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Proceedings: Speakers Series  
Treaty of Guadalupe-Hidalgo  
1998



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EL PASO, TEXAS, USA

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Memorandum

To: Distribution List  
From: Superintendent, Chamizal National Memorial  
Subject: Guadalupe-Hidalgo Speakers Series Proceedings

We are pleased to be able to present this "Proceedings: Speakers Series, Treaty of Guadalupe-Hidalgo, 1998". Such an endeavor would have not been possible without the tremendous cooperation of our speakers, who graciously gave of their notes and texts that enabled the creation of this proceedings. To them we owe our thanks.

This proceedings begins a program that we hope to continue with future such events, the point of which will be to capture and share the thoughts and concepts of our speakers so there can be utility beyond the mere event. We learned much in the assembly of these proceedings and hope to improve in the future. To that end we would appreciate suggestions for improvement.

Cordell J. Roy

Enclosure

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1998

CHAMIZAL NATIONAL MEMORIAL  
EL PASO, TEXAS, USA

April - May, 1998

with the advice and approbation of the Senate of the United States, and of the President of the Mexican Republic, with the previous approbation of its general Congress, and the ratification of the same in the City of Washington, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty of Peace, Friendship, Limits and Settlement, and have hereunto affixed our seals respectively. Done in duplicate at the City of Guadalupe Hidalgo, on the second day of February in the year of our Lord one thousand two hundred and forty eight.

*[Signatures]*  
Bernardo Gutierrez  
Luis J. Guzman  
A. P. Smith

*[Signatures]*  
Bernardo Gutierrez  
Luis J. Guzman  
A. P. Smith

Signatory pages of the Treaty of Guadalupe-Hidalgo. Courtesy of National Archives.



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## Foreword

The 1998 sesquicentennial of the signing of the Treaty of Guadalupe-Hidalgo offered Chamizal National Memorial the opportunity to commemorate this historical event. With the generous cooperation of the National Archives, the Memorial was able to display the signing pages of the treaty from February 2 to May 30, 1998. The Memorial also hosted a Speakers Series on the Treaty.

The material presented during the Speakers Series contributed to the body of knowledge on historical and contemporary issues surrounding the treaty. This booklet is the compilation of the presentations of those speakers. It is our hope that it proves helpful to scholars, historians and those interested in regional history.

Contributors to the success of the Treaty of Guadalupe-Hidalgo sesquicentennial activities at Chamizal were many. Among them were staff, National Park Service experts, the El Paso Museum of History, and the National Archives. We especially appreciate the efforts and guidance of then-Acting Superintendent Jock Whitworth.

A handwritten signature in black ink, appearing to read "Cordell J. Roy".

Cordell J. Roy  
Superintendent  
Chamizal National Memorial





# Proceedings

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# First Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

Maria Luisa Pérez-González  
University of Seville, Spain

Dr. Aurora Morcillo  
Spanish Colonial Research Center  
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Albuquerque, NM

Thursday, April 9, 1998  
Chamizal National Memorial

EL CAMINO DE OÑATE:  
OLD WORLD AND NEW WORLD PERSPECTIVES

MARIA LUISA PEREZ-GONZALEZ

UNIVERSITY OF SEVILLE, SPAIN

THURSDAY, APRIL 9, 1998

INTRODUCTION: ROUTES TO NEW MEXICO AT THE END OF THE  
SIXTEENTH CENTURY

I am going to talk about the *camino de Oñate* trying to relate it with the rest of *caminos reales* in Spain and America. For this purpose it is necessary to look back to the Spanish and American background of colonial roads, an instrument I believe was essential for the expansion of royal control and Spanish colonization. By illustrating this point I would like to offer a view about the significance of the royal road in the Hispanic colonization and tradition of New Mexico.

On January 26, 1598, after many delays, the colonizing expedition under the command of the Adelantado don Juan de Oñate, finally set out to the north. The lands where they were going had been previously explored, and the news and interest about them had reached the mining frontier of Nueva Vizcaya.

Since the 1580s various expeditions had been carried out into the territories of Pueblo Indians from Spanish settlements located east of Sierra Madre Occidental. These *entradas* took advantage of an extensive pre-Hispanic network of trails. Those trails enabled Spaniards to acquire a more precise knowledge of the area and the best routes of access and communication.

There were basically two routes: one along the Conchos River to La Junta where it joined the Rio Grande and followed this northward, and the other following the Pecos River upstream. The segment from around El Paso to the upper Rio Grande was one of the important northern segments of the Casas Grandes trail network, what scholar Carroll Riley calls "the Rio Grande Pueblo Indian Trail."<sup>1</sup>

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<sup>1</sup> Carroll L. Riley, "The Pre-Spanish Camino Real." In Gabrielle Palmer, ed., El Camino Real de Tierra Adentro. Bureau of Land Management, New Mexico State Office, Santa Fe, 1993. P. 15.

In 1581, from the mining settlement of Santa Bárbara, Fray Agustín Rodríguez and Captain Francisco Sánchez Chamuscado departed with a small party of soldiers, following the valleys of the Conchos River and the Rio Grande. They reached the Bernalillo area and then they went east on to the Plains to the upper Canadian River, then west to Zuni and finally back to the Rio Grande, which they followed south to the Conchos River and then to Santa Bárbara.

In 1582 a new expedition set out from the same place under the command of Antonio de Espejo. On this occasion they used again the same trails to the Tiwa country. After learning about the deaths of the two friars left behind by Fray Agustín Rodríguez, Espejo traveled west to the Zuni pueblos, continued west to the Hopi country and then south to the Verde Valley. He then returned east to Pecos Pueblo. Espejo returned to Mexico by way of the Pecos River and the lower Rio Grande to the Conchos River and on to Santa Bárbara.

In 1590 Gaspar Castaño de Sosa led an unauthorized *entrada* that became the first formal attempt to colonize the new provinces. "His colony, including a train of wagons in addition to the usual equipment and supplies, left Almaden on July 27, with its full complement of men, women, and children...."<sup>2</sup> Castaño followed the route along the Pecos River on to Pecos Pueblo. "This *entrada* was the first since Coronado's to travel among the Tewas; they also journeyed into northern Tiwa country as far as the pueblo of Picuris and spent time among the Keresans along the Galisteo."<sup>3</sup> Castaño was arrested by Captain Juan Morlete in New Mexico and they all returned to Santa Bárbara by way of the Rio Grande to the Conchos.

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<sup>2</sup> George P. Hammond and Agapito Rey, The Rediscovery of New Mexico. 1580-1594. The University of New Mexico Press. Albuquerque, 1966. Pp. 30-31.

<sup>3</sup> Albert H. Schroeder, "At the End of the Roads." In Gabrielle Palmer, ed. Opus cit. P. 26.

These first expeditions and the routes they followed provided abundant information about the territory, which the Spaniards began to see as a province to colonize.

In 1598, "Oñate was the first Spaniard to traverse the full length of what was to become El Camino Real from the Santa Bárbara-Parral region to San Juan Pueblo north of Santa Fe. Instead of following the Conchos-Rio Grande route, Oñate led his colonists north-northwest overland and reached the Rio Grande about 25 miles south of El Paso."<sup>4</sup> Oñate probably followed a pre-Hispanic route which enabled him to avoid the detour along the Conchos River and travel directly north. This most direct route, the ideal goal for any road, was a requirement for any *camino real*, since the royal road was designed to serve as the principal line between the provinces of the empire.

In fact, Oñate's itinerary constituted the last leg of the *Camino Real de Tierra Adentro*, crossing uncolonized lands to connect New Mexico with the rest of New Spain. At the time of Oñate's expedition this road stretched from Mexico City to the mining towns of *Nueva Vizcaya*. Spaniards had extended it in stages to precede new colonizing enterprises.

Some scholars often, and mistakenly, consider the term "royal road" as grandiose language for modest highways frequently appropriate only for mule and pedestrian traffic. From our point of view, the importance of a royal road goes far beyond its physical dimensions, as it also constitutes a historical institution with many aspects.

Since the Middle Ages, the Spanish crown had consolidated and opened roads, protecting them according to precise regulations. As the highway network developed, royal sovereignty also extended its control over medieval lordships. "King's roads," their uses and regulations, conservation, security, commercial traffic, etc., turned out to be a complex

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<sup>4</sup> Albert H. Schroeder, *opus cit*, p. 27.



entity that, at the same time, was related to many others, and from these connections we see the significance of the term "*camino real*."

The segment of the road opened by Oñate was considered from the first years of colonization as a royal road. A new province had been incorporated under the control of the Crown, and the forms of communication and commerce that had developed along the royal roads in Spain followed similar paths in America.

The expansion and conservation of this *camino de Oñate*, and many others in Spain and America, left much to be desired in the majority of cases, but this condition was not to the detriment of this public institution. Even amidst the challenges of the frontier, the quest for uniformity in Spanish colonization meant that Spanish institutions reached almost all corners of the empire.

#### PENINSULAR ANTECEDENTS

The builders of the Roman Empire designed a network of paved roads as an organic system that could connect the various provinces as they became incorporated into Hispania. Communication with the empire was the fundamental goal, and several institutions and public positions developed to take care of the construction, conservation, and protection of roadways.

During the Early Middle Ages, with the rise of new political and economic interests, part of the network was abandoned. It was during the Late Middle Ages when new routes began to open up. Some routes took advantage of Roman foundations, but in most cases, the new roads were a result of new interests, especially as communication links between important religious and commercial centers.

Also during the Late Middle Ages, the monarchy began its gradual expansion in the face of the political fragmentation of the period. One

important means of consolidating a national sovereignty and a national territory was by regaining control of these traffic links. Royal legislation began by timidly defining public routes or "*caminos del rey*" (king's roads) as those that passed through Crown lands. As the Crown strengthened its position in the last centuries of the Middle Ages, roads became one more of its *regalias* (privileges), with the king having the responsibilities of physical maintenance and public order as well as the income from taxes and tolls, on roads that crossed royal lands and those lands of the nobility. Such was the theory, because in reality the medieval practices with respect to local privileges over roads continued until early in the nineteenth century. Nonetheless, in all these centuries, the monarchy legislated extensively regarding the public roads, both to regulate their use and to consolidate royal jurisdiction.

The pervasive lack of public funds for the opening and conservation of public roads created a permanent contradiction between royal goals and the ways to attain them. As a result, the rights of transit or tolls, an old tax of Roman origin which were often denominated indiscriminately "*portazgos*," "*pontazgos*," "*peajes*," or "*pisajes*" and which supposedly belonged to the king, were often granted to the nobility, cities, or the Church. The objective was that collected tolls would be directed towards the opening and conservation of roads and bridges, a task the Crown delegated mainly to the cities. In some municipal ordinances and in the proceedings of the *cabildos* we see this municipal obligation delegated by the Crown, and the Crown repeatedly insisted on this matter in its own legislation. Cities were required to consult with the king on all decisions regarding the opening of new roads or the construction of bridges because such capacities belonged only to the king. All vassals, including clergy and nobility, were required to contribute to the preservation of roads and bridges when it was considered necessary.

The collection of these taxes led to continuous abuses. Noblemen collected taxes known as "*castilleras*" and municipalities also frequently collected taxes for municipal support in the name of the king but without his express permission. To cope with this situation, the Monarchy legislated extensively against such illegal toll collection. Respecting municipalities, the Crown insisted through the centuries that the public works on bridges and roads were paid by the public revenues or *bienes de propios* and not by the abusive collection of extra tolls. Cities sometimes turned to an even more serious abuse, that of the "*sisá*" or "*derrama*" (the apportionment of local taxes on residents) to pay for construction to open or repair a roadway. As best it could, the Crown tried to facilitate commercial traffic, especially by relieving travelers of the burdens that restricted movement. But municipalities were an important political force that was protective of its autonomy and to which the crown often conceded toll privileges when economic needs required it.

The Catholic kings carried the struggle over royal jurisdiction on roads to its furthest extent by clearly establishing municipal responsibilities and *ventas* (inns) along these roads. On the meticulous regulation of these *ventas* it is possible to see all of the potential abuses that could be committed against traders and travelers. To promote travel to the recently reconquered kingdom of Granada, for instance, the Crown exempted from taxes all *ventas* that were established on these roads.

Given the limitations of the period we can only wonder at the tremendous number of journeys made by the itinerant court and at the amount of new segments opened in this epoch. The war against Moorish Granada demonstrated the importance of a road network for the defense of Christian Spain. Queen Isabella and King Ferdinand were also very conscious of how the roads facilitated the collection of taxes, the maintenance of public order, and mailing. In order to protect commercial

traffic, wagon drivers were granted specific privileges in 1497, 1516, and 1533. Among other things, these privileges required towns and cities to provide the necessary supplies for mules and horses and lodging for the travelers. Legal claims by the drivers to protect these privileges began in these same years. With the creation of the *Cabaña Real de Carreteros* (Royal Council of Wagon Drivers), the Crown protected the interests of the group while maintaining a royal monopoly of public traffic. In 1629 long-distance muleteers (with convoys of up to 100 mules) also received these privileges.

We believe that the term "*camino real*" as applied to public routes of first order dates from this period of feverish activity on the part of the Catholic kings. The roads along which the royal court moved through the country received this title of "*camino real*", and in most cases they were roads connecting various important cities. A supraregional set of links among these roads began at this time as well. Nonetheless, even today in some places the term "*camino real*" applies to local roads of secondary order because they were originally public roads crossing among lands of the Crown. As early as the eighteenth century, principal or royal roads began to be differentiated from local roads. According to their physical condition, the roads could be "*caminos carreteros*" (vehicular road), that is, for the use of carts and wagons, or "*caminos de herradura*" (bridle paths). They were indistinctly considered royal roads, and sometimes included stretches of both kinds. The importance of royal roads lay not in their physical condition, but rather in the fact of being roads that connected large areas. The interest of the Crown in favor of connecting the various parts of the kingdom led to the policy of protection and development of public roads.

One fundamental aspect of the consolidation of royal roads as an institution was in terms of public security. The royal road was protected

from the times of the Roman Empire by what was called "*la paz del camino*" (peace of the roadway). This type of peace meant that the road was protected in a special way, and as a result of this distinction crimes committed on roads were considered all the more serious.<sup>5</sup> The jurisdiction over these crimes, as with all other elements for the administration of the royal roads, belonged to the king even when the roads passed through lands of the nobility. Municipal officials were the ones in charge of the application of justice and punishments for crimes committed on the roads.

This was precisely the legal basis for the *Santa Hermandad*, or Holy Brotherhood, an organization founded in 1476 by the Catholic kings to oversee the security along the roads and uninhabited areas. There had previously existed local *hermandades* for the same purpose of providing effective protection that the Crown was not always in a condition to guarantee. The *Hermandad Vieja de Talavera*, for instance, played an important role in this respect from the thirteenth to the fifteenth centuries.

The organization of the *Tribunal de la Santa Hermandad* consisted of an *Alcalde Provincial* (Provincial Justice), who lived in the capital, and two *alcaldes de Hermandad* in every town of more than 30 citizens. Among the crimes pursued by the Brotherhood - the so-called "*casos de Hermandad*" - were roadway attacks, assassination, treachery, or stalking. *Cuadrilleros*, or groups of citizens prepared for the enforcement of law and policing, pursued delinquents, taking them back to the scene of the crime, where they were tried. The relationship between crime and punishment was established through royal legislation. Trials were of a summary nature and punishments were especially harsh; for example, stealing between 50 and 500 *maravedies* was punished with 100 lashings plus the cutting of the

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<sup>5</sup> With respect to the peace on the road and for a more exhaustive look into the subject, see the classic work by R. Gilbert, "*La paz del camino en el derecho medieval español.*"

ears; between 500 and 5000 *maravedies* meant the prohibition of riding a horse and the cutting off of one foot. Robbers of more than 5000 *maravedies* suffered the death penalty.

Another fundamental aspect of public roads was that travelers were obliged to move along them and never across the fields. In other words, the royal road was a public service that couldn't be avoided by any travelers. All merchants and travelers were required to pay taxes and tolls charged to them and their cargos. There were specific penalties for those who sought to avoid official roads with the object of eluding control and toll payments. Such transgressors were called "*descaminados*" and their goods, or "*descaminos*," were confiscated.

Merchandise was largely transported by cart or mule, depending on the conditions of the roads, although wagons of four wheels were used for long-distance traffic and the transportation of large quantities of goods. In fact, the Royal Council of Wagon Drivers consisted mostly of owners of wagons involved in interprovincial trade.

In terms of private travelers, the horse and the mule were used by the most powerful people and donkeys and traveling on foot were left to the poor. "There also appears in legislation another form of travel, which was to pay for a seat in a wagon used for transport, or renting a place in one of the caravans crossing the Peninsula; these were the traditional *galeras* ... that were like wagons but three times longer and equipped with three wheels on each side...."<sup>6</sup>

Another kind of transport common among people of means was the carriage, which appeared in Europe in the fifteenth century and which supposed "an outstanding innovation compared to the wagon because it was hung from straps, improving the suspension, and because the front

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Anuario de Historia del Derecho Español, XXVII-XXVIII. 1957-58.

set of wheels could turn.... A vehicle that achieved great diffusion was the litter. The litter was, without any doubt, more comfortable than the carriage for traveling along bad roads. Since the poles were supported by two horses, one in front and another behind, the bodies of the horses served as shock absorbers."<sup>7</sup>

This was the panorama in Spain regarding public roads at the time of the early colonization of America, where, as we will see, this institution was transplanted without significant changes.

#### THE ROAD NETWORK IN AMERICA

The medieval experience of Spanish monarchy led to the conception of the conquest and colonization of America as a royal project from its origins. In this sense, the Crown tried to establish in the new territories the unity and sovereignty so painfully obtained in Spain in previous centuries. As was the case in the Old World, the public roads opened in the New World would help the king to organize politically and economically the new provinces under the interests of the State. Political unity was guaranteed from the beginning because the king was the source of all legislation. All rules regarding public roads emanated from the Crown and were exported to America. Guidelines for the new territories essentially followed previous rules. On one hand this was because current legal bodies were a compilation of old and new norms (since many rules from the Early Middle Ages had not been abolished and were compiled and subsequently applied). For example, the chapters of the *Recopilación de Leyes de Indias* dealing with public roads compiled Peninsular legislation as well as norms specifically produced for the Indies. On the

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<sup>6</sup> José I. Uriol Salcedo. *Historia de los caminos de España*. Colegio de Ingenieros de caminos, canales y puertos. Editorial AC. Almagro 1990. Pp. 204-205.

<sup>7</sup> José I. Uriol Salcedo, *opus cit.*, p. 93.

other hand, Castilian law was used whenever a specific regulation was lacking for the Indies.

In spite of these ideal royal policies, cities and conquerors still held important privileges. The former had the support of tradition, and the latter their enormous services offered to the Crown in conquering and colonizing the new lands.

Contrary to what had happened in Spain, where roads were opened to connect existing populations, the royal roads preceded settlement in America in most cases. Because of colonizing dynamics, these *caminos reales* would articulate and communicate the new and rapidly annexed territories. A good example is the first leg of the *Camino Real de Tierra Adentro* from Mexico City to Zacatecas, which was opened to allow for more rapid access to the silver mines. Once the *camino de la plata* was opened, colonization of the area began. Secondary roads emerged and the American communication network developed from the *camino real*. In other cases, the old Castilian institution was established on excellent pre-Hispanic roadways, as it happened with the *caminos del Inca* in Perú. Sometimes, Spaniards simply took advantage of indigenous paths, conferring them more specific meaning within the parameters of Spanish colonization.

The system applied to the opening and conservation of the roads was basically the same as the one developed in Spain: it was up to the cities to keep roads and bridges within their districts in good shape. Municipal ordinances of some American cities frequently addressed this responsibility. The ordinances of the city of Cuzco provide a good example. In the section about *tambos* or *ventas* (inns) established along the *camino real*, the ordinances specified that *tambos* were granted to the city by the king, so that any benefit obtained from the use of *tambos* had to be applied to the repair of roads and bridges.



Besides the abuses related to *ventas*, there were also frequent abuses in the collection of tolls. Some landowners charged tolls to merchants or people using a specific leg of the road or crossing a bridge in their lands. They usually pretended to have the right to do so, claiming to have built or repaired the road or bridge. For example, on the *Camino Real de Veracruz* a landowner charged people to cross the river on the basis of having built a bridge (a very bad one indeed) at his own expense. This individual was acting "without the authorized permit ... illegally taking a right that belongs only to the king."<sup>8</sup> In addition, the American cities lacked from their beginnings the *bienes de propios* (city public revenues) needed and required by the king for use on public works. The result was the common practice of obtaining the funds by collecting illegal but customary "*sisas*" and "*derramas*" (apportionments of local taxes).<sup>9</sup> What we try to say with these cases is that the same abuses that occurred in Spain took place in America as well. When the Crown tried to protect public roads, it turned out to be a highly uniform system both in how the rules were followed and broken.

An essential element in the application of the royal colonizing plans were the *Audiencias* or the highest royal courts of appeal. With respect to the roads, the *Audiencia* annually reviewed the expense accounts of the municipal revenues for the building and maintenance of roads and bridges. The *Audiencia* also distributed the expenses for public works and took account of them annually. Thirdly, the *Audiencia* had to oversee the public *ventas* to ensure that they provided travelers with the needed supplies at a just price. The protection of the freedom of movement on the

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<sup>8</sup> Diego Panes, *Descripción de los caminos que desde la plaza de Veracruz se dirigen a México por distintos rumbos*. Banco de Santander de Negocios. Madrid 1992. P. 104.

<sup>9</sup> Regarding the subject of the American cabildos, see the classic work of Constantino Bayle, *Los cabildos seculares de la América española*, (Sapientia, Madrid 1952), which dedicates a chapter to the problem of municipal *bienes de propios*, or public revenue.

roads also lay with the *Audiencia*. This freedom of movement included the traveler's liberty of choosing the most convenient route.<sup>10</sup>

The *Santa Hermandad* initially did not exist in Mexico or New Spain. But by the end of the sixteenth century, crime had risen to unbearable levels. The *Hermandad* was established on May 27, 1631, by Felipe IV. By the middle of the seventeenth century it was active, as it is evident in the appointments of *alcaldes* and other officials. The rules about the organization and functioning of the *Hermandad* are gathered in the *Recopilación de Leyes de Indias*, book V, title IV, acts I-V. From 1715 a new organization was created with the aim of achieving more autonomy and efficacy. In this way, the faculties and jurisdiction of the *Alcalde Provincial* were extended, excusing him from giving an account of his sentences to the *Real Sala del Crimen* (Royal Criminal Office) of the *Audiencia*. The *Tribunal de la Santa Hermandad* came to be known in Mexico as the *Tribunal de la Acordada*, borrowing the name from the *Providencia Acordada* by the *Real Audiencia de Mexico* in 1719.<sup>11</sup> In most respects, the organization was the same as the *Hermandad* (with *alcaldes* and *cuadrilleros*). The functioning of the *Hermandad* was improved through the centuries, and for example, around 1700 it had two advisers, a defense attorney, two notaries, and two solicitors. In addition, imprisonment penalties were served in its own prisons, independent from the prisons of the kingdom. Death penalties were executed without delay and the convict's body was left hanging from a tree to give the required example. Offenses committed in populated areas were also considered in America among the "*casos de Hermandad*," including domestic robberies or the carrying of forbidden

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<sup>10</sup> Tomás Polanco Alcántara, *Las Reales Audiencias en las provincias americanas de España*. Colecciones MAPFRE, Colección Realidades Americanas, Editorial MAPFRE, Madrid 1992, p. 113.

<sup>11</sup> On the *Tribunal de la Acordada*, see the juridical study by Fernando Casado-Fernández-Mensaqué, "El tribunal de la Acordada de Nueva España". *Anuario de Estudios Hispanoamericanos*. 1950.

weapons. Its original function and perhaps the most important one for the Crown was to chase thieves and killers who affected the royal roads in New Spain.

With respect to the means of transportation in America, carts and wagons traveled along royal roads and secondary roads as well. Regulations dealt with the width of these vehicles or, more frequently, with the features of their wheels in order to protect highways or city streets. But by far the most common means of transportation was the mule. These animals proved to be strong and efficient on long distances and rough roads. The big mule trains gave rise to big proprietors who acted as the main element in the economic and territorial consolidation of New Spain. The Crown exercised the effective control of those trains by confiscating the mules. "... if the State's discourse declared total liberty for its development, the facts reveal the intervention of the authorities at critical moments for the support of the transport of merchandise and for its exclusive benefit."<sup>12</sup> Such is the case with quick silver or *azogue*, and even arms destined for northern provinces. Muleteers profited from royal dispensations in exchange for aiding the Crown in maintaining its transportation monopoly. This situation was absolutely similar to what had occurred in Spain.

#### THE EIGHTEENTH CENTURY

The eighteenth century marked the beginning of a significant revolution in thought and ideas that continued up to our times. The most influential ideas in shaping the future were fundamentally the investment of public funds on the construction of primary roads and the establishment of standards of quality for the new roads. During this

century we find the first clear definitions of royal roads: "or public roads of the first order called *cabdales* or *caudales*, which is to say that these are the *cabezas*, or heads, from which the other members are derived ... They go from one city to another, belong to the king, and must be protected by his highness."<sup>13</sup>

Terms such as "royal," "principal," or "general" begin to appear in legislation from this time on, just as the state was centralizing its power and creating stronger institutions for the oversight of the public welfare.

The first Spanish roads that can be called highways by today's standards were built during the times of Fernando VI. These roads were built for the use of carts and four wheeled vehicles in general and were called *caminos carreteriles* and later *carreteras*. Nonetheless, the consequences during this century were not spectacular. Not even the paving of the major roads from Madrid to the periphery went too far. This radial network of roads was built with the growing centralism of the state in mind. In this century, as in earlier ones, roads were used for the propagation of the ideology of the Enlightenment and uniform administration.<sup>14</sup>

America also experienced certain reforms in public works. Nonetheless, the majority of such projects involved fortresses necessary for the defense against Spanish rivals. Regarding roads, the large part of the projects in New Spain were directed toward eight roads (Mexico-Puebla-Perote, Jalapa-Veracruz, Mexico-Puebla-Orizaba, Cordoba-Veracruz, Mexico-Toluca, Mexico-Vallejo, Veracruz-Antigua, San Blas-

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<sup>12</sup> Regarding this subject, see the indispensable work of Clara Elena Suárez Argüello, Camino Real y Carrera Larga. La arriería en la Nueva España durante el siglo XVIII. CIESAS. 1997.

<sup>13</sup> José I. Uriol Salcedo, *opus cit.*, p. 241.

<sup>14</sup> For the actual accomplishments in road construction during the eighteenth century, see the chapter of Santos Madrazo Madrazo, "Reformas sin cambio. El mito de los caminos reales de Carlos III" in Equipo Madrid de Estudios Históricos, Carlos III, Madrid y la Ilustración: contradicciones de un proyecto reformista. Siglo XXI. Madrid 1988.

Tepic, Merida-Puerto Sisal, Tabasco-Guatemala) and seven bridges. In other areas, the situation continued to be the same.

This century is important in terms of roads because it became evident that roads would have to be under the direct control of the central administration. But meeting these objectives would require certain social conditions, as for example the loss of monopolistic privileges. It was necessary above all that the public funds be used effectively in the construction and conservation of roads. It would take some time to achieve these goals, but what is certain is that public roads, which had been an important tool in the consolidation of Crown authority, were in the eighteenth century an extremely important element in the diffusion of enlightened despotism.

#### CONCLUSION: EL CAMINO DE OÑATE

Going back to the *camino de Oñate*, on July 13, 1573, Felipe II promulgated his Ordinances for the Discovery, Population, and Pacification of the Indies, for the regulation of all new conquest enterprises. Oñate's enterprise, from its initial regulations and orders, followed the letter of the law set down in these ordinances. These orders reflected the new disposition of the Crown (beginning with the very term of "pacification") with respect to the incorporation of the new territories. The Ordinances established in their article 14 that lands, mountains, and rivers of the new provinces be named. The colonizing expedition of Oñate meticulously followed this particular disposition and as it headed north, Oñate named the new lands and rivers with names that, in some cases, have endured until today: "*Encinar de la Resurrección*," "*Fuente de San Francisco de Paula*," "*Socorro del Cielo*," "*Rio de la Mentira*," "*Bocas de los Médanos*," "*Paraje de Robledo*," "*Paraje del Perrillo*" and "*Nueva Sevilla*" for instance, were often names that commemorated events along the way.

Article 37 of the Ordinances established that the new provinces had good roads for "easy communication, commerce, government, rescue, and defense." Article 71 also ordered the opening of roads and paths to the new settlements. These dispensations are particularly important for our present purpose because they condensed in a few lines all the peninsular and American experience in connection with roads. These orders attempted to establish from the beginning a coherent network of roads, free of the traditional peninsular impediments. These roads nonetheless were to be regulated by the customs and legislation originating in the medieval era.

In the Act of Possession of the new provinces that took place on April 30, 1598, don Juan de Oñate made reference to his *camino* with the following words: "Through these settlements there passes a road for carts, wide and level, that I have opened, after marching close to one hundred leagues over uninhabited country, so that it may be traveled without difficulty."<sup>15</sup> With these words that defined the royal road, in our opinion, Oñate explicitly referred to the specific dispositions of the Ordinances and also to New Mexico's implied connection to the peninsular and American background regarding public roads.

Therefore, the term "*camino real*" was applied to Oñate's route practically from the moment of the departure of the first caravan with supplies for the new province. Caravan service was established under royal patronage and Franciscan control during all of the seventeenth century and the beginning of the eighteenth. From the middle of the eighteenth century, the service became annual, and merchants of the *Villa de San Felipe el Real de Chihuahua* played a gradually increasing role in the

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<sup>15</sup> George P. Hammond and Agapito Rey, Don Juan de Oñate, Colonizer of New Mexico, 1595-1628. The University of New Mexico Press, 1953. Vol. 1, p. 330.

trade. The caravan then passed to the control of the royal officials in Santa Fe and came to be mostly composed of mule trains.

Max L. Moorhead, in his classic work on New Mexico's royal road, gives an example about what he considered to be a typical trip from Santa Fe to Chihuahua along the *camino real*. In order to improve the general organization and control of commercial traffic, the departures and arrivals of caravans were publicly announced. In La Joya de Sevilleta, the last settlement along the royal road, royal officials carried out an inspection of all the merchandise and provisions. All goods were registered in duplicate, with one of the copies being sent to the governor in Santa Fe, and the other to the Commander General in Chihuahua. All of the people making the trip were also registered. These lists were sent to the authorities in the places of origin of travelers and to the governor of New Mexico. The illegal recruitment of horses and mules for the return trip as well as the excessive export of sheep were also strictly controlled. All people who wished to return to El Paso needed to have passes of safe-conduct. The members of the caravan were to be restrained from going in advance of an escort, even on approaching Chihuahua, unless special permission was granted and advance notice sent to the Commander General in the city.<sup>16</sup>

All these measures could be directed toward the protection of the caravan but also to avoid frauds and "*descaminos*." The final goal was to control the traffic in a manner similar to what had already been done in Spain and other parts of America.

In terms of security, the principal risk for merchants and merchandise lay almost always in attacks by nomadic tribes. In response, the different presidios along the route provided military escort according

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<sup>16</sup> Max L. Moorhead, New Mexico's Royal Road. Trade and Travel on the Chihuahua Trail. University of Oklahoma Press. Norman, 1958. Pp. 46-49.

to their jurisdictions. In frontier territories, the traditional requirements of "the peace of the roads" were not enough by themselves to guarantee the security of travelers. Nonetheless, the *Santa Hermandad* also reached the northern frontier as far as *el camino de Oñate*. We have had access to the documentation nominating the Provincial *Alcalde* of the Brotherhood of Chihuahua in 1761, with the traditional prerogatives.<sup>17</sup> In this manner crimes committed on the road fell under the jurisdiction of the *Hermandad*. It is also important to note that the volume of merchandise, including the high number of luxury items, was significant from the beginning, both for the supply of the missions and for the use of private citizens.

The political and economic idea of the *camino* also endured in the frontier, and it is important not to forget that the *Camino De Oñate* was the last leg of a mining road, that is *El Camino Real de Tierra Adentro*. Mines, and the necessary roads to supply them, were fundamental to the royal economy.

The segment of road opened by Oñate from the San Bartolomé Valley to New Mexico was from its origins a royal road, whose very name evokes the concepts of interregional communication, territorial connection, and what is most significant, the application of royal authority in the frontier. Any problem related to the *camino real* up to Santa Fe could be taken care of under the fact that the road was actually a royal road. The title of *Camino Real* made this road more than a link between the provinces of Nueva Vizcaya and Nuevo México. Its very name guaranteed the application of Castilian and Colonial legislation. The royal road opened by don Juan de Oñate contributed from the beginning to the stability of the Spanish colonization of New Mexico and was a most significant achievement in this first phase of Spanish settlement.

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<sup>17</sup> Título de Alcalde Provincial de Hermandad y regidor de la villa de San Felipe el Real de Chihuahua en la Nueva Vizcaya." Archivo General de Indias, Indiferente General



In conclusion, it may be said that *El Camino Real* was the instrument to maintain New Mexico as a living part of the Spanish empire and so denying the alleged isolation of the province from the rest of New Spain.

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1504, 23 febrero de 1761.

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First Presentation

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GEDEÓN: HUMOR, JOURNALISM, AND THE SPANISH-AMERICAN

WAR OF 1898.

NATIONAL IMAGES, NATIONAL CHARACTERS

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THURSDAY, APRIL 9, 1998

This paper focuses on the Spanish-American War of 1898 as narrated in a series of cartoons published in a satirical Madrid newspaper called *Gedeón*. In examining these images we can discern the significance of the press in shaping a patriotic pro-war sentiment. We can visualize the representations of the Spanish and American national identities, as they were imagined, invented, and fabricated by the cartoonist mind. Both Spaniards and Americans invented each other to fuel patriotism. The events of 1898 foreshadowed the paths that each country would take in the twentieth century.

Increasing circulation became essential to the survival of a newspaper and sensationalism the main means of achieving it. The publishing of lurid stories and comic images attracted literate readers as well as illiterate viewers. The sensationalism guiding the Spanish press manufactured a double misrepresentation at the time of the Spanish-American War. Spain was shown as invincible while emphasizing the incapacity of the United States to withstand Spanish arms.

Caricature is as old as the press itself. However, in the nineteenth century it was developed into an art form with the power to reach a wider audience in a time when illiteracy was more the norm than the exception. These caustic images invited the viewer to think and sometimes conveyed a visual message more powerful than words themselves.<sup>18</sup> By the 1880s humor gained importance in the Spanish daily and weekly press. Some weeklies appeared that devoted themselves exclusively to the art of

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<sup>18</sup> The political cartoon was born with the French Revolution and thus, was a natural offspring of modern liberal bourgeois politics. Honoré Daumier (1808-1879) is considered the first political cartoonist. He published in the first satirical paper in the world *La Caricature* (1831) where the famous caricature of emperor Louis Philip entitled "The Pears" was published which led to the imprisonment of the editor of the journal. *El arte irrespetuoso según Rius* (Mexico: Grijalbo, 1988), 23.

cartooning<sup>19</sup> such as *Gedeón*, a satirical weekly born in 1895 (slide #33). A journalist of the period, José Francés, praised the quality of the *Gedeón*:

This weekly's use of satire and irony is a bizarre husbandry of tastelessness and exquisiteness; it resorts to obscene puns like those of Aristophanes<sup>20</sup>, and possesses a ostentatious Rabelaisian<sup>21</sup> wit. However, it does not ridicule the common man, or his ill passions, but rather it lashes out at the powerful.<sup>22</sup>

The meaning of the word *Gedeón* evokes the satirical nature of the publication. In the early 1800s modern cartoonists created some imaginary characters to represent either a particular class or an entire nation. In the case of the United States, for example, the most famous personification of the American nation was "Uncle Sam," created by Thomas Nast in the mid 1800s. *Gedeón* was also an imaginary character, archetypically finicky, a combination of uncouth and cynical traits, to whom folklore had surrounded with an aura of philosophical witticism. Usually, he accompanied himself with another character called *Calínez*, who personified naive and indiscrete stupidity. Both characters complemented each other perfectly and Spanish cartoonists exploited them to lash out against social and political vices of the time.

*Gedeón* was published every Thursday and cost ten centimos. A detailed caricature of the most controversial social and political issues dominated the front page in contrast with the text which had been reduced to the minimum. The cartoons published in *Gedeón* in 1898 by

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<sup>19</sup> The major newspaper of this variety was *Madrid Cómico* famous for its benign and festive humor. The text still filled most of the pages rather than the drawings and the cartoons were not directed against the government but rather referred to regular daily events. Other satirical newspapers were: *La Filoxera*, *El Buñuelo*, *El Cabecilla*, *Las Ratat*, *El Motín*, *El Censor*.

<sup>20</sup> Aristophanes (448?-385? B.C.) was an Athenian comic dramatist, author of many satirical comedies such as *Lysistrata*.

<sup>21</sup> Rabelaisian refers to Francois Rabelais (1494?-1553), French humanist. Rabelaisian means broadly and lustily humorous.

cartoonists Moya and Sileno offer us the satirical pictorial narrative of the Spanish-American War. They illustrate the old Spanish nation versus the United States as an emerging world power.

The press reflected the nationalist spirit of the times. Two major incidents were inflamed by the American press: the controversy around a compromising (and private) letter by Dupuy de Lome, Spanish minister in Washington, and the destruction of the U.S. battleship *Maine* in Havana harbor. The latter especially lingers as an unresolved historical puzzle, and has been considered the ultimate incident leading to war between the two countries.

In early February 1898, Dupuy de Lome wrote a letter critical of President McKinley to José Canalejas, a personal friend in Havana. De Lome characterized McKinley as a low politician who wanted to leave the door open to himself and to stand well with the jingoes of his party.<sup>23</sup> A Cuban rebel that worked in Canalejas' office stole the letter and sent it to the Cuban Junta in New York. There, the letter was translated and sold to William Randolph Hearst's newspaper, the *Journal*. On February 9, the *Journal* used all of its front page to publicize it with a headline that read: "The worst insult to the United States in its history."<sup>24</sup> De Lome instantly cabled his resignation to Madrid and the Spanish Government disavowed his letter and apologized for it. The incident was portrayed by Moya in the *Gedeón* issue of February 27, 1898 (see 2<sup>nd</sup> image slide #6) under the headline "Última Hazaña Yankee" ("Last Yankee deed"). The cartoonist represented Uncle Sam as a monsterlike character with claws instead of hands, reaching into the mouth of a Lion mailbox of "Correos de España." The caption under the caricature reads: "Ya se atreve este tío a meter la

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<sup>22</sup> José Francés, "Visto y leído. Glosar de semanarios," *Alma española*, 13-3-1904. Quoted in Seoane and Saiz, *Historia del periodismo en España*, 182.

<sup>23</sup> W.A. Swanberg, *Citizen Hearst. A Biography of William Randolph Hearst*. (New York: Charles Scribner's Sons, 1961), 135.

mano en la boca del león ... Pero es para robar cartas." ("This fellow dares to put his hand in the lion's mouth ... but it is to steal letters") (slide #38). On the left hand side of the drawing there is a pig covered with stars who watches Uncle Sam's maneuvering closely. Behind Uncle Sam is the shadow of the Statue of Liberty (slide #37) guarding a bundle of weapons with a sign that reads "para Cuba" (ready for Cuba").

The De Lome incident would have been forgotten had it not been followed almost immediately by the tragic sinking of the battleship *Maine* at Havana. The United States' concern for the security of American citizens in Cuba led President McKinley, in October 1897, to order the quick deployment of the *Maine* to Key West. The battleship anchored in Havana harbor on January 25, 1898. Spanish authorities were suspicious of the arrival of the American vessel to Cuban waters and what the ulterior motives of the United States might be. The *Gedeón* depicted this suspicion on the February 3, 1898 (slide #2) issue under the headline "Refrán en acción" ("Proverb in action"). A Moya drawing shows Uncle Sam carrying the *Maine* on his back and taking a bow at a Spaniard who contemplates the disaster of war. The caption at the bottom of the page reads: "De los amigos me libre Dios, que de los enemigos me libraré yo" ("From my so-called friends protect me God, for from my enemies I will protect myself.")

Spain in turn sent the battleship *Vizcaya* to pay a "friendly visit" to New York. The *Gedeón* of February 10 published a cartoon (slide #3) by Sileno representing Spanish Prime Minister Sagasta and President McKinley playing with toy battleships *Maine* and *Vizcaya* in a pool named "Golfo de Mexico." The pool has a hole in the bottom but McKinley's hat is collecting the water. The caption under the drawing reads: "Jugando al golfo ... de Mexico" ("Playing Gulf ... of Mexico"). The suspicion of the

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<sup>24</sup> Ibid.

*Maine's* presence that the rest of the Spanish newspapers expressed is sustained by *Gedeón* by using the word "Golfo" that in Spanish not only means gulf but also tramp.

The explosion of the *Maine* that followed on February 15, 1898, in Cuba is still an historical enigma. *The New York Times* reported the tragic incident as follows:

At 9:45 o'clock this evening a terrible explosion took place on board the United States battleship *Maine* in Havana Harbor. Many persons were killed or wounded. All the boats of the Spanish cruiser *Alfonso XII* are assisting. As yet the cause of the explosion is not apparent.<sup>25</sup>

Both Spain and the United States formed courts of inquiry to investigate the circumstances leading to the explosion and the ultimate responsibility in the matter. American and Spanish divers and experts tried to find out whether the force of the explosion was from the exterior or the interior. The findings of the Spanish Court of Inquiry were published on March 22 and they concluded:

It can only be honestly asserted that the catastrophe was due to internal causes.<sup>26</sup>

On March 28, *The New York Times* published the abstract of the findings of the American Court of Inquiry. This newspaper reported that an external shock caused the explosion of two of the magazines and that at that point the responsibility for the disaster was not fixed.<sup>27</sup> However, the Senate Committee of Foreign Relations considered the report of the Court of Inquiry by April 11 and blamed Spanish authorities for the explosion.

It is the opinion of your committee having considered the testimony submitted to the board,..., that the destruction of

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<sup>25</sup> *The New York Times*, February 16, 1898.

<sup>26</sup> *Harper's Pictorial History of the War with Spain* (New York: Harper and Brothers Publishers, 1899), 78.

<sup>27</sup> *The New York Times*, March 28, 1898.

the Maine was compassed either by the *official act* of the Spanish authorities [my emphasis] or was made possible by the negligence on their part so willing and gross as to be equivalent in culpability to positive criminal action.<sup>28</sup>

This official statement paralleled the coverage of the disaster in the American yellow press. Three days after the explosion the *Journal* published "The whole country thrills with the war fever." The accusation against the Spaniards was rooted on the American perception of the Spanish temperament and national character, a vision that persisted a year after the war was over. *Harper's Pictorial History of the War with Spain* was published in 1899 and the chapter devoted to the destruction of the *Maine* explained in hindsight the tragic event. According to this publication, philosophical historians had "endeavored in vain to reconcile the many estimable qualities of the individual Spaniard with the detestable traits of his historical character," and concluded that "every Spaniard seemed to have been born crazy." The article continued by characterizing a Spaniard as the representative of "slothfulness and procrastination."<sup>29</sup>

This monster-like representation of the Spanish individual and national character was ridiculed in the *Gedeón* by cartoonist Sileno (slide #7) on February 24, 1898, with a drawing entitled "La voladura" ("The explosion"). A police officer holds the real criminal, the author of the explosion, a Silenus. Often represented as a bearded drunken old man as in this instance, Silenus was a mythological forest spirit, sometimes referred to as the oldest of satyrs and the foster father, teacher, and companion of Dionysus. This character matches the representation of Spaniards by the American press and official reports at the time. The press demonizing of the Other became crucial in fueling patriotism and a pro-war sentiment. The nationalist rhetoric of hatred exacerbates during

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<sup>28</sup> *Harper's Pictorial History*, 82.

<sup>29</sup> *Harper's Pictorial*, 74.



war and the Other is not only foreign and different, but also the enemy. The supreme value attached to nationality as part of one's identity as much as gender, or ethnicity, explains the attacks to national traits and qualities. Both Spain and the United States invented each other's national identities as being, by nature, anomalous. The fight in the Spanish-American war began at the symbolic level. The hostile language was a clear reflection of where things were heading: unavoidable war by the end of April 1898.

Spanish pride and honor were in question, and the constant insults from Americans favored the escalation of Spanish press propaganda fueling anti-American sentiments. The Spanish press depicted Spain as an invincible power and emphasized the United States' weakness as a nation. Instead of concern about the military and economic superiority of the enemy, the Spanish press constantly mocked the United States' power.

The *Gedeón* also resorted to sexual puns to pepper its cartoons. This creative license was utilized during the Spanish-American War on several occasions. On March 26, 1898, around the time the Court of Inquiry's reports were made public, *Gedeón* published a cartoon (slide #8) by Moya entitled "A lo que vamos llegando" ("Where we are heading"). The drawing showed Uncle Sam surrounded by money bags and a Spanish character surrounded by eggs. The caption under the cartoon reads: "Ya enseña cada cual lo que tiene" ("Each of us is showing what he has most"), eggs representing Spanish manliness and bravery that would make up for the lack of money.

The paroxysm of Spanish masculine valor was played in the celebration of the so-called "fiesta nacional," bullfighting. *Gedeón* used bullfighting as a metaphor of the war against the United States when (slide #19) on May 12, 1898, it published a cartoon by Sileno entitled "Corrida patriótica" ("Patriotic bullfight"). The bull represents the United

States, and Spain is the matador. Watching the bullfight are the different nations of Europe, Japan, and Turkey. The British Prime Minister, the Marquis of Salisbury, is behind the arena fence. The caption under the drawing is a dialogue between Salisbury and the matador: "Salisbury [sic]: "Va usted a dar en hueso. Matador: "Concedido, pero el estoque saltará al tendido." (Salisbury: You are going to hit the bone. Matador: Granted, but the sword will bounce to the audience.") Certainly, the reference to the further ramifications of the Spanish-American War for the imperialist race was clear in this cartoon. The United States was a strong young nation and sooner or later that strong young bull would charge against the other western powers.

By the beginning of June the war had turned into its last phase. The United States proved its superiority almost immediately. The disastrous development of the war for Spain led her to work toward an honorable peace. The major Spanish newspapers, *El Imparcial*, *El Nacional*, *El Heraldo de Madrid*, *El País*, urged the government to reach a peace agreement with the United States as soon as possible, before Spanish pride suffered further humiliation.

The war lasted three months. The peace conditions were outlined in the "Washington Protocol" of July 26, but Spain did not sign it until August 12.<sup>30</sup> Moya illustrated the mood about the peace conference in Spain in the July 7 issue of *Gedeón*. Under the title "El hotel de la paz" ("The hotel of peace") (slide #24), he drew Uncle Sam surrounded by different characters carrying the various territories of Spain to be sorted out in Paris.

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<sup>30</sup> The first step was cessation of hostilities, followed immediately by the occupation of Manila by Gen. Merritt and the United States troops under his command; the occupation of San Juan in Puerto Rico, by General Miles, and the evacuation of that island and of Cuba by the Spanish troops. *The New York Times*, August 12, 1898.

The Peace Conference began in October and the final signing of the treaty took place on December 10, 1898, after a long struggle on the Spanish side to reach an honorable agreement. But in Judge Day's words "a peace treaty can contain anything the victors put into it."<sup>31</sup> The final peace treaty required from Spain: to relinquish sovereignty over Cuba; the cession of Puerto Rico and other Spanish possessions in the West Indies, together with Guam, and cession of the Philippines. As compensation for her losses, Spain received twenty million dollars.<sup>32</sup>

The American people faced a new era as a nation united after the Civil War. "The Republic is today larger," said McKinley, "stronger, and better prepared than ever before for wise and profitable developments in new directions."<sup>33</sup> And he attested: "Thus far we have done our supreme duty."

After the war, in contrast with the American joyous celebration of victory, Spanish intellectuals tried to make sense of the disaster. The Generation of 1898, and the *Regeneracionismo* of Joaquín Costa searched for a new national identity, built on the knowledge of the mistakes of Spain's past. Sileno published a cartoon on September 1, 1898 (slide #27) entitled "Lavandera nacional" ("National laundress"). Prime Minister Sagasta received the laundry from *Gedeón*. The bag of laundry reads: "Errores" ("Mistakes") while a line of tattered clothes in the background was marked with the word "Libertad" ("Freedom").

The analysis of these images afford us an opportunity to evaluate modern politics and the role of the media (in this case the newspapers) in shaping national identity. By the end of the nineteenth century, the art of governing was not one ruler's prerogative any more, but rather a social affair. Politics turned into a public concern. It was essential to convince

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<sup>31</sup> *The New York Times*, December 6, 1898

<sup>32</sup> Pedro Gómez Aparicio, *Historia del periodismo español*, 68.

the citizenry of the righteousness of political decisions. In this sense, the press' role turned crucial in stimulating a national identity and patriotic enthusiasm. Although the images analyzed here are from the Spanish perspective, they certainly manipulated symbolic representations of the American national character, to ridicule and mock it. Both countries at war ignited the patriotic spirit of the citizenry through the newspapers by creating an evil image of the other, the enemy. Such symbolic imagery stimulated sentiments of patriotism that made thousands of unknown fallen soldiers immortal.

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<sup>33</sup> "Atlanta's Peace Jubilee is ended," *The New York Times*, December 16, 1898.



# Second Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

Sam Hoyle  
Military Historian, El Paso, TX

Dr. Félix D. Almaráz  
Professor of History  
University of Texas at San Antonio, San Antonio, TX

Thursday, April 23, 1998  
Chamizal National Memorial

MILITARY ASPECTS OF THE ANNEXATION OF TEXAS AND  
EARLY HISTORY OF FORT BLISS

SAM HOYLE

MILITARY HISTORIAN

THURSDAY, APRIL 23, 1998

- I. The impact of the Louisiana Purchase and the Lewis and Clark Corps of Discovery convinced the government in Washington that it could purchase portions of land from the Mexican government.
  - A. The War for Texas Independence left Mexico with a feeling of dissatisfaction and convinced that it could reclaim Texas.
  - B. Annexation was sure to be opposed militarily. Mexican law prohibited slavery in 1822 and many of the Texans intended to retain slaves, which had been an issue in 1836. This issue is also why Texas was admitted as only one state to address the interests of abolitionists in Congress.
  
- II. Militarily, the U.S. Army was smaller than the Mexican Army and had not fought a war outside the United States. Its most recent experience had been the Seminole wars and the removal of the five civilized tribes to the Indian Territory.
  - A. The U.S. Army had stabilized its ordnance, rifles, muskets, and artillery in 1841 and had a greater number of percussion cap weapons as opposed to the militia and Mexican arms which were mostly flintlocks.
  - B. Anticipating war as a result of annexation, Congress passed laws to raise a regiment of mounted riflemen, stating that they were intended for the "54-40 or fight" boundary dispute for the Oregon Territory with Great Britain.
  
- III. The initial battles were fought at Fort Brown, across the Rio Grande from Matamoros. While these initial engagements were in progress, both sides mobilized reserve forces and prepared for war.
  - A. Militia units were mobilized and Naval forces were brought to bear on both coasts. The initial battles in the North were

accompanied by expeditions across the west to Santa Fe, which were extended to California, New Mexico, West Texas, and into Chihuahua.

- B. The battle for central Mexico began with a landing at Vera Cruz and ended in Mexico City where the Treaty of Guadalupe-Hidalgo was signed. A critical part of the treaty was the Disturnell Treaty map which mislocated the future site of El Paso by over 100 miles.

IV. To ensure the territorial imperative of the newly ceded lands, the Army sent the 2<sup>nd</sup> Dragoons to present-day Doña Ana, New Mexico, to secure the eastern terminus of the intended border. It also ordered on 8 November 1848, six companies of the 3<sup>rd</sup> Infantry, under Major Jefferson Van Horne from San Antonio to "establish a Post opposite El Paso" (present-day Juárez).

- A. Van Horne arrived in September of 1849 after a six-month march which was hindered by a cholera epidemic and the additional burden of some 600 civilians headed for the California gold fields.
- B. He established the post in rented quarters at Smith's ranch on the site of downtown El Paso of today. Smith had purchased the site from Benjamin Franklin Coons who had purchased it from its original owner, Ponce DeLeon.
- C. The communities on the north side of the river were the haciendas of Anglo settlers, many of which had been established prior to the war.
- D. To facilitate the International Boundary Commission, James Russell Bartlett moved the garrison to Fort Billmore, near



Mesilla, in 1851 until the Gadsden Purchase would move the border back to El Paso in 1853.

V. The post was established on the property of James Wiley Magoffin at the present site of Willow and Magoffin streets in January of 1854 and was named Fort Bliss, after William Wallace Smith Bliss, in March of that year.

- A. The post was surrendered to Confederate forces in 1861 by order of General Twiggs, commander of the Department of Texas, and was occupied for two years during the Confederate expedition into New Mexico and the resulting battles of Val Verde and Glorieta Pass.
- B. The post was reoccupied by Union forces in 1863 and operated as an infantry post until 1868 when a flood of the river rendered it unrepairable.
- C. The garrison moved to Concordia from 1869 to 1876 and then to rented quarters in downtown El Paso from 1878 to 1879. The post had been dissolved for a couple of years, but the Salt War of 1877 had proved its necessity.
- D. In 1880, the garrison moved to permanent new quarters at the Hart's Mill site which was located directly in the Pass of the North and was rendered useless in 1881 when the railroad placed its tracks across the parade field.

VI. With the situation at Hart's Mill being the final blow, the War Department stated its intention to close Fort Bliss. The citizens of El Paso surveyed the impact of losing the Army post for economic and border trouble liabilities and concluded that the post must remain.

- A. The citizens of El Paso raised money by subscription and pledges and bought the present site of Fort Bliss at Lanoria Mesa and donated it to the Army.
- B. The new post opened on 27 October 1893 and has been continuously operated since that date. Because of the Mexican Revolution of 1910, the post was greatly expanded in 1914 and General John Pershing assumed command of the Military District of El Paso and came to Fort Bliss in 1916 just before Pancho Villa's raid on Columbus, New Mexico.
- C. The impact of the raid on the national awareness resulted in the mobilization of the National Guards of 35 states. The real national benefit of this action was that it became a rehearsal for the World War mobilization of 1918.
- D. With the return of the Guard troops who had controlled the border while the regulars went into Mexico after Villa, it became apparent that a large mounted force was needed to patrol the border. The First Cavalry Division was formed in 1919 and operated until 1943.

VII. With the approach of World War II, the Army needed firing ranges for anti-aircraft training and the deserts surrounding Fort Bliss were utilized for this purpose. The post was expanded to accommodate large numbers of trainees and the Antiaircraft Center and School were moved here in 1944.

TEXAN ANNEXATION:  
PRECIPITATING FACTOR IN THE OUTBREAK OF THE  
U.S. - MEXICO WAR, 1846

DR. FÉLIX D. ALMARÁZ, JR.

THURSDAY, APRIL 23, 1998

- I. Republic of Texas, March 2, 1836 - December 29, 1845
  - A. President James K. Polk: Annexation, 1845
  - B. Secretary of War William L. Marcey mobilized armed forces; General Zachary Taylor dispatched to Corpus Christi, Texas; Brevet Gen. Stephen Watts Kearny dispatched to New Mexico.
  
- II. Delegates at Washington-on-the-Brazos declared
  - A. Texan independence, March 2, 1836; the defeat of Santa Anna's forces at San Jacinto confirmed the existence of the Republic of Texas and changed the course of North American history.
  
- III. Presidential Leadership of Republic of Texas
  - A. David G. Burnet (ad interim) (March-October 1836)
  - B. Sam Houston (1836-1838)
  - C. Mirabeau B. Lamar (1838-1841)
  - D. Sam Houston (1841-1844)
  - E. Dr. Anson Jones (1844-1846)
  
- IV. Diplomatic Recognition by the United States
  - A. Texan Agents in U.S.
  - B. Sentiment in U.S.; sentiment in Texas
  - C. Houston sent commissioners to U.S. (James Collinsworth, Peter W. Grayson)
  - D. The question of recognition of Congress
  
- V. Annexation Refused
  - A. Disorganized finances of Texas
  - B. Texan annexation efforts; annexation refused.

## VI. French Recognition of Texan Independence

- A. Work of J. Pinckney Henderson, James Hamilton
- B. Efforts to secure British recognition
- C. Informal commercial agreement with Great Britain
- D. Negotiations with France (1839)

## VII. Lamar's Aggressive Policies

- A. Domestic and foreign plans
- B. Situation in Mexico: Col. Bernard Bee
- C. Plans of James Treat with Mexico
- D. Federalist Uprising: Republic of Rio Grande

## VIII. James Treat in Mexico

- A. The situation in Mexico
- B. Assistance of Richard Pakenham
- C. Failure of Treat's Diplomatic Mission

## IX. The Alliance with Yucatán

- A. Results of Treat's Failure
- B. Alliance with Yucatán: Commodore Moore and Texas Navy
- C. Efforts of Quintana Roo: Withdrawal from Yucatán

## X. James Hamilton in Europe

- A. Hamilton in Holland (September 1840)
- B. Negotiations with England: Three Treaties (December 1840, January 1841)
- C. Negotiations for loan with France: The Lafitte Agreement
- D. Controversy involving Count Alphonse De Saligny
- E. The Return of General Hamilton

XI. Lamar's Legacy: Houston's Inheritance

- A. The Santa Fe Expedition (1841)
- B. Mexican Raids: General Vásquez and Woll (1842)
- C. Triple Intervention: France, England, U.S.

XII. Negotiations for annexation

- A. Annexation movement in the United States
- B. Secretary Calhoun's treaty (1844)
- C. American presidential election of 1844

XIII. Annexation completed

- A. Anson Jones as President
- B. Tyler's strategy: Joint resolution
- C. English-French efforts to block annexation
- D. Smith-Gonzaga Cuevas Treaty
- E. Texas Congress accepted annexation



# Third Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

Dr. Oscar J. Martinez  
Professor of History  
University of Arizona, Tucson, AZ

Armando Rendón  
Public Information Officer  
California Public Utilities Commission

Sunday, April 26, 1998  
El Paso Museum of History

THE TREATY OF GUADALUPE-HIDALGO  
AND THE GADSDEN TREATY

DR. OSCAR J. MARTINEZ  
UNIVERSITY OF ARIZONA  
TUCSON, ARIZONA  
SUNDAY, APRIL 26, 1998



- I. Introduction - 150<sup>th</sup> anniversary of the Treaty of Guadalupe Hidalgo
- II. Border conflicts that led to war of 1846-1848
  - Frontiers in North America, 1700
  - Boundary changes, 1763
  - Louisiana, 1800-1803
  - Treaty of 1819
  - Tensions over Texas
- III. The role of Texas in precipitating war in 1846
- IV. Negotiating the Treaty of Guadalupe Hidalgo
- V. Important articles of the Treaty (5, 8, 9, 11)
- VI. The Gadsden Treaty
- VII. Conclusion - Legacies of the two treaties

References:

Oscar J. Martinez, Troublesome Border

Richard Griswold del Castillo, The Treaty of Guadalupe Hidalgo

## MEXICO'S "GIFT" TO THE UNITED STATES

This year (1998) marks the 150<sup>th</sup> anniversary of the signing of one of the most important treaties in American history - the Treaty of Guadalupe Hidalgo. This treaty ended the war between the United States and Mexico, fought between 1846 and 1848.

Fundamentally the war was caused by American expansionism. For years the United States had attempted to buy Mexico's northern frontier, but Mexico would not sell. Tensions mounted in 1845 when the United States annexed the Republic of Texas, a breakaway province still claimed by Mexico. Washington then engineered a confrontation that led to a rupture in diplomatic relations. A military skirmish followed, and finally war.

In 1846 Mexico had been an independent republic for only 25 years. Severely unfavorable conditions undermined the effort to construct the nation. The Mexican people faced chronic internal political instability, social fragmentation, and a shattered economy. Most of the 8 million people then residing in Mexico lived outside the national system. The opposite was true in the United States, which had a population of about 20 million. Historians have questioned whether Mexico should even be classified as a viable country at that point in its evolution.

The crushing weaknesses of the fledgling Mexican republic and the vast strengths of the United States made the outcome of the war easily predictable. Much better equipped and trained American soldiers quickly invaded Mexico and gained the upper hand in the negotiations for territory.

At one point American expansionists pressed for the absorption of all of Mexico, but eventually Washington settled for "only" New Mexico, Arizona, California, Nevada, Utah, and portions of Wyoming, Colorado, and Oklahoma. Mexico received \$18 million in compensation. Then, in

1853, Americans obtained parts of Sonora and Chihuahua for \$10 million as part of the Gadsden Treaty. In all, Mexico turned over one-half of its national domain to the United States between 1845 and 1853.

With the natural resources, superb ports, and other riches in the territories acquired from Mexico at such bargain rates, the United States assured itself a future of economic and military prominence on the global stage. Conversely, having lost some of its most valuable assets, Mexico could look forward to diminished wealth, a scarcity of agricultural land, reduced potential for conducting world trade, and limited economic growth.

Thus the alteration of the boundary brought about by the Treaty of Guadalupe Hidalgo and other agreements truly helped shape the destiny of each nation. What a "gift" Mexico bestowed on the United States!

## THE SURVEYING AND MARKING OF THE U.S.-MEXICO BOUNDARY: THE MEXICAN PERSPECTIVE

### INTRODUCTION

The surveying and marking of the boundary between the United States and Mexico, which began in 1849 and ended in 1856, constitutes the final chapter in a long conflictive relationship between the two nations over border delimitation. Mexico emerged from that process dispossessed of half of its national domain, while the United States expanded its holdings by almost a third. Texas fell to the *norteamericanos* through annexation in 1845, and New Mexico, Arizona, California, Nevada, Utah, and parts of Wyoming, Colorado, Kansas, and Oklahoma were acquired as part of the Treaty of Guadalupe Hidalgo in 1848; finally the 1854 Gadsden Purchase added portions of Sonora and Chihuahua to the U.S. land mass.

Mexico's devastating loss of territory is remembered by its people as one of the most critical junctures in their history. At the time many Mexicans expressed disgust with their national leaders, heatedly debated the effectiveness of governmental structures, and somberly questioned the ability of their fragmented society to achieve national unity. Much of the wrath and bitterness spawned by the humiliation of the 1840s, however, was directed at the United States, whom Mexicans saw as an aggressive nation bent on conquest and domination of its neighbors. The arrogance and expression of racial superiority on the part of Americans in particular elicited deep resentment.<sup>1</sup>

In the late 1840s and early 1850s, Mexican suspicion and distrust of the United States continued to grow as Americans attempted to secure

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<sup>1</sup> See Cecil Robinson, ed. and trans., The View from Chapultepec: Mexican Writers on the Mexican-American War. (Tucson: University of Arizona Press, 1989) for an excellent exposition of Mexican interpretations of events during the period, including views on American expansionism and racism.

transportation privileges in the strategic Isthmus of Tehuantepec, as filibusters based on U.S. soil repeatedly invaded Mexico's northern provinces, and as Apache and Comanche Indians continued to plunder frontier settlements in Sonora and Chihuahua. Mexican politicians and diplomats necessarily proceeded with extreme caution when conducting negotiations with American officials. The nation had to be on its guard lest it lose more territory to its land-hungry neighbor or suffer additional violations of its national sovereignty.

Under such conditions, members of the Mexican commission charged with identifying the exact location of the political line dictated by the 1848 treaty faced a particularly difficult challenge. The work had to be conducted jointly with American counterparts, some of whom proved difficult to deal with because of their ethnocentric and expansionist views. For the Mexican commissioners, the task at hand demanded suppression of personal resentments and painful memories. It also required considerable patience, for there would be continuous delays in the field brought on by American political maneuverings and frequent changes in personnel on the U.S. commission. Chronic shortages of funds and spartan living conditions on the desert would take their toll as well for both Mexicans and Americans, and as the work progressed, both delegations would see their diplomatic skills tested. As the party bargaining from the weaker position, however, the Mexican contingent would have to overcome more hurdles and make greater adjustments.

This essay presents the Mexican side of the marking and surveying of the boundary, with an emphasis on developments between 1849 and 1853. Three significant problems are discussed: (1) the dispute over ownership of three communities in the Paso del Norte area (today El Paso-Ciudad Juárez), (2) the making and unmaking of the compromise reached by the heads of the U.S. and Mexican commissions and (3) the

confrontation between the governors of New Mexico and Chihuahua at La Mesilla, an event that led to the signing of the Gadsden Treaty, *or El Tratado de La Mesilla*.

#### ISLETA, SOCORRO, AND SAN ELIZARIO

The first dispute over the location of the boundary involved Isleta, Socorro, and San Elizario, three towns with a combined population of nearly 3,000 in the midst of very fertile agricultural lands. At the time of the signing of the Treaty of Guadalupe Hidalgo, these communities were situated on an island, surrounded by two channels of the Rio Grande. Before 1828 the river ran exclusively north of the towns, but sometime in the next six years a second channel formed to the south. The Treaty of Guadalupe Hidalgo specified that wherever the river split up into two or more channels, the deepest one would constitute the boundary, and thus the question arose whether the three settlements, and the surrounding valuable lands, should remain in Mexico or be absorbed by the United States.<sup>2</sup>

Without waiting for the boundary commissions from both nations to render a decision on the issue, as stipulated in the treaty, U.S. troops in January, 1849, took possession of the towns and expelled the Mexican authorities, declaring the southern channel as the deeper one and therefore the new boundary.<sup>3</sup> When the mayor of Paso del Norte objected to the U.S. occupation to the nearest American magistrate (in Frontera, New Mexico), the latter arrogantly stated that no one had complained about the change in jurisdiction and asked the mayor to present property

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<sup>2</sup> Article V of the Treaty of Guadalupe Hidalgo specified that the boundary would proceed from the Gulf of Mexico "up the middle of that river [the Rio Grande, or Rio Bravo del Norte], following the deepest channel...." Charles I. Bevans, ed., Treaties and Other International Agreements of the United States of America, 1776-1949 (Washington, D.C.: State Department, 1972), vol. 9, p. 794.

titles from the three towns. The magistrate further warned the Mexican mayor about the possibility of a disturbance. In expressing concern about these developments, the governor of Chihuahua informed the Mexican Secretary of Foreign Relations that it would be easy to drive out the invaders, but he counseled restraint because that course of action might lead to more serious confrontation.<sup>4</sup>

Vehement diplomatic protest by the Mexican government prompted the United States to withdraw its soldiers, but a few years later the commissioners confirmed the southern channel as the legal boundary, thus ending the controversy. Had the commissioners investigated the matter in 1848 or 1849, Mexico would have retained the towns because, according to Mexican historian Luis G. Zorrilla, at the time the northern channel was the deeper one.<sup>5</sup> In any case, willing or not, several thousand Mexicans living in Isleta, Socorro, and San Elizario were incorporated into the United States. Under the newly imposed U.S. legal system, these towns lost their *ejidos*, or communal landholdings, as did San Lorenzo and Senecú, two settlements south of the river that had also had *ejidos* north of the river. Land claims submitted to American authorities by Mexican citizens yielded no results.<sup>6</sup> To Mexico, the invasion of these towns demonstrated the disregard the U.S. government had for procedural stipulations contained in the Treaty of Guadalupe Hidalgo. The Isleta-Socorro-San Elizario episode, says Mexican historian Angela Moyano Pahissa, replicated the expansionist process previously seen in Texas: "invasion of coveted land, change of officials in charge, pretense of

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<sup>3</sup> The authority for determining the exact location of the boundary rested solely with the two commissions, each comprised of a commissioner and a surveyor. *Ibid.*

<sup>4</sup> Angela Moyano Pahissa, *México y Estados Unidos: Orígenes de una relación, 1819-1861* (Mexico, D.F.: Secretaría de Educación Pública, 1985), p. 176.

<sup>5</sup> Luis G. Zorrilla, *Historia de las relaciones entre México y Los Estados Unidos de América, 1800-1958*, 2 vols. (México, D.F.: Editorial Porrúa, 1977), vol. I, pp. 240-241.

<sup>6</sup> *Ibid.*, pp. 272, 496.

holding a referendum, threats, claims of innocence on the part of federal authorities, and annexation of territory."<sup>7</sup>

#### FRUSTRATED COMPROMISE

The second and much more important controversy pertained to the location of the boundary westward from the Rio Grande above Paso del Norte. Following the uneasy but largely trouble-free determination of the initial location of the boundary on the Pacific and the point of junction at the Colorado and Gila Rivers,<sup>8</sup> the commissioners agreed to meet at Paso Del Norte in November, 1850, to begin the task of drawing the line from the Rio Grande to the Gila River.

At Paso del Norte, their toughest challenge was to interpret the vague assertion in the treaty that the dividing line should be placed "north of the town called Paso"; the problem was complicated by an error in the Disturnell Map of 1847, a key document used in the treaty negotiations, which placed Paso del Norte 34 miles north and 130 miles east of its true location. From Mexican Boundary Commissioner Pedro García Conde's perspective, which reflected the official view in Mexico City, the line westward from the Rio Grande had to begin at 32°30' north latitude, since Disturnell had placed the southern boundary of New Mexico at that point. The interpretation clashed with American wishes to begin the line much closer to Paso del Norte, at about 31°52', emphasizing the need to correct the error made by Disturnell.

García Conde proposed a line from the Rio Grande to the Gila River that would leave the Santa Rita del Cobre mines and the Mesilla valley in Mexico; U.S. Boundary Commissioner John Russell Bartlett countered with a line that would not only place that valuable real estate in

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<sup>7</sup> Moyano Pahissa, *México y Estados Unidos*, p. 177.

<sup>8</sup> Leon C. Metz, *Border: The U.S.-Mexico Line* (El Paso: Mangan Books, 1989), pp. 11-29.



the United States but would assure a much-desired pathway for a railroad route to the Pacific. The two sides compromised by agreeing on a boundary that would leave the Mesilla valley in Mexico but place the Santa Rita mines in the United States and include enough territory for the U.S. railroad route. García Conde considered this agreement a great victory because the primary interests of Mexico, retaining fertile agricultural lands and the important towns of Mesilla and Paso Del Norte, had been accomplished.<sup>9</sup> Bartlett also saw the compromise as a triumph because he knew the land obtained by the United States had rich deposits of gold and silver, and he felt much of the territory retained by Mexico had little value.<sup>10</sup>

But subsequent events unraveled the work of the two commissioners. Lieutenant Amiel Weeks Whipple, the surveyor ad interim for the U.S. commission, had just started to trace the new line when the army reassigned him. Eight months would pass before permanent surveyor Andrew B. Gray assumed his duties following an extended illness. The resulting delays "infuriated" García Conde. "The increased expenses I am incurring in this desert," he wrote to Bartlett, "and the loss of time could lead to serious consequences. I am telling you how I feel and I am reporting it to my government." Embarrassed, Bartlett apologized.<sup>11</sup>

Much to García Conde's, and Bartlett's, dismay, Surveyor Gray disapproved of the 32°22' line, and refused to sign the compromise document; Lieutenant Colonel James D. Graham, then the principal astronomer, and Whipple himself, also repudiated the García Conde-Bartlett pact. Lacking the support of these key individuals, Bartlett

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<sup>9</sup> Joseph Richard Werne, "Pedro García Conde: el trazado de límites con Estados Unidos desde el punto de vista mexicano," *Historia Mexicana*, vol. 36, no. 1 (julio-septiembre, 1986), p. 121.

<sup>10</sup> J. Fred Rippy, *The United States and Mexico* (New York: Knopf, 1926), p. 110.

suspended surveying activities, and asked García Conde to do the same. García Conde declined, and the Mexican Commission continued to trace the line toward the Gila River in accordance with the provisions of the compromise. But García Conde's efforts bore no fruit, for Gray's objections succeeding in bringing the drawing of the boundary in the Mesilla strip to a halt. "The biggest fears of the Mexican government had been realized," writes Joseph Richard Werne. "The United States adopted and staunchly held on to Gray's interpretation of article V of the Treaty of Guadalupe Hidalgo; the subsequent dispute gave that country sufficient diplomatic pretexts to demand a new treaty...."<sup>12</sup>

García Conde and his associates on the Mexican commission must have felt considerable anger, frustration, and resentment at the unfavorable turn of events. Dealing with Gray must have been especially difficult because of his background. In the 1830s, the U.S. surveyor had assisted in the drawing of the eastern-northern boundary of the "Republic of Texas"; at the time Mexicans viewed Texas as a renegade province that had fallen into the hands of Anglo American separatists, mercenaries, and pirates. Gray had also ridden with the Texas Rangers, a notorious law enforcement agency well known for persecuting Mexicans and Indians.<sup>13</sup>

All along García Conde and his superiors in Mexico City had been annoyed with frequent delays brought on by changes in personnel on the U.S. commission as well as the apparent lack of interest on the part of the Americans to expeditiously identify the location of the new boundary, choosing instead to absent themselves for long periods conducting explorations, searching for the best terrain to build roads, canals, and

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<sup>11</sup> Ibid, p. 122. The comment from García Conde's letter is quoted in Metz, Border, p. 47.

<sup>12</sup> Werne, "Pedro García Conde," p. 125.

<sup>13</sup> Metz, Border, pp. 11, 13.

railroads, and assessing the potential of the region's natural resources.<sup>14</sup> "It is not far fetched to assume that the suspension of activity or slowness in drawing the boundary had the approval of the government in Washington," writes Zorrilla.<sup>15</sup> The implication in Zorrilla's comment is that the United States intentionally slowed down and complicated the process in an effort to buy time to learn more about the region and subsequently extract from Mexico as much valuable territory as possible.

If Gray had been a thorn for the Mexican boundary commissioners, Major William H. Emory, another surveyor-astronomer, turned out to be worse. He too repudiated the García Conde-Bartlett compromise. Emory was an original member of the U.S. commission who resigned in 1851, then returned as surveyor and chief astronomer in 1853, then became the head commissioner in 1854. He disdained Mexicans of mixed blood, viewing them as examples of racial "decline."<sup>16</sup> His resolve to gain maximum American advantage in the boundary give and take is reflected in a statement he once made where he expressed hope that the United States "might succeed in torturing the Treaty of Guadalupe Hidalgo to embrace a practicable [railroad] route."<sup>17</sup> To Mexican diplomat and historian Cesar Sepúlveda, Emory's words and actions revealed a streak of expansionist greed. Sepúlveda concludes that the "ambitious and unscrupulous" Emory was willing to use censurable methods to get what he wanted. When it appeared to Emory that it might not be possible to obtain the desired railroad route, he recommended that the territory be taken by force. Emory, states Sepúlveda, was guilty of provoking confrontation by setting off a "spark" of rather minor importance, but one

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<sup>14</sup> Zorrilla, Historia de las relaciones entre México y Los Estados Unidos de América, vol. I, p. 337.

<sup>15</sup> *Ibid*, p. 336.

<sup>16</sup> William H. Emory, Report of the United States and Mexican Boundary Survey, vol. I, part I (Washington: 34<sup>th</sup> Congress, 1<sup>st</sup> Session, Senate Executive Document no. 108), p. 69.

that could ignite another war.<sup>18</sup> Even Bartlett, a learned man who seemed more fair-minded than his colleagues, must have irritated the members of the Mexican commission. His contempt for biracial people and scorn for the Catholic faith are well illustrated in his Personal Narrative.<sup>19</sup> One suspects that such pejorative attitudes surfaced from time to time in Bartlett's demeanor during the negotiations between the two commissions.

### SHOWDOWN AT LA MESILLA

Between December 1850, when García Conde and Bartlett achieved their famous compromise, and the ratification of the Gadsden Treaty three and a half years later, the Mesilla strip remained disputed land. The presence of Mexican repatriates in the region would make resolution of the New Mexico-Chihuahua boundary particularly difficult. From 1848 to 1852 nearly 2000 people who wished to escape U.S. jurisdiction or who sought refuge from harassment at the hands of abusive Anglo Americans settled at La Mesilla. A large percentage had lived in New Mexico east of the Rio Grande, an area claimed by Texas between 1836 and 1850. In his Personal Narrative, Bartlett describes the circumstances that drove many of these refugees into Mexican territory.

Immediately preceding, and after the war with Mexico, the Mexican population occupying the eastern bank of the Rio Grande in Texas and New Mexico were greatly annoyed by the encroachments of the Americans, and by their determined efforts to despoil them of their landed property. This was done by the latter either settling among them, or in some instances forcibly occupying their dwellings and

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<sup>17</sup> Ibid, p. 51.

<sup>18</sup> Cesar Sepúlveda, La frontera de México: Historia, conflictos, 1762-1975. (México: D.F.: Editorial Porrúa, 1976), pp. 74-75.

<sup>19</sup> John Russell Bartlett, Personal Narrative of Explorations and Incidents in Texas, New Mexico, California, Sonora, and Chihuahua, 2 vols. (New York: Appleton Co., 1854), vol. I, pp. 39-40, 43, 262, 427, 449, 484, 488-489; vol. II, pp. 299-300, 435.

cultivated spots. In most cases, however, it was done by putting "Texas head-rights" on their property. These head-rights were grants issued by the state of Texas, generally embracing 640 acres, or a mile square, though they sometimes covered very large tracts. They were issued to persons who had served in her wars ... and also to original settlers.... With these land certificates, or "head-rights," many Americans flocked to ... the Rio Grande, and in repeated instances, located them on property which for a century had been in the quiet possession of the descendants of the old Spanish colonists. The latter, to avoid litigation, and sometimes in fear of their lives, abandoned their homes, and sought refuge on the Mexican side of the river.<sup>20</sup>

Bartlett states that when he and García Conde agreed to the 32°22' compromise in April, 1850, confirming that La Mesilla was in Mexico, the fears of local residents that they might wind up in the United States disappeared. "The whole population had determined to abandon the place if the boundary line had run south of the village, and thus placed them under the jurisdiction of New Mexico.... The event was celebrated by firing of cannon and a grand ball.... After this the population continued to increase."<sup>21</sup> The Chihuahua government also stationed several hundred soldiers at La Mesilla, although they were withdrawn within a short time because of shortages of funds.<sup>22</sup>

Once the U.S. Congress rejected the Bartlett-García Conde line, newly-appointed New Mexico governor William Carr Lane claimed the Mesilla strip for the United States and threatened to occupy it with military force. He was emboldened by advice given to him earlier by New Mexico's territorial delegates in the U.S. Congress to invade La

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<sup>20</sup> Bartlett reports that more than half of the population of the town of Doña Ana moved to La Mesilla in 1851. Bartlett, Personal Narrative, vol. I, pp. 212-214.

<sup>21</sup> *Ibid*, pp. 214-215.

<sup>22</sup> Odie B. Faulk, Too Far North, Too Far South (Los Angeles: Westernlore Press, 1967), p. 119.

Mesilla.<sup>23</sup> Lane asserted that the disputed area had been taken illegally by the state of Chihuahua, and that the residents of the town wished to be annexed to the United States. Indeed, a portion of the population of La Mesilla preferred to be in U.S. territory, but it appears they were a small minority comprised largely of Anglo American settlers. Lane's claim that the Mesillanos preferred the United States sounded preposterous to Mexican officials. They pointed out that most people residing in the town had fled the United States a short time earlier and without question they wished to remain in Mexico.<sup>24</sup> Bartlett shared the Mexican view of the situation at La Mesilla, commenting that fewer than twenty Anglo Americans lived there.<sup>25</sup>

Lane failed to obtain direct U.S. government or military support for his aggressive plan to occupy the land in question, whereupon he led a volunteer force to Doña Ana. There, on March 13, 1853, he proclaimed that he was taking possession of the Mesilla territory until the boundary "shall be determined by the United States and the Mexican Republic." He made clear that he was taking this action on his own, "without orders from the cabinet in Washington." Governor Angel Trías of Chihuahua countered by warning Lane that he would "use the means unquestionably necessary for its [La Mesilla's] defense and preservation in case it is attacked," adding that the "responsibility for the consequences" would rest with Lane. With the backing of Mexico City, Trías followed up with a military buildup at Paso del Norte.<sup>26</sup>

Once again armed confrontation over disputed land seemed imminent between the United States and Mexico, but a determination to resolve the matter through negotiation eventually prevailed. Lane, whose

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<sup>23</sup> Rippey, *The United States and Mexico*, p. 116.

<sup>24</sup> *Ibid*, pp. 115-116.

<sup>25</sup> Bartlett, *Personal Narrative*, p. 215.

<sup>26</sup> Rippey, *The United States and Mexico*, p. 117.

impetuous actions had contributed significantly to bringing about the crisis, unintentionally helped matters by resigning the New Mexico governorship for reasons unrelated to the border controversy. His replacement, David Meriwether, had specific instructions from Washington to "abstain from taking forcible possession of the tract, even if on your arrival in New Mexico you find it held adversely to the claim of the U.S. by Mexico or the authorities of Chihuahua."<sup>27</sup>

Conflict at the New Mexico-Chihuahua frontier eventually gave way to hard bargaining in Mexico City with the arrival in 1853 of newly-appointed U.S. minister James Gadsden. Following in the tradition of several American envoys before him, Gadsden tried to bully the Mexican government into selling large portions of its northern territories. But, while agreeing to sign the Gadsden Treaty, or *El Tratado de La Mesilla*, president Antonio López de Santa Anna would only consent to sell the strip of land long identified by the Americans as necessary for a U.S. railroad route to the Pacific.<sup>28</sup> Unfortunately for the people of La Mesilla, their town became part of the tract acquired by the United States in 1854, forcing many of them to pull stakes and relocate a second time into Mexican territory. Those who remained in U.S. soil received guarantees of equal treatment and protection under the U.S. constitution, just as other Mexicans annexed in 1848 had obtained through the Treaty of Guadalupe Hidalgo.<sup>29</sup> In the years that followed the signing of the boundary treaties,

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<sup>27</sup> Quoted in *Ibid*, p. 119.

<sup>28</sup> For the Mexican perspective on the Gadsden or La Mesilla Treaty, see Moyano Pahissa, *México y Estados Unidos*, pp. 242-256, and Zorrilla, *Historia de las relaciones entre México y Los Estados Unidos de América*, vol. I, pp. 335-360. The U.S. view is presented in Paul Neff Garber, *The Gadsden Treaty* (Gloucester, Mass.: Peter Smith, 1959).

<sup>29</sup> Articles VIII and IX of the Treaty of Guadalupe Hidalgo specify the property, civil, and religious rights accorded Mexicans absorbed into the United States in 1848. Article V of the Gadsden Treaty reaffirms those rights for the residents of the Mesilla strip. Bevans, ed., *Treaties and Other International Agreements*, vol. 9, pp. 796-797, 815.

however, Mexican Americans in New Mexico and elsewhere witnessed continued violations of their rights.<sup>30</sup>

## CONCLUSION

Identifying the exact location of the U.S.-Mexico boundary proved to be a prolonged, frustrating experience for the officials and technical personnel who conducted the fieldwork as well as for political leaders in the distant capitals of both countries. While the tracing of the line from the Pacific to the confluence of the Colorado and Gila rivers, and from Paso del Norte to the Gulf of Mexico, spawned little disagreement, fixing the dividing line between New Mexico and Chihuahua became a major problem. The root of the controversy over La Mesilla lay in the errors of the Disturnell map and the imprecise language in the Treaty of Guadalupe Hidalgo. Yet the disparity in the two countries' strength contributed significantly to the outcome of the dispute. In the end the United States, by far the more powerful nation, got the land it desired through the signing of the Gadsden Treaty.

From Mexico's point of view the best that could be said is that it prevented a military invasion of the disputed zone and that it resisted another U.S. diplomatic offensive to annex greater portions of the national domain. Mexican officials could also derive some satisfaction from having sold a remote and largely barren tract of land for ten million dollars. The loss of La Mesilla, however, represented another blow to national pride. Mexicans deeply resented the American repudiation of the Pedro García Conde-John Russell Bartlett compromise, the pressure tactics used by

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<sup>30</sup> See Rodolfo Acuña, Occupied America: A History of Chicanos, second edition (New York: Harper and Row, 1981); Matt S. Meier and Feliciano Ribera, Mexican Americans/American Mexicans: From Conquistadors to Chicanos (New York: Hill and Wang, 1993). Moyano Pahissa, México y Estados Unidos, pp. 173-241, discusses extensively many of the violations of the Treaty of Guadalupe Hidalgo by the United States and their disastrous effect on Mexico and Mexican Americans.



James Gadsden in Mexico City, and the changes made by the U.S. Senate to El Tratado de La Mesilla. The Mesilla episode added to an already strong legacy of Mexican resentment and suspicion of the United States.

THE TREATY OF GUADALUPE HIDALGO:  
A LIVING INTERNATIONAL BRIDGE

ARMANDO B. RENDÓN, ESQ.

SUNDAY, APRIL 26, 1998

The Treaty of Guadalupe Hidalgo was signed 150 years ago to affirm peace and friendship between the United States and Mexico. This political act, which ended military conflict between the two nations, did something else that most historians overlook - it gave birth to a unique "person" in the Americas - the Mexican American or Chicano.<sup>1</sup>

As subsequent events bear out, the Treaty also generated a mass of litigation, from trial court to Supreme Court. However, the nature of these actions bore almost exclusively upon only one of the rights guaranteed specifically to the Mexicans who elected to stay on this side of the new border, the first Mexican Americans.

#### THE EARLY LITIGATION

The Treaty of Guadalupe Hidalgo, in spite of its apparent agedness, is a living document. It provides human rights guarantees which are recognized at the international level, but widely ignored and violated on the domestic level. With a relatively new human rights system now in operation, the Treaty represents a valuable and practical tool in seeking redress for violations of these rights. Unfortunately, the Treaty has largely been relegated to a land grants document rather than pursued as a viable alternative and foundation for sound human rights assertions in domestic and international tribunals.

From the earliest cases which ensued almost from the moment the Treaty was signed until the more recent cases which deal with American Indian claims<sup>2</sup>, the right to "property" has been the dominant focus in challenging or citing the Treaty. The ownership of land, for a number of

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<sup>1</sup> Treaty of Guadalupe Hidalgo, 9 Stat. 922; T.S. 207; 9 Bevans 791, signed Feb. 2, 1848, went into force May 30, 1848. For Spanish text, Algunos Documentos sobre el Tratado de Guadalupe Hidalgo, Archivo Histórico Diplomático Mexicano, No. 31, ed. Antonio de la Peña y Reyes. Secretaria de Relaciones Exteriores, México, D.F. 1930, p. 115.

<sup>2</sup> Shephard's contains more than 150 citations to the Treaty, of which some 45 cases cite to Articles VIII and IX alone.

reasons, was uppermost in the minds of the inhabitants in the lands taken from Mexico by the United States. Land meant a livelihood, if not wealth, prestige, a patrimony, certainly the means to sustain life itself.

The Mexican Americans - robbed, cheated, taxed into poverty, beaten, murdered and lynched, or otherwise driven off their lands, went into the U.S. courts only to find either that they had no protected titles where Texas was concerned<sup>3</sup> or that the Treaty, instead of validating previous land claims, had only given claimants the right to seek validation or clarification in U.S. tribunals.<sup>4</sup> As one court saw it, Mexicans in the ceded territories got merely the status of citizenship under the Treaty; they gained no special guarantees under it.<sup>5</sup>

Article IX of the Treaty specifically cites the right to "liberty and property."<sup>6</sup> At the time, the right to challenge land claims or validate titles was an important and perhaps the crucial issue, often a life-and-death matter, to the early Mexican Americans. However, I assert that the Treaty conveyed - under the rubric of the right "to liberty" and by virtue of other documents specifically incorporated into the Treaty - a whole range of values and individual guarantees. Apparently, these protections were not considered assertable theories in litigation at the time, but have since become both national and international standards of law.

Moreover, while the right to property and claims stemming from it exclude Texas, U.S. citizenship was afforded all Mexicans within the territories who did not elect to retain Mexican citizenship by the end of

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<sup>3</sup> McKinney v. Saviego, 59 U.S. 240 (1855), Basse v. Brownsville, 154 U.S. 610 (1875), Amaya v. Stanolind Oil & Gas Co., (D.C.S.D. Tex) 62 F.Supp 181 (1945).

<sup>4</sup> Baldwin v. Frank, (Tex. Supp.) 31 S.W. 1064, *af'd* 26 S.W. 155 (1852), the Texas Act of 1850 does not discriminate between U.S. and Mexican citizens, so does not violate Treaty Article VIII which simply guarantees property rights, the same protection afforded to all U.S. citizens.

<sup>5</sup> Chadwick v. Campbell, 115 F.2d 402 (1940), equality with other property owners in having *ad valorem* taxes assessed against land grant.

<sup>6</sup> Documentary History of the Mexican Americans, ed. Wayne Moquin, Bantam Books, New York, 1971. P. 246.

one year. The other rights, to life and liberty, in other words, adhered to all Mexicans who remained on the U.S. side of the new border; in effect, these guarantees were extended not only to individuals but to the group clearly identifiable by their national origin as Mexican/Americans. The significance of this factor will become clearer in the light of subsequent developments in the law.

Because land constituted the very sustenance of life in the society of the 1800s, it is understandable that claims to property depended on assertions of title, adverse possession, riparian rights, community ownership, and the like. In time, the significance of land has given way to the right of life and liberty as the primary values in effecting redress for wrongs against civil and human rights. For example, where denial of one's civil rights results in death at the hands of another, code law supplants the direct murder charge. See 18 U.S.C.A. §242.

Chicano claims for justice are basically at an impasse. Claims related to property rights obviously have faltered not only in the courts but also in the public conscience. The efforts of Reies Tijerina and the Alianza Federal de Mercedes Libres in the 1960s land claims movement in New Mexico sought redress in the courts and in public opinion, even in the halls of the United Nations<sup>7</sup> - to no avail.

What this paper urges is a new approach, retracing many of the same documents, but re-examining them in light of the development of international systems for the protection of human rights. The inter-American system, in particular, did not exist as a forum until two decades ago. Now, by reviving the Treaty of Guadalupe Hidalgo along modern conceptual lines of human rights, Mexican Americans may, in fact, have a new opportunity to redress decades-old grievances.

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<sup>7</sup> Cue Canovas, Agustin, Los Estados Unidos y El México Olvidado, Arno Press, New York, 1976. P. 133-37.

## THE RIGHT TO LIFE AS A PROTECTED HUMAN RIGHT

At the time of the signing of the Treaty of Guadalupe Hidalgo, the principles entailed in the term "life and liberty" were perceived as human rights, each part of the other. We present here a review of some of the basic documents with the goal in mind of bridging these views with the modern documents on human rights.

America's commitment to basic individual rights is embodied first in the Declaration of Independence, although these principles also appear in the earlier "Declaration and Resolves of the First Continental Congress."<sup>8</sup> The second paragraph of the Declaration of Independence asserts that,

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.<sup>9</sup>

Not until 1868, however, did the United States constitutionally bestow upon the concept of "life, liberty and property" the status of protected individual rights, interdependent facets of the fundamental equality and worth of the human person. The 14<sup>th</sup> Amendment reads,

§1. All persons born or nationalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State ... shall ... deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.<sup>10</sup> (Emphasis added.)

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<sup>8</sup> "That they (the inhabitants of the English colonies in North America) are entitled to life, liberty and property, and they have never ceded to any sovereign power whatever, a right to dispose of either with their consent." Documents of American History, ed. Henry S. Commager, F.S. Crofts and Co., New York, 1941. P. 83.

<sup>9</sup> *Ibid*, p. 100.

These two tenets, taken together with Article 11§2(2), which places treaty-making authority in the President<sup>11</sup> and Article VI (2) which asserts that the Constitution of the United States and its laws and Treaties shall be "the supreme law of the land..."<sup>12</sup>, indicate that pre-1848 in the United States, "life, liberty and property" were understood as a whole, each element complementing and encompassing the other. Later statutes, such as 18 U.S.C.A. §242 and 42 U.S.C.A. §1983, reinforce this view.<sup>13</sup> Under these laws, a U.S. citizen may seek redress in court against violations of Constitutional and Treaty rights involving government officials or agents.

#### MEXICAN PERCEPTIONS OF BASIC RIGHTS

Mexican views on the right to life and liberty are well-rooted in official documents of the Republic both prior and subsequent to 1848. Citing the seminal nature of the Declaration of Rights of Man and Citizen by the National French Assembly in 1789 to Mexican constitutional thought, Noriega, in tracing the sources of individual rights in the Mexican Constitution of 1917, says,

... the Law, and for that matter, the laws, enacted in chapter one of our Constitution, make crystal clear the challenge stemming from that great dynamic of the natural law of a Nation: that law which has been evolving in the heat of the struggle begun in 1810, which fomented in 1814 and became incorporated in 1824 in the life of the Republic; felt and absorbed in 1847 and which became flesh and spirit in 1857.<sup>14</sup>

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<sup>10</sup> U.S.C.A. Const. Art., Am. Art. XIV.

<sup>11</sup> Ibid. Art. 2, §2.

<sup>12</sup> Ibid. Art. VI.

<sup>13</sup> Under 42 U.S.C.A. §1983, any person who under color of law deprives any citizen of the United States of his constitutional rights as "secured by the Constitution and laws (read Treaties as well) shall be liable to the person injured in an action of law, suit in equity, or other proper proceedings for redress."

<sup>14</sup> Noriega, Alfonso C. La naturaleza de las garantías individuales en la Constitución de 1917, Ciudad Universitaria, México, 1967, p. 97.

Noriega reinforces the notion posited herein that life, liberty and property are essentially interrelated to each other and to the derivative rights which become successively more specific to social, economic and cultural needs of an increasingly complex world.

Noriega states,

... I shall seek to enumerate the most salient rights which the State should recognize and protect: the right to life, to existence; the right to physical freedom, the right to bodily integrity, the right to be master of one's own destiny.<sup>15</sup>

In the prior quote, Noriega referred to a series of historic documents, for one, the Constitution of 1824, which averred in Article 24,

The happiness of a people and of each individual consists in the mutual enjoyment of equality, security, property, and liberty. The preservation as a whole of these rights is the goal of government and the only objective of political bodies.<sup>16</sup>

Furthermore, in the Actas de Reformes of 1847, Article 5 asserts, "...the declaration that a single law would insure the guarantees of liberty, security, and equality in favor of all citizens of the Republic..."<sup>17</sup> (Emphasis added.)

Finally, in the Constitution of 1857, Article 14 stipulates, No one shall be deprived of life, liberty or property without (due process) before tribunals already established which conform with the essential procedural steps and comply with the laws previously enacted toward that end.<sup>18</sup>

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<sup>15</sup> Ibid, p. 111

<sup>16</sup> Burgoa, Ignacio. Las Garantías Individuales, Editorial Porrúa, S.A., México, 1981, p. 119. "La felicidad del pueblo y de cada uno de los ciudadanos consiste en el goce de la igualdad, seguridad, propiedad, y libertad. La integra conservación de estos derechos es el objeto de la institución de los gobiernos y el único fin de las asociaciones políticas." (Emphasis added.)

<sup>17</sup> Ibid, p. 134. "...una declaración de que una ley fijaría las garantías de libertad, seguridad, propiedad, igualdad en favor de todos los habitantes de la República." (Emphasis added.)

<sup>18</sup> Constitución Política de los Estados Unidos Mexicanos, Secretaría de Gobernación, Tomo 1, p. 13. Nadie podía ser privado de la vida, de la libertad o de las propiedades,



The Treaty of Guadalupe Hidalgo incorporates language reflecting much the same conceptual framework of these Mexican documents and by reference those statutes and treaties more familiar to the United States. Further on, a review of the inter-American human rights documents demonstrates that an unbroken line exists between Guadalupe Hidalgo and 20<sup>th</sup> century human rights law, a fact that has yet to be tested in nearly a century and a half.

#### THE RIGHT TO LIFE IN THE TREATY OF GUADALUPE-HIDALGO

The formulation of the Treaty, as early and then revised texts indicate, progressed from a full recognition of inalienable rights of those already on the northern side of the new border, citing longstanding international agreements, to a well-excised document, grudgingly granting the new Mexican/ Americans the most minimal protections.

However, as we shall see, by reference to U.S. documents, other treaties, the Treaty of Guadalupe Hidalgo itself, and to some extent a suppressed protocol, the full scope of rights encompassed in the Treaty will become apparent.

Moreover, a review of the inter-American human rights documents demonstrates that an unbroken line exists between the Treaty and today. This fact has not been recognized nor, consequently, put into practice in litigation since 1848.

Article VIII, in para. 1, identifies as group, "Mexicans now established in territories previously belonging to Mexico..." and adds in para. 2, "...who have remained in the said territories (beyond the year from the date ratifications were exchanged) without having declared their

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posiciones o derechos sino mediante juicio seguido ante los tribunales previamente establecidos en el que cumplan las formalidades esenciales del procedimiento y conforme a las leyes expedidas con anterioridad al hecho.

intention to retain the character of (citizens of Mexico) shall be considered citizens of the United States."<sup>19</sup>

The grant of citizenship, therefore, is not made with regard to propertied status or place of residence: that group of persons of Mexican origin who simply decided to stay behind the new boundary line became citizens by operation of Treaty law.

However, Article IX declares that,

(These) Mexicans...shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged 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 meantime 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.<sup>20</sup>

(Emphasis added.)

Both conditions, the tacit election to assume U.S. citizenship after one year and the admission of the territory into statehood, are since fully complied with by operation of law, although in the case of New Mexico it took more than a half century before it was finally admitted as a state.<sup>21</sup> Congress, in effect, withheld full citizenship from the Mexican/ Americans by setting a vague point in the future ("at the proper time") for grant of citizenship. Congress' fears are clear from a reading of the original text of Article IX, as follows:

Those Mexicans (who by operation of law become U.S. citizens under Article VIII) will be incorporated into the Union of the United States and will be admitted as soon as possible in conformity with the Federal Constitution and to the enjoyment of full rights of U.S. citizens and meanwhile shall be maintained and protected in the enjoyment of their

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<sup>19</sup> Moquín, p. 246.

<sup>20</sup> Ibid, p. 247.

<sup>21</sup> De La Peña y Reyes, p. 122-23.

liberty, their property and of the civil rights which they now have according to Mexican law.<sup>22</sup>

Article IX originally also provided:

...with respect to political rights, their condition shall be on an equality with that of the inhabitants of the other territories of the United States (and at least equally as good as that of the inhabitants of Louisiana and the Floridas) when (they) became territories of the United States.<sup>23</sup>

Thus, the explicit extensions of protections already in effect by virtue of Mexican law as to personal (human), property and civil rights were diluted. And, by deleting references to the Floridas' treaties, Congress also sought to curtail extension of treaty precedents by reference to the Louisiana and Floridas' treaties. The words in Article IX, as to "equality with that of the inhabitants of the other territories," and "at least as good," apparently appeared too generous.

However, two U.S. and one Mexican commissioner drafted and signed a protocol on May 26, 1848, setting forth the understanding which each side had of the revised document. The protocol stipulates that Article IX reflects and in effect incorporates Article III of the Louisiana Treaty (April 30, 1803) as well as the intent of Article VI in the Floridas Treaty (February 27, 1819).<sup>24</sup> The three commissioners affirmed that the U.S. Congress, by substituting Article III of the Louisiana Treaty for Article IX of Guadalupe Hidalgo,

...has in no way sought to diminish what was agreed to in Article IX....As a consequence, all the freedoms and guarantees of a civil, political, and religious nature which the inhabitants of the ceded territories would have under Article IX, the same without difference are contained in the substituted article.<sup>25</sup>

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<sup>22</sup> Ibid, p. 121-22.

<sup>23</sup> Ibid, p. 122.

<sup>24</sup> Commager: for the Louisiana Treaty, P. 190; for the Floridas Treaty, p. 224.

<sup>25</sup> De la Peña y Reyes, p. 138.

Controversy surrounds the drafting of the Treaty as well. Nicholas Trist, the U.S. negotiator, had been deprived of portfolio before entering into negotiations with Mexican authorities. The protocol itself was suppressed and never made a part of the Treaty. Despite this questionable genesis, the Treaty was accepted by Congress, amended, and ratified on U.S. Independence Day, July 4, 1848. All but one question is moot: Does the Treaty contain protections of relevance to current human rights issues or is it a dead letter?

#### THE RIGHT TO LIFE IN INTERNATIONAL HUMAN RIGHTS DOCUMENTS

The concept that "life" itself is a right inherent in the nature of human beings seems so obvious that it hardly requires documentation. Yet, from this essential notion are derived, as Contardo indicates, so many related projections that human existence as a value in itself becomes the starting point for the projection of a whole series of affairs and conditions within a number of international documents.

Contardo, writing in the *Revista Chilena de Derecho*, notes how often the right to life is omitted as a specific reference in many if not most constitutional documents; though it seems so apparent, the right to life, as the most immediate possession of oneself, must be memorialized, especially in light of "the new multiple forms of attack" humanity now faces. Contardo adds,

As a consequence of (the right to life's) gaining constitutional recognition, there may be derived numerous legal means by which to protect it, to sanction unjust violations, and to create proper conditions for its exercise.<sup>26</sup>

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<sup>26</sup> Contardo, Sergio. "Reflexiones sobre los Derechos Humanos," *Revista Chilena de Derecho*, Feb. 1978, Vol. 5, p. 33. Como consecuencia de su reconocimiento constitucional podían derivarse numerosas disposiciones legales que tiendan a protegerla; a sancionar su violación injusta y a crear condiciones adecuadas para su mejor ejercicio.

"From this root sprout other necessities" (De allí brotan otras exigencias), Contardo asserts, which demand the creation of structures within society to protect and augment the assurance and protection of human rights such as medical care, social security, police protection, employment, even economic stability:

No one can be barred from the exercise of these rights, because to do so indirectly attacks one's right to life.<sup>27</sup>

The United Nations Charter, that momentous document in the whole history of world affairs, itself does not specifically assert a "right to life"; rather, it characterizes its States Party to the Charter as, "Determined...to reaffirm faith in fundamental human rights and in the dignity and worth of the human person."<sup>28</sup>

More to the point is the Universal Declaration of Human Rights, a derivative document of the U.N. Charter. Several articles specify that life is a protected value and elaborate its many ramifications into society.

Article 3 cites the right to "life, liberty and the security of person"; 4, denounces slavery and any form of forced servitude; 5, condemns "...torture, cruel, inhuman or degrading treatment or punishment"; 7, entitles the person "to equal protection of the law"; 8, 9, and 10 assert rights to effective remedies before competent tribunals, fair and public hearings by impartial tribunals, and freedom from arbitrary arrest, detention or exile; 25, promotes the right to a decent standard of living, and 27, seeks progress for all by participation in or benefiting from cultural, artistic and scientific progress.<sup>29</sup>

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<sup>27</sup> Ibid, p. 34. A nadie puede impedirse el ejercicio de estos derechos porque ello significa, indirectamente, atentar contra su derecho a la vida.

<sup>28</sup> Basic Documents on International Protection of Human Rights, ed. Sohn, Louis B. and Buergenthal, Thomas. Bobbs-Merrill Company, Inc., New York, 1973, p. 1.

<sup>29</sup> Ibid, p. 31-34.

Of immediate relevance to human rights in the Americas is the Declaration of Rights and Duties of Man, adopted by the Organization of American States in Bogotá in 1948, which is also quite explicit. The introductory paragraphs assert basic assumptions about "the dignity of the individual" and the generic nature of "life in human society..." The Preamble adds substance and depth to the "life" value, promoting culture as the highest social and historical expression of ... spiritual development, ... it is the duty of man to preserve, practice and foster culture by every means within his power.<sup>30</sup>

Several articles assert a series of related rights: I, "life, liberty and security of person"; II, equality of all persons before the law without distinction; XI, preservation of health and well-being; XIII, the "benefits of culture"; XVII, the recognition of a juridical personality and of civil rights; XVIII, the right to a fair trial; XXV, protection from arbitrary arrest, and XXVI, due process of law.<sup>31</sup>

In the Statute of the Inter-American Commission on Human Rights which was approved in 1960, Article 2 assumes by reference the listing of rights as set forth in the American Declaration of the Rights and Duties of Man. In Article 9 and 9(bis), among the functions and powers vested in the Commission is that it pay "particular attention to observance" of certain of the rights cited in the American Declaration, including the ones cited in the preceding paragraph (except for Articles XI and XIII which the author added).<sup>32</sup>

Finally, the Regulations of the Commission, approved in October 1960, places the Commission under the governance of the OAS Charter with its functions determined by the Statute while its scope of goals and activities derive from the American Declaration of Rights and Duties of

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<sup>30</sup> Ibid, p. 187.

<sup>31</sup> Ibid, p. 188-92.

Man. The full impact of the Commission's powers are spelled out in following sections. The significance to Mexican American needs and aspirations will also become apparent.<sup>33</sup>

Reflecting its derivation from the American Declaration and other human rights documents, the American Convention on Human Rights further enhances the understanding of "right to life" as an inherent human value and societal goal. The Convention, of course, is of crucial importance, as we shall discuss, with respect to the procedural, administrative and juridical system now established in the Americas.

Because of the particular focus of this paper on inter-American human rights, specific references within the American Convention which fall into the general penumbra of "life"-related rights are reviewed as follows:

Preamble ... the essential rights of man are not derived from one's being a national of a certain state, but are based on attributes of the human personality, and they justify international protection ... complementing the protection provided by the domestic law of the American states.

Article 4.1 Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life.

Article 5.1 Every person has the right to have his physical, mental and moral integrity respected.

Article 7.1 Every person has the right to personal liberty and security.

Article 8.1 Every person has the right to a hearing ... for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

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<sup>32</sup> Ibid, p. 196-97.

<sup>33</sup> Ibid, p. 199.

Article 11.1 Everyone has the right to have his honor respected and his dignity recognized.

Article 24 All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25 Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights.<sup>34</sup>

Under the American Convention, Article 41 reflects the same functions as Article 9 and 9(bis) in the Statute, with an important distinction between communications (complaints) and petitions. Submission of communications to the Commission and cases to the Court of Human Rights vary decidedly in regard to restrictions.

Under Article 44, "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with this Commission containing denunciations or complaints of violation of this Convention by a State Party."<sup>35</sup> (Emphasis added.) To submit a case before the Court, however, only a State Party or the Commission has such right under Article 61.<sup>36</sup>

Where communications involve allegations by one State Party against another, Article 45 requires that at the time a State Party files its instrument of ratification of the Convention, it include a statement recognizing the competence of the Commission to consider such communications before the Commission will accept a State Party communication against another State Party; similarly, under Article 62, the competence of the Court of Human Rights must be recognized by a

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<sup>34</sup> Ibid, p. 209-218.

<sup>35</sup> Ibid, p. 197.

<sup>36</sup> Ibid, p. 197-98.



State Party before decisions of the Court become binding upon that State Party.<sup>37</sup>

An Article 44 petition has a series of hurdles to overcome before receiving full Commission attention. Article 46 §1 requires the exhaustion of domestic remedies and submission of the petition within six months of the date "the party alleging violation of his rights was notified of the final judgment."<sup>38</sup>

An Article 44 petition must contain the name, nationality, profession, domicile, and signature of the petitioners or the legal representative. The requirements for exhaustion and six months' period need not apply where, under Article 46 §2, there are no domestic remedies nor due process afforded by the state concerned in regard to the right allegedly violated, the party making the allegation has been denied access to the remedies or prevented from exhausting them, or there has been unwarranted delay in obtaining a final judgment.

If Article 46 requirements are not met, the facts do not tend to establish a violation, or the petition is "manifestly groundless or substantially like another case already studied by the Commission or another international body," Article 47 provides for the Commission to find the petition inadmissible.<sup>39</sup>

However, once these barriers are overcome, a petition then undergoes a series of procedures under Article 48 to 50: the cause may be settled or submitted to the Court of Human Rights, or the Commission may vote to take appropriate measures such as making recommendations to the state concerned or publishing a report on the matter.

Because only a State Party or the Commission may approach the inter-American Court, who that complainant would be becomes the

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<sup>37</sup> Ibid, p. 203.

<sup>38</sup> Ibid, p. 223.

paramount - and extremely political - question. Two state parties have clear standing to sue: the United States and Mexico. It is doubtful that the U.S. government would implicate itself on a charge of a human rights violation. (In one of the first cases before the Court, however, Costa Rica itself initiated an inquiry. Government of Costa Rica, In the Matter of Viviana Gallardo, et al. Inter-American Court of Human Rights, Decision of Nov. 9, 1981, No. Glol/81.) Mexico would face enormous political and economic considerations before taking action. Most likely, only the Commission would approach the Court.

Another approach involving the Court involves recourse to the advisory function of the Court. In order to determine the validity of issues stemming from interpretative problems related to internal domestic law or inter-American agreements, Article 64 specifically provides that any member State or the Commission "...may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States.<sup>40</sup> (Emphasis added.) Such advisory jurisdiction may be invoked with regard to any state whether or not it recognizes the Court's competence. Buergenthal, a member of the Court, asserts that, though not binding, states may find it as difficult to disregard an advisory opinion as they would a judicial decision.<sup>41</sup>

In the realm of international affairs, the publicity such an event can generate might prove an effective means of seeking redress.

As a treaty, then, which falls clearly within the purview of American documents establishing obligations among nations, the Treaty of Guadalupe Hidalgo must also be considered an inter-American document "...concerning the protection of human rights" and thus within

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<sup>39</sup> Ibid, p. 229.

<sup>40</sup> Ibid, p. 229.

the jurisdiction of the Commission and the Court. Certain questions need to be raised and resolved, such as: what is the nature and extent of the Treaty's human rights protections, can Chicanos in fact have standing as claimants, and where do remedies lie, within the jurisdiction of the Commission, the Court or the OAS General Assembly? An American forum exists which we can address and a document exists, however old, which warrants renewed attention and review with respect to the deprivation of human rights which the Mexican-American is now experiencing in the United States.

#### SOME PERTINENT CASES

Vigil v. U.S., 293 F. Supp. 1178 (1968), attempted to draw on civil rights statutes to regain control of land grants in New Mexico, but the claim was dismissed for failure to state a claim. The complaint cites the Treaty of Guadalupe Hidalgo outside any human rights context and otherwise fails as "vague and general," at 1183.

The distinctiveness of the Chicano person was alluded to in In Re Rodriguez,<sup>42</sup> one of less than a handful of cases cited in Shephard's under the Treaty (9 Stat. 922) reaching the Supreme Court or District Courts based on other than a property claim. Rodriguez' application did not fit the description of either a white or African as the immigration laws required. The Court noted that color or race had not been a condition for becoming a citizen; rather it had merely been used to distinguish the nature of rights permitted. (Statutory exclusion of Asians from becoming citizens through the naturalization process was upheld in In re Ah Yup, 5 Sawyer. 155, 1 Fed Cas. 22). Rodriguez was granted citizenship essentially, the Court held, because under the Treaty of Guadalupe

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<sup>41</sup> Ibid, p. 224.

<sup>42</sup> Ibid, p. 224-25.

Hidalgo, Mexicans were granted citizenship status without regard for color or race and besides, Rodriguez had been a model American for more than 10 years as a resident of San Antonio.

A more famous case, for different reasons, provides another perspective on the Chicano person. In Dred Scott v. Sandford, 60 U.S. 586 (1856), the Treaty was cited to show that the Constitution had not excluded "colored aliens from citizenship", i.e. color of a certain kind was not a necessary quality to obtain citizenship. The grant or withholding of citizenship is the prerogative of Congress. In the case of the Mexican American, he obtained citizenship by virtue of treaty powers, without regard to color or race, but certainly with regard to his identification with a national origin. Cases which have since sought to establish the character of the Mexican American as an identifiable ethnic group took no cognizance or had no knowledge of this fact, e.g., Hernandez v. Texas, 347 U.S. 475, 74 S.Ct. 667, L.Ed. 866 (1945); U.S. v. Texas, (E.D. Texas) 342 F.Supp. 24 (1971).

What this line of thought suggests, then, is that the Chicano may have special status with regard to domestic forums, but certainly should have special standing in international ones dedicated to the protection of human rights. Such a theory, of course, has yet to be tested in a domestic or international forum.

With regard to the latter avenues, the thrust of the analysis here suggests that the international character of the harm inflicted upon Chicanos would constitute a basis for submitting proposals for study by the Commission as well as petitioning the Commission for redress of alleged violations. The doctrine of exhaustion, moreover, would indicate that redress of grievances in the area of human rights within the Americas be instituted in the inter-American arena before recourse to other international bodies.

Besides, while the United States is not technically bound by the Convention, it is not free of public scrutiny: the Convention having gone into effect July 18, 1978, the United States cannot simply ignore the findings of a body duly established by the Convention. The inter-American system is designed as a forum for bringing world scrutiny and opinion to bear in as many ways as possible on the preservation and extension of human rights to all persons in the Americas.

If, in fact, Chicanos are victims of conduct proscribed by the Treaty, they should have full recourse to its protections. In short, the inter-American system of human rights may constitute the next step in Mexican Americans' continuing pursuit of the right to life and liberty.

Mexican Americans could gain access to inter-American forums through three principal means:

- under the Statute of the Commission on Human Rights, seek consideration of Chicano rights as topics for Commission study,
- under the Regulations, file petitions, and
- under the Convention, have the Commission conduct investigations and submit and/or publish reports of a public nature, or bring a specific case before the Court of Human Rights.

Because domestic remedies must be followed through to some final judgment under the doctrine of exhaustion, cases must be carefully selected which in fact have reached a final determination or have been stymied or delayed at some point in the adjudicatory system within the United States (Article 46, §2) before a petition or case may be found admissible and either dealt with by the Commission or passed on to the Court.

An additional hurdle exists where the State Party must have filed, either with their instrument of ratification or some time since, a statement acceding to the competence of the Commission and the Court before communications related to that State Party may be accepted for consideration. The United States has signed and ratified the OAS Charter and is thus bound by the American Declaration of the Rights and Duties of Man. However, it is only a signatory at present to the American Convention (signed June 1, 1977). Until ratification, it need not submit itself to adjudicatory proceedings under the Court but it is still open to studies by the Commission and to submittal of petitions alleging human rights violations.

#### CONCLUSIONS AND RECOMMENDATIONS

In light of the continual violence being inflicted on Mexican Americans throughout the Southwest, the most significant finding posited by this paper is that the Treaty of Guadalupe Hidalgo is in fact an international rights document, extending guarantees through the decades which have not been asserted on an international level. Moreover, for the first time in the Americas a system for addressing violations of basic individual rights is in place which provides several means by which persons in the Americas can seek redress.

The Chicanan community, by virtue of its origins in an international agreement in which it had no say at the time, may not only hold U.S. citizenship, but a form of standing in certain international forums. Whether the Mexican American may seek redress in inter-American forums by virtue of this dual status, has yet to be tested. Thus, while the doctrine of exhaustion may apply to the Chicanan domestically, his international status may suggest a way to short-circuit a judicial

system which has failed to address his claims against injustice except when a judge faces a situation so "outrageous" that it cries for vindication.

Many questions have been raised in this paper which suggest various courses of action. The American Convention on Human Rights through its operational branches, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, holds the answer to many of these questions. Finding the suitable case, the most fitting approach, and the appropriate forum to deal with a petition or issue will require considerable effort on the part of many persons.

Many areas of research, moreover, have been indicated in this paper as well which would provide information on related facets of the history of the Mexican American from a juridical standpoint. Legal research into the land grants issue, educational deprivation, employment exploitation, and other elements of the Mexican American experience should help fill out what is known about "those Mexicans" who stayed on this side of the new border with Mexico 150 years ago.

The more that is discovered about the international as well as domestic status of the Chicanan, the greater will be the opportunity to redress the kinds of injustice inflicted upon Chicanas and Chicanos for the past century and a half. I cite only one such incident: the shooting death of Ezequiel Hernandez, Jr., by a U.S. Marine during a drug patrol along the Mexican border. Hernandez' death has not been vindicated at the domestic level, nor have the cases of many more Hernandezes, nor have their families gained restitution, nor has the community of Mexican Americans obtained full redress. Perhaps it is only at the international level that such redress can be obtained for the Chicanan people, this offspring of war and Treaty.

## Appendix A

The following are extracted from the Archivos de la Secretaría de Relaciones Exteriores (ASRE) in Mexico, identifying references in the ASRE files of incidents involving violence against Mexican Americans:

| File No.  | Description   |
|-----------|---|
| 1-11-1110 | Persecution of mexicanos in U.S. in late 1870s  |
| 1-12-1400 | Persecution and death of mexicanos in U.S.  |
| 1-15-1731 | Mexican bandoleros against U.S., Caso El Alamo 1891   |
| 2-12-2904 | Mistreatment of mexicanos in California in 1870s  |
| 2-13-2975 | "   |
| 2-13-2976 | "   |
| 11-2-106  | Persecution of mexicanos in 1870s   |
| 11-511    | "   |
| 12-3-37   | Persecution in Texas in 1880s, Caso del Rio   |
| 12-13-48  | Complaints by Mexican consuls in 1850s  |
| 12-13-50  | "   |
| 18-27-3   | Expulsion of mexicanos, Caso Shafter 1890   |
| 18-27-34  | Expulsion of mexicanos in 1880s   |
| 18-27-114 | Attacks against Mexican residents, Caso El Hijo   |
| 18-27-128 | Abuses of mexicanos in late 1880s   |
| 28-27-126 | Eight mexicanos killed in Wyoming 1889  |
| 730-2     | Mexican killed in Duval, Texas  |
| 3743-14   | Mexican repatriation due to persecution 1880s   |
| 10-H-I-7  | Mexicans recruited to fight on both sides of Civil War  |
| Page 262  | Raimundo de la Mota and eight others in Calaveras County, Cal., robbed and forced off their land under threat of being lynched.   |
| Page 263  | Claims against confiscation of ranches, mistreatment by civil authorities, lynchings (e.g., robbery, assault with four businessmen killed in Feb. 1853 in Roma, Texas). |

Source: Zorilla, Luis G., Historia de las Relaciones entre México y los Estados Unidos de América, 1800-1958, Editorial Porrúa, S.A. México, 1965.





# Fourth Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

Leon Metz  
Historian and author  
El Paso, TX

Robert Seipel  
Land Surveyor  
El Paso, TX

Sunday, May 3, 1998  
El Paso Museum of History

THE MEXICAN BORDER

LEON C. METZ

SUNDAY, MAY 3, 1998

The Mexican War ended with the Treaty of Guadalupe Hidalgo signed in Mexico City. That treaty dictated terms for a cession of hostilities. It arranged for the mutual withdrawal of troops, Mexican protection against Indian attacks from the North, citizenship and property status of civilians passing from one nationality to another, and above all, it created a surveyed, verifiable international boundary between the United States and Mexico.

The boundary began at the mouth of the Rio Grande, three leagues out in the Gulf of Mexico, and followed that river to the southern boundary of New Mexico, which was north of a town called Paso. Hence the boundary forked off to the Gila River, followed it to its junction with the Rio Colorado, and then plunged straight across the remaining continental one-third to a point on the Pacific Ocean one league south of San Diego Bay.

Boundary commissioners Pedro García Conde for Mexico, and John R. Weller for the United States met in San Diego. On July 6, 1849, the surveys began, everybody's intention being to survey into El Paso, down the Rio Grande to the Gulf of Mexico, and then take passage to their homes. It did not quite work out like that.

The American engineers came up with one figure for the southern limit of San Diego Bay. The Mexicans had another. The boundary commissioners split the difference. Incidentally, everyone recognized that there would be survey disagreements. Although the Americans had the more modern equipment, even that was primitive by today's surveying standards. Therefore, when disagreements arose, and there were lots of them, the two commissioners resolved the differences. Their mutual decisions were official, legal and binding on both nations for all time.

After reaching agreement on the lower limits of San Diego Bay, the two teams surveyed east from San Diego and west from the Colorado/Gila junction. They agreed to meet in the middle. Unfortunately, due to miscalculations the two lines did not properly intersect, but they were pulled together anyway...and that was that. Between San Diego and the Colorado, the international line was official, intact and accepted.

Meanwhile, the American contingent had been filled with dissension. It wasted much of its money. The surveys subsequently collapsed as Washington recalled its officials.

The government replaced John Weller with John R. Bartlett, a New England bookdealer. This time the contingent would steam to Texas, disembark in Indianola, walk overland to El Paso, and survey in two directions at once: west to the Colorado/Gila junction, and southeast along the Rio Grande to the Gulf of Mexico.

In El Paso, a dispute arose as to the exact location of the southern New Mexico line. Granted it was north of the town called Paso. In this respect, both parties were obligated by the treaty to be guided by the Disternell map, even though it placed the town called Paso about 40 miles further upstream than it was on the ground. Since the map had an eight mile difference between Paso and the New Mexico line, did this mean that the commissioners should survey eight miles north of El Paso on the ground, then head for the Gila? Or did it mean that the surveyors would go 40 miles north along the river to where the Disternell Map placed El Paso, then 8 miles beyond that. Obviously, the latter would benefit Mexico.

The Americans, looking at all the desert around Paso, said "Who cares about this wasteland? Let's be kind to Mexico." So everybody

began surveying a mile or so south of the present-day community of Doña Ana.

They reached the Gila River near Santa Rita, and began surveying down it toward its junction with the Colorado. The surrounding mountains swarmed with Mimbres Apaches led by Mangas Coloradas, but the Indians were generally friendly toward the Americans.

Bartlett, for his part, imagined himself a Presbyterian preacher. He gave his staff Sunday afternoon off for listening to him preach on Sunday morning.

In mid June 1851, as guide John Cremony lay reading in his tent, two naked Mexican boys charged inside. Sometime earlier they had been kidnapped by Indians down in Mexico, and now they were pleading with him for sanctuary. Although the Indians resisted giving up the boys, the military prevailed after discussions and suitable trade goods had changed hands.

At roughly the same time, the military arrested a group of Comancheros at Santa Rita who had in their possession a 16 or 18 year old Inez Gonzalez. This very attractive young lady had been kidnapped from her home in Sonora by Indians, sold to another tribe, who then sold her to the Comancheros. They were trying to sell her again when the Americans put them in irons.

Bartlett turned the two boys over to the Mexican boundary commissioner, but said he would take Miss Inez home himself. He halted the boundary surveys, and journeyed at least 100 miles south of the border where he turned Inez over to her family. There he caught typhoid but survived. The Mexican boundary commissioner, García Conde, also caught typhoid. He died.

Since the American boundary commission was broke, Bartlett asked his men to return to Santa Rita as best they could. He would travel

overland to Guaymas, Mexico, take a ship to San Francisco, and cashed vouchers.

He did, but upon returning to San Diego, he learned that Washington had recalled him because he had given so much land away to Mexico. He traveled overland to the Gulf coast and sailed back to Washington where he was dismissed.

Washington subsequently appointed a new boundary commissioner, as did Mexico. Together they finished the boundary surveys.

In the meantime, Washington dispatched James Gadsden to obtain from Mexico sufficient land for a railroad. His subsequent purchase added what is today roughly the southern third of Arizona and New Mexico. During the United States Civil War, this area briefly became known as the Territory of Arizona.

Fifty-two stone monuments marked the land border between El Paso and the West Coast, with Boundary Marker No. 1 being at the Pacific. However, in 1892, Commissioner Jacob Barlow resurveyed the line, installing 258 monuments of stone and iron. This time, International Boundary Marker No. 1 was designated across the Rio Grande from El Paso, where it has been ever since. Incidentally, Boundary Marker No. 1 is probably fifty feet in Mexican territory. The other part of that rather jagged line sometimes favors the United States with a mile or so of land, and sometimes Mexico. The point here is that the original surveys, for all their errors, had to stand. If not, we would be changing the international line right up to this very day, especially in view of satellite measuring.

The river border in particular had its identification problems. Where more than one channel existed, the deeper one was the international line. Islands therefore passed either to the United States or to Mexico.

Now and then the deeper channel led to interesting consequences. For instance, Ysleta, Socorro and San Elizario were originally founded on the south bank of the Rio Grande. However, by the time of the surveys, the river had abruptly changed its course, putting those towns on the north bank, and thus in United States jurisdiction.

The Rio Grande, particularly in the valley region, meandered widely and created what the Mexicans call the *bosque*, meaning thickets, swamps, jungle-like growth. In places these regions would be ten or more miles wide. These curves were called bancos, and the channels often silted up or changed year to year. As a result, these swampy areas became a no-man's land as it became almost impossible to identify national jurisdiction.

The 1905 Treaty for the Elimination of Bancos virtually eliminated much of the problem. In essence, both governments drew a line down through the middle of these curves (bancos). Land on the north side went to the United States; land on the south side went to Mexico. At this time, it became possible to clear the land, and much of what had once been *bosque*, became farms.

Other treaties led to the distribution of Rio Grande and Colorado River water. Dams sprang up.

Although we are all familiar with the 1916 Punitive Expedition into Mexico, most of us never heard of the order of June 1, 1877. This very controversial order permitted the United States to engage in hot pursuit of Indian and outlaw bands into Mexico. This very controversial agreement was approved, although reluctantly by Mexico, and continued in force on a now and then basis up until 1896 when both countries unsuccessfully sought the Apache Kid. At that point, the border crossing agreement quietly faded away.

Today the Mexican border remains in the news as much as it ever did. Things have changed, but things have also stayed the same. But of this much we can be proud: the border was originally a line separating enemies. Today, it is a place where friends meet ... after an hour's wait.



THE SURVEY OF THE INTERNATIONAL BOUNDARY FROM THE  
GULF OF MEXICO TO THE PACIFIC COAST

ROBERT SEIPEL  
SUNDAY, MAY 3, 1998

Political considerations aside, the survey of the boundary between the United States and Mexico was a remarkable accomplishment. The Southwest was wild and sparsely settled; the Apaches were quite a problem; there were two groups of surveyors trying to agree upon and survey the same line; and the movement of personnel and equipment across the country was extremely difficult and time-consuming. That the survey happened at all, and ended up as accurate as it is, is quite astounding.

The men who made the survey were mostly soldiers; some were civilian employees of the military, others were trappers or traders or simply adventurers. The chief surveyors of the parties were highly trained and well educated. They were surveyors in an era when surveying was considered a respected and noble profession.

I'm going to consider the boundary survey between the United States and Mexico in three phases: first, the survey from the Pacific Ocean to the Colorado River; second, the survey of the Rio Grande from the Gulf of Mexico to El Paso; and, third, the survey from El Paso to the Colorado River. For more than one reason, no single section was surveyed continuously from beginning to end, nor were the sections surveyed in the exact order I'm going to discuss them; in the interest of simplicity, though, we're going to pretend they were. Because various aspects of all 3 phases of the survey were occurring simultaneously, in order to avoid as much confusion as possible, I'm also going to omit most of the dates, as well as the names of the people involved.

The Treaty of Guadalupe Hidalgo, ratified in 1848, described the westerly portion of the new international boundary as "*thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.*" It goes on to say "*in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is*

*agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league south of the southernmost point of the port of San Diego."* Seems simple enough, doesn't it - find the point one marine league south of San Diego, then connect that point with a straight line to the intersection of the Colorado and Gila Rivers?

The Mexican and American survey parties began the boundary survey on July 6, 1849. The first problem the surveyors encountered was that the Treaty did not include a definition of the length of a "*marine league*." The surveyors talked for a while, and finally agreed that a marine league should be 5,564.5 meters - just slightly less than 3 ½ miles. Each party set an initial point south of San Diego - the locations disagreed by a considerable amount (approximately 3500 feet), but a compromise was reached and Monument No. 1 was established.

A second American survey party headed east to the junction of the Gila and Colorado Rivers, some 148 miles from San Diego, to establish a second initial point from which to begin surveying the line back toward Monument #1. They set this second initial point, then surveyed west for some time. Deciding it would be easier to survey the remainder of the line from west to east, they packed up their gear and returned to San Diego. They ran the remainder of the line east from Monument No. 1, and when they got to where they had stopped their previous survey, they discovered that they were some 1800 feet south of the east-to-west line they had previously run. They decided that the east-to-west line was probably more accurate than the west-to-east line, so they adjusted the west-to-east line south to agree with the east-to-west line.

Why did the two lines miss by so much? I think there are 3 major factors to consider, and these factors apply to all surveys, whether ancient or modern. The first to consider is the conditions under which the survey

was made - these men had to survey across forests and deserts, mountains and rivers, there was little or no water in arid areas, and they had to deal with extreme weather conditions throughout; these are all things which contribute to poor surveying results. Second, the surveying instruments of the day were crude and inherently inaccurate, and any repairs or adjustments to them had to be made in the field, while the survey was in progress. The third factor to be considered is that, on the surface of the earth, straight lines that run east and west are actually curves! This factor can be compensated for during a survey, and I'm sure the survey parties attempted the necessary corrections, but the probability is high that this was a contributing factor. Considering the time, the place and the conditions, it's amazing to me that they only missed by 1800 feet.

At this point, the Boundary Commissioners adjourned and agreed to meet in El Paso in November of 1850 to establish another initial point from which to survey the remainder of the boundary, west toward the Colorado River and south toward the Gulf of Mexico.

The Treaty of Guadalupe Hidalgo defined the initial portion of the international boundary by stating it "*shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo Del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico.*" This, then, is the next phase of the survey we'll consider.

In August of 1852, the American and Mexican survey parties began surveying the boundary down the Rio Grande from El Paso. The early part of the survey from El Paso to the Big Bend was fairly routine, but the survey through the Big Bend was another story entirely. Remember that the Big Bend was essentially unexplored; this was extremely rugged and

dangerous country. The high canyon walls made astronomic observations difficult or impossible, and the river area was generally inaccessible to supply wagons through most of the Big Bend. The Rio Grande itself was swift and full of rapids and large boulders, causing the surveyor's boats to continually be swamped or sunk.

The surveyors persevered, however; where they could, they established astronomic observation stations and used these to make calculations to connect the portions of the line that had actually been surveyed down the river. This portion of the boundary was surveyed primarily by the American party; the Mexican party was so poorly equipped and financed by their government that they fell way behind the American team. The survey continued down the river until November of 1852, when even the American party ran out of money because of lack of funding from Congress. They left the river at Rio Grande City just before Christmas, 1852.

In the spring of 1853, Congress appropriated enough money to complete the Rio Grande portion of the boundary, so the survey resumed in March of 1853, this time from the Gulf of Mexico up. By September, this portion of the survey was essentially complete, except for the final monumentation of the boundary line.

The final portion of the international boundary we'll talk about is the stretch from El Paso to the Colorado River, described by the Treaty of Guadalupe Hidalgo as "*thence up the middle of that river [the Rio Grande], following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; ... ; thence down the middle of said branch and of the said river, until it empties into the Rio*

Colorado." The Treaty goes on to say, "*The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell.*" This portion of the boundary is without question the most controversial, and probably the most interesting, portion of the entire international boundary between the United States and Mexico.

The survey from El Paso westward began in December of 1850, as most surveys in this era began, with astronomic observations to determine a starting point. These observations led immediately to the discovery that Disturnell's 1847 map contained two major errors - first, the Rio Grande on the map was 2 degrees (approximately 115 miles) west of its actual location, and, second, the town of El Paso was depicted 30 minutes (about 34 miles) north of its actual location. Since, according to Disturnell's map, the south boundary of New Mexico was supposed to be 8 miles north of El Paso, the Mexican boundary commissioners wanted to set the initial point with respect to El Paso and the Rio Grande as they were shown on **the map**; it was obviously more advantageous to their position, as well as what the Treaty had explicitly declared. The Americans, on the other hand, wanted to place the initial point 8 miles north of El Paso and on the Rio Grande as they existed on the **ground**; they declared this to be the **intent** of the Treaty. It would also give the United States, rather than Mexico, a strip of land in the Mesilla Valley that the Americans were considering for a possible railroad route.

After prolonged discussion, the American and Mexican boundary commissioners compromised on an initial point where the Rio Grande, as it was situated on the ground (the American position), intersected the parallel of 32 degrees 22 minutes North Latitude (the Mexican position).

Even after the compromise, the surveyors for the two sides disagreed on the location of the initial point on the ground by 100 feet or so; they finally decided to split the difference, and the compromise initial point monument was dedicated on April 24, 1851.

The compromise on the location of the initial point created quite a stir, mostly because it left that strip of the Mesilla Valley I spoke of earlier on the Mexican side of the border rather than in the United States. The powers-that-be in Washington were so outraged over the compromise that events were set into motion which eventually led to the Gadsden Purchase in 1853. The terms of the Gadsden Purchase defined the international boundary much more explicitly; the south boundary of New Mexico was moved from 32 degrees 22 minutes North Latitude south to 31 degrees 47 minutes North Latitude. This had the net effect of moving the disputed strip back into the United States; ironically, it never was used by the railroads.

With the location of the initial point above El Paso finally settled, Boundary Monument No. 1 was erected on January 31, 1855 near Mt. Cristo Rey. The American party surveyed west from this point for 100 miles as required by the Gadsden Treaty, then south to 31 degrees 20 minutes North Latitude; this portion of the survey was fairly routine and was completed in late March, 1855. They continued along 31 degrees 20 minutes North Latitude until they reached the 111<sup>th</sup> meridian, marking the boundary with stone mounds wherever there were enough native materials at hand. This portion of the survey was made without the assistance of the Mexican survey party, which had yet to make an appearance.

A second American party, meanwhile, was attempting to survey the remainder of the Gadsden Treaty line from the Colorado River east to a point at the intersection of 31 degrees 20 minutes North Latitude and the

111<sup>th</sup> meridian. After repairing his instruments, which had been damaged in transit from San Diego, the American surveyor began making his astronomic observations; the Mexican party finally arrived and, by April 10, they had established the initial point and were ready to proceed eastward. The two parties soon discovered, however, that there was little or no water to be found in the first 125 miles of the survey, and so they decided to stop right where they were and proceed to the other end of the line in hopes of being able to survey the line backwards to their present location.

The joint party traveled to Dos Nogales and by the end of June was proceeding westward. The American party surveyed the line itself, while the Mexican party went on ahead and established an astronomical station so they could calculate a latitude and longitude for the American party to check in to. The delay in surveying this portion of the line had allowed the rainy season to set in, thus providing sufficient water for the survey parties to complete their task, which they did in mid-October, 1855. Two months later, the last of the survey parties completed its work and arrived in San Antonio, and the field survey of the boundary was complete.

In June of 1856, with the maps and reports of the survey finally submitted by the boundary commission, President Franklin Pierce proclaimed the survey of the international boundary between the United States and Mexico to be finished. It had taken more than six years and covered some 1950 miles.

In 1883, an American inspection team reconnoitered the boundary to determine the condition of the boundary markers, and in 1891, the joint boundary commission was re-created in order to define the boundary more precisely. The joint commission added more boundary monuments, and others were added in later years as well.



As I said to begin with, political considerations aside, the survey of the international boundary was a task of enormous proportions; that it was completed at all, much less as accurately as it was, is a tribute to all those who contributed their efforts, and in some cases, their lives, to the project.

It is a well-settled and long-standing canon of surveying law that an *original* monument, set by the *original* surveyor, is never in the *wrong* place. While it's true that some of the monuments marking the international boundary are in slightly different locations than called to be on the maps and reports, the fact that they're original monuments provides them the dignity to which original monuments are entitled. Thus, they mark a dividing line which, for the foreseeable future, should remain firmly anchored in its historic location.



# Fifth Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

Michael Quintana  
Congressional Aide to Bill Redmond (R), NM

Dr. Art Gomez  
History Program Manager  
National Park Service  
Intermountain Support Office

Thursday, May 7, 1998  
Chamizal National Memorial

BACKGROUND AND SUMMARY OF H.R. 2538, A BILL TO ESTABLISH  
A PRESIDENTIAL COMMISSION TO DETERMINE THE VALIDITY OF  
CERTAIN LAND CLAIMS ARISING OUT OF THE TREATY OF  
GUADALUPE HIDALGO OF 1848.

INTRODUCED BY REP. BILL REDMOND (R-NM) ON  
SEPTEMBER 24, 1997

MICHAEL QUINTANA  
AIDE TO REP. BILL REDMOND (R-NM)  
THURSDAY, MAY 7, 1998

## BACKGROUND ON THE ISSUE

At the end of the Mexican-American War, the United States signed a treaty with Mexico called the Treaty of Guadalupe-Hidalgo. February 2, 1998, marks the 150<sup>th</sup> anniversary of the signing of this treaty. When the treaty was signed, American troops held the Mexican capital, and it is believed that Mexico signed it under duress, selling a large part of their Northern territories for \$15 million. These territories included Alta California, Arizona, New Mexico, and Texas between the Nueces and the Rio Grande; plus part of Utah, Nevada, and Colorado. The treaty is credited with creating the American Southwest.

The Treaty of Guadalupe-Hidalgo guaranteed this sale and was supposed to protect the lands, culture, religion, and civil rights of the wartime residents who had been Mexican citizens and their descendants. Article VIII of the Treaty states: "In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract shall enjoy with respect to it, guarantees equally ample as if the same belonged to citizens of the United States."

Article IX, which covers the social rights of the newly de-Mexicanized citizens, states that "The Mexicans, who in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic ... shall be incorporated into the Union of the United States and be admitted to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property ..."

Native Americans referred to the treaty in legal disputes over reservation land, as did various Hispano political/land organizations.

The Indian Land Claims Commission (1946) referred to the Treaty and used it to support their land disputes.

#### BRIEF SUMMARY OF H.R. 2538

H.R. 2538 would establish a Presidentially-appointed Commission to determine the validity of certain community land grant claims arising out of the Treaty of Guadalupe-Hidalgo of 1848, involving the descendants of persons who were Mexican citizens at the time of the treaty. The land in question is largely public land and the disputes are largely with the federal government. A community land grant refers to a village, town, settlement, or pueblo consisting of land held in common by three or more families under a grant from the King of Spain before the effective date of the Treaty of Cordova, August 24, 1821, or from the authorities of the Republic of Mexico before May 30, 1848, in what became the State of New Mexico, regardless of the original character of the grant.

The Commission would review the land claims and make recommendations about whether a community land claim shall be reconstituted and its lands restored. The Commission will do this by submitting a report to the President and to Congress. It is up to Congress and the President to take further action after this.

Treaty of Guadalupe-Hidalgo  
Brief explanation

Article 10, El Tratado de Guadalupe Hidalgo (The Treaty of Guadalupe Hidalgo) begins:

“All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid to the same extent if the said territories had remained within the limits of Mexico.”

1998 marks the 150<sup>th</sup> anniversary of the treaty and created the American Southwest

- was signed at end of Mexican-American War, February 2, 1848 in the villa of Guadalupe
- annexed territory of California, Arizona, New Mexico, Texas and parts of Utah, Nevada and Colorado for \$15 million
- most importantly, this is not a racial issue! It is a right-vs-wrong.

Treaty was more than a “bill of sale”; it guaranteed Mexicans and their descendants political rights, including territorial rights

- protected the lands, culture, religion, and civil rights of Mexican citizens (including their descendants) living in the territory to be annexed to U.S.
- Article VIII professes the sanctity of Mexican property by stating U.S. shall inviolably respect the land belonging to (then) Mexican citizens and “guarantee equally ample [land] as if the same belonged to citizens of the United States.”

- many people see the Treaty as a central contract that governs relations between U.S. and Mexico

Native Americans referred to the treaty in legal disputes over reservation land, as well as Hispano political/land organizations.

- Reies Lopez Tijerina and the Alianza movement during land dispute in northern New Mexico which led to the infamous Rio Arriba Courthouse raid in 1967.
- the Indian Land Claims Commission (1946) referred to the Treaty and used it in land disputes.

There are really two reasons to explain the situation we find ourselves in as New Mexicans (and the Southwest for that matter)

- U.S. Congress failed to provide money and guidance for the transfer of land from Mexico to the United States.
- U.S. courts failed to provide a smooth transition from Spanish law to English common law.
  - \* the courts failed to demonstrate some measure of respect for the *mercedes* concept, or the common ownership of land
  - \* courts failed to defend property rights of new American citizens in the spirit of the law in which it had originally been granted (which was Spanish law)

## **GUADALUPE-HIDALGO TREATY LAND CLAIMS ACT**

The Guadalupe-Hidalgo Treaty Land Claims Act of 1997 (HR 2538) has been introduced by Congressman Bill Redmond of New Mexico and is expected to pass the 1998 congressional session. We seek your support in this popular effort. This bill:

- \* is an environmentally sensitive strategy to restore sustainable communities in New Mexico
- \* rights historical injustices done to traditional communities after the Treaty of Guadalupe-Hidalgo ending the Mexican-American War.
- \* recognizes the rights of traditional communities to local self-governance and sustainability
- \* sets up a Commission to adjudicate the return of common lands to traditional land-based communities
- \* sets up a Study Center to aid in the Commission's work

**The most frequently asked questions about this bill are:**

### **What is the Treaty of Guadalupe Hidalgo?**

The Treaty of Guadalupe-Hidalgo was signed in 1848 to end the war between Mexico and the United States. Mexico lost about half of its land due to the war. The treaty guaranteed all property rights of all natives living in the new U.S. territory.

### **Who are the land grant heirs?**

The land grant heirs are descendants of the settlers who came from Spain (not conquistadors) and intermarried with the Indians in Mexico and the tribes in New Mexico (Navajo, Apache, and the Pueblo Indians). Thus they have a long indigenous heritage in this hemisphere.

### **Is this an act of privatization? Won't the heirs just turn around and sell the land to corporations?**

This bill recognizes the sovereignty and self-governance of the land grants by establishing them as municipalities. Land will not be bought or sold but be set aside as common lands for traditional sustainable uses.

### **Will the use of the land involve clearcutting, strip mining, or other ecologically destructive practices?**

This land will be used only for sustainable economies that will maintain the land grant heirs and their families into the future.



**Why is a Republican carrying the bill?**

Former Congressman Bill Richardson introduced a similar bill just before he was named Ambassador to the U.N. Representative Bill Redmond re-introduced it upon taking office because of his conviction that injustices had been done to the land grant heirs in his district.

**Who wrote the bill?**

The New Mexico Land Grant Forum wrote the bill Mr. Redmond introduced. The Forum is made up of land grant heirs (farmers, traditional healers, adobe-builders, and other people of the land) who have been meeting for 3 years.

## PROTOCOL OF QUERETARO

In the city of Queretaro on the twenty sixth of the month of May eighteen hundred and forty-eight at a conference between Their Excellencies Nathan Clifford and Ambrose H. Sevier Commissioners of the United States of America, with full powers from their Government to make to the Mexican Republic suitable explanations in regard to the amendments which the Senate and Government of the said United States have made in the treaty of peace, friendship, limits and definitive settlement between the two Republics signed in Guadalupe Hidalgo, on the second day of February of the present year and his Excellency Don Luis de la Rosa, Minister of Foreign Affairs of the Republic of Mexico, it was agreed, after adequate conversation respecting the changes alluded to, to record in the present protocol the following explanations which those aforesaid Excellencies the Commissioners gave in the name of the Government and in fulfillment of the Commission conferred upon them near the Mexican Republic.

First:

The American Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III. article of the Treaty of Louisiana did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the IIIrd article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

A POINT OF HONOR:  
THE TREATY OF GUADALUPE-HIDALGO AND  
THE NATIONAL PARK SYSTEM

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THURSDAY, MAY 7, 1998

On September 18, 1996, amid the vermilion, corduroy-like cliffs of the Grand Canyon, President Bill Clinton interceded in one of the most virulent conservation fights of the decade. Employing the privilege of executive proclamation afforded him under the provisions of the Antiquities Act of 1906, Clinton declared 1.7 million acres of desert lands in southern Utah a national monument. In doing so, the Grand Staircase-Escalante National Monument, with a land surface equal to twice the size of the state of Rhode Island, became the largest national monument in the United States.

In his address to a select crowd of onlookers, President Clinton said: "Our parents and grandparents saved the Grand Canyon for us. Today we will save the Grand Escalante Canyons and the Kaiparowits Plateau of Utah for our children." The proposed new national monument, located west of the Colorado River and east of Bryce Canyon National Park, will set aside for preservation purposes "a unique combination of archeological, paleontological, geological and biological resources, all in a relatively unspoiled state."

I use this recent example in southern Utah to illustrate one method by which units of the National Park System are to this day created. For the most part, the term "national park" refers to only a handful of the 385 units that comprise the National Park System. With a few notable exceptions - Big Bend National Park in west Texas, for example - most of them were established before 1916. The most familiar examples in the West are: Yellowstone, Yosemite, Mount Rainier, Crater Lake, and Rocky Mountain National Parks, to name a few. Since the first reorganization of the National Park Service in 1933, the nomenclature of the national system now bears some 20 designations - national military park, national seashore, national historic trail, national scenic river, and national

memorial - which seem only to add to the public's confusion. The one common characteristic these units do share, however, is that all are formally legislated by Congress.

More confusing still are the "national monuments," such as the aforementioned Grand Staircase-Escalante. While the early national parks were being established, a separate movement arose to protect prehistoric cliff dwellings, Pueblo ruins, and early Spanish-era missions. In 1906, Congress gave the President of the United States extraordinary executive powers to proclaim and reserve "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific value" on lands owned and controlled by the United States.

Thus, when President Clinton exercised the executive powers ascribed to his office under the 1906 Antiquities Act to set aside a vast parcel of state-owned lands for public use, his action was neither unprecedented nor, perhaps, unanticipated. The same legislation enabled President Theodore Roosevelt in 1908 to establish - without congressional approval - Grand Canyon National Monument in his effort to protect the popular western attraction from imminent industrial destruction. In similar fashion, Presidents William Howard Taft and Woodrow Wilson established Zion National Monument in Utah; Herbert Hoover protected the Death Valley of California; FDR declared Wyoming's Grand Tetons a national preserve; and Jimmy Carter authorized more than a dozen national monuments in Alaska. President Clinton, therefore, no doubt seeking to avert congressional bi-partisan "gridlock," which has plagued him throughout his presidency, used this legal precedent to proclaim as public domain the spacious and scenic desert landscape of southern Utah.

Most frequently misunderstood by the American public is the "national memorial" designation, which we find here in El Paso. A more common occurrence in the East - for example, the Statue of Liberty, the

Washington Monument, and the Jefferson Memorial - national memorials were established primarily to commemorate an historic event, as opposed to preserve sites and features that are directly associated with the event itself. In 1911, for instance, Congress authorized construction of the famous Lincoln Memorial in Washington's Potomac Park. Other examples of memorials authorized by Congress quickly followed: (1) one in recognition of the Portuguese explorer Juan Rodríguez Cabrillo in California; (2) Mount Rushmore, a tribute to four of America's outstanding executive leaders, and (3) Wright Brothers National Memorial, commemorating the birthplace of flight. Thus, when Congress authorized the establishment of Chamizal National Memorial on June 30, 1966, there already existed several precedents for the designation "national memorial."

There was, however, no precedent for the manner in which Chamizal National Memorial evolved out of a set of circumstances steeped in foreign diplomacy and judicial arbitration. As most of you in this room are aware, the so-called Chamizal controversy was a century-old boundary dispute that had remained essentially unresolved until 1963. Rooted in provisions of the Treaty of Guadalupe-Hidalgo that were designed to protect violations of territorial sovereignty between Mexico and the United States through the establishment and recognition of an international boundary, the Chamizal Convention of 1963 symbolized a "point of honor" between two neighboring countries whose diplomatic association up to this time could be characterized as less than honorable.

It was the Treaty of Guadalupe-Hidalgo and subsequent international agreements that provided the mechanism by which Pedro Ignacio García, a citizen of Ciudad Juárez, pressed his grievances against the United States to reclaim portions of land lost because of the uncontrolled meandering of the Río Grande. García's protests, along with

those of fellow Mexican citizens, went virtually unheeded until the creation of an arbitration commission in 1911 that ruled Mexican claimants were entitled to the return of portions of the so-called *chamizal*, located at that time, north of the international boundary. However, efforts to enforce the ruling of the arbitration committee between 1915 and 1962 proved, for the most part, fruitless.

So it is that unlike the Grand Staircase-Escalante National Monument in Utah, and most other units of the National Park System, the idea for a national memorial in downtown El Paso did not originate either in the halls of Congress or in the Oval Office. The idea for the park was in fact a by-product of the international accord between Mexico and the United States that was initiated with John F. Kennedy's presidential visit to Mexico City in June 1962. Shortly after the 11:00 a.m. touchdown of Air Force One, Kennedy, accompanied by the charismatic Jacqueline, and an entourage of American congressional and foreign service dignitaries, acknowledged the largest assembly of Mexican citizens ever before gathered to welcome a foreign leader. In greeting President Adolfo López Mateos, Kennedy endeared himself to his audience by saying: "We are both children of revolution." In so doing, the youthful American president validated the most significant socio-political upheaval in Mexico's rich but turbulent history.

With every deliberate phrase, Kennedy was determined to win the affection of the Mexican people, as well as the admiration of their national leaders. During the next 48 hours, he aimed to resolve for all time the long-standing political differences between the two countries. At the heart of the diplomatic standoff was the century-long problem of *el chamizal*. By the time the Kennedys arrived in Mexico City, the infamous Chamizal controversy had become a discordant note in the otherwise harmonious coexistence of two bordering nations.

Behind the enormous hand-hewn doors of the Presidential Palace, John Kennedy and Adolfo López Mateos pledged to resolve the nagging border controversy through diplomatic means. On August 29, 1963, slightly more than one year after the two leaders issued their joint presidential communique in Mexico City, members of both foreign ministries drafted the Chamizal Convention, which under President Lyndon B. Johnson's signature, took effect on December 20.

Under the terms of the Convention, territorial disputes resulting from the erratic flow of the Río Grande would be forever resolved. The river would flow through a man-made channel of concrete running 4.3 miles between El Paso and Ciudad Juárez. Affected by this rechannelization, Cordova Island, a small outcropping of land lying immediately west of the disputed territory, would be divided equally between Mexico and the United States, with each nation receiving 193 acres. In further compensation to Mexico, the United States relinquished two parcels of land fronting the new river channel. These tracts, comprising the so-called Chamizal Zone, totaled 366 acres and 264 acres respectively, or roughly a net gain to Mexico of 437 acres.

All of the stipulations listed in the Chamizal Convention of 1963 were subject to the endorsement of the State of Texas as well as of the city of El Paso. When Pedro Ignacio García filed his initial claim against the United States in November 1895, the Chamizal was scarcely more than a brush-ridden strip of land housing a handful of small farms and adobe huts. At the time of the diplomatic accord, however, the once-desolate wasteland comprised several city blocks in downtown El Paso, representing home to more than 5,600 predominantly Hispano residents. For this reason, no American international treaty to date has required such intensive consultation with city and state officials before its ratification.



Seizing the opportunity to gain some concessions from Washington for their acceptance of the treaty, El Paso city officials proposed the construction of a national memorial park on Cordova Island as one feature of a comprehensive, well-conceived four-point urban improvements program. The projected cost to establish the 55-acre memorial park, channelize the Río Grande, construct a four-lane, high-speed "border highway" around the city, and relocate 5,000 plus residents from the so-called Chamizal Zone to other El Paso neighborhoods, was a staggering \$44.3 million dollars! Despite the exorbitant price tag, President Lyndon B. Johnson authorized the International Boundary and Water Commission (IBWC) to supervise the Chamizal Resettlement Program, which began in January 1965.

With the stroke of a pen, a century-old Hispano community was irrevocably altered. The arrival of the railroad in El Paso in 1881 and the city's subsequent industrialization had lured thousands of Mexican immigrants across the Río Grande to take up residence in neighborhoods that El Pasoans collectively dubbed "Little Chihuahua." This Hispano *barrio*, which extended south to north from 11<sup>th</sup> Avenue to present Paisano Drive, and west to east from Santa Fe Street to San Marcial Street - which today fronts Chamizal National Memorial - was in fact several neighborhoods comprising the Chamizal Zone.

Within the neighborhood's familiar parameters, thousands of Spanish-speaking residents maintained their humble but neatly manicured homes, attended local schools and churches, shopped in open markets reminiscent of their native Mexico, and found dependable work in long-established commercial and industrial outlets such as: Ziegler's Cattle Company and Stockyards, Peyton Packing Company, Imperial Furniture Company, 3-V Cola Bottling Company, Western GMC Trucking, and the American Smelting and Refining Company. According

to one sociological profile of the community, the typical Chamizal resident most likely had resided in the same domicile since childhood, spoke more Spanish than English, generally lacked a high school education, and supported a nuclear family averaging four members plus one or both parents.

The international treaty notwithstanding, citizen response to the federal mandate to sell their homes and relocate to different neighborhoods was one of initial shock, deep resentment, and, to a lesser degree, open hostility. Many of the homes, albeit modest, had been paid for, and often were occupied by senior citizens, who trembled at the prospect of undertaking a new mortgage payment. More disturbing, however, was the potential social disruption resulting from the residents' removal to unfamiliar parishes, neighborhoods, and, in most cases, places of employment. In less than two years, however, the IBWC, bound by the terms set forth in the international accord of 1963, disrupted the social and cultural continuity of a 100-year-old Hispano neighborhood.

Placed in the context of its time, public resentment toward the resettlement of the Chamizal community seems completely justified. Viewed in retrospect, however, the initial trauma of relocation gave way to long-term, positive results for many of the Hispano residents of this culturally diverse western community. When recently questioned about their memory of relocation to other parts of the city, some descendants of former Chamizal families respond in more forgiving terms than their parents presumably might have. Today, many of those questioned view the resettlement as, ultimately, a catalyst for their own upward social and economic mobility. Without the imposition of the federal mandate, some say, opportunities for Hispano families to buy homes in predominantly middle-class neighborhoods and educate their children in modernized schools may likely never have occurred. In some cases, the children of

these dislocated families moved on to become doctors, lawyers, and accountants; they, at least, derived some benefit from the government's implementation of the Chamizal Convention. Thus the Chamizal accord - perhaps inadvertently, perhaps not - imposed a measure of social integration within the border community of El Paso that may have even presaged the official Civil Rights legislation of the Johnson Administration.

In the shadow of the Treaty of Guadalupe-Hidalgo, the binational cities of El Paso, Texas, and Ciudad Juárez, Chihuahua, are willing partners in the establishment and maintenance of national memorials on both sides of the border. Through a unique set of circumstances, dictated by the exigencies of foreign diplomacy and fueled by the civic necessities of a dynamic metropolitan border region, Chamizal National Memorial was adopted into the fold of the National Park System. It is, therefore, most appropriate that in this Sesquicentennial year of the Treaty of Guadalupe-Hidalgo, the National Archives and Records Administration (NARA) selected the park to exhibit portions of the very document that helped serve to give it life.



# Sixth Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

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Sunday, May 17, 1998  
Chamizal National Memorial

THE TREATY OF GUADALUPE HIDALGO AND ITS LEGACY

DR. JOSEPH P. SÁNCHEZ

NATIONAL PARK SERVICE

SPANISH COLONIAL RESEARCH CENTER

ALBUQUERQUE, NEW MEXICO

SUNDAY, MAY 17, 1998

As New Mexico had remained a territory of the United States for sixty-four years following the war with Mexico (1846-48), the civil rights of Hispanics there were deemed less than those in California which quickly became a state in 1850. Hispanics of New Mexico did not acquire full rights of citizens of the United States under terms of the Treaty of Guadalupe-Hidalgo until statehood in 1912. Meanwhile, District Courts and Territorial Courts interpreted the provisions of the Treaty and, indeed, had minimized the role of the Treaty in their deliberations. Caught between judges, politicians, legislators, and land speculators, Hispanic New Mexicans struggled to be recognized as citizens of the United States. Early in the Anglo-American occupation of New Mexico and California, Hispanics asserted their rights through the court system of their newly adopted country. The Anglo-American judicial system, however, was administered by Anglo-American appointees who usually worked against Mexican-American interests to protect themselves under the law. For nineteenth century Hispanics, justice was not always served.

Early in the legal history to enforce the Treaty of Guadalupe-Hidalgo, Mexican-Americans asserted their rights as citizens of their newly adopted country, the United States of America. In regard to land issues, 1,000 claims had been filed by 1880, but only 150 had been considered by the federal government. Their legal status, granted through their incorporation as citizens of the United States under the Treaty of Guadalupe-Hidalgo, was based on the Constitution of the United States. The main issues discussed in this study are (1) the efforts of Mexican-Americans to gain recognition of the Treaty of Guadalupe-Hidalgo in the courts; (2) the assertion of citizenship rights under the United States Constitution by Mexican-Americans; and, (3) the struggle to gain recognition of land and water rights possessed by Mexican-Americans

prior to and in conformity with the provisions of the Treaty of Guadalupe-Hidalgo. This study examines selected court cases in California and New Mexico during and after the territorial period as well as Federal Court cases that evolved throughout the lands ceded by Mexico to the United States under the treaty.

Particularly between 1849 and 1900, the main issues affecting the lives of Mexican-Americans living in the ceded territories, revolved around articles VIII and IX of the treaty. These articles pertained to approximately 100,000 Mexicans, including a large number of Hispanicized and nomadic Indians living within the area encompassed by present New Mexico, Arizona, and California. Texas was theoretically exempted from the Treaty's provisions.

In effect, the treaty provided under Article VIII that persons living in the newly acquired territories had one year to elect United States citizenship or after one year they would automatically be considered to have decided to remain within the U.S. domain. They would, according to the provision, be free to continue their residency within the ceded territory or move at any time to the Mexican Republic. Those who preferred to remain were given two options: to "retain the title and rights of Mexican citizens, or acquire those of citizens of the United States." The provision specified that property, real or personal, belonging to Mexicans not living in the ceded territory would be inviolably respected. The owners and their heirs, and all Mexicans who would thereafter acquire property by contract in the United States, would be guaranteed rights to their property "equally ample as if the same belonged to citizens of the United States."

Article IX provided for the protection of property rights. Mexicans living in the said territories would "be maintained and protected in the free enjoyment of their liberty and property." Absentee Mexican

landowners holding property in the ceded territories would have their property "inviolably respected." This article, furthermore, reiterated that Mexicans who remained in the said territories "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."

At the onset, the provisions of the treaty conferring citizenship rights on Mexicans living in the ceded territories seemed clear. The evolving practice of denying or suppressing these rights would prove otherwise. In the context of the nineteenth century United States, where nativism and racism enjoyed a long history vis-a-vis white-black relationships, Mexican-Americans would have to fight for their rights. The struggle took on many forms from armed resistance to alienation with Anglo-American society, to direct involvement using the intervention of the American court system.

Citizenship was the main crux of the provisions of the treaty. Everywhere, in the ceded territory, was Mexican-American citizenship challenged by Anglo-Americans who hoped to despoil Mexican-American successes to advance their own interests in this newly acquired land. In 1869, for example, Pedro de la Guerra, a landholder who had been a signer of the California Constitution, ran for district judge. His right to hold office was challenged on grounds that his citizenship had not been perfected, for he had only elected to become a citizen of the United States as provided by the treaty. His opponents argued that Mexican-Americans were not yet citizens because Congress had not yet formally granted them citizenship.



In *People v. de la Guerra* (1870), the California Supreme Court ruled in de la Guerra's favor by declaring that the admission of California as a state of the United States conferred citizenship on former Mexican citizens who had remained within the territory as provided in the treaty. Inferentially, the status of the treaty had, in effect, been challenged. The principle was that statehood, as an act of Congress, had, with one broad sweep, conferred on all legal residents full rights as citizens of the United States.

In New Mexico, it was different. Its territorial status running from 1848 to 1912 created a different ambiance. There, the franchise was limited to Anglo-Americans only. New Mexicans attempted to broaden political rights by participating, as members, in the convention of 1849 aimed at drawing up an organic act to create the Territory of New Mexico as a step toward statehood. The majority of delegates were from old Hispano families. Regarding the issue of citizenship, they provided that citizenship should be limited to "free white male inhabitants residing within the limits of the United States, but who [had been residents] on the 2nd day of February 1848." As a compromise, they agreed that former Mexican citizens would be required to take a court approved oath of affirmation renouncing their allegiance to the Mexican Republic as a condition of citizenship in the Territory of New Mexico. The statement was approved by the U.S. Congress the following year. In theory, the treaty had promised that they would "in the mean time be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion." But, the territorial status granted New Mexico relegated New Mexican Hispanics to a second-class citizenship.

In New Mexico, earlier efforts to remind the general public that Hispanic New Mexicans were U.S. citizens were made as early as 1848.

Acting Governor John M. Washington issued a controversial proclamation in April 1848 requiring Mexican residents to declare publicly their intent to remain Mexican citizens.

Whereas, I, John M. Washington, governor of the territory of New Mexico, do hereby ordain, that the clerks of the probate courts in the different counties of this territory shall immediately open, at the prefectures, records, which shall be handed as follows: 'We elect to retain the character of Mexican citizens;' in which those of each county who shall so elect may personally record their names, and those who do not appear and sign said declaration, on or before the thirtieth day of May next, will be, in conformity with the treaty, considered citizens of the United States. Within six days after the thirtieth of May, the record shall be sent, with the certificates of the clerks of the prefectures of the several counties, to the secretary of the territory, that they may be published and distributed to the different tribunals of justice in the territory. Given under my hand and seal, at Santa Fe, the twenty-first day of April, 1848. (Signed) 'J.M. Washington.'

However, it was generally agreed among jurists, that such a public declaration was not necessary because the Treaty of Guadalupe-Hidalgo had prescribed that permanence in the territory would be sufficient. It was generally agreed that Washington's proclamation on the subject was unnecessary because a voluntary, formal, but private, declaration before any court would have been enough.

On the contrary, others, as in *George Carter v. Territory of New Mexico* (1859), felt that "The filing of a declaration of intention to become a citizen of the United States by a Mexican who resided in this territory at the date of the treaty of Guadalupe Hidalgo, is not evidence that such Mexican had previously elected to retain his Mexican citizenship under that treaty." Even so, it was argued that the mere signing of such a declaration would be insufficient especially in cases where the signatures

had not been authenticated or certified in the absence of an appointed deputy.

In 1858, George Carter was indicted for assault with intent to kill and murder Juan Duro. Carter protested his indictment on grounds that the grand jury foreman was not a U.S. citizen. Carter basically charged that his rights had been violated because he had not been properly accused by a jury of his peers as was the custom. At the time of his arraignment, Carter pleaded "that the territory of New Mexico ought not further prosecute the said indictment against him, because he saith that Anastacio Sandoval, one of the grand jurors who found said indictment, was not at the time of finding said indictment a citizen of the United States, but was...a citizen of the republic of Mexico, etc. He prayed 'judgment' that he be discharged and dismissed from the premises in said indictment specified." The attorney-general agreed to tender the "issue to be tried by jury." Carter acquiesced to the process.

In the ensuing arguments, the jury found the following verdict: "We, the jury, find the issue for the territory in this, that Anastacio Sandoval is a citizen of the United States." Carter's assault case was then continued into the 1859 term.

At his arraignment in the new term, Carter pleaded not guilty to his indictment. In that trial, Carter was found guilty and fined sixty dollars as his punishment. Carter's lawyer then moved for a new trial on grounds that "the jury found against the law and the evidence in the trial of the issue upon the plea in abatement, and also upon the final issue of not guilty." The motion was overruled, but the court allowed an appeal, and granted Carter a stay of execution of the sentence.

It appeared that the court preferred to give Carter the benefit of the doubt because "Such shrinking, however, would be unworthy of the independence and dignity of an intelligent tribunal of justice. We may

take judicial notice of the public and notorious acts which constituted a portion of the history of New Mexico during the past thirteen years, and in the midst of these the question of the retention of the character of Mexican citizenship has been exciting and disturbing. It is so now, and this fact imposes, in the investigation of this question on its legal merits, the greater labor and care."

The case was reopened to allow the introduction of evidence to prove that Anastacio Sandoval, the grand jury foreman, had in fact retained the character of a Mexican citizen as stipulated in Article VIII of the Treaty of Guadalupe Hidalgo, and had "thereby established his Mexican citizenship and disqualification to serve as a juror." It appeared that the court went through an extraordinary length to serve justice and satisfy Carter's plea.

The court, indeed, undertook an exceptional position to demonstrate to Carter that he had been tried by a jury of his peers. In the best interests of justice, nevertheless, the ensuing arguments labored to indict or, at least, accuse, New Mexican Hispanics of being disloyal to the United States, and that Governor Washington had acted in the best interests of territorial security to weed out disloyal Mexicans. Using the 1849 Taos Rebellion as the prime example to question the loyalty of New Mexican Hispanics, the argument was put forth that

It was now after the peace confirming the conquest and its consequences and engendered among a people foreign in language, laws, customs, and religion, with the pride of kindred and race peculiar to all Spanish races, in the midst of those who had lately, as the Mexican cabinet council said, 'risen against the government and the American name and blood in the country,' and when risen, whose steps and deeds were marked with murder, robbery, and fiendish atrocity in the village of Taos, and who, as the counsel assert, through 'their plans were discovered and disconcerted, their conspiracies frustrated, did not cease to conspire.

The court argued that it was necessary to establish certain legal tests that would determine those persons of Mexican allegiance. In subdued but inflammatory language, the judge stated that it was the "imperious duty of Washington to allay the increasing excitement and tranquilize the inhabitants.... He was the power to call the excited Mexicans to pause, to consult more calmly and wisely their true interest, and let reason and judgement assume the control of passions and prejudices in the selection to be made between Mexico and the United States."

Returning to the issue at hand, that is, Sandoval's citizenship, the court attempted to ferret out the salient facts revolving around Sandoval's right to serve as foreman of the grand jury that indicted Carter. The court stated,

it must be borne in mind that the whole effort of the defense was to prove that Sandoval's Mexican citizenship resulted from his having elected to retain it under the treaty. If he was a resident of this territory, as was apparent at the time of the ratification of the treaty, and was so remained, and did not elect in favor of Mexico, then, with this explanation, neither one nor a hundred declarations of intention in the district court would prove him a Mexican citizen, in fact and law. With such residence, the presumptions would be in favor of his citizenship to the United States, nor should he lose it or be deprived of it without the clearest proof. He may not have known his rights, or mistaken them, and had a fancy to make them doubly secure. The date at which he did that act, as it seems jointly with fifteen others, does not appear, but it is shown by the record that it was some time during the judicial administration of Chief Justice Deavenport. Sandoval was not defending his own rights of citizenship on the trial, and it is but a reasonable inference that he had perfected his naturalization, even if such in law be needed. The evidence was wholly insufficient to authorize the jury to find in the defendant's favor. They found rightly for the territory.

As the judge's gavel came down, it made a resounding sound, for Carter's conviction was upheld. The price, of course, was the revelation

that some nineteenth century Anglo-Americans in New Mexico harbored an intense disdain and distrust of Mexican-Americans, and would continue to question Hispanic loyalty to the United States. That distrust would hamper Anglo-Hispanic relations, and would affect the ability of Hispanics to progress in all aspects of American life.

What the Territorial Court did not consider is that between 1849 and 1850, local authorities in Territorial New Mexico did everything they could to discourage the out-migration of Mexicans because of the cost of moving them as well as financially disposing of or administering their property within the ceded territory. During that time 900 New Mexicans had petitioned the Mexican government to move to Chihuahua. Hoping to convince Mexicans to remain within the territory, authorities argued that the move would result in great inconveniences, suffering and misery. Additionally, their move would take place without the protection of either government against Apache raiders because New Mexicans would be living in isolated areas. Despite Governor Washington's proclamation, Territorial officials "pressured Mexicans not to sign the lists."

Ironically, while the Territorial Court had argued that Mexicans had a choice, officials in the territorial administration sought to convince Mexicans not to leave. Notwithstanding the provisions of the Treaty of Guadalupe-Hidalgo and Governor Washington's proclamation, the effort to curb their out-migration demonstrated yet another force in keeping New Mexicans within the territory.

Still, it would take the rest of the century for courts within the ceded territory to admit, as it did in *Hurtado v. California* (1884) that

"The Constitution of the United States was ordained...by descendants of Englishmen, who inherited the traditions of English law and history; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations and of many tongues. And while we take just pride in the principles and institutions of

the common law, we are not to forget that in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe...."

In the Hurtado case, the Fourteenth Amendment was the issue. Its application in a California case meant only that California statehood had conferred upon Mexican-Americans civil rights as citizens of the United States. Under the XIV Amendment to the Constitution ratified in 1869, birth and residency in the United States were sufficient to determine citizenship. In contrast, Mexican-Americans who lived in territories like New Mexico were denied full status as citizens of the United States until the second decade of the twentieth century when New Mexico was admitted to the Union.

The question of the validity of the Treaty of Guadalupe-Hidalgo in regard to full civil rights of Mexicans incorporated into the United States persisted throughout the nineteenth century. In *Albuquerque Land and Irrigation Company v. Gutierrez* (1900), the Territorial Court of New Mexico argued, on basis of the Latin maxim, "*Qui facit per alium, facit per se*," that the doctrine of prior appropriation is the law governing water rights in New Mexico Territory, i.e., a valid prior appropriation of waters of the Rio Grande must be established. The validity of appropriation must include two factors: 1.) There must be a rightful diversion; and, 2.) There must be an application to some beneficial use.

Quoting articles VIII and IX of the Treaty of Guadalupe-Hidalgo, the Territorial Court disagreed with the logic of the judge of a district court in the prior decision of the case that

Upon the allegation of defendants as to treaty rights, I am of the opinion that the lands of citizens of New Mexico since the cession, are subjects to the operation of the law of

eminent domain under the laws of the United States, and the states and territories thereof, and not exempt therefrom by virtue of the treaty of Guadalupe Hidalgo. The appropriation and distribution of water must be governed by similar laws, inasmuch as the United States has adopted its own system of water rights and adjusted the system to the different sections of the country as necessity required, and the laws of the states and territories are in harmony therewith. Those laws must govern wherein they differ from the treaty provisions, and wherein they are harmonious, treaty provisions need not be considered. The laws of the United States and the states and territories are ample for the protection of the rights of appropriators of water in this territory, and remedies for impairment or destruction of such rights are adequate also.

The Territorial Court argued that Gutierrez never once contended that the Mexican Cession was not subject to all the laws of the United States resulting from provisions in the Constitution. His sole contention was that "rights recognized and guaranteed by the treaty are not subject to be impaired by acts of the territorial Legislature." The Territorial Court also recognized that Gutierrez's rights had been curtailed by the District Court.

The Territorial Court revisited the issue of Mexican-American citizenship within the context of the constitutional protections. In his statement on the issue, the Territorial judge went out of his way to address the question of Mexican-American disloyalty by stating that even had Gutierrez been considered an enemy, he would still have had a legal status. Presenting his argument on that point, the Territorial judge stated:

"It is alleged that he was in the position of an alien enemy, and hence could have no locus standi in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice.



Whether the legal status of the plaintiff in error was, or was not, that of an alien enemy, is a point not necessary to be considered; because, apart from the views we have expressed, conceding the fact to be so, the consequences assumed would by no means follow. Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to use all means and appliances of defense....

Wherever one is assailed in his person or his property there he may defend, for the liability and the right are inseparable. There is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard is not a judicial determination of his rights,

A denial to a party of the benefit of a notice would be in affect to deny that he is entitled to notice at all, and the sham and the deceptive proceeding had better be omitted altogether. It would be like saying to a party, "Appear, and you shall be heard; and, when he has appeared, saying, Your appearance shall not be recognized and you shall not be heard."

The Territorial Court's pronouncement in this case points to the unjust treatment of Mexican-Americans in the district courts where many of their complaints were dismissed by ethnocentric judges.

Gutierrez sought to defend rights secured under the laws of Spain and Mexico, guaranteed under the Treaty of Guadalupe-Hidalgo saying that for "centuries, in some instances, their grantors and ancestors had used waters of the Rio Grande...to the full extent of the flow of said river during the planting and growing seasons, etc., etc." As Gutierrez's land was down river of the diversion constructed by the Albuquerque Land and Irrigation Company, the court ruled that it would not "consider the rights of all appropriators of water from the Rio Grande below the terminus," but "the complainant [Albuquerque Land and Irrigation Co.]

will not be allowed to destroy the present ditches or in any way diminish the flow of water lawfully diverted by or flowing through the old ditches. If, however, the canal can be constructed without injury to the present capacity of the old ditches, it may lawfully be done."

The Gutierrez case demonstrated the reluctance of the Territorial Court of New Mexico to admit, as a rule of law, the governing articles of the Treaty of Guadalupe-Hidalgo in regard to the citizenship rights of Mexican-Americans. Even when rights of Hispanics were violated, such as in the district court's pronouncement in the Gutierrez complaint, the higher courts tended to apply legal precedents that had occurred in the English custom, further denying Hispanic traditions of law which established ownership and rights to land and water. In that regard, historian Dan Tyler has concluded that "so long as the prior appropriation doctrine is not attacked, the state of New Mexico appears willing to recognize the legitimacy of customs in water litigation."

As in the *Albuquerque Land and Irrigation Co. v. Gutierrez*, cases were usually decided to benefit Anglo-American land corporations. Historian Richard Griswold del Castillo states that "a review of selected U.S. court cases shows that Anglo-American land corporations and the state and federal governments were the primary beneficiaries of the legal system's interpretation of the Treaty of Guadalupe Hidalgo. Although some Indians and Hispanics lodged lawsuits citing the treaty guarantees, the vast majority of them were unsuccessful in their efforts."

Despite their assertive efforts to establish their citizenship rights under the Treaty of Guadalupe-Hidalgo, Hispanic and Indian litigants were frequently at the losing end, for "defeats outnumbered victories by about two to one." It may be erroneous to assume, as one historian has concluded, that the Supreme Court had decided almost half of the major cases citing the Treaty of Guadalupe-Hidalgo. It can be safely assumed

that the majority of cases that were tried at the district court level never reached the Territorial Court, much less the Supreme Court.

New Mexico had, indeed, remained a territory for sixty-four years, during which time, the civil rights of Hispanics there were deemed less than those in California which quickly became a state in 1850. Through precedents set by the Northwest Ordinances of 1787, the Louisiana Purchase Treaty of 1803, and the Wisconsin Organic Act of 1836, inhabitants of territories were considered a dependent people and not entitled to full participation in the overall body politic of the United States. Hispanics of New Mexico did not acquire full rights of citizens of the United States under terms of the Treaty of Guadalupe-Hidalgo until statehood in 1912.

THE TREATY OF GUADALUPE HIDALGO AND CIVIL RIGHTS

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SUNDAY, MAY 17, 1998

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- Confirmation and denial of citizenship among Mexican immigrants
- Assumed citizenship rights and violations of the Treaty
  - Language
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References:

Oscar J. Martinez, Struggle and Progress: Mexican Americans in the Twentieth Century (book in progress)

Richard Griswold del Castillo, The Treaty of Guadalupe Hidalgo

## MEXICO AND THE U.S.-MEXICAN WAR

### I.

No other catastrophe in the history of Mexico rivals the war with the United States. A foreign invasion forced a weakened government in Mexico City to cede half of the nation's domain. Since its occurrence, Mexican historians and the public at large have viewed the conflict as a product of American expansionism. Manifest Destiny, an ideology that called for the acquisition of new territories to satisfy future U.S. population growth and the achievement of world leadership, had to be fulfilled. Mexico, however, blocked the way westward, and a way had to be found to extend U.S. control to the Pacific. Dollar diplomacy did not work, so force became necessary. That is the overarching explanation one finds in Mexico for the eruption of the war and, incidentally, among the vast majority of U.S. historians as well. Controversies in the 1830s and 1840s that escalated the tension between the two nations such as the Texas rebellion, property and personal claims against the Mexican government, and breakdowns in diplomatic negotiations are seen as mere sub-themes of that larger interpretation. This essay focuses on the central role that U.S. expansionism played in provoking the war, highlighting events that exemplify aggression against Mexico. The conclusion reflects on the meaning of the war for Mexicans.

### II.

The pattern of English/American expansion westward and southward into territories that formed part of the northern frontier of New Spain (colonial Mexico) can be traced to the days of the thirteen colonies, when Anglo migrants and soldiers began encroaching on lands in the vicinity of the Mississippi River and on Florida. In 1763, following

the Seven Years' War, France transferred the Louisiana Territory to Spain, and Spain ceded Florida to Britain, creating a common Anglo/Spanish borderland. Pressure mounted on New Spain's frontier defenses when the United States achieved independence, as many Americans trekked westward in search of cheap land.

One of the most contentious periods in the relations between Spain and the United States began in 1803, when the United States purchased Louisiana from France, which had reacquired it from Spain three years earlier. Unfortunately, the precise location of Louisiana's western border was unknown, leading Spaniards and Americans to engage in a prolonged debate over the extent of each other's territorial claims. The discussions resulted in the signing of the Adams-Onís Treaty of 1819, which made East Florida an American possession and established the Sabine River as the demarcation line between Louisiana and the northeastern frontier of new Spain. Many Americans, however, denounced the treaty, accusing Secretary of State John Quincy Adams of giving away Texas, a province they believed was an integral part of the Louisiana Territory. From the perspective of the treaty negotiators, however, the historical record did not support that position, and the U.S. government had to renounce any claim to Texas. Nevertheless, the desire to possess Texas persisted among American expansionists. Adams himself believed that it would only be a matter of time that Texas and "the remainder of the continent should ultimately be ours."<sup>1</sup>

By the time Mexico became an independent country in 1821, apprehensions about American threats to its northern frontier were well established. Luis de Onís had warned as early as 1812 that the American government was prepared to use intrigue and to foment trouble in order

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<sup>1</sup> Quoted in Frederick Merk, *Manifest Destiny and Mission in American History* (New York: Vintage Books, 1966), p. 16.

to absorb Texas, Nuevo Santander, Coahuila, New Mexico, part of Nueva Viscaya, and Sonora.<sup>2</sup> Another Spanish diplomat had stated in 1820 that Americans believed they were destined to extend their dominion "to the Isthmus of Panama, and ... over all the regions of the new world." Mexican envoys to Washington quickly got a taste of the American territorial ambition reported earlier by the Spaniards. "Americans will be our own sworn enemies," stated a Mexican diplomat in 1822, "and foreseeing this we ought to treat them as such from the present day." In 1823 another Mexican official noted that the American desire for Texas was so strong that U.S. troops might soon be ordered there.<sup>3</sup>

Rather than attempting to acquire Texas by force, however, the United States in the 1820s and 1830s adopted a policy of seeking to persuade Mexico to sell that province along with adjacent territories, but Mexico proved unreceptive. Joel Poinsett, who would become the first U.S. minister (ambassador) to Mexico, first met as a private citizen in 1822 with a representative of Agustín de Iturbide's government to discuss the U.S. desire to alter the border created by the Adams-Onís treaty. Three years later, now acting as the official U.S. representative, Poinsett expressed the American interest in fixing the border so that New Mexico, California, and parts of Nuevo León, Coahuila, Sonora, and Baja California would be transferred to the United States. Poinsett simply aroused Mexican suspicions and made no headway. Then in 1827, under instructions from President John Quincy Adams, Poinsett offered to buy Texas. In 1829, one year after both countries had signed a treaty affirming the boundary established by the Adams-Onís treaty of 1819, President Van Buren instructed Poinsett to renew the offer for Texas. Poinsett was to suggest options for a new border and was to offer up to \$5 million for

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<sup>2</sup> Gastón García Cantú, *Las Invasiones norteamericanas en México* (México, D.F.: Ediciones Era, 1971), pp. 17-18.



the line most advantageous to the United States.<sup>4</sup> Before he could act, however, Poinsett was relieved of his post, and for the next six years Anthony Butler represented the United States in Mexico. Butler, politically inept and an unprincipled expansionist, tried various means of acquiring Texas, including threats and the attempted bribery of high officials. By 1835, Mexico City had arranged for his recall.<sup>5</sup>

The use of dollar diplomacy to detach Texas from Mexico became moot in 1836, when Anglo-Texans, assisted by American funds and volunteers as well as some Mexican Texans, staged a successful insurrection against a Mexican government weakened by political instability and economic disarray. Americans widely assumed that the United States would soon annex the independent Republic of Texas, but sectional rivalry delayed the event until 1845. When the annexation occurred, Mexico interpreted it as a serious and hostile act by the United States, for it still considered Texas part of its national domain.

By late 1845, relations between the two countries seriously deteriorated. Not only had the United States taken Texas; it was also adamantly claiming that that providence extended to the Rio Grande. In December, U.S. envoy John C. Slidell traveled to Mexico to discuss the boundary and to negotiate other matters, in particular pending damage claims submitted by Americans who had suffered losses in Mexico during

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<sup>3</sup> J. Fred Rippy, *The United States and Mexico* (New York: Knopf, 1926), p. 2.

<sup>4</sup> Manuel Medina Castro, *El gran despojo* (México, D.F.: Editorial Diógenes), pp. 12, 17, 20; William C. Binkley, *The Expansionist Movement in Texas* (Berkeley: University of California Press, 1925), p. 13; Luis G. Zorrilla, *Historia de las relaciones entre México y los Estados Unidos de América*, 2 vols. (Mexico, D.F.: Editorial Porrúa, 1991), I, p. 67.

<sup>5</sup> Historian Justin H. Smith, who wrote the classic defense of the United States' role in the outbreak of the Mexican War, used the following terms in his devastating characterization of Butler: "a national disgrace," "bully," "swashbuckler," "ignorant," "shamefully careless," "scandalous in conduct," "a cantankerous, incompetent rascal." *The War with Mexico*, 2 vols. (New York: MacMillan, 1919), I, pp. 62-63.

periods of political instability.<sup>6</sup> The timing, however, was not favorable for such delicate bargaining. The Mexican government refused to receive Slidell, and President James Polk interpreted this refusal as an insult to the United States. By early 1846, Polk ordered U.S. troops to proceed to the Rio Grande, thereby setting the stage for direct confrontation. Mexico had tolerated American military control of territory north of the Nueces River while the status of Texas remained uncertain, but the advance across that stream constituted a flagrant act of aggression because Mexicans viewed Texas as extending no farther than the Nueces. On April 24, a skirmish between U.S. and Mexican troops resulted in the death of some Americans, and Polk immediately declared war on the grounds that Mexicans had "shed American blood upon American soil." Polk sidestepped the issue of American provocation; after all, U.S. troops had penetrated disputed territory. What is more, even before the skirmish occurred, the United States had blockaded the Rio Grande.

The incident seized on by Polk as justification for declaring war illustrates the determination of American expansionists to sustain the claim that the territory of the United States extended to the Rio Grande. The declaration of the Texans in 1836 that their new republic extended that far and the agreement signed that same year by President Antonio Lopez de Santa Anna while a prisoner at San Jacinto, which recognized Texan jurisdiction to the Rio Grande, lent plausibility to that claim. To expansionists, it hardly mattered that the Texas declaration constituted a unilateral action, or that the Mexican Congress, the only treaty making entity under Mexico's constitution, repudiated the Santa Anna

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<sup>6</sup> Because it was bankrupt, Mexico had defaulted on payments, and Polk made this a major grievance. The sum outstanding was \$3,250,000, which was small compared to the contemporary default of American states and corporations on both in British possession, amounting to \$220,000,000. Frederick Merk, "Dissent in the Mexican War," in Samuel Eliot Morrison, et. al., eds., *Dissent in Three America Wars* (Cambridge: Harvard University Press, 1970), p. 36.

agreement.<sup>7</sup> Polk chose to ignore the vast documentation that undermined his claim to the Rio Grande boundary expansionists. Spain had clearly defined the Nueces River as the southern border of Texas, and Mexico had never given Texas jurisdiction over the strip between the Nueces and the Rio Grande. Over the years, responsibility for the Nueces strip rested with the state of Tamaulipas. Mexicans clearly had physical possession of the disputed territory, with settlements well established on the north bank of the Rio Grande.<sup>8</sup> Most maps and atlases published during the period, including European ones, showed Texas extended no further than the Nueces. Even Stephen F. Austin, the "father of Texas," recognized that border in three maps he prepared in the 1820s, and national leaders such as John Quincy Adams and Andrew Jackson concurred.<sup>9</sup>

Many Americans who were knowledgeable about the border issue condemned Polk for starting the war and then labeling Mexico as the provocateur.<sup>10</sup> Members of Congress, editors, intellectuals, and other influential Americans viewed Polk as a liar and the instigator of national aggression calculated to end in the absorption of land belonging to a weak neighbor. John C. Calhoun, who refused to vote on the war bill, felt that

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<sup>7</sup> The legality of the Treaty of Velasco, the document signed by Santa Anna with the Texans, is discussed in Humberto Escoto Ochoa, *Integración y desintegración de nuestra frontera norte*, (México, D.F.: UNAM, 1949), pp. 77-84.

<sup>8</sup> Binkley, *Expansionist Movement in Texas*, 9; I.J. Cox, "The Southwest Boundary of Texas," *Southwestern Historical Quarterly* 6:2 (Oct. 1902), pp. 97-98; Frederick Merk, *The Monroe Doctrine and American Expansionism, 1843-1849* (New York: Knopf, 1967), pp. 147-48.

<sup>9</sup> Even Justin F. Smith, who blamed Mexico for the war, rejected Polk's claim that the Rio Grande was the Texas boundary. However, Smith buried that opinion in a footnote after giving the impression in the text of his *The War with Mexico* that he agreed with Polk (see pp. 138-39, 448-49).

<sup>10</sup> Only a few historians have defended Polk's policies that led to the war with Mexico. Smith's *The War with Mexico* holds that Polk acted aggressively only as a last resort, after Mexico had insulted the United States and refused to negotiate. A modern variation of Smith's interpretation is found in the following works: Odie B. Faulk and Seymour V. Connor, *North America Divided: The Mexican War, 1846-1848* (New York: Oxford University Press, 1971); Odie B. Faulk and Joseph Allen Stout, *The Mexican War, Changing Interpretations* (Chicago: Sage Books, 1973).

Polk had created hysteria and had used stampede tactics to obtain support. Calhoun believed that less than 10 percent of Congress would have voted with Polk if they had had time to examine the documents closely. Abraham Lincoln felt Polk waged "a war of conquest." If expansionists had not coveted Mexico's northern provinces, the dispute would have been settled "in an amiable manner," said Lincoln.<sup>11</sup> Once the war was in progress, however, many of the critics supported it, on the principle of "country first, right or wrong." Dissent notwithstanding, the United States took the war deep into Mexico, forcing its neighbor to negotiate a drastic change in the border. The draft treaty carried by U.S. State Department representative Nicholas Trist called for the acquisition of New Mexico, Upper California and Lower California. As the negotiations progressed, pressure mounted on Mexico. Finally it agreed to the Rio Grande as the eastern half of the border and to a line across the desert from Paso del Norte (present-day Ciudad Juárez) to the Pacific as the western half.

Exulting in the strong bargaining position of the United States, many expansionists criticized their government for seeking only a portion of Mexico. Instead, they argued, all of Mexico should be seized. Providence had willed the fall of Mexico, and higher duty demanded that Americans rescue the Mexicans from their "depraved" and "backward" state. Thus adherents of this view, affected by Manifest Destiny and the psychology of war and impatient with the prolonged negotiations, launched a crusade that seriously threatened the future existence of Mexico as a nation. Support for the "all Mexico" idea spread quickly among members of Polk's cabinet, in both chambers of Congress, in the military, in the press, and among other influential sectors of American

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<sup>11</sup> Merk, "Dissent in the Mexican War," pp. 38-40, 43, 46, 48.

society.<sup>12</sup> No doubt this ominous development motivated the Mexicans to "seize the opportunity" to part with their northern territories before Washington dismembered their country altogether.

Many historians are convinced that if negotiations had dragged on much longer, the "all Mexico" movement would have prevailed. Fate took an unexpected turn, however, and Mexico continued to exist.<sup>13</sup> Nevertheless, American expansionism up to 1848 had cost Mexico nearly half of its territory, including Texas, New Mexico, Arizona, California, Nevada, and Utah, and portions of Wyoming, Colorado, and Oklahoma. In part to mitigate the appearance of outright land grabbing, the United States paid Mexico \$15 million for this vast domain and assumed old claims of its citizens against Mexico, valued at just over \$3 million. Never before or since has the United States negotiated a treaty that yielded so much and cost so little.

### III.

Mexicans have viewed the U.S.-Mexico War with indignation, anguish, and ambivalence. The provocation of the conflict by the United States, the military invasion of Mexico, and the massive detachment of national territories are seen as a great injustice and moral outrage perpetrated by a powerful and greedy neighbor. The vast northern frontier from Texas to California was forever lost, and with it the possibility of utilizing bountiful natural resources and superb harbors in

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<sup>12</sup> On the "all Mexico" movement, see John D.P. Fuller, *The Movement for the Acquisition of Mexico* (Baltimore, Md.: Johns Hopkins University Press, 1936).

<sup>13</sup> Ray Allen Billington, *Westward Expansion: A History of the American Frontier* (New York: MacMillan), pp. 586-87; Fuller, *Acquisition of All Mexico*, p. 81; Allen K. Weisberg, *Manifest Destiny* (Baltimore, Md.: Johns Hopkins University Press, 1935), p. 160. Paul F. Lambert disagrees on the inevitability of the annexation of all Mexico had the treaty not been negotiated by Trist or had it been rejected by Polk. Lambert points out that a strong peace movement had developed to counter the "all Mexico" drive. See Lambert's "The All Mexico Movement," in Faulk and Stout, eds., *The Mexican War*, pp. 171-72.

the Gulf of Mexico and on the Pacific to aid in the nation's economic development.

Immediately after the war, Mexicans began a process of analysis, reflection, and introspection regarding the tragedy of 1846-1848; that trend has continued to the present day.<sup>14</sup> Writers first and foremost have condemned the United States for its aggression, but they have also found fault within their own country. They have lamented the behavior of different segments of Mexican society during the crucial 1840s, including insufficient efforts by domestic political factions to achieve national unity, the lack of support in the then powerful Catholic Church for the difficult task of mounting a strong defense, and the failure on the part of many nationalistic leaders to grasp that the recovery of Texas had turned into an impossibility once the Anglo Texans became demographically and politically dominant.

Mexican umbrage against their northern neighbors has diminished significantly with the passing of several generations during the last century and a half. Nonetheless, the memory of the war and its consequences remain very much alive, as Daniel Levy and Gabriel Szekely so aptly observe in their book, Mexico: Paradoxes of Stability and Change:

It would be difficult indeed to understand contemporary Mexican attitudes toward the United States without reference to the enormous land grab of the mid-nineteenth century. Not that most Mexicans feel an active anger about the war or advocate "taking back the land." Rather, sentiment remains like a dormant volcano in the historical consciousness. There is a sense of resentment based on the unhappy role Mexico played in U.S. expansionism. The war

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<sup>14</sup> An excellent anthology that presents interpretation of the war from nineteenth and twentieth century Mexican writers is Cecil Robinson, ed., *The View from Chapultepec: Mexican Writers on the Mexican-American War* (Tucson: University of Arizona Press, 1989).

may not be an explicit political issue, but it is a vital historical referent and symbol.<sup>15</sup>

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<sup>15</sup> Daniel C. Levy and Gabriel Szekely, *Mexico: Paradoxes of Stability and Change* (Boulder, Co.: Westview Press, 1983), p. 173.



# Seventh Presentation: Treaty of Guadalupe-Hidalgo Speakers Series

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Wednesday, May 20, 1998  
Chamizal National Memorial



TREATY OF GUADALUPE HIDALGO AND WATER RIGHTS

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INTERNATIONAL BOUNDARY AND WATER COMMISSION

WEDNESDAY, MAY 20, 1998

## BACKGROUND

The 1848 Treaty of Guadalupe-Hidalgo does not speak to the issue of water rights regarding the international rivers, the Rio Grande and the Colorado; it only refers to the free right of navigation on these rivers on the part of the United States and Mexico. Very soon, however, both countries realized that these rivers were not as navigable as they thought, and that irrigation was more important than navigation.

With the signing of the treaty there ensued a systematic effort to colonize the newly acquired borderlands on the part of the United States, and people began to settle what would later become the states of Colorado and New Mexico. In these areas, the settlers found an arid climate and desert landscape which virtually forced them to settle in the areas near the Rio Grande initially. The Native Americans and Spanish settlers had done the same before them, so it was natural for these new immigrants to the area to congregate near the available water source, which was now totally theirs to use as they saw fit.

## IMPACT ON RIO GRANDE FLOWS AT EL PASO

By the late 1800s, the volume of water arriving at El Paso in the bed of the Rio Grande was considerably diminished due to the increasing diversions from the river upstream in Colorado and New Mexico. In the El Paso area, the greater population was always found on the right bank, or the Mexican side, of the Rio Grande after the treaty took effect. So, the first ones to really notice and react to the decreasing volumes in the river were the Mexicans, especially since they had been using a developed irrigation system of agriculture based on the full force and effect of the river's flow for at least the 300 years they had been in the valley of the Pass of the North.

Naturally, their reaction soon manifested itself in the form of an official claim. The treaty, among other stipulations, had established a framework for either country to bring to the negotiating table any pertinent grievance or other complaint against the other, as opposed to resorting to the force of arms in order to settle their differences.

#### THE HARMON PRINCIPLE

Mexico filed a court claim for \$35 million in damages against the United States alleging that water shortages near Ciudad Juárez, across the Rio Grande from El Paso, Texas, were the result of increased diversions by United States citizens in Colorado and New Mexico. United States Attorney General Harmon at the time asserted that Mexico had no legal claims to Rio Grande surface water since there were no Mexican tributaries to the river upstream of El Paso. This concept became known as the "Harmon Principle."

Mexico countered with recourse to the legal principle of the "Right of Prior Appropriation." Since water in the United States is considered a state's rights issue, this principle, basically a "first in time, first in right" doctrine gives the first person to divert water for beneficial use a property right in the use of the water, and each state, rather than the federal government, has the responsibility to enact legislation for its proper management. In its review of Mexico's claim, the United States concluded: "There is no doubt that a considerable amount of land in Mexico was formerly irrigated to some extent by the waters of the Rio Grande, and that the use of the water farther up the stream has been injurious to this land."

## 1906 CONVENTION

The Convention Between the United States and Mexico - Equitable Distribution of the Waters of the Rio Grande, signed May 21, 1906, was the result of the United States' consideration of Mexico's claim. It states: "The United States of America and the United States of Mexico being desirous to provide for the equitable distribution of the waters of the Rio Grande for irrigation purposes, and to remove all causes of controversy between them in respect thereto, and being moved by considerations of international comity, have resolved to conclude a Convention for these purposes...." This convention provides for the delivery to Mexico of 60,000 acre-feet of water per year in the bed of the Rio Grande "at the point where the head works of the Acequia Madre, known as the Old Mexican Canal, now exist above the city of Juárez, Mexico." This delivery would be made in accordance with a monthly schedule, and depending on availability in consideration of extraordinary drought or serious accident to the irrigation system.

The United States, then, shied away from the Harmon Principle, in favor of a more amicable stance, primarily because downstream of El Paso, at Presidio, Texas-Ojinaga, Chihuahua, there is a confluence of the substantial Mexican tributary to the Rio Grande, the Rio Conchos, and, in effect there, "the shoe would be on the other foot." That is to say, the United States wanted to be in a position to share in the waters of this Mexican tributary to the river.

Consequently, between 1906 and 1944, comprehensive hydraulic and hydrologic studies were undertaken to determine the physical characteristics, especially the flow volumes of the Rio Grande, and also the Colorado River. Both sides had seen the "handwriting on the wall" relative to water rights.

## INTERNATIONAL WATER COMMISSION, UNITED STATES AND MEXICO

The two governments established a joint technical commission to conduct the investigations and studies to definitively characterize the international river regimes, and establish jointly acceptable national ownership ratios. The International Water Commission, United States and Mexico, conducted these studies which resulted in the signing of the "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande" treaty, simply known as the 1944 Water Treaty. Significantly, it was signed in February of 1944, that is to say, right in the middle of World War II, which should indicate how important this treaty was considered by both countries.

This treaty specifies the ratios of national ownership for the waters of the Rio Grande downstream of El Paso, since the 1906 Convention covered the river from its origin in Colorado to that point. It also provided for the delivery of 1.5 million acre-feet of water to Mexico for its beneficial use from the Colorado River at Yuma, Arizona, again depending on availability.

### SUMMARY

These treaties, then, manage the issue of water rights along the United States-Mexico border relative to water quantity. But, they also bring up the related issue of water quality. This issue is the current issue on the table between the two countries.

The above description provides a thumbnail sketch of the handling of international surface water rights between the United States and Mexico from the initial 1848 Treaty of Guadalupe-Hidalgo through the 1906 Convention and the 1944 Water Treaty. The negotiations that they involved were consistent with the "Friendship" stipulations of the 1848

Treaty of Peace, Friendship, Limits and Settlement. They are concrete examples of the "living proof" nature of this treaty which, as has been shown, is not so much a historical document to be admired in a glass case as it is a day-to-day guidebook for the conduct of relations between our two countries.

Of course, there is much more work to be done in the future in this arena; the challenges are, indeed, daunting given the social, political, and environmental characteristics framing the technical, international issues that must be resolved concerning international water rights in general, given the decreasing quantities and quality of this precious resource. Fortunately for both countries, the precedent of amicable negotiation and settlement has been well established in our guidebook.

LAND AND WATER POLICY:  
ONE OF SPAIN'S MOST ENDURING LEGACIES

ROBERT J. TORREZ

WEDNESDAY, MAY 20, 1998

Spanish colonial water policy is a complex subject that can not be discussed properly without a review of the context in which both land and water were used in colonial provinces such as New Mexico. By reviewing the basic principles of Spanish land policy and the process by which these policies were implemented in New Mexico we can also gain realization that these historic land and water policies left an enduring legacy, a legacy which continues to affect our daily lives of the Southwest.

#### BACKGROUND OF SPANISH LEGAL SYSTEM

The law by which Spain's colonial empire was administered is generally derived from *Las Siete Partidas*, a 13<sup>th</sup> century compilation of laws utilized by Iberian monarchs, mostly as a basis for determining appeals. These were Roman in character, but had a foundation in Canon law and were heavily influenced by Spanish common law. When the Spanish turned their attention to the discovery, exploration and conquest of the New World after 1492, a compilation, or *recopilación*, of these laws, extended these *Partidas* to its colonial empire.

These *Leyes de Indias*, or laws of the Indies, as they are called, consist of several thousand laws, and is probably the most comprehensive code ever compiled for a colonial empire. These laws, however, were generally not widely distributed to the Spanish provinces until after they were published in 1681.

The principal administrative and judicial officer at the provincial level in the Spanish colonial system was the Governor. In New Mexico, beginning with Juan de Oñate in 1598, the individual who held this office generally held the titles of *gobernador y capitán general*, and as such exercised both civil and military authority over the province. He was assisted in the administrative and judicial duties of his office by local officials, among whom the most important were the *alcaldes*. These



officials were prominent, locally influential individuals, who were usually appointed for life terms by the governor. During the late colonial period, the governor made these appointments in consultation with the local *cabildo*, or town council, and often, the clergy.<sup>1</sup>

The *alcalde mayor* was the principal official in an *alcaldia*, or district, and usually lived in the principal community of that district. It may be said that the *alcaldia* was the rough colonial equivalent of a contemporary county. The *alcalde mayor* was himself assisted in his duties by deputies called *alcaldes ordinarios* or *tenientes*. Santa Fe, for example, had at least two *alcaldes ordinarios* at various times during the 18<sup>th</sup> century.<sup>2</sup> *Alcaldes* were invariably male and the de facto administrators of Spanish and Mexican law at the community level. They played an important role in the day to day decisions regarding local land and water decisions.

## LAND POLICY

The authority to make grants of land generally lies in the sovereign of a state. In Spain, that authority rested in the reigning monarch, and consequently, through the monarch's authority, their appointed officials. In the Spanish province of New Mexico, that authority rested in the Governor.<sup>3</sup> New Mexico's long history of European settlement has seen two major trends in the manner in which land was granted. From 1598, when Juan de Oñate established the first Spanish colony at the northern

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<sup>1</sup> This background is extracted principally from the New Mexico State Planning Office, *Land Title Study* (Santa Fe: State Planning Office, 1971); Marc Simmons, *Spanish Government in New Mexico* (Albuquerque: University of New Mexico Press, 1968); and Malcolm Ebricht, "Introduction: Spanish and Mexican Land Grants and the Law," *Journal of the West* XXVII:3 (July 1988):3-11.

<sup>2</sup> Criminal proceedings against Augustin Saez and Luisa Varela, October 4-20, 1701 (Twitchell #79); and Proceedings against Nicolas Romero..., May 16-June 28, 1737 (Twitchell #424). *Calendar of the Microfilm Edition of the Spanish Archives of New Mexico, 1621-1821* (Santa Fe: New Mexico State Records Center and Archives, 1987). Microfilm roll 3 and 6. Hereafter cited as SANM II.

<sup>3</sup> *Land Title Study*, pp. 21-22.

New Mexico *Tewa* Indian village which they renamed San Juan de Los Caballeros, to 1680, the principal form of land tenure was the *encomienda*. Little is known about how this system functioned in New Mexico due to the almost complete destruction of documentation for that period during the Pueblo revolt of 1680. The New Mexico State Records Center and Archives in Santa Fe, for example, has only four documents which predate the Revolt.<sup>4</sup> We can generally conclude, however, that despite the theoretical protections designed into the *encomienda* system, in practice those responsible for administration of the system tended to abuse Indian labor, and these abuses were a significant factor in the general pueblo unrest of the seventeenth century which culminated in the revolt of 1680.

At the time the Spanish were being expelled from New Mexico in 1680, the *recopilación* was being published and implemented in New Spain, making the land grant the principal form of land tenure. Even before their return to Santa Fe in 1692, Governor Jironza Petriz de Cruzate began implementing the new laws of the *recopilación* by making formal grants of land to some of New Mexico's pueblos, presumably in anticipation of the need to protect Indian rights to their land at such time that the *reconquista* would be accomplished. After 1692, the Spanish government also made a series of grants to individuals as rewards for their role in the reconquest and to encourage resettlement of the colony.

Grants made to individuals, or private grants, were the principal type of land grant during the early 18<sup>th</sup> century. These were intended for the personal use of the individual and his family. These grants were usually, but not always, small, and as the name implies, became private property that could be sold once the individual met a specific requirement of possession, usually three or four years.

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<sup>4</sup> SANM II, pp. 1, 258.

The most prominent type of land grant in New Mexico was the community grant. These were made to groups who agreed to establish a settlement and cultivate the land within a grant. Many of these grants were made in the late 18<sup>th</sup> and early 19<sup>th</sup> century during the period of frontier expansion in New Mexico. Generally, each individual in the group given a community grant was allotted a plot of irrigable land for cultivation, which were called *suertes*, or *donaciones*. When the individual met a requirement of occupation, he received a title, or *hijuela*, to this lot, which he could then sell. The balance of the land within the grant boundaries was reserved for the common use and benefit of all the settlers, where they could pasture and water their livestock, gather firewood, cut timber for building their homes, hunt, and other such activities necessary for their subsistence. These common lands could not be sold, and became the basis of much controversy following the adjudication of most community land grants following the American occupation of 1846.

The process of acquiring a land grant began with the preparation of a written petition, which was submitted to the Governor by an individual or group. The petition normally included a description and the boundaries of the land being sought. These boundaries were usually stated within the context of the features of the natural landscape, such as a river, a mountain range, or hill. The petition usually included a statement or inference that the land in question was vacant public land, or land previously granted to someone that had not settled or utilized it as required by law.

After reviewing the petition, the governor usually ordered the *alcalde* where the grant was located to verify the information contained in the petition. This investigation consisted of some form of public announcement, which notified nearby communities and solicited

comment on adverse claims to the land. The *alcalde* then submitted a report to the Governor, sometimes including a sketch of the land (although few such sketches seem to have survived), with a statement that indicated whether the claim was as represented by the applicants. If the land was vacant and there were no adverse claims, the governor generally approved the grant, noted any conditions under which the grant was to be made, and ordered the *alcalde* to place the applicants in possession of the land.

The act of possession was a fascinating procedure which generally consisted of several distinct actions by the *alcalde*, each of which he recorded in the grant documents. The process normally began with a frequently lengthy preamble in which the *alcalde* reviewed the authority by which he performed this function. It continued with a statement which confirmed that the grantees understood the purpose of this procedure, and were informed of any conditions placed on the grant. Then came a statement describing the boundaries of the grant and the grantees' physical demonstration of their possession.

The following excerpts from two land grant documents will serve to illustrate this process. The first is a 1714 application by Catalina Griego and her son, heirs of the deceased Diego Truxillo, for revalidation of a private grant made to Truxillo in 1701.<sup>5</sup> Sebastian Martin, the *alcalde mayor* of nearby Santa Cruz de La Canada, began the process with some preliminary statements concerning his authority. He then continued with a description of the grant boundaries:

I ... led them over said tract as their own in sign of true possession; and that it may so appear I designated the boundaries for them [as follows]: on the south, a dry arroyo

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<sup>5</sup> Diego Truxillo, petition...1701, and Catalina Griego, widow...1714 (Twitchell #926). J. Richard Salazar, ed. And comp., *Calendar to the Microfilm Edition of the Land Records of New Mexico: Spanish Archives of New Mexico, Series I* (Santa Fe: NMSRCA, 1987). Microfilm roll #5. Hereafter cited as SANM I.

that flows from a canyon called Ancha; on the north, the point of the mesa of San Juan where there are some little hills and a ridge that comes down to the Rio del Norte; on the east, the Rio del Norte; on the west, the hills.

Nearly a century later, in 1815, the *alcalde mayor* of Taos, Pedro Martin, performed the following act of possession for the Arroyo Hondo grant, a community grant north of Taos.<sup>6</sup> You will note the manner in which the grant conditions are stated.

... with the forty-four families being present, I made them aware and made them understand what their presentation was about, and told them that upon their being placed in possession they would have to ... comply with the following conditions: that the designated place is to be used in common not only by them but by others who might continue to join them in the future; ... they are to keep firearms and lances [for defense] ... under the penalty that those that do not have them, can be expelled from the said settlement; ...

After he took care of these preliminary procedures, and affirmed the conditions under which the grant was made, Don Martin proceeded with the actual possession:

... having all heard and being made responsible as a group and each one for himself ... they answered jointly that they all understood what was told them ... I took them by the hand and said in clear and intelligible voices that in the name of His Majesty ... and without prejudice to his royal domain nor to a third party, walked them through the said lands, plucking up grass, throwing rocks, they took possession of said lands ... and they shouted long live the king.

This act of possession has been ridiculed by some who consider these actions silly and useless. However, it is important to point out that under the Spanish and Mexican land grant systems you could not buy Florida swamp or Arizona beachfront property by mail or own it in

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<sup>6</sup> Arroyo Hondo Grant, SANMI, roll #29.

absentia. In order to own land in Spanish colonial New Mexico, you had to step on the land and literally run your fingers through the dirt. The act of possession was a public declaration that you were going to live on the land, cultivate it, and if necessary, defend it with your life.

Finally, *Alcalde* Martin set the boundaries of the grant, and since this was a community grant, he then measured and assigned specific plots of land to the individual settlers, noting the name of each individual and the number of *varas* of land each one received. There were undoubtedly variations to this process in the interim and subsequent years, but generally, it can be noted that not much had changed in the course of the century since Doña Catalina's grant was reaffirmed in 1714.

Land grants, and the process by which they were made, became an important issue when Stephen Watts Kearny and the American army occupied New Mexico in 1846. In 1854, the United States Congress established the Office of Surveyor General and appointed William Pelham as Surveyor General for New Mexico to investigate the validity of claims to land made under the Spanish and Mexican governments. Following each investigation to a claim, Pelham forwarded a recommendation to Congress. If Congress confirmed a claim, a survey was ordered, and eventually, a patent, or title, to the property was issued.

By the time the Office of Surveyor General was eliminated in 1891, a succession of New Mexico Surveyor Generals had investigated 180 land grant claims, of which 135 were transmitted to Congress. Forty-six of these were confirmed, in addition to 18 Pueblo grants. In 1891, Congress created the Court of Private Land Claims, which reviewed an additional 282 claims from New Mexico, of which 82 were approved.<sup>7</sup> The process by which many of these grants were adjudicated has been widely criticized and is a source of contention to this day.

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<sup>7</sup> *Land Title Study*, pp. 30, 34.

## WATER POLICY

The problems of accessing a source of irrigation water has shaped communities and cultures in New Mexico for many centuries. There is evidence of advanced and extensive irrigation systems at many of our well-known prehistoric community sites. The societies which developed along the Gila in the Southwest, the Anasazi in the Four Corners, and later, Chaco Canyon in northwest New Mexico, all show evidence of great ingenuity in the storage and utilization of a scant water supply. At Pueblo Bonito there are remnants of ancient reservoirs and a system of ditches used to store and carry water to an extensive system of agricultural fields. Francisco Vasquez de Coronado noted the Indian's irrigation systems in 1540 and when Juan de Oñate established the Spanish colony at San Juan de Los Caballeros in 1598, the Spanish *acequias* were based along those already laid out by the *Tewas*.

The land and water usage system brought to New Mexico also owes many of its origins and principles to Moorish practice and law. The prophet Mohamed himself held that water should be fully accessible to all. This "law of thirst" granted all living things completely free access to all water to satisfy a need. The Moors took their water law and practice to the Iberian peninsula in the eighth century and by the time the *reconquista* was accomplished in 1492, the Moorish systems not only remained, but also were often reaffirmed by royal ordinances.

When the Spanish came to the Southwest, here too they found that irrigation was essential to the existence and survival of communities. In our environment, there was minimal dry land farming and no technology for deep well irrigation. The growing of crops depended on the existence and utilization of a permanent source of ground water in the form of a river, creek, or springs from which the communities could draw for irrigation.

In administering water, the Spanish differentiated surface and ground water rights. Ground water was that which originated on a piece of property, and ran solely within its boundaries. This category included springs, snowmelt, and other water sources, such as wells (although wells were not common), which could be dammed or stored. This type of water was considered private property and its owner could use it without limit or need for special permission from the government. If ground water was needed for the common good, such as a nearby community, the beneficial use of the many could take precedence, but only if the owner was compensated.

Surface water, such as a river or creek which passes through private property, could be used by the land owner for private domestic use only - drinking, bathing, watering his livestock - but not for irrigation or commercial use (such as a mill), without permission or grant from the sovereign.<sup>8</sup>

These practices are outlined for the Provincias Internas of New Spain in the 1789 Plan of Pitic. This Plan reiterated long-standing practices of allocating land and water only if such allocations did "not result in injury to any private individual, nor to any Pueblo of Indians."<sup>9</sup> The law specified how plots of irrigable farm land were to be distributed. A survey had to be made to determine where and how the main ditch, or *acequia madre*, and feeder ditches called *contra acequias* or *sangrias*, could be built. The entire process was designed so that no settler could "take the water of another or in a greater quantity than his share."<sup>10</sup>

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<sup>8</sup> Ira G. Clark, *Water in New Mexico* (Albuquerque: University of New Mexico Press, 1987); Michael C. Meyer, "The Living Legacy of Hispanic Groundwater Law in the Contemporary Southwest," *Journal of the Southwest* 31:3 (Autumn 1989), pp. 291-293.

<sup>9</sup> Richard E. Greenleaf, "Land and Water in Mexico and New Mexico, 1700-1821," *New Mexico Historical Review* XLVII:2 (April 1872), pp. 97-98.

<sup>10</sup> Greenleaf, p. 100.



In New Mexico, these policies were often modified by the manner in which land and water usage impacted the Indian pueblos. In these cases, an Indian consensus was sought and often, but not always, achieved. This process was often complicated by frequently contradictory Spanish policies which sought economic exploitation for the benefit of the empire, but which also sought to protect Indian rights. These contradictory policies of conversion, protection and need for Indian tribute to support the European elite, were a significant factor in the Pueblo Revolt and expulsion of the Spanish in 1680.<sup>11</sup>

Generally, the labor to build and maintain these irrigation systems came from the collective manpower of the community. A *mayordomo*, or overseer, was elected by those who utilized the water. This individual, whose duties remain basically unchanged to this day, inspects ditches, regulates labor needs, appropriates water, and adjudicates disputes. Generally, when water is plentiful, everyone uses what they need, but in times of scarcity, the role of the *mayordomo* is critical, as he assigns each *parciante* a period of time during which he can use the water to irrigate his fields.

Much of Spanish and Mexican law and custom has been written into statute since New Mexico became a territory of the United States in 1850. Since the first Territorial Legislative session in 1851, lawmakers have enacted laws allowing and regulating the formal incorporation of local irrigation systems. In 1909 (Chapter 150, 1929 Compilation) the legislature codified sixty years of earlier piecemeal legislation and established the authority for local "water users associations" to incorporate and organize. This legislation is a great summary of the manner in which irrigation was done in territorial New Mexico. It defines

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<sup>11</sup> Myra Ellen Jenkins, "Spanish Land Grants in the Tewa Area," *NMHR* XLVII:2 (April 1972), p. 113.

the duties of local water association commissioners and *mayordomos*, sets standards for fees, and codifies the manner in which water users are traditionally responsible for providing the labor to maintain their *acequias*. The statutes even include one section that allows blind men or their widows free use of water for irrigation of up to three acres.

These statutes also allowed the organization of special irrigation districts, presumably to enable municipalities to meet their special needs. While El Paso was obviously not a part of New Mexico after 1850, it is interesting to note that the municipal government apparently had regulatory authority over the local *acequias*. As early as 1880, the city government had passed ordinances "for the Protection of the *acequias*." The April 29, 1885, issue of the *El Paso Daily Times* printed a variety of these city regulations including the 1880 ordinance which made it a misdemeanor for any person "to bathe in any *acequia* in the city, or cast off in, filth or impurity of any kind...." The ordinance listed a number of other prohibited activities and established fines of up to one hundred dollars and/or thirty days imprisonment for violations. It is interesting to note that many of the ordinances related to the *acequias* by the city of El Paso sound very similar to elements of the laws passed in New Mexico.

Conflicts over water were, and remain, common in a land where the resource is often scarce. The Spanish and Mexican archives in Santa Fe contain many examples of complaints filed by otherwise good neighbors over the use of water, disputes which occasionally escalated into violence. In 1796, one such dispute over irrigation at Trampas in northern New Mexico escalated into a fight in which Juan Ignacio Vigil killed Josef Armijo. In this particular Vigil was acquitted of any wrongdoing, as subsequent investigation showed that he had "acted in proper defense of his person."

Sometimes the conflicts spilled over to entire communities. This happened in 1832 when two villages in the Taos region decided that compromises reached by civil authorities over allocation of water to their respective community ditches could no longer be tolerated. Representatives from both villages agreed instead to settle the issue by force and set a date for an armed confrontation which was to decide the issue. On a specific day, each faction was to march to the headgate which controlled the water, armed and ready for battle. On the designated day, as the two groups approached each other, a tremendous cloudburst forced everyone to seek cover. When the skies finally cleared, both sides could not help but notice that the river which fed the ditch had flooded. It appeared that Divine intervention had not only dampened their fields but the anger which had fueled the planned armed conflict.<sup>12</sup>

The basic principle applied to water adjudication in New Mexico is that the first and earliest user has the best claim to use of the water. Spanish and Mexican officials tended to abide by this principle, but in times of scarcity, they also recognized and insisted that the greater good demanded an equitable sharing with those who had an inferior right to the water. A form of this priority use is currently administered by the New Mexico State Engineer, who establishes priority dates for the state's water.

Today, legal disputes about water usage and relative priorities to its use have generated what Sylvia Rodriquez of the University of New Mexico calls a "minor industry" of research and study designed to justify or oppose a particular claim to water. New issues of urban growth and diversion of agricultural water resources to recreational activities continue

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<sup>12</sup> Case against Juan Ygnacio Vigil, Santa Fe, August 1-September 30, 1796 (Twitchell #1368). SANM II, roll #13; John O. Baxter, *Spanish Irrigation in Taos Valley* (Santa Fe: New Mexico State Engineer Office, September 1990): 47.

to change and transform long-standing patterns of Spanish land and water use.<sup>13</sup>

#### AN ENDURING LEGACY

On June 6, 1967, headlines throughout the world informed us of the outbreak of the Six-Day War in the Middle East. Sharing the headlines were startling reports of another conflict unfurling in a remote and heretofore unheard of place in northern New Mexico called Tierra Amarilla.

The Tierra Amarilla Courthouse Raid, as this incident has become known, occurred on June 5, 1967. That day, a small group of armed men associated with the Alianza Federal de Mercedes, a land grant organization popularly known as the Alianza, entered the Rio Arriba County courthouse at Tierra Amarilla with the intent of effecting a citizen's arrest on the District Attorney. From the beginning, things went tragically wrong. The District Attorney was not there, and by the time the raiders made their escape, hostages had been taken, and a jailer and a policeman lay wounded. Police vehicles were strewn about, riddled with bullets. Over the next several days, hundreds of law enforcement officers, including a battalion of New Mexico National Guard troops armed with two M-40 anti-aircraft tanks, descended on northern New Mexico.

The raid and subsequent manhunt for Reis Lopez Tijerina, the fiery leader of the Alianza, focused national attention on a curious, century-old problem. It seemed that in parts of this remote region, there were strong feelings among many residents that land grants made to their ancestors by the Spanish and Mexican governments had been unjustly, if not fraudulently, adjudicated. They expressed a seething frustration with a

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<sup>13</sup> Sylvia Rodriguez, "Applied Research on Land and Water in New Mexico: A Critique," *Journal of the Southwest* 32:3 (Autumn 1990), pp. 300-301.

government that they felt had ignored repeated suggestions that something should be done.

The Tierra Amarilla Courthouse Raid was not the first time residents of this region had resorted to violence in the name of the land grants. Nor was it the last. There is evidence of violence related to eroding access to grazing land in the Tierra Amarilla as early as 1919 by a group known as *la mano negra*. In the 1890s, fence cutting and haystack burning in northeast New Mexico by *las gorras blancas* signaled the beginnings of local efforts to protest and resist the fencing of land traditionally used as commons.

Outbreaks of such activity have occurred periodically since then. One of the most serious of these was in 1940, when state police were dispatched to Tierra Amarilla to investigate large scale fence cutting along several segments of the grant. The investigating officer was dismayed at the public sentiment he found in support of these actions. "The people ... feel as though the land belongs to them and should not be fenced," he reported. "They are living under the illusion that years ago the Tierra Amarilla grant was disposed of by the Grant owners ... without [their] consent...." The policeman was incredulous that sixty years after the grant had been patented to infamous land grant baron Thomas B. Catron, local residents still felt they had a right to graze their flocks in the traditional *ejidos*.<sup>14</sup>

In the villages of the Tierra Amarilla as well as other land grant based communities in New Mexico, there seems to be an enduring belief

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<sup>14</sup> Robert J. Torrez, "La Merced de Tierra Amarilla, A Short History," in Anselmo F. Arellano, ed., *La Tierra Amarilla: The People of the Chama Valley* (Tierra Amarilla: Chama Valley Schools, 1978); Malcolm Ebright, *The Tierra Amarilla Grant: A History of Chicanery* (Santa Fe: Center for Land Grant Studies, 1980); Robert J. Torrez, "The Tierra Amarilla Land Grant, A Case Study in the Editing of Land Grant Documents," *Southwest Heritage* 13:3&4 (Fall-Winter 1983-1984): 2-16; Robert J. Torrez, "Hispanic Resistance to Land Grant Loss in Northern New Mexico." Unpublished paper presented at the Western Social Science Association Conference, April 1991, pp. 11-12.

that the legislative and judicial systems of the United States have perpetuated an injustice which deprived them of their ancestral lands. Whether or not there is truth to this seems immaterial. The perception of injustice festers. This history of periodic violence related to the loss of the land grant in Tierra Amarilla is one of the unfortunate legacies of Spain's land and water policy. It has often been said that the robber barons of the nineteenth century were Machiavellian in the manner by which they acquired land grants in New Mexico. If they were, however, they certainly ignored Niccolo Machiavelli's advice to his Prince: "above all things, abstain from taking people's property, for men will sooner forget the death of their fathers than the loss of their patrimony."<sup>15</sup> It may be added that today, that patrimony includes both land and water.

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<sup>15</sup> Niccolo Machiavelli, trans. Christian E. Detmold, *The Prince* (New York: Airmont Publishing Co., Inc., 1965), p. 83.



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## BIOGRAPHIES

### **María Luisa Pérez González**

Ms. González is a Ph.D. candidate at the University of Seville in Spain who is presently studying at the University of New Mexico. Her specialty is marginal areas of Spanish colonization to the north and south of Mexico. She was recently named Senior Research Assistant in the History Department at the University of Seville.

### **Dr. Aurora Morcillo**

Dr. Morcillo currently serves as a post-doctoral research fellow at the Spanish Colonial Research Center at the University of New Mexico. She earned a Ph.D. in History from the University of New Mexico in 1995, and also a Ph.D. from the University of Granada in Spain in 1988. Her major fields of study have been modern Spain and Italy, women's history, and U.S. history since 1877.

### **Sam P. Hoyle**

Mr. Hoyle retired in 1998 as the Chief of the Museums Office at Fort Bliss, Texas. He has served on the Board of Directors of the American Association for Museums and also as a past president of the Mountain-Plains Museum Association. Mr. Hoyle holds a Masters in Library Science from the University of Oklahoma and a Bachelor of Fine Arts from Cameron University.

### **Dr. Felix D. Almaráz, Jr.**

Since 1980, Dr. Almaráz has been a Professor of History at the University of Texas at San Antonio. He has written numerous books and scholarly articles relating to Spanish colonial history. Dr. Almaráz received a Master of Arts degree from St. Mary's University in 1962 and a Ph.D. from the University of New Mexico in 1968.

### **Dr. Oscar Martínez**

Since 1988, Dr. Martínez has been a Professor of History at the University of Arizona. Before his current appointment, he taught at the University of Texas at El Paso. He has written six books and numerous scholarly articles on the history of the borderlands. Dr. Martínez is also a past president of the Association of Borderlands Scholars.

### **Armando B. Rendón**

Mr. Rendón currently works as a Public Information Officer for the California Public Utilities Commission. He earned a Master of Arts in Education from the Antioch Graduate School of Education in 1975 and a J.D. from The American University in 1983. In addition to teaching at a



variety of colleges throughout the United States, Mr. Rendón has written extensively on the Treaty of Guadalupe-Hidalgo and its importance as a human rights document for the Chicanan people.

#### **Leon Metz**

Mr. Metz has lived in El Paso since 1953 and is regarded as one of the eminent historians of the U.S.-Mexico border. He has written 15 books and dozens of articles on the history of the Southwest and northern Mexico. Metz has been active in the El Paso County Historical Society, the El Paso Mission Trail Association, and numerous other civic associations.

#### **Robert R. Seipel**

Mr. Seipel is principal and owner of Robert Seipel Associates, Inc., a professional land-surveying firm in El Paso. He holds a Bachelor of Science degree from the University of Texas at El Paso, has worked in the field of land surveying for 26 years and has held a license as a Registered Professional Land Surveyor in Texas since 1983.

#### **Dr. Art Gomez**

Dr. Gomez, a 17-year employee of the National Park Service, currently serves as the History Program Manager in the NPS Intermountain Support Office in Santa Fe. He holds a Ph.D. in history from the University of New Mexico and a M.A. in Oriental Studies from the University of Arizona. One of Dr. Gomez's current projects is an administrative history of Chamizal National Memorial.

#### **Dr. Joseph P. Sánchez**

Dr. Sánchez is superintendent of the Spanish Colonial Research Center, an institution jointly sponsored by the National Park Service and the University of New Mexico. Prior to his current position, he was a professor of colonial Latin American history at the University of Arizona. Dr. Sánchez has published several studies on the Spanish frontier in the Southwest.

#### **René A. Valenzuela**

Since 1992, Mr. Valenzuela has served as Public Affairs Officer for the United States Section of the International Boundary and Water Commission. He has also worked with the Departments of the Army, Air Force, and Agriculture in a variety of capacities. Mr. Valenzuela holds a Bachelor of Arts in Inter-American Studies and a Master of Arts in Mexican History from the University of Texas at El Paso.

**Robert J. Torrez**

Since 1987, Mr. Torrez has served as the State Historian for the state of New Mexico. He has published nearly one hundred scholarly and popular articles on New Mexico history. Mr. Torrez holds a Bachelor of Arts in Political Science and a Master of Arts in History and Political Science from New Mexico Highlands University.



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