structure came directly from Roman common law (as opposed to English common law in the U.S.) and was inherited by Mexico from the Spanish and French. Mexican courts in accordance with Roman civil law attempted to ensure certainty by making complete legal codes so detailed that the assumption was that if a right is not listed, then that right does not exist. This structure also forbid the courts from implying rules and forbid judicial interpretation when rules were not expressly spelled out.[128] The Mexican Supreme Court was a distinctly non-independent branch of government from independence until 1917 due to its direct subordination to the executive branch of Mexican government.[129] In fact, according to Pilar Domingo, "The Mexican Supreme Court has been traditionally characterized by its passive political role, and its subservience to the will of the executive, in a system which has concentrated most political power, both formal and de facto, in the hands of the

[127] Hale, p. 95.
[128] Michael C. Taylor, "Why No Rule of Law in Mexico- Explaining the Weakness of Mexico's Judicial Branch." *New Mexico Law Review,* 27 N.M. L. Rev. 141 (1997), p. 143.
[129] Domingo, p. 705.

presidency." The weakness of the court was specifically adopted by Mexico and suggested by Bentham so that it did not threaten advancement of the general will with a rigorous defense of individual rights. [130]

Judicial weakness became an increasing issue after 1824 and some judicial reform was implemented after utilitarians gained power over conservatives during La Reforma which produced a new Mexican Constitution in 1857. The changes to the judiciary in the 1857 Constitution were a direct counter to French model based on "popular sovereignty."[131] However, the changes made little difference in regards to subordination to the executive and only marginally increased protection of individual rights. The 1857 Constitution gave the supreme court a more prominent role than in the past by granting the courts power of judicial review in the case of amparo suits.[132] Amparo suits were designed to protect individual rights of speech, press, thought, life, industry, property, labor and association from any authority, including the federal and state governments.[133] However, Amparo suits did not allow courts to judge whether a "right" is constitutionally protected. Instead, Amparo's only allow the court to review whether or not a right was violated by "establishing the facts of the case, not to the meaning of the constitutional text."[134] If a suit claims government abuse, the law in question was to be interpreted "as strictly as possible."[135]

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[130] Domingo, p. 706.
[131] Timothy James, *Mexico's Supreme Court: Between Liberal Individual and Revolutionary Social Rights, 1867-1934* (Albuquerque: University of New Mexico Press, 2013), p. 6.
[132] Domingo, p. 710.
[133] James, p. 5.
[134] Taylor, "Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch." p. 153.
[135] Taylor, p. 153.

In Amparo suits, in addition to a strict interpretation of any law, a ruling in favor of a plaintiff only applies to that individual who receives "an exemption from the law" which remains in place until legislatively overturned. While the granting of jurisdiction to the Supreme Court in amparo cases was an improvement, there were severe weaknesses still in existence. Most notably, a law determined by the Supreme Court to be unconstitutional did not set precedent. The ruling only applied to the individual bringing the suit. Article 102 of the 1857 Constitution specifically states that, "the sentence [of an amparo suit] shall be confined to affording them redress in the special case to which the complaint refers, without making any general declarations with respect to the law that motives it."[136] In his article titled "Why No Rule of Law in Mexico," Michael Taylor explains that:

> a plaintiff may bring an amparo contra leyes suit against an over-burdensome tax law as a violation of the constitutional right not to be deprived of a living. A favorable ruling exempts the plaintiff from the tax, which has been in effect, declared unconstitutional. Nevertheless, all other citizens are subject to the same unconstitutional tax law, unless they too file an amparo contra leyes suit (or the legislature decides to change the law).[137]

When utilitarians seized control in the 1850s, the Mexican Supreme Court was too weak to defend contract rights. This inability was further exacerbated when Article 27 of the 1857 Constitution further weakened communal land rights with the inclusion of the

[136] James, p.5.

[137] Taylor, p. 158. Taylor also explains several other weaknesses of the amparo suit including an overburdened supreme court, which was the only court in Mexico authorized to hear amaparo suits and a lack of amparo experience for judges working their way up the ranks of the court system. The sheer number of cases was overwhelming. According to Timothy James, the Mexican Supreme Court heard 57,000 amparo suits between 1887 and 1907.

Ley Lerdo. Because of the subordination of the Supreme Court, the court was unable to rule on the constitutionality of Article 27 which was a direct utilitarian attack on communal property rights. Article 27 of the 1857 Mexican Constitution states that,

> No civil or ecclesiastical corporation, whatever may be its character, denomination, or object, shall have legal capacity to acquire in property (as owner) or administrator by itself real estate, with the only exception of the edifices destined immediately and directly to the service or object of the institution.[138]

The article's primary target was the property of the Catholic Church. However, the 1856 Lerdo Law, upon which the article was based, specifically defined corporations as "religious communities of both sexes, confraternities, congregations, brotherhoods, parishes, town councils (ayuntamientos), colleges, and in general every establishment or foundation which may have the character of perpetual or indefinite duration."[139] Prior to 1856, Native American ejido land was still legitimately owned by Native American communities, not because of their previous protected status under the Spanish government, but because of the general protection of towns to own and control communal land.

When the Lerdo Law was enacted on June 25, 1856 and confirmed by Article 27 of the 1857 Constitution, it "compelled the pueblos throughout the republic to sell all their community lands." The new government saw the forced sale of communal land as protecting the general will because the vast amount of land held by corporations "was

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[138] Frederic Hall, *The Laws of Mexico: A Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances* (San Francisco: A.L. Bancroft and Company, 1885), p. xcv.

[139] Hall, p228.

considered a great detriment to the country" and the government needed to provide "some means for the distribution of these lauded estates to private individuals."[140] The government rationalized that it was giving the opportunity to own land to renters and peons. The government also felt that the unhappiness of members of corporations were minimized because members maintained the right to "make conventional sales" which ensured a fair price was paid to corporations by individual renters buying the land and fair public auctions be held with individual corporations receiving money from auction of their land.[141] However, the Mexican government directed who had the right to buy the land. The 1856 Lerdo Law directed that common property belonging to pueblos but rented out was to be first sold to the lessees. Only if a lessee declined to buy would individuals in the community have the opportunity to purchase communal land for themselves.[142] So, if a town was renting land to an outside rancher or homesteader for income, the members of the town had no right to purchase the land until the lesee declined to buy the land.

Despite the soon to be apparent complications to the Lerdo Law, utilitarians claimed that the law and Article 27 was in keeping with the 1821 Plan of Iguala, which stated that "the person and property of every citizen shall be respected and protected by the government."[143] Lerdo also pointed to the 1813 decree by the Cortes of Cádiz for legitimacy, which stated that the "reduction of the common lands to private dominion is

[140] Hall, p. 222.
[141] Hall, p. 228.
[142] Hall, p. 260.
[143] Hall, p. 63.

one of the provisions which the welfare of the pueblos and improvement in agriculture and industry most imperiously claim"[144]

In *The Laws of Mexico*; a comprehensive English translation of Spanish and Mexican property law, personal rights, and contract law; Frederic Hall explained that the Spanish laws of the Indies suggested that "The fee of the land embraced within the limits of pueblos continued to remain in the sovereign, and never in the pueblo as a corporate body. Under the jurisprudence of Spain, no lands within a pueblo were ever sold to a private individual, except the house-lots."[145] His analysis of the Spanish Constitution of 1812 and the federal laws of Mexico led him to conclude that this had never been repealed by either government.[146] With the ousting of Iturbide and the establishment of a decentralized federal government, Hall believed that sovereignty passed to the individual states until the 1857 Constitution dictated that the federal government regained sovereignty of communal land.[147]

Once the 1856 Lerdo Law and Article 27 of the 1857 Constitution were enacted, several Mexican citizens tested the constitutionality of both by initiating Amparo suits. In 1882, the pueblo of Tepetitlan lost a suit against the privatization of communal land and in 1892, the Indians of Chicontepec in the State of Vera Cruz lost their communal rights. In both cases, the supreme court ruled that "the foregoing laws, regulations, and circulars extinguished the juridical personality of said communities or Indian towns" and that the

[144] Hall, p. 43 and 50.
[145] Hall, p. 53.
[146] Hall, p. 55.
[147] Hall, p. 56.

"law of desamortization was not in conflict with the constitution; and that towns or communities could not hold real estate nor manage the same.[148]

The loss of corporate rights brought about by the 1857 Constitution faced a short-lived backlash. Conservatives hurt by the law looked to Europe for an enlightened despot to reestablish their traditional rights. With the U.S. embroiled in its own Civil War and unable to enforce the Monroe Doctrine, France and Mexican conservatives used the excessive debt owed by Mexico as an excuse to place Austrian archduke Maximilian as King of Mexico with the help of 27,000 French troops in 1861. After years of fighting Mexican forces under Juarez, Maximillian finally ascended to the throne of Mexico in 1864 only to be deposed and executed in 1867.[149]

With the downfall of the monarchy that had been supported by the conservative faction in Mexico, the country's internal divisions between traditional corporatism and utilitarianism re-ignited. The peasants demanded land, pueblos demanded autonomy, and soldiers demanded land for their service. Benito Juarez was elected President of the restored republic in 1867 by advocating for a strong executive presiding over a centralized government. [150] However, reform under Juarez resulted in a "rotation of capital among a small elite [rather] than a free circulation of capital in a well extended marketplace" according to historian Steven Sanderson. This accelerated the concentration of wealth within a small landholding elite and "retarded that decomposition of traditional

[148] Hall, p. 227.
[149] William H. Beezley and Michael C. Meyer, *The Oxford History of Mexico* (New York: Oxford University Press, 2010), pp. 379-384.
[150] Beezley and Meyer, p. 397.

haciendas" and promoted the ravaging of rural communities stripped of their protections of municipal land tenure by speculators, merchants, and public officials.[151] With no way to protect individual or corporate rights of non-elites, the restored republic endured rebellions every year between 1867 and 1876 which discouraged foreign investment that the Mexican government was desperate to receive.[152]

As a result of the Revolution of Tuxtepec in 1876, Porfirio Diaz claimed the presidency of Mexico and enacted a utilitarian program for government. Diaz promised that by providing stability, Mexico would obtain economic development through reliable markets; stable currency; and protection from unreasonable demands, such as land seizures and taxes which discouraged trade and investment. However, the new Diaz regime maintained the utilitarian belief that statesmen (the legislature) held "a right of expanded eminent domain" in order to execute the general will.[153] In order to modernize, the Diaz regime believed that "primitive accumulation" needed to precede industrial capitalism. This accumulation "involved the concentration of wealth through dispossession of its former owners" which resulted in an "army of labor necessary for the production of surplus value."[154] Due to this belief, Diaz embraced the communal dispossession of the reforma by arguing that the resulting concentrated land tenure would benefit all of Mexico to include those Mexican citizens who had been dispossessed.

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[151] Steven Sanderson, *Agrarian Populism and the Mexican State: The Struggle for Land in Sonora* (Berkeley: University of California Press, 1981), p. 29.
[152] Sanderson, pp. 31-32.
[153] Sanderson, p. 26.
[154] Sanderson, p. 33.

As the first step to modernization, Diaz developed the Mexican railroad network which was designed to link agricultural and mining regions with both the U.S. and the center of the Mexican Republic. Diaz also saw the subsidization of railroads and opening national lands to colonization was an effective method for controlling disgruntled Native American groups within Mexico.[155] Diaz also promoted foreign colonization and land speculation in the name of "peace and prosperity."[156] By 1883, dispossession of land was in full swing when Diaz reformed the Law of Colonization. Instead of allowing claimants to survey land grants, Diaz allowed the government to commission engineers to survey national lands. Sanderson states that:

> Up to one-third of the territory surveyed was granted as compensation for the work of the concessionaires. This provision, along with previous colonization and land-tenure laws, was the nucleus of the Porfirian dispossession program… which amounted to an enclosure movement, in which any lands not clearly titled were redistributed to survey companies and regime favorites. Land redistribution during the next two decades completely reordered the ownership of the Mexican countryside and stripped thousands of their way of life.[157]

The Diaz reforms did eventually bring the foreign investment Mexico craved by the 1880s. But this investment only made traditional inequalities worse as the rich became richer and spent much of their new wealth on imported luxuries while only some wealth trickled down to the middle class in the form of government jobs and business opportunities in an export economy. The underclass benefited only "occasionally, conditionally, and selectively."[158] In the late nineteenth and early twentieth centuries, the

[155] Sanderson, p. 35.
[156] Sanderson, p. 35.
[157] Sanderson, p. 36.
[158] Meyer and Beezley, p. 400.

failures of these utilitarian programs to produce the economic development, wealth, and stability that was promised coalesced opposition to the Diaz dictatorship which eventually resulted in the Mexican Revolution.

The general struggle between utilitarianism and classical liberalism in the western world and more specifically in Mexico provides important context when studying the judicial and economic outcomes of Spanish and Mexican land grants in the U.S. in the late nineteenth and early twentieth centuries. All branches of the U.S. government were eventually influenced by utilitarian thought in an evolution taking place between 1877 and 1897. Corporate capitalists and agrarian populists used utilitarianism to advance their agendas in all three branches of the federal government. Southern redeemers, western Yankees, and progressive racists used utilitarianism to rationalize the creation of a social "aristocracy of color" and structural racism in government by the early twentieth century. This rejection of individual rights in the U.S. set the conditions for the successful late nineteenth century assault on the contract rights of land grant owners by using legal precedents set in Mexico regarding land grants. The Treaty of Guadalupe Hidalgo bound the U.S. government to recognize land grant rights in accordance with Mexican law. However, the interpretation of pre-1848 Mexican law established by the Mexican government in the 1857 Constitution and the Lerdo Law allowed the Mexican government to reject the contractual obligations of Spanish and Mexican land grants for the supposed good of the country and the Mexican population. As a result, the U.S. government embraced this Mexican interpretation of pre-1848 Mexican laws in their handling of Spanish and Mexican land grants starting in 1897.

CHAPTER FOUR: SPANISH AND MEXICAN LAND GRANTS IN NEW MEXICO AFTER 1877

After the 1897 Sandoval decision, the claims court rejected the common lands of every community grant that came up for adjudication. This vast acreage acquired by the United States now comprises most of the Carson and Santa Fe National Forests in northern New Mexico.[1]

- Malcolm Ebright

As chapter 2 and 3 explained, the U.S. government readily recognized communal (ejido) land grants of both Hispanics and Pueblo Indians prior to 1877 in New Mexico. At the same time, the Mexican government was dispossessing Hispanics and Native Americans of similar communal grants in Mexico. This divergence in legislative and judicial action between neighboring countries came about as a result of differing intellectual philosophies influencing liberalism in each country. Prior to 1877, utilitarian philosophy had a significant influence on Mexican land policy but was not a significant influence on the U.S. government. However, as chapter 4 will show, after 1877 the U.S. government actions regarding Spanish and Mexican land grants were increasingly influenced by utilitarian philosophy. This philosophical shift led to a fundamental change in perceived property rights of Spanish and Mexican land grant holders in New Mexico, the racial reclassification of Pueblo Indians and Hispanics, and legislative dominance over the fate of remaining unadjudicated land grants.

The transition from the dominance of a rights based, classically liberal, proprietary capitalist world view to a legislative based, utilitarian, corporate capitalist

[1] Malcolm Ebright, "The Legal Background." In *Land, Water, and Culture: New Perspectives on Hispanic Land Grants,* Ed. Charles L. Briggs and John R. VanNess, p. 47.

world view changed the legal and moral rationale in regards to the litigation and confirmation of Spanish and Mexican land grants in U.S. courts for all claimants. Prior to this change, outcomes of land grant litigation in the U.S. were not linked to race or ethnicity for Anglo, Hispanic, and Pueblo claimants. Instead, the legal system focused on protecting individual contract rights and property rights. After this change, the focus of federal courts shifted to decisions that were understood to be in the best interest of society as a whole. This shift provided an opening for a fundamentally new understanding of race to become entrenched in U.S. political and judicial actions. This made both Pueblo Indians and Hispanics more vulnerable to unfair treatment by an increasingly powerful federal government in the first decades of the twentieth century. This new treatment of Hispanic and Pueblo Indian land grant owners by the U.S. government was legitimized by the 1897 *U.S. v. Sandoval* decision, the 1910 *Enabling Act*, the 1912 New Mexico state constitution, and the 1913 *U.S. v. Sandoval* decision.

The legal flexibility of utilitarian philosophy and subordination of individual contract and property rights made it possible for government officials to use moral rationalizations to legitimize race-based alienation of land grants for the supposed "good" of both the dispossessed grantees and society as a whole. Techniques such as fallacious legal maneuvering, federal assumption of control over Pueblo lands, and seizure of Hispanic communal lands by the U.S. government were initially prevented by the judicial enforcement of contract rights prior to 1877. However, the influence of utilitarian thought during the Progressive Era made these same actions both legally and morally acceptable through the use of a complex racial caste system that influenced court rulings, legislation,

and executive action after 1877. The U.S. government tendency to use utilitarian rationalizations and the new social construct of race were the basis for the successful dispossession of Hispanic land grant claims, the loss of independent control of Pueblo Indian land grant claims, and the loss of economic opportunity for both Hispanic and Pueblo land grant owners at the turn of the twentieth century.

The most significant event influencing the outcome of the rulings for land grant claims was the 1897 *United States v. Sandoval et al. Morton v. United States* decision by the U.S. Supreme Court. The case itself was brought before the court by two plaintiffs, Julian Sandoval and Levi Morton, making separate claims to the San Miguel del Vado Grant. Because the surveyor general system appealed directly to Congress and bypassed federal courts, the federal court system initially had limited influence and oversight on land grants in New Mexico before 1897. However, a number of events finally led to the opportunity for the U.S. Supreme Court to address the question of communal land grants. These events started as a result of the lack of judicial oversite of land grants in New Mexico.[2] This led to a great deal of confusion as dispossession schemes by land speculators, such as the members of the Santa Fe Ring, were attempted prior to 1897.[3]

[2] Unlike the legislation creating the California land commission, the legislation establishing the adjudication system in New Mexico bypassed federal courts in the appeal process for land grant rulings.
[3] The most famous organization engaging in legal chicanery to acquire land grants in New Mexico was the Santa Fe Ring. This organization consisted of prominent lawyers (such as Thomas Catron), businessmen, federal officials (to include several New Mexican territorial governors and surveyors general), and Hispanic brokers (such as the mayor of Santa Fe and first secretary of Education after statehood, Amado Chavez). The Santa Fe Ring pursued Eastern U.S. and British investors to invest in New Mexico land. They convinced these outside interests to buy timber, mining, and grazing lands which the ring acquired title to from purchase, partition suits, and legal manipulation (Correia, "Making destiny manifest: United States territorial expansion and the dispossession of two Mexican property claims in New Mexico, 1824-1899, p. 92).

When trying to acquire community grants that were valued for their valuable mineral, lumber, or water resources; speculators had to overcome a difficult conundrum. They wanted the grants to be recognized as legitimate by the surveyor general and U.S. Congress, but they also needed to invalidate the claims of the legitimate owners who possessed the land both by occupation and legitimate contract.[4] To acquire communal grants approved by the New Mexico surveyor general and confirmed by Congress, speculators attempted to illegally acquire lands through two methods. For both methods, the lawyer would work for a community trying to receive a confirmation of its grant in the surveyor general system. The lawyer would work diligently to succeed in what seemed to be in the best interests of the local community. However, he would ensure that grant holders pay his legal fee by conveying land from the grant in lieu of a cash payment. Once the lawyer secured the confirmation to the grant for all land holders to include himself, he would attempt to do one of two things. He would either initiate a partition suit representing himself as one of many stakeholders in a grant and force the sale of the land which he would later buy through a business partner at a low price; or, he would ensure that his part of the grant originated from one of the named recipients of the original grant and then claim that he was the sole owner of an individual grant and the members of the community on the grant were squatting illegally.[5]

Both of these methods were in violation of the original grant contract and Mexican Law which both forbade the sale of communal lands. Not only did the actual

[4] Charles Briggs and John VanNess, *Land, Water, and Culture: New Perspectives on Hispanic Land Grants* (Albuquerque: University of New Mexico Press, 1987), p. 277.
[5] Briggs and VanNess, p. 277.

communal residents oppose this, but ranchers, homesteaders, and miners without legal ownership of the grant also opposed this corruption because they believed communal land should be placed in the public domain and opened to preemption and settlement just like other areas in the west.[6] Because of several attempts to steal land grants and the multiple parties unhappy with these attempts, Congress stopped confirming grant claims in New Mexico until the creation of the Court of Private Land Claims (CPLC) in 1891. But this inaction also gave organizations, such as the Santa Fe Ring, the opportunity to attempt to enrich themselves from land grants despite not winning a confirmation.

Two examples of attempts by the infamous Santa Fe Ring to take control of communal grants in New Mexico are the adjacent grants of Petaca and Vallecito de Lovato. The Lovato Grant was established in 1824. This communal grant listed Jose Samora and twenty-five unnamed individuals as the grantees. In 1836, the Petaca communal grant was established with the grant listing Jose Martinez, Antonio Martinez, Francisco Atencio, and thirty-six other unnamed settlers as grantees. Both ejidal communities continued to prosper after New Mexico became part of the U.S.[7]

Unbeknownst to community members, Samuel Ellison submitted a claim to the surveyor general for both communities in 1875. He claimed to be representing the heirs of the original grantees, but there is no evidence that the community members were ever aware of these legal proceedings. The surveyor general quickly recommended approval

[6] Briggs and Van Ness, p. 277.
[7] David Correia, "Making destiny manifest: United States territorial expansion and the dispossession of two Mexican property claims in New Mexico, 1824-1899." *Journal of Historical Geography* (No. 35, 2009), pp. 91-99.

of both claims; which he characterized as communal grants. But, as discussed in chapter 2, Congress took no action to confirm or reject land grants between 1863 and 1891. While waiting for final confirmation, Ellison submitted two amendments to his claims in 1877 and 1878 which substantially increased the size of both grants.[8]

Once the grants received the surveyor general's recommendation for approval, speculators began purchasing deeds from heirs to the grants in anticipation of Congressional confirmation. Prior to 1883, a speculator named S.S. Farwell consolidated the deeds from the heirs of the three named petitioners for Petaca (Jose Martinez, Antonio Martinez, and Francisco Atencio). John Pearce then purchased a deed for the Lovato grant from the heirs of Jose Samora, the only named grant holder of the Lovato grant. Once these purchases were secured, the heir's business associate and new surveyor general of New Mexico, Henry Atkinson, amended the recommendation for confirmation of the Petaca and Lovato grants by stating that they were actually individual grants made only to the named grantees and not communal grants.[9] This action re-characterized the surveyor general's recommendation from one that would give land to the actual residents of Petaca and Lovato to a recommendation that made S.S. Farwell the sole owner of Petaca and John Pearce the sole owner of Lovato. Although neither man held a patent to the grants or received Congressional confirmation for their claim, both began leasing grazing and mining rights to ranching and mining companies as well as contracting a lumber company to harvest trees for the production of railroad ties from the grants.[10]

[8] Correia, pp. 91-99.
[9] All of these actions occurred within the N.M. Surveyor General system and not the court system.
[10] Correia, pp. 91-99.

A third example of speculators attempting to dispossess the inhabitants of an ejidal grant is the Mora community land grant. This grant was originally settled by Hispanic settlers who were eventually joined by both Yankee and European immigrants at the end of the Mexican American War. These new settlers purchased individual parcels on the Mora grant. Over time, they were absorbed into the larger community after working with and marrying into Hispanic families. Their children were assimilated into the Spanish-American community. In 1860, the surveyor general recommended confirmation of the grant but Congress never issued a final confirmation due to the inability of the surveyor general to deconflict the proposed boundary with other grants.[11]

Two members of the Santa Fe Ring, Thomas Catron and Stephen Elkins, soon became interested in Mora and quietly bought 16 shares of the communal grant by 1870 and then started an investment pool and continued to buy more shares of the grant. Through their connections with the General Land Office, Catron, Elkins, and their other investors attempted to secure a patent in 1876 despite lack of Congressional confirmation of the grant. Then, in 1877, they initiated a partition suit. The Hispanic and Anglo settlers of Mora submitted a petition denouncing the patent and partition suit by stating:

> The title to possibly one fifth of the grant… is now vested in two or three speculators who were Particularly careful to conceal from the settlers the extent of the land they were buying, many having disposed of their claims for the inconsiderable sum of five or ten dollars and more than one or two deny all knowledge of any conveyance whatever of their claims, so that chicanery and fraud have obtained in various of the alleged purchases. The grant includes with its limits, a population of about ten thousand souls, many of whom have at the risk of their lives, settled and improved the lands they occupy, and many lives have been lost through the hostile Indians surrounding them on all sides at the

[11] Clark S. Knowlton, "The Mora Land Grant: A New Mexican Tragedy," in *Spanish and Mexican Land Grants and the Law,* ed. By Malcolm Ebright (Manhattan: Sunflower University Press, 1989), pp. 58-59.

> time of their settling the said land… Many persons were invited and solicited to go upon, settle, and cultivate land within the grant by the original grantees as a protection to themselves from the hostile Indians, with the understanding that they would enjoy equal rights and privileges with the grantees; and many did so. In fine, it is seriously believed that the vesting of this territory in those who are now so unjustly soliciting it, will cause a quasi-revolution here, for many of the present settlers are determined to defend what they consider their just rights, at all hazards, and will not consent to any circumscription of those rights, and it would, evidently be a very bad policy to disturb such a large body of people and deprive them of what they consider their justly acquired homes, to satisfy the greed of a few hungry sharks.[12]

As a result of the strong push back by the actual Hispanic and Anglo residents of the Mora community and the continued issue regarding the actual boundary of the grant, the final confirmation of the grant was delayed, along with all other unconfirmed community grants, until after the creation of the CPLC and the infamous 1897 *Sandoval* Supreme Court decision.[13]

By 1885, the federal government was unhappy with the abuse, violence, and attempted theft of land by the Santa Fe Ring and other speculators. The government was becoming concerned that unchecked business speculators were taking control of and wasting the valuable and abundant natural resources on land grants in New Mexico. In order to break the strangle hold that organizations such as the Santa Fe Ring had on land speculation in New Mexico and resolve the increasingly problematic New Mexican land grant claims, the federal government made major changes to land grant adjudication in New Mexico. However, these changes did little to empower the many Hispanic and

[12] Knowlton, pp. 66-67.

[13] Knowlton, p. 70. Despite not having any recognized claim to the land, Catron attempted to collect royalties from the inhabitants who refused to pay. This conflict led to the 1911 murder of Catron's land grant agent responsible for collecting the royalties from the inhabitants. The common lands of the Mora grant were eventually sold as private plots at auction in 1916.

Native American victims of the Santa Fe Ring and Eastern corporations entering into land grant speculation in the 1870s and 1880s.

The first change began with the appointment of George Julian as surveyor general of New Mexico in 1885. He was tasked by President Cleveland to break the Santa Fe Ring and other lesser land speculation rings operating in New Mexico.[14] As he reevaluated land claims that were recommended by his predecessors for confirmation, Julian recommended the rejection of 22 of 35 claims. Of the few claims he recommended for confirmation, almost all were revised to drastically reduce the acreage in the confirmation. He did this by theorizing that the title to ejidal grants were retained by the Spanish and Mexican governments just as the Mexican Lerdo Law and the 1857 Mexican Constitution asserted (See Chapter 3). According to Julian, common lands of all grants fell into the possession of the U.S. federal government which should decide how best to use and/or distribute the commons instead of handing over vast tracts of land to speculators or leaving the commons in the hands of the local community. Although Julian could not put this theory into practice due to the complete collapse of the surveyor general system, his perspective was legally confirmed by the U.S. Supreme Court in their 1897 *Sandoval* decision and then adopted by the Court of Private Land Claims (CPLC).[15]

Because of the inability of the surveyor general system to confirm land grants and prevent corruption, the U.S. Congress created the Court of Private Land Claims (CPLC) in 1891 to more efficiently resolve cases based on Spanish and Mexican land grants in

[14] Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (Albuquerque: University of New Mexico Press, 1994), p. 43.
[15] Ebright, *Land Grants and Lawsuits,* pp. 44-45.

New Mexico. This action came about because the lack of resolution regarding the status of land began to hinder economic development in New Mexico brought by the railroads, lumber companies, and mining companies as the century drew to a close.[16] The legislation creating the CPLC in 1891 had many similarities to the legislation that created the California Land Commission in 1851. Both mandated that claims be initiated within two years or be extinguished, that all decrees were to be based on the Treaty of Guadalupe Hidalgo and the laws of Spain and Mexico, and that appeals could be made by the attorneys representing the U.S. government, land grant claimants, and other parties.[17] In addition to these similarities, both stated that claims for cities, towns, or villages should be "presented by the corporate authorities of the said city, town, or village."[18] This is significant because it is the section that CPLC judges assumed was referring to ejidos until 1897.

Despite the basic organizational similarities, there were two key differences between the California Land Act of 1851 and the CPLC Act of 1891 that made it much more difficult for a claimant to receive a confirmation from the CPLC in the 1890s than it was for a claimant to receive a confirmation from the California Land Commission in the 1850s. First, unlike the California Land Act, the CPLC Act did not contain a specific statement that consideration of local custom, usages, and laws should be a factor in

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[16] Phillip B. Gonzales. "Struggle for Survival: The Hispanic Land Grants of New Mexico, 1848-2001," *Agricultural History,* Vol. 77, No. 2 (Spring 2003): 306.

[17] "An Act to Establish a Court of Private Land Claims and to Provide for the Settlement of Private Land Claims in Certain States and Territories," 51st Cong., 2nd sess., *Congressional Record* Ch 539, 1891, pp. 857-859. The California Land Act legislated that appeals would go to the appropriate district court in California before being appealed to the U.S. Supreme Court. Appeals for CPLC rulings were sent directly to the U.S. Supreme Court.

[18] "An Act to Establish a Court of Private Land Claims," p. 859.

adjudication.[19] Second, the legislation that created the CPLC added specific statements that directed the strict enforcement of the terms of the grant to ensure claims were "complete and perfect" and have proof that the grant was received from a lawful authority.[20] The combination of both of these factors compelled the CPLC to more strictly scrutinize whether the terms of the grant were met and placed a burden on the claimant to produce documents that were sometimes difficult to obtain. Because of this, the CPLC was much more likely to reject claims than the California Land Commission.

Two individuals who brought claims before the CPLC in the late nineteenth century were Julian Sandoval and Levi P. Morton. Both men petitioned the CPLC in separate cases in the early 1890s. Both cases were then combined and sent to the U.S. Supreme Court as a single case titled, *The United States v. Sandoval et al. Morton v. United States* in 1897. Levi P. Morton was born in Shoreham, Vermont in 1824. He could directly trace his ancestors to the Mayflower and grew up in a well-known New England family of ministers.[21] He began his professional career as a dry-goods store clerk in Concord, New Hampshire. In 1849, he became a junior partner in Beebe, Morgan & Company which bought cotton in the Southern U.S., shipped it to England for resale, and then purchased British manufactured goods for resale in the U.S. After spending several

[19] Placido Gomez, "The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants," *Natural Resources Journal,* No. 4 (October 1985), p. 1075. This clause was most likely added to prevent the confirmation of claims similar to California claims that many believed were either fraudulent or abandoned.

[20] "An Act to Establish a Court of Private land Claims," p. 860. This clause was most likely added to prevent the confirmation to claims similar to California claims that many believed were abandoned.

[21] Irving Katz, "Investment Bankers in American Government and Politics: The Political Activities of William M. Corcoran, August Belmont, SR., Levi P. Morton, and Henry Lee Higginson" PhD diss., New York University, New York, 1964 (66-9537), 89.

years in London, Levi moved to New York in 1855 and formed his own wholesale dry-goods firm Morton, Grinnell & Company. This company specialized in the sale of Southern cotton to New England textile mills. His endeavor was hugely successful until the outbreak of the Civil War. He declared bankruptcy soon after fighting began because he was unable to collect debts from Southern cotton producers. With little opportunity available in cotton, he transitioned from the profession of merchant to banker.[22]

In 1863, Morton started the bank L.P. Morton & Company which conducted general banking as well as foreign exchange transactions. Due to his extensive connections in London and the increased demand for overseas trade during the Civil War, Morton's company was hugely successful. In 1869, he formed two separate and legally independent banks in the U.S. (*Morton, Bliss & Company)* and London (*Morton, Rose & Company*). Although both financial institutions were technically independent entities, both were run by Levi Morton and their business actions were closely coordinated. Both companies specialized in international exchange and security transactions. Morton became a prominent figure in the international financial community as a result of President Grant awarding *Morton, Rose & Company* the government accounts for the U.S. Navy and U.S. State Department in London.[23] Bolstered by this success, Morton's financial institutions then began financing railroad and telegraph companies. Morton soon became a member of several railroad directorates and heavily invested his private

[22] Katz, 90-92.
[23] Katz, 94.

and company funds in both well-established eastern railroads and new western railroad companies. [24]

With his financial firms ranked as one of the foremost of the era, his significant political influence, and his international connections; Levi Morton turned his attention to politics with an unsuccessful bid for Congress in 1876 followed by a successful run in 1878. Morton campaigned for the gold standard and civil service reform during his tenure. While in Congress, he was a member of the Committee on Foreign Affairs and worked to protect U.S. manufacturing through a high tariff, immigration regulation, the encouragement of fisheries, and the construction of a canal through Nicaragua. He was also known for pleasing Republican leadership including President Hayes and former President Grant by towing the party line during key votes in Congress.[25]

In 1879, Morton joined the "Half-Breeds" and "Reformers" of the Republican Party while running for governor of New York. After losing the nomination to the Stalwart Republican candidate, Levi Morton avoided hard feelings for the Stalwarts and instead allied himself with them as he continued to serve in the U.S. Congress.[26] Now, fully allied with the Stalwarts, Morton unsuccessfully rallied support for former President Grant at the Republican nominating convention who lost to James Garfield. Because of his support for Garfield in the general campaign, Morton was considered as a potential Secretary of the Treasury but was rejected due to his Wall Street connections. Instead, he

[24] Dolores Greenberg, *Financiers and Railroads 1869-1889: A Study of Morton Bliss & Company* (Newark: University of Delaware Press), 27-37.
[25] Katz, 98-99.
[26] Katz, 100.

served as Minister to France under Garfield and then Arthur. Having Morton in this position was disappointing to his finance partner, George Bliss, who hoped he would become part of the cabinet in order to "'promote the interests of the firm.'"[27]

After four years, Morton returned to his private business briefly before becoming Benjamin Harrison's Vice-President from 1889- 1893. Vice-President Morton was often attacked by representatives of the growing Populist party because of his pro-business stance and Wall Street connections.[28] While a lame duck vice-president, Levi P. Morton submitted a claim to the CPLC in January 1893 for property he had purchased on April 30, 1884 in New Mexico.[29] This claim would bring Levi Morton into direct legal conflict with Julian Sandoval for the next four years.

Julian Sandoval had deep roots in San Miguel, New Mexico which was located east of Santa Fe along the Pecos River. In 1794, Lorenzo Marquez petitioned and received a grant from Lieutenant Colonel Don Fernando Chacon, the governor of the kingdom of New Mexico, for himself and 51 other families including Julian Sandoval's grandfather and four other relatives. This grant provided small individually owned lots to owners who also had rights to use a large communally held area of approximately 315,000 acres. From these initial lots, families expanded individual holdings within the Del Vado grant, newcomers received individually owned land of their own, towns were

[27] Katz, 111.
[28] Katz, 129.
[29] *Levi P. Morton vs. U.S.,* 1894 Court of Private Land Claims no. 60, p. 40.

founded, and communal rights were maintained throughout the entire nineteenth century.[30]

Julian was born in San Miguel in 1830. He married his first wife, Placida, in the 1860s and had three children. They ran a small farm on the Del Vado grant worth $831 in 1870.[31] After his first wife passed away in the 1870s, Julian lived as a widower. In 1880, he was still exclusively farming and only had his youngest son Andres, who was 20 years old, living with him. Soon after, Julian married his second wife, Celsa Salazar Sandoval. Shortly after their marriage, Julian expanded his professional life by opening a dry-goods store while continuing to farm. By 1885, in addition to their dry goods store, Julian and Celsa owned 20 acres of pasture, 10 acres of woodland, 7 acres of agricultural fields, and 321 acres of unimproved land. The value of their farm had increased from $831 in 1870 to $1050. On the farm and San Miguel ejido, they maintained 250 cattle, 4 horses, 19 mules, and 3 oxen. Julian produced 170 bushels of corn, 22 cords of firewood, and 700 bushels of wheat in 1885.[32]

Julian and Celsa had three children. Jesus was born in 1880 and Francisco was born in 1882. They also had a daughter, Marcelina, who was born in 1886.[33] In 1899, Jesus moved from his parents' farm, married, and had a child. He lived close to his

[30] *Levi P. Morton vs. U.S.*, 1894 Court of Private Land Claims no. 60, p. 6.
[31] U.S. Census Bureau, "Population Schedule for the County of San Miguel, New Mexico Territory:1870."
[32] New Mexico Territory, "Productions in Agriculture in the County of San Miguel in the Territory of New Mexico: 1885."
[33] New Mexico Territory, "New Mexico Territory Census for San Miguel County: 1885." Julian and Celsa had three other children who never survived beyond early childhood.

parents and worked as a farm laborer, most likely for his father. Francisco still lived with his parents, and worked as a farm laborer for his father.[34]

In 1893, Julian Sandoval became aware of the potential danger to his family's livelihood by the land claim of Levi P. Morton. Morton's claim to the CPLC argued that he rightfully owned the entire 315,000-acre San Miguel del Vado grant because of his purchase of an individual plot that was originally owned by Lorenzo Marquez. Morton argued that Marquez was the only name mentioned in the original 1794 Spanish grant, and therefore, the conveyance of the grant was not communal. Instead, he argued that it was exclusively meant only for Lorenzo Marquez. If Morton's claim was confirmed, it would mean that Sandoval and all the other citizens residing on the del Vado grant would not own the land that had been worked by generations of their families and was theirs according to a written contract with the Spanish empire. In response, Sandoval and six other men petitioned the CPLC on behalf of themselves and all del Vado residents in April of 1894. They argued that the del Vado grant was communally owned and that no individual had claim to the entire grant. The CPLC agreed with Sandoval's argument and recommended that Congress approve Sandoval's claim that individual land and communal rights to the ejido in the del Vado grant be officially recognized. The CPLC dismissed the claim of Levi Morton entirely.[35]

The U.S. Supreme Court combined both cases and began hearing arguments in 1896. In 1897, the court upheld the CPLC decision against Morton and upheld the claim

[34] U.S. Census Bureau, "Free Inhabitants in the County of San Miguel, New Mexico Territory:1900."
[35] *Julian Sandoval Et AL. vs. The United States*, 1894 Court of Private Land Claims no. 25.

of the current residents as legitimate. However, just as the government of Mexico claimed in the Lerdo Law and 1857 Constitution, the U.S. Supreme Court further ruled that the residents only had a claim to land that was individually owned or improved which amounted to about 5,000 acres total. The remaining 310,000 acres was declared public domain and owned by the U.S. government. [36]

In his majority opinion, Chief Justice Fuller made several key points indicating his divergence from the earlier CPLC decision regarding San Miguel del Vado. He began his opinion by explaining how the "mode in which private rights of property may be secured… belongs to the political department of the government to provide."[37] He went on to explain the different systems established by Congress for California and New Mexico and how the court is beholden to this legislation. Fuller explained that the legislation creating the CPLC was much more restrictive in its instructions regarding communal property claimed by towns because any land not owned individually "remained in the government and passed to the United States." Because of this, any instance of common areas confirmed as the property of California towns/pueblos was not relevant to decisions regarding New Mexican common land. As a result of this, Fuller explained that there is no question as to whether or not "the fee to lands… intended for community use, continue to remain in the sovereign…"[38]

[36] The *United States, Appellant v. Sandoval et al. Morton v. United States* , 167 U.S. 278 (1897).
[37] The *United States, Appellant v. Sandoval et al. Morton v. United States*.
[38] There is no judgement as to which land confirmation system was morally right or better. From the utilitarian perspective, both were legitimate because they were enacted by laws written by Congress that were the best action for the time and place they were written.

Fuller went on to explain why Congress wrote the CPLC legislation the way they did. Fuller explained that the CPLC reviewed the actions and beliefs of Spain and Mexico in regards to property rights. Fuller cited several examples from the Spanish empire's laws of the Indies, summarized in a 1783 book by Francisco Antonio del Elizondo to include the statement that:

> it is a prerogative reserved to the princes to divide the terminus of the provinces and towns, assigning to these the use and enjoyment, but the domain remaining in the sovereigns themselves... [and] even after a formal designation, the control of the outlying lands, to which a town might have been considered entitled, was in the king, as the source and fountain of title, and could be disposed of at will by him. [39]

He concluded that, as the sovereign successor to the king of Spain and the government of Mexico, the U.S. inherited the title to communal lands.

In addition to citing Spanish law, Fuller then detailed Mexican law when he summarized points made in Frederic Hall's book titled *The Laws of Mexico: A Compilation and Treatise Relating to Real Property, Mines, Water Rights, Personal Rights, Contracts, and Inheritances.* This book contains translations of Spanish and Mexican laws up to 1885 to include a translation of the 1857 Constitution and the Lerdo Law. In his majority opinion, Fuller used Hall's summary that "the fee of the lands embraced within the limits of pueblos continued to remain in the sovereign, and never in the pueblo as a corporate body" to show that Mexico also recognized that communal lands remained in the possession of the sovereign and not the town it was associated with.[40]

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[39] *United States v. Sandoval et al. Morton v. United States*

[40] *United States v. Sandoval et al. Morton v. United States;* Hall, chapter 7, p. 53

Fuller then explained that after the Treaty of Guadalupe Hidalgo "subsequent decrees, orders, and laws did not change the principle."[41] Although not mentioned specifically, this clarification most likely refers Article 27 of the 1857 Constitution and the Lerdo Law which used this same argument to dispossess ejidal lands from Pueblos in Mexico forty years earlier and was translated unabridged in Frederic Hall's book which Fuller relied on as a reference in his majority opinion.[42] Fuller's decision is consequential for several reasons. First, he acknowledged legislative dominance over the judiciary regarding recognition of property rights which indicates a utilitarian influence on his understanding of English common law in regards to property rights. Second, the court set the precedent that the title to common lands of Spanish and Mexican land grants would pass into the public domain and Congress would determine how this land should be used or distributed.

The significant change in philosophy used by Justice Fuller in the 1897 *Sandoval* case becomes clear when his opinion is compared to decisions made by the CPLC before 1897 and decisions made by the U.S. Supreme Court and federal district courts regarding land grants in California. As Chapter 1 explains, initially both the California Land Commission and the California district courts attempted to make rulings based on the strict observance of Mexican law and the terms of the grant. The only break from standard Mexican law in adjudication of California land grants was the legal provision

[41] *United States v. Sandoval et al. Morton v. United States*

[42] Article 27 of the 1857 Mexican Constitution states that, "No civil or ecclesiastical corporation, whatever may be its character, denomination, or object, shall have legal capacity to acquire in property (as owner) or administrator by itself real estate, with the only exception of the edifices destined immediately and directly to the service or object of the institution" (Frederic Hall, p. xcv).

that a grant had to be approved by the local legislature to be legitimate and the consideration of oral testimony to substitute for a lack of documentation on the part of claimants. Both Judge Hoffman and Attorney General Caleb Cushing documented their support of adjudicating land grants using a strict interpretation of the terms of the grant and Mexican law in their rulings prior to 1855.[43]

The judicial logic used by Hoffman and Cushing before 1855 was very similar to those of the CPLC between 1891 and 1897. All believed that the conditions of the grant and Mexican law needed to be the central focus in the adjudication of any claim.[44] The only difference was the latitude given to local custom by Hoffman and Cushing. This difference led to a higher rejection rate by the CPLC than the rate of rejections in the California district courts between 1851 and 1855. The CPLC also adhered to Mexican law by enforcing that no grant could be confirmed that was larger than 11 leagues unless it could be proven that the claim was perfect prior to the Treaty of Guadalupe Hidalgo. This led to more partial confirmations by the pre-1897 CPLC when compared to the California commission and California district courts.[45]

Although the standards used in adjudicating claims varied in their adherence to Mexican law and terms of the grant; the CPLC, California Land Commission, California district courts, and U.S. Supreme Court under Justice Taney made their decisions by

[43] In 1855, Chief Justice Taney's majority opinion in the U.S. Supreme Court rulings on Las Mariposas and Rosa Morada allowed even more latitude in approving California land grants. Even in cases where none of the conditions of the grant were achieved by the grantee, a grant could still be approved based on the intent of the Mexican government to provide grants as rewards for military service so that not meeting requirements of occupation and improvement did not necessarily invalidate a grant.
[44] Hoffman modified this opinion to a more liberal interpretation in order to conform with the precedent set by Justice Taney in the cases involving the Rosa Morada and Las Mariposas land grants.
[45] An Act to Establish a Court of Private Land Claims," p. 850.

applying the contract clause to grant documents and the Treaty of Guadalupe Hidalgo. This adherence to a classically liberal philosophy led to the confirmation of both individual and communal grants in both California and New Mexico. It is only after the 1897 *Sandoval* decision that claimants who held grants that specifically defined their property and could prove that they met all the terms of the grant were dispossessed by the U.S. government.[46]

The impact on the San Miguel del Vado Grant was somewhat better than other communal grants in New Mexico. Some residents were able to successfully recover part of the lost ejidal land that was distributed by Congress through homestead and small claim laws. Other community grants in New Mexico were not as lucky. After this 1897 decision, every remaining ejidal claim was rejected by the CPLC and "this vast acreage acquired by the United States now comprises most of the Carson and Santa Fe National Forests in northern New Mexico."[47] Due to the climate of New Mexico, communal lands were extremely important to the traditional livelihoods of farmers living on ejidal grants. If communities lost access to the resources found in the communal parts of the land grant, farming of any kind would be much more difficult for residents of New Mexico and the del Vado grant.[48]

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[46] See Table 6 on p. 212 to see the resulting change in judicial outcomes before and after 1897 under the CPLC.

[47] Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico,* pp. 48-49. However, the U.S. Supreme Court did not apply this decision to communal lands that were approved by Congress prior to 1897. But, Congress would have the power to do this if it so chose in accordance with utilitarian philsophy.

[48] Clark Knowlton, "The Mora Land Grant: A New Mexican Tragedy," in *Spanish and Mexian Land Grants and the Law,* ed. Malcolm Ebright (Manhattan: Sunflower University Press, 1989), 70. The population of the San Miguel del Vado grant dropped from 1,000 residents in 1850 to 200 residents in 1930.

Despite this significant loss in resources, Julian Sandoval continued his dual profession of farmer and merchant through 1910. At this time, the only child still living with Julian and his wife Celsa was their youngest, Marcelina, who was 24 years old.[49] Julian passed away sometime between 1910 and 1920 and Celsa, who was 35 years his junior, continued on as a dry goods merchant but no longer received significant income from the farm Julian had maintained all his life. In 1920, Celsa was caring for her three-year-old granddaughter and namesake by herself while she maintained the dry goods store.[50] By 1930, her son Francisco, now a widower, and his daughter Juliana moved in with Celsa and her granddaughter. Francisco's main income came from working at the county court house as the San Miguel County Treasurer. Interestingly, Celsa and her grandchildren were listed as living on a farm despite Celsa's occupation as dry-goods merchant.[51] It seems that although the dry goods store had become the main source of income, Celsa and her grandchildren persisted in keeping a small part of her husband's agricultural and land grant legacy alive three decades into the twentieth century.[52]

The legal defeat in court had little impact on Levi Morton's life and finances. While the court case was still in litigation, Morton successfully ran for governor of New York where he focused on civil service reform in the state. He was unsuccessful in his 1896 bid for the Republican presidential nomination against William McKinley. At the age of 72, Morton turned down President-elect McKinley's offer to be his vice-

[49] U.S. Census Bureau, "Free Inhabitants in the County of San Miguel, New Mexico Territory:1910."
[50] U.S. Census Bureau, "Free Inhabitants in the County of San Miguel in the State of New Mexico: 1920."
[51] U.S. Census Bureau, "Free Inhabitants in the County of San Miguel in the State of New Mexico: 1930."
[52] Although living at the same residence, Francisco was not listed in the census as living on a farm. Based on the intent of the census question, he had a white-collar job and most likely did not participate in working on the farm in any significant way and was therefore listed as not residing on a farm.

presidential candidate and retired from active politics in 1897. Morton retired in 1909 when Morton, Bliss & Company merged with the Guarantee Trust Company. Levi P. Morton died on his ninety-sixth birthday in 1920 "among a generation which, for the most part, 'remembered him not.'"[53]

Despite differences in class, ethnicity, and political connections, Julian Sandoval and Levi Morton were both unsuccessful in their attempts to gain full confirmation of their land grant claims in New Mexico. Instead of the del Vado Grant going to an individual or group, the small individually owned portions of the grant stayed in the hands of the ejidal claimants, despite their socio-economic and ethnic status, while the majority of the grant became property of the U.S. Federal Government.[54] This decision by the U.S. Supreme Court also determined the fate of every subsequent claim in New Mexico by setting the precedent that communally owned land was officially the property of the sovereign state and not the property of the communities receiving grants during Spanish or Mexican rule. The case study of the del Vado grant complicates the standard narrative found in the current historiography of Spanish and Mexican land grants in New Mexico and can only be explained by a fundamental shift in judicial philosophy from a classically liberal emphasis on individual property and contract rights to a utilitarian emphasis on legislative dominance.

In addition to the change in perceived property rights of grant holders, the racial definitions of both Hispanics and Pueblo Indians also changed significantly between

[53] Katz, 140.
[54] This new situation will lead to less autonomy and less economic opportunity for Hispanics.

1877 and 1897. Their ability to achieve economic success with their land grants was impacted by this change. By the turn of the 20th century, the aristocracy of color began to influence all three branches of government and would soon change the legal and social classification of the Pueblo people from quasi-white U.S. citizens (See Chapter 2) to Native American. This was done using an argument based on a belief of racial inferiority and the Progressive Era idea that it was the government's role to decide what was best for Native Americans, Hispanics, and Anglos. The U.S. Congress thought that dependence on the U.S. federal government and federal control of Pueblo land was what was best for the Pueblo people. But, instead of helping them advance as a group, this change in status and the loss of direct control of their land to the federal government would negatively impact the Pueblo Indians, who had been previously immune to the impact of the racial caste system impacting other Native American groups in the U.S. because of the fee simple ownership of their land.

In 1912, during the final negotiations for statehood, the New Mexican territorial government bent to the will of Congress when, in exchange for ratification of their state constitution, they legally re-classified Pueblo lands as "Indian country" that fell under the protection of the federal government. Under the guise of protecting the Pueblo from state taxes, Congress relegated the Pueblo to a subordinate status and took control of their land which now made dispossession of land under the Dawes Act and the exploitation of their natural resources with the consent of the U.S. government a renewed possibility.[55]

[55] Hall, p. 200-203.

A year after New Mexico became a state, the U.S. Supreme Court affirmed the Congressional belief of Pueblo inferiority in their 1913 ruling in *U.S. v. Sandoval.*[56] The case adjudicated the arrest of Felipe Sandoval who was accused of selling liquor to Pueblo Indians in the Santa Clara Pueblo. He was charged with violating the 1910 Enabling Act which officially classified the Pueblo as Indians and guaranteed their protection under the provisions of the Non-Intercourse Act. The government claimed that the sale of alcohol was illegal due to the newly established federal guardianship over the Pueblo which included enforcement of non-intercourse with Indians by states or non-Indian individuals.[57] The Supreme Court ruled in favor of the government and found Felipe Sandoval guilty and that the "Nonintercourse Act 'easily includes Pueblo Indians'… [as] 'the Indians of the pueblo are wards of the United States.'"[58]

This decision marked a clear shift by the U.S. Supreme Court regarding Pueblo land ownership in New Mexico and the classically liberal philosophy which had protected the Pueblo people up to this point. The 1913 *Sandoval* decision reversed the 1876 *Joseph* decision and established that the U.S. Supreme Court would now support the subordination of the Pueblo due to their race by specifically defining the Pueblo as "Indians in race, custom and domestic government… [who are] essentially a simple, uninformed, and inferior people."[59] This outcome would soon open the Pueblo up to a

[56] Not to be confused with the completely different and unrelated 1897 *Sandoval* decision.
[57] Ebright, *Four Square Leagues,* pp. 255-258.
[58] Ebright, *Four Square Leagues*, p. 261.
[59] *United States v. Sandoval,* 13 U.S. 28 (1913).

loss of autonomy in regards to their land and their communities that they had previously been immune to.

The 1913 Sandoval decision was also a major set-back to Hispanic Pecos. Because the court declared that the Non-Intercourse Act always applied to the Pueblo, Hispanic Pecos had no legal claim to their land as squatters, owners of land purchased from Pecos Indians, or as holders of Mexican land grants inside of Pecos.[60] This shifted the debate over Pueblo land from the legal realm that took place in the courts to the political realm that took place in the executive and legislative branches of the federal government. The Department of the Interior placed land still owned by the Pueblo Indians in trust to the U.S. and began working on the process of securing any lost Pueblo land which would also be kept in trust by the government for the Pueblo Indians.[61] In 1924, Congress created the Pueblo Lands Board to decide how to resolve Pueblo land disputes using utilitarian based justice.[62]

Prior to 1877, courts centered the debate on whether the Pueblo Indians could convey real property as citizens and if title by possession alone could overrule ownership based on contracts with the Spanish and Mexican governments. This was a classically liberal debate between a Lockean belief that labor was the basis of property ownership and Marshall's assertion that legal contracts were the basis for property ownership. Now that the Pueblo Lands Board was given the power to decide the issue in the political realm, the question became: how could the Pueblo land question be resolved in a way that

[60] Hall, p. 206.
[61] Hall, p. 208.
[62] Hall, p. 224.

hurt the least and helped the most? The answer was to make arbitrary decisions that were different for each individual case.

The Congressional guidance to the Pueblo Lands Board was to recognize non-Indian claims to Pueblo land if they were based on a deed prior to January 1902 (10 years prior to New Mexican statehood). If the claim was based on possession alone, without a deed or grant, then the claimant had to prove possession from at least 1899. In both cases, the claimant had to prove continuous payment of property taxes in accordance with local law. In their adjudication of Pueblo lands, the board "would not let private attorneys see the board's work [and] the board would not specify its interpretation of the law under which it worked." This was especially frustrating for litigants because the standard for adjudication seemed to vary significantly between Pueblos. [63]

In the case of Nambe Pueblo, the board only recognized Hispanic ownership of land that was directly used by individual Hispanics occupying land (non-communal land). Using this strict interpretation, the vast majority of the grant was returned to the Nambe Pueblo (and the control of the U.S Department of the Interior).[64] If the same standard for assessing ownership were applied to Pecos, a significant amount of land would have been returned to the Pecos people.[65] Instead, Pecos lost all land rights and received only a small monetary compensation for lost land.[66] Almost inexplicably, the 40 scattered descendants of the long abandoned Pojoaque Pueblo received almost 10,000 acres from

[63] Hall, p. 246.
[64] Hall, p. 252.
[65] If the same standard was used for Pecos, 15,000 acres would have been returned to the descendants.
[66] When the Pecos community formally merged with Jemez in 1933, Jemez used the Pecos compensation to buy additional land adjacent to the Jemez Pueblo league with the approval of the Department of the Interior.

the land board despite an almost identical situation to that of Pecos.[67] Of the twenty Pueblos, only Acoma, Zia, Santa Ana, and Jemez did not have significant changes to tribal boundaries due to the inconsistent and arbitrary whims of the land board.[68] The reason for this was that they had successfully maintained direct control of their Four Square Leagues. Because they maintained both contractual rights and Lockean rights based on labor, they had prevented any outside interests from gaining any legal foothold on their land prior to the creation of the land board. [69] However, control of their land was taken from them and was placed in trust to the U.S. Department of Interior.

The change in status of all 20 Pueblos based on the 1910 Enabling Act and the 1913 Sandoval decision led to a loss of Pueblo independence and a greater agency by the federal government in Pueblo affairs due to the recognition of the Pueblo as wards to the U.S. Joe Sando, the Pueblo historian and member of Jemez Pueblo, describes how these early twentieth century events:

> set in motion a Western-type organizational structure destined to become troublesome and controversial… [and] destructive of traditional Indian government. It also tied the tribal governments and their right to enact laws and govern themselves to the United States because in all matters of importance, the secretary of the interior must approve such actions, including in most cases the election of tribal governing bodies.[70]

Malcolm Ebright agrees with Sando's assessment regarding the lack of fairness by the U.S. government acting as guardian to its Pueblo wards to include the consistently independent Jemez Pueblo. Ebright explains that the Pueblo Lands Act left the Pueblo

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[67] Hall, p. 246.
[68] Ebright, *Four Square Leagues,* p. 288.

[70] Sando, p. 259.

vulnerable to U.S. granting authority of easements to railroads and lumber companies; and maintained control over water rights.[71] Ebright states that the U.S. government "seemed to go out of their way to arrive at policies and interpretations that were disadvantageous to the Pueblos.[72]

In less than seventy years, the federal court system's perception of the Pueblo people went from considering the Pueblo people U.S. citizens belonging to a group with independent communal property rights based on contracts and possession to non-citizen Indian wards of the federal government dependent on their federal guardian to protect, manage, and properly develop their communities and land. As quasi-citizens in the last half of the nineteenth century, the Pueblos that maintained their populations and actively used their land were able to protect their communities from encroachment by Hispanic settlers, Anglo settlers, speculators, the federal government, and industrial corporations interested in the natural resources on and under Pueblo land by using classically liberal arguments based on contract and occupation rights. However, utilitarian arguments concerning land grants began to influence the U.S. federal government, the Pueblo lost their status as citizens and became wards of the U.S. government who had a very direct say in how the Pueblo people would use, govern, and develop both their land and communities. This left the Pueblos vulnerable to both dispossession and the exploitation of their natural resources by corporations closely affiliated with powerful federal government officials.

[71] Ebright, *Four Square Leagues,* pp.289-291.
[72] Ebright, *Four Square Leagues,* pp. 290-291.

Despite Pueblo loss of autonomy, Hispanic ejidal communities faired much worse in terms of land ownership and economic outcomes. As a result of the 1897 *Sandoval* decision, the U.S. government added the vast communal holdings of land grants to the public domain and then decided how best to use the land. Some land was redistributed to individuals or companies as private property. But, after the turn of the century, the government increasingly maintained possession of ejidal land. The bureaucratic institution given control of this newly acquired land from Spanish and Mexican land grants was the U.S. Forest Service which was created in 1905. Gifford Pinchot, the first Forest Service chief, promoted the idea that "a faith in technological progress, the regulatory role of the state, the commercial focus of forest resources… and the central role of professional foresters" employed by the government was essential in the proper management of natural resources. This statement shows that the government believed that such important natural resources could not be entrusted to simple Hispanic ranchers. As the Forest Service matured, it evolved from a belief in strict regulatory authority focused managing timber harvest limits on public lands to a belief that policies needed to be more active in managing both industry and society. This new idea was firmly established by the third Forest Service chief, William Greeley who believed the Forest Service should have a central role in "reshaping social relations of production among timber operators, labor, and the communities dependent on forest resources." [73]

[73] David Correia, "The sustained yield forest management act and the roots of environmental conflict in Northern New Mexico," *Geoforum*, No. 38 (2007), pp. 1042-1043.

By the 1920s, the Forest Service not only usurped control over the resources in the ejidal lands of New Mexico, but also saw it as their role to shape the local Hispanic society and Anglo controlled timber industry culture for the supposed benefit of all. They did this by applying the "aristocracy of color" to the Hispanic agro-pastoralist grant owners. In response to the obvious resource exhaustion impacting the forest industry in the nineteenth and twentieth centuries, the Forest Service primarily blamed Hispanic ejidal community practices which had changed little for over two centuries. In a 1935 report, Roger Morris stated that Hispanic communities:

> are sedentary in character living in the present and with no thought for the future. They accept conditions as they are and make the best of them with no idea of conserving the natural resources much less enhancement of them. They would remain in place to the point of extinction by starvation and disease before they would migrate.[74]

He recommended that the government create and regulate a local subsistence economy that limited the number of livestock Hispanic communities could maintain on public land that was formerly communally owned by these communities. The Forest Service would balance the need to maintain the environment with the economic need for Hispanic ranchers to maintain their meager, subsistence existence. If the Forest Service determined that a particular community did not have the available natural resources to maintain a subsistence level existence from ranching without degrading the environment, then those communities would be involuntarily converted to a wage labor economy through the banning of livestock on public land. In return, the government would mandate that timber

[74] Correia, "The sustained yield forest management act," p. 1044.

companies hire a certain number of the local population now dependent on the federal government for survival.[75]

This suggestion was further racialized when local Hispanics were excluded from applying for skilled positions.[76] The Forest Service policies ensured a racial division in regards to jobs by writing regulations that allowed management positions to go to Anglo outsiders while reserving only unskilled labor positions for local Hispanics working for the large timber companies. While this report formalized the racialization and exploitation of ejidal communities, execution of this policy had been ongoing since 1905 when the newly formed Forest Service began annually reducing the number of livestock local Hispanics could maintain on former communal land while simultaneously providing contracts to large timber companies to conduct logging operations on the same land.[77]

Like the timber industry, the mining industry in New Mexico forced Hispanics into wage labor and racially segregated jobs by only making unskilled and low paying positions available to local Hispanics. In *On Strike and On Film: Mexican American Families and Blacklisted Filmmakers in Cold War America*, Ellen Baker describes how mining in New Mexico evolved from a system of "individual prospecting by Anglos and Mexicans…[to] large-scale wage labor in capital-intensive mines and mills." Baker argues that between 1850 and 1900, ethnicity did not mark social status. Instead, Hispanics and Anglos in New Mexico maintained "some level of social equality" by

[75] Correia, "The sustained yield forest management act," p. 1045. The lack of regulation regarding a minimum wage made the local Hispanic population even more open to exploitation by the timber industry.
[76] Correia, "The sustained yield forest management act," p. 1045.
[77] Correia, "The sustained yield forest management act," p. 1045.

owning similar amounts of land and intermarrying.[78] But, as large-scale companies began mining in New Mexico, a new racial order evolved. Known as the "dual-wage system," Hispanics were restricted to the lowest paying jobs and were segregated in housing, schools, and society. Essentially, all Mexicans, whether native-born or immigrant, were grouped into a single "subordinate class" by the turn of the century.[79]

In the name of Progressive Era reform, the federal government attempted to use scientific management to maintain natural ecosystems and efficiently use the natural resources found in New Mexico. To make this a reality, the government seized control of land from legitimate Hispanic land owners, made their source of income (cattle) illegal, brought in corporate ranchers and timber companies, and forced Hispanics to engage in wage labor in a racialized labor system designed to maintain a subsistence level and subordinate existence. Through the lens of utilitarian thought, the federal government believed that this was the best outcome for all. The federal government believed its actions provided many benefits to include a stable living for the "simple" local population who would otherwise destroy the environment and their ability to survive; controlled management of large timber companies in a way that ensured a sustainable harvest of lumber on both private and public lands; and a restructured local culture and industrial culture that worked more efficiently in a modern world. Unfortunately, none of these goals were met. Ecological degradation continued due to large scale logging and

[78] Ellen Baker, *On Strike and On Film: Mexican American Families and Blacklisted Filmmakers in Cold War America* (Chapel Hill: The University of North Carolina Press, 2007), p. 23.
[79] Ellen Baker, p. 17 and 23. Katherine Benton-Cohen makes a similar argument in her study of Hispanics in Arizona in her book titled *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands.*

mining practices; local Hispanics and Pueblo Indians lost access to their communal lands and were relegated to low wage, subsistence livelihoods which were dependent on the federal government; and racial tensions increased throughout the twentieth century because of the wide-spread belief in the aristocracy of color and its influence on political, bureaucratic, economic, and legal decisions.

In the name of Progressive Era reform, multiple injustices were enacted on Hispanic and Pueblo land grant owners in New Mexico. Pueblo lands held in fee simple by the Pueblo people were given over to the Department of the Interior as a result of the 1910 Enabling Act, the 1913 U.S. Supreme Court ruling in *U.S. v. Sandoval* and the 1925 Pueblo Lands Act. This was done in the belief that the government was doing what was best for the Pueblo people who were now seen as incapable of effectively taking care of themselves and their communities because of their lack of ability as a race.

Hispanic ejidal land, and with it, the means to make an independent living were turned over to the Forest Service or distributed as privately owned homesteads as a result of the establishment of the Court of Private Land Claims in 1891, the 1897 U.S. Supreme Court ruling in *U.S. v. Sandoval et al*. and the establishment of the U.S. Forest Service in 1905. Federal officials ignored the rights of individuals to own a share in communal property despite legitimate contracts establishing ejidos between settlers and the Spanish and Mexican governments, recognition of Mexican land law by the Treaty of Guadalupe Hidalgo, and thirty years of U.S. jurisprudence supporting ejidal land claims. Instead, utilitarian philosophy was used to deny the existence of ejidal property rights by the claim that ownership was always retained by the sovereign government.

With the loss of their ability to earn an independent living through the use of communal lands, Hispanics in New Mexico were forced into wage labor. However, the system of wage labor created in the timber and mining industries was organized using ideals of white supremacy which held that the Hispanic race would benefit from a period of extended labor under the management of Anglo-Saxons. Because those in government at the beginning of the twentieth century believed Hispanics to be racially subordinate, they implemented a "dual wage" system through federal regulation of corporations where low skill and low wage jobs became synonymous with "Mexican jobs."[80] These jobs were dependent on a utilitarian federal government enacting and enforcing regulations on the timber and mining companies providing the jobs and were subject to arbitrary changes. As a result, both Hispanic and Pueblo land owners went from a situation, prior to the twentieth century, where they owned and controlled the means to independently maintain their communities in the way they felt was best; to a situation, after the turn of the century, where the government allowed large corporations to exploit the land and natural resources that rightfully belonged to Hispanic and Pueblo communities whose members had no choice but to work in low wage jobs for those same corporations in the name of what was best for the country, the economy, and the local population. This change came about because of the shift from a federal judiciary that focused on contract rights to a a judiciary that subordinated contract rights relative to legislative authority.

[80] Baker, p. 1.

Table 6: New Mexico Ejido Land Claims 1855-1904

This table shows how ejido claims were dealt with under both the surveyor general system and the CPLC. It reflects two types of ejidal claims. The first is a claim where the ejido is mentioned specifically in the Spanish or Mexican grant. The second is a claim where the ejido is claimed by the community with no formal documentation. This table shows that both types of ejidos were accepted by the surveyor general and during the first six years of the CPLC. Only after the Sandoval decision in 1897, are both contracts and possession by the community ignored in favor of unfettered congressional latitude to decide how to distribute and utilize communal land in New Mexico. As a result, Congress either distributed commons through the Homestead Act or delegated management to the U.S. Forest Service which often led to the depopulation of ejido communities after the corporate authority of the community was no longer recognized.

Table does not reflect Pueblo claims						
System of Adjudication/ Type of Ejido	Full Acreage Approved (within 10%)	4 leagues or more approved	Less than 4 leagues approved	Rejected	Withdrawn by Claimants	Comments
Surveyor General System (1855-1885)						
Ejido defined in original grant**	17	6				
Ejido not defined in original grant but claimed by community***	5	1		2		
CPLC 1891-1897 (Pre-Sandoval)						
Ejido defined in original grant**	10	14	4	*	****	
Ejido not defined in original grant but claimed by community***	1	1		*	****	
CPLC 1897-1905 (Post-Sandoval)						
Ejido defined in original grant**			12	20 *	2****	Cases listed may have been initially ruled by CPLC before 1897, but final ruling was rendered after appeal to USSC.
Ejido not defined in original grant but claimed by community**			4	8 *	10****	

*No date indicating when CPLC rejected these cases. Rejections could have taken place at any point between 1891 and 1905.
**Original grant references common land
*** No mention of commons in original grant but community had possession and managed land as an ejido.
**** The sources used to build this table did not indicate when these cases were withdrawn. Withdrawals could have taken place at any point between 1891 and 1905. However, in *Land Grants and Lawsuits in Northern New Mexico,* Malcolm Ebright explains that after the 1897 precedent was set, lawyers "conceded many cases without a trial near the end of the fourteen-year term of the Court of Private Land Claims." (Ebright, *Land Grants and Lawsuits,* pp. 47-48*).*
Sources: The data for this table was derived by cross-referencing information in three sources. Hubert Howe Bancroft's summary of New Mexico land grant cases under the surveyor general system on pages 758-764 in his book titled *History of Arizona and New Mexico* provided the size of initial claims made under the surveyor general system. George Anderson's table on pages 204-208 in his book *History of New Mexico: its Resources and People* provided the size of the initial claims made under the CPLC. Data from a 2001 GAO report titled "Treaty of Guadalupe Hidalgo: Definition and List of Community Land Grants in New Mexico" provided the type of ejido that was claimed, the date of the claim decision and the total acres confirmed.

CHAPTER FIVE: SPANISH AND MEXICAN LAND GRANTS IN CALIFORNIA AFTER 1877

It has become cliché to say that Americans who wish to see their future should look to California. Like all cliches, this one contains a kernel of truth, but at the same time hides a deeper truth. California has, since Americans first took possession of it, been central to American destiny in ways few other states, or even regions, can match.[1]

- D. Michael Bottoms

As chapters 3 and 4 explain, between 1877 and 1897 the federal judiciary transitioned from the use of a classically liberal philosophy to a utilitarian philosophy which led to the erosion of federal protections for the rights of Yankee, Hispanic, and Pueblo ejidal land grant owners in New Mexico. Just as in New Mexico, the federal government provided protection to Hispanic and Anglo land grant owners in California prior to 1877.[2] After 1877, both the state and federal government were increasingly influenced by utilitarian philosophy. In regards to land ownership, this philosophical shift had a significant but smaller impact on Hispanic and Yankee land owners than it did for other minorities for two reasons. First, land grant claims in California, almost exclusively made by Hispanics and Yankees, were settled prior to the end of the Civil War. Because of this, fee simple ownership was established and land grants were already substantially subdivided and integrated into a system of individual land ownership needing only moderate changes in the opinion of utilitarians influencing state and federal policy after 1877.[3] Second, a racist social structure was adopted as a result of increasing utilitarian

[1] D. Michael Bottoms. *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850-1890* (Norman: University of Oklahoma Press, 2013), p. 208.
[2] See Chapter 1 for a detailed discussion of federal protection of property rights in California.
[3] Most New Mexican land grants were still not adjudicated by the last decade of the nineteenth century.

influence on government where both Hispanic Californios and Yankees continued to be classified as “White” and at the apex of this new aristocracy of color.

While some children and grandchildren of Yankee and Californio grantees continued to use the land originally granted to their ancestors, others sold their inheritance and abandoned agriculture. Those who remained in agriculture adapted farm practices to comply with the pressure, in the form of taxes and subsidies, applied by the state and federal government. The goal of this pressure was to encourage specific use of land grants in a way that produced results they believed were best for California and the nation. Those who left agriculture entered a diversity of professions which produced varying levels of success and failure for future generations of grantees. Regardless of ethnicity, many Yankee and Californio family members either adapted agricultural practices in reaction to state and federal regulation or abandoned the traditional family farm on land grants for salaried positions in agri-business; jobs in the power industry, automobile repair, and sales; or taking jobs in growing bureaucracies at the local, state, and federal levels.

Hispanic migrants, Chinese residents, African Americans, and California’s Native American population were discouraged and sometimes directly barred from attempts to become land owners by state level regulation after 1877. However, between 1877 and 1892, the federal judiciary, which was still beholden to classical liberalism, attempted to protect these groups from state level utilitarian-based legislation that discriminated along racial lines in the area of property rights. However, as federal judicial rulings based on classical liberalism were increasingly influenced by utilitarian philosophy at the turn of

the twentieth century, these minority groups became easy targets and the primary victims of white supremacy. By 1897, the influence of utilitarian philosophy and racial pseudo-science in both the state and federal judiciary provided opportunities for the economic success of Yankee and Californio residents of California while simultaneously preventing Native American, Chinese, and recent Hispanic immigrants from becoming land owners. Utilitarians rationalized that creating an unequal playing field based on race in regards to property rights was legal and moral because they were doing what was best for society and what was best for the minority groups who fell below Yankees and Californios on the aristocracy of color.

In his book titled *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945,* George Sanchez concludes that Californios held a different place in California society than Hispanic immigrants due to class. He explains that starting in 1880, southern California began the "most extended period of sustained growth by an equally compact region of the United States."[4] Sanchez explains that Mexican-born immigrants had little contact with native-born Californios because, as immigrants from Mexico moved into the city center, Californios moved to the "Anglo-dominated west side of the city where they were completely isolated from the growing Mexican community."[5]

[4] George Sanchez, *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945* (New York: Oxford University Press, 1993), p. 71.
[5] Sanchez, p. 70. Sanchez does note the few Californio families who remained in downtown Los Angeles fully assimilated into the Mexican immigrant community through marriage and quickly became indistinguishable from the new immigrants.

The continued classification of Californios and Yankees as the apex ethnicities within the aristocracy of color in California is evident when the economic outcomes of the Californio Juarez, Peña, and Vallejo families are compared with the Yankee Wolfskill family. As subsequent generations confronted the many economic and social changes coming at the dawn of the twentieth century, success and failure was not based on the ethnicity of Californio and Yankee families. Instead, individual choices and circumstance were the primary determinant of success or failure of individuals in subsequent generations of each family.

Descendants of the four Wolfskill brothers from Kentucky found both individual economic success and failure. By 1880, John Wolfskill had a very diverse 5,000-acre farm where he maintained 5 milk cows, 111 cattle, and 1,800 sheep. In addition to this livestock, Wolfskill's ranch produced 300 bushels of barley; 16,000 bushels of wheat; 1,100 bushels of peaches; and 100,000 pounds of grapes.[6] Like so many in northern California, Wolfskill took advantage of the wheat "bonanza" between the late 1860s to late 1880s. From the time he first settled Rio de los Putos, Wolfskill always intended to grow crops. In the 50 years he worked in Solano, his focus on different crops shifted, and he "always seemed to be growing the right commodity at the right time." He also understood the importance of transportation, and ensured he had the means to hall his produce to the boats and rail cars that linked his products to distant population centers. [7]

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[6] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880."
[7] "History Lessons: How one Sacramento area rancher- John Wolfskill- shaped the way we arm, what we grow and how we do it." (University of California: Wolfskill Experimental Orchards, 2009). Downloaded from https://ucanr.edu/sites/wolfskill2/John_Wolfskill_-_History/The_Grant/ on 10 November 2020, p. 19.

John's three brothers; Milton, Mathias (Matthew), and Sarchel; and oldest son Edward also prospered on their own farms in Solano County in 1880.[8] The three brothers all moved to Solano County by 1860 and purchased over 1,000 acres of land each from their brother John. All three brothers took their cue from John and raised cattle and grew wheat and fruit. John's son Edward owned and managed his own farm in 1880 where he lived with his wife Anne and two young sons Frank and J.R.[9] Unfortunately, Edward became a widower some time before the turn of the century. By 1900, his 21-year-old son Frank worked as a farm laborer and servant for his Aunt Margaret who was running the fruit farm started by her late-husband Sarchel.[10] By 1910, his youngest son J.R. worked as a fruit farm laborer on various farms in Solano.[11] While his adult children struggled to make a living at the bottom of the agricultural ladder, Edward quit California completely and joined the Navy as an office clerk.[12] He was stationed in the Philippines in 1910 and returned to San Francisco around 1920 at the age of 69 where he lived in a boarding house and worked as a low-level clerk in a local government office.[13] Edward's son

[8] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1880" and U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1880."
[9] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1880"
[10] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1880" There is no evidence of the whereabouts of Edward in the 1900 census. Margaret's household in 1900 consisted of two adult sons (William-44 and Barney-27), adult daughter (Sallie-40), and another servant named Reed Wolfskill. By 1910, No family members owned or ran Sarchel's farm. His wife Margaret was still living with her son William and daughter Sallie. William was the only member employed in the household. He was listed as working as a carpenter.
[11] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1910." Downloaded from ancestry.com on Dec 1,2020.
[12] Based on an analysis of Edward's agricultural output in 1880, the most likely reason for his failure as a farmer was his exclusive focus on growing wheat. Both Edward Wolfskill and Demetrio Pena failed to diversify their crop production. While wheat prices stayed high, they did very well economically, but once prices fell at the end of the 1880s, this lack of crop diversity most likely ruined both men economically.
[13] U.S. Census Bureau, "Inhabitants in Agency of Depot Quartermaster, U.S. Navy: 1910" and U.S. Census Bureau, "Inhabitants in the County of San Francisco in the state of California: 1920"

Frank made another attempt at farming when he rented a fruit farm in 1910. But, by 1920 he had quit farming and worked as a carpenter which allowed him to own his own house. His good fortune didn't last the decade. By 1930, he was renting a home again and working as an unskilled laborer. [14]

Although his son Edward was unable to succeed in agriculture, John's daughter Frances was able to continue her father's legacy. Frances continued to work with her father on Rio de los Putos until his death in 1897 at the age of 93. She learned a lot from her father "who was a true horticulturist" and became the father of the fruit industry in northern California.[15] Frances continued to run the farm with her first husband Samuel Taylor. After his death, she married a lawyer named Lawrence Wilson. Her husband continued working as a lawyer in 1910, but listed his occupation as farmer in the 1920 and 1930 census.[16] After her death in 1934, Frances left the Wolfskill mansion and her vineyard and orchard to the UC Davis Department of Pomology which continues to maintain the legacy of John Wolfskill today.[17]

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[14] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1910, 1920, 1930."
[15] "History Lessons: How one Sacramento area rancher- John Wolfskill- shaped the way we arm, what we grow and how we do it." (University of California: Wolfskill Experimental Orchards, 2009). Downloaded from https://ucanr.edu/sites/wolfskill2/John_Wolfskill_-_History/The_Grant/ on 10 November 2020. Frances recalled that her father loaned tools and gave fruit tree cuttings to new settlers and was always available to answer questions for neighbors who were struggling.
[16] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1910, 1920, 1930."
[17] "History Lessons: How one Sacramento area rancher- John Wolfskill- shaped the way we arm, what we grow and how we do it." (University of California: Wolfskill Experimental Orchards, 2009). Downloaded from https://ucanr.edu/sites/wolfskill2/John_Wolfskill History/The_Grant/ on 10 November 2020, pp. 19-20. Only one of Frances' four children chose a profession in the fruit industry. Her oldest son Bayrd Taylor was a manager for a produce company in Arizona in 1920 and 1930. Her second oldest son worked as a personal secretary. Both of her daughters, Francis (Iris) and Virginia lived on the fruit farm with her until her death in 1934.

John Wolfskill set his family up for inter-generational success by starting orchards and vineyards prior to the Northern California "fruit boom" in the 1890s.[18] However, it only seems that his sister-in-law Margaret and his daughter Frances were able to extend this agricultural opportunity into the twentieth century. His son Edward left farming completely and his grandchildren, Frank and J.R., owned no property and worked as laborers. While Frances continued her father's legacy, only one of her four children continued to work in agriculture. Her son Bayrd worked as a manager for a fruit company in Arizona while her other son Don made a living as a personal secretary. Although they lived on her mother's farm into adulthood, there is no evidence that Frances' two daughters became active in agriculture.

Sarchell Wolfskill's four children continued to work on their mother's farm through the first decade of the twentieth century. In 1900, Sarchel's 72-year-old widow, Margaret, was listed as the head of household with an occupation of fruit grower. Her 42-year-old son William was listed as the farm manager while her 27-year-old son Barney worked as a farm laborer along with cousins Frank and Reed Wolfskill.[19] By 1910, the farm legacy of Sarchel Wolfskill was ending. According to the census, they still lived on the farm, but the only source of income came from William's work as a carpenter. His salary supported his 82-year-old mother and 50-year-old sister Ruth.[20] By 1930, William was a patient in a hospital in Napa while the only indication of a Wolfskill connection to farming, besides William's Aunt Frances, are individuals with the name Wolfskill

[18] Vaught, *After the Gold Rush,* p. 209
[19] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1900."
[20] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1910."

working as farm laborers in Solano County throughout the 1920s and 1930s.[21] John Wolfskill's grandchildren, nieces, and nephews never owned farms of their own as they struggled to make ends meet as farm laborers for Aunt Margaret and other farmers in Solano. Several family members left agriculture completely and made modest livings in trades such as carpentry. His daughter's family eventually moved on from farming and entered a secure middle-class life while their cousins languished in the working class of California. It seems the personal choices and circumstance had a great deal of influence regarding how well the Wolfskill grandchildren faired in the first decades of the twentieth century.

Much like the Wolfskill family, the Juarez family had individuals who were successful and those who struggled during the first decades of the twentieth century. By the time Cayateno Juarez was 70 years old in 1880, he had almost fully altered his operation from a livestock-based farm to a crop-based farm and was affectionately referred to as the "Duke of Tulucay" by his neighbors.[22] In 1880, he owned 1,100 acres of his original grant. He still owned 8 horses, 9 mules, 8 milk cows, 8 cattle, and 8 calves. In 1880, Rancho Tulucay produced 70 tons of hay, 160 bushels of corn, 2,920 bushels of Barley, 1800 bushels of potatoes, and 700 bushels of Wheat. Cayateno's son, Dolores Juarez, had his own wheat farm adjacent to his father by 1880. Both were successful and

[21] U.S. Census Bureau, "Inhabitants in the County of Napa in the state of California: 1930."
[22] Myrtle M. McKittrick, "Salvador Vallejo." *California Historical Quarterly,* Vol. 29, No. 4 (Dec 1950), p. 319.

took advantage of the wheat boom that was coming to a close by the end of the penultimate decade of the nineteenth century. [23]

By the turn of the twentieth century, the Juarez family continued to prosper in agricultural pursuits. Dolores continued farming into the first decade of the twentieth century. But, by 1910, he no longer owned a farm and was making a living as a "repair man."[24] However, his brothers, Augustine and Juaquin Juarez, transitioned from wheat farming to fruit orchards like the rest of the "new generation" of California farmers "as the means to cultivate their own identities."[25] Each moved to Santa Barbara where they owned separate fruit farms from 1900-1920. Both brothers carried a mortgage on their respective farms in 1900, but Augustine paid off his mortgage by 1910 and Joaquin paid off his mortgage by 1920.[26] Although not farmers, Dolores' son in law Stewart MacKroth (married to Ethel Juarez) and son Percey worked as fruit salesman in San Francisco in 1930.[27] Percey and Ethel's oldest brother Roy Juarez never worked in agriculture. Instead, he worked as an electrician from 1900 to 1910 and then owned a garage in 1920

[23] U.S. Census Bureau, "Productions in Agriculture in the County of Napa in the state of California: 1880." Juarez's son, Dolores, owned a farm next to his father in 1880 with his wife and two-year-old son Roy. Unfortunately, he was not listed on the 1880 Agriculture Schedule so there is no way to determine how much acreage his father deeded to his son by 1880 and how productive Dolores was as a farmer. However, it is safe to assume that the diminished size of his father's farm is partially explained by the conveyance of land to his son. (U.S. Census Bureau, "Inhabitants in the County of Napa in the state of California: 1880.").

[24] U.S. Census Bureau, "Inhabitants in the County of Napa in the state of California: 1910." He was also listed as blind in the 1910 census.

[25] Vaught, *After the Gold Rush,* p. 198.

[26] U.S. Census Bureau, "Inhabitants in the County of Santa Barbara in the state of California: 1900, 1910 and 1920."

[27] U.S. Census Bureau, "Inhabitants in the County of San Francisco in the state of California: 1930."

where he employed his younger brother Percey. By 1940, Roy owned his home, worked as a salesman and had completed at least one year of college.[28]

After 1880, the Juarez family members who remained in agriculture followed the same path as their Yankee counterparts, to include Margaret and Frances Wolfskill, in their transition from wheat to fruit production.[29] The first names of the grandchildren of Cayateno Juarez indicate that some of the Juarez family assimilated into the much larger Yankee population in California at the turn of the century while others maintained their Californio roots.[30] The fact that Cayetano's son Augustine and granddaughter Ethel married into non-Hispanic families exemplifies this assimilation.[31] The children and grandchildren had personal successes and failures comparable to any family. Joaquin and Augustine secured successful fruit farms while their nephew and nephew-in-law made a less prosperous but secure living as fruit salesmen. Their nephew Roy made a respectable living in the new field of electricity starting in 1900. It seems that Percey was the only son of Dolores to struggle as a renter who never owned a home or kept a job as he seemed to drift from one unskilled profession to another between 1900 and 1930. But overall, the members of the Juarez family adapted to a changing economy in the

[28] U.S. Census Bureau, "Inhabitants in the County of San Francisco in the state of California: 1900, 1910, 1920, and 1940."
[29] See David Vaught's *After the Gold Rush* which describes the shift from gold to wheat to fruit in California between 1850 and 1900.
[30] The names of Cayateno's grandchildren included Roy, Ethel, Vivian, Percey, Clyde, Margaret, Madeline, Viola, Ester, Frederick, Frank, Benjamin, and Joseph. Some grandchildren did retain Hispanic names to include Vicente, Arrelena, Liberto, Carmeleto, and Juaquin (U.S. Census Bureau, "Inhabitants in the County of Napa in the state of California: 1880, 1900, and 1910.").
[31] Ethel married Stewart MacKroth who was originally from Missouri. Augustine married Margaret whose father was born in Ireland and mother was born in New York (U.S. Census Bureau, "Inhabitants in the County of San Francisco in the state of California: 1930." and U.S. Census Bureau, "Inhabitants in the County of Santa Barbara in the state of California: 1900.").

twentieth century much like Cayetano Juarez did in the nineteenth century. While some adapted within the agricultural industry by shifting from wheat to fruit production, others became skilled in trades associated with the new technological industries associated with electricity and automobiles to secure a successful and stable middle-class life for their families.

Much like the Wolfskill family and the Juarez family, individuals from the Peña family had different levels of success based on circumstance and personal choice. After Juan Felipe Peña died in 1863, his rancho was divided between his children. Three children; Demetrio, John, and Nestora; held on to part of their inheritance and began farming independently in Solano. Juan Felipe Peña left the family home to his youngest child and only daughter Nestora who continued to live with her mother and two children in the original adobe built by her father. There is no documentation of Nestora's farm production in 1870. But, in 1880, she owned 500 acres of her father's land grant where she maintained 25 milk cows, 45 pigs, and 12 chickens. Her livestock allowed her to produce 200 pounds of butter and 100 dozen eggs for the year.[32] This production from livestock pales in comparison to her wheat production which was the main economic driver of her farm. In 1880, she produced 4,000 bushels of wheat.[33]

Demetrio, the oldest sibling, owned 2,000 acres of his father's original land grant in 1870 where he maintained 8 horses, 2 milk cows, and 50 pigs. He produced 4,000

[32] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1880."
[33] As a comparison, her nearest neighbors produced 1,800 bushels, 1,000 bushels, 1,200 bushels, 1,000 bushels, and 3,200 bushels of wheat in 1880. Nestora and her brother Demetrio (who produced 16,000 bushels) produced exponentially more than most of their neighbors in 1880

bushels of wheat and 2,000 bushels of barley in 1870.[34] However, by 1880, he produced the astonishing amount of 16,000 bushels of wheat in a single year.[35] Demetrio and Nestora's brother John, owned 286 acres of land where he maintained 4 horses, 1 milk cow, and 40 pigs. He also produced 1,300 bushels of wheat and 200 bushels of barley in 1870.[36] This large amount of wheat (when compared to their Yankee neighbors) produced by Nestora, Demetrio, and John at the height of the northern California wheat boom indicates that all three siblings were very successful economically into the 1880s.

Nestora lived and farmed on her father's rancho until her death in 1922. After her death, her financial estate was distributed to family, a church in Vacaville, and the Dominican Sisters of Benecia. A portion of her land was conveyed to the City of Vacaville to build a park. The remaining land was passed on to her children who maintained ownership until 1957 when the original adobe and the surrounding land were donated to the City of Vacaville.[37]

Like his sister's family, John Peña's family also remained economically successful in the agriculture industry well into the twentieth century. By 1900, John retired from farming and had passed the farm on to his 36-year-old son Vidal. Vidal's

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[34] To understand the importance of wheat to the economy of California and the economic success of farmers during the last half of the nineteenth century, read *After the Gold Rush: Tarnished Dreams in the Sacramento Valley* by David Vaught. See Table 1 on page 61 to compare Pena's wheat production (which is very substantial) with other Hispanic and Anglo farmers in the area.

[35] This amount of wheat equals that of John Wolfskill in the same year. A survey of Solano County Agricultural schedules for 1880 reveals that this amount Is exponentially larger than the average wheat production for the county. Most wheat yields for 1880 were between 1,000 and 3,500 bushels. Demetrio also maintained a single milk cow, 30 pigs, and 24 chickens on the farm.

[36] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1870 and 1880." Downloaded from Ancestry.com on Feb 4, 2015.

[37] "Maria Nestora (Pena) Rivera." *Old Spanish Trail Association.* Downloaded from https://oldspanishtrail.org/maria-nestora-pena-rivera on 1 June 2020.

younger siblings also lived on the farm in 1900. His brothers Salvador and Philip worked as farm laborers for Vidal along with his sisters Juanita and Rose. However, just as the Wolfskill and Juarez families had done, Vidal transitioned from wheat to fruit production. After John's death, his children still remained active in agriculture. Vidal continued to live on his father's farm while his sibling moved away. By 1910 Vidal had a wife named Anita, a son named Gustave who was born in 1905, and a daughter named Frances who was born in 1906. Along with his immediate family, Vidal had an aunt and two farm employees living with him in 1910. His brothers, Salvador and Philip, had not moved far. They had started their own fruit farm by 1910 a short distance away and most likely on land originally owned by their grandfather.[38]

By 1920, Salvador had moved back in with his brother Vidal and his wife and children.[39] Although they are listed as living in the same dwelling, both Salvador and Vidal are listed separately as fruit farmers who owned different farms. The most likely explanation for this is that they were living together but were still running their adjacent farms independent of one another. This co-habitation with separate farms continued through 1930. However, by 1940, a 62-year-old Salvador was running his own farm and living with his 36-year-old wife along with two step sons who were 20 and 16 years old.[40] After spending their childhoods on a fruit farm, Vidal's children moved out of agriculture completely. Gustave became a credit investigator in San Francisco. He only

[38] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1900 and 1910."
[39] There is no record of Philip Pena after 1910 in the U.S. Census records.
[40] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1920, 1930, 1940."

married briefly before divorcing. He lived as a bachelor through 1940.[41] Frances married a bank cashier named Joseph Orato whose parents were both born in Italy. The couple moved to San Rafael just north of San Francisco where they owned their own house and had 3 daughters who were 11, 10, and 2 in 1940.[42]

Although Demetrio Peña owned 1,500 acres more than his sister Nestora and 1,700 acres more than his brother John in 1880, his family seems to have fared the worst in the first decades of the twentieth century. Looking at his agriculture production in 1880 (see Table 1 in Chapter 1), it is reasonable to assume that his economic downfall came as a result of his inability to diversify his agricultural output like his more successful neighbors and relatives. He invested exclusively in wheat production. This would have worked well for him until wheat prices crashed at the end of the 1880s.[43] By 1900, his 70-year-old widow Inez was living in a rented house with her daughter Neavis, son John, granddaughter Bella, and granddaughter Anita. John is the only employed member of the family and was working as a farm laborer. Inez's youngest son Frederick was living as a boarder with an unrelated family and working as a farm laborer. By 1910 Inez was living with her granddaughter Anita, who was 25 and working as a sales lady in a dry goods store.[44] By 1920, Anita had married a successful farmer named Frank Reyes and moved to Ventura in southern California.[45] Frederick remained in Solano County, married, and had 6 children. In 1920, he worked as a laborer on a fruit farm and lived

[41] U.S. Census Bureau, "Inhabitants in the County of San Francisco in the state of California: 1940."
[42] U.S. Census Bureau, "Inhabitants in the County of San Rafael in the state of California: 1940."
[43] Vaught, *After the Gold Rush,* pp. 204-205.
[44] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1900 and 1910."
[45] U.S. Census Bureau, "Inhabitants in the County of Ventura in the state of California: 1920."

with his family in a rented house. By 1930, Frederick still worked as a fruit farm laborer but owned his own house. By 1940, he had retired and lived with his wife, two of his children, and two grandchildren in the house that he still owned.[46]

Despite different ethnicities, the Peña and Juarez families had much in common with the Wolfskill family in early twentieth century California. Juan Felipe Peña, Cayateno Juarez, and John Wolfskill all maintained a portion of their Mexican land grants throughout their lives and passed the land on to their children. All had direct descendants that did one of three things. One branch of each family continued to successfully run farms and hold onto a portion of the original Mexican land grant given to their ancestors into the twentieth century. To be successful, this branch of each family adapted to a changing economy by transitioning their parents' wheat farms to fruit farms which remained profitable through the 1930s. Agriculture also provided an opportunity for female family members to thrive as small business owners in turn of the century California. Three of the successful farms growing out of the original land grants that continued into the twentieth century were owned and run by Frances Wolfskill, Margaret Wolfskill, and Nestora Peña. These matriarchs owned and managed these farms while employing male relatives as farm laborers and successfully navigated the ups and downs as agricultural proprietors in northern California.

While these women and men from each family carried on their parents and grandparents farming legacy, another branch of each family remained successful by quitting agriculture for new vocations such as banking, law, carpentry, electricity,

[46] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1920, 1930, 1940."

mechanical repair, sales, personal secretary, and credit investigation. While the men who left agriculture worked in these fields directly, the women did not. Unlike their female counterparts who remained in agriculture, the females who left agriculture did not directly work in new vocations. Instead, they married men who entered these new fields. A third branch of each family struggled economically. They often rented their homes, occasionally worked for or lived with more successful family members, and made their living either as agricultural laborers or in other low-level unskilled work in non-agricultural fields.

Just as the middling Californio and Yankee families without extensive political connections had a variety of success, the Yankee and Californio families that made up the antebellum Californio political and social elite also had varied success in the late nineteenth century. Elite Yankees with both economic and political connections such as John C. Fremont and John Sutter "spent their final years financially embarrassed, one jump ahead of dire poverty" while others such as Thomas Larkin and John Frisbie flourished due to individual circumstances.[47] Like Fremont and Sutter, elite Californios such as Mariano and Salvador Vallejo struggled personally at the end of their lives. However, their families continued to achieve various levels of prosperity due to individual choices in twentieth century California despite the financial struggles of their parents and grandparents. Leonard Pitt used the Vallejo family as an example of the injustice, violence, and broken promises that led to the pitiful collapse that took "the

[47] Rosenus, p. 207 and 219. Alan Rosenus concludes that different outcomes were partially the result of the decision to either invest in wharves, commercial buildings, banking, and trade goods (which led to success) or invest exclusively in agricultural land (which was much less stable).

worst possible form" of dispossession and financial ruin.[48] But, despite the economic misfortunes both Salvador and Mariano Vallejo endured late in life, several of their progeny were notably successful.

While it is true that Salvador, like many speculators, lost much of his personal fortune in the Panic of 1873; his family continued to prosper well into the twentieth century because he "had diversified interests that seemed to guarantee a safe future for himself and his family."[49] After his service as a Major in the Union Army during the Civil War, Salvador maintained a 700-acre ranch along the Napa River called Las Trancas. After his death in 1876, Salvador's oldest son, Ignacio, inherited Las Trancas and "was a prominent resident of Napa for many years."[50] With Las Trancas in the hands of her son, Salvador's wife Rosalia purchased additional land in Napa near Coombsville where she lived until her death in 1894. Salvador and Rosalia's grandson, Uriah Frisby, stated that "at her death her children's inheritance was considerable."[51]

Salvador's brother, Mariano Vallejo also met with well documented financial setbacks late in life. His fortune dwindled to almost nothing over two decades due to questionable investments, generous loans to dubious business partners and friends, overleveraging his assets on the assumption that the city of Vallejo would become the state capital, and the U.S. Supreme court rejection of his claim for the Suscol Grant due to the discovery of forged documents used in the claim.[52] Because of his misfortune and

[48] Pitt, pp. 282-283.
[49] McKittrick, p. 320. These diversified interests included agricultural pursuits, soap making, supplier for mining operations, and land speculation among others.
[50] Mckittrick, p. 326.
[51] McKittrick, p. 329.
[52] Mariano Vallejo successfully obtained confirmation to his 66,000 acre claim to Petaluma in 1857.

advancing age, Mariano Vallejo retired to his 267-acre farm in Sonoma called Lachyrma Montis where he lived with his wife Benecia, daughter Lulu, and son Uladislao. Mariano listed his occupation as a retired soldier on the 1880 census while his son Uladislao, living with his father, was listed as both a wine maker and farmer.[53] In 1880, Uladislao earned a modest living for himself, his sister, and his parents by managing Lachyrma Montis for his father. The farm produced 100 bushels of apples, 12,000 pounds of grapes, 100 dozen eggs, and 60 pounds of cheese, and 100 pounds of butter in 1880.[54] Vallejo was proud of his son Uladislao who served as an officer in the Mexican Army and fought against the occupation of Maximillian in the 1860s. However, Vallejo kept his son close to him because he believed "Ula needs what a little tree needs- a great big post for support." Despite his father's support, Ula continuously failed in his business ventures throughout the 1870s and 1880s. He finally parted ways with his father after fleeing to Mexico with the tax proceeds he collected as the Sonoma County tax collector. Mariano repaid the city with his personal funds to ensure that his family was not publicly disgraced and continued to live a modest life on his farm until his death in 1890.[55]

Despite the modest lifestyle of Mariano Vallejo in the last years of his life and the disappointment of Ula's actions, several of his children were notably successful. Mariano Vallejo's daughter Epifonia (Fannie) and her husband John Frisbie achieved great economic success. In 1860, John's occupation was listed as a farmer. Together, John and

[53] U.S. Census Bureau, "Inhabitants in the County of Sonoma in the state of California: 1880."
[54] U.S. Census Bureau, "Productions in Agriculture in the County of Sonoma in the state of California: 1880."
[55] Rosenus, pp. 225-226.

Fannie continued to own 4,000 acres given to them by Mariano Vallejo where they produced 15,000 bushels of wheat, 40 bushels of barley, 200 pounds of butter and 11 tons of hay. They also maintained 250 beef cattle, 81 milk cows, and 30 horses.[56] Although the cash value of the working farm was $80,000, Frisbie listed the value of all of his real estate as $150,000 which indicates his involvement in land speculation in addition to his occupation as a farmer.[57] By 1870, Frisbie no longer claimed an occupation of farmer. Instead, his listed occupation was lawyer when he and Fannie collectively owned real estate worth $300,000.[58]

However, Fannie and John's good fortunes did not last. In 1876, John Frisbie lost almost all his assets after his bank, having invested heavily in bonanza stocks, was forced to pay creditors. To keep the bank from closing, Frisbie was forced to sell all his assets to include his private estate. Although the bank survived, Frisbie lost everything. Instead of accepting his economic demise, John Frisbie and Fannie moved to Mexico where Frisbie acted in a key role in establishing the commercial alliance between the Porfirio Diaz regime and the U.S. government. As a result, Frisbie and Fannie found more economic success in Mexico than they had in California through investments in Mexican railroads, stock raising, sugar mills, gold mining, and an electric power company.[59] By 1900, John

[56] U.S. Census Bureau, "Productions in Agriculture in the County of Solano in the state of California: 1860."
[57] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1860."
[58] The 1870 census shows that they held real estate independent of one another. John listed a personal real estate value of $250,000 and Fannie listed a personal real estate value of $50,000. The right of married women to maintain ownership of land independently was written into the original California state constitution at the insistence of the Californio representatives. The couple also lost the land which was part of the Suscol Grant that had been given to them by Mriano Vallejo in 1862 as a result of the unfavorable ruling by the U.S. Supreme Court.
[59] Rosenus, p. 231.

and Fannie returned to California. John listed his occupation as a "capitalist" and lived comfortably with his wife Fannie, one of their adult daughters, a grandchild, and unrelated servant.[60]

Another notable child of Mariano Vallejo was his son Platon. Unlike Marriano's daughter and son-in-law, Platon never made a living in agriculture. Platon was born in 1841 and was educated in both San Francisco, CA and Baltimore, MD. In 1860, he began studying medicine at Columbia University in New York City. In 1862, his studies were briefly interrupted when he volunteered as a surgeon for the New York Sanitary Commission where he treated wounded soldiers in Washington D.C. after the Second Battle of Bull Run. After graduating near the top of his class in 1864, he was commissioned as an officer in the U.S. Navy where he served as a surgeon on the *U.S.S. Farallones* which was stationed just outside of San Francisco. Following his Navy service, he worked as a surgeon for the *Pacific Steamship Company* briefly before returning home to Solano County to settle down and start a family. He married Lily Wiley in 1867. They had four daughters who he raised on his own after the death of his wife in 1885. According to local historian Brendan Riley, Platon became a highly regarded physician and surgeon whose practice covered parts of Solano, Napa, Marin, and Contra Costa counties. In addition to his civilian medical practice, Platon also assisted with surgeries at the Navy hospital on Mare Island. Historian Lee Fountain summarized Platon's life by stating that Platon "enjoyed a rich and significant life. Born to comparative luxury, reared in a devout and caring family, educated in the classics and

[60] U.S. Census Bureau, "Inhabitants in the County of Solano in the state of California: 1900."

medicine to serve his community, he fulfilled his destiny well [in a world that] changed from a frontier wilderness to a suburban community in the shadow of a growing metropolitan sphere" until his death in 1925 at the age of 84.[61]

Although both Mariano and Salvador Vallejo experienced financial setbacks in their lives, an assessment of the economic well-being of their children cannot include a narrative of dispossession based on ethnic animosity. Several of their elite Yankee counterparts, such as Fremont and Sutter, were financially ruined because of similar mistakes and decisions made by the Vallejo brothers. Also, several of their children adapted to a quickly changing world and as a result, were able to maintain social status and economic success in early twentieth century California. Both male and female children of the Vallejo's married into prominent Yankee families who had been among the early settlers, business partners, and friends of their Californio neighbors. This personal connection continued into the twentieth century as these Yankee and Californio family successes, challenges, and relationships continued to remain intertwined.[62]

Synthesizing information from case studies, agricultural data, and judicial data from the mid-nineteenth century through the first decades of the twentieth century shows that twentieth century Californio families remained at the top of the aristocracy of color

[61] Mariano and Benicia Vallejo had three other children who achieved more modest success in non-agricultural pursuits. Their daughter Louisa married Ricardo Emparan, who was the Mexican consul to California. Napoleon Vallejo worked as a Custom House Collector and sold oil paintings late in life. Andronico Vallejo made a living as a music teacher and "Gentleman." Mariano Vallejo's biographer concluded that Napoleon and Andronico could not imagine themselves committed to a life of farm labor because of their elite upbringing. The believed that "even a successful career in business might imply a fall from caste [and were never able to] shrug off all inhibitions and carry through on strong inner volition, which is what Platon achieved" (Rosenus, p. 227).

[62] Both Mariano and Salvador Vallejo's families maintained long term business connections and intermarriage with the Frisbie and Leese families.

along with Yankees just as they did before 1877 in California. Because of this, success or failure was based on individual choices and individual circumstances and not ethnicity. This conclusion provides context for other more complicated case studies that, if studied individually, might be interpreted as an example of dispossession by a systemically racist society that believed Californios were not worthy of land ownership. One much more complicated example is that of the Sepulveda family who owned Rancho Palos Verdes just outside of Los Angeles in southern California.

The Sepulveda's lost most of their land as a result of a partition suit initiated by creditors in the 1880s. Unlike the Juarez, Peña, Vallejo, and Wolfskill families, the Sepulveda family never adapted to a changing economy by transitioning from cattle to wheat to fruit farming. They also never subdivided land between children after the original grantee passed asway. Instead, they held the land in undivided shares which would lead to many complications by the penultimate decade of the nineteenth century. This was a common practice in southern California. Despite these different choices in how to utilize and convey land grants between generations, grantees in southern California had similar success to their northern counterparts when defending land grant claims in the 1850s.[63] But, after their success in court, southern Californians generally took a different course than their northern counterparts. Instead of selling land and adapting to the new economy by transitioning to crop based farming and/or land speculation as many did in northern California, many grantees in southern California

[63] 120 grants were confirmed and patented out of 140 claims in Los Angeles County (Clay and Troesken, p. 57).

maintained their traditional livelihood by maintaining large land holdings and large herds of cattle despite drought and drops in cattle prices.[64]

In order to finance the costs associated with property taxes, maintenance of the extravagant lifestyles of traditional Californio patriarchs, and loss of income due to drought and a diminishing cattle market; many grantees in southern California sold undivided shares of their grant to non-family members and divided remaining shares of a single grant to the children and grandchildren of the original grantee.[65] Despite many difficulties, Leonard Pitt concluded that the patriarchal ranchero system continued in southern California until the Santa Fe Railroad descended on Los Angeles in 1887, and "sealed the coffin on the old California culture."[66]

Because grant owners in the southern part of the state generally conveyed shares of the grant instead of definitively subdividing grants to individual owners, legal issues began to crop up between family members and outsiders who were given possession of undivided shares of land grants in exchange for loans or services.[67] By the 1870s, this practice resulted in several partition suits being brought into state courts. In a partiton suit, the court is tasked to divide land equitably among multiple legitimate owners who either inherited or bought shares of a particular grant. In Los Angeles County alone, five such partition suits were adjudicated in the late 1860s and 1870s. The partition suit for Rancho Tajauta involved twenty-nine partial claimants to include twenty-one Hispanics

[64] Pitt, p. 104.
[65] Karen Clay and Werner Troesken. "Ranchos and the Politics of Land Claims," in *Land of Sunshine: Toward an Environmental History of Los Angeles,* ed. Bill Deverell and Greg Hise (Pittsburgh: University of Pittsburgh Press, 2006), pp. 52-66.
[66] Pitt. p. 249.
[67] Clay and Troesken, pp. 58-62.

and eight Anglos. The Rancho La Ballona suit involved fifteen claimants to include twelve Hispanics and three Anglos. The Rancho La Cienaga suit involved thirteen claimants to include six Hispanics and seven Anglos. The Rancho San Pedro suit involved eleven claimants to include six Hispanics and five Anglos. The Rancho El Valle De San Jose suit involved thirty-two claimants to include twenty Hispanics and twelve Anglos.[68]

To understand the situation that led to these partition suits, how they were adjudicated, and what legal philosophy the courts used in their adjudication; it is best to look at a single example in detail. Just outside of Los Angeles, the rancho known as Palos Verdes was issued in 1846. Initially, a provisional grant was given to Dolores Sepulveda in 1826 as a reward for his service to the Mexican Army. While enroute to request a permanent grant from the governor, Dolores was killed while assisting in the defense of the mission of La Purissima from an attack by Native Americans.[69] Due to the unfortunate circumstances of his death and his respected service to the state, the provisional grant consisting of 39,000 acres was transferred to his five surviving children in 1827. Dolores' daughter Teresa, maintained ownership of her share of Palos Verdes but married a silversmith from Kentucky and moved to nearby Los Angeles where they had a son named Pablo (Paul) Pryor. By 1840, Teresa passed away and two of her brothers, Ygnacio and Diego, moved away from the area and abandoned their portions of Palos Verdes to their two brothers remaining on the rancho. These brothers, Juan and

[68] Clay and Troesken, pp. 60-61.
[69] Mary Thacker, "A History of Los Palos Verdes Rancho, 1542-1923," PhD diss., University of Southern California (Los Angeles, 1923), p. 37.

Jose Sepulveda, then successfully petitioned to change their provisional grant for Palos Verdes to a permanent grant on the eve of the Mexican American War in 1846.[70]

After the war, Juan and Jose submitted their Palos Verdes claim to the California Land Commission on 1 November 1852. The land commission quickly validated the claim in 1853, but the U.S. attorney appealed the commission's decision on the grounds that the Palos Verdes grant violated the Mexican Colonization Law of 1824 due to its location on the coast. However, the U.S. attorney was unsuccessful and the claim was confirmed by the California Southern District Court in 1856 and a second appeal to the U.S. Supreme Court was dismissed in 1858. With their land grant confirmed, Juan and Jose Sepulveda maintained possession of their grant and continued ranching.[71]

Under U.S. rule, Jose Sepulveda became a member of the Los Angeles city council in 1850, married Cesaria Pontoja and had eleven children. Juan Sepulveda also held several high offices to include serving as alcalde of Los Angeles from 1845 to 1849, county supervisor in 1854, and county assessor from 1857-1859. Juan married twice and had five children.[72] Of the brothers who had left Palos Verdes, Ygnacio was killed during the Mexican American War and Don Diego acquired the San Bernardino grant from the Mexican government in the 1840s. However, in 1851, Diego sold his interest in San Bernardino and returned to Palos Verdes where he erected a home and was allowed to graze his cattle herd with those of his brothers. In 1858, Diego formally bought a portion

[70] Thacker, pp. 37-41.
[71] Thacker, pp. 32-33. They did lose a few acres to eminent domain when the federal government constructed a light house and Fort McArthur on the California coast in 1873
[72] Thacker, p. 39.

of Palos Verdes from Jose but passed away the next year and his recently acquired portion of Palos Verdes was conveyed to his two children.[73] Although they struggled financially, life remained stable on the rancho for the descendants of Dolores Sepulveda into the 1870s.

As the value of their land increased, a partition suit was filed in in the 17th Judicial District for the State of California and the County of Los Angeles in 1874. The goal of the partition suit was to identify legitimate claimants to shares of the rancho and divide portions of the grant fairly between the parties.[74] The suit for Palos Verdes listed 48 claimants which included two groups. The first group consisted of members of the Sepulveda family. These included immediate children and grandchildren of Dolores Sepulveda and more distant relatives who felt they had a legitimate claim to the rancho due to inheritance or business transactions between family members. The second group consisted of non-family members such as bankers, lawyers, traders, and cattlemen who felt they had a claim to a part of the rancho as a result of deed transfers from the sale of land or unpaid loans given to individuals in the Sepulveda family.[75]

Because of the complicated nature of the partition suit, the court did not finalize its decision until 1881. In the final decision, the court denied the claim of two non-family members. The first, Don Santiago Johnson, made a claim for one fifth of Palos Verdes based on a contract signed between himself and Diego Sepulveda in 1844. The agreement

[73] Thacker, pp. 41-42.
[74] If this couldn't be done without reducing the value of the land, then the court would order the sale of the grant and divide profits from the sail between claimants. Because of the size of Rancho Palos Verdes, the sale of the land was not needed.
[75] Thacker, pp. 50-51.

was for Johnson to trade one half interest in his Yacuaipa Ranch for Diego's one fifth interest in Palos Verdes. The court denied Johnson's claim on the grounds that Diego did not own an interest in Palos Verdes at the time of the agreement, there was no record of a Yacuaipa grant, no record of Johnson ever owning Yacuaipa Ranch, and no record of Diego receiving an interest in Yucaipa. This lack of evidence led the court to the conclusion that Don Santiago Johnson's claim was fraudulent.[76] A second outsider whose claim was denied was James Bell. He claimed a one-half interest in Palos Verdes based on an overlapping grant he had received from the U.S. military governor of California in 1849. His claim was denied by the court based on the opinion that the military governor of California in 1849 had no power to grant land to individuals because Congress had not yet enacted a plan for adjudication or distribution of public and private lands in California at the time he was in office.[77]

Several outsiders did prove to the court that they were owed a part of Palos Verdes. They included A.W. Timms who made a claim for one fifth of Palos Verdes based on his purchase of a one fifth interest in the ranch from Don Diego. Jotham Bixby claimed a large section of Palos Verdes based on multiple transactions. He purchased 1500 acres from Timms in 1874, and secured Pablo (Paul) Pryor's claim of inheritance from his mother Teresa by accepting the conveyance of a part of Pablo's share of Palos Verdes in exchange for the repayment of a loan. In a separate transaction, Bixby then

[76] Thacker, pp. 51-52.
[77] Thacker, p. 52.

bought the remainder of Pablo Pryor's share of Palos Verdes.[78] He also acquired shares from Don Santiago Johnson's claim and part of a claim made by J.G. Downey through various methods. Mr. Narbonne made a claim to a part of Rancho Palos Verdes based on the conveyance of land to repay a $3000 loan he had given Jose Sepulveda in 1871. J.G. Downey, representing The Farmers and Merchants Bank, made a claim for a two fifths interest in the ranch sold to him by Nathanial Pryor, the husband of Teresa Sepulveda (daughter of Dolores Sepulveda). Pryor claimed one fifth based on the interest in the ranch his wife received and conveyed to their son. He claimed a second fifth based on his purchase of Ygnacio Sepulveda's one fifth interest in the ranch. [79] It seems that both Bixby and Downey bought the same share of Palos Verdes that was based on the inheritance of Teresa Sepulveda. Bixby bought the share from Teresa's husband Nathanial and Downey bought the same share from Teresa's son Pablo.

The family of Don Diego Sepulveda claimed a one third interest in Palos Verdes. They claimed that they should receive the land their father purchased from his brother Jose in 1858. In addition to this, they believed they were still owed the original one fifth of the rancho given to their father by Dolores Sepulveda prior to Diego's abandonment of the ranch and prior to the final grant from the Mexican Government in 1846. On top of these two claims, Diego's family believed they should receive a third share as payment for improvements to the rancho they had completed (construction of buildings) that

[78] In this and many other cases, the holder of the claim was many times removed from the original owner. In the case of Bixby's claim for Pryor's share of Palos Verdes, he only gained possession after Pryor sold the interest to Mr. Tomlinson, who then sold it to Mr. Griffith, who then sold it to S.H. Wilson, who sold it to Mr. Glassel, who sold it back to Mr. Griffith, who then sold it to Jotham Bixby.
[79] Thacker, pp. 53-55.

financially benefited all of their extended family.[80] Rafael Poggi, the husband of Jose's daughter Luisa and father of their six children, made a claim based on a deed given by Diego to Luisa. Jose and his brother Juan maintained that they each owned one half of Palos Verdes and did not recognize any other claims to the rancho due to their continuous possession of the grant.[81]

The main focus of the adjudication for the case was the legitimacy of an 1852 Declaration of Trust that Jose and Juan signed agreeing to recognize the equal inheritance rights of all of their living and deceased brothers and sister. By finding this document genuine, the court gave legitimacy to claims made by the heirs of Teresa, Diego, and Ygnacio; and also legitimized the sale and mortgage of shares by these heirs to outside parties. In the final decision of the court, Rancho Palos Verdes was partitioned into 15 subdivisions.[82] Diego Sepulveda's family received the largest allotment given to family members when two separate claims were recognized by the court. One was 749 acres and the other was 3,650 acres. Diego Sepulveda's family maintained ownership of this land at least two decades into the twentieth century. Juan Sepulveda received an allotment of 12 acres, where he continued to live until his death in 1896. His brother Jose, died prior to the culmination of the Partition Suit. Jose's son-in-law, Rafael Poggi, and grandchildren received 200 acres as a result of the partition suit.[83]

[80] Thacker. P. 52.
[81] Thacker, pp. 53-54.
[82] Not including the land taken by the federal government for the light house and Fort McArthur.
[83] Thacker, pp. 56-57.

The majority of the land that made up Rancho Palos Verdes went to non-family members. J.G. Downey received just over 1,000 acres and Merchants Exchange Bank received 732 acres based on their acquisition of Ygnacio and Teresa Sepulveda's interests in the ranch which they had bought from Teresa's son, Pablo Pryor. Jotham Bixby received a 17,000-acre portion of Palos Verdes based on his multiple acquisitions of various shares of the grant that trace back to dealings with multiple members of the Sepulveda family. This was by far, the largest portion of the partition. The remaining partitions were given to outsiders based on the sale and conveyance of shares by various members of the Sepulveda family conducted over half a century.

The story of Rancho Palos Verdes is a microcosm of land grants in southern California. Increases in property taxes, drought, and drops in cattle prices put a strain on the finances of southern California ranchos in the 1860s to the point that 85% of property owners in 1864 Los Angeles were delinquent in paying taxes.[84] This encouraged the sale of shares of large land grants which led to partition suits. This was made even more complicated by internal family divisions regarding how to best use land grants that were often not subdivided between siblings. Some chose to continue working the ranch while others legally sold their shares to speculators, bankers, or other outsiders. This convoluted situation involving multiple generations of large families asserting individual claims to ranchos and outside interests who legally acquired partial claims from other family members led to the large number of southern California partition suits in the 1870s and 1880s. The judgements of these suits were overwhelmingly based on legal contracts

[84] Clay and Troesken, p. 62.

for financial and legal agreements between family members, banks, speculators, and other interested parties.

Karen Clay's conclusions after researching partition suits in Los Angeles and the results of the Palos Verdes partition are in line with the larger argument regarding California land grants in this dissertation. Clay concluded that the majority of partition suits that took place in California during the 1870s were not legal fronts for corrupt actions. Her study of land grants in Los Angeles County concludes that family members actually owned the land and their names were not being used by outsiders working to illegally or immorally dispossess the rightful owners. In addition, she concluded that outside interests based on legal deed transfers and mortgages were clearly identified in the Los Angeles partition suits. Based on the case study of Rancho Palos Verdes and the findings of Karen Clay, it is reasonable to conclude that although there were individuals attempting to subvert the legal system for their benefit (to include family members of grantees), the California courts that adjudicated partition suits prior to 1890 used a classically liberal framework heavily based on contract supremacy just as courts had done in northern California.

Due to the claims of the Sepulveda family and the convoluted nature of the Rancho Palos Verdes partition suit, without context, it would be easy to conclude that this was an example of corrupt dispossession by a racist Anglo society. However, given the context of land grants in northern California, the analysis of partition suits in Los Angeles by Karen Clay, and the changing economy in the state; the fate of the Sepulveda family and Rancho Palos Verdes is another example of both the exercise of contract supremacy

in the court system and the equal protection of the rights of Californios in late nineteenth century California.

In northern California during the late nineteenth century, land was in high demand. Because of this, land grants were subdivided and distributed to family members for direct use or sold to non-family members. In southern California, demand for land was much lower until the last decade of the nineteenth century. Because of this, land speculators were content to pay grantees for undivided shares of land grants in the hopes of these shares paying off years or decades later. These shares were not acted upon immediately which allowed the continued use of land grants by grantees and their heirs while simultaneously receiving money for shares of the land that were not immediately claimed. Once the demand for land in southern California increased, the result was a turbulent period where speculators pressed for possession of land which they legally and contractually purchased years before. While the suddenness of these partition suits creates a perception of dispossession; the rejection of illegal claims, the monetary benefit received by grantees who sold shares and chose to engage in other professions, and the judicial focus on making decisions based on legitimate contracts made with those initiating partition suits does not support the dispossession narrative in regards to Hispanic Californios.

Despite placement at the top of the aristocracy of color, both Yankee and Californio property owners were increasingly limited by utilitarian inspired state and federal regulation of property rights as the twentieth century approached. The utilitarian trend in California began with “the land question” regarding Spanish and Mexican land

grants in California. In her book titled *A Squatter's Republic: Land and the Politics of Monopoly*, Tamara Venit Shelton explains that the land issue forced the United States to answer two questions. First, "who had the right to own land? And second, how much land should they be allowed to own?" She explains that these questions led to more questions regarding the nature of property rights, freedom, and the danger of monopolies. Taken as a whole, the answers to these questions were the center of the U.S. transformation in political and economic reform during the Gilded Age and the federal court's transition from a philosophy of classical liberalism to utilitarianism.[85]

Yankee and Californio landowners were impacted differently in regards to how much land should be owned depending on where they lived. By the mid-twentieth century in California, 79% of farmland was divided into units of 1,000 acres or more but 68 % of total farms in California were smaller than 100 acres. Paul Wallace Gates explains that these seemingly opposite outcomes in twentieth century land ownership patterns were the result of late nineteenth century administration of legislative land policy. [86] Looking at specific state level legislation, regulation encouraging large farms in one area and small farms in another is explained by local racial issues throughout California.

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[85] Tamara Venit Shelton, p. 1. Shelton also states that this history "is the history of America's transformation from agrarian republic to industrial empire." In order to do this, the federal government needed to subordinate individual rights in favor of legislative dominance in order to create this empire. Much of this transition was discussed in Chapter 4 in regards to land use in New Mexico after 1877. This same legislative manipulation impacted land use in California.

[86] Paul W. Gates, "Public Land Disposal in California," *Agricultural History,* Vol. 49, No. 1 (Jan. 1975), p. 158.

Yankees and Californios retained the right to own land at the turn of the twentieth century, but the amount of land they owned and how they used that land was heavily influenced by local and state regulation. In some areas, state and municipal policies encouraging large farms were made in order to encourage a robust economy in the areas of wheat and fruit production. In terms of public land placed into individual ownership, legislation such as the Homestead Act, the Timber and Stone Act, the Desert Land Act, and the California Swamp Land Act paid "lip service to the small-family-farm-concept," but in practice encouraged corporate accumulation and large farms in certain areas of California.[87] In terms of farms on land grants, the families of grantees in areas where large farms were encouraged held on to parts of their ancestors' land grants and agricultural tradition, but were forced to adapt to the requirements of state and federal legislation which made California the land of the corporate-agribusiness farm through taxes, subsidies, and regulation.

One example of state government influencing development of private land is taxes. In areas where the state wanted large farms, the tax structure Penalized intensive development. Taxes were minimized for lightly developed land (few structures for houses, barns, etc…) while more intensive development was taxed at a much higher rate. This encouraged families that owned land grants to either adopt the model of industrial agri-business or sell their land and start a new profession because these policies made

[87] Gates, "Public Land Disposal in California." pp. 158-159 and 170-177. Gates stated that legislators all talked of providing "land to the small man but rarely voted that way."

small family farms less economically tenable in targeted areas.[88] In the 1880s, targeted federal subsidies contributed to the wheat boom and the subsequent fruit boom by encouraging large farms focused on the use of mechanized agricultural methods on lightly developed land with few structures that focused on a few staple crops.[89]

However, in rural areas with a large and growing population of Asian and southern European immigrants, local municipalities were given power from the state to use taxes to indirectly discourage large land holdings which attracted foreign populations and encourage small family farms made up of Anglo owners. State legislation, such as California's Wright Irrigation Act of 1887, encouraged the breakup of large land holdings in areas where land owners rented land to tenant farmers who were overwhelmingly Asian or southern European. Elwood Mead spoke out against tenant farming and the threat it posed to society when he argued that the Wright Irrigation Act prevented "an alien peasantry drawn… from the Orient, or from those portions of Europe where the conditions of living are the hardest" from driving "the young, virile, and ambitious" white laborers to the cities.[90] The irrigation act encouraged subdivision and the expulsion of foreigners by forming irrigation districts with the power to acquire water rights and levy taxes used to build dams, canals, and reservoirs. This positive utilitarian legislation provided both a carrot and a stick to encourage large land holders to sell land to white farmers. The carrot was the profit that large land-owning farmers and cattle ranchers

[88] Gates, "Public Land Disposal in California." P. 177. This tax structure could be the motivation for the co-habitation of brothers Salvador and Vidal Pena in the same house while owning and running separate farms.
[89] Shelton, p. 170. This led to a focus on mechanized agriculture and overproduction which eventually led to a market glut for wheat.
[90] Shelton, p. 187.

would receive from selling irrigated (and more valuable) land. The stick was that large land owners would be compelled to sell land in order to avoid paying the new significantly higher taxes imposed by the irrigation district.[91] Because potential tenant farmers did not have the capital, and in some cases the eligibility, to buy these smaller plots, these localities believed they were preserving civilized white society in rural California.

While acts such as the Wright Irrigation Act intentionally, but indirectly, resisted race mixing in rural areas, state and federal government actions in the twentieth century would pass legislation that was much more overtly racist by making specific groups ineligible for land ownership. [92] As California's state courts embraced utilitarianism as a tool to defend white supremacy after 1877, the federal judiciary continued to defend classically liberal ideals and the rights of targeted minority groups up to the early 1890s. The state versus federal conflict regarding Chinese land ownership clearly reveals this struggle between classical liberalism at the federal level and utilitarianism at the state level in California between 1877 and 1897.

On the state level, racist legislation was enacted to prevent Chinese residents from owning land for the supposed greater good of the larger society. According to many state officials in early twentieth-century California, Chinese immigrants fell just above Native

[91] Vaught, After the Gold Rush, p. 211. The twentieth century saw even more centralized and overtly racist legislative actions that included California's Alien Land Law of 1913, which denied the right to own land to immigrants ineligible for citizenship and the Land Settlement Act of 1917, which prevented Asians and Southern European immigrants from participating in an agricultural colonization program in rural California (Shelton, pp. 186-187).

[92] These groups in California included the few remaining Native Americans relegated to a dependent life on inadequate reservations, Chinese residents, Hispanic immigrants, and African Americans (According to D. Michael Bottoms, African Americans were placed above these other groups on the spectrum).

Americans in California's aristocracy of color. Those who disparaged Chinese immigrants recognized the achievements of Chinese culture, but argued that these achievements happened long ago and that the minds of Chinese people had stagnated and Chinese society was in retrograde. Some of their detractors, such as H.N. Clement, even went so far as to publicly proclaim that "Like the North American Indian… 'The Chiman must die'" for the good of society.[93] Those who made this argument said that the conclusion was not opinion, but "the rational judgement of science" which guided utilitarian legislation. The historian Hubert Howe Bancroft explained that Chinese children "were attractive and intelligent," but as they grew older, they retained "a certain simplicity." Ethnologist, Charles Brace believed that this simplicity was a "fearful barrier to advance in learning, or science, or general knowledge." Based on this pseudo-science, Californio congressman and former governor Romualdo Pacheco argued in favor of the Passage of the Chinese Exclusion Act. In his speech to Congress, Pacheco argued that "'by the laws of heredity," Chinese habits and character "are incorporated into his brain… His ancestors have… bequeathed to him the most hideous immoralities… so shocking and horrible that their character cannot even hinted."[94]

Because of this perceived defect, California statesmen believed that any integration with the larger white population needed to be minimized. This directly impacted the property rights of Chinese migrants and proprietors who ran laundries. Despite the popular negative opinion of Chinese residents, a classically liberal federal

[93] Bottoms, pp. 152-154.
[94] Bottoms, pp. 154-155.

judiciary led by Judge Ogden Hoffman of the Northern District, who had ensured property rights of Hispanic land grant claimants, protected Chinese rights.[95] Both Judge Hoffman and Judge Sawyer of the U.S. Circuit Court were overwhelmed by the number of Chinese habeas corpus cases requesting legal entrance into the U.S. in accordance with loopholes in the Chinese Exclusion Act. Despite their own racial prejudice, accepted legal options to deport Chinese workers suggested by U.S. Supreme Court Justice Field, and the growing unpopularity of the judges among white Californians for their defense of the Chinese; both men were "scrupulously fair" to Chinese plaintiffs and allowed the entry of 86% of Chinese petitioners between 1882 and 1890. Judge Hoffman explained his actions when he wrote that habeas corpus was "'the most sacred monument of personal freedom." D. Michael Bottoms concludes that Hoffman and Sawyer's actions were a "testament to an abiding faith in the rule of law prevalent in nineteenth-century American jurisprudence" and were motivated by both men's desire to defend both personal and legal principles.[96]

In addition to admitting Chinese migrants into the U.S., both Judge Hoffman and Judge Sawyer continued to protect the property rights of California's Chinese residents. Both federal judges were instrumental in "striking down the more odious anti-Chinese elements of California's new state constitution ratified in 1879" which gave local

[95] This defense of Chinese rights was not in line with either judge's personal opinion of the Chinese people as a whole. Outside of their role as judges, both made comments in personal correspondence that "harbored hostile opinions concerning Chinese immigration and the Chinese themselves" (Bottoms, p. 175).
[96] Bottoms, p. 175.

municipalities strong police power to regulate a well ordered society.[97] Despite the considerable power the state constitution gave to municipalities, both Hoffman and Sawyer maintained a strict adherence to classically liberal principles regardless of race by consistently ruling in favor of Chinese laundry owners targeted for expulsion from towns by local legislation. This placed Judge Hoffman and Judge Sawyer in direct conflict with their Democratic counterparts in the state courts of California who actively supported municipalities who outlawed Chinese owned laundries within city and residential areas. State courts supported the assault on Chinese laundries as long as regulations were written in race-neutral language even if they were only enforced in cases involving Chinese businesses.

Because of the large number of Chinese laundrymen arrested in 1885 for refusing to abandon their businesses, the struggle between federal judges and state judges in California was appealed to the U.S. Supreme Court to decide if the property rights of Chinese residents could be protected from local municipal laws. In *Yick Wo v. Hopkins,* the U.S. Supreme Court needed to decide two issues. First, they had to determine the constitutionality of a law that "'was fair on its face and impartial in appearance, yet, … [when] administered by public authority [made] unjust and illegal discriminations between persons in similar circumstances.'" Second, the court needed to determine if the due process and equal protection clauses of the fourteenth amendment applied to non-

[97] Bottoms, p. 164. In the book titled *The People's Welfare: Law and Regulation in Nineteenth-Century America by* William J. Novak discusses the common practice of local municipalities to use police power to regulate a well-ordered society. According to Novak this power was quite extensive in the U.S. and extended into many areas of private lives and property.

citizens in the U.S. In accordance with the classically liberal focus on individual rights and a repudiation of utilitarian philosophy, the Supreme Court ruled in favor of the Chinese laundries by finding that the fourteenth amendment applied to aliens as well as citizens and that the application of municipal regulations unequally were unconstitutional.[98]

In addition to the federal judiciary declaring state and local laws that discriminate on the basis of race unconstitutional, federal courts also made racial real estate covenants between private parties unconstitutional as late as 1892. For a short time in the early 1890s, U.S. Supreme Court decisions protected the property rights of Chinese residents impacted by racial covenants forbidding the sale of land to specific groups. In the 1892 U.S. Supreme Court decision in *Gandolfo v. Hartman*, the Supreme Court ruled that racial covenants in real estate contracts between private individuals were "'absolutely void and should not be enforced in any court."[99]

However, *Gandolfo v. Hartman* was the last gasp of federal judiciary making decisions based on classically liberal rights based philosophy. Despite the U.S. Supreme Court decisions of *Yick Wo v. Hopkins* in 1885 and *Gandolfo v. Hartman* in 1892, Californians at the top of the aristocracy of color continued to discriminate in the private sphere by using racial covenants in real estate contracts. Those in public office also continued to discriminate in the public sphere with the adoption of "separate but equal" which became settled law across the United States for the first half of the twentieth

[98] Bottoms, pp. 164-166.
[99] Bottoms, p. 203.

century after the 1896 ruling in *Plessy v. Ferguson.* Not coincidentally, this change came about as older judges using classically liberal philosophy like Ogden Hoffman, who passed away in 1891, were replaced by Progressive Era judges using utilitarian philosophy which allowed pseudo-science, legislative dominance, and white supremacy to influence their decisions. By the turn of the century, the legal positivism found in all three branches of California's state government and the executive and legislative branches of the federal government became unchecked as the last institution pushing back against utilitarian influence, the U.S. Supreme Court, abandoned classical liberalism.

Unlike New Mexico, utilitarian philosophy was very popular at the state level of government in California before 1877. This popularity was prominent in state legislative actions in regards to land grants, the restructuring of the social understanding of race, and the evolution of populist ideas regarding monopolies prior to 1877. D. Michael Bottoms explains that at the state level:

> Californians articulated the legal boundaries of racial discrimination, they also reordered and refined their ideas about race. Nonwhites' assault on whites' legal regime collapsed the crude binary distinction between white and nonwhite, and in the process redefined each racial group's status as well as the qualities and characteristics popularly supposed to be associated with each group.[100]

Despite the popularity of utilitarianism at the state level, it was initially limited in California by a classically liberal federal judiciary led by the northern and southern district courts through the early 1890s. These two district courts protected contract rights and individual rights of land owners and non-land owners regardless of race, ethnicity,

[100] Bottoms, p. 205.

and country of origin by pushing back against the racist utilitarian policies promoted by the state and local government in California.[101] But, by the 1890s, utilitarian trends internal to California became popular throughout the U.S. and were implemented at the federal level of government. This change in philosophy at the national level, especially within the judicial branch, led to a loss of federal protection of property rights for Chinese residents, Hispanic migrants, and African Americans while continuing to protect both Californios and Yankees who continued to be classified as "White" well into the twentieth century.[102]

California changed drastically as a result of becoming part of the United States and the Gold Rush. The ranchero social and economic order changed in an extremely short time. However, changes in the regulation of property rights and land use had an equal impact on Yankee land grant owners like the Wolfskill family and Californio land grant owners like the Juarez family. Individuals from both families found success, failure, and advantage due to their property inheritance. The period between 1877 and 1897 was transitional in terms of the dominant intellectual philosophy used by the federal government. Within California, utilitarian arguments were used to build a racial structure

[101] However, the federal courts were not able to protect individual rights in totality. Native Americans in California were especially vulnerable due to factors such as the established Californio policy of subjugation and violence towards Native Americans and the Yankee placement of Native Americans in California at the bottom of the aristocracy of color and at times not even recognizing their right to life.
[102] The Native American population of California were consistently robbed of their property rights. They were subjected to a system under Spanish and Mexican rule that relegated them to peon status which continued under early U.S. rule. Under U.S. rule, Native Americans fell on the wrong side of the older binary racial structure popular before the Civil War and fell at the bottom of the aristocracy of color that grew in popularity at the end of the nineteenth century in California. Because of this, they were never able to obtain any substantial rights to property ownership despite favorable rulings in the few land grants they had obtained prior to the Treaty of Guadalupe Hidalgo.

through the delegation of policing authority to maintain a well-ordered society from the state to the municipal level. Municipalities in turn created regulations that infringed on the individual property rights of Chinese residents, Hispanic residents, African Americans, and Native Americans. However, from the end of Reconstruction until the last decade of the nineteenth century, this state level effort was thwarted by a federal judiciary that upheld classically liberal beliefs in contract supremacy, property rights, and equality under the law. The federal courts were effective in protecting against the infringement of individual rights by both the state of California and the executive and legislative branches of the federal government. However, this ended when the federal judiciary embraced the utilitarian based ideals of progressivism, bureaucratic efficiency, and scientific expertise in the last years of the nineteenth century.

CONCLUSION

[Judge Hoffman and Judge Sawyer's] insistence is testament to an abiding faith in the rule of law prevalent in nineteenth-century American jurisprudence. Both judges muted their racial antagonism toward the Chinese while seated at the bench. They did so, as Hoffman's biographer Christian G. Fritz points out, not so much out of sympathy for the Chinese as out of a desire to defend legal and personal principles. [1]

- D. Michael Bottoms

In his 1985 article titled "The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants," Placido Gomez asserts that "Not until the United States of America gained sovereignty over the northern territory [of Mexico] did the question of who owned the common lands of the Spanish and Mexican land grants become an important one."[2] He then explains that the U.S. Supreme Court's conclusion in 1897 that the federal government owned the common lands in land grants contributed to the rejection of "94% of the claimed acreage [in New Mexico]… [and that the] 'reversion to the public domain of the general government of more than 30,000,000 acres' was one of the court's major accomplishments."[3] This dissertation agrees with the final outcome of New Mexico land grant claims described by Gomez and his assertion that the objective of the U.S. government in the last years of the nineteenth century was to place land from Spanish and Mexican land grants into the public domain. But it complicates his conclusions in two specific ways.

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[1] D. Michael Bottoms. *An Aristocracy of Color: Race and Reconstruction in California and the West, 1850-1890* (Norman: University of Oklahoma Press, 2013), pp. 175-176.
[2] Placido Gomez, "The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants," *Natural Resources Journal,* No. 4 (October 1985), p. 1041.
[3] Gomez, p. 1074.

First, this dissertation points out that, while the U.S. government did not explore sovereignty questions for land grants after the annexation of Florida, Louisiana, and Texas; the government of Mexico asked whether the community or the national government owned common lands (ejidos). In 1856 the government of Mexico concluded that sovereignty remained with the national government of Mexico. The preceding chapters then ask how Mexican legislation and actions concerning communal land grants after 1857 might have influenced the adjudication of land grants in U.S. courts. Second, this dissertation points out that the end result of land grant adjudication by the CPLC was just as Gomez asserts, but asks how many ejidos were confirmed by the surveyor general and the CPLC prior to 1897. It then explores the significance of the fact that confirmations of ejidos were common before 1897 and asks what factors led to the change in this long-standing precedent.

In order to provide nuance to the conclusions of Gomez and other historians studying land grants in California and New Mexico, this dissertation places the adjudication and economic outcomes of Spanish and Mexican land grants into three separate eras between 1850 and 1925. The first era takes place between 1850 and 1877. During this period, the success or failure of judicial outcomes for Hispanic, Pueblo, and Anglo claimants to Spanish and Mexican land grants in California and New Mexico were based on the validity of legal contracts between the grantee and the Spanish or Mexican government, local tradition, and the perceived intent of the government of Mexico when issuing the grants. Economic outcomes were based on the individual choices and circumstances of grantees. The California Land Commission, district courts, and U.S.

Supreme Court readily confirmed land grant claims in California despite resistance from a state legislature that was overwhelmingly anti-corporate, anti-monopolist, and actively attempting to protect the preemption rights of squatters contesting land grant claims. The New Mexico surveyor general and U.S. Congress also approved the few individual and community (ejidos) grants that made it to actual adjudication. However, administrative limitations of the surveyor general system slowed the adjudication of New Mexico claims prior to 1877. Anglo, Hispanic, and Pueblo Indian claims were treated in a similar manner in California and New Mexico during this period.

The second era takes place between 1877 and 1897. During this period, California land grants continued to be an economic resource for both Hispanic and Anglo land grant owners and their progeny. There was a general transition from ranching to wheat and fruit farming in California during this period. Land grants were subdivided and sold at a profit while the families of original grantees maintained portions of their grants that were often larger than neighboring Anglo farms. In New Mexico, final confirmations of land grants stopped until 1891 for two reasons. First, the research and time needed to adjudicate claims was beyond the capabilities of the surveyor general's office. Second, increased confusion resulted from the corruption of surveyor generals between 1876 and 1884 who colluded with land speculators, such as those in the Santa Fe Ring, in an attempt to dispossess the rightful owners of individual and communal grants in New Mexico. Because attempts to reform and increase the efficiency of the surveyor general system failed, Congress formed the CPLC to settle claims in 1891. Between 1891 and 1897, the CPLC ruled on land grant claims using a rigid adherence to the terms of the

land grant contracts and pre-1848 Mexican land law. Unlike California, no latitude was given to local tradition or perceived intent beyond what was contractually outlined in any grant. As a result, rejections and partial confirmations of grants adjudicated by the CPLC were more likely than those that were adjudicated in California and by the surveyor general in New Mexico. Despite a rigid interpretation of contract requirements, the CPLC continued to confirm individual and communal land grant claims by relying on an adherence to contract rights.

The third era takes place between 1897 and 1925. This period began with the U.S. Supreme Court ruling in *U.S. v. Sandoval.* In this case, Chief Justice Fuller referenced Mexican land law in his majority opinion which suggests the court was influenced by Mexico's Ley Lerdo and 1857 Constitution which declared that ejidos remained in the sovereign and were never owned by communities. After this supreme court decision, the CPLC no longer recognized communal ownership of commons in New Mexico's ejidal land grants. As a result, the lands that were integral to New Mexican Hispanic ranching communities were either seized by the federal government and turned into national forests or distributed to individuals as part of the Homestead Act. Federal bureaucratic management of the newly created national forests led to increasing Hispanic dependence on the federal government to ensure subsistence level salaried jobs with lumber and mining companies who were given mineral and logging rights to the new federal land which was previously owned by Hispanic communities prior to 1897.

Unlike most Hispanic ejidos, which were mostly adjudicated after 1897, Pueblo Indian claims to Spanish land grants in New Mexico were confirmed in the 1850s. The

fee simple ownership of their land allowed Pueblo communities to maintain internal autonomy and control over their land. Fee simple ownership also provided protection from the federal government goal of destroying Native American corporate entities throughout the U.S. This was attempted through the passage of the Dawes Act which had an anti-monopolistic goal of land redistribution and the anti-corporate goal of assimilating Native Americans for their supposed benefit and the benefit of the country. However, Pueblo exemption from government influence ended when the 1912 New Mexican state constitution and the 1913 *Sandoval* U.S. Supreme Court decision altered the status of the Pueblo from individual U.S. citizens who voluntarily formed corporate entities to domestic dependent nations who no longer had the right of independent communal property ownership. This change in status placed both the internal Pueblo government and the land grants of each Pueblo under the control of the U.S. Department of the Interior. As a result, the Department of Interior ended the autonomy and control the Pueblo formerly enjoyed prior to 1913 by assuming authority to decide how the Pueblo governed themselves and how their land would be utilized.

Placido Gomez and Malcolm Ebright are correct that the CPLC in 1891 was much more likely to reject or only partially confirm individual and communal land grant claims when compared to the California Land Commission and the New Mexico surveyor general systems. However, The CPLC between 1891 and 1897, the California Land Commission, and the New Mexico Surveyor General all used contract supremacy as the basis for their rulings. All three systems defended land grant claimants from squatters asserting preemption property rights based on their occupation and improvement of

unoccupied land. Anglo squatters who contested land grants in California and Hispanic squatters who contested Pueblo grants in New Mexico were both unsuccessful in their opposition to land grant confirmations. However, after the 1897 *Sandoval* decision, both contract rights and preemption rights became secondary considerations in favor of placing the fate of land grants in the hands of the legislature to decide whether to distribute land through the Homestead Act or delegate management of land to the U.S. Forest Service. These actions by the U.S. Congress and support by the U.S. Supreme Court suggest that the liberal tendencies of both branches of the U.S. government were influenced by Mexican utilitarian philosophy that was both anti-corporate and anti-monopolist.

The moral flexibility provided by utilitarian influence on liberalism gave white supremacists the opportunity to inject racist ideas into local, state, and federal legislation in the early twentieth century. Californio and Anglo land owners at the apex of the aristocracy of color were minimally impacted. While they were compelled to make economic decisions regarding how much land they owned and how they used their land as a result of municipal and state level regulations in the form of taxes and subsidies, both groups still had access to economic success. In stark contrast, those placed lower on the aristocracy of color were no longer provided the protection of the federal courts from racists implementing local, state, and federal regulation. Chinese and Hispanic migrants in California were targeted by local regulations and federal legislation that prevented them from achieving economic success through land ownership with no significant protection from federal courts after 1897. Similarly, Hispanic land grant owners in New

Mexico were forced into poorly paid wage labor after their commons (ejidos) were transferred to the U.S. Forest Service who subsequently extinguished the grazing rights of many local communities.

The philosophical struggle described between classical liberalism and utilitarianism described in this dissertation is embodied in the motivation behind the decisions of Judge Ogden Hoffman and Justice Stephen Field. Judge Hoffman represented the philosophy of classical liberalism and English common law through his consistent decisions made while presiding over the U.S. Northern District Court of California. Hoffman's decisions were integral to the defense of individual contract rights for the claimants of Spanish and Mexican land grants and Chinese residents of California regardless of race, ethnicity, or country of origin. Historian Christian Fritz describes Hoffman as "motivated by a sense of judicial duty" where his decisions were "enmeshed in a far more complicated process… [that] could not avoid the obligation [of] his concept of judicial review and duty to the common-law tradition."[4] Justice Stephen Field represented a much more flexible liberal philosophy influenced by utilitarianism while serving on the U.S. Supreme Court from 1863-1897. While a member of the U.S. Supreme court, Justice Field was part of the majority opinion in the 1897 *Sandoval* ruling where he and his colleagues defended the sovereign right of the U.S. Congress to utilize ejidal lands in any way the legislature deemed appropriate. In contrast to his description of Hoffman, historian Christian Fritz describes Field as "thinking in sweeping terms" in regards to how to solve the country's problems and often used legal interpretations that

[4] Fritz, pp. 248-249 and 256.

would produce results "more in keeping with public sentiment."[5] Fritz's summary of both men's judicial decisions and general legal philosophy explains that Hoffman was a strict adherent of classical liberalism while Field's liberal philosophy was influenced by utilitarian sentiments.

After conducting a thorough analysis of Spanish and Mexican land grants in California and New Mexico, the answer to the fundamental question asked in this dissertation becomes clear. Why were judicial and economic outcomes of land grant claimants in California so much more successful than those in New Mexico? The answer is that the adjudication of land claims in each state was subjected to the influence of two different judicial philosophies enacted during different periods in U.S. history. The dissimilar outcomes between California and New Mexico land claims are a clear example of the impact of the U.S. federal judiciary's transition from a guiding philosophy of classical liberalism to a liberalism influenced by anti-corporate and anti-monopolistic utilitarian philosophy that took place between 1877 and 1897.

[5] Fritz, pp. 249 and 255-256.

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