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"El Amparo de la Ley": Hispanas' Use of Spanish Mexican and Anglo American Law in Northern New Mexico and Southern Colorado, 1848-1912

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"El Amparo de la Ley": Hispanas' Use of Spanish Mexican and Anglo American Law in Northern New Mexico and Southern Colorado, 1848-1912

by

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ABSTRACT

Following the conclusion of the Mexican-American War of 1846-1848, and the acquisition of nearly one-half of Mexican territory, the United States replaced Spanish civil law with judicial procedures based on English common law in both New Mexico and Colorado Territories. New Mexico retained a community property system which ensured more property rights for women than the common law. However, based on the legal records of Rio Arriba County in New Mexico and Conejos and Costilla counties in Colorado, it is evident that Hispanas in both territories exercised customary inheritance practices, marital customs, and selective use of the law long after conquest. Changes in land title and taxation procedures, increased numbers of European Americans, especially in southern Colorado, and differing social attitudes affected the status of Hispanas. Cultural identity remained firm but new legal practices and power imbalances led to tremendous property loss.

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Finally, I thank my family for their patience and total support. My husband Chris never doubted that I would complete the dissertation and I thank him for his love, good humour, and all the hours spent cleaning up the kitchen after dinner so that I could return to work. My daughter Katherine and my son John, and their families, are truly the wind beneath my wings.

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Introduction

> Historians are often mocked for seeing an inevitability in events that felt like messy happenstance when they actually occurred. The opposite intellectual error is to describe as surprising an outcome that was fairly predictable.[1]

The wind is ceaseless. It blows as if it will never end. Huge clouds of dust boil up and tear across the empty fields, reminding one of the dust storms in the 1930's: the empty swings on the children's playground shift forlornly back and forth, moved by invisible bodies. The great sand dunes thirty-five miles northeast of Alamosa, Colorado, also shift, moving endlessly in wavelike patterns, the sand particles trickling restlessly across the sculptured surfaces. It is difficult to recognize springtime in Colorado's San Luis Valley; the landscape is dun-coloured and seemingly lifeless, until one notices the activity on the edges of the fields that cover the countryside. People, trucks, and backhoes form in small clusters around the *acequias* that border the fields, irrigation ditches that will bring life-giving moisture to the crops. In a centuries-old tradition, the local farmers have gathered communally to clean out the past winter's debris. The season has shifted once more and spring is evident.

The use of the word "shift" throughout the above paragraph is deliberate. The cleaning of *acequias* may have been an old and necessary activity but it did not represent a static, timeless culture in which nothing ever changed.[2] Characterizing New Mexico

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[1] *The Economist*, October 2-8, 2010.

[2] See Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 5; Kevin Adams, *Class and Race in the Frontier Army: Military Life in the West, 1870-1890* (Norman: University of Oklahoma Press, 2009), 8. Adams, in another context, stated that to regard the military as timeless ". . . is to flatten out enormous variability across cultures and eras."

and Hispanic culture as static dismissed its variety and rich traditions. The present U.S. Southwest was a region of great complexity in the nineteenth century as borders shifted, national and ethnic identities changed, and new institutions transformed both northern New Mexico and southern Colorado.[3] The area existed under the jurisdiction of three countries in one century: Spain from 1598 until September 16, 1821, when Mexico gained its independence; Mexico from 1821 until 1848; and the United States following the Mexican-American War, 1846-1848 until the present. After the war, the terms of the Treaty of Guadalupe Hidalgo forced Mexico to surrender forever almost one half, or over 500,000 square miles, of its territory for $15 million, an event that one Mexican historian referred to as " la mutilación territorial que sufrimos (the territorial mutilation that we suffered)."[4]

The vast region influenced by the Spaniards acquired a new name, the U.S. Southwest, that eventually produced a new school of history—the Spanish or Mexican Borderlands.[5] But even the borderlands shifted, for originally they had included the present day states of Florida, Georgia, Louisiana, Mississippi, Alabama, and the U.S.

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[3] See Ralph H. Vigil, "Historical Overview" in Ellwyn R. Stoddard, Richard L. Nostrand, and Jonathan P. West, *Borderlands Sourcebook: A Guide to Literature on Northern Mexico and the American Southwest* (Norman: University of Oklahoma Press, 1983), 27-28 which included southern Colorado within the Hispanic Southwest because, although it was settled by New Mexican pioneers in the nineteenth century, "its land titles often derive from original Mexican grants, and the rivers, valleys, and mountains of the region have Hispanic toponyms." Also, traditional plaza arrangements dominated the Spanish-American settlements. 27-28.

[4] David Piñera Ramirez, *Historiagrafía de la Frontera Norte de Mexico: Balance y Metas de Investigación* (Tijuana: Universidad Autónoma de Baja California, Universidad Autónoma de Nuevo León, 1990), 56.

[5] The term the *Spanish borderlands* first appeared in a book by Herbert Eugene Bolton, *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest* (New Haven: Yale University Press, 1921). Bolton argued that American history must also include its Hispanic past and he defined the borderlands as "the regions between Florida and California now belonging to the United States, over which Spain held sway for centuries." Thus the borderlands stopped at the border with Mexico. In 1970, John Francis Bannon published *The Spanish Borderlands Frontier 1513-1821* (New York: Holt, Rinehart and Winston, 1970).

West north to the southern border of Russian claims at 54° 40' latitude on the northwest coast.[6]

Spanish influence in the borderlands confounded Frederick Jackson Turner's frontier thesis in which westward-moving migrants moved the dividing line between "savagery" and "civilization."[7] On the contrary, the Spanish frontier thrust northward from the metropolis in New Spain, for as John Francis Bannon observed, "Nowhere in the Borderlands was the Anglo-American a pioneer. His frontier in these parts ran head-on into another and older one."[8] He also described Spaniards as "the first American frontiersmen."[9] After the Mexican-American War, Mexican nationals found themselves living in a newly defined geographic location, variously termed the West or the Southwest. But as Sarah Deutsch noted, Hispanics self-identified with their villages, not with a geographic region.[10]

This dissertation examines the legal experiences of Hispanas in one region of the American Southwest during a period of great change, when what one early-twentieth-century writer termed "questions of Spanish law in an American environment" permeated judicial encounters.[11] I focus on the period from 1848 through the early 20th century to set the stage for 1912 when the Territorial period closed and New Mexico achieved statehood. The legal thread weaves throughout the chapters, both in a descriptive sense and in more personal examples. The thesis of the study contends that historically defined

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[6] David J. Weber, ed, *New Spain's Far Northern Frontier: Essays on Spain in the American West* (Albuquerque*:* University of New Mexico Press, 1979), xii.
[7] Frederick Jackson Turner, "The Significance of the Frontier in American History" *Annual Report of the American Historical Association for the Year 1893* (Washington, D.C.: U.S. Government Printing Office, 1894).
[8] Bannon, *The Spanish Borderlands Frontier*, 230.
[9] Ibid., 29.
[10] See Deutsch, *No Separate Refuge*, 9.
[11] Henry A. Dubbs, "The Unfolding of Law in the Mountain Region," *The Colorado Magazine* 3:4 (October 1926): 116.

temporal and spatial boundaries do not necessarily apply to the topic of Hispanas and the law because Spanish law and customs persisted throughout the period into Mexican independence, and overlapped with Anglo-American law to frame the judicial experience of Spanish-Mexican women.

As I explored Hispanas' use of the law, I found that as northern New Mexico and southern Colorado slowly adjusted to a new legal system in the Territorial periods following American conquest in 1848, they persisted in the exercise of their own Hispanic customs and practices as they negotiated old concerns in new contexts.[12] This study examines the positive and negative effects of dramatic systemic change over time, the continuities that linked Hispanas to Spanish and Mexican law, and the vitality of Hispano culture. Historically, Hispanas were part of a larger legal world. In essence the research seeks to determine how the legal options of Hispanas in the region changed as they reacted to the territorial takeover after 1848. Furthermore locating Hispanas at the centre of their own story adds complexity to their lives and to that of the national historical narrative. [13]

In a speech to Congress in December, 1847, the eleventh President of the United States, James K. Polk (1845-1849), uttered the following statement: "In proposing to acquire New Mexico and the Californias, it was known that but an inconsiderable portion of the Mexican people would be transferred with them . . . the country embraced within

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[12] The process was different for Colorado than for New Mexico as Colorado achieved early statehood.

[13] For an excellent historiographical overview of the efforts to place women of colour (as used in the article) at the centre of their own history, see Marion Perales, "Empowering the Welder": A Historical Survey of Women of Color in the West" in *Writing the Range: Race, Class, and Culture in the Women's West*, eds. Elizabeth Jameson and Susan Armitage (Norman: University of Oklahoma Press, 1997), 21-41. See also Peggy Pascoe, "Western Women at the Cultural Crossroads" in *Trails: Toward a New Western History*, eds. Patricia Nelson Limerick, Clyde A. Milner, Jr. and Charles E. Rankin (Lawrence: University Press of Kansas, 1991), 40-58.

these provinces being chiefly an uninhabited region."[14] In April of the following year in Rio Arriba County in northern New Mexico, María Ignacia Quintana and Francisco Saavedra appeared before the *alcalde* (mayor) to revoke an incorrect marriage donation that had not detailed exactly what was to be included in the gift.[15] Written in a formal style, the document was typical of the way in which Hispanos/as consciously strove to follow the form of Spanish/Mexican law even in an "uninhabited region." This example is illustrative of the general ignorance of the U.S. population concerning their new acquisition. The populations in "these provinces" might have been sparse but they were by no means uninhabited, especially New Mexico which Spain had settled in 1598 and which had approximately 60,000 Mexican residents and also an almost equal number of Indian inhabitants by 1848. Howard Lamar estimated the population of the peaceful Pueblo, Zuni, and Moquis tribes to be between 7,000 and 10,000 persons. However, the "wild nomads" of the Southern Ute, Navajo, Mescalero, Jicarilla Apache, Comanche, and Kiowa tribes who numbered between 40,000 and 58,000 challenged white settlements.[16] More importantly the legal document cited revealed not only the culture situated in New Mexico but also the presence of Hispanas in the legal record.

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[14] James K. Polk: "Third Annual Message", December 7, 1847. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project.* http://www. Presidency.ucsb.edu/ws/?pid+29488/ (accessed October 2, 2010).

[15] Francisco Saavedra and María Ignacia Quintana, April 1848, Rio Arriba County, New Mexico State Records Center and Archives (hereafter referred to as NMSRCA), Deed Record Book 1852-1884, Box 1, Folder 1, Number 86. See Howard R. Lamar, *The Far Southwest 1846-1912: a Territorial History* (New Haven: Yale University Press, 1966), 31. The *alcalde* or *alcalde mayor* "acted as justice of the peace, mayor, probate judge, and sometimes as a militia captain."

[16] For estimates of New Mexico's population, see Lamar, *The Far Southwest, 1846-1912: A Territorial History*), 92.

The identification of persons or groups of people can be problematic, especially in the U.S. Southwest when administrations, citizenship, and populations changed.[17] For example, in eighteenth-century New Spain (and by inference in New Mexico), racial and ethnic categories were more numerous, nuanced, and fluid than in the nineteenth-century U.S. Historically, despite racial categories that assigned status according to racial ancestry, some people who adopted a Spanish lifestyle and enjoyed some prosperity stretched the boundaries of society and moved up in the social and racial hierarchies.[18]

I refer to the female subjects of this dissertation as Hispanas, the preferred self-referent term used by New Mexicans. Admittedly it is a somewhat all-encompassing terms as a typical "Hispana" did not exist. In colonial times a woman named María in a legal instrument might have been a *peninsular* (a person born in Spain); a *criollo* (someone born in Mexico but of Spanish "blood"); a *mestiza* (of mixed Spanish and native Indian ancestry); or an *india*, an indigenous female who lived in one of the Pueblos or who was Navajo or Apache or genízaro (a detribalized Indian.) The majority of women in northern New Mexico and those who moved into southern Colorado in the mid-nineteenth century were *mestizas*. I use the term European American in place of Anglo American to refer to persons of European origin other than those from Spain, as migrants to New Mexico and Colorado came from many ethnic groups. I also quote the full names of those women and men who appear in the case files despite the danger of appearing repetitious in order to acknowledge their full presence in the historical record.

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[17] For examples of the difficulties inherent in assigning terms to people in the Southwest, see Deutsch , n.p.; David G. Gutiérrez, "Significant to Whom? Mexican Americans and the History of the American West," *Western Historical Quarterly* 24:4 (November 1993): 520; Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), xix-xx; and Maria E. Montoya, *Translating Property: The Maxwell Land Grant and the Conflict Over Land in the American West, 1840-1900* (Berkeley: University of California Press, 2002), 255.

[18] See Michael C. Meyer, William L. Sherman, and Susan M. Deeds, *The Course of Mexican History* (New York: Oxford University Press, 1999).

In a statement that directly contradicted Polk's description of an "uninhabited region" Howard Lamar's comprehensive study of the Southwest looked at how "Anglo-American political institutions and habits took root and flourished in the Spanish Southwest—a region which already possessed a European cultural heritage and established institutions of its own."[19] The difference between President James Polk's speech and Lamar's statement is emblematic of the struggles that the two cultures engendered when they collided in the mid-nineteenth century after the Mexican-American War (1846-1848). When Louis Knafla observed that "legal change is related to changes in socioeconomic relations, in the distribution of wealth, and in political power, legitimacy, and authority" he could have been describing New Mexico, for under U.S. jurisdiction it suffered all of the above changes.[20] Although national, state, and territorial policies and events influenced the lives of everyone who lived in the Southwest, the focus of this study will be on the Hispanas of northern New Mexico and southern Colorado as they experienced their own lives within a period of great change.

Despite the conflicted nature of justice in northern New Mexico and southern Colorado and the existence of a connected population that was separated into two Territorial legal systems, Hispanas continued to pursue justice. Before the American annexation of New Mexico much of the law was local in nature but it followed fairly formal guidelines and legal language as evidenced in the *alcalde* records and court documents of the period. Implementation of the U.S. justice system, new procedures and personnel, and the introduction of new legal terms as well as the use of English, did not deter Hispanas from seeking *justicia* in suits that concerned issues of property,

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[19] Lamar, *The Far Southwest, 1846-1912*, 1.
[20] Louis A. Knafla and Susan W.S. Binnie, *Law, Society, and the State: Essays in Modern Legal History* (Toronto: University of Toronto Press, 1995), 7.

inheritance, adoption and guardianship, personal disputes, and divorce. Although court and probate records, wills, inventories and property deeds do not reflect Hispanas equally, neither class nor the lack of education dictated their presence in legal transactions. Many illiterate female litigants signed legal instruments with an "X" in place of a signature. Wealthier women, with greater resources at their disposal, were more likely to initiate lawsuits, to execute deeds, and to write detailed wills. Racism, sexism, and a policy of "Americanization" that resulted in massive property loss did not erase women from the legal system as they tried to exercise what they perceived as their rights. Sometimes, however, the reasons for their appearance in court changed.

As noted above, my research centres on Rio Arriba County in northern New Mexico, and Conejos and Costilla Counties in southern Colorado. Before U.S. occupation, in 1844 the Departmental Council of Mexico created seven counties in three districts: Rio Arriba and Taos existed in the Northern district. After the 1848 takeover of New Mexico, General Stephen Watts Kearny created nine counties including Rio Arriba which had its county seat in Tierra Amarilla in northern New Mexico. When New Mexico became a U.S. territory in 1850 the county names remained although boundaries changed. Rio Arriba became a U.S. county on January 9, 1852 predating by nine years the formation of Colorado Territory in 1861 that included Conejos County with its county seat at Conejos, and Costilla County with a county seat at San Luis, as two of the original seventeen counties. (Conejos County had originally been named Guadalupe County but the name was changed after six days.)

The settlement of the San Luis Valley, a semi-arid, intermontane valley located at 7000 feet above sea-level in southern Colorado, has had a long and colourful history.

People have lived there for centuries: Apaches, Arapahoes, Cheyenne, Comanche, Navajos, and Pueblos hunted there, but the Ute believe that they have lived in the valley the longest. Spain laid claim to the area in the sixteenth century and in 1821 it came under Mexican administration.[21] Spanish-speaking New Mexicans from adjoining villages, propelled by the increasing pressure of population growth on land resources and the need for irrigable land, attempted to establish agricultural settlements in the San Luis Valley in the 1830s and 1840s. However, Ute Indian attacks and crop destruction repulsed any efforts by the prospective settlers to gain a permanent foothold in the resource-rich valley.[22]

The formerly Mexican and now American community in New Mexico and the two Colorado counties in this study together formed part of a cultural region linked by kinship ties, religion, and extended social networks. New political realities did not mean a permanent separation of culture, economy, or people. Southern Colorado is included as part of the Hispanic Southwest because its land titles originated from Mexican land grants and settlers from New Mexico, initially from Abiquiú, San Juan de los Caballeros, and Santa Cruz, formed the plazas and small villages in southern Colorado where " . . . the Spanish-Mexican settlement frontier was well-established . . . by 1858."[23] However their culture would only remain dominant for a few decades.[24]

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[21] However, others were also interested in the San Luis Valley. See Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974), 26. Swadesh pointed out that "The secret reconnoitering journey into the San Luis Valley of New Mexico (now southern Colorado), led by Major Zebulon Pike in 1806-1807, put the Spanish colonial government on notice that the Louisiana Purchase had provided them with an intrusive new neighbor."

[22] For a comprehensive history of the San Luis Valley, see Virginia McConnell Simmons, *The San Luis Valley: Land of the Six-Armed Cross* (Niwot: University Press of Colorado, 1999).

[23] Lamar, 225.

[24] Ralph H. Vigil, "Historical Overview," 28.

I focus upon these three counties in order to ascertain how Hispanas employed the courts in northern New Mexico and later in southern Colorado and to look at the changes and continuities in that practice over time when the same population experienced differing legal practices and encountered new arrivals in their territories after the U.S takeover. Did the legal records of the three counties reflect the composition of their population? Little has been done on the Hispanas of Conejos and Costilla counties not only in a comparative sense with Rio Arriba County but also as a discrete topic.[25]

Because county boundaries changed over time references to earlier legal cases may include place names that later belonged to another county. For instance, authorities enlarged Rio Arriba County in 1880 to include the lands west to the Arizona border and the boundaries changed again in 1887 with the creation of San Juan County immediately adjacent to the west. Similarly, the original boundaries of Costilla County included a large part of south-central Colorado. In 1866 part of the northern portion became a portion of Saguache County, in 1874 much of the western portion formed part of Hinsdale and Rio Grande counties, and modern boundaries were established in 1913 with the formation of Alamosa County from Costilla County's northwest area. Conejos County's boundaries that had originally included a large part of southwestern Colorado Territory changed, too. In 1874 the county lost most of the western and northern portion in order to form parts of Hinsdale, La Plata, and Rio Grande counties. Modern boundaries were set in 1885 when the western half of the county was removed to create Archuleta County.

[25] For earlier work on Rio Arriba see Carol Archer, "Surviving the Transition: Women's Property Rights and Inheritance in New Mexico, 1848-1912," Master's thesis, University of Calgary, 2006.

The regional disparities that characterized the Spanish colonial empire were also apparent in the Southwest, especially in Colorado.[26] The initial Hispano area encompassed south central Colorado but economic necessity led some Hispanos to move east and north to the coal camps and sugar beet fields. Not only was there a divergence between the mainly Protestant north and more Catholic south of the state but Colorado's San Luis Valley itself was divided between the northern portion that had a majority Anglo population by the 1870s and 1880s and the primarily Hispanic southern portion. For example, the town of Alamosa, laid out in 1878, heralded the arrival of the Denver and Rio Grande Railroad. Predictably the valley's economic focus moved northward and as a consequence Alamosa no longer wished to have county business administered in Conejos.[27] The creation of Alamosa County in 1913 from the northern portions of Conejos and Costilla counties, the sixty-third and the last county created in Colorado, meant that Costilla County suffered from increased impoverishment as the boundary change also removed a large part of the county's tax base and also marks the end of the period of this study.[28]

When the Spaniards came to New Spain they brought with them the laws of Spain, a civil code that granted women considerable property rights. As Guadalupe T.

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[26] See Armando Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* (Albuquerque: University of New Mexico Press, 1998), 142, for the varied historical experiences of the Spanish-Mexican possessions. "The Californios and the Mexican settlers of Arizona . . . were quickly overrun by Anglo newcomers. Whereas Hispanic New Mexico consisted mostly of villages, the Tejano experience was based largely on ranchos, towns, and cities, instead of villages." For Hispana experiences in the coal mining communities and beet fields of Colorado, see Deutsch, *No Separate Refuge*, 93, 206. Also see Marta Weigle, ed., *Hispanic Villages of Northern New Mexico* (Santa Fe: The Lightning Tree-Jene Lyon, 1975), 82. Weigle noted that from 1880 on, Hispanos worked section-gang hands or in the smelters and mines of Colorado, Utah, and Wyoming. They also earned income from making railroad ties by hand on the Rosario Grant.

[27] Virginia McConnell Simmons, *Land of the Six-Armed Cross,* (Niwot: University Press of Colorado, 199, 210.

[28] For an example of what the loss of 586 square miles of land to Alamosa County meant to the finances of Costilla County see Thomas L. Krainz, "Culture and Poverty: Progressive Era Relief in the Rural West," *Pacific Historical Review* 74:1 (February 2005): 94.

Luna noted, "ancient Spanish law and Mexican civil law recognized the legal right of women to own and control property independent of patriarchal relationships."[29] Women owned their own property, often inherited from parents and grandparents, and sons and daughters shared in a system of partible or equal inheritance. However, the advent of American jurisdiction, based on the English common law, meant that the region encompassed by northern New Mexico and southern Colorado became a legal borderland where two judicial systems collided. How Hispanas adapted to the legal transition when the border shifted but they did not is the subject of this dissertation.

The research focuses upon the changing legal framework from 1848-1912, the period from conquest to New Mexico statehood and the boundary change in the two Colorado counties, within which Hispanas conducted their lives. Their struggles to maintain some semblance of traditional property, inheritance, and legal rights within an imposed, foreign legal system and to adapt to a changed judicial environment under United States sovereignty lies at the heart of this study. Changes in attitudes toward land use and ownership, marriage and intimate relationships, divorce laws, land title and taxation procedures, and increasing numbers of European Americans with their racist and classist attitudes affected the status, existence, and survival of Hispanas in New Mexico and Colorado. American common law that placed married women under the control of their husbands deprived Hispanas of their legal identity as legitimate property owners.[30]

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[29] Guadalupe T. Luna, "'This Land Belongs to Me: Chicanas: Land Grant Adjudication, and the Treaty of Guadalupe Hidalgo," *Harvard Latino Law Review* 3 (Fall 1999): 118.

[30] Ibid., 120. Luna argued that the circumvention of the Treaty of Guadalupe Hidalgo's promise to protect the property rights of those living in the newly annexed territory, placing an unfair burden of proof of title upon the landholder, the concept of universal law under which everyone supposedly received the same treatment, prolonged litigation, and "imprecise legal rulings", all served to hinder Hispanas in their ability to maintain their property. 122. See also Donna C. Schuele, "Community Property Law and the Politics of Married Women's Rights in Nineteenth-Century California," *Western Legal History* 7:2 (Summer/Fall

Using the lens of the law allowed me to address issues of gender, race, and class in the judicial interaction between Mexican interpretation of the law and the requirements of Anglo-American law.

When the Spaniards arrived in New Mexico in 1598, Juan de Oñate (1550-1626) initially established the first Spanish capital of San Juan de los Caballeros at the Tewa village of Ohke, north of present-day Española, with a contingent of 130 men, women, and children. On April 30, 1598, Juan de Oñate took possession of New Mexico in the name of the Spanish king and became the first colonial governor of the New Spanish province of New Mexico. The second Spanish governor, Don Pedro de Peralta founded Santa Fe, which became the capital in 1610. The Pueblo Indian Revolt in 1680 forced the Spaniards out for twelve years but after the Reconquest of the province, Don Diego de Vargas recolonized Santa Fe in 1692 and Spain remained in control of New Spain until Mexican independence in 1821. The Mexican Territory of New Mexico was created by the Decree of July 6, 1824; on December 29, 1836 it became a department under the Republic of Mexico.

However, Spain was less interested in building a new society than in transferring an old one that followed the strict guidelines of the royal government. Thus a civil code of justice formed part of what Spaniards conveyed from the old world to the new, but isolation and the distance from Mexico City meant that over the centuries New Mexico changed slowly and retained Spanish customs and practices. As Janet Lecompte noted, "The culture of New Mexicans, and especially of New Mexican women, was distinct in many aspects from that of central Mexico or the Mexican frontier territories. In costume,

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1994): 245-281. Schuele focuses upon the struggle for women's marital property rights in nineteenth-century California and the confusion over "common" property as defined in civil and common law.

language, religion, government, and legal rights of women, the people of New Mexico kept strong ties to sixteenth-century Spain."[31]

I look at Hispanas in a period of great political, economic, and social upheaval but I do not categorize them exclusively as settler women, burdened by the never-ending, gender-based tasks of household work, agricultural pursuits, and constant childbearing. Of course, this is not to deny that very important part of their existence but I look at Hispanas as individuals who had legal rights as well as through other aspects of their lives that emphasized their role in what one might consider to be public space.[32] I do not refer to their presence in the political arena (women did not have the vote in the period of study nor could they sit on juries for example) nor do I ignore their incorporation into a capitalist economy and the tremendous loss of land suffered by the Hispano population in the latter part of the nineteenth century. This is not to categorize the influence of external forces as immaterial, for the pressures they exerted on the lives of Hispanas were real, but such factors must not be allowed to define completely women's presence in the historical record.[33]

Still, "public space" could have multiple meanings.[34] If a woman lived on a plaza or in a village; attended births, weddings, and funerals; participated in numerous Saint's Days festivities; appeared at church; pursued suits in *alcalde* or local courts and later,

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[31] Janet Lecompte, "The Independent Women of New Mexico: 1821-1846," *Western Historical Quarterly* 12:1 (January 1981): 71.

[32] The term "public space" itself was a cultural construct. See Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18:2 (Summer 1966): 151-174, which is discussed later in the dissertation.

[33] For an earlier generalized perspective on women see Nancy F. Cott and Elizabeth H. Pleck, eds. *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 4, who described women as not "victims of social change—passive victims of changing definitions of themselves—nor totally mistresses of their destinies." Obviously, this did not apply to Hispanic women. They experienced not only social change, but also a change in culture (social and legal), citizenship, and geographic boundaries.

district courts; or visited between one territory and another, she could be seen as living in a public space. Mario T. García put this concept neatly when he described the Mexicans of El Paso: "What we see is that women refused to distinguish the domestic space of the 'woman's sphere' in a way that makes private/public a strict binary opposition: rather, domestic space provides the vantage point from which history is witnessed as well as the strategic space from which women act upon history."[35] However, Linda Fregoso argued that "Chicana confinement to domesticity" does not mean "women's presence outside the home or the labor force, but rather the regulation of their access to the public sphere of the streets and discursive relations."[36]

Despite the turbulent times in which they lived, this study will investigate who used the courts and the reasons they did so. For instance, did women of different classes use the courts and if so for what purpose? A woman living in Rio Arriba County might have complained to the local *alcalde* court about payment owed for a *fanega* of wheat and a woman in Conejos County, who was the administratrix of an estate, might have appeared in probate court to challenge other family members over some missing property, but both felt entitled to exercise their judicial rights. Did being single, married, or widowed influence women's use of the court and again, if so, why?

When I chose to explore the subject of Hispanic women's property and inheritance rights in New Mexico and Colorado, the inseparable links of gender, race, ethnicity, class, and sexuality in the region became evident, ties that one historian

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[35] Mario T. García, *Desert Immigrants: The Mexicans of El Paso, 1880-1920* (New Haven: Yale University Press, 1981), 118.
[36] Rosa Linda Fregoso, *meXicana Encounters: The Making of Social Identities on the Borderlands* (Berkeley: University of California Press, 2003), 93.

referred to as "tangled, shifting, and contingent ethnic and social relationships."[37] Or as Elliott West put it, "whenever we explore any field or topic, we quickly find that its boundaries cannot contain what we try to put there."[38] Ultimately West noted: "The economic merges with social and cultural concerns."[39] Thus, I investigated keeping these analytical categories always in mind. For example, wives inherited property from their husbands but so did the long-time partners of men whom they had never married but with whom they had raised families. Captive Indian women purchased by Hispanos sometimes also bore their children by their masters (who on occasion married them) and frequently received bequests left to them in their owners' wills. Thus, who acquired property is as interesting as how it occurred. Some Hispanas intermarried with European American men but others did not; in both cases provision was made for the children's welfare, including children whose mestizo background might not always have been evident.

From the Spanish invasion in the sixteenth century until the present, territorial disputes, boundary changes, the acquisition and theft of land, changing social attitudes, and racial and ethnic definitions all coloured the history of this region. Hispanas, too, contested the division of land, challenged wills and estates, and sought resolution to unhappy relationships within a legal framework. It is these cases that reveal the strength of Spanish Mexican culture and indicate how thin the veneer of American influence could be in some areas of Hispanic private life. The continued use of customary law challenged the interpretations of common law, and the overlapping of two legal systems combined with the use of the Spanish language undermined and delayed American efforts

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[37] William J. Convery, "Reckless Men of Both Races: The Trinidad War, 1867-1868," *Colorado History* 10 (2004), 22.
[38] Elliott West, "Thinking West," in William Deverell, ed., *A Companion to the American West* (Malden: Blackwell Publishing, 2004), 26.
[39] Ibid., 33.

to establish English-speaking courts that attempted to instill Anglo-American common law.[40]

In 1849 following the Mexican American War the first permanent Hispanic settlement took root in the San Luis Valley when several families constructed simple shelters on Costilla Creek. On April 9, 1851, Hispanic settlers from the earlier colonization of the Taos Valley established the town of San Luis or San Luis de la Culebra on the Culebra River, the oldest town in present-day Colorado. One historian termed the exodus an "extension of Taos."[41] A Colorado newspaper described San Luis as having about one hundred families almost exclusively Mexican and its architecture and custom as "purely Mexican."[42] During the next two years Ute Indians once again attacked the fledgling settlements, but by 1852 Hispanic settlers were able to defend themselves. In 1852 the U.S. government established Fort Massachusetts, the first military post in Colorado, to protect the settlers in the San Luis Valley from Indian depredations. In 1858, the fort moved six miles and became Fort Garland, named in honour of General John Garland.[43]

The early communities in Costilla County, located in the Sangre de Cristo land grant, followed the same traditional settlement pattern as northern New Mexico as they

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[40] See C.A. Bayly, *The Birth of the Modern World; 1780-1914: Global Connections and Comparisons* (Oxford: Blackwell Publishing, 2004), who noted how important stable legal institutions were to the advance of the western world. I use the term Anglo-American when referring to the common law to reflect its origins in English law. Otherwise I use European American to indicate all of those persons not Hispanic.
[41] José de Onís, *The Hispanic Contribution to the State of Colorado* (Boulder: Westview Press, 1976), xv. See also William G. Robbins, *Colony and Empire: The Capitalist Transformation of the American West* (Lawrence: University Press of Kansas, 1994), 27, who remarked that by 1900 the Rio Arriba or upper Rio Grande became the "point of origin for most Spanish-Americans living in Colorado. Hence, one can conclude that fifty years removed from the conquest of 1848 the Rio Arriba people were subject colonials on lands they had occupied for more than three centuries."
[42] *The Colorado Weekly Chieftain*, August 6, 1868. The same paper counted about fifty men of American and foreign birth; the "entire valley was composed of Mexicans except for the fifty Americans."
[43] Simmons, *The San Luis Valley*, 74.

consisted of plazas headed by senior family leaders.[44] Charles H. Beaubien (1800-1864), a French-Canadian-born fur trader, controlled the grant. He and Guadalupe Miranda, a Mexican public official, received land in 1841 from Mexican governor Manuel Armijo that became known as the Beaubien-Miranda Grant. Charles Beaubien's thirteen-year-old son, Narciso Beaubien, and fur trapper Stephen Louis (Luis) Lee received the Sangre de Cristo Grant in the San Luis Valley in 1845. When Narciso Beaubien was killed in the Taos Revolt in January, 1847, Charles Beaubien inherited his son's share of the grant.[45] He separated the land into three areas of use and divided the agricultural land into narrow strips (*varas*) that faced onto streams for irrigation but extended back into individual plots of farmland.[46] Farmers had access to water from the *acequia madre* or main ditch. Common land in the mountains, La Sierra, provided timber; firewood; berries; nuts, and game, and La Vega, or the common grazing land, ensured adequate pasturage for livestock. As in the older New Mexican land grants, partible inheritance, wherein the land was divided equally among inheritors, eventually reduced the size of the *vara* strips.[47] Hispanic settlers continued the traditional division of land in the valley for agricultural purposes even after it had become American territory.[48]

Evidence of the connections between New Mexico and Colorado can be found in many nineteenth-century documents. In 1889 in a case of attachment (prevention of

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[44] See Thomas G. Andrews, "Tata Atanasio Trujillo's Unlikely Tale of Utes, Nuevomexicanos, and the Settling of Colorado's San Luis Valley," *New Mexico Historical Review* 75:1 (January 2000), 23. Andrews asserted: "Power in nuevomexicano society resided not in Santa Fe, but in the plaza where residents were usually related by blood or marriage."

[45] On January 19, 1847 in Taos, New Mexico where anti-American feeling was running high, a band of Taos Indians murdered Governor Charles Bent and several others.

[46] A *vara* is a variable unit of length about 2.8 feet.

[47] This section drew extensively from Krainz, "Culture and Poverty: Progressive Era Relief in the Rural West", 95-96.

[48] Minette C.Church noted in "The Grant and the Grid: Homestead Landscapes in the Late Nineteenth-Century Borderlands of Southern Colorado," *Journal of Social Archaeology* 2:2 (June 2002), 222, that "in relatively few cases does settlement there (southeastern Colorado and northeastern New Mexico) actually conform to legislative intentions originating in Mexico City or Washington, D.C."

goods being removed) between Ferdinand Meyer, a merchant in Costilla County in the state of Colorado, and José Antonio Vigil, the court stated: "That the cause of action originated in the Territory of New Mexico and that these proceedings should have been commenced in the Territory of New Mexico."[49] Wills and estates, too, frequently reflected enduring regional bonds. In 1866 when Tomás Salazar acted for the estate of Antonio José Salazar who died intestate in Rio Arriba County, he noted before Probate Judge Juan Antonio Roybal that Luis Salazar and Josefa de la Soleden, minors living in Conejos County, Colorado Territory, were the sole heirs.[50] Conejos County resident, José Guadalupe Jirón, also owned "some land in New Mexico and one house to be divided" which he described in his will filed in 1893.[51] And in 1897 Juan Antonio Peña from El Brazo Precinct in Conejos County ordered that upon his death all of his property in Colorado *and* in the Territory of New Mexico should be transferred in favour of his wife, María Cisneros de Peña, except forty acres for his grandchild, Candelaria Romero, in one corner of his ranch "where they, the two, agree."[52] In addition, Juan Antonio Peña's brother was to deliver four hundred ewes to María Cisneros de Peña, eighty yearlings with wool and eighty fleeces, and the land that was at present in his brother's care. The 1898 will of María Gertrudes de Lujan de Gonzales who lived in Conejos County, Colorado, included the bequest of a piece of land and an adobe house known by the name of La Jolla in the Territory of New Mexico to her daughter Querina Gonzales besides a

[49]Ferdinand Meyer vs. José Antonio Vigil, May 16, 1889, Box 68742, Number 95, Costilla County, Colorado State Archives, Denver, Colorado.
[50] Estate of Antonio José Salazar, November 7, 1866, NMSRCA, Probate Court, Series 7, File Number 209. The document had been misfiled in the María Jesus de Cordoba folder.
[51] Estate of José Guadalupe Jirón, August 1, 1893, Conejos County, Conejos County Court Records, Record of Wills.
[52] Juan Antonio Peña to María Juliana Cisneros de Peña, February 26, 1897, Conejos County, Conejos County Court Records, Record of Wills.

residence, furniture, and implements in Capulin, Conejos County.[53]

Newspaper accounts and court records also reflected the business connections between the communities in New Mexico and those in Colorado. Hispanas travelled between New Mexico and Colorado, sometimes to accompany their husbands on business or to visit family. When *La Voz del Valle,* an Antonito, Colorado newspaper reported that Virginia M. de Quintana and Pablita de Quintana had returned from visiting family in Santa Cruz, New Mexico, that the wife of Moses Ruybal was visiting Española, New Mexico, and that Doña Josefa B. de Herrera from Guadalupe and her family were going to Bernalillo, New Mexico, on business, they did not record just simple family visits.[54] We also learn that Doña Asenaida de Herrera, a relative of the latter, was shearing in her field of lambs that were not yet a year old.[55] If we look more deeply, we realize that this event evidenced the continuation of a decades-old inter-regional relationship that crossed geographical survey lines drawn upon a piece of paper.

Richard Griswold Del Castillo and Arnoldo De León described northern New Mexico and southern Colorado as a cultural region that "entered the twentieth century with its Hispano population still largely identifying with the Spanish past, unaffected by any appreciable Mexican immigration."[56] Stephen Hyslop concluded that: "Throughout the history of the American exchange with Mexico, there had been considerable confusion as to where one country ended and the other began—not just territorially but culturally."[57] However, these descriptions, while accurate, ignore the indigenous peoples

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[53] Estate of María Gertrudes Lujan de Gonzales, March 1898, Probate Court C, Conejos County.
[54] *La Voz de Valle*, October 26, 1899, April 12, 1900, and July 19, 1900.
[55] Ibid., June 14, 1900.
[56] Richard Griswold Del Castillo and Arnoldo De León, *North to Aztlán: A History of Mexican Americans in the United States* (New York: Twayne Publishers, 1996, 1997), 172.
[57] Stephen G. Hyslop, *Bound for Santa Fe: The Road to New Mexico and the American Conquest, 1846-1848* (Norman: University of Oklahoma Press, 2002), 435. Hyslop documents the "revealing literary

and the considerable mestizo influence that complicated the borderlands.

Because a number of explorers, military men, and travelers wrote accounts of their experiences in New Mexico and Colorado it is easy to privilege the white gaze and English-language documents and far more difficult to place Hispanas entirely at the centre of their own history and in their own communities.[58] This is especially difficult with a topic that requires the comparison of two completely different legal traditions so that the intrusion of European Americans is unavoidable. One has to avoid the tendency to "write around and about" Hispanas and instead focus upon their point of view as far as possible. Since there is a scarcity of diaries and reminiscences by the women in my study, I examined wills, court records, property deeds, statutes, manuscript census returns, and newspapers in order to determine the presence of Hispanas in the immediate post-conquest period. Nevertheless it is challenging to analyze patterns and trends when sources are scattered, documentation is incomplete, and legal activities are not always comparable. I basically used only litigation that involved Hispanas and cases in which females were the principal actors. I also looked at the federal population censuses for Rio Arriba, Conejos, and Costilla counties from 1850-1900 in order to gain a sense of the lives of Hispanas in the nineteenth century.

Despite the dry statistics of census records, if one reads them with the intention of putting Hispanas at the centre of the historical focus, something of the diversity and

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exchange, by which the Americans came to grips with a region that remained essentially Spanish long after the hostilities of 1846." xi. See also Paige Sylvia Raibmon, *Authentic Indians: Episodes of Encounters From the Late-Nineteenth Century Northwest Coast* (Durham: Duke University Press, 2005), 109. Raibmon noted that when the Coast Salish travelled from the Province of British Columbia to Washington State, they ". . . reentered a familiar orbit of extended kin more than they entered a foreign country."

[58] For a critique of the exclusion of Hispanic women from their own history see Antonia Castañeda, "Women of Color and the Rewriting of Western History: The Discourse, Politics, and Decolonization of History," *Pacific Historical Review* 61:4 (November 1992): 514-519, and "Gender, Race, and Culture: Spanish Mexican Women in the Historiography of Frontier California," *Frontiers* 11:1 (1990): 8-20.

reality of their private lives is revealed. Regardless of the fact that the majority of their marital partners worked as either farmers or labourers, the legal instruments drawn up by and for Hispanos/as reflected an often-surprising sophistication and knowledge of the law by at least some members of the community.

Although written and compiled by male court officers, census enumerators, and newspaper editors, a gendered analysis of these sources provides a different perspective and makes it possible to build a picture of the lives of Hispanas as they experienced the change to American administration and law. The record showed that indeed women functioned as historical actors in their own right who responded to circumstances as best they could in a rapidly changing environment. Sources such as these allow us not only to know "what women could do at law, rather than what they could not;" they also illustrate how women operated judicially in actual practice.[59]

Fortunately, recent scholarship has added greatly to our knowledge of the lives of mid-nineteenth-century Hispanas.[60] Modern terms such as "strategies" and "agency" fail to describe accurately the complexity of the actions of mid-nineteenth-century Hispanas as they confronted new institutions and adapted to them.[61] Deena González examined the

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[59] Nancy E. Wright, Margaret W. Ferguson and A.R. Buck, *Women, Property, and the Letters of the Law in Early Modern England* (Toronto: University of Toronto Press, 2004), 61. Also see James F. Traer, *Marriage and the Family in Eighteenth-Century France* (Ithaca: Cornell University Press, 1980), 9. Traer argued that "Statutes and court decisions regulated certain aspects of family life, but by themselves they constitute an imperfect mirror of society's actual practices. The law sets the outer limits for human behavior; it does not ordinarily identify the norm. Furthermore, in normal times the law tends to lag behind social change, while in a period of revolution it may leap ahead of prevailing practices as legislators modify it in order to instruct and change society." 9.

[60] For an older view, see Gordon Bakken, *Practicing Law in Frontier California* (Lincoln: University of Nebraska Press, 1991), xvii, who argued "Democracy in the form of participation, suffrage changes, and access to institutional power gained ground as Americans moved west. Law was the institutional glue that held communities together and enabled the building process to continue." Of course not all communities benefited from the American "building process" in quite the same way.

[61] See Sueann Caulfield, "The History of Gender in the Historiography of Latin America," *Hispanic American Historical Review* 81:3/4 (Aug/Nov 2001): 486. She included Richard Boyer's work *Lives of the Bigamists: Marriage, Family, and Community in Colonial Mexico* (Albuquerque: University of New

impact of U.S. annexation of New Mexico on the lives of Spanish-Mexican women in her work, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe: 1820-1880.* Women refused to be integrated "at its lowest rungs, into a nineteenth-century economy that was being transplanted from the Midwestern and eastern United States."[62] Despite the increased impoverishment of the women of Santa Fe, New Mexico under the American regime, González asserted that the dramatic increase in the writing of wills after 1877 allowed Hispanas to exercise some measure of control over their lives as they sought to pass on their property. However, she argued that after U.S. conquest women began leaving most of their land to male relatives.[63]

The women of Rio Arriba, Conejos, and Costilla counties experienced slightly different conquests. Although the three counties were regarded as part of the "Hispanic" or "Spanish" counties of the two states, their legal histories varied considerably.[64] Rio Arriba County, isolated both by geography and by Spanish government policy that had historically forbidden foreign commerce, and home to a majority Hispano population, retained a strong Hispanic culture within which elites and the *ricos* or wealthier persons collaborated with the incoming Anglos to maintain some political power.[65] Hispanos in Colorado were poor and always a political minority after large numbers of Anglos rushed

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Mexico Press, 1995), and noted that according to Boyer, "Neither compliance nor avoidance were forms of resistance in the ordinary sense, but rather the consequences of ordinary people making choices and carrying on day by day." See also Jane Dysart, "Mexican Women in San Antonio, 1830-1860: The Assimilation Process," *The Western Historical Quarterly* 7:4 (October 1976), 366. Dysart noted that some actions were "a temporary response to necessity, not a basic alteration in role."

[62] González, *Refusing the Favor,* 7.

[63] Ibid., 101.

[64] See Arnold Valdez and María Mondragon-Valdez , " Costilla County: Contested Landscapes," *ReVista: Harvard Review of Latin America* 2:2 (Winter 1999), n.p. They described a Rio Grande Bioregion formed by seven counties in New Mexico and two in Colorado. "Together Rio Arriba, Sandoval, Santa Fe, and Taos Counties form the old Hispano settlement core of the Rio Arriba. Costilla and Conejos County in Colorado, and Mora and San Miguel [at the] far eastern edge of Mexico represent later established traditional Hispano enclaves."

[65] For a comprehensive view of political collaboration and accommodation in New Mexico see Lamar, *The Far Southwest.* See also Bakken, *The Development of Law on the Rocky Mountain Frontier.*

to the discovery of gold at Cherry Creek in 1858 and to the gold–lode strike on North Clear Creek made by John Gregory the next year.[66] As a consequence Costilla County, contiguous to both Rio Arriba and Conejos counties, and Conejos County became increasingly exposed to Anglo influence. However the San Luis Valley, administered as part of New Mexico for eleven years, 1850-1861, ensured that the region that encompassed the southern half of the valley and the mountain villages of northern New Mexico maintained its Hispanic identity.

The flow of population from New Mexico into the counties of southern Colorado increased after U.S. annexation. In 1868, the *Colorado Weekly Chieftain* noted that the population of Costilla County increased during the summer by immigration from New Mexico and added:

> Southern Colorado is just now in the focus where Governor Gilpin's two great columns are converging. Daily accessions are being made to our population from the south, east and north, of American immigrants, while Mexicans from the northern part of New Mexico are pouring into the counties of Las Animas, Costilla and Conejos. There is yet room enough to spare.[67]

However, the shift from Spanish/Mexican civil law to American common law did not occur in a uniform process throughout the three counties. The differing timelines of the achievement of territorial status and eventual statehood in New Mexico and Colorado, the uneven application of a new legal system, and cultural differences all sometimes allowed the older Spanish civil code of law to overlap with the common law. Although New Mexico became a territory in 1850 it did not achieve statehood until 1912. After the U.S. annexed Colorado in 1848 after the Mexican American War, all areas of Hispano

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[66] Dubbs, "The Unfolding of Law in the Mountain Region," 119.
[67] *Colorado Weekly Chieftain*, September 10, 1868. William Gilpin (1813-1894) was the first governor of Colorado Territory 1861-1862.

settlement remained under the supervision of Santa Fe in New Mexico until Congress created the Colorado Territory in 1861, and Colorado achieved statehood in 1876.[68] Divergent periods of settlement meant that communities in Conejos and Costilla counties experienced different concerns than those in Rio Arriba. The loss of land suffered by the Hispanic population occurred earlier in the history of the southern counties than it did in Rio Arriba, which had been settled far earlier but had fewer land-hungry foreigners. Legal disputes that had traditionally been adjudicated by the local village *alcalde* or mayor in New Mexico villages numbered far fewer in the Colorado counties where Hispanos appeared in the new American courts with their court-appointed lawyers.

As Laura Gómez argues, "The American occupation heralded tremendous changes in New Mexico's legal system, although there remain questions about the degree to which formal changes in the legal system seeped down to influence daily life."[69] This study examines the "fascinating process of the reception of new legal orders and the perseverance of older ones."[70] Indeed, the use of the term "fascinating" is arguable if one considers the context of conquest and land acquisition that underlay some of these processes.

Because my primary emphasis is upon Hispanas, comparisons to the lives of nineteenth-century European American women will be made when it is necessary to highlight a particular issue. For example, in New Mexico, married women retained their community property rights whereas Colorado adopted Anglo American law that

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[68] See Bakken, *The Development of the Law on the Rocky Mountain Frontier.*
[69] Laura E. Gómez, "Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico," *UCLA Law Review* 49:5 (June 2002): 1402. Gómez further argues "as late as 1870—more than twenty years after the American conquest—many New Mexico counties continued to function with little or no activity in the American district courts."
[70] Hans W. Baade, "Marriage Contracts in French and Spanish Louisiana: A Study in 'Notarial' Jurisprudence," *Tulane Law Review* 53:1 (December 1979): 30.

circumscribed the property rights of Mexican women. Spanish, and later, Mexican, married women enjoyed significant property rights under the civil code that the Anglo American common law would later deny them.[71] Silvia Arrom noted that the "legal inferiority [of Mexican women] was less glaring because of the considerable protection and property rights they enjoyed under Hispanic law."[72] Spanish women controlled the property that they brought to a marriage, bequeathed it in their own wills, shared equally in the community property acquired during the marriage, and inherited equally with their male siblings. They could purchase and sell property, enter into contracts and bring suit in court. After marriage, a Spanish woman might retain her maiden name as her legal name. The customary addition of the surname of the husband served to indicate her marital status.[73] Under common law, however, a married woman became one with her husband, a *feme* covert, covered and protected by her partner.[74] Her spouse gained control over her real property, her earnings, and any children resulting from the marriage.

In 1850, regular transfer of property between a father and a daughter illuminated how the winds of change were blowing and the start of the legal and cultural shift. On November 19, 1850, in Rio Arriba County in New Mexico Territory two-and-a-half years

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[71] See Schuele, "Community Property Law and the Politics of Married Women's Rights Century": 245-281. There are nine community property states in the United States today: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington State, and Wisconsin.
[72] Silvia Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985), 267.
[73] Leo Kanowitz, *Women and the Law: The Unfinished Revolution* (Albuquerque: University of New Mexico Press, 1969), 263.
[74] Ibid. However, Kanowitz, like others, referred to "The common law fiction of merger between husband and wife." Although women could turn to chancery courts and trusts to protect their property, this was an expensive process and not accessible for all women. Jean Stuntz noted that when the common law became too complex, Courts of Chancery heard cases in equity "meaning they dispensed their opinions based on fairness, not complicated procedure issues." Jean Stuntz, *Hers, His, and Theirs: Community Property Law in Spain and Early Texas* (Lubbock: Texas Tech University Press, 1995), 100. See also Marjorie K. McIntosh, "The Benefits and Drawbacks of Femme Sole Status in England, 1300-1630," *Journal of British Studies* 44:3 (July 2005): 410-438.

after the end of the Mexican-American War, Julián Lucero transferred the house in which he lived to his daughter, María Martha Clark, and her husband, Elias T. Clark who would later serve as a judge from 1855-1860. María Clark also acquired land, the orchard, and household furniture on the understanding that she relinquished any rights to her father's other houses. In return, María Clark and her husband agreed to look after Julián Lucero and to furnish the necessities of life. Theodore D. Wheaton and Philipe [sic] Lujan witnessed the document of conveyance concerning their negotiations in the presence of Charles Beaubien, *Juez del Circuito* or Judge. On closer inspection a more complex story is revealed. For example, a Mexican woman and a European American man had intermarried; one of the witnesses was Mexican and the other European American; and the judge, French-Canadian by birth, signed the document of conveyance in Spanish as *Juez del Circuito*. But Theodore Wheaton was no ordinary witness and Charles Beaubien no ordinary judge. Theodore Wheaton, who later married a Mexican woman, Catalina Vigil, in 1853, was a member of the Territorial Legislature representing Taos County, and Speaker of the House; he became the district attorney in Taos from 1860-1867. Charles Beaubien, a naturalized Mexican citizen married to María Paula Lobato, a Mexican woman, was one of the judges of the New Mexico Territorial Supreme Court and the owner of the Sangre de Cristo land grant.[75] The transitional nature of this period is evident in the inclusion of Spanish terms in the English translation of the document

[75] In 1841, Guadalupe Miranda and Charles Beaubien requested and received lands east of the Sangre de Cristo Mountains along the Cimarron and Canadian rivers from Governor Manuel Armijo of the Department of New Mexico. These lands became known as the Beaubien-Miranda grant. See Maria E. Montoya, *Translating Property: the Maxwell Land Grant and the Conflict Over Land in the American West, 1840-1900* (Berkeley: University of California Press, 2002), 30-39 and 52-54, and Joseph P. Sánchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History, 1692-1968* (Norman: University of Oklahoma Press, 2008), 121.

that transferred the house to María Martha Clark "with all its choveras [sic], entradas and salidas as defined by the Mexican law."[76]

However, it is interesting that two months before, on October 23, 1850 Theodore Wheaton was also involved in buying and selling the Lucero property. On that day, Julían Lucero sold a piece of land with a water-powered grist mill to Theodore D. Wheaton of the County of Taos, provided that he, Julían Lucero and his daughter, María Martha could do their grinding for free. Elias T. Clark acted as witness, clerk, and acting recorder and duly set his hand and seal in the presence of an *alcalde* and two witnesses.[77] This case is a microcosm of many of the elements that underpin the dissertation. María Martha Clark is portrayed as a dutiful daughter who received her father's property in return for her care of him.[78] The positions of court officials were already filled by European Americans who had moved to the territory, made advantageous marriages, and who actively engaged in the acquisition of land even as they served the legal needs of the community.

In the chapters that follow I explore the judicial environment in which Hispanas found themselves after the cession of New Mexico to the United States and the transition from civil to common law. I also follow settlers who moved from Rio Arriba County in northern New Mexico Territory (a community property jurisdiction) into Colorado's Conejos and Costilla Counties (administered under the common law) in the San Luis

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[76] *Chorreras* are the spouts that allow water to run off the roof of a Mexican style adobe home. See Julián Lucero to María Martha Clark, and Elias T. Clark, 19 November 1850, Rio Arriba County, New Mexico State Record Center and Archives (hereinafter referred to as NMSRCA), Deed Record Book 1852-1884, Box 1, Folder 1, unnumbered.

[77] Julían Lucero to Theodore D. Wheaton, October 23, 1850, Rio Arriba County, NMSRCA, Land Conveyances, 3.

[78] See Yolanda Chávez Leyva, "'A Poor Widow Widow Burdened With Children': Widows and Land in Colonial New Mexico," in Elizabeth Jameson and Susan Armitage, eds. *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997), 91.

Valley in the mid-nineteenth century, in order to study the legal continuities and disruptions that characterized the lives of Hispanas.

Chapter One looks at the gradual incorporation of Hispanas into a historical narrative that did not generally include them to any great extent in early accounts of the history of the Southwest settlements of New Mexico.[79] New scholarship gradually moves Hispanas from the margins of history to the centre of their own story. This chapter also briefly looks at the colonial period in northern New Spain to look for continuities with the legal lives of Hispanas under U.S. administration and touches upon the imperial tone of American conquest. Chapter Two analyzes the demography and family composition of Rio Arriba, Conejos, and Costilla counties by looking at the age at marriage of Hispanas, the age difference between spouses, family size, and occupational structure. As well I look at elements of class difference and racial classification. This provides a demographic context in which to assess how particular women used the law. Chapter Three discusses the development of the Spanish civil code and the relative positions of Mexican women and European American women under two different legal systems. In particular, property rights illustrated the dramatic differences in law perceived by European American women and Mexican women. Chapter Four examines how Spanish/Mexican law operated in practice in the mid-nineteenth-century New Mexico, the attitude of European Americans towards that law, and legal differences between northern New Mexico and southern Colorado. Chapter Five looks at intimate relationships, formal, informal, and customary in the region through the lenses of ethnicity, gender, and class. I include separation and divorce in this chapter because these legal rights changed under U. S.

[79] Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974).

administration as did the opportunity to end partnerships with the right of absolute divorce under American administration. Chapter Six investigates the differing attitudes towards property exhibited by Hispanos/as and European Americans, the nature of property transactions between community members, particularly the conveyance of land by women, and the loss of land experienced by the Hispano community in northern New Mexico and southern Colorado. A closer look at inheritance practices in the region is revealed in Chapter Seven through both the wills of Hispanas and those of Hispanos as they affected wives and families. Wills offer a unique window into the lives of nineteenth-century Hispanic communities through which it is possible to perceive not only the care with which Hispanos provided for their heirs but also the conflicts that could arise from disputes over an estate. Finally Chapter Eight touches briefly upon other concerns such as issues of debt, property disputes, and honour that brought Hispanas into the legal system. I conclude with a consideration of how this study illuminates changing gender roles in a period of transition.

Chapter One: Hispanas in the Historical Narrative

If one traces the historiography of the West, western women's history, and the multicultural history of women in the West, it becomes clear that not only has the journey been contested, controversial, and complex but that a debt is owed to those scholars who struggled to forge an inclusive history of western women. This scholarship provided the conceptual framework that made it possible for the present dissertation to centre upon a gendered approach that illuminates a basically unstudied theme, the legal lives of a particular group of Hispanas during a particularly tumultuous moment in the history of the Southwest. Although some recent scholarship has focused upon Hispanas' uses of the law, less work has been done on those settlers who moved into southern Colorado from northern New Mexico. Questions remain as to what happened to Mexican women's use of the law and whether there was any continuity in their sense of legal entitlement in addition to the inevitable changes that occurred as they encountered a system of Anglo-American common law that differed sharply from the Spanish civil code to which they had been accustomed. Also more work has been done on the colonial period and on the twentieth century and less on the territorial era.

Older studies on the nineteenth-century Southwest and borderlands of the United States tended to focus on the larger economic, political, and legal changes that occurred under American jurisdiction. Women did not figure largely in these narratives, much less those who did not come from a European American background. As earlier noted, Herbert Eugene Bolton's 1921 book, *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest*, conceived of U.S. history in a hemispheric context that would

include Spain's legacy although his borderlands were not strictly hemispheric for they stopped at the U.S. border.[1] However, his Spaniards inhabited a world of heroes, adventurers, explorers, and missionaries in which women were virtually absent. Bolton did not deal with gender, race, ethnicity, or class, although he did offer a wider ethnic angle. Carey McWilliams tried to place Mexican Americans in historical perspective and contested the east-west orientation of most American history in his work, *North From Mexico, The Spanish-Speaking People of the United States*. Despite the fact that he focused upon the larger community without differentiating between men and women, McWilliams notably placed ethnicity at the centre of his work.[2] Howard R. Lamar provided a comprehensive history of the region in *The Far Southwest, 1846-1912: A Territorial History* that covered a wide range of topics including the territorial justice system, although his actors were almost exclusively male.[3] The index listed seven European American women by name and only three women of Mexican descent. Two more items referenced women--the Sisters of Loretto as well as several pages on female suffrage. Oakah L. Jones' *Los Paisanos: Spanish Settlers on the Northern Frontier of New Spain* put ordinary Spanish citizens at the centre of the story rather than great men, but again, women did not figure largely in his narrative.[4] Hispanas existed on the edges of history, frequently characterized as passive individuals who lived in partriarchal

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[1] Herbert Eugene Bolton, *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest* (New Haven: Yale University Press, 1921) and "The Epic of Greater America," *American Historical Review* 38:3 (April 1933): 448-474.

[2] Carey McWilliams, *North From Mexico: The Spanish-Speaking People of the United States* (New York: Greenwood Press, 1968). See also his study *Factories in the Field: the Story of Migratory Farm Labor in California* (Boston: Little, Brown and Co., 1939).

[3] Howard R. Lamar, *The Far Southwest: 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966). For another traditional history see Marc Simmons, *New Mexico: a Bicentennial History* (New York: Norton, 1977).

[4] Oakah L. Jones, *Los Paisanos: Spanish Settlers on the Northern Frontier of New Spain* (Norman: University of Oklahoma Press, 1979). See also Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974).

families where they wielded little power. For example Carolyn Zeleny wrote: "The friendliness of the New Mexican women to the Anglo men has been ascribed in part to the subservient role they played in their own homes."[5] These studies, although on different topics concerning the borderlands, are linked by the virtual absence of women. However in *The Spanish Frontier in North America* David Weber argued for a more inclusive American history that emphasized the integral role of Spanish cultural and political institutions in what would become the U.S. Southwest.[6]

Still other earlier studies focused more directly upon the U.S.-Mexico borderlands to study the social and economic transformations that resulted from conquest and that complicated the aftermath of the Mexican-American War and the Treaty of Guadalupe Hidalgo, although women were still marginal characters. For example, Mario Barrera argued that discrimination caused inequality as American employers sought to use lower-paid "colonized" labourers.[7] But the very definition of borders and borderlands led to substantial discussion and debate. Richard L. Nostrand endeavoured to regionalize the contemporary borderland or what he termed "America's Hispanic culture region."[8]

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[5] Carolyn Zeleny, *Relations Between the Spanish-Americans and Anglo-Americans in New Mexico: A Study of Conflict and Accommodation in a Dual-Ethnic Situation* (New York: Arno Press, 1974), 91.

[6] David J. Weber, *The Spanish Frontier in North American (*New Haven: Yale University Press, 1992).Weber's extensive scholarship on the Southwest includes *The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846* (Norman: University of Oklahoma Press, 1968); *Foreigners in Their Native Land: Historical Roots of the Mexican Americans* (Albuquerque: University of New Mexico Press, 1973); *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico* (Albuquerque: University of New Mexico Press, 1982); and *Myth and the History of the Hispanic Southwest* (Albuquerque: University of New Mexico Press, 1988).

[7] Mario Barrera, *Race and Class in the Southwest: A Theory of Racial Inequality* (Notre Dame: University of Notre Dame Press, 1979). See also Albert Camarillo, *Chicanos in a Changing Society: From Mexican Pueblos to American Barrios in Santa Barbara and Southern California: 1848-1930* (Cambridge: Harvard University Press, 1979); and John R. Chávez, *The Lost Land: The Chicano Image of the Southwest* (Albuquerque: University of New Mexico Press, 1984).

[8] Richard L. Nostrand, "The Hispanic-American Borderland: Delimitation of an American Culture Region," *Annals of the Association of American Geographers* 60:4 (December 1970): 639. See also Donald E. Worcester, "The Significance of the Spanish Borderlands to the United States," *Western Historical Quarterly* 7:1 (January 1976): 4-18.

Jeremy Adelman and Stephen Aron sought to untangle frontiers from borderlands as they explored the transition from borderlands to borders underscored by "the connections between imperial competition and intercultural relations."[9]

In 1980 Joan Jensen and Darlis Miller published a comprehensive historiographic essay, "The Gentle Tamers Revisited: New Approaches to the History of Women in the American West," that presaged new scholarship on western women and the emergence of substantial scholarship on Hispanas in what became the Southwest after the Mexican American War.[10] They noted that an "ethnically broader and more varied image of women in the West" challenged the "older male image of western women."[11] The experiences of all ethnic groups of women were to be included "within an historical framework incorporating women's history into western history."[12] In her essay, "Toward a Multicultural History of Women in the Western United States," Elizabeth Jameson noted that the evolution of western women's history had been influenced by "three major scholarly traditions" that included women's history, western history, and ethnic history.[13] Women apparently played little role in the European American movement west for they are essentially absent in Frederick Jackson Turner's frontier thesis, nor is there any acknowledgment that not all "frontiers" moved in a westerly direction—Hispanos

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[9] Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and People in Between in North American History," *American Historical Review* 104:3 (June 1999): 838. See also David J. Weber, "Turner, the Boltonians, and the Borderlands,"*American Historical Review* 91:1 (February 1986): 66-81. Also see James A. Sandos, "From' Boltonlands' to 'Weberlands': The Borderlands Enter American History," *American Quarterly* 46:4 (December 1994): 595-604.

[10] Joan M. Jensen and Darlis A. Miller, "The Gentle Tamers Revisited: New Approaches to the History of Women in the American West," *Pacific Historical Review* 49:2 (May 1980): 173-213. See also their edited volume, *New Mexico Women: Intercultural Perspectives* (Albuquerque: University of New Mexico Press, 1986).

[11] Ibid., 174.

[12] Ibid.

[13] Elizabeth Jameson, "Toward a Multicultural History of Women in the Western United States," *Signs: Journal of Women in Culture and Society* 13:4 (Summer 1988): 763:

followed a northern trajectory in their move to the so-called borderlands.[14] As Jameson noted, "Much western history was shaped by Frederick Jackson Turner's frontier thesis and responses to it."[15]

Historians have defined frontiers differently. In the introduction to her book, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940,* Sarah Deutsch wrote that "historians of the Chicano experience began to look at theories of cultural interaction rather than victimization" with an emphasis on cultural continuity, acculturation, and continuous movement.[16] She defined an economic meeting ground characterized by the cultural, economic, and migratory strategies of Hispanic families who managed at first to deflect full integration into the national economy through a combination of male migratory labour and female agricultural production in the northern New Mexico villages. After 1880, when whole families moved north to Colorado to follow employment, Hispanas struggled to survive in a wage economy where they were isolated in new workplaces far removed from their villages and traditional spheres of power. Deutsch, who put Chicanas at the centre of the story, was one of the first scholars to highlight the links among gender, class, and culture in a wider geographic framework that encompassed northern Colorado, southern Colorado, and northern New Mexico. She described her Anglo-Hispanic frontier as not a

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[14] Frederick Jackson Turner, "The Significance of the Frontier in North America," in *Annual Report of the American Historical Association for the Year 1893* (Washington, D.C.: U.S. Government Printing Office, 1894).
[15] Jameson, "Toward a Multicultural History," 761. See also Elizabeth Jameson, "Bringing It All Back Home: Rethinking the History of Women and the Nineteenth-Century West," in William Deverell, ed. *A Companion to the American West* (Malden: Blackwell Publishing, 2004): 179-199.
[16] Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 6.

line but as "a range of situations." The frontier was continuous because Anglos and Hispanics "settled in different densities in different locations."[17]

Peggy Pascoe envisioned not only a cultural crossroads in the American West but also an intercultural meeting place in which race, class, and gender intersected. Pascoe argued that in a "frontier of interactions" the focus must be put upon women of color.[18] European American pioneers comprised the historical actors in early western and women's history, settlers who, historians argued, brought the attitudes and values of middle-class eastern society and Victorian ideals of womanhood to the frontier.[19] Historian Julie Roy Jeffrey questioned whether the European American women who moved to the West experienced more freedom and less constraint from the concept of True Womanhood and concluded that they attempted to live up to its rules.[20] Sandra L. Myres on the other hand described the frontier experience in terms of opportunity and adaptation.[21] Ann Stoler referred to the concept of an "interior frontier" wherein "one preserved one's national identity despite location outside the national frontier and despite heterogeneity within the nation-state."[22]

Other historians challenged the prescriptive literature that placed women in a separate sphere of home, hearth, and family. Jameson noted that only by including the

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[17] Ibid., 10.
[18] Peggy Pascoe, "Western Women at the Cultural Crossroads," in Patricial Nelson Limerick, Clyde A. Milner II, and Charles Rankin, eds., *Trails:Toward a New Western History* (Lawrence: University Press of Kansas, 1991): 40-58.
[19] See Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18:2 (Summer 1966): 151-174.
[20] Julie Roy Jeffrey, *Frontier Women: The Trans-Mississippi West*, 1840-1880 (New York: Hill and Wang, 1979).
[21] Sandra L. Myres, *Westering Women and the Frontier Experience 1800-1915* (Albuquerque: University of New Mexico Press, 1982).
[22] Ann Laura Stoler, "Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia," 199, in Frederick Cooper and Ann Laura Stoler, eds. *Tension of Empire: Colonial Cultures in a Bourgeois World* (Berkeley: University of California Press, 1997): 198-237.

lived experiences of people in the West, the daily detail of women's lives, and the location of all women at the centre of their own stories would a more honest history of the West be possible.[23]

In her review essay, "Empowering the 'Welder' A Historical Survey of Women of Color in the West," Marian Perales traced the efforts of historians to place ethnic women at the centre of western women's history.[24] She noted that early studies included Martha Cotera's pioneering work, *Diosa y Hembra: The History and Heritage of Chicanas in the U.S.*, a survey of Mexicanas and Chicanas from the pre-Columbian era to contemporary times.[25] As well, Alfredo Mirandé and Evangelina Enríquez put Mexican American women at the centre of their study but as passive victims who suffered sexist, racist, and internal oppression and lacked agency in their own lives.[26] Angelina Veyna looked at the legal experiences of women in colonial New Mexico to illustrate how Hispanas participated in their own societies in her 1984 essay, "Women in New Mexico: A Preliminary View." She challenged the traditional historical model of Hispanas through research into colonial legal documents that revealed women as actors in legal proceedings. The editor's introduction to her work noted:

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[23] Elizabeth Jameson, "Women as Workers, Women as Civilizers: True Womanhood in the American West," in Susan Armitage and Elizabeth Jameson, eds., *The Women's West* (Norman: University of Oklahoma Press, 1987), 145-164. For additional responses to the concept of western women as passive helpers, see Robert L. Griswold, "Anglo Women and Domestic Ideology in the American West in the Nineteenth and Early Twentieth Centuries," in *Western Women: Their Land, Their Lives*, ed. Lillian Schlissel, Vicki Ruiz, and Janice Monk (Albuquerque: University of New Mexico Press, 1988), 15-29; Rosalinda Méndez González, "Distinctions in Western Women's Experience: Ethnicity, Class, and Social Change," in Armitage and Jameson, *The Women's West*, 237-251; Katherine Harris, "Homesteading in Northern Colorado, 1873-1920: Sex Roles and Women's Experience," in Armitage and Jameson, *The Women's West*, 165-178.

[24] Marian Perales, "Empowering the 'Welder': A Historical Survey of Women of Color in the West," in Elizabeth Jameson and Susan Armitage, eds., *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahome Press, 1997): 21-41.

[25] Martha Cotera, *Diosa y Hembra: The History and Heritage of Chicanas in the U.S.* (Austin: Information Systems Development, 1977).

[26] Alfredo Mirandé and Evangelina Enríquez, *La Chicana: The Mexican-American Woman* (Chicago: University of Chicago Press, 1979).

> . . . she (Veyna) makes it apparent that women were anything but passive in accepting the roles assigned them. Instead they filed their grievances and used a public forum to voice their views. That they were heard and that the courts at times ruled in their favor began to challenge traditional views about colonial women and the place in it occupied by women.[27]

Elizabeth Jameson and Susan Armitage have done much to correct "the gender bias underlying the western story," to see women as historical actors, and to emphasize the importance of challenging stereotypes.[28] Their edited volumes, *The Women's West,* and *Writing the Range: Race, Class, and Culture in the Women's West*, included essays that considered the multiple perspectives informed by race, ethnicity, gender, and class that formed part of the collective history of the West. In their introduction to *Writing the Range,* Jameson and Armitage stated: "We think, however, that inclusiveness is the only way to correct incomplete histories and the relationships of power they reflect."[29]

But the attempt to address diverse experiences can be as conflicted as the conceptual theories it tries to incorporate into an inclusive framework. For example Antonia Castañeda criticized the early writing on women of colour for the lack of analysis or theory about the conflicts and differences among cultures, the emphasis on European American definitions of multiculturalism, and the need to look at women's history before American conquest.[30]

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[27] Angelina Veyna, "Women in Early New Mexico: A Preliminary View," in Teresa Cordova et al, eds., *Chicana Voices: Intersections of Class, Race, and Gender* (Albuquerque: University of New Mexico Press, 1993), 117.
[28] Susan Armitage and Elizabeth Jameson, eds., *The Women's West* (Norman: University of Oklahoma Press, 1987), 7.
[29] Elizabeth Jameson and Susan Armitage eds., *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997), 13.
[30] Antonia Castañeda, "Women of Color and the Rewriting of History: The Discourse, Politics, and Decolonization of History," *Pacific Historical Review* 61:4 (November 1992): 501-533.

A number of studies, including those by Chicana and Chicano historians, have focused upon Mexican American adaptation to life in the United States.[31] Hispanas exercised selective acculturation, responded to economic opportunities, and strove to maintain their cultural identity in shifting circumstances.[32] As Vicki Ruíz asked, "What have Mexican women chosen to accept or reject? What were women's real choices?" Ruiz conceived the concept of a cultural coalescence, or how people "pick, borrow, retain, and create distinctive cultural forms. There is not a single hermetic Mexican or Mexican American culture but rather permeable *cultures* rooted in generation, gender, region, class, and personal experience." The impetus was for integration rather than separation in the lives of Mexican women in the United States who did not see themselves as caught between two worlds but who instead saw themselves as actors who negotiated multiple spaces on their own terms.[33]

Some writers explored the topic of cross-cultural relationships and intermarriage in the Southwest when they focussed upon Hispanas as historical subjects.[34] For example,

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[31] See for example Albert Camarillo, *Chicanos in a Changing Society: From Mexican Pueblos to American Barrios in Santa Barbara and Southern California: 1848-1930* (Cambridge: Harvard University Press, 1979); and John R. Chávez, *The Lost Land: The Chicano Image of the Southwest* (Albuquerque: University of New Mexico Press, 1984). For an older work, see Mario Barrera, *Race and Class in the Southwest: A Theory of Racial Inequality* (Notre Dame: University of Notre Dame Press, 1979).

[32] See Margarita Melville, *Twice a Minority: Mexican-American Women* (St. Louis: C.V. Mosby, 1980); Magdalena Mora and Adelaida del Castillo, *Mexican Women in the United States: Struggles Past and Present* (Los Angeles: UCLA Chicano Studies Research Center Publications, 1980); and Teresa Córdova, ed., *Chicana Voices: Intersections of Class, Race, and Gender* Albuquerque: University of New Mexico Press, 1993). For more recent work, see Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California: 1770s to 1880s* (Tucson: University of Arizona Press, 2004).

[33] Vicki L. Ruíz, "Dead Ends or Gold Mines? Using Missionary Records in Mexican American Women's History," in Elizabeth Jameson and Susan Armitage, eds, *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997), 354-371, 355- 356. See also Ruiz's pioneering work on the history of Mexican-American women: *Cannery Women, Cannery Lives: Mexican Women, Unionization, and the California Food Processing Industry, 1930-1950* (Albuquerque: University of New Mexico Press, 1987); and *From Out of the Shadows: Mexican Women in Twentieth-Century America* (New York: Oxford University Press, 1998).

[34] For an early work that focused upon cross-cultural relationships with native women, see Sylvia Van Kirk, *Many Tender Ties: Women in Fur-Trade Society, 1670-1870* (Norman: University of Oklahoma Press, 1983).

Darlis Miller focused upon intermarriage in New Mexico with an emphasis on the assimilation process and the nature of social change as it impacted Hispanas. She argued that the degree of Americanization varied according to circumstance and the character of the couple.[35] Rebecca Craver, who studied Mexican-Anglo intermarriage in the twenty-five years before conquest, concluded that Americanization and the presence of greater numbers of American men meant that the daughters of Anglo-Mexican couples increasingly married Anglo men. Deena González did not perceive upward mobility for Hispanas through intermarriage since intercultural contact hid the power imbalances created by colonization.[36] Susan Johnson contended that informal unions between European American men and Mexican women in the Arizona goldfields in the 1860s existed as a "cultural category" that differed from relationships with European American women. She compared the double standard of European American morality with the culturally accepted informal unions of Mexican society and examined the historical

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[35] Darlis A. Miller, "Cross-Cultural Marriages in the Southwest: The New Mexico Experience, 1846-1900," *New Mexico Historical Review* 57:4 (October 1982): 335-359. See also Amanda Taylor-Montoya, "'Under the Same Glorious Flag': Land, Race, and Legitimacy in Territorial New Mexico, PhD diss., University of Oklahoma, 2009). For an earlier work on Mexican women, see Jane Dysart, "Mexican Women in San Antonio, 1830-1860: The Assimilation Process." *Western Historical Quarterly* 7:4 (October 1976): 365-375.

[36] Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999). See also Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas: 1734-1900* (Albuquerque: University of New Mexico Press, 1998, 130, 189-90. Alonzo viewed intermarriage between European American men and Mexican as "more calculated than natural." Also see Richard Griswold del Castillo and Arnoldo de León, *North to Aztlán: A History of Mexican Americans in the United States* (New York: Twayne Publishers, 1996), 27. Griswold del Castillo and de León argued that ranchers who believed that intermarriage increased their social status became disillusioned when "Anglo owners disposed of the ranch (if they had inherited it on the hacendado's death) without taking into account the long-term interests of his Hispanic relatives." Additionally, see Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley: University of California Press, 1995). Haas addresses the historical property rights that Mexican women enjoyed before American conquest in California as well as their struggle to preserve these rights in the face of their declining economic position. For a more cynical view of intermarriage, see Rodolfo Acuña, *Occupied American: A History of Chicanos* (New York: Longman, 2000), 69. Acuña asserted that the European American acquired a wife *and* property "since under the law, daughters inherited property on an equal basis with their brothers."

reasons for *barraganería* or concubinage.[37] More recently, María Raquél Casas presented a more positive attitude towards interethnic marriage in California. She maintained that intermarriage to non-Iberian European men allowed Mexican women to act as "cultural agents" and argued that Mexican women retained their Californio identities after intermarriage.[38] These studies served to inform my research as legal issues concerning the division of property and guardianship between Hispanas and European American men in both formal and informal unions were sometimes reflected in wills, divorce cases, and the guardianship of children.

In addition to an inclusive history that moved women of colour to the centre of their own stories, expanded models of scholarship on Hispanas began to include them as actors on the legal stage. New scholarly approaches informed my field of research and led me to the courts of northern New Mexico and southern Colorado in order to ascertain the historical role and presence of Hispanas in a legal frontier, to, at times, move the timeline of the judicial framework back into the eighteenth century, and to determine whether or not gender played a part in the dispensation of justice. Whereas earlier works focused more generally on the marital property rights of married couples under Spanish civil law and their right to community property acquired during the marriage, more recent

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[37] Susan Johnson, "Sharing Bed and Board: Cohabitation and Cultural Difference in Central Arizona Mining Towns, 1863-1873," in Susan Armitage and Elizabeth Jameson, eds, *The Women's West* (Norman: University of Oklahoma Press, 1987), 77-91. See also *Roaring Camp: The Social World of the California Gold Rush* (New York: W.W. Norton & Company, 2000). The term *barranganería* is defined as concubinage in Arturo Cuyas, *Appleton's Revised Cuyas Spanish Dictionary* (New York: Appleton-Century-Crofts), 66. *Barrangana* is defined as a concubine. The word *barrangía* is not included. Johnson notes that it was a term used in medieval Spain.

[38] María Raquél Casas, *Married to a Daughter of the Land: Spanish-Mexican Women and Interethnic Marriage in California, 1820-1880* (Reno: University of Nevada Press, 2007). Casas made reference to Hubert Howe Bancroft who declared that Californianas preferred Euro American men who possessed greater physical and spiritual qualities than Californio men. These marriages aided in "peaceful and beneficial" conquest by Euro American men. See Hubert Howe Bancroft, *California Pastoral, 1769-1848* (San Francisco: The History Company, 1888).

scholarly research has focused upon women and their appearances before the courts in various judicial proceedings.[39] The extant scholarship on women and the law in colonial New Mexico includes the work of Asunción Lavrin whose *Latin American Women: Historical Perspectives* advocated using legal resources and fitting empirical data into a legal framework in order to understand the complexity of women's lives.[40] Susan Socolow's work included Indian women in colonial Mexico who learned how to access the legal system in Mexico.[41] Edith Couturier explored how eighteenth-century Mexican women held property and the manner in which families navigated around rigid inheritance laws.[42]

Silvia Arrom's work is fundamental to understanding nineteenth-century law and the Mexican woman in colonial Mexico. Her careful research discovered that litigation between married couples revealed the operation of the law as it was actually practiced, not written, because historically practice did not always follow prescription and new attitudes and behaviors frequently prefigured laws and legislation.[43]

In *Conquests and Historical Identities in California: 1769-1936,* Lisbeth Haas affirmed that the women of California exhibited a sense of entitlement to property

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[39] For representative examples of older but useful legal studies see Robert Emmet Clark, "Management and Control of Community Property in New Mexico," *Tulane Law Review* 26:3 (1951-1952): 324-343, and William Quimby DeFuniak, *Principles of Community Property* (Tucson: University of Arizona Press, 1971).

[40] Asunción Lavrin, ed., *Latin American Women: Historical Perspectives* (Westport: Greenwood Press, 1978), 303. See also Asunción Lavrin, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989).

[41] Susan Socolow, *The Women of Colonial Latin America* (New York: Cambridge University Press, 2000). See also Jill Mocho, *Murder and Justice in Frontier New Mexico: 1821-1846* (Albuquerque: University of New Mexico Press, 1997), 62. Mocho argued that there were differences between Indians and Spaniards in domestic abuse cases and that Pueblo women possessed more power and privilege in their communities than Hispanic women in theirs.

[42] Edith Couturier, "Women and the Family in Eighteenth-Century Mexico: Law and Practice," *Journal of Family History* 10:3 (September 1985): 294-304.

[43] Silvia Marina Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985).

guaranteed to them under Spanish and Mexican law. Many owned property outright, including at least sixty-six women who received grants of ranchos after 1821 following Mexico's independence from Spain. However, territorial conquest, European American perceptions of social roles, and the requirements of U.S. law gradually eroded that sense of entitlement. In what she described as a "gendered politics of conquest," Haas suggested that Californianas became vulnerable to the prejudices and mores of U.S. society in which women lacked equal status in either law or custom. With the advent of wage labour the defense of property became more acute.[44]

Despite their geographic isolation from Mexico City, the women of northern New Mexico made regular appearances in court in both the colonial period and after independence. In her important article "The Independent Women of New Mexico" Janet Lecompte challenged the stereotypes of Mexican women as victims of internal oppression. In an unequivocally positive manner, Lecompte discussed Mexican women's property rights and their presence in *alcalde* courts. She described the traditional legal rights of Hispanas after Mexican independence, rights that diminished after conquest with the reorganization of the court system.[45]

Rosalind Z. Rock examined the use that colonial women made of the law and argued that Mexican women of all classes were aware of their rights and exercised them as they believed necessary. She found that women could rely on the law to at least have a case considered in colonial New Mexico where frontier conditions sometimes

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[44] Haas, *Conquests and Historical Identities in California,* 90.

[45] Janet Lecompte, "The Independent Women of New Mexico: 1821-1846,"*Western Historical Quarterly* 12:1 (January 1981): 71-35. See also in another context, Nancy F. Cott and Elizabeth H. Pleck, eds. *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 4. In the introduction, they declared "women were neither victims of social change—passive receivers of changing definitions of themselves—nor totally mistresses of their destinies." The *alcalde* was the mayor of a small community who also generally served as the local justice of the peace.

necessitated deviation from prescribed law.[46] Nevertheless Yolanda Chávez Leyva cautioned against a simplistic interpretation of women's rights pre-1848. She noted that Spanish authorities defined women as "protected protectors" who acted within the prescribed societal expectations of what constituted "good women": those wives who had entered marriage as virgins, or daughters who had taken good care of widowed mothers. As Leyva pointed out, although the rights of Hispanas gradually decreased under common law after 1848, neither had New Mexican women been entirely independent within the civil code.[47]

Joan Jensen also cautioned against "romanticizing" the property rights of Mexican women. She noted that married women were subordinate to their spouses who, under Mexican law, had control and management of marital property. In addition, in 1907 New Mexico passed a new law by which a woman could not dispose of her half of the community property by will; it all went to her husband. A man could, however, dispose of his share of the community property as he wished. Only if a husband predeceased his wife, could she dispose of one half of the property by will.[48]

In addition to books on how women used the law, it is useful to consult works written about the structure of the legal system as it operated in the region under study. Hispanic women were not central within these books, but often their legal and property rights are evident. Charles Cutter's *The Legal Culture of Northern New Spain, 1700-1810,*

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[46] Rosalind Z. Rock, "Mujeres de Substancia-Case Studies of Women of Property in Northern New Spain," *Colonial Latin American Review* 2:4 (Fall 1993): 425. Rock also noted that unlike European American women, a New Mexican woman retained her property, legal rights, wages, and maiden name after marriage. See also her article, "'Pido y Suplico': Women and the Law in Spanish New Mexico: 1697-1763," *New Mexico Historical Review* 65:2 (April 1990): 145-159.

[47] Yolanda Chávez Leyva, "'A Poor Widow Burdened With Children': Widows and Land in Colonial New Mexico" in Elizabeth Jameson and Susan Armitage, eds., *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997), 86.

[48] Joan M. Jensen, ""I've Worked, I'm Not Afraid of Work": Farm Women in New Mexico, 1920-1940," *New Mexico Historical Review* 61:1 (January 1986): 27-53, 30-31.

offers invaluable knowledge about the operation of law on the Spanish frontier, particularly on the local administration of justice, the roles of the *alcaldes*, and the access of authorities to Spanish and Mexican legal codes and decrees.[49] In addition, the careful analysis of Laura E. Gómez, who studied the New Mexico county of San Miguel, has proved helpful in examining the role of Mexican jury members in racial power-sharing agreements with the American judiciary. In order to incorporate Mexicans into the political system, European Americans used the criminal justice system to legitimate their authority in New Mexico. Gómez found that the majority of petit jurors in San Miguel County were elite and middle status Mexicans. However, their presence as jurors in the

[49] Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995). See also David Langum, *Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821-1846* (Norman: University of Oklahoma Press, 1987). For the functioning of Spanish law on another "frontier", see David Reichard, "Justice is God's Law": The Struggle to Control Social Conflict and U.S. Colonization of New Mexico, 1846-1912" (PhD. diss., Temple University, 1996). Reichard argued that the U.S. employed new legal forums to incorporate New Mexico Territory into American social, political, and economic institutions. Also see Joseph W. McKnight, "Law Books on the Hispanic Frontier," *Journal of the West* 32:3 (July 1988): 74-83. He asserted that one cannot assume that local justices were ignorant of the law as some of them did have access to legal materials. Also see McKnight's "Spanish Legitim in the United States—Its Survival and Decline," *American Journal of Comparative Law* 44:1 (Winter 1996): 75-107. For background information on the operation of the law, see Larry D. Ball, *The United States Marshals of New Mexico and Arizona Territories, 1846-1912* (Albuquerque: University of New Mexico Press, 1978), and Jill Mocho, *Murder and Justice in Frontier New Mexico, 1821-1846* (Albuquerque: University of New Mexico Press, 1997). Gordon Bakken studied the development of civil law including water, corporation, contract, and labor law in the Rocky Mountain region, broadly defined as Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming as the region sought to attract business and industry. See *The Development of Law on the Rocky Mountain Frontier: Civil Law and Society, 1850-1912* (Westport: Greenwood Press, 1983). For the influence of Spanish law in the U.S., see John Thomas Vance, *The Background of Hispanic-American Law: Legal Sources and Juridical Literature of Spain* (New York: Central Book Company, 1943); James Murphy, *The Spanish Legal Heritage in Arizona* (Tucson: Arizona Pioneer Historical Society, 1966); Patricia Seed, "American Law, Hispanic Traces: Some Contemporary Entanglements of Community Property," *The William and Mary Quarterly* 52:1 (January 1995): 253-276, and Deborah Rosen, "Women and Property Across Colonial America: A Comparison of Legal Systems in New Mexico and New York," *William and Mary Quarterly* 60:2 (April 2003): 355-381. For a comprehensive treatment of community property, see Jean Stuntz, *Hers, His, and Theirs: Community Property Law in Spain and Early Texas* (Lubbock: Texas Tech University Press, 2005).

criminal justice system had an unexpected consequence as it gave Mexicans a public forum in which they could challenge American political authority.[50]

There has been more scholarship devoted to New Mexico than Colorado owing in part to a longer history of Spanish settlement and to an extensive legal documentary record. As in all of its overseas possessions, the Spanish state maintained detailed institutional records that proved to be an unparalleled resource for academic scholarship.[51] One cannot help being intrigued by the tenor of the cases that emerged from the archives and the subtleties and ambiguities of the "story behind the story" as a new legal system overlapped its predecessor. New legal terms appeared, court structure, procedure and personnel changed, and customary law challenged common law precepts. As Gregory A. Hicks observed, "Tension between local ideas of property rights and the rules of the external legal order can become an engine for an adaptive pluralism in which the dominant legal order absorbs and reflects some local norms and practices."[52]

Spanish and Mexican women were omnipresent in the early judicial records of New Spain and throughout the following centuries. As Jill Mocho noted, "Women had no political power—they could not vote or hold political power—but they did have access to the legal system and court records show that many made good use of this privilege." Nevertheless, Mocho also observed that the impetus for reconciliation in troubled

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[50] See Laura E. Gomez, "Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico," *UCLA Law Review* 49:5 (June 2002): 1395-1416, and "Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico," *Law and Society Review* 34:4 (December 2000): 1133. Mexican jury members fought to ensure the dominance of Spanish in court, used "legal maneuvers--such as the peremptory challenge--in "race-conscious" ways in order to assemble juries, and to exercise leniency and severity in race-conscious ways when dispensing punishment."

[51] Ralph H. Vigil, "Historical Overview" in Ellwyn R. Stoddard, Richard L. Nostrand, and Jonathan P. West, *Borderlands Sourcebook: A Guide to Literature on Northern Mexican and the American Southwest* (Norman: University of Oklahoma Press, 1983), 28.

[52] Gregory A. Hicks, "Memory and Pluralism on a Property Law Frontier: The Contested Landscape of the Costilla Valley," *New Mexico Historical Review* 81:3 (Summer 2006): 321.

marriages could be unfair to women.[53] Heirs to the Spanish legal tradition, women in colonial Mexico could buy, sell, rent, administer, inherit, and bequeath property. Archival evidence reveals that women in colonial Mexico actively pursued their interests in court. Like Herbert Eugene Bolton and David Weber, who argued that U.S. history did not begin in the east, so the presence of women in the colonial courts underscores the fact that the legal history of Hispanas did not begin solely with American occupation.

The powerful scholarship cited helps to clarify the story of native-newcomer relations in a colonial settler society and contradicts the top-down view from incoming colonizers who carried not only the attitudes of middle-class eastern society, Victorian ideals of womanhood, and Anglo-American legal values, but who also held the superior views of empire-builders and colonists as they strove to justify their domination, authority, and ultimately, the acquisition of land. Furthermore the majority of the newcomers to both northern New Mexico and southern Colorado would have had little conception of the judicial rights and affairs of Hispanas in the Spanish/Mexican legal tradition.

A detailed discussion about whether the United States undertook to build an empire in the classic sense of the word is beyond the scope of this work. The U. S. colonization of New Mexico was unusual in that the land acquired was adjacent to the territorial United States and had already been colonized by Spain in the sixteenth century. The result was a mestizo population created through the relationship of the European conquerors and the indigenous residents that created a settler society long before Americans, who arrived to create new lives, came to the area. In contrast as Elizabeth Buettner noted, imperial India was not a settlement colony, for the British who lived there

[53] Mocho, *Murder and Justice in Frontier New Mexico,* 60.

did not consider themselves to be permanent residents of the country. The plan was always to return to Britain one day.[54]

A number of scholars analyzed the position of women in colonial societies through the categories of race and gender. Being white ostensibly provided a superior position for women in the British Empire where they served as what Adele Perry described as "boundary markers" between races. White women also helped to maintain the social distance and racial hierarchy necessary in the creation of an empire. However, as Perry noted, in British Columbia, the fact that the settlers intended to stay, the sometimes contested position and role of white women, and the resistance of First Nations peoples meant that the reality of empire was fragile at best.[55] But in the U.S. Southwest a designation as white did not always guarantee a superior position. The U.S. federal censuses classified Hispanics as white until 1930, whereas in reality they were racialized and treated as people of colour, heirs to the black and white binary of American slavery.

The language of empire used in nineteenth-century accounts fed directly into the treatment of Hispanics and especially in the description of, and attitude towards Hispanas. The change in administrations affected women and men differently, and language became a powerful influence in the portrayal of Hispanas. Travellers' accounts, newspaper articles, and editorials revealed the virulent antipathy many European Americans directed toward Mexicans. Indeed, Mexican women suffered not only the general opprobrium directed against the Mexican people; they were also made victims of

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[54] Elizabeth Buettner, *Empire Families: Britons and Late Imperial India* (Oxford: Oxford University Press), 2004.
[55] Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001), 193.

their own biology. Some European American writers portrayed Mexican women as erotic, wanton, and unguided by strict sexual mores. In another context, in her article on "gender imperialism", Helen Bradford referred to "narratives that subject women to textual abuse while declining to listen to their voices or analyse their lives." [56]

The written accounts of a number of people who visited, worked, and served in both New Mexico and Colorado cannot be taken at face value since their observations reflected the stereotypes, prejudices, and racism of nineteenth-century writers who encountered an overwhelmingly mestizo population. Ann Stoler defined the perspective as "cultural racism" wherein 'cultural literacy' and 'cultural competence'" were the "defacto criteria by which racial membership was assigned."[57] Nevertheless it is noteworthy that many of the diaries and journals evidenced a striking similarity in tone and content. In their attempts to explain Mexicans to Americans, soldiers, travelers, merchants, political figures, and others criticized Mexicans for their lack of adherence to the American ideals of "progress", enterprise, and industriousness.

In her study of captivity, Linda Colley argued that the United States formed a contiguous land-based empire "like no other. It is an empire in the sense that much of its territory was originally acquired by force, purchase, and migration at the expense of other, weaker peoples."[58] Colley cited Edward Said's work, *Orientalism*, in which he described the process of distancing oneself from what is perceived as the "other":

> . . . formulaic denunciations have to be taken seriously and recognised

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[56] Helen Bradford, "Women, Gender, and Colonialism: Rethinking the History of the British Cape Colony and Its Frontier Zone," *The Journal of African History* 37:3 (1996): 368. Bradford's work on gender and British imperialist attitudes in Africa revealed similarities in the opinions some European American males held concerning Mexican-American women.
[57] Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2002), 17.
[58] Linda Colley, *Captives* (New York: Pantheon Books, 2002), 378.

> for what they were: a set of constraints upon and limitations of Western thought. By consistently resorting to derogatory language of this type—he and others argue—Britons became able to view Islamic cultures over the centuries in terms of strangeness, backwardness, and political and moral excess. By so projecting a 'settled, clear, unassailably self-evident' divide between 'us' (the West) and 'them' (the non-West), European and above all British imperialism became in due course possible.[59]

Despite the tone of British imperium, the quote captured the essence of the attitude of many middle-class nineteenth-century Americans. Gilbert G. González, too, saw parallels between American and British writing about their colonial subjects. Poor Mexicans were described as a "a rather uncivilized species--dirty, unkempt, immoral, diseased, lazy, unambitious--and compared to Orientals (then the identifier for all colonial subjects) and despised for being peons."[60]

The young men crossing the continent to the California gold fields in 1849 belonged to the generation that would "make Victorian morality the norm of conduct in American life."[61] However, the historical record showed that actual practice did not always follow prescriptive values as gold-seekers, engineers, surveyors, soldiers, merchants, and those seeking land sought to establish careers in the former Mexican territory.[62] "Victorian morality" obviously only included white women and Eurocentric social attitudes became evident in the sexualization of Mexican women as American men

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[59] Ibid, 102.
[60] Gilbert G. González, *Culture of Empire: American Writers, Mexico, and Mexican Immigrants: 1880-1930* (Austin: University of Texas Press, 2004), 8. For work on the discursive creation of "the other" see Edward Said, *Orientalism* (New York: Pantheon, 1978).
[61] John Phillip Reid, *Law for the Elephant: Property and Social Behavior on the Overland Trail* (San Marino: The Huntington Library, 1980), 11, 19.
[62] For accounts of life in the mining camps and cities, see Malcolm J. Rohrbough, *Days of Gold: The California Gold Rush and the American Nation* (Berkeley: University of California Press, 1997); Albert Hurtado, *Intimate Frontiers: Sex, Gender, and Culture in Old California* (Albuquerque: University of New Mexico Press, 1999); and Johnson, *Roaring Camp: The Social World of the California Gold Rush*.

compared the women in the new territory with those they had left behind.[63] Their gaze appeared to be a combination of the *flâneur,* the male who strolled around a city to experience it for his delectation, and the assumed right of males to observe, to evaluate, and to criticize women. As in the British Empire, women and those not British became the "objects of a masculine, colonial gaze."[64] Such nineteenth-century accounts failed to address the complexity of Mexican women's lives or to see them as individuals.

When Eveline Alexander, the wife of a cavalry officer, travelled to New Mexico in the mid-nineteenth century she visited Rayado Ranch. She described the scene thus: "The flat roofs with their gay flowers flaunting and the mamas and the children who were seated upon them gazing at us gave an oriental appearance to the scene." On a later visit to Taos, New Mexico, she compared the town to Palestine: women and children looking out from housetops "all but their eyes muffled up from view in true Oriental fashion. In the centre of the town is a large plaza surrounded by nice-looking stores—evidence of American enterprise."[65] In two sentences, Eveline Alexander managed to both assign "otherness" to Hispanics and to provide a rationale for the American conquest.

As an army wife, Mrs. Orsemus Bronson Boyd much appreciated the hospitality of the Mexican families that she met while travelling between Forts Stanton and Union. Nonetheless, she complained about the difficulty in obtaining household help and despaired that the "long line of idle ancestry, together with every tendency of climate, surroundings, and viciousness, had so developed indolence in the natives so as to utterly

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[63] See Beverly Trulio, "Anglo American Attitudes toward New Mexican Women," *Journal of the West* 12"2 (1973): 229-239.
[64] Alison Bashford, "Medicine, Gender, and Empire" in Philippa Levine, ed., *Gender and Empire* (Oxford: Oxford University Press, 2004), 114.
[65] *Cavalry Wife: the diary of Eveline M. Alexander, 1866-1867: being a record of her journey from New York to Fort Smith to join her cavalry-officer husband, Andrew J. Alexander, and her experiences with him on active duty among the Indian Nations and in Texas, New Mexico, and Colorado*, ed., Sandra Myres (College Station: Texas A & M University Press, 1977), 78, 104-105.

incapacitate them for any serious employment."[66] The Mexican women consented to perform only those tasks, including child-minding, that allowed them to remain out of doors.[67] The situation reflected the assumption of some European American women that the menial tasks that she preferred not to undertake should be carried out by those whom she viewed as racially and culturally inferior.

Frank S. Edwards' personal narrative of his campaign with Colonel Alexander Doniphan from 1846-1847 revealed not only comparative standards of beauty but also manifested the racism that ran through many reports during that period. He noted that Mexican women lacked the "clear complexion that we deem inseparable from beauty" although their dark eyes and highly-coloured lips supplied some redeeming features. The women of Santa Fe fared less well in his opinion for they were dirty "which does not add to the attractiveness of their ugly, dark countenances. . . .Those who have much white blood in them are pretty, but these are seldom found among the lower order."[68] Nathaniel Hill remarked that the ladies liked to receive a gift such as face powder after one had danced with them: "The ladies are extremely ambitious about their appearance. They are fully as dark-complexioned as the Indian and with few exceptions ill looking. They are a

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[66] Mrs. Orsemus Bronson Boyd, *Cavalry Life in Tent and Field* (Lincoln: University of Nebraska Press, 1982), 223. See also David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (Berkeley: University of California Press, 1993), for similar attitudes towards India where the ignorance, indolence, religious practices, and social institutions of Indians legitimized the "civilizing" mission of British imperialism.

[67] Ibid.

[68] Frank S. Edwards, *A Campaign in New Mexico With Colonel Doniphan* (Ann Arbor: University Microfilms, 1966), 50. For other examples of this genre, see James A. Bennett, *Forts and Forays: A Dragoon in New Mexico, 1850-1856,* eds. Clinton E. Brooks and Frank D. Reeve (Albuquerque: University of New Mexico Press, 1948, 1996); Richard F. Pourade, *The Sign of the Eagle: a View of Mexico, 1830-1855* (San Diego: Union-Tribune Publishing Company, 1970); Ralph W. Kirkham, *The Mexican War Journal and Letters of Ralph W. Kirkham,* ed. Robert Ryal Miller, (College Station: Texas A&M University Press, 1991). For the views of army wives on Mexicans see Sandra L.Myres, "Army Women's Narratives as Documents of Social History: Some Examples From the Western Frontier, 1840-1900." *New Mexico Historical Review* (April 1990): 175-198.

strange and curious people."[69] Whiteness equaled civilization, progress, and morality and even working-class or poor European American women possessed something which differentiated them from the majority of Hispanas—a "white" skin.

In addition to skin colour, American men and women frequently ascribed immorality to Mexican women because they considered their dress immodest and their bodies improperly covered. The women wore short skirts and loose blouses, not the bodices (or "waists" as the authors termed them), petticoats, long sleeves, and corsets of a "proper lady." Lieutenant William Seaton Henry noted the "undress" of the women he encountered during his service in the Mexican American War: "At the landing. . . many of the women were washing. . . they dress with as little clothing as can well be fancied, and appear as contented as the day is long."[70] In Matomoros, Lieutenant Henry enthusiastically described the great beauty of the women who "sit all day long in buildings with thick walls . . . having the least quantity of dress you can *possibly* fancy."[71] Lewis Hector Garrard admitted that while having a Mexican wife might seem romantic "the only attractions are of the baser sort. . . . We look in vain for true woman's attraction—modesty."[72] A soldier, George Gibson, who served under General Stephen Kearney, also commented upon the boldness of Mexican women who were not

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[69] Nathaniel Hill, "Nathaniel Hill Inspects Colorado: Letters Written in 1864," *Colorado Magazine* 33:4 (Ocotber 1956), 270.
[70] William S. Henry, *Campaign Sketches of the War With Mexico* (New York: Harper and Brothers, 1847), 70. See also Kevin Adams, *Class and Race in the Frontier Army: Military Life in the West, 1870-1890* (Norman: University of Oklahoma Press, 2009), 187. Adams observed that accounts by newcomers to New Mexico "misread cultural patterns as racial characteristics for nonwhites." Also see Philippa Levine, *Prostitution, Race, and Politics: Policing Venereal Disease in the British Empire* (New York: Routledge, 2003), 55. Levine argued that a "racialized set of assumptions about how sex should be managed" existed in the British Empire.
[71] Henry, *Campaign Sketches of the War With New Mexico,* 118.
[72] Lewis Hector Garrard, *Wah-to-Yah and the Taos Trail* (Norman: University of Oklahoma Press, 1955), 171.

"overloaded with modesty."[73] There could be no clearer statement of the ideology of true womanhood that pervaded the Victorian era. Besides his virulent anti-Mexican attitude as noted earlier, army clerk Charles E. Whilden admitted that the women were "good looking enough with jet black eyes" but later confessed that he "should very much like to see an American young Lady as there are none in Santa Fe, and I have not seen one for some time."[74] What he meant, of course, was that he had not seen a *white* woman (as he defined whiteness) for many months. George Raymond expressed similar sentiments in 1850 when he wrote to his sister Sarah from California: "I like the country much better than formerly and were it not for the want of society (I mean ladies) the Sabbath and the faces of my friends at home, should be content to stay here. There are no women except a few spanish." [sic][75] George Raymond apparently shared the same ignorance of the new U.S. inhabitants as his fellow Americans.

Admittedly not all Americans shared the negative opinion of Mexican women expressed by the travelers, soldiers, and diarists of the era. John James Peck remarked on the polite manners of the Mexicans he encountered in 1847 during the military campaign in Mexico and compared the graceful manners of "Spanish" ladies with the affected, artificial airs of his countrywomen.[76] Henry Smith Turner, who journeyed to Mexico and

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[73] George Rutledge Gibson, *Journal of a Soldier Under Kearney and Doniphan, 1846-1847,* ed. Ralph P. Bieber (Philadelphia: Porcupine Press, 1974), 210.

[74] Charles E. Whilden, "Letters From a Santa Fe Army Clerk, 1855-1856", 1956, 158. See also John Phillip Reid, *Law for the Elephant*, 1980. He recounted an excerpt from the diary of a forty-niner who mentioned the "first female" he had seen since Fort Smith. "He was referring to the wife of a soldier stationed at Socorro and, as he had passed through Santa Fe and Albuquerque, he meant she was the first non-Mexican, non-Indian woman he had seen," 27 and Malcolm J. Rohrbough, *Days of Gold: The California Gold Rush and the American Nation* (Berkeley: University of California Press, 1997), 96.

[75] As quoted in Rohrbough, *Days of Gold*, 96.

[76] *The Sign of the Eagle: A View of Mexico: 1830 to 1855*. Foreward by Richard F. Pourade (San Diego: Union-Tribune Publishing Company, 1970), 61.

California with Stephen Watts Kearny remarked upon the rumors that swirled around the vicar in Santa Fe:

> . . . but these people may be misrepresented—that they are pure I can scarcely believe yet they may not be so abandoned as they are said to be —the reports we receive are from ignorant Americans generally, with whom want of veracity and violent prejudice are the conspicuous traits of character. A truthful American is rarely seen here.[77]

However, Turner was not totally without prejudice. On August 28, 1846, upon observing a deputation of Mexicans who rode in to swear their allegiance to the United States he commented upon how much better looking they were than the people he had encountered earlier for they had "less of the Indian tinge in their complexion." Two days later he recorded that he had attended a church service where not one woman was reputed to be virtuous.[78]

The social structure of the dances or *bailes* where Hispanas and European American men met and socialized could be relatively formal as older women monitored the behaviour of their daughters and other young female family members. Women might control the right of men to dance with them for some travelers mentioned that after a dance, their partners expected to be treated at a refreshment table and to receive small

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[77] Henry Smith Turner, *The Original Journals of Henry Smith Turner: With Stephen Watts Kearny to New Mexico and California: 1846-1847*; edited and with an introduction by Dwight L. Clarke (Norman: University of Oklahoma Press, 1966), 73. See also Thomas James, *Three Years Among the Indians and Mexicans* (Waterloo: Office of the War Eagle, 1846). He found Mexican society in Santa Fe to be "profligate and vicious" but approved of Mexican Indians whom he thought "better-looking and better behaved" especially the women, superior in beauty and virtue to the Spanish females. 70-71. Also see Paul Foos, *A Short, Offhand, Killing Affair: Soldiers and Social Conflict During the Mexican-American War* (Chapel Hill: University of North Carolina Press, 2002), 155, who concluded that "Men who had been in central and northeastern Mexico, witnessed a distinctive national culture, not simply an extension of the social hierarchies they previously understood. Many came to realize they were fighting a nation, not a race."

[78] Turner, *The Original Journals of Henry Smith Turner,* 74.

gifts purchased from a "presents" table.[79] A Conejos correspondent noted in the June 5th, 1868 edition of the *Denver Tribune* that times were dull "even no fandangos, as all the hombres are absent and the senoritas and senoras [sic] of course are too bashful to go without their old mothers and husbands to the 'baile'."[80]

The literature on the topic is extensive but a few examples will suffice to indicate the anti-Mexican tone that permeated some accounts as one society encountered another with differing values about land use, religion, and personal relationships. Early letters and diaries frequently depicted the gulf that existed between newcomers and residents of the annexed territories. Charles E. Whilden, an army clerk in mid-nineteenth-century New Mexico, initially disliked the region and its people and believed the territory was not worth keeping. In Whilden's view: "The government had better buy up the claims of all these New Mexicans—transplant them to Botany Bay, fence in the country—give it up to Indians and let them fight it out in their own fashion."[81] In his letters home to his wife, Nathaniel Hill, working on a survey in Colorado, wrote from Denver, August 1, 1864: "The fact mentioned about the supply of provisions in the Mexican house will give you a good idea of their indolence and worthlessness. So long as they have nothing else not even salt, [sic] they are happy and feel rich."[82] On April 22, 1876, a writer for the *Saguache Chronicle* commented:

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[79] Nathaniel Hill, " Nathaniel Hill Inspects Colorado: Letters Written in 1864," *Colorado Magazine* 34:1 (January, 1957): 270.
[80] *Colorado Weekly Chieftain*, June 18, 1868.
[81] Charles E. Whilden, "Letters From a Santa Fe Army Clerk, 1855-1856," ed. John Hammond Moore *New Mexico Historical Review* 40:2 (April 1965): 146.
[82] Hill, "Nathaniel Hill Inspects Colorado: 26. See William H. Brewer, *Up and Down California in 1860-1864: The Journal of William H. Brewer, Professor of Agriculture in the Sheffield Scientific School From 1864 to 1903,* Francis P. Farquhar, ed. (Berkeley: University of California Press, 1966), 152, 178, for examples of American "enterprise" and the "hum of industry.

> A great many greasers, a mixed race of Spaniards and Indians are found "making believe" farming in the valleys of Southern Colorado. They combine the slothfulness of the Hidalgos with the filth and shiftlessness of the Indians, and are a libel on the races represented by Cortez and Montezuma. They are just rapid enough for sheepherders, and take more to this than any other branch of husbandry.[83]

Ironically the same issue of the newspaper also noted that anyone could call at the *Chronicle* office in Saguache for copies of the Constitution of the State of Colorado in English or Spanish.[84]

The nineteenth-century press reflected the stereotypes and prejudice of many Americans toward their new "citizens" that included allusions to the "timeless" (static) nature of Mexican culture. For example, in a column in 1869 concerning the potential of New Mexico, the *Colorado Weekly Chieftain* judged: "With some faint understanding of the facts, New Mexico is at last awakening from a long sleep, extending through half a dozen generations."[85] The same theme reappeared two years later when the same newspaper described Mexicans as a "stagnant people" who lived a "dreamy existence" in which "evidence of decay and decrepitude stare into the face of the passerby, wherever he finds adobe huts and sheepskins for chairs."[86] The gulf that existed between the two cultures is evident in an item in the *Las Animas Leader* in which the writer rendered a character sketch of a Mexican Bullwhacker: "Of the many and varied scenes in the Southwest that constantly remind the stranger of his proximity to another and entirely

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[83] *Saguache Chronicle*, April 22, 1876.
[84] Ibid.
[85] *Colorado Weekly Chieftain*, May 27, 1869.
[86] Ibid, January 12, 1871.

different race of people, none is more likely to attract his attention than that of a Mexican freighting team."[87]

Unfortunately the number of biased accounts is easily accessible whereas it takes considerable investigation to unearth the material with which to refute some of the prejudiced opinions of newcomers who interpreted and chronicled the history of the Southwest as they sought to impose new political and economic institutions, and attempted to control the courts. This study is part of that effort.

[87]*Las Animas Leader*, November 1, 1873.

Chapter Two

A Demographic Profile: Rio Arriba and the "Mexican Counties"

Who were the women who lived in northern New Mexico and southern Colorado in the last half of the nineteenth century and what were their lives like? This chapter uses census data to explore the position of Hispanas within Hispanic culture, to ascertain the similarities and differences that characterized life in the mid-nineteenth century, and perhaps, most importantly, to avoid the homogenization of a female population who lived in a very different culture from that of the European American newcomers. Some women married at a very young age while others married later. Some widows remarried but others lived within an extended family. Many women had very large families while others had fewer children. The census listed almost 100 percent of the women enumerated in domestic roles such as "keeping house" or "house keeper," but that designation disguised the myriad complexities of life in a settler society and defined all women within one monolithic term. Class differences did exist as some families owned more land than others and the spouses of wealthier males had help in the form of Indian servants. Increased numbers of European Americans might have meant increased employment opportunities for some, albeit in gender-related roles, but property loss for others. In the absence of diaries, letters, memoirs, and other written material by Hispanas, census returns can help to detail their lives with information not easily attainable elsewhere.

The term "Mexican Counties" in the title of this chapter reflects both a culture and an attitude that existed in the so-called "Mexican" or southern counties of Colorado, terms that appeared in the literature of the time. In *Mining Frontiers of the Far West:*

1848-1880, Rodman Paul noted that the census numbers for Colorado Territory in 1870 would have been smaller than those for 1860 except that an Act of Congress in 1861 put 265,000 acres of land that had originally been in New Mexico into Colorado when the line between the two territories was straightened out. As a result there was "a subsequent influx of Spanish-speaking farmers and ranchers into the southern counties."[1] Overlooked is the fact that the new line came to the farmers as they had not moved.

In 1870, the *Colorado Weekly Chieftain* announced the publication of *The Enterprise*, a new five-column weekly paper in the town of Trinidad, Las Animas County, Colorado, "especially adapted to the wants of the Mexican counties as it would be in both English and Spanish."[2] To describe the counties as Mexican is not entirely inaccurate for the new citizens of the United States were culturally Mexican. However the use of the term in the newspaper was pejorative, designed to put distance between "them" and "us," and reflected the racialized division between European Americans and the Hispanic population. Indeed, some census returns reflected the ethnic division of Conejos and Costilla counties as European American names dominated in some precincts and Spanish names in others. Rio Arriba County reflected less division among ethnic groups as the residents remained predominantly Hispanic until the 1880s.[3]

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[1] Rodman Wilson Paul, *Mining Frontiers of the Far West, 1848-1880* (New York: Holt, Rinehart and Winston, 1963), 116. When the boundary line was redrawn in 1867 the town of Costilla lay just below the line and thus reverted back to New Mexico. In 1864 a joint resolution of the Legislative Assembly of the Territory of New Mexico referred to Conejos, Costilla, and Culebra as the "Mexican settlements" in addressing the issue of boundary changes. In 1868 the *Colorado Weekly Chieftain* referred to some politicians who were campaigning in "our Spanish American possessions." *Colorado Weekly Chieftain*, September 3, 1868.

[2] *Colorado Weekly Chieftain*, October 1870. Las Animas County is adjacent to Conejos County.

[3] See Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 17-18: "The Anglo control and conquest over land had barely begun to impinge on Hispanic movement and livelihood in the 1870s. The railroad had not reached New Mexico and had only just reached southern Colorado."

Furthermore *indios* were not enumerated; for example Taos Pueblo was in Rio Arriba County.

The censuses used for this study proved to be somewhat problematic as they are not directly comparable, especially when one is trying to trace change through time.[4] The kind of information included in a census varied from decade to decade and in fact from enumerator to enumerator, some of whom were Hispanics who included Spanish terms in the data, and others of whom were not.[5] When the *Colorado Weekly Chieftain* reported: "The ladies say he skips over all the hard questions," the statement seemed innocuous enough until one learns that the "he" in question was the local census-taker, a certain Captain Morgan.[6] The anecdote neatly sums up the difficulty in using federal census returns to sketch a portrait of Hispanas in northern New Mexico and southern Colorado. It was not until the 1900 federal census that the total number of children a woman had borne was included as well as the number of children still living at the time of the census. American federal censuses in 1850, 1860, and 1870 did not record marital status or family relationships so it was not entirely clear who was married or not, nor were marriage dates included, making it difficult to determine the age at which a wife

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[4] The statistics used in this chapter and the conclusions drawn are tentative at best due to changes in the recording of census data over time and the enormous task of recording data from three counties. As Amanda Taylor-Montoya observed "Translating census data into socially constructed categories like race is tricky, however." Amanda Taylor-Montoya, "'Under the Same Glorious Flag': Land, Race, and Legitimacy in Territorial New Mexico" (Ph.D. diss., University of Oklahoma, 2009), 64.

[5] See Silvia Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University, 1985), 319. Arrom referred to "the ambiguous nature of the census as a historical source." See also Sarah Deutsch, "Women and Intercultural Relations: The Case of Hispanic New Mexico and Colorado" *Signs* 12:4 (Summer 1987), 719-739. Deutsch noted that the high number of gainfully employed Hispanic men recorded in the Fifteenth Census of the United States "may have been due to the time of year when the census was taken, to the reluctance of census takers to enter the barrios, or to their inability to communicate once they did," 733.

[6] *Colorado Weekly Chieftain*, July 7, 1870. See also Carl Abbott, Stephen J. Leonard, and David McComb, *Colorado: A History of the Centennial State* (Boulder: Colorado Associated University Press, 1982), 16. The southern counties are described as forming a third region in which "the people alone set it apart." They were also variously termed the "Spanish" counties.

bore her first child.[7] Such information is useful because it can reveal the family and kinship structure that underpinned Spanish Mexican society and aids in understanding the wills and legal cases that appear in the legal record. Some Hispanas bore a large number of children and this pattern continued from the middle to the end of the nineteenth century. Without knowledge of the total number of births, it was entirely possible that an older child might have left home and not been counted in the number of children borne by a woman. A wife might not have been the mother of any or all of the children listed. As well, county borders changed with the creation of new counties which altered population numbers. For this reason the data is impressionistic at best and is used to help represent the lives of Hispanas in an isolated area of northern New Mexico and later in southern Colorado as well as to refute the prejudiced opinions of many European Americans.

The data contained in the following tables comes from a line by line count of the 1880 and 1900 federal manuscript censuses used to obtain the number of Hispanic and European American females fifteen years and older who were living in Rio Arriba, Conejos, and Costilla counties.[8] I used the age of fifteen as Hispanas in New Mexico could legally marry at this age. I did not include the instances of girls who married at fourteen years as they were few and statistically insignificant. I also did not include those women classified as Indian or Black or those women who had one Hispanic and one European American parent as again the numbers were small and, in the latter case,

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[7] Enumerators listed wives, if they were such, below the names of their husbands, and then any children in descending order of age.

[8] On age at marriage see Carroll D. Wright, *A Report on Marriage and Divorce in the United States, 1867-1868* (Washington, D.C.: Government Printing Office, 1891), 31. In New Mexico, minors could marry, males at eighteen and females at fifteen, with verbal or written consent. Colorado required parental consent for those under twenty-one who wished to marry. Both New Mexico and Colorado had strict rules regarding prohibited degrees of consanguinity or relationship except that in Colorado" persons living in that portion of the state acquired from Mexico are permitted to marry according to the custom of that country."

difficult to categorize. In some cases ages were left out and some manuscript censuses were almost unreadable so the total numbers are not definitive. Additionally it is unclear as to whether ages might have been either incorrectly provided or recorded. Nevertheless, the raw numbers are basically indicative of both the differences and similarities among Rio Arriba County and the two Colorado counties.

The analysis of the female population numbers revealed a variety of family groups and living arrangements that in many cases reflected not only Hispanic culture and custom wherein extended families were not unusual but also evidence of a settler society whose relatives lived in the same geographic region. Although some European American settler families consisted of members beyond the nuclear unit, the majority of them left their kindred behind in other states. Family groups for both the Hispanas and European American women enumerated included wives, daughters, stepdaughters, sisters, sisters-in-law, mothers and mothers-in-law (some widowed but others not), nieces, and grand-daughters. I also counted the female relatives of widowers as well as female lodgers and those servants not classified as Indians, some of whom may have been related to the families for whom they were working.

In 1850 when the United States undertook its first federal census of the newly acquired Territory of New Mexico, Rio Arriba County supported an agricultural, pastoralist society.[9] As noted in the introduction, Rio Arriba had been settled by the early Spaniards on land granted by the Spanish crown and contained a largely Hispanic population. As Howard Lamar wrote, not many Americans moved to New Mexico in the

[9] For information on society in a colonial frontier, see Oakah L. Jones, Jr., "Spanish Civil Communities and Settlers in Frontier New Mexico, 1790-1810", in *Hispanic-American Essays in Honor of Max Leon Moorhead*, edited by William S. Coker. (Pensacola: The Perdido Bay Press, 1979), 37-60. Jones found that by the end of the eighteenth century the major occupations consisted of farming, weaving, day labour, stock raising, and the trades.

decade after the Mexican American War so it remained essentially Nuevo Mexicano.[10] In a total population of 10,668 persons, only sixteen non-Hispanics were listed (Indians were excluded). Out of 1,749 male heads of families counted, 67 percent listed their occupation as farmer and 32 percent as laborer.[11]

When tabulating the pre-1880 U. S. federal censuses, I focused upon what would be assumed to be the married heads of families who had wives or partners living with them. Women's occupations did not appear in the 1850 census and, indeed, not in subsequent ones if they were married. The occupations of males over fifteen years of age consisted of those that one would expect to find in a rural agricultural community such as carpenters, shoemakers, blacksmiths and shepherds.[12] Significantly, other more specialized jobs belonged to non-Hispanics, a trend that accelerated in the next decades as more European Americans moved into the territory. For example, of the handful of foreigners present in Rio Arriba County in 1850, four were traders; one was a doctor, and one a county clerk. Richard Hogan noted that in census reports "Anglos were much more likely to be enumerated with a particular occupation" whereas Mexican Americans were described as farm laborers or common labor, not farm workers thus denying both the individuality of Mexican American workers and the complexity of Hispanic society. Admittedly Hogan was referring to Pueblo, Colorado in his work but the same classification existed for Rio Arriba, Conejos, and Costilla counties.[13] (See Table 1).

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[10] Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 91.
[11] United States Bureau of the Census. *Seventh Census of the United States, 1850* (Washington, D.C.: Government Printing Office, 1850). http://search.ancestry.com. Accessed November 2, 2012.
[12] The 1860 federal census listed the occupation of persons over fifteen and the 1870 census included the occupation of every male and female.
[13] Richard Hogan, *Class and Community in Frontier Colorado* (Lawrence: University Press of Kansas, 1990), 163.

Tab1e 1. Occupations of Hispanic Male Family Heads: Rio Arriba County, 1850

	Number	Percent
Farmer	1123	64
Laborer	536	31
Carpenter	23	1
Shoemaker	13	1
Tailor	11	1
Weaver	9	NA
Alguacil (Constable)	7	NA
Fleater (Freighter)	7	NA
Alcalde (Mayor or J.P.)	4	NA
Mason	4	NA
Clergyman (R.C.)	3	NA
Blacksmith	2	NA
Coachman	2	NA
Herder	2	NA
Musician	1	NA
Prefect	1	NA
Silversmith	1	NA
Total	**1749**	**98 %**

Source: United States Bureau of the Census. *Seventh Census of the United States, 1850* (Washington, D.C.: Government Printing Office, 1850). http://search.ancestry.com. Accessed November 2, 2012. The numbers do not total 100 percent due to rounding.

Of 1670 couples in 1850, 700 women, or 42 percent, married men who were older than themselves by at least ten years or more. This may not have been so unusual for a period in which men may have tried to establish themselves financially before they could afford to marry, women died young due to the complications of childbirth, and men remarried as soon as possible in order to ensure the survival of the family. This early census did not indicate the relationships among family members so it was not always easy to differentiate between the children and grandchildren of a woman, or to determine whether a woman was a second wife, as stepchildren were not listed as such. Therefore the data gleaned from the 1850 census are imprecise at best and form an approximate, though large number of marriages from which to extract family formation. The median age of the 993 women whose age at the birth of a first child could be relatively reliably

ascertained was twenty with some mothers as young as fourteen and others as old as thirty-eight.[14] Families tended to be large although it was again difficult to ascertain precise averages because daughters or sons might live with parents accompanied by their own young children. There did not seem to be a "typical" family as a dwelling or habitation might house more than one family. A household might contain as many as twelve or fourteen people including siblings of a spouse, widowed children and their offspring, widowed parents, and nieces and nephews. A couple could have as many as seven or eight children or as few as one. Seven intermarriages had occurred between European American men and Hispanic women.

Rio Arriba had a relatively homogeneous population and experienced little change in the next decade as foreigners were few. These included thirty-five-year-old Henry Pfeiffer from Germany who acted as Indian agent and who had married Antonia Salinas, age twenty-five; and Sabastiano Marcam, a farm labourer from Hesse Darmstadt. Eight males, one female, and a family of rope dancers had all come from Mexico. Farmers and farm labourers formed the primary occupation of male heads of families who listed wives. However, the 1860 census did include the names of five Hispanas who worked as midwives, and one seamstress. I noted 327 women whose names appeared first in a family unit and who thus can be assumed to have been the head of the family or whose husbands could have been away doing seasonal wage work. Although the 1860 census did not indicate marital status, some women were obviously widows with a number of children but we do not know whether all women listed as heads had in fact been married.

[14] I did not count those cases for which there was the slightest doubt about the age of the mother or the age of the first child. For example, if a woman began having children at the age of twenty-two or twenty-three it might have meant that an older husband had lost one wife, remarried, and started a new family. Sometimes a woman brought a child to the marriage so the ages of the children listed were not always consecutive.

Older men continued to marry younger women as there were 370 couples for whom the husband was at least ten years older than his wife.[15] Unlike the 1850 census, census-taker Charles Beaubien enumerated married women by their maiden names.

Costilla and Conejos did not officially appear as counties until the 1870 federal census when they were two of the original seventeen counties created by the formation of the Territory of Colorado in 1861. Prior to this time any records for these two areas are to be located in Taos County. Although there would not be an official census for Conejos and Costilla counties for a decade after that of Rio Arriba in 1860, the two counties are listed in the 1860 census for Taos as divisions.

Conejos and Costilla in Taos County counted few foreigners in 1860. Of the six "foreigners" listed, two males came from Mexico, one from Chihuahua and the other from Sonora, and one woman originated from Durango, Mexico. The three non-Mexicans included Silvester Leroux from St. Louis, Missouri, Lafayette Head who married María Martina Martínez from Rio Arriba County, and merchant James B. Woodson, age thirty-nine from Cumberland County, Virginia, married to nineteen-year-old María Juliana Vigil from Taos. After Woodson's death María Juliana later married Woodson's partner, John Lawrence, on Christmas Day 1895.[16] Pedro Valdez, the census-taker, recorded married women by their maiden names, did not list family relationships, and classified some people as peons. Of the nine foreigners in Costilla, six men were married to Hispanas.[17]

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[15] United States Bureau of the Census. *Eighth Census of the United States. 1860* (Washington, D.C.: Government Printing Office, 1864). http://search.ancestry.com. Accessed November 2, 2012.
[16] John Lawrence, *Frontier Eyewitness: Diary of John Lawrence, 1867-1908,* ed. Bernice Martin (Saguache: Saguache County Museum, 1990), 150.
[17] *Eighth Census of the United States,* 1864.

By 1870 the Hispanic population of Rio Arriba continued to live an agrarian existence, served by basic trades such as carpenter, shoemaker, and silversmith although more people were listed as servants. Married women were listed by maiden name; marital status was not noted; the status of women listed as heads remained ambiguous; and the age gap between some spouses continued. The ninth census of 1870 recorded a small change in the number of foreigners and out-of-state residents who lived in the three counties. In Rio Arriba County fifteen of the twenty-one foreigners had come from Mexico, ten were native born and there were fifteen intermarriages. There were only ten foreigners in Conejos County, and four instances of intermarriage. Costilla County, the first area of Colorado to be settled by people of European origin, had originally covered most of south central Colorado until Saguache County was formed in 1866, by which time European Americans were homesteading in the area. In 1870 Costilla County recorded thirty-two foreign born residents, forty-two native born from out of the territory, and twelve intermarriages.[18]

Interestingly in all three counties married women were not listed by maiden name as they had been previously, and they all shared the same occupation, "keeping house." The most dramatic change in the 1870 census was the number of Navajo and Paiute Indians who showed up in the statistics for Rio Arriba County as either domestic servants or farm labor. In 1870, 40 percent of the inhabitants of Conejos County had been born in Colorado Territory and 59 percent came from New Mexico Territory whereas 29 percent of Costilla County's population had been born in the territory and 66 percent originated from New Mexico Territory. (See Table 2).

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[18] *Ninth Census of the United States,* 1872.

Table 2. Population of Rio Arriba, Conejos, and Costilla Counties by Nativity: 1870

	Population	Born in Territory		From New Mexico Territory	
	No.	No.	%	No.	%
Rio Arriba	9294	9241	99%	NA	
Conejos	2489	986	40%	1473	59%
Costilla	1721	494	29%	1137	66%

Source: United States Bureau of the Census. *A Compendium of the Ninth Census.1870.* (Washington: Government Printing Office, 1872).

Nevertheless, the nature of the population was changing as evidenced in the diary kept by the Jesuits of Our Lady of Guadalupe Parish in Conejos, Colorado from 1871 to 1875. For example, one of the Jesuit fathers in Antonito, Colorado noted that when he said mass in the village of Del Norte for the first time in August, 1873, 300 people attended, including both Americans and Mexicans. (In fact all were legally Americans.) And the next month the Jesuit diary recorded the first communion by an American woman.[19]

By the tenth census in 1880 it became easier to form a more detailed portrait of the lives of Hispanas, for by 1880 the railroad had come to New Mexico, and land-hungry European American settlers from the U.S. were moving into the southern counties of the four-year-old state of Colorado to claim homesteads. Rio Arriba, however, still remained predominantly Hispanic. (See Table 3)

[19] Marianne L. Stoller and Thomas J. Steele, eds. *Diary of the Jesuit Residence of Our Lady Guadalupe Parish Conejos, Colorado, December 1871-December 1875* (Colorado Springs: The Colorado College, 1982), 76.

Table 3: Population of Rio Arriba, Conejos, and Costilla Counties by Nativity: 1880

	Population	Born in State or Territory	
		No.	%
Rio Arriba	10837	10103	93 %
Conejos	5605	1177	25 %
Costilla	2879	976	36 %

Source: United States Bureau of the Census. *A Compendium of the Tenth Census 1880* (Washington: Government Printing Office, 1882). Accessed November 2, 2012.

The number of males in the three counties outnumbered females, most notably in Conejos County in 1880 where mining attracted prospectors. (See Table 4)

Table 4: Male and Female Population of Rio Arriba, Conejos, and Costilla Counties: 1880-1900

	1880		1890		1900	
	M	F	M	F	M	F
Rio Arriba	**5735**	**5288**	**6102**	**5432**	**7038**	**6739**
Conejos	**3793**	**1812**	**3901**	**3292**	**4571**	**4223**
Costilla	**1558**	**1321**	**1833**	**1658**	**2402**	**2203**

Source: United States Bureau of the Census. *Twelfth Census of the United States*. *1900.* (Washington, D.C.: Government Printing Office, 1901).

The relationships among family members were described as well as the marital status of individuals. The age gap between some Hispanic spouses remained high and women continued to give birth to their first child at a relatively young age. (See Table 5)

Table 5: Married Women of Rio Arriba, Conejos, and Costilla Counties, 1880

	No. of Wives		Average Age at First Child		Older Spouse (10 yrs. or more) No.	%	No.	%
	H[20]	A	H	A	H		A	
Rio Arriba	1749	98	19	20	625	36%	19	16%
Conejos	371	253	19	21	148	40%	57	23%
Costilla	411	84	20	22	140	34%	25	30%

Source: United States Bureau of the Census. *Tenth Census of the United States. 1880.* (Washington, D.C.: Government Printing Office, 1883). http://search.ancestry.ca. Accessed December 6, 2012.

[20] H refers to Hispanas and A refers to women who did not have Spanish surnames in the census.

The census also noted the occupations of both Hispanas and European American women. Although the greatest number of married women were still classified with the gendered term "keeping house" listed beside their names, this census included a slightly more differentiated picture of women's lives in the occupation category. Of course women who "kept house" did the same work but not for pay. Most employment reflected not only the traditional domestic tasks of women but also the type of employment available to women, especially widows and their daughters, such as cook, laundress or washerwoman or seamstress. These jobs indicated both economic change and the requirements of a new service economy related both to the arrival of newcomers and to the construction of the railroad.[21]

Women's work was less varied in Rio Arriba County where the population was predominantly Hispanic but the two Colorado counties had a greater number of European American women who worked in different jobs, albeit still in the domestic arena. In Conejos County three women worked in hotels and restaurants, one divorced woman kept a saloon, and two other women ran a boarding house and a hotel respectively. Yet another woman kept a dairy. The census also counted four teachers, three of whom were European American and one Hispanic. The most interesting job designation listed for a European American female was that of "doctress" although it is difficult to know what the census-taker really meant by the use of this term. Costilla County's four teachers were

[21] United States Bureau of the Census. *Tenth Census of the United States. 1880* (Washington, D. C.: Government Printing Office, 1883). http://search. ancestry.ca. Accessed December 6, 2012. For the increasing poverty of women and the options available to them, see Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999).

all European Americans as was the hospital matron at Fort Garland whose husband was a hospital steward.[22]

The 1900 U.S. federal census included family relationships as well as the number of births and the number of children living for each woman. In Rio Arriba the median age of the birth of a woman's first child had not changed a great deal. Hispanas generally gave birth for the first time at the age of twenty and European American women at twenty-two years of age. Of the 2072 Hispanic marriages that could be determined, 625, or 30 percent of the women had married men at least ten years older than themselves. Thirty-four, or 29, percent of the 135 European American wives married older husbands. (See Table 6)

Table 6: Married Women of Rio Arriba, Conejos, and Costilla Counties: 1900

	No. of Wives		First Child		Older Spouse			
	H	A	H	A	H		A	
					No.	%	No.	%
Rio Arriba	2072	135	20	21	625	30%	135	29%
Conejos	660	667	19	21	253	38%	123	18%
Costilla	520	292	19	23	203	39%	57	20%

Source: United States Bureau of the Census. *Twelfth Census of the United States. 1900*. (Washington, D.C.: Government Printing Office, 1901). http://search. ancestry.com. Accessed August 1, 2012.

The occupations of Hispanas in Rio Arriba County changed little in the decades from 1880 to 1900. Fifty-two worked as laundresses, forty-three were servants while fourteen more were cooks and eleven women found employment as dressmakers. Of the nine female schoolteachers, eight were European American and one was Hispanic. There were two midwives listed in the 1900 census. Two new jobs appeared, those of waitress and saleslady, but they were filled by European American women. Conejos County

[22] United States Bureau of the Census. *Tenth Census of the United States. 1880.* (Washington, D.C.: Government Printing Office, 1883). http://search.ancestry.com. Accessed December 6, 2012.

reflected the greatest changes both in the identity of who filled certain roles and in the variety of employment. For example, twenty-three Hispanic women were listed as servants but forty-three European American women also held the same position. Two stenographers and one compositor appeared for the first time in this census, European Americans, to be sure, but it demonstrated that more types of employment were available for some women. However, some gender-related occupational patterns continued: twenty Spanish-speaking women worked as laundresses and of the fourteen female schoolteachers, only one was Hispanic. Costilla County, too, reflected the change in the demographics of southern Colorado: of the thirty-five female servants noted only one was a Hispanic woman. The censuses counted Hispanos as white. (See Table 7).

Table 7: Population of Rio Arriba, Conejos, and Costilla Counties: 1900

	Population	Native White/ Native Parents		Native White/ Foreign Mixed		Foreign Born White Parents	
	Total	**No.**	**%**	**No.**	**%**	**No.**	**%**
Rio Arriba	13777	12169	88.3%	187	1.4%	105	0.8%
Conejos	8794	7525	86 %	854	10.0 %	376	0.4%
Costilla	4632	4162	90 %	304	7.0 %	147	0.3%

Source: United States Bureau of the Census. *Twelfth Census of the United States. 1900* (Washington, D.C.: Government Printing Office, 1901). http://search.ancestry.com. Accessed August 1, 2012.

Census numbers taken alone belie the complexity of the predominantly Hispanic communities in northern New Mexico and southern Colorado for unstated was the ethnic intricacy and mestizo composition of the Hispanic population although Hispanos and Hispanas were generally classified as white until the 1930 federal census.[23] Indeed,

[23] See Richard Griswold del Castillo, *The Los Angeles Barrio, 1850-1890: A Social History* (Berkeley: University of California, 1979); see also John-Michael Rivera, *The Emergence of Mexican America: Recovering Stories of Mexican Peoplehood in U.S. Culture* (New York: New York University Press, 2006); also see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*

nineteenth-century census enumerators could not seem to agree upon a firm racial classification. The Hispanic inhabitants of Costilla County were recorded as Mexican in the 1880 census returns by the two enumerators, William Stewart and William Carson whereas D.E. Newcomb initially designated those who lived in Conejos County in 1880 as Mexican but a large W was subsequently superimposed over the first category although it is not known who made the correction. These difficulties continued in the 1900 census when, curiously enough, enumerators Silas Smith and William H. Hirst assigned a W to everyone living in Conejos County except African Americans and Indians but José B. Romero used the label M which either meant Mexican, or as some transcribers noted, mulatto. In Costilla County, however, Felix G. Esquibel used white as his favoured designation. Being white mattered. For example Section Seven of an Act Concerning Practice in Chancery (court of equity for cases not provided for by law) stated that a defendant should be delivered a copy of a summons or a copy left "at his usual place of abode, with some white person of the family, of the age of ten years or upwards."[24] Did this mean that a non-white defendant could not receive a summons unless there was a white person present? Furthermore, who determined the "whiteness" of the recipient in what could be an entirely arbitrary observation?

The malleable nature of racial identification in the Southwest frequently obscured racial and ethnic origins. When a Pueblo Indian was christened he or she received a

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(New York: Oxford University Press, 2009), 295. Pascoe presents a sophisticated study that examines just how crucial a racial designation can be. "Government statistics are careful to name 'Hispanics' as an 'ethnic' rather than 'racial' category; a quarter of all U.S. 'Hispanics' marry 'non-Hispanics,' too." See also Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998).

[24] An Act Concerning Practice in Chancery, st. Col. Terr. 1861. This was most likely a single court that sometimes sat as a court of chancery.

Spanish name so a name was not significant of race.[25] Despite legislation that barred the captivity trade in 1866, the practice continued, which obscured the origins of household members for they received Spanish names at baptismal ceremonies where their purchasers often served as their *padrinos* or godparents. For example in 1870 some 115 females and eighty-seven males designated as Indians in the federal census lived in the wealthier households of Rio Arriba County. The Sheriff, Luciano Herrera, housed six Indian servants. In 1880 the number of those classified as Indian had been reduced to fifty-one females and fourteen males. The majority of these servants were Navajo with some Paiutes and a few Comanches numbered amongst them. Conejos County counted thirty-one female and nine male Indians in 1870 and only eight females and two males in 1880 and Indian members of the households in Costilla County numbered eleven females and five males in 1870 and five females and no males in 1880.[26] These were only Indians living in white or Hispanic households as pueblos were not enumerated.

As noted in the introduction some Indian female captives bore the children of their owners and occasionally others eventually married those had purchased them. For example José Antonio Jaquez married María Rita Maes whom he bought from the Utes in Colorado Territory when she was but ten years old.[27] Baptismal records of the time

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[25] Laura E. Gómez, *Manifest Destinies: The Making of the Mexican American Race* (New York: New York University Press, 2007). See also John-Michael Rivera, *The Emergence of Mexican America: Recovering Stories of Mexican Peoplehood in U.S. Culture* (New York: New York University Press, 2006), 20. Rivera referred to the "complicated racialization of Mexicans who have been lynched, lived under Jim Crow laws, and classified as mongrels without natural rights . . . who were classified sometimes as ethnic and other times as white." Also see Neil Foley, *The White Scourge: Mexicans, Blacks and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1997), and Clara E. Rodríguez, *Changing Race: Latinos, the Census, and the History of Ethnicity in the United States* (New York: New York University Press, 2000).

[26] For example, see Gene Combs, "Enslavement of Indians in the San Luis Valley of Colorado," *San Luis Valley Historian* 5 (1973): 1-29. Also see James Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Carolina Press, 2002).

[27] Historian Virginia Sánchez has compiled lists of captives and their owners in Conejos and Costilla Counties. See Indian Captives Reported by Indian Agent Lafayette Head, 1865. The report is only dated up

include a number of "natural children" born to Indian women where the name of the father is not listed. When a white male married an Indian female the census data in the three counties under study listed any children of the couple as Indian so that their white heritage was hidden.[28] But being termed "Indian" also denied some individuals their tribal status for they might have been Navajo, Cheyenne, Paiute, Apache, or Pueblo from any number of the nineteen Pueblos. However during the nineteenth century, the census frequently recorded domestic servants and laborers under the names of their masters or mistresses, with a racial designation that might have been white, Indian, mulatto, or simply, "copper." Indian captives and servants, both adults and children were invariably baptized with the surname of the adoptive family. Indeed, Peggy Pascoe referred to the "contradiction between the imperative of race classification and the instability of race categories." [29]

When Alice Blackwood Baldwin wrote her memoirs about her years as an army wife from 1867-1877, she referred to the birth of her daughter, Juanita Mary, as "the first white child of unmixed blood born in Trinidad. Señora Felipe Baca, a "descendant of

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until 1865 but the list contains captives who were purchased as early as 1852, [electronic resource], Virginia Sánchez, compiler, Virginia.Sánchez@comcast.net, (Accessed August 4, 2013), and Additional Indian Captives in Southern Colorado, [electronic resource], Virginia Sánchez, compiler, Virginia Sánchez@comcast.net, (Accessed August 4, 2013). The second list contains the names of those Indian captives held by Lafayette Head, the Indian agent in Conejos County, who omitted the names from his first report. Sánchez' source for the information on José Antonio Jaquez came from NARA. Letters Received by the Office of Indian Affairs, 1824-1880, Roll 193, "Colorado Superintendency, 1865-1866, Frame 41, Lines 1-3.

[28] For instance, see Minette C. Church, "The Grant and the Grid: Homestead Landscapes in the Late Nineteenth-Century Borderlands of Southern Colorado," *Journal of Social Archaeology* 2:2 (June 2002): 228. Church referred to the 1870 territorial census of the lower Purgatoire River which classified eighteen people as Indian. She noted that "all were integrated into New Mexican households often through marriage and the census listed the children of these unions as white, so the mixed heritage of these and other individuals in the census may be hidden."

[29] Pascoe, *What Comes Naturally*, 133.

proud hidalgos" attended the birth.[30] Apparently proud hidalgos existed into the twentieth century, although perhaps in a pejorative sense, for in 1902 the *Alamosa Independent Journal* reported that "About 25 brunette Spaniards passed through Alamosa yesterday on their way home to Del Norte from La Sauses [sic] where they had been attending a wedding."[31] When Juan Vigil died in Costilla in 1905 his death certificate identified him as Mexican but when María Ignacia M. de Casias, a wealthy resident of Conejos County who had been born in El Rito in the "Mexican state" of New Mexico died in 1913, documents described her as being "of Caucasian race, of Mexico birth and parentage."[32] But apparently one Francisco García, born at Costilla, New Mexico, in the county of Taos in the Territory of New Mexico who died on his farm in San Luis on December 12, 1912, "belonged to the Spanish decent [sic] race."[33] The problematic nature of racial classification is evident in the examples cited for in the early twentieth century within the span of eight years, an individual might be regarded as Mexican, Caucasian, or even Spanish.[34] The important point these designations underscore is the historical construction of race.

Census numbers also obscured the number of "natural" children born to unmarried mothers who might be classified as widows as well as those who might have been of mixed Indian and white parentage but whose racial status, depending upon the census enumerator and the responses of the enumerated, resulted in a white classification.

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[30] *An Army Wife on the Frontier: The Memoirs of Alice Blackwood Baldwin, 1867-1877*, edited and with an introduction by Robert C. and Eleanor R. Carriker (Salt Lake City: University of Utah Press, 1975), 59.
[31] *Alamosa Independent Journal*, February 5, 1902.
[32] Estate of Juan Vigil, December, 1906, Costilla County, Costilla County Probate Court, Box 68738, Number 14. Estate of María Ignacia M. de Casias, January 26, 1914, Conejos County, Conejos County Court Records, Box 68905, Number 117. When she died, the administrators of María Ignacia de Casias' estate found $3349.00 in a trunk.
[33] Estate of Francisco García, 1913-1915, Colorado State Archives, Box 68736, File Number 12.
[34] See Jacobson, *Whiteness of a Different Color*.

The intimate relationship between the head of the household or employer and an employee was also not revealed.[35] In many cases it might only be through christening records that one could discover a baby's parentage for virtually all children in the Catholic Church in New Mexico and Colorado were baptized. Some baptismal records did not identify the father especially if a child was a "natural" son or daughter. The mother was invariably named. Large families sheltered unmarried daughters or sons who had offspring and it is often through the interruption of the natural sequence of ages in a basically nuclear family that the presence of natural children appeared. Grandparents also either formally or informally adopted the children or went to court to assume guardianship.

A woman's true marital status might also remain hidden in the statistical records that add an element of ambiguity to any firm conclusions drawn from them.[36] The numbers of women classified as heads of families included those who were widowed as well as those who were married but who did not have spouses listed as living at home. Because the census was often conducted in June, men may have gone to work as agricultural labour away from their homes. Some males may have been away working on the railroad, in the mines, or in the beet fields while others may simply have deserted the marriage. Some women might not have been absolutely truthful in their replies to an enumerator's questions if they feared loss of status or position in the community. Hispanic villages had large numbers of widows, some of whom lived with family members or had relatives living with them while a relatively few lived alone. More

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[35] See Brooks, *Captives and Cousins.*

[36] For more on "unmarried women" see Deena González, "The Widowed Women of Santa Fe: Assessment of the Lives of an Unmarried Population, 1850-188." in Ellen Carol DuBois and Vicki L. Ruiz, eds., *Unequal Sisters: A Multicultural Reader in U.S. Women's History*, Ellen Carol DuBois and Vicki L. Ruiz (New York: Routledge, 1990): 34-50.

married European American women headed families in which a spouse was not listed but whose husbands might also have been working away from home. Thus what one can tell is that for at least a part of each year, some women, both Hispanas and European American, managed their households on their own. (See Tables 8 and 9)

Table 8: Female-Headed Households: Rio Arriba, Conejos, and Costilla Counties: 1880

	Total Females 15 and Older		Widowed				Married -No Spouse			
	H	A	H		A		H		A	
Rio Arriba	2699	104	274	10%	NA		7	0%	NA	
Conejos	566	353	43	8%	18	5%	3	1%	14	4%
Costilla	665	141	57	9%	NA		36	5%	NA	

Source: United States Bureau of the Census. *Tenth Census of the United States. 1880* (Washington, D.C.: Government Printing Office, 1883).http://search.ancestry.com. Accessed December 6, 2012; United States Bureau of the Census.

Table 9: Female-Headed Households: Rio Arriba, Conejos, and Costilla Counties: 1900

	Total Females		Widowed				Married-No Spouse			
	H	A	H		A		H		A	
Rio Arriba	3171	179	258	12%	8	4%	6	0%	3	2%
Conejos	1237	1000	98	8%	13	1%	4	0%	19	2%
Costilla	801	436	53	7%	15	3%	7	1%	10	2%

Twelfth Census of the United States, 1900 (Washington, D.C.: Government Printing Office, 1901). http://search.ancestry.com. Accessed August 1, 2012.

As noted above, the percentage of widowed Hispanas in the 1880 and 1900 censuses was greater than the number for European American women. Not surprisingly the number of Anglo married women as they are defined in the chart who counted themselves as married despite the fact that their spouses were not listed as living at home is higher in Conejos and Costilla counties than in Rio Arriba County which retained a

majority Hispanic population. Additionally the two censuses listed fewer married Hispanas without their husbands at home in Rio Arriba County than in the two southern Colorado counties where the opportunity for employment outside of the village sent men away from their homes.[37]

The communally-based agricultural economies of mid-century northern New Mexico and the settler society of southern Colorado would seem to have presented little opportunity for dramatic class differences although degrees of status did exist, some more obvious than others.[38] Some farmers possessed more land than others; older men tended be listed as farmers in the census whereas sons were farm laborers until they acquired land of their own. However some older men worked as laborers and some younger men worked in occupations other than as farm laborers.

Differences in the status and class of Hispanic women can be gleaned from other sources such as diaries kept by non-Hispanics, wills, and by the nature and type of court cases. In 1865 María Luisa Quintana appeared as a plaintiff in the district court in Rio Arriba against Merced Sánchez who refused to produce documents confirming the sale of some land to her father. She claimed that she was entitled to a house and the land but that the defendant had taken possession of the aforesaid property and denied her right to it.

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[37] For information on the migrant labour force and the life of Hispanas who remained in the villages of northern New Mexico see Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987).

[38] However Deena González cautioned against drawing conclusions about class using incomplete records or insufficient data despite the shared concerns of both wealthy and poorer women. See González, *Refusing the Favor*, 33. For colonial New Mexican women see Angelina Veyna, "It Is My Last Wish That. . . A Look at Colonial Nuevo Mexicanas Through Their Testaments" in Adela de la Torre and Beatríz M. Pesquera, eds., *Building With Our Hands: New Directions in Chicana Studies* (Berkeley: University of California, 1993), 101. Veyna looked at the type and value of goods and asserted that "wills indicate that not all of them were socially equal." For a view of seventeenth-century New Mexican frontier society see France V. Scholes, "Civil Government and Society in New Mexico in the Seventeenth Century" *New Mexico Historical Review* 10:2 (April 1935): 98. Scholes found a "fairly well defined local aristocracy based on family, service to the Crown and worldly possessions." For an opposing view, see Oakah L. Jones, Jr., *Los Paisanos: Spanish Settlers on the Northern Frontier of New Spain* (Norman: University of Oklahoma Press, 1979).

María Luisa Quintana wanted the property and damages. However Merced Sánchez requested a change of venue as he said he could not receive justice in Rio Arriba because Don Manuel Trujillo, a relative of the plaintiff and Don Diego Archuleta, a person of great influence in Rio Arriba were taking great interest in the case and that they had "an undue influence over the minds of the petit jurors" and would use their influence against him.[39]

The diary of the Jesuit Fathers in Our Lady of Guadalupe Parish in Antonito, Conejos County from December 1871 to December 1875 provided some revealing instances of class structure. For example when a doctor operated upon Doña Cornelia Salazar, wife of Don Manuel Sabino Salazar, in Conejos County in September, 1873, this would have been no ordinary occurrence, for many Hispanic families would not have been able to afford a doctor's service. The use of the honorific terms, Don and Doña, also indicate a higher social status.[40]

The physical church itself could also serve as a marker of status and wealth. As the editors of the diary noted in a footnote: "In the Conejos Books of Burial it is recorded that Guadalupe Valdez, daughter of Francisco Valdez and María Nicolás Romo, both deceased, and wife of Celedonio de la Isla, was buried in the transept of the church, an appropriate honor for the wife of the largest landowner in the parish."[41] Thus, the location of one's burial place; burial with full rites; nuptial blessings with a sung Mass; and the ability to place cushions on one's pew in church all served as markers of status, subtle

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[39] María Luisa Quintana versus Merced Sanchez, September, 1865, Rio Arriba County, NMSRCA, District Court Records, Box 7, Number 64a.
[40] Stoller, *Diary of the Jesuit Residence of Our Lady of Guadalupe Parish, Conejos, Colorado. December 1871-December 1875,* 79. "The doctor from Culebra was most likely Joseph Kugler, the only civilian physician in the San Luis Valley listed in the 1870 census." Joseph Kugler (1829-?), a German-born physician and surgeon, was married to Candelaria Vigil and when she died in 1870, he married her sister, Simona Vigil.
[41] Ibid, 67.

distinctions that would have taken on more significance in a small community. When Doña María Dolores Martínez Silva of La Isla died in 1874, she received not only a Solemn Requiem Mass sung by Father Fede, but burial inside the church, a fact deemed worthy of registration in a diary.[42] On the other hand María Beatriz Gallegos of Fuertecitos was buried a few months earlier in the third area of the church.[43] The relative standing of the two women is difficult to discern as Doña María Martínez Silva's burial was only referred to as inside the church.

However, Miquela García de Salazar left no doubt about *her* status. In her 1883 will the resident of Guadalupe in Conejos County stated: "I direct that my body be decently buried with proper regard to my station and condition in life and the circumstances of my estate, according to the form and faith of the Holy Catholic Church." I included the will of Miquela García de Salazar here instead of in the chapter on wills to illustrate why the deceased referred to her "station and condition in life." She left a substantial estate with some specific bequests wherein her three sons, José Pablo, Juan María, and Salvador Salazar each received two cows and a brood mare from her herds. Her ranch or farm six miles downriver from Conejos was to be divided equally by her three sons. She bequeathed to daughters Gertrudes and Asencion pieces of gold jewelery, and a bureau and a black silk dress respectively. In addition, the children, including her married daughter, divided equally the household furniture, houses and lots in the town of Guadalupe, stock, and the residue of her estate. Her faithful servant, María Antonia Salazar received two cows and a brood mare. It is clear that Miquela García de Salazar was a woman of some means, although despite her obvious material prosperity,

[42] Ibid., January 22, 1874, 102.
[43] Ibid., October 7, 1873, 82.

she did not sign her name on her will but made her mark instead.[44] But the inventory of the estate of María Ignacia Casias, who appears more than once in this dissertation, revealed an expense that set her apart from the majority of deceased residents. The list of expenditures against the estate included the building of a monument fence for the sum of $157.95, surely not a structure possible for many families in the San Luis Valley. Her deceased spouse, José María Casias, had been a wealthy sheep-raiser so it is probable that this was a family plot.[45]

The diary entries that concerned marriage nuptials also revealed class and ethnicity. The priests described several weddings as important but a note for November 30, 1873 merely said, "An Indian man was married."[46] Although the accounts of the "important weddings" also did not include the names of the participants, they were acknowledged as special, included sung masses, and often two or more priests attended or officiated at the ceremony. The Fathers also served at the weddings of Americans. On January 12, 1875 the diary recorded that "Father Salvador went to La Servilleta for the marriage of an American man."[47] Although the "American" man is also not named by the priest the tone of the two entries hints at a certain diffidence towards the first marriage entry.

Class or perhaps social standing could be measured in other ways. The diary noted that groups of parish women came to whitewash the church on several occasions, some of whom volunteered and others of whom were invited by the priests. For this task,

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[44] Estate of Miquela García de Salazar, February 28, 1883, Conejos County, County Court Records, Estates, 13-15.
[45] Estate of María Ignacia Casias, January 16, 1914, Antonito, Colorado, Conejos County Courthouse, Inventory Record, Volume C, 93.
[46] Ibid., November 30, 1873, 91.
[47] Ibid., January 12, 1875, 141.

traditionally performed by Hispanas, they received a much-prized religious medal and a small print, a drink, and sweets.[48] Masses were also performed for the women who did the plastering; thus, it would have been considered an honour to have been part of this group.

Occasionally items in contemporary newspapers provided intimations of class and status. In January, 1885, *The Alamosa Journal* picked up a 'personal' from the January 13 issue of *The Denver Republican* which noted that Mrs. A.D. Archuleta of Conejos, Colorado had stayed at the St. James Hotel in Denver.[49] The Archuleta name figured prominently in the history of both New Mexico and Colorado. Archuleta County in Colorado is named after José Manuel (J.M.) Archuleta, noted as a county judge in 1879, and in honour of Antonio D. Archuleta, senator from Conejos County in 1885 when Archuleta County was created out of western Conejos County. However, Archuleta was a common name and not all were related or wealthy. Documents sometimes referred to individuals as Don or Doña which reflected their higher social and financial standing in the community. For example, those women and men letting out sheep on partido contracts might be a Don or Doña. Status or wealth might also be measured by the ability of a plaintiff or defendant in a court case to hire an attorney. Admittedly some lawyers may have been appointed by the court but other individuals possessed the means to employ an attorney of his or her own choice.

The population schedules revealed that the majority of nineteenth-century Hispanas lived in a rural setting, married at a young age, generally bore several children, and in some cases oversaw extended families that might include nieces, nephews, and

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[48] Ibid, 83.
[49] *The Alamosa Journal*, January 22, 1885.

grandchildren. It was not unusual for a young woman to marry a man at least ten years older than herself, a man who could have been a widower or who had become established enough to allow him to support a family. Gaps in the ages of the children in a family could indicate the presence of a second wife for if a woman died in childbirth and left several children it became imperative for a man to remarry quickly in order to have someone to take care of the family. In most cases the second wife began to bear children. A widower might also marry his sister-in-law and begin a second family as was the case with José Amarante García of Conejos County who married Teodora Espinoza after the death from tuberculosis of his first wife, Sofia.[50]

Remarriage could, however, become relatively complicated when it came time to divide an estate, especially when a man had married several times. Documentary evidence reveals the difficulties encountered if an estate had to be parceled out amongst two or three wives, particularly if each marriage had produced children.

Census returns and population statistics can be helpful in sketching the lives of the Hispanas who lived in northern New Mexico's Rio Arriba County and in the "Mexican" counties of southern Colorado, but it is also necessary to look at the pre-territorial judicial system under which they had lived until the advent of American jurisdiction, both to determine how they had used the law, and to gain a sense of how legal change might affect their legal rights.

[50] Colorado Society of Hispanic Genealogy, *Hispanic Pioneers in Colorado and New Mexico* (Denver: Alliance Press, 2006), 64.

Chapter Three: A Woman's Place

A brief overview of Mexican women's historical legal rights will provide an interpretative framework within which to study the legal transformation that later affected women under U.S. authority.[1] Although they enjoyed greater legal status under Spanish civil law than under the common law the fact remains that in both justice systems Hispanas negotiated their legal affairs in an all-male judicial environment. Furthermore in small New Mexico villages it was extremely likely that a court official might be a relative or neighbour. In the most fundamental sense it is important to remember that in 1848 Mexican women who found themselves enmeshed in a new legal environment came from a Spanish colonial legal tradition that coloured how they viewed society and their role in it, a "pre-conquest" viewpoint as Charles Cutter termed it.[2] For example, a number of people in Rio Arriba County who were listed in the 1860 federal census as being forty years or older would have been thirty years old or older in 1850 and far more familiar with Spanish and Mexican law than with American legal procedures. Of the 630 persons over forty years of age, there were 400 males and 220 females.[3] These women and men would understandably have had a Mexican mindset. The question of conscious knowledge of the law on the part of Hispanic women is difficult to define. However, although older Hispanas might not have been personally involved in any judicial affairs it

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[1] Silvia Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985), 55. Arrom addressed the "legal system as it was understood by Mexicans in the first half of the nineteenth century…as cited in contemporary handbooks and compilations to avoid conclusions based on ancient laws long forgotten or ignored."

[2] Charles R. Cutter, *The Legal Culture of Northern New Spain: 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 87. The use of the term "pre-conquest" is relative. As used here, it is "pre-conquest" only if one ignores the earlier Spanish conquest.

[3] USGenWeb, http://www.usgwcensus.org/ (accessed September 18, 2012).

is likely that they were either related to or knew of someone who had been engaged in a legal transaction, especially within the confines of a small village.[4]

Spanish law that evolved over the centuries reflected a history of invasion and changing cultures. Roman law deemed a husband and wife to be distinct persons who could have separate estates, incur separate liability, and contract with each other.[5] In 693 A.D. the Visigothic Code or *Fuero Juzgo* in Visigothic Spain recognized marital rights in property.[6] The Fuero Juzgo contained the community property system whereby both husband and wife shared equally in the matrimonial gains or *gananciales* acquired during marriage, a system later adopted in Texas (1840), California (1849), and Arizona (1865). New Mexico operated under the community property laws of Spain until 1901 when they were codified into statute.[7] Colorado, however, did not adopt the community property system. (Book Four, Title II of the Fuero covered property ownership and inheritance which stated that daughters and sons inherited equally).[8]

During the *Reconquista* of most of Spain from the Moslems or Moors that lasted from 718 until January 2, 1492, and the expulsion of the last Moslem ruler from Granada

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[4] See Rosalind Z. Rock, "Mujeres de Substancia-Case Studies of Women of Property in Northern New Spain," *Colonial Latin American Review* 2:4 (Fall 1993): 425-440; Yolanda Chávez Leyva, "A Poor Widow Burdened With Children": Widows and Land in Colonial New Mexico," in Elizabeth Jameson and Susan Armitage, eds. *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997): 85-96; and Deena J. *Refusing the Favor:The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999).

[5] Elizabeth Warbasse, *The Changing Legal Rights of Married Women, 1800-1861* (New York: Garland Publishing Inc., 1987), 49. On the other hand, Arrom, *The Women of Mexico City*, 1985, 55, noted that "Roman law . . . placed women under perpetual male guardianship because they were deemed incapable of managing their own affairs." Importantly "although Spanish law derived in part from Roman law the two diverged in their treatment of women, and it is Spanish law, passed on to the New World possessions, that is relevant to Mexico."

[6] William Q. DeFuniak and Michael J. Vaughn, *Principles of Community Property* (Tucson: The University of Arizona Press, 1971), 3.

[7] Ibid. However, these *bienes de ganancias* were defined as originating by onerous cause (work) rather than by lucrative cause (inheritance or donation).

[8] *The Visigothic Code: (Forum Judicum). Book IV*. Retrieved September 7, 2013, from The Library of Iberian Resources Online: http:// libro.uca.edu/vcode/bk.4.htm.

by Queen Isabella and King Ferdinand, Spanish women could own and inherit property in towns on the newly liberated frontier.[9] Jean Stuntz stated that little changed when the laws of Spain transferred to the New World in the sense that the enforcement of the property rights of women that had led to the successful repopulation of land wrested from the Moors should also do well overseas.[10] The codification of Spanish law under King Alfonso X in 1265, known as the Siete Partidas, formed the foundation of the legal system subsequently transported to the New World.[11] The Leyes de Toro, based on the earlier *Partidas* and codified in the early-sixteenth century, guided inheritance, transfer of property, and guardianship, both in colonial New Spain and in Mexico's early decades of independence. These two codes basically circumscribed Spanish women's legal position. Mexican historian, Josefina Zoraida Vásquez, noted:

> . . . the Europeans brought with them their contradictory medieval Hispanic notions about women with which was mingled with [sic] the Greek philosophical concept of the inferiority of the female, Roman notions of legal equality, the ambivalent Judaeo-Christian idea of a "certain" spiritual superiority in women, and traces of Islamic ideas . . .[12]

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[9] To promote marriage in the resettled towns, Spanish women had liberal property rights. See Heath Dillard, *Daughters of the Reconquest: Women in Castilian Town Society, 1100-1300* (Cambridge: Cambridge University Press, 1984), 25. The Moslems who entered Spain in 711 conquered all but an area of northwest Spain by 718 and it took almost eight centuries to drive them out. See Richard Herr, *An Historical Essay on Modern Spain* (Berkeley: University of California Press, 1971).

[10] Jean A. Stuntz, *Hers, His, and Theirs: Community Property Law in Spain and Early Texas* (Lubbock: Texas Tech University Press, 2005), 57. But see Rodolfo Acuña who argued that under Spanish rule the status of Aztec women diminished "although they were allowed to litigate inheritance and land rights in court." Rodolfo Acuña, *Occupied America: A History of Chicanos* (New York: Longman, 2000), 26.

[11] See Michael C. Meyer, "The Living Legacy of Hispanic Groundwater Law in the Contemporary Southwest," *Journal of the Southwest* 31:3 (Autumn 1989): 287-299. Charles Cutter notes however that *Las Siete Partidas* were "applicable only in the absence of royal law or municipal *fuero*." *Fueros* were privileged courts outside of ordinary tribunals, most notably enjoyed by the church and the military. Charles Cutter, *The Legal Culture of Northern New Spain*, 32.

[12] Josefina Zoraida Vásquez, "Women's Liberation in Latin America: Toward a History of the Present," in Gertrude M. Yeager, ed., *Confronting Change, Challenging Tradition: Women in Latin American History* (Wilmington: Scholarly Resources Inc., 1994), 18-19.

In 1614, when Philip III decreed that "only laws formulated specifically for the Indies would have force," the 1680 *Recopilación de Indias* came into effect.[13] Charles Cutter referred to the Recopilación as an "intricate legal system that proved to be adaptable to the peculiar needs of the diverse regions of empire."[14] This body of law consisted of more than 4000,000 royal orders codified into 6400 laws in nine books. [15]

Like many aspects of this study, the legal status of women in Hispanic law proved to be complex, for as Silvia Arrom noted regarding earlier legal studies: "One persisting source of error is the failure to distinguish between laws that applied to women and those that applied only to wives."[16] Widows and adult single women enjoyed more legal rights than married women. The Spanish law that transferred to the New World, although partly derived from the stricter Roman law, differed in the treatment of women, and it is this Spanish law that continued to be in force in Mexico until the adoption of the 1879 Civil Code.[17] John Vance concluded, "Mexico was closer to the legal and administrative structure of the mother country than any other Spanish possession."[18] Thus it was Mexican law that came to the *frontera del norte* (the northern frontier) of New Spain and

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[13] Charles Cutter, *The Legal Culture of Northern New Spain, 1700-1810,* 32.
[14] Ibid., 34.
[15] Indeed, Deena J. González referred to a "full-fledged compilation of laws that had come northward with Spanish-Mexican officials, and were embodied in a heavy and vexing legal code recorded and compiled in texts and on official documents." See Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880,* (New York: Oxford University Press, 1999), 7. The last compilation of the laws, the *Novisima Recopilación,* occurred in 1805.
[16] Arrom, p. 54-55.
[17] Ibid., 55. Arrom described *derecho indiano* as an "ad hoc" body of law developed for Spain's American colonies, little concerned with contracts, marriage, and inheritance. In his memoirs, Ulysses S. Grant provided his perspective on independent Mexico's legal system: "The Mexicans have been brought up ignorant of how to legislate or how to rule. When they gained their independence, after many years of war, it was the most natural thing in the world that they should adopt as their own the laws then in existence." As quoted in Grady McWhiney and Sue McWhiney,eds., *To Mexico with Taylor and Scott 1845-1847* (Waltham: Blaisdell Publishing Company, 1969), 7.
[18] John Thomas Vance, *The Background of Hispanic-American Law: Legal Sources and Juridical Literature of Spain* (New York: Central Book Company, 1943), vi. See also Joseph W. McKnight, "Spanish Legitim in the United States--Its Survival and Decline," *American Journal of Comparative Law* 41:1 (Winter 1996): 75-107.

influenced the territory annexed by the United States. Under this law daughters and sons remained under the father's *patria potestas,* or paternal authority, until the age of majority at the age of twenty-five, and even then remained under the guardianship of the father during his lifetime unless legally emancipated either voluntarily by the father or by court order. Causes for court intervention in this form of guardianship included abuse, incest, illness, or banishment. Marriage provided emancipation but not adult rights until the age of majority, as did the death of the father. Freedom of choice of residence, the right to administer property, and the ability to enter into contracts and litigation, all followed the release from the *patria potestas.*[19]

Hispanas could buy, sell, rent, inherit, and bequeath various types of property. Some borrowed and lent money, administered estates, and engaged in diverse business transactions. They initiated legislation, acted as their own advocates in court, appeared as witnesses (except in the case of wills), and served as the guardians of their children and grandchildren.[20] Widows and emancipated single women acted independently in the exercise of their legal rights. Wives and women who were not legally emancipated needed the consent of the husband or father for the majority of their legal transactions.[21] Nevertheless, there were some areas over which husbands exercised no control. Married women could accept an unencumbered inheritance, testify in court, and make their own

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[19] See Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts Over Marriage Choice, 1574-1821* (Palo Alto: Stanford University Press, 1988), 307, footnote 15. "In medieval law, however, the authority of the father had been trimmed from its broader Roman significance as head of a household full of slaves and servants, to an understanding of *patria potestas* as the authority of parents over their legitimate and adopted children."

[20] Although the father had final authority over children under the age of twenty-one during his lifetime, widows could be appointed as guardians but only if the father had not named someone else as guardian in his will. See Arrom, 70. Under the common law the father could give guardianship to someone other than the mother at any time. See Warbasse, *The Changing Legal Rights of Married Women,* 56.

[21] Arrom, 61. I have referred extensively to Arrom for this section and am grateful for her careful research in Hispanic law.

wills. In 1627 María Domingo de Ampuero presented a petition in which she stated that she was the only executor of the goods of her legitimate son, Juan Martinez de Aranga who died in Indias, Mexico.[22] And in 1796 Juana Gervacia de Victoria, executor for Bachiller Nicolas Pérez made an appeal in which she opposed the gift he had made of the profits of two haciendas in favour of María Pérez, the widow of Agustín del Real.[23] A wife could file suit against her spouse for separation, recovery of property, mistreatment, and lack of support.[24] A married woman owned, controlled, and could will her *bienes parafernales*, generally the clothing and jewels that she brought to the marriage, including property that she later acquired through inheritance or donation (gift). A husband could administer the *bienes parafernales* with written permission from his wife but he could not dispose of them nor was this property liable for his debts or subject to donation. Under Spanish and Mexican law, a wife had a "tacit lien" upon her husband's property up to the amount of her dowry or dotal property that was brought to the marriage to help defray marriage expenses as well as other separate property.[25] Furthermore, Spanish law frowned upon significant interspousal gifts which could dilute the estate for heirs.[26]

The concept of community property was, and still is, a unique feature of the Hispanic civil code, for the wife retained her identity as an individual under "one of the outstanding principles of the civil law and is one of those [principles] in which it diverges

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[22] AGN, Bienes de Difunto, Caja 5230, Expediente 011, 1627. Pedimento de María Domingo de Ampuero como única albacea de los bienes de Juan Martinez de Aranga, hijo legítimo que falleció en Indias, Mexico.
[23] AGN, Matrimonios, Caja 0014, Expediente 14, 1796, Apelación hecho por Juana Gervacia de Victoria, albacea del Bachiller Nicolas Pérez.
[24] Arrom, 67.
[25] De Funiak, *Principles of Community Property,* 1971, 414-415. See also Warbasse, *The Changing Legal Rights of Married Women,* 54.
[26] Ibid.

sharply from the common law."[27] Norma Basch noted that the notion of community property embraced a fundamental difference in the definition of marital property, in that it could be shared whereas separate property remained apart.[28] Hispanic wives shared in the *gananciales* (participation in profits) of the community property. The common law failed to identify the wife as a "working partner" in a marriage, thus denying her a share in the profits of the union. According to William DeFuniak, the Visigothic system of a marital community of property rested "on the conception that, although each spouse retained ownership of his or her separate property, each unselfishly and unhesitantly had at heart the success and well-being of the marital union and that, accordingly, the fruits and income of all property of each naturally were to be devoted to the benefit of the marital union."[29] If a husband bought property in his name, but paid for it out of the wife's *parafernal* funds, the title remained in the community but with the acknowledgment that he owed a monetary debt to his wife for the sum of her investment.[30]

The husband administered the community for the couple's mutual benefit but under no circumstances could he mismanage it. The wife became the administrator of the community property if a husband were absent, or had deserted the marriage, or if he became incapacitated or incompetent. In these instances, the court could grant authority to the wife to enter into contracts and to dispose of property. Debts incurred prior to marriage could only be charged against the separate property of the indebted spouse.

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[27] Ibid., 5. Although there are nine contemporary community property states, definitions of community, marital property, and non-marital property vary between those states.
[28] Basch, 18.
[29] De Funiak, 71. De Funiak viewed the "transmissibility" of the wife's interests to heirs as one of the essential characteristics of the community property system. The division of community property applied to a putative marriage as well as to a legal marriage.
[30] Harriet Spiller Daggett, *The Community Property System of Louisiana With Comparative Studies* (Baton Rouge: Louisiana State University Press, 1931), 13.

However, upon the death of one of the spouses, payment for debts charged against the community came out of community property, as did any taxes owing on that property. The husband had the authority to sell community property without his spouse's consent, but she could object to a transaction and a sale could not be "fraudulent or injurious to the rights of the wife."[31] When a marriage ended, the law required community property to be divided into equal halves disregarding the unequal financial contribution of one partner or the other to the community. The law also recognized the importance of the wife's support at home. Heirs of the deceased spouse received their portions of one half of the community property immediately without the need for further administration of the court.[32] The flexibility of Spanish probate law meant that an executor did not need a court order to enact something not specified in a will.[33] In order to distinguish between separate property and community property, a detailed inventory was to be drawn up that listed the goods and properties that each spouse brought to the marriage.[34]

Any discussion of the juridical experiences of Spanish and Mexican women must include instances of marriage and divorce because U.S. administration brought important changes. In Mexico in the first half of the nineteenth century, ecclesiastical divorce served as the only possible channel through which women might end a conflicted marriage. However, they could leave an abusive marriage if there were somewhere to go, but an absence of convents in New Mexico limited that option.[35] Separation of bed and board did not mean absolute divorce, which did not become available to couples in

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[31] Ibid., 276.
[32] Ibid., 474.
[33] Donald Chipman, *Spanish Texas, 1519-1821* (Austin: University of Texas Press, 1992), 251.
[34] De Funiak, 30.
[35] See Rosalind Rock, "'Pido y Suplico:' Women and the Law in Spanish New Mexico, 1697-1763," *New Mexico Historical Review* 65:2 (April 1990): 145-159.

Mexico until 1917. In Catholic doctrine, when a marriage was deemed indissoluble the marriage bond could not be broken except in the case of death or an annulment, which was extremely difficult to obtain.[36] Separation of bed and board might be granted if one spouse physically abused another, if one spouse had a contagious or incurable disease like leprosy, if one spouse forced the other to perform criminal acts, or if one spouse were guilty of heresy. Adultery, abandonment, and lack of support over a number of years also satisfied the grounds for separation. Only adultery warranted a perpetual divorce but a woman suffered from a double standard in that she could lose her share of the community property if she committed adultery whereas a man did not.[37] Courts granted separation of bed and board for all other causes, either for a certain number of years or for an indefinite time period.[38] Incompatibility could not be used as just cause for divorce and in fact, reconciliation was the favoured approach to aid troubled marriages. An early example of a divorce case appeared in Fray Angelico Chávez, *The Archives of the Archdiocese of Santa Fe: 1678-1900*, in which he listed an item that referred to "a divorce case remitted

[36] In Spain grounds for the annulment of a marriage existed where persons were related within prohibited degrees of consanguinity; under the age of puberty; one or both of the marriage partners was of unsound mind; where one or both were incurably impotent; or were persons bound by canonical vows to chastity. In Mexico, annulment was possible through being related within prohibited degrees of consanguinity; being incapable by reason of non-age or otherwise of legally concluding the marriage; if the necessary parental consent or consent of the person exercising the *patria potestad* was not had; if the marriage occurred irregularly contrary to law whereby the proper publication had been omitted or if no witnesses had attended the celebration; and finally, if there existed or had existed before, an incurable impotency for copulation..

[37] See Arrom, *Women of Mexico*, 208-209.

[38] Ibid, 207-209. The guilty party in a divorce by separation suffered severe repercussions. "A guilty husband lost the custody of his children, was denied the use of his wife's dowry and share of the community property, was required to provide support for his family (*alimentos*) during the separation, and had to pay the expenses of the trial (*litis expensas*). A guilty wife lost the custody of children over three years of age, was denied rights to her husband's future earnings, and had to pay the court costs; if she had committed adultery she lost her dowry and share of the community property as well."

to the Governor, Santa Fe, January 29, 1818." This would have been an ecclesiastical separation of bed and board rather than the complete dissolution of a marriage.[39]

Initiating a divorce suit required a strong will and great patience on the part of the female petitioner. Before the divorce petition could be acted upon, the couple had to appear face-to-face in a *juicio de conciliación* (trial of reconciliation) in an attempt to see if they could be persuaded to change their minds. If the suit for divorce continued, the authorities placed the wife in a *depósito*, a safe and honourable house, immediately after the suit was effectively launched. This move proved to be an irritation to some women and a refuge for others who were able to conduct their divorce suits without the fear of possible violence or coercion.[40] For example the Provisor and Vicar General of the Archbishopric of Mexico provided a list of denunciations made by various women between 1566 and 1584 in which they cited the mistreatment they had received from their husbands, asked for separation from them, and requested that they be deposited in some house where they could be safe.[41] Though not entirely class-specific, more middle- and upper-class women in Mexico took advantage of divorce than poor women, fewer of whom enjoyed formal marriage unions. Unlike wealthier Mexican women, the cost, lack of education and social connections, and threatened loss of earning power, frequently deterred working-class women from pursuing separation of bed and board. However, as Chapter Four reveals, the option of divorce for nineteenth-century Hispanas in northern

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[39] Fray Angelico Chávez, *Archives of the Archdiocese of Santa Fe: 1678-1900* (Washington, D.C.: Academy of American Franciscan History, 1957), 150.
[40] Women's experiences in the *depósito* varied. Some enjoyed relative freedom while others were held virtually incommunicado. For further discussion of life *en depósito* see Arrom, 213-215.
[41] AGN, Matrimonios, Caja 5568, Expediente 025, 1566-1584, Provisorato y Vicario General de Arzobispado de México, Denunicas que hacen varias mujeres de los malos tratos que reciben de sus maridos.

New Mexico remained limited owing to isolation, the lack of *depósitos* or safe houses, and fewer opportunities to access alternative domestic arrangements.

The procedure to legitimize children in a relationship revealed the enormous differences between Spanish civil law and English common law. Spanish fathers could legitimate their natural children by a notarial act following the subsequent marriage of parents whereas England required a special act of Parliament. Children conceived in adultery did not enjoy the benefits of natural children, but Spanish civil law allowed fathers to acknowledge their illegitimate children, although such children could not inherit more than one-fifth of a father's estate if there were legitimate offspring. Civil law adoption traced back to Roman law and allowed a man "to avoid the extinction of his family and to perpetuate its religious rites."[42] Thus legal status and property rights became separate to a degree not possible under common law.[43] The civil law provision for the legitimating of offspring both before and after marriage became invaluable for couples living in Spain's far northern frontiers and continued well into the nineteenth century in those territories that came under U.S. jurisdiction. For example, in 1864 the Legislative Assembly of the Territory of New Mexico passed legislation that declared the legitimation of María Rafaela, María Jacinta, María Virginia, María Perfecta, and Florencia Cicila. Section One of the Act read as follows:

> That María Rafaela, María Jacinta, María Virginia, María Perfecta, and Florencia Cicila born of Juan Santiesteban and María Justa Sandoval, be and by this act, declared to be legitimate children and forced heirs of the said Juan Santiesteban,

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[42] Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 268.

[43] Ibid, 205. Grossberg further notes, 197: "Though ecclesiastical courts adopted the continental code, common-law tribunals held that only children born after nuptials could claim inheritance rights. An English child could thus be legitimate in one court, while propertyless and illegitimate in another."197.

> and as such are entitled to inherit his name and fortune, and to enjoy all the rights and privileges as legitimate children, descendants of the said Juan Santiesteban.[44]

The five girls were the natural children of Juan Santiesteban (Santiestevan), a general merchant, and María Justa Sandoval, a couple who did not marry until December 17, 1878. As New Mexico retained the strict provisions of Spanish law concerning *sucesíon forzosa* (forced heirship) until the late-nineteenth century, wherein legitimate children automatically inherited from a deceased parent, it was incumbent upon Juan Santiesteban to bestow legitimacy and thus an inheritance upon his five daughters.[45]

Although dowries were unusual in Mexico by the nineteenth century, a brief mention of the subject is useful because the word *dote* (dowry) still appeared in the records of nineteenth- and twentieth-century northern New Mexico and southern Colorado. A woman's dowry, essentially an advance on a bride's inheritance from her parents and designed to help defray marriage expenses, could never be alienated (have the ownership of her property transferred to another) by her husband, who nonetheless controlled the dowry and its earnings.[46] If a husband mismanaged the dowry, his wife could have it removed it from his control and, if approved by a judge, she could control it by herself. [47] If a wife died first, her children shared equally in its division, or in the

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[44] Laws of the Territory of New Mexico With the Joint Resolutions, Passed by the Legislative Assembly at the Session of 1863-1864, Theodore B. Greiner, Translator, (Albuquerque: Rio Abajo Press, 1864). http://books.google.ca/books. Accessed July 10, 2013.

[45] Joseph McKnight described New Mexico's rules of succession as the most Hispanic in North America for they had been virtually untouched on the northern frontier. McKnight, "Spanish Legitim in the United States": 85.

[46] Warbasse, *The Changing Legal Rights of Married Women*, 54.

[47] The *arras* consisted of the groom's gift to the bride; it belonged to her as economic protection in the event of the husband's death or bankruptcy and could not be accessed by his creditors. Traditionally the dowry included the parental money and the clothes, jewels, and other property that the bride brought to the marriage. These in turn were divided into the *profecticia*, what the father and grandfather or other ascendants in the direct male line gave of their own property to the husband; and the *advertencia* from the wife's mother or other collateral relations, not of paternal ascent. See DeFuniak, *Principles of Community Property*, 30, footnote 59. See Patricia Seed who noted, 160, "In Portuguese and Spanish America, a

event of there being no issue from the marriage, the dowry returned to the wife's parents. In a word, the dowry belonged to the blood relations of the wife. A widow retained control of her previous dowry if she remarried, with only the second dowry under the administration of her new husband.[48]

Notably, when Mexico amended the 1884 Civil Code, it ended the mandatory practice of equal partition amongst heirs; however, most parents continued to divide estates equally among daughters and sons, a custom that persisted into the twentieth century in northern New Mexico and southern Colorado.[49]

Spanish views of the property rights of married women contrasted sharply with the Anglo-American law practiced in most of the United States. Indeed, nineteenth-century American women have been viewed as "legal minors" and considered as "economic wards of their husbands, fathers, or court-appointed guardians."[50] To understand the differences between the common law and civil or continental law requires a similar brief historical overview of the Anglo-American common law with reference to its English antecedents.

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husband had to return the entire dowry or its value to his wife intact upon his death." Patricia Seed, "American Law, Hispanic Traces: Some Contemporary Entanglements of Community Property," *The William and Mary Quarterly* 52:1 (January 1995): 160. See also Arthur L. Campa, "Hispanic Folklore in Colorado" in José de Onís, ed., *The Hispanic Contribution to the State of Colorado* (Boulder: Westview Press, 1976), 114. Campa observed that the custom of the *arras* or groom's present to the bride still remains in Colorado and New Mexico consisting not of the thirteen gold pieces in recognition of a bride's merits that existed in the Middle Ages but $1.75 or *catorce reales.* Also see Basch, *In the Eyes of the Law*, 18, who argued that one of the notable differences between a wife's status under Anglo-Norman law and in a continental model of community property "was the weakness of her family's influence in comparison with that of the wife's family in community-property systems, which also functioned within a feudal structure."

[48] Arrom, 68.

[49] Codification of Latin American and Spanish law in the nineteenth century aimed to "eliminate the discretionary powers of the judiciary." Cutter, *The Legal Culture of Northern New Spain*, 160, ftnt. 18.

[50] See for example Alexis de Tocqueville who noted that "In America the independence of woman is irrecoverably lost in the bonds of matrimony." Alexis de Tocqueville, *Democracy in America* (New York: Alfred A. Knopf, 1969), 201. But see John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York: Oxford University Press, 1970), for an account of actual practice concerning women and property in Plymouth Colony.

"Common" law, the basis for Anglo-American law, simply referred to law common to all of England. Under English common law a single woman could buy and sell property, enter into contracts, sue and be sued, and write a will. Once a woman married she became a *feme covert*, literally "a covered woman," legally one with her husband. The status of wife demanded that a woman lose most of her legal rights. If she accepted a proposal of marriage and subsequently sold her property without the consent or knowledge of her fiancée before the marriage took place, the sale could be judged as legal fraud and reversed. Marriage invalidated the will of a single woman in which she could dispose of her property in the same manner as a man's will.[51] Once married she could not sue or be sued, make a will or contracts, or purchase and sell property. Even if she had not brought property to the marriage, her husband assumed responsibility for all of his wife's debts, including those incurred before marriage, and became liable for any previous torts or wrongful acts that his partner had committed. Any personal property a woman might have owned before marriage now belonged to her spouse; he also had sole supervision over any real estate that she owned and collected any profit generated for his own use. However, while the husband acted as guardian of his wife's real property, he could not sell the land without her permission. If he did so, his wife was able to regain possession of said property after his death.[52]

A married woman did possess the right to a life estate in one-third of her husband's estate upon his death; if the husband owned several properties the wife received one-third of each.[53] The "widow's third" vested upon marriage which reduced

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[51] Warbasse, 14.
[52] Ibid, 7.
[53] Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: The University of North Carolina Press, 1986), 122. A married woman could choose *jointure* by which a husband settled an

the husband's estate and restricted his right to sell his property. If a married man planned to sell any real estate, his wife would be examined apart from her spouse to ascertain whether she had any objections to the sale that might affect her widow's dower. Conversely, a husband had a right to *curtesy*, the life tenure held in his wife's land inheritance, provided there had been live offspring from the marriage who eventually would inherit. When he died, the children inherited the maternal lands. However as Norma Basch observed, if the husband died and no children survived the marriage, on the wife's death "the lands revert to the wife's family, one of the few instances in which the common law recognizes the significance of the wife's kin."[54]

Since married women could not sue or collect debts without their husband's permission it proved difficult for them to pursue business. Women might become "feme sole traders" with the written consent of their husbands meaning they could sue and be sued and enter into binding contracts as though they were single. However, the husband retained control of his wife's business activities; any earnings from her business became his, and he regained control of her enterprise even after a lengthy absence.[55]

At the same time, legal rules and opinions about those rules were flexible. Some legal experts argued that the precept wherein a couple could not contract with one another was untrue, a legal fiction, since a deed or sale of land to the wife vested in her, and not in her spouse: "As to real property, then, they are two distinct persons."[56] In 1769, the

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estate on a wife before marriage in the place of dower. Jointure provided support for a woman in the event of widowhood.

[54] Norma Basch, *In the Eyes of the Law*, 1982, 53. The provision derived from civil rather than the common law concept of primogeniture.

[55] Salmon, *Women and the Law of Property*, 57.

[56] See Tapping Reeve, *The Law of Baron and Femme; of Parent and Child; of Guardian and Ward; of Master and Servant; And of the Powers of Courts of Chancery* (Buffalo: Williams, Hein and Co., 1981), 89. See also Warbasse, *The Changing Legal Rights of Married Women*, 47, who wrote that "the idea of trust estates worked against the idea of 'unity' of man and wife."

English Court of Chancery decided to recognize "the simple antenuptial agreement without a trust."[57] Women could also obtain equity from the Court of Chancery that granted justice based on the inherent fairness of each case and not solely upon procedure. Thus the separate equitable estate of a married woman could be placed in a trust. However, the process was very cumbersome and costly which restricted access to a very few wealthy, elite women.[58] Marylynn Salmon argued that the inaccessibility of equity courts to the majority of women "explained why most historians have depicted the nineteenth-century married women's property acts as more important to women than the equitable developments of the early modern period, even though the earlier changes represented a far more radical intellectual break with accepted spousal roles and relationships."[59]

Under English ecclesiastical law, consistory or ecclesiastical courts in England had jurisdiction over matrimonial and probate matters. Unhappy marriages could be resolved by divorce *a mensa et thoro* or bed and board, a legal separation without the possibility of remarriage, on the grounds of adultery or abusive conduct. A woman divorced *a mensa et thoro* still received a dower "this being but a particular Divorce."[60] During a decree of judicial separation a wife could acquire property and act as a single

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[57] Basch, 73.

[58] This could be accomplished in one of several ways. "A wife could have a separate estate and hold the husband as trustee of his legal interest for her or the wife's *choses in action* (rights such as a debt, demand, or damages not currently in possession but potentially redeemable in a lawsuit) could be reduced to possession contingent on a suitable settlement to maintain the wife and children. A married woman could hold an equitable separate estate as a *feme sole* or single woman. The estate could be disposed of by will, gift, transfer, or conveyance and charged by contract." See Leo Kanowitz, *Women and the Law: The Unfinished Revolution* (Albuquerque: University of New Mexico Press, 1969), 38.

[59] Salmon, 81. In nineteenth-century Canada, it was not until 1884 that the Ontario legislature abolished a husband's position as trustee over a wife's separate estate. Thus "the wife was no longer treated as a child, lunatic, or criminal—a legal incompetent." See Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997), 9.

[60] Lance E. Dickson, *A Treatise of Feme Coverts: Or the Lady's Law* (Hackensack: Rothman Reprints Inc., 1974), 68.

woman in other matters.[61] The Consistory court became the most important divorce court in the country for those who had the means and position to access it.[62] The Matrimonial Causes Act of 1857 permitted absolute divorce though under restrictive conditions. A husband could obtain a divorce on the grounds of his wife's proven adultery; but the law required a wife to verify that her husband had committed a number of specified sexual behaviours in addition to adultery.[63] The father also retained sole custody of any children resulting from the marriage.[64]

The annulment of a legal marriage required a private act of Parliament that was well beyond the financial reach of most couples. By the early-nineteenth century England's common law system was in need of reform. As Lee Holcombe noted, "The common law affecting women had not changed, but the economic conditions of the society within which the law operated had been dramatically altered with the accelerating pace of industrialization."[65] The number of women who suffered legal disabilities under common law had increased.

The trajectory of the common law across the Atlantic produced regional variations that make it difficult to generalize about the legal status of American women in the Colonial and post-Revolutionary periods. Gerda Lerner concluded that: "Absence of dowry, ease of marriage and remarriage, and a more lenient attitude of the law with

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[61] Cleveland, *Woman Under the English Law*, 287.
[62] Nancy E. Wright, Margaret W. Ferguson, and A.R. Buck, *Women, Property, and the Letters of the Law in Early Modern England* (Toronto: University of Toronto Press, 2004), 72.
[63] English ecclesiastical courts had previously annulled marriages upon the proof of impotence, consanguinity, or affinity. Partners then lived celibate lives until one or the other of them died.
[64] See Arthur Rackham Cleveland, *Woman Under the English Law: From the Landing of the Saxons to the Present Time* (Littleton: Fred B. Rothman and Co., 1987), 162. "So long as her husband was alive, she was not even joint guardian with him of her children, not until his death had she any legal power over the children of the marriage."
[65] Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England*, 1983, 48.-49. Both Silvia Arrom (supra n. 5) and Paula Petrik "If She Be Content: the Development of Montana Divorce Law: 1865-1907," *Western Historical* Quarterly 18:3 (July 1987): 261-291, discussed how society's actions outstripped the law and practice surpassed prescription.

regard to women's property rights were manifestations of the improved position in the colonies."[66] Indeed Eleanor Flexner observed that in the early nineteenth century:

> In Louisiana the discriminatory provisions of the "Code Napoléon" inherited from the days of French dominion were still in full force: a married woman did not even have legal title to the clothes she wore. In Georgia a woman's earnings still belonged to her husband. Yet next door, in Mississippi, she was fairly well safe-guarded as to property rights, while in Florida she could control her own earnings.[67]

Married women possessed dower rights, retained their personal clothing, and had prenuptial contracts between husband and wife upheld by colonial courts at some times and in some places. In the event of her husband's absence a wife could gain *feme sole* rights that allowed her to transact business, sign contracts, and to sue.[68] However, this did not mean freedom to act in any truly independent capacity since married women did not have the legal right to act independently with respect to property.[69] Equitable rules allowed married women to own and control their separate property but with their husbands' consent. Marylynn Salmon argued that after the American Revolution only three "real" changes occurred regarding women's legal status: absolute divorce, the abolition of primogeniture and the institution of equal inheritance for all children, and reform of the laws of intestacy wherein widows and widowers had equal rights.[70] Indeed Sarah Deutsch noted: "That husband and wife shared rights in property acquired during marriage was the rule for Hispanic families long before it became so for Anglos, as was

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[66] Gerda Lerner, "The Lady and the Mill Girl," in Nancy F. Cott and Elizabeth H. Pleck, eds., *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 183.
[67] Eleanor Flexner, *Century of Struggle: The Woman's Rights Movement in the United States* (Cambridge: The Belknap Press of Harvard University Press, 1959), 236.
[68] Ibid.
[69] Salmon, xv.
[70] Ibid.

equal inheritance by sons and daughters."[71] Michael Grossberg commented that: "In post-Revolutionary America the attraction of what appeared to be the humane, but not indulgent, civil law encouraged states to repudiate English policy as feudal, aristocratic, and antidemocratic."[72]

It is not possible to generalize concerning divorce law in colonial America since it was not uniform in each state and not all colonial legislatures enacted statutes that allowed divorce. New England's divorce laws were relatively liberal since marriage was a civil contract, governed by the civil courts and the legislatures.[73] Grounds for divorce included adultery, desertion, and lengthy absence. Divorced couples could also remarry others. Women could divorce husbands for impotence in Plymouth Colony.[74] New York, on the other hand, allowed divorce only on the grounds of proven adultery. In some of the southern states, the influence of the Roman Catholic Church precluded divorce as an option for unhappy couples. For instance, South Carolina did not grant its first divorce until 1868. It is notable, but not surprising, that South Carolina followed right behind New York in the development of chancery law since restrictive laws compelled women to seek equity in chancery courts.[75]

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[71] Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the Southwest, 1880-1940* (New York: Oxford University Press, 1987), 45.
[72] Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America*, 1985, 211. See also Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 22. American divorce deviated from English divorce as it was "accessible, gender-neutral, and allowed for complete dissolution of the marriage."
[73] For women in New England, see Nancy F. Cott, *The Bonds of Womanhood: "Women's Sphere" in New England, 1780-1835* (New Haven: York University Press, 1977), 20. "Divorce records of the eighteenth century clearly differentiated the two spouses' economic roles: the husband's, to supply or provide; the wife's, to use goods frugally and to obey."
[74] Demos, *A Little Commonwealth*, 95.
[75] Warbasse, *The Changing Legal Rights of Married Women*, 47. The United States implemented statutory legislation as fewer wealthy fathers devised trusts and marriage settlements that afforded equitable protection. Moreover, Warbasse noted that most people did not understand chancery procedure and that it was poorly administered.

Since the rights of married women in America regarding property developed unevenly from state to state, a comprehensive survey of the nineteenth-century Married Women's Property Acts lies outside the scope of this study.[76] The acts referred to legislation passed in the nineteenth and twentieth centuries that granted women the right to appear in courts, to make contracts and conveyances, to manage their own property, meaning property that a woman had either earned or inherited, and latterly too, to control their earnings. Of course property law was significant only to those women who actually owned property. Beginning in 1839 in Mississippi, states began to pass Married Women's Property Acts. In 1840 Texas passed a statute that permitted married women to own their separate property (real estate, stocks and bonds, and personal effects) that they held at marriage, and in 1844, Rhode Island enacted the first comprehensive New England Married Women's Property Act wherein a married woman retained her real and personal property as separate. Whether acquired before or after marriage, her property could not be made liable for her husband's debts. Moreover, she could also will her personal estate.[77]

By 1845, Massachusetts permitted a wife to hold separate property, inherit and hold separate property without a trustee, and contract and sue regarding the affairs of her separate estate. She held a "virtually absolute right of dower not contravened by divorce if she were the innocent party."[78] In 1847, married women in Vermont could will their real estate. In 1848 Maine's property act became the most liberal in the United States at

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[76] Basch, 159. Additionally, the Earnings Act of 1860 allowed married women to "bring actions in their own name for damages or personal injury;" own property acquired through "trade, business, labor, or services"; and become joint guardian of their children with their husbands. Ibid, 164.

[77] See Warbasse, 197. Women with property who paid taxes, generally widows or unmarried property owners, could vote in some colonies. In New Jersey, one had to possess fifty pounds in cash or property to be able to vote; thus some women could vote from 1776-1807.

[78] Nancy Cott, "Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records," *Journal of Social History* 10: 1 (Autumn 1976): 41.

the time. Married women received full control of their own property with the power to contract, will, and sue. The Married Women's Property Act of 1848 legislated that married women could own their real and personal property legally rather than equitably through a third party or with a husband's consent. The Seneca Falls Convention calling for increased women's rights, as well as the franchise, was held in New York State the same year and its list of demands summarized many of the legal inequities that existed in some or all of the states. The "Declaration of Sentiments" called for the right of married women to own property in their own name, the liberalization of divorce laws, the right to attend schools of higher learning, and to participate in trades, professions, and commerce. Ironically some of these rights had been possessed by Hispanas who faced their erosion after U.S. conquest in 1848 as they transitioned to a system that was itself in flux. The next year, in 1849, married women gained the right to sell their real and personal property as though they were single women in the state of New York. In 1849, California gave married women property rights in order to "lure" women west to settle in the new state.[79] Moreover, historians have argued that these acts were more about protecting the property of their husbands from creditors in an increasingly industrialized and business-oriented economy rather than increasing the rights of married women.[80]

Colorado passed its married women's property acts in 1874 and New Mexico in 1897. In 1870 the *Colorado Weekly Chieftain* published a long letter on women's rights,

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[79] Julie Roy Jeffrey, *Frontier Women: The Trans Mississippi West 1840-1880* (New York: Hill and Wang, 1979), 117. See also Schuele, "Community Property Law": 257.

[80] See Salmon, *Women and the Law of Property in Early American*, 83. "When we remember that the married women's property acts of the mid-nineteenth century initially served as a way of protecting women's estates during periods of economic depression, it becomes clear that property rights for women in America grew as the financial prospects of their husbands became increasingly unstable." Salmon attributes this connection to Warbasse, *The Changing Legal Rights of Married Women 1800-1861*. The private creation of separate estates prior to 1830 served the same purpose. See also Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983).

responsibilities, and the purpose of married women's property acts that were designed "to cut off numerous disabilities as to property, person, guardianship of children, incapacity to contract, etc., under which married women now labor," many of which rights Hispanas had enjoyed under civil law.[81] For example in the same year as the *Chieftain's* column appeared John Lawrence noted in his diary that "I wrote a contract the night before between Mrs. Woodson and her brother, José Ramón Vigil, for three cows that Mrs. Woodson let her brother have fore [sic] five years."[82] It appears that Mrs. Woodson, a Hispana, was already engaging in contracts much as her predecessors would have done under Mexican administration.

However, it was not only women who strove to increase their legal rights and who fought for the opportunity to move into the public sphere of politics and business affairs. For example, on September 4, 1864, Nathaniel P. Hill, a chemistry professor who was in Colorado to investigate issues in refining ores mined in Colorado, wrote to his wife Alice from Denver concerning his business affairs and property holdings: "You need not feel alarmed because I have written you so minutely about matters you ought to know. It occurred to me that it would be wise to let you know how the property or funds I own are distributed."[83] Hill's absence from home proved to be more lengthy than expected; in such circumstances a wife's knowledge of her husband's financial affairs then would have been not only beneficial but necessary. Hill's letter illustrates the uneven match between

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[81] *Colorado Weekly Chieftain*, March 17, 1870.
[82] *Frontier Eyewitness: Diary of John Lawrence, 1867-1908*. Edited and Annotated by Bernice Martin (Saguache: Saguache County Museum, 1990).
[83] Nathaniel Hill, "Nathaniel Hill Inspects Colorado: Letters Written in 1864," *Colorado Magazine* 34:1 (January 1957):22-47, 37-38.

law and practice, for women, too, required knowledge of the world of business and the tools with which to manage a family's affairs.[84]

When legislators sought to change the laws concerning married women and their property, they were aware of the continental civil code. In the first part of the nineteenth century, Louisiana alone had a community property system that had resulted from adoption by colonial Louisiana of the custom of Paris (later incorporated into the Code Napoleon) and Spanish law.[85] Florida permitted married women to continue to control their property as they had under pre-existing Spanish law.[86] Texas and California reflected their Spanish heritage under their community property laws in which husband and wife held their own property that had been separately owned before marriage, but maintained joint ownership of property acquired after their marriage. Elizabeth Warbasse found that opinions on civil code concepts varied. In 1844, for instance, New York's Judiciary Committee railed against the civil law and the concept of a wife who could control her separate property. It described such marriage as "a mere matter of convenience and sensuality."[87] Others, however, described civil law as "the friend of woman" which allowed her freedom and equality. Some opponents of civil law opined that "Separate property in France . . . led to infidelity in the marriage bed, a high rate of divorce, and an increase in female criminality." [88]

On the other hand, American common law in the mid-nineteenth century treated married women much less kindly. Women like Jane Grey Swisshelm who published her

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[84] See also Linda S. Peavy and Ursula Smith, *The Gold Rush Widows of Little Falls: A Story Drawn From the Letters of Pamelia and James Fergus* (St. Paul: Minnesota Historical Society Press, 1990); and Linda S. Peavy and Ursula Smith, *Women in Waiting in the Westward Movement: Life on the Home Frontier* (Norman: University of Oklahoma Press, 1994).
[85] Daggett, *The Community Property System of Louisiana With Comparative Studies*, 4.
[86] Warbasse, 77.
[87] Ibid. , 224.
[88] Basch, *In the Eyes of the Law*, 146.

own newpaper, the *Saturday Visiter* [sic], suffered bitterly under the restrictions of common law. Married into a family that actively worked against her, Jane Swisshelm endured a tormented relationship with James Swisshelm. He resented the time that Jane spent nursing her own sick mother, and threatened to bill his mother-in-law's estate for his wife's nursing services, as was his legal right. In 1857 the two separated and Jane Swisshelm subsequently went to court to secure her personal property. In 1861 James Swisshelm divorced his wife on grounds of desertion. The next year Jane Swisshelm pressed for a law that would permit women to hold property in their own names. (The small estate that she inherited from her mother came as a trust, a legal device designed to allow a married woman to enjoy property.)[89] Articulating the concerns of many women, she wrote: "If I do not mistake, there are more systems of oppression than southern slaves which [are] growing shaky; and I expect to see the day when all that a married woman acquires by her labor or services will belong to herself-when wives as well as slaves will own their own bodies and souls just like white folks."[90] Her statement crystallized the desperation of both the middle-class women who had property to protect and working-class women who had no right to their own earnings. The notion of marriage as slavery and servitude formed a common thread throughout much of the feminist analysis of women, marriage, and property in the Anglo-American world. In 1979, Nancy Cott wrote: "In the strictly economic aspect the traditional marriage contract resembled an indenture between master and servant. Both parties had rights and obligations. The wife

[89] Flexner, *Century of Struggle*, 1975, 62

[90] Arthur J. Larsen, ed., *Crusader and Feminist: Letters of Jane Grey Swisshelm: 1858-1865* (St. Paul: Minnesota Historical Society Press, 1934), 132. James Swisshelm also tried to swindle his wife out of her title to some land mortgaged to her in return for money she had loaned to her brother-in-law, William Swisshelm. The case of *Swisshelm vs. Swisshelm* in 1858 gained notoriety at the time as it exposed the pitiful state of married women's property rights in the nineteenth century.

(much like the servant) deserved provision and owed service and obedience."[91] Men also served their wives but in a "superordinate" role.

In the same year that Jane and James Swisshelm separated, Benito A. Larragoite of Rio Arriba County restored some property to his wife, Feliciana Valdéz, "in consideration of the natural love and affection" that he bore his wife and, more importantly, in consideration of the $3,000 dollars worth of property she had brought to the marriage, and which he had used. In addition he promised to defend his spouse and her heirs to the title of the land.[92] The contrast between the legal experiences of the two women could not have been greater.[93]

In the mid-nineteenth century, the newly acquired possessions of the United States, and particularly the region that included the territories of New Mexico and Colorado, proved to be legally ambiguous for years to come.[94] Attempts by American court officials to replace one legal system with another proved to be extremely frustrating as they encountered problems with language, customs, and culture. A set of legal traditions based on a code of law, individual pleading in court, and lengthy consideration of the evidence conflicted with Anglo-American law characterized by a jury, oral testimony by witnesses, and an adversarial system. How did nineteenth-century American

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[91] Nancy F. Cott and Elizabeth H. Pleck, eds., *A Heritage of Her Own: Toward a New Social History of American Women* (New York: Simon and Schuster, 1979), 22.

[92] Harriet Spiller Daggett noted that in the community property system "When property is bought in the husband's name, even though paid for with the wife's paraphernal funds, the title is in the community, with but a debt to the wife for the amount of her money invested." Harriet Spiller Daggett, *The Community Property System of Louisiana, with Comparative Studies* (Baton Rouge: Louisiana State University Press, 1931), 13.

[93] Benito A. Larragoite to Feliciana Valdéz, 21 August 1857, Rio Arriba County, NMSRCA, Deed Record Book 1852-1884, Box 1 Folder 1, Number 242.

[94] See Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974), 117. Swadesh argued that in the town of Rosa in the San Juan Basin of New Mexico for example the residents preferred to take cases to the "community-controlled court" rather than the American-controlled district court. The justice of the peace courts "had enough flexibility so that traditional customs and procedures could be followed within the law."

mores and norms influence the administration of justice in a conquered region governed by foreign institutions? How did Mexicans receive the common law? How did Mexican women fit into this shifting legal world on a frontier that had traditionally relied less upon formal judicial rules and more upon community values and traditions? How did legal change affect the long established property rights of Mexican women? How would a couple married under Mexican jurisdiction resolve a troubled relationship under U.S. administration? Change came haltingly and unwillingly as Hispanas negotiated their way on the shifting terrain of a new legal landscape.

Chapter Four

"The Context of Lawmaking Was the Frontier"[1]

"The American mode of administering justice is yet something of a novelty to the Mexican people, being so entirely different from what they had heretofore been accustomed to. Under the Mexican government courts of justice were almost unknown."[2] Willliam Watts Hart Davis' opinion of the nature of law and justice in New Mexico acquired during a trip through New Mexico "to observe how our judicial system works among a population just tasting of its effects" was shared by a number of newcomers to the Territory.[3] The European Americans who encountered the Spanish and Mexican legal world for the first time, whether in California, Texas, or New Mexico complained bitterly about antiquated laws, ignorance of "proper procedure," and unlettered *alcaldes*.

I use the "frontier" of the chapter title both to define "the extreme part of a country bordering on another country" and to describe a Mexican settler society in which the so-called "American" frontier qualities of independence, self-reliance, and local solutions to local problems survived well into the twentieth century.[4] Presumably the Spanish women and men who initially settled the *frontera del norte* would have claimed these qualities as their own although as a group or a community rather than as

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[1] The phrase is from Gordon Morris Bakken, *The Development of Law on the Rocky Mountain Frontier: Civil Law and Society; 1850-1912* (Westport: Greenwood Press, 1983), 3.
[2] William Watts Hart Davis, *El Gringo: or New Mexico and Her People* (New York: Arno Press, 1973), 267. William Watts Hart Davis (1820-1910) was appointed U.S. attorney for the Territory of New Mexico in 1853. Davis also served as territorial secretary and acting governor from 1856 to 1857.
[3] Ibid., 388.
[4] This definition of a frontier came from *The New Webster Encyclopedic Dictionary of the English Language*, ed. Virginia S. Thatcher (Chicago: Consolidated Book Publishers, c. 1971). Reference to a frontier as "the extreme part of a country" aptly described northern New Mexico. The 1890 U.S. census which defined the frontier as an unbroken line of settlement with two or fewer people per square mile declared that the frontier line had been broken by isolated settlements and had closed forever. *Eleventh Census of the United States. 1890.*

individuals. Settlers on the northern frontier of New Spain far from the metropolis of Mexico City would most certainly have had to have been independent, self-reliant, and able to solve their own problems.

It is one thing to recapitulate and encapsulate the legal framework of Spanish and Anglo-American laws as they related to nineteenth-century women in Mexico and the United States and quite another to recreate the milieu in which legal prescription met actual practice. Although this chapter appears to move away from the stated purpose of putting Hispanic women at the centre of the work, it is important both to comprehend the frontier conditions in which they lived and to grasp just how difficult the clash between the two justice systems would be.

Early travelers were scathing in their critiques of the Mexican justice system. In his diary for December, 1845, frontiersman James Clyman lamented that in California "no such thing as a court of Justice is known higher than an Alcaldas court which is equivolent to a Justice of the peace in the United States and [the] alcalda is bound by no law but his own oppinions which decides all differences."[sic][5] He did acknowledge, however, that, because there were very few residents in the mountains who rarely saw one another, there were few disputes to settle. David Weber wrote that Americans arriving in Texas complained about losing their "inalienable rights" although these had been "voluntarily" relinquished when they became Mexican citizens. He added, "Mexican justice, which was slow, inefficient, and subject to *personalismo* in remote Texas, was

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[5] James Clyman, *James Clyman Frontiersman*: *The Adventures of a Trapper and Covered-Wagon Emigrant as Told in His Own Reminiscences and Diaries*. Charles L. Camp ed., (Portland: Champoeg Press, 1960), 186. The word *alcalde* stems from the Arab *khadi*, a mayor or town judge. See also Neal Harlow, *California Conquered: War and Peace on the Pacific 1846-1850* (Berkeley: University of California Press, 1982), 24, who contended that, "Law and justice were elementary, one depending upon the caprice of the governor and legislature (there being no common law or lawyers), the other upon the whim and vitality of local officials."

especially annoying to the newcomers. . . .Laws in Texas were sometimes made by the same *alcaldes* who administered and interpreted them." [6]

Even those Hispano men who held higher positions in the judicial structure did not escape the critical eye of Anglo commentators. For instance, Ralph Emerson Twitchell described Judge Antonio Jose Otero as:

> the only man of Spanish or Mexican origin who ever sat upon the Supreme Bench in New Mexico. . . It is a matter of more than passing notice that Judge Otero, born and reared under the Spanish and Mexican governments, whose laws and customs were so different from those of the United States, growing to manhood in a portion of the world at that time far removed from all the influences of modern thought and civilization, residing in a locality whose inhabitants were engaged six months in every year in wars with hostile Indians could so well fill his place upon the bench.[7]

Some writers expressed stronger views. In Taos, in 1845, Charles Bent, (who would be appointed civil governor of the occupied territory in New Mexico by General Stephen Kearny on September 25, 1846), wrote to Manuel Alvarez, the Spanish-born American consul in Santa Fe concerning Mexican justice:

> Officers, and justices particularly eaqually ignorant, insolent & aviritious are easely bribed justice is badly administered, and is rendered with extream delay, caused as much by the rangling and subterfuge of advocates as the insuffitiency of the lawes and inumberable ignorant pleaders who from thare indolence and incapacity, and the extortion of the justices are always calculated to create delay Fees are a grevious item they are always exacted according to the caprice of the

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[6] David Weber, *Foreigners in Their Native Land: Historical Roots of the Mexican Americans* (Albuquerque: University of New Mexico Press, 1973), 89. But Anglos did appear before alcaldes as evidenced by the case of Thomas Boggs whose former cook, María Francisca Vargas, "demanded that he keep his promise to marry her. William Workman successfully defended Boggs before the alcalde of Taos by arguing that the favors that María Francisca had bestowed upon Boggs had not been exclusively his." See David Weber, *The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846* (Norman: University of Oklahoma Press, 1968), 168.

[7] Ralph Emerson Twitchell, *The History of the Military Occupation of the Territory of New Mexico* (New York: Arno Press, 1976), 362. Antonio José Otero (1812-1870) was the first Hispanic State Supreme Court Justice of New Mexico Territory, appointed by General Stephen Kearny.

> justice. The Mexican character is made up of stupidity, Obstanacy, Ignorance duplicity and vanity.[sic][8]

However, Bent was not unaware of the role that *alcaldes* filled in New Mexican villages. He wrote to Manuel Alvarez from Taos on November 15, 1840 that when Ignacio Martínez wanted the return of some animals stolen by the Shawnee, he was unwilling to pay the "trifle" demanded by the Indians: "but no sir he wished uss to act for him as an *alcadi* would have done heare proove his brand, take his animals, this we could not doe."[sic] [9]

Contemporary writers and historians disagreed about the weakness of the justice system in the former Mexican territories. For example Carolyn Zeleny described justice in the province of New Mexico as "slipshod" and quoted Don Pedro Bautista Pino, a private Spanish citizen who travelled to New Mexico to examine the justice system , who, in 1812, described persons involved with the courts as ill-equipped "to draw up a defense or present a case. The sentence given by the *alcalde* was the same for a minor debt or a murder—"A la carrel (cárcel)." (To prison). [sic][10] She argued that the Spanish-Americans "did not possess a clear judicial system."[11] Granted, the northern frontier was

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[8] "The Charles Bent Letters, Notes and Documents," *New Mexico Historical Review* 30:3 (July 1955): 254.
[9] Ibid., *New Mexico Historical Review* 29:3 (July 1954): 237-238.
[10] Carolyn Zeleny, *Relations Between the Spanish-Americans and Anglo-Americans in New Mexico: A Study of Conflict and Accommodation in a Dual-Ethnic Situation* (New York: Arno Press, 1974), 67. In fact, the Spanish word for prison is *cárcel.* Zeleny added: "Moreover imprisonment was more of a reward than a punishment. In the two duty rooms used for a jail the prisoners enjoyed themselves at games of cards and noisy revelry and in the evening went to the dances accompanied by the jailer." After examining the administration of justice Don Pedro Juan Bautista Pino concluded, "Crime is never punished because there is absolutely no one who knows how to conduct an examining trial, to prepare a defense, or to prosecute a case. . . In brief, one cannot narrate all the obstacles which ignorance throws in the way of the proper administration of justice in New Mexico." In *Three New Mexico Chronicles [electronic resource]: the Exposición of Don Pedro Bautista Pino, 1812; and the Additions by Don José Augustín de Escudero, 1849* (Albuquerque: The Quivira Society, 1942), 60.
[11] Zeleny, 150.

far removed from the metropole but what law there was stemmed from a centuries-old judicial code.

Nevertheless, Charles Cutter argued that the judicial system in northern New Mexico was not "aberrant" although it may not have been "strictly conformist with metropolitan practice."[12] The title of his book, *The Legal Culture of Northern New Spain, 1700-1810*, indicated that the judicial system functioned despite distance, isolation, and the absence of fully-trained personnel such as advocates, counselors, notaries, and pleaders.[13] As Cutter noted "*justicia real ordinaria* (ordinary royal justice) affected everyone."[14]

Early-nineteenth-century documents provided evidence that *alcaldes* did not function in a legal vacuum. Lynn I. Perrigo found that the legal papers of one Don Juan Geronimo Torres revealed that local justices "received copies of the provincial laws, attested to the legal sale of land, heard the disputes which came before them, called in witnesses, rendered decisions, kept clear and formal records of the proceedings, and sent copies of these records to the political chief."[15] He refuted Ralph Emerson Twitchell's assertion acquired from Josiah Gregg and others that the *alcaldes* did not know the law

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[12] Charles Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 30. For the role of law in Sonora in northern Mexico see Laura M. Shelton, *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850* (Tucson: University of Arizona Press, 2010), 3. She noted that "in spite of appearances of a weak judiciary, local judges were deeply involved in resolving family disputes " and referred to the court's "subtle, but far-reaching influence in a region often associated with lawlessness and a weak state."

[13] For detailed information on the resources and personnel available in New Spain, see Joseph McKnight, "Law Books on the Hispanic Frontier," *Journal of the West* 27:3 (July 1988): 74-84. McKnight's article traces the historical acquisition of law books across the Spanish frontier of North America and into the period when Anglo-American law gained dominance.

[14] Cutter, *The Legal Culture of Northern New Spain*, 7.

[15] Lynn I. Perrigo, "New Mexico in the Mexican Period, as Revealed in the Torres Documents," *New Mexico Historical Review* 29:1 (January 1954): 35. See also Joseph P. Sánchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History: 1692—1968* (Norman: University of Oklahoma Press, 2008), who asserted that New Mexican settlers were legally sophisticated. For a more jaundiced opinion of the role of the *alcalde* see William Watts Hart Davis, *El Gringo; or New Mexico and Her People* (New York: Arno Press, 1973).

and kept no formal records. They encouraged compromise, imposed fines, and sentenced offenders to labour on public projects.[16]

Spanish law and its administration on the northern frontier of Mexico may have been denigrated by contemporary observers unfamiliar with it but the civil code was by no means unsophisticated. Whereas Anglo-American common law relied on court decisions and precedent, Spanish jurisprudence looked to original law and commentaries by *juriconsults*, (experts in Spanish law), whose opinions, if unanimous, conveyed the force of law.[17] Joseph McKnight reported that "The republication of the English translation of the treatise of Asso and Manuel gave frontier lawyers a general summary of the whole body of Spanish private law, and the Texas courts cited it frequently as did the courts of New Mexico and California."[18] Similarly, E.N. Van Kleffans found that an 1820 two volume translation of 1250 *leyes* or laws from the *Partidas*, entitled *The Laws of the Siete Partidas*, had been published at the request of the Louisiana legislature.[19] In his book, *Anglo-American Law on the Frontier*, William Baskerville Hamilton remarked that, "The newspapers in this polyglot area offered for sale subscriptions to a *Digest of the Laws of Castile and the Spanish Indies* by James Workman and a translation of the civil law by Edward Livingston, the latter a ten-volume work at $100.00."[20] Perplexed American officials, faced with the administration of justice and the absence of resources

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[16] Perrigo, 40. See also Laura E. Gómez, "Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico," *Law and Society Review* 34:4 (December 2000): 1145. *Alcaldes* did not require legal training but were generally men of property in their own communities.

[17] William Quimby DeFuniak, *Principals of Community Property* (Tucson: University of Arizona Press, 1971), 8.

[18] Joseph McKnight, "Law Books on the Hispanic Frontier," 80.

[19] E.N. Van Kleffans, *Hispanic Law Until the End of the Middle Ages* (Edinburgh: Edinburgh University Press, 1968), 192.

[20] William Baskerville Hamilton, *Anglo-American Law on the Frontier: Thomas Rodney and His Territorial Cases* (Durham: Duke University Press, 1953), 136.

in California before statehood on September 9, 1849, "unearthed" the Mexican laws in the form of the *Translation and digest and of such portions of the Mexican laws of March 20th and May 23d [sic], as are supposed to be still in force and adapted to the present condition of California*.[21] In 1851, Congress appropriated $5,000 for standard texts on common and civil law, including reports, codes, and government documents to be sent to Santa Fe.[22]

Before one can describe the changes wrought by American administration in the Southwest, it is necessary to refer not only to the centuries-old judicial environment that the new American officials encountered but also to the new society that brought Hispanic women into confrontation between two distinct cultures. In her book, *Law and Colonial Culture,* Lauren Benton described the jurisdictional disputes in seventeenth-century New Spain: "Colonists and missionaries, and Indians responded to the complexities of the imposed legal order while creating, through their own maneuvering, new sources of cultural and jurisdictional tension."[23] There were no legally trained lawyers or judges in New Mexico during Spanish rule nor any extensive collections of civil legislation. Little improved after Mexican independence, although as Hans Baade noted, constitutional rule and federalism caused some changes wherein New Mexico acquired a resident *asesor letrado* (legally trained adviser), and federal administration ensured that new legislative decisions became more available to local officials.[24]

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[21] Harlow, *California Conquered: War and Peace on the Pacific, 1846-1850*, 333.
[22] Arie Poldervaart, "The New Mexico Law Library-A History," *New Mexico Historical Review* 21:1 (January 1946): 47.
[23] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), 87.
[24] Hans W. Baade, "The Formalities of Private Real Estate Transactions in Spanish North America: A Report on Some Recent Discoveries," *Louisiana Law Review* 38:3 (1977-1978): 706.

The United States annexed a Mexican department with a legal system that operated informally although justices generally tried to follow legal procedures, however rudimentary. Local courts and military justices administered minor civil and criminal cases but a New Mexico citizen had to travel to a larger center such as Mexico City, Chihuahua, or Guadalajara, situated five hundred leagues or fifteen hundred miles away if he or she wanted to appeal a decision of the governor.[25] The local political official, appointed by the Mexican government, received appeals over perceived unjust rulings that had been decided by the *alcaldes*. At the beginning of the nineteenth century Licenciado Don Pedro Bautista Pino, who journeyed from Spain to conduct an investigation of judicial conditions in New Mexico, commented on the difficult position of the government officer. "Because of this erroneous conception, this officer is always occupied in settling ridiculous suits, and is harassed by a thousand impertinent complaints against the judge. If a political chief wishes to abuse this authority, which ignorance has conferred upon him, how much harm he can do!"[26] Pino's report contained a scathing indictment of the state of the judiciary in the Spanish province.

The complex nature of the region formed by northern New Mexico and southern Colorado resulted from a contested Hispanic-Anglo borderland in both a cultural *and* a legal sense. Whereas regional differences resulted from the chronological variation in settlement patterns and differing demographics, the underlying legal Spanish heritage persisted. Although rapid changes occurred in the external trappings of the law such as

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[25] David J. Weber, *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico* (Albuquerque: University of New Mexico Press, 1982), 325. In 1810, Pedro Pino, a delegate to the Cortes in Spain, petitioned "to bring a court of appeals as close as Chihuahua. See Howard Lamar, *The Far Southwest, 1846-1912*, 32.

[26] *Three New Mexico Chronicles*, 45. Don Pedro Bautista Pino declared that the administration of justice was so poor ". . . when one asks for justice, according to law, under present circumstances, no one is able to give him relief." 60.

court structure, personnel, and vocabulary, the tenacious culture legal and traditional use of the courts by Hispanics remained. Richard Griswold del Castillo wrote that from 1848 to 1900, the Spanish-speaking peoples of the southwestern United States "changed from a Mexican frontier society into an ethnic group marginal to both Mexican and American cultures."[27] The slowest change occurred in the small villages in the rural areas of New Mexico where life continued much as it had before the Mexican-American War. Howard Lamar characterized New Mexico as culturally Spanish American because few Americans moved to New Mexico until 1880 and he described Colorado as an "American frontier mining society with business and social connections with the East."[28] Anglo influence in New Mexico and southern Colorado began with completion of the railroad in 1880. However, in many respects southern Colorado retained stronger cultural and familial ties with northern New Mexico than with northern Colorado or the eastern plains, and as Lamar further noted, issues concerning separation of church and state, schools, and politics were complicated by the reality that Coloradans "were on the borderlands of another culture and shared problems with neighboring New Mexico."[29]

Coloradans also bordered another legal culture, for as one historian wrote: "When we [Americans] employ the word 'steal' to describe the conversion of an emigrant's horse by an Indian, but not to hunting or fishing by emigrants, our meaning may be clear, but only because the law we apply is our law, the law of a single culture in a multicultural legal world."[30] This opinion related to the resentment felt by Americans when they had to pay tolls to Indians to cross land that they viewed as the U.S. public domain. The

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[27] Richard Griswold del Castillo, *The Los Angeles Barrio, 1850-1890: A Social History* (Berkeley: University of California Press, 1979), xi.
[28] Lamar, *The Far Southwest, 1846-1912: A Territorial History*, 4.
[29] Ibid, 300.
[30] Larry D. Ball, *The United States Marshals of New Mexico and Arizona Territories*, 334.

sentiment could also be seen to reflect not only the attitude of some Americans towards their new possessions but also the bitterness felt by Hispanics towards Anglo-American law. The region under examination in this study epitomized that "multicultural legal world" in which Spanish colonial, Mexican, and Anglo-American legal systems all played parts. I refer to the law as it affected Indian peoples only tangentially since a full treatment of the topic lies beyond the scope of the present work.[31]

However rudimentary the legal process may have appeared to Europeans or Anglo-Americans it did function. On August 15, 1803, at the *Puesto* or Post of Rio Arriba, Don Manuel Garcia de la Mora, *Alcalde Mayor* and *Capitan de Milicias*, was the judicial authority when Cristóbal Montolla with his wife, María Manuela Martin, sold 75 *varas* of land to Julián Lucero that she had inherited from her parents.[32] The fact that Don Manuel García de la Mora frequently complained about the lack of *escribanos* (royal or public scribes), as he tried to fulfill his judicial role, indicated that he possessed at least some knowledge of Spanish legal procedures. After Mexican independence, non-military officials commonly served as justices. On December 27, 1828, *ciudadano,* or citizen, Gregorio Lucero acted as the *Alcalde Constitucional* in the Jurisdiction of San Juan de los Caballeros, originally the Pueblo of Yuque-Yunque, and the first capitol of the new territory. Doña María Manuela García appeared before Gregorio Lucero to document her sale for eighty pesos of some land that she had inherited from her father, Don Salvador

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[31] Many mestizas were counted as Hispanas and treated as Mexican Americans under U.S. law.

[32] Cristóbal Montolla and María Manuela Martin to Julián Lucero, New Mexico State Records Center (hereinafter referred to as NMSRCA), Rio Arriba County, N.M. County Records, 1847-1857, Box 1, Number 327. Some records that predate the indicated years are listed here. In an earlier document dated April 18, 1800, wherein Juana Padia gave land and property to her niece Monica and Monica's husband Juan Pacheco, in return for their care, Manuel García de la Mora lamented "ha falta de Escribano real ni publico que no las hai de ninguno clase in este Reino de que doi fé." (I attest there is a lack of royal or public scribes for there are none of any class in this Kingdom.) Juana Padia to Monica and Juan Pacheco, April 18, 1800, NMSRCA, Rio Arriba County, N.M. County Records, 1847-1857, Box 1, Number 173.

García, to Don Matias Velarde. This parcel bordered upon land that Doña María Manuela García already owned as well as properties owned by her sisters Doña Josefina Garcia and Doña Juana García.[33]

It is interesting to note that the last military commandant in Tucson, Arizona, officiated at land conveyances as late as 1854, as Mexican troops did not leave the Presidio San Agustín de Tucson until 1856.[34] It was not unusual for Mexican officials to retain their posts until the completion of an orderly transition to American governance.

The pre-territorial Hispanic legal system proved to be sufficiently flexible to meet the needs of a population isolated from the metropole and its extensive judicial apparatus, a system that in many respects was reflected in post-conquest judicial proceedings. Community harmony and survival depended upon the ability of citizens to negotiate and to resolve their differences in an amicable manner. Janet Lecompte and Rosalind Rock noted that northern New Mexican women went to the *alcalde* courts to institute property suits, apply for the guardianship of children, seek advice with marital difficulties, and perhaps start the proceedings for a legal separation.[35] These local courts dispensed swift justice, guided by common sense and community sensibilities. In her work on the province of Sonora, Laura Shelton averred: "State building on the frontier depended on

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[33] María Manuela García to Matias Velarde, December 27, 1828, NMSRCA, Rio Arriba County Records, 1847-1857, Box 1, Number 248.

[34] James M. Murphy, *The Spanish Legal Heritage in Arizona* (Tucson: Arizona Pioneers Historical Society, 1966), 1.

[35] For women in the *alcalde* courts of New Mexico, see Janet Lecompte, "The Independent Women of Hispanic New Mexico, 1821-1846," *The Western Historical Quarterly* 12:1 (January 1981): 17-35. For the women in Spanish New Mexico see Rosalind Z. Rock, "'*Pido y Suplico*'": Women and the Law in Spanish New Mexico, 1697-1763," *New Mexico Historical Review* 65:2 (April 1990): 145-159, and *Mujeres de Substancia*--Case Studies of Women of Property in Northern New Spain," *Colonial Latin American Review*, 2:4 (Fall 1993): 425-440.

the daily practice of filing suits and seeking reconciliation with neighbors and kin." [36] When one community member brought suit against another, the complaint frequently confirmed what that particular community deemed important, especially if the category of accusation formed a pattern. However tightly-knit communities might also influence the delivery of justice as evidenced in the criminal case of Antonio Sandoval of Conejos County who requested a change of venue as he believed he was in great danger owing to the prejudice against him.[37]

Alcaldes strove for conciliation amongst the parties to a dispute or lawsuit or else depended upon community pressure to bring an end to a conflict.[38] When in 1865 María Meregilda Abeyta, a resident of Rio Arriba County, brought suit against Reducindo Torres for the payment of twenty-one pesos for wheat, the *alguacil* or local constable, Encarnacion Espinosa, proposed an act of reconciliation. However María Meregilda Abeyta demanded a jury and the judge, Pedro Salazar, granted her wish whereupon the defendant was ordered to pay what he owed. It is worth noting that the president of the jury addressed the judge as *Señor Alcalde*; Salazar signed the document as Juez de Paz Alcalde.[39] Serious misbehaviour might mean temporary banishment in order to maintain

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[36] Laura M. Shelton, *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850* (Tucson: University of Arizona Press, 2010), 21.
[37] People versus Antonio Sandoval, April 29, 1882, Colorado State Archives, Conejos County, Box 68739, Number 107.
[38] See Leon R. Yankwich, "Social Attitudes as Reflected in Early California Law," *Hastings Law Journal* 10:1 (August 1958-1959): 251, who quoted from the Mexican Decree of March 20, 1837, Article 1 which stated that "The Alcaldes in the places of their usual residences, will take good care of good order and public tranquility."
[39] María Meregilda Abeyta vs. Reducindo Torres, September, 1865, NMSRCA, Rio Arriba County District Court, Box Number 7, Civil Cases Number 5-208, 1849-1880, Number 11.

community harmony.[40] However, some historians have felt that under a patriarchal system women did not always fare as well with reconciliation.[41]

Several factors influenced a judge's decision as he reviewed not only the state's laws, "but also . . . community values, local accounts of the events of the case, and the reputation of the parties involved."[42] For example, when an American named Andrew Daily was murdered on February 28, 1838, the slow pace of Mexican justice frustrated his countrymen. However, Governor Donaciano Vigil stated that "the Mexican law must be observed for the sake of peace and tranquillity in both countries. Furthermore, foreign nationals living in Mexico must obey the laws of the Republic."[43]

Alcaldes could consult *hombres buenos* or "good men" from the community who, in their roles as arbitrator would examine the evidence and suggest an equitable settlement.[44] The plaintiff and the defendant were each permitted to have one *hombre bueno* although these men did not serve as advocates for either side. The *alcalde* considered the opinion of these individuals before issuing his judgment and if agreement could not be reached, the case was dropped. However, proceedings became more serious if a plaintiff laid a formal charge, for witnesses then had to testify and the suit must be sent to the governor for a verdict.[45] Between 1827 and 1832 the government of Mexico City appointed an additional forty-two *alcaldes* to New Mexico to serve the needs of

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[40] Rock, "'Pido y Suplico'": 156.
[41] For further discussion of this topic see Jill Mocho, *Murder and Justice in Frontier New Mexico 1821-1846* (Albuquerque: University of New Mexico Press, 1997).
[42] Ana María Alonso, *Thread of Blood: Colonialism, Revolution, and Gender on Mexico's Northern Frontier* (Tucson: The University of Arizona Press, 1995), 222.
[43] This case is described in Mocho, *Murder and Justice in Frontier New Mexico.*
[44] For the use of *hombres buenos* in California, see Theodore Grivas, "Alcalde Rule: The Nature of Local Government in Spanish and Mexican California," *California Historical Society* 40:1 (March 1961): 42, who contended that the "use of *hombres buenos* under the Mexican system was in itself a quasi jury. The breach between the two was not so wide as to make introduction of the jury system difficult."
[45] Lecompte, *The Independent Women of New Mexico*, 24.

communities in which most justice occurred at the local level.[46] The decree of March 2, 1843 authorized alcaldes and justices of the peace in the Departments of California, New Mexico, and Tabasco to act as Judges of the First Instance in areas where there were no such legal authorities.[47] Although northern New Mexico was a sparsely settled frontier region, Charles Cutter referred to "the vitality of a local legal culture that received constant infusions from the larger Hispanic world."[48]

At the beginning of the Mexican American War (1846-1848), Colonel Stephen W. Kearny and his volunteers marched across New Mexico, entered Santa Fe on August 15, 1846, and effectively captured the Mexican Department without firing a shot. As the army passed through villages on the expedition the *alcaldes* took an oath of allegiance to the United States. Henry Smith Turner, who campaigned with Kearny, commented that "San Miguel like the other villages through which we passed, presents more the appearance of a brick yard, than the village of a civilized people."[49] On August 18, 1846, Kearny became the self-professed military governor and established a civilian government. He established Justice of the Peace courts, maintained the district prefect to serve as a probate judge, and retained *alcaldes* as both Justices of the Peace and

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[46] Manuel Ruiz Jr., *Mexican American Legal Heritage in the Southwest* (Los Angeles: Financial Center Building, 1972), 53.
[47] David Langum, *Law and Community on the Mexican-California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions: 1821-1846* (Norman: University of Oklahoma Press, 1987), 40, footnote 27. Apparently New Mexico only had two attorneys during the Mexican period and one district judge 1852-1836. Langum credits this information to Janet Lecompte who included it in a letter to him. A judge of the first instance was not a professional or specialized individual. He heard civil cases and issued a decision which could be revised upon appeal.
[48] Charles R. Cutter, *The Legal Culture of Northern New Spain: 1700-1810,* 101.
[49] Henry Smith Turner, *The Original Journals of Henry Smith Turner: With Stephen Watts Kearny to New Mexico and California, 1846-1847; edited and with an introduction by Dwight L. Clarke* (Norman: University of Oklahoma Press, 1966), 72.

constables.[50] Indeed Laura E. Gómez maintained: "In many cases, this judicial system was quite literally overlaid on the former."[51]

Kearny assigned Colonel Alexander W. Doniphan of the Missouri mounted volunteers and Private Willard P. Hall (a civilian lawyer from the same regiment) to draft a legal code for the new territory. It provided that "all laws heretofore in force in this territory which are not repugnant to or inconsistent with the constitution of the United States and the laws thereof, or the statute laws in force for the time being, shall be the rule of action and decision in this territory."[52] It is interesting to note the wording of another statement that followed in this portion of the Laws: "When any person, party or subject is described or referred to, by words imparting the singular number, or the masculine gender, several matters, and persons, females as well as males, and bodies corporate as well as individuals shall be taken to be included."[53]

The two military men used several sources that included Mexican laws "either retained in their original form or modified to bring them into agreement with the laws of the United States," the laws of Missouri, and those of Texas and Texas-Coahuila. This completed a system of law that Kearny published September 22, 1846. He also

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[50] Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 64.
[51] Gómez, "Race, Colonialism, and Criminal Law; Mexicans and the American Criminal Justice System in Territorial New Mexico," 1146.
[52] Succeeding territorial governors all made the same promise. See Frances Leon Swadesh, *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier* (Notre Dame: University of Notre Dame Press, 1974), 27.
[53] The Avalon Project, Documents in Law, History and Diplomacy, *Laws for the Government of the Territory of New Mexico; September 22, 1846* Laws, Sections 1 and 3. http://avalon.law.yale.edu/19th_century/kearney.asp. Accessed August 23, 2010.

established a complete system of courts.[54] More importantly for women, the Kearny Code of Laws for the Government of the Territory of New Mexico provided:

> The laws heretofore in force concerning descents, distributions, wills, and testaments, as contained in the treatise on these subjects, written by Pedro Murillo [Velarde] De Lorde, shall remain in force so far as they are in conformity with the Constitution of the United States and the state laws in force for the time being.[55]

Women retained their right to hold property in their family names, even in marriage; to sue in a court of law; and in some instances to initiate divorce.[56]

The first session of the Territorial Court with Anglo appointees met in Santa Fe on December 1, 1846.[57] However, in the spring of 1847, Congress repudiated the conferring of territorial status by General Kearny so that New Mexico was governed primarily by military authority until Congress passed the Compromise of 1850. As a consequence, by late 1847 the limited jurisdiction of Kearny's courts, problems between civil and military authorities, and the essentially martial nature of the government, after the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848, prevented New Mexicans from obtaining justice for two years.[58] In her study on race and justice, Laura Gómez questioned the legality of Kearny's courts that had been established by the "leader of the invading forces" rather than by Congress, that did not authorize a civil government and a

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[54] Sister Mary Loyola, "The American Occupation of New Mexico 1821-1852," *New Mexico Historical Review.* 14:1-3 (January 1939): 66. See also Jack K. Bauer, *The Mexican War: 1846-1848* (Lincoln: University of Nebraska Press, 1974). According to international law, an occupying force should observe the laws of the occupied territory, so far as they were just and equitable according to accepted ideas. Persons acquiring rights under one sovereign cannot be deprived of those rights when sovereignty passes to another. A treaty of cession of territory passes sovereignty only and does not interfere with private property.

[55] Hans W. Baade, "Marriage Contracts in French and Spanish Louisiana: A Study in 'Notarial' Jurisprudence,"*Tulane Law Review* 53:1 (December 1979): 20, ftnt. 25.

[56] Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe: 1820-1880* (New York: Oxford University Press, 1999), 74.

[57] Larry D. Ball, *United States Marshals of New Mexico and Arizona Territories*, 1840-1912 (Albuquerque: University of New Mexico Press, 1978), 21.

[58] Ralph Emerson Twitchell, *The History of the Military Occupation of the Territory of New Mexico From 1846 to 1851 by the Government of the United States* (New York: Arno Press, 1976, 1909), 152.

legal system until late 1850.[59] One observer commented that legislative bodies, courts, and judges meant nothing if matters of judicial jurisdiction could be overruled by the commanding officer.[60]

On September 9, 1850, President Millard Fillmore signed the proclamation admitting New Mexico to the Union as a territory; on March 3, 1851 James S. Calhoun was appointed Territorial Governor; and on July 12, 1851, the territorial legislature adopted the provision that the common law was to be recognized in criminal cases. Mexicans who chose to remain in the United States were uncertain about their civil and property rights under the Treaty of Guadalupe Hidalgo. The Senate had eliminated the original Article X which stated that the U.S. government would honor and guarantee all land grants awarded in lands ceded to the U.S. to citizens of Spain and Mexico by those respective governments. The amended Article IX declared that rather than admitting Mexican citizens as soon as possible, they were to be admitted at a proper time (to be judged by the Congress of the United States). The Kearny Code instituted what Howard Lamar described as an "institutional revolution" in a society "without the tradition of a strong legislature, unfamiliar with both the jury process and common law. . . . It was hard

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[59] Laura E. Gómez, *Manifest Destinies: The Making of the Mexican American Race* (New York: New York University Press, 2007), 38. See also Deena J. González, *Refusing the Favor*, who maintained that after 1848, New Mexicans "could hardly keep abreast of the changes in the legal codes." 61.

[60] George Rutledge Gibson, *Over the Chihuahua and Santa Fe Trails, 1847-1848* ed. Robert W. Frazer (Albuquerque: University of New Mexico Press, 1981), 152. Also see Thomas L. Karnes, *William Gilpin Western Nationalist* (Austin: University of Texas Press, 1970), 153. "Fraternization seems to have been encouraged by the officers as well as the town fathers. Several fandangos were sponsored by Kearney [sic] or by businessmen; officers and enlisted men alike could attend and dance with the local girls although "the most decent and most respectable were not there." It appears that Colonel Kearny and his officers also enjoyed the social life in Santa Fe.

for a people whose culture was still medieval in many ways to accept such a thoroughly and radically different new political constitution."[61]

The Organic Act of 1850 that created the Territory of New Mexico affirmed that the Supreme Court and the District Courts should possess chancery or equity power as well as common law jurisdiction but not the whole of the English common law.[62] The new territory was "inhabited by an enlightened people, possessed by a complete system of law. . . a just interpretation of the Organic Act required a protection of all rights of persons and things, whether arising under the former Mexican civil law or under the common law, the Acts of Congress, or the statutes of the territory."[63] Yet even in the making of law, some criticized the low level of education and general ignorance in New Mexico that made them question the wisdom of letting New Mexicans make their own laws.[64] In 1876, common law, as recognized in the United States, became the law in all the courts again as applicable to local conditions and circumstances; the statute did not mean a repeal of existing local statutes. The justices' courts and probate established by Kearny persisted.

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[61] Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 65-66. Lamar offers a more critical view of the Kearny Code.

[62] In English common law, law courts under judges heard trials based on legislated statutes whereas chancery courts under chancellors dealt with trials based on what was equitable or fair. Early twentieth-century legal reform in the United States combined law and chancery courts in many states. However, as Section Five of the Laws of the Territory of New Mexico, 1851 stated "The distinctions known to the common law of England and the United States, between courts of chancery or equity and courts of common law, and the distinctive jurisdiction of said courts in regard to the subject-matter in controversy, shall not be regarded or recognized in the practice of the courts of said Territory."

[63] Henry A. Dubbs, "The Unfolding of Law in the Mountain Region," *The Colorado Magazine* 3:4 (October 1926): 113-132. Dubbs asserted that Section 17 of the Organic Act of 1850 specifically stated: "The Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of New Mexico as elsewhere in the United States."

[64] Davis, *El Gringo,* (1973), 193.

The *alcalde* courts continued to be the principal venue for resolving local disputes during the military occupation of New Mexico.[65] Traditionally the *alcalde* and the prefect had a great deal of power and the application of the new American law meant that the clergy and large landowners fell under United States jurisdiction: "The new appointees—especially in Calhoun's administration—proceeded to settle old personal prejudices, to curb church activities and fees, and to use the high rate of illegitimacy as an excuse to reassign lands to new heirs."[66] The new probate judges and local justices assumed powers and tried cases that were beyond their jurisdiction: "One of the major issues of the first territorial decade was the struggle by federal judges to save some jurisdiction for the federal courts."[67] *Juez de paz alcalde* (justice of the peace and mayor) became a transitional term that appeared in wills as late as 1865 in Costilla County and even later in Rio Arriba in a 1904 land transaction between María Ignacia Valdez and Jose Gabriel Atencio.[68] Even by 1870, territorial judges had not managed to institute the jury system and American procedures into the courtrooms.[69] As David Reichard noted, "Hispano villagers met the territorial legal system in District Courts, outside of the J.P. courts in their own communities."[70] Probate courts, established for each county, exercised

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[65] See here David A. Reichard, 'Justice is God's Law': The Struggle to Control Social Conflict and U.S. Colonization of New Mexico, 1846-1912 (Ph.D. diss., Temple University, 1996) on the informal nature of the justice of the peace courts.
[66] Lamar, *The Far Southwest, 1846-1912*, 85.
[67] Ibid, 85.
[68] Estate of Jesus María Sanchez, n.d. 1865, Colorado State Archives, Probate Court of Costilla County, Costilla County Records, and María Ignacia Valdez to Jose Gabriel Atencio, 1904, Rio Arriba County, NMSRC, County Clerk Records, Box 1, Folder 1c, Series 1.
[69] Ibid, 132. Lamar also noted that "Not one in ten justices of the peace had a territorial code of laws in his office, or that if he did, he could not read them." 178.
[70] Reichard, "Justice is God's Law," 137.

the same jurisdiction as had been exercised by the probate courts of New Mexico, including the determination of the inheritors of real property.[71]

Spanish society has been described as being litigious and "unfriendly lawsuits, or *pleitos* were part of the Hispanic cultural legacy" that encompassed disputes over land, water rights, and wandering livestock.[72] Jill Mocho argued that although the Spanish people had always been litigious; "records indicate that New Mexicans were making full use of the courts, without benefit of lawyers, counselors, or judges formally educated in law."[73] However, the *alcalde* courts were by no means perfect. When New Mexico merchant William Krönig discovered that a gambler had stolen a silk *rebozo* (shawl) from his store, he pursued the thief, and dragged him before the *alcalde* who "had no written laws in his office and didn't know how to sentence. . . . He was in a muddle and did not know how to perform his duties as Justice of the Peace."[74] The scattered New Mexico settlements depended upon local courts to maintain community harmony and co-operation.

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[71] Richard N. Ellis, ed., *New Mexico Historic Documents* (Albuquerque: University of New Mexico Press, 1975), 110. See also Gómez, "Race, Colonialism, and Criminal Law," 1156, n. 65. Gómez noted: "Legislation passed in 1860 and 1864 [in New Mexico] gave probate judges jurisdiction over debts and replevin actions of $500 or less, disobedient minors, vagrants, (defined to include prostitutes), and criminal matters concurrent with justices of the peace (assault and battery with words, minor larceny).

[72] Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas: 1734-1900* (Albuquerque: University of New Mexico Press, 1998), 48. Charles Cutter, *The Legal Culture of Northern New Spain,* 1995, referred to the work of Richard Kagan, *Lawsuits and Litigants in Castile: 1500-1700* (Chapel Hill: University of North Carolina Press, 1981), who showed the litigious nature of sixteenth-century Spanish society. However, Rogelio Pérez-Perdemo, *Latin American Lawyers: A Historical Introduction* (Stanford: Stanford University Press, 2006), 36, regarded the "high propensity for litigation in colonial society" a myth and noted: "Small increases in litigation during a particular time period, and the concentration of cases of a particular nature, do not indicate a historical trend—if coming from present-day historians, the supposed litigiousness of the colonial era may be attributed to the perception that matters were litigated then that today we consider trivial, such as questions of social preeminence."

[73] Jill Mocho, *Murder and Justice in Frontier New* Mexico, 179.

[74] Charles Irving Jones ed., "William Krönig, New Mexico Pioneer, Conclusion," *New Mexico Historical Review* 19:4 (October 1944): 276. The account does not contain the precise date of this incident but dates from his memories of 1849-1860.

In other former Mexican territories the complex transition from a Mexican to an American administration had to be eased in slowly. In July, 1846, in California, John D. Sloat, Commander-in-Chief of the United States Naval Force in the Pacific Ocean, also decided to maintain the local judicial structure:

> I invite the judges, *alcaldes,* and other civil officers, to execute their functions as heretofore, that the public tranquillity may not be disturbed; at least until the government of the territory can be more definitely arranged. All persons holding title to real estate, or in quiet possession of lands under color of right, shall have those titles guaranteed to them.[75]

Anglo-Americans sought definable rights but "Californios called upon their legal system to grant equitable and personalized solutions to economic and social problems as they arose."[76]

The reception to the implementation of Anglo-American law in the new territories followed a rocky path that wound its way slowly into New Mexican life. Legal change was slow, incremental, challenged, and had to be negotiated at every step along the way. As David Langum aptly described it, "The reception, abrogation, and alteration of the English common law . . . was part of the Western heritage."[77] The frontier environment influenced how territorial statutes incorporated English common law, with the proviso that "local circumstances would prevail." However, the influence of Spanish-Mexican law in New Mexico created a climate of resistance that delayed the complete acceptance of a new legal system. The common law was adopted in criminal cases in 1851 but not until 1876 in civil cases. English common law never applied to the laws of inheritance, or

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[75] Edwin Bryant, *What I saw in California: being the journal of a tour by the emigrant route and South Pass of the Rocky Mountains, across the continent of North America, the Great Desert Basin, and through California, in the years 1846, 1847* (New York: D. Appleton, 1848), 292.
[76] David Langum, *Law and Community on the Mexican California Frontier*, 130.
[77] Gordon Morris Bakken, "The Influence of the West on the Development of Law," *Journal of the West* 24:1 (January 1985): 69.

to the rights of illegitimate children.[78] In 1853 when federal judge Kirby Benedict arrived in New Mexico, the new U.S. territory was only three years old. Since laws had not yet been enacted to guide procedures, he had no alternative other than to rely upon the laws and customs of the former Mexican possession.[79] These laws and customs may have been reflected in the will of Manuel Armijo, the last Mexican governor who died the same year having acknowledged his adopted daughter, Ramona Armijo, as his universal heir.[80] John G. Jones, the first marshal of New Mexico and Arizona territory, and his successors expressed dismay at the Mexican judicial structure: "The more important institutions—church, army, trades, and professions—were permitted to administer justice in their own courts. Civil cases went before the official tribunals, the courts of the *alcaldes*, where the burden of proof was not upon the judges, but upon the plaintiffs."[81]

There was also a perception on the part of some European Americans that the system of peonage in New Mexico had some influence on the delivery of justice. On May 3, 1846, at Taos Charles Bent reported that a large group of Mexicans had attacked some Americans: "I wish if Posible that the Governor woud have theas and those others not named, that have participated in this taken to Santafe . . . it is imposible to get justice heare several of theas ar serventes of the big family and they will protect them all they can."[sic][82] A week later events obviously had not improved for Bent wrote that he

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[78] William Friedmann, ed., *Matrimonial Property Law* (London: Stevens and Sons Limited, 1955), 91.
[79] Aurora Hunt, *Kirby Benedict, Frontier Federal Judge. An Account of Legal and Judicial Development in the South-West: 1853-1874* (Glendale: A.H. Clark, 1961), 121.
[80] William A. Keleher, *Turmoil in New Mexico* (Albuquerque: New Mexico Press, 1952), 115.
[81] Ball, *United States Marshals*, 21.
[82] Charles Bent to Manuel Alvarez, May 3, 1846, "The Charles Bent Papers," *New Mexico Historical Review* 31:2 (April 1956): 160. After the American occupation of New Mexico, Charles Bent was appointed civil governor of the territory until he was killed in the Taos uprising, January 19, 1847. He referred to Juan Bautista Vigil y Alarid, the acting governor after the flight of Manuel Armijo, Governor of the Department of New Mexico, (1837-1846). See also Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University

thought the affair (the beating of Americans by Mexicans) might soon be closed: "the justice Valdess has heard that the Priest has told the culprets that are in jail, to raise and leave the thare prison if the justice dose not discharge them but the information comes from such a sores (wimen) that he cannot take hold on the Good Priest"[sic][83] It is unclear who the "wimen" were, an intriguing mystery that a different line of inquiry might solve.

Some legal historians argued that New Mexico rejected the English common law because Mexican civil law was considered to be sufficient: "Moreover, the common law was antagonistic to their peculiar institutions of peonage and polygamy, respectively."[84] Ostensibly peons were not slaves but indebted persons forced into servitude to pay off their debts. Many leading peon-holding citizens opposed legislation designed to end a traditional institution that had been in place for hundreds of years. Although President Andrew Johnson abolished peonage on March 2, 1867, by December, 1867, many in New Mexico remained bound to masters through perpetual debts.[85] Apparently 146 people were freed in Rio Arriba and Santa Fe Counties alone.[86] In August, 1881, an item in the *Rio Grande Republican* newspaper referred to the old town of Cuchillo, a Mexican village "composed entirely of old liberated *peones* of the Tafoya, Chavez and Baca

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Press, 1999), 232, who referred to a "Hispanic concept of law that viewed it less as a universal mandate to be enforced impartially than as an entity to which personal exceptions might be made."

[83] Ibid, "The Charles Bent Papers", 160.

[84] Gordon Bakken, The *Development of Law on the Rocky Mountain*, 23.

[85] "Peonage Abolition Act." *American History Online.* Facts on File, Inc. http://www.fofweb.com/acitivelink2.asp? Accessed October 9, 2013. Lamar states that the federal law of 1867 forced the New Mexican Assembly to end both peonage and Indian slavery. 89.

[86] Lawrence R. Murphy, "Reconstruction in New Mexico," *New Mexico Historical Review* 43:2 (April 1968): 106-107. Murphy noted that in remote parts of New Mexico Territory "peons and even free men were still so reluctant to testify that it was nearly impossible to convict offenders." In Taos County Benigna Lee and María Means each had five servants. See also Lamar, 27, who noted that "the peon himself was often related to the patron and was himself a petty entrepreneur ."

families, living in the rude, old-fashioned houses, which have weather gable plates, showing their age of occupancy."[87]

The overlapping nature of the law in New Mexico with American juridical practice led L. Bradford Prince, Governor of New Mexico (1889-1893), to express his frustration with New Mexican justice. In a message to the Legislative Assembly in Santa Fe in 1890, he stated there "was no country in the world, Christian or Pagan, in which the court practice was so antiquated, cumbersome and complicated as in New Mexico."[88]

Colorado's legal narrative diverged from that of New Mexico in its patterns of settlement, the nature of the population, and in its political division. In 1706, the region that is now the state of Colorado formed part of the Spanish empire in America. The Adams-Onís Treaty of 1819 still left two-thirds of present Colorado in Spanish territory; with independence in 1821 it fell under Mexican administration until 1848; and it was part of Kansas Territory from 1848 until 1861 when Colorado Territory was created from parts of New Mexico, Utah, Nebraska, and Kansas. Statehood followed in 1876. As the region evolved, local populations in the various mining districts created Miners' Courts and People's Courts to extend at least some form of legal protection over such a vast and unincorporated area. It became obvious that with the gold rush to the Pike's Peak region in 1858 informal law no longer was sufficient to regulate the sudden surge of gold seekers.[89]

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[87] *Rio Grande Republican*, August 20, 1881.
[88] As quoted in Howard Lamar, *The Far Southwest, 1846-1912*, 191. L. Bradford Prince maintained his critical attitude toward the New Mexican justice system for years. See *Brief History of the Compilation and Publication of New Mexico Laws*, New Mexico Compilation Commission: History electronic resource that noted: "An unauthorized compilation was prepared in 1880 by Chief Justice L. Bradford Prince a critic of the 1859 compilation."
[89] Dubbs, "The Unfolding of Law in the Mountain Region," 161.

Complicating the formation of a legal system in the new Colorado Territory was the lack of wholesale adoption of the common law. The reasons for the recognition of the common law varied from state to state. Some argued that it had arrived with their ancestors while others dated the adoption of the common law from the American Revolution. In Colorado, however, the acquisition of the common law proceeded in a provisional and flexible manner.[90] Whereas one may still contract an extralegal union in Colorado, in New Mexico such marriages were deemed illegal (although New Mexican society tolerated informal unions). Nevertheless, women's status was determined by common law values. In Colorado Territory an uncontested will became binding after a period of two years except for "infants, *femes covert,* persons absent from the Territory, or *non compos mentis,*" wherein the two year period began after "the removal of their respective disabilities."[91] If any person had been named as an executor or executrix in a will who was under seventeen years of age or of unsound mind or convicted of a crime, *or* a married woman, letters of administration could be granted to a person or persons as if such a person in the above categories had not been named. A married woman could serve as administrator or executrix if her husband gave bond with her with two or more securities.[92]

Married women in Colorado and New Mexico territories gradually acquired more legal rights as economic and social conditions changed. A married woman acquired the rights of a *femme sole,* or single woman, and a widow received a larger portion of the estate of her intestate husband. However, the law of community property did not exist in Colorado Territory. The first session of the Colorado territorial legislature in 1861

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[90] Ibid.
[91] Colorado Territorial Legislative Assembly, 1861, Practice of Law, Section 6, 400, 407.
[92] Ibid.

covered inheritance but the conveyance of real property remained limited.[93] In 1874, Colorado's common law property laws enabled married women to retain, manage, and control their own real and personal property and expanded *feme sole* without restriction. In 1897 New Mexico passed Married Women's Acts that empowered married women to appear in court, to make contracts and conveyances, and to manage their own property, rights that Hispanas had enjoyed under Spanish and Mexican law.[94]

In Colorado Territory the law of dower proved impossible to maintain in a region where many men left wives behind or else abandoned them altogether. The common law dower had no comparison to the dowry, historically a gift from the suitor to the father of the prospective bride. Common law dower referred to the legal right in her husband's property a wife acquired by marriage if she survived him. She had the use of one-third of all of the real estate that her husband possessed during the marriage.[95] Eventually it disappeared by a statute that repealed the dower act in the Revision of 1868. The original statute stated that if a married man deprived his wife of over one-half of his property by will she had a choice of accepting either the conditions of the will or one-half of his whole estate. This statute had overlapped the old dower law for seven years.[96] Similarly, the husband's estate by right of curtesy, by which he enjoyed his wife's land inheritance after her death provided they had children able to inherit, had no existence or recognition in Colorado.[97]

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[93] Bakken, 116.
[94] Carter, "Legal Aspects of Widowhood", 279.
[95]See Helen S. Carter, "Legal Aspects of Widowhood" in *On Their Own: Widows and Widowhood in the American Southwest 1848-1939, ed. Arlene Scadron* (Urbana: University of Illinois Press, 1988), 278-279.
[96] New Mexico abolished dower in 1907 and it was not unusual to find references to a wife's dower in legal documents.
[97] Henry A. Dubbs, "The Unfolding of Law in the Mountain Region", 683.

In a pattern that makes the study of legal history so complex, Colorado's law stemmed from the statute of Virginia that had passed to Indiana in 1807, and to Illinois in 1819 (which had already qualified its statute in 1845 against inapplicable parts of the common law). Thus Colorado adopted the common law but specifically limited it "so far as the same is applicable and of a general nature."[98] Territories located in the new United States territorial acquisition thus employed a judicial system that was a hybrid of Spanish civil law and Anglo American common law. Legal historian Gordon Bakken argued that subsequent modification of the law by territorial legislatures and courts to satisfy local conditions formed "the most significant aspect of the legal history of the West."[99] There was little reference to the ancestral antecedents of English common law in the United States and few sweeping changes although with statehood in 1876 county courts replaced probate courts. Anglo-American law functioned with two sets of courts—courts of law and courts of equity, often the same court. The same judge would sit "in equity" on one day and "in law" the following week whereas the Spanish operated with a unitary system. Judicial procedure differed, too, as English law mandated that lawsuits take place where the dispute occurred; under Spanish law it took place in the most convenient location for the defendant.[100]

Appointed as the first governor of Colorado Territory in March, 1861, William Gilpin arrived to serve in office in mid-July. He organized a system of courts with three judicial districts. The first, headquartered in Denver (also the main office of the

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[98] Ibid. See also Lamar, *The Far Southwest,* 442, which noted the flexibility of Arizona law, like that of Colorado, where the mining laws combined Mexican and California legislation "mixed with parts of the New York." Lamar, 300, also viewed the Colorado judicial system as "generally competent and professional" unlike that of New Mexico. There was not a "legal and institutional revolution. Similarly, no major revolutionary change occurred in the operation of local government in Colorado, although county courts replaced probate courts when the 1876 constitution was adopted."

[99] Bakken, 22.

[100] Donald Chipman, *Spanish Texas: 1519-1821* (Austin: University of Texas Press, 1992), 251.

Territorial Supreme Court) took in all the area east of the mountains; the second, with its headquarters in Central City covered the northwest quarter of the territory; and the third, centered in Cañon City, encompassed the southwestern quarter of the territory. When the three judges of the districts sat together as appellate judges they formed the Territorial Supreme Court. Because the third district was so large geographically, the judge, when riding circuit, travelled with an "entourage of officials, lawyers, Spanish interpreters, and prisoners for trial."[101]

The Colorado courts apparently continued to be lively places, for thirty years later an item in *The Colorado Chieftain* described a session of the U.S. District Court at Pueblo as a "first class circus" over which the judge presided with his "usual dignity." Some wits proposed the editor of the said newspaper as a candidate for the Harlequin in the circus.[102] The appointment of Charles Lee Armour as one of the justices provoked an immediate uproar. Some saw Justice Armour as "talented but tyrannical" and many citizens signed petitions for his removal. Failing this, the legislature set up Conejos and Costilla counties as his district, hoping that these isolated Mexican counties would discourage him to the point of resigning. Instead Armour filled out his term without leaving Denver.[103] The story exposed a dismissive attitude toward the "isolated Mexican counties" that were viewed not only as a convenient place in which to place an inconvenient justice but also as counties in which an American would not wish to spend much time.

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[101] John L. Kane, Jr., and Sharon Marks Elfenbein, "Colorado: the Territorial and District Courts," in James K. Logan, ed., *The Federal Courts of the Tenth Circuit: A History* (Denver; U.S. Court of Appeals for the Tenth Circuit in 1992), 39.
[102] *Colorado Chieftain,* January 14, 1875.
[103] Karnes, *William Gilpin: Western Nationalist,* 261.

The legal transition in northern New Mexico and the southern Colorado counties confronted yet another obvious and persistent problem: the new citizenry spoke a foreign language. For example, in New Mexico in 1897, Marshal Creighton M. Foraker (1897-1912), commented, "It is absolutely essential that deputies here speak Spanish."[104] The arbitrary nature of record-keeping in English and/or Spanish frustrated court officials, illustrated the tenacious hold of custom, and insulted Mexican Americans. As one traveler in New Mexico observed:

> The legislative journals and session laws have always been printed in Spanish and English. It is not the law but the custom. There is a territorial law requiring all proceedings of all courts to be kept in English and Spanish but no attention is paid to it. In Justices courts, if the justice is Mexican he keeps dockets in Spanish; if American in English.[105]

The use of the Spanish language in court generated a vicious debate in Colorado, where it played out in the press. In 1868, Justice Moses Hallett of the third judicial district reversed a judgment in Dunton vs. Montoya because the case had been argued in Spanish. A newspaper column published in 1869 put the matter bluntly:

> This opinion is decisive upon a point of very general interest to the people of the Spanish counties of our Territory. A custom prevails in those counties of keeping the records and judicial proceedings of Courts in the Spanish language. This method of keeping the record and proceedings will not bear the scrutiny of our highest Court. The decision of the court is, that the English language only must be used in judicial records. A general knowledge of this fact will save litigants in the Spanish counties a great deal of useless and costly litigation. . . it is enough to say that the declaration in the cause was in the Spanish language. It is not to be tolerated in this country, that judicial proceedings should be in any other than

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[104] Ball, 191.

[105] J. Manuel Espinosa, Memoir of a Kentuckian in New Mexico," *New Mexico Historical Review* 13:1 (January 1938): 11. After Congress had officially established courts, they had two Spanish translators, one to translate court proceedings and another who translated for the grand and petit juries. See Gómez, *Manifest Destinies: The Making of the Mexican American Race*, 36. See also the Laws of the Territory of New Mexico, 1851. Section 1 stated "That it shall be the duty of the governor of the Territory, in accordance with this act, to cause the laws passed by the present session of the legislative assembly to be printed and published in the Castilian and English languages." Five hundred copies of the laws were to be printed on alternate pages of Castilian and English.

> the adopted language of the nation. To argue this proposition would be useless, and for this reason the judgment of the Court below is reversed.[106]

This excerpt reflected a great deal about the nature of the two solitudes that existed in nineteenth-century Colorado. Obviously Americans did not see the southern counties as "American," not even as formerly Mexican, but as Spanish, culturally as well as linguistically. The use of the term "adopted language" should have made it obvious how difficult it would have been to litigate in an unfamiliar legal system much less in a new language. After 1848 and the end of the Mexican-American War, barely a generation would have come of age and perhaps learned some English, but for those Hispanics who had been born before 1848 and presumably would have been of an age to pursue litigation, the task might have seemed insurmountable. In effect, the opinion seemed to urge Hispanics not to pursue cases because it would be both expensive and useless. Constitutionally defined "justice for all" apparently meant justice for only English speakers. As previously noted, Hispanic Americans differed from immigrant groups who chose to move to the United States for the border had moved south to envelope them. Finally, it appears that Francisco Montoya, the original plaintiff, did not receive any justice for his monetary demand from Riley V. Dunton. In fact, as noted in the quotation above, the justice ordered the entire proceedings struck from the probate court docket.[107]

On February 10, 1870, the *Colorado Weekly Chieftain* reported that a bill which passed the Senate providing for an appropriation of $8,000.00 for translating and printing the laws in Spanish, suffered defeat in the House."[108] On February 24, 1870, the same

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[106] *Colorado Weekly Chieftain*, January 28, 1869.
[107] Ibid.
[108] *Colorado Weekly Chieftain*, February 10, 1870. See also Lamar, *The Far Southwest*, 240. "Finally, the Colorado Assembly was faced with the problem of passing laws that took into consideration the customs of

newspaper ran an editorial concerning a large German immigrant group whose leaders promised to look after their own law and order. The editorial speculated: "Is this to be a new German principality? Or is this to avoid having the 'Revised Statutes of Colorado' translated into the German language? Our Spanish citizens who clamored fruitlessly for a translation during the recent session of the Legislature, may perhaps, learn a lesson in self-government, without the aid of Spanish statutes."[109] By May of the same year the reality of serving two different populations appeared to prevail regarding the printing of revenue and school laws in Spanish, because "the laws cannot be practically carried out without it." With 5-6,000 Spanish-speaking inhabitants, translation became a necessity. The editorial in the *Colorado Weekly Chieftain* that crystallized the nature of the struggle between two cultures continued:

> We have been thrusting our laws upon two-thirds of the population of half the Territory in a language they do not understand—people who not have come among us, but among who *we have come.* It is unjust and tyrannical to ask them to abjure their language, their literature, and their religion, which is a part of it, during the present generation. It is unreasonable to suppose they have no prejudice in favor of that language which contains all their history, traditions and religion, such as would prevent, for a generation at least, the adoption of language and customs. too Draconian—code—written in fine characters and posted on lofty poles for people to read and be compelled to understand and obey at their peril.—forget precedent—look at necessity.[sic][110]

The editorial appeared to express some understanding of the plight of the Mexican Americans although it seemed to assume that it would only be one generation or at the most, two, until Americanization was complete and Mexican Americans all spoke English. A letter to the same newspaper in July, 1870 complained that the necessity of

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the local Spanish-Americans. All laws had to be translated into Spanish; and since Congress refused to pay for such a task, the cost fell on the territory."

[109] Ibid, February 24, 1870.

[110] Ibid, May 5, 1870.

translating everything into Spanish and then back again meant that the Territorial Court docket could not be cleared up in the two weeks allowed by law.[111] Fourteen years later, the same debate over the use of Spanish in court raged on. The March 6, 1884 edition of *The Alamosa Journal* noted that the Mexican population in Las Animas County had arranged a convention in the town of Trinidad to take steps to contest the order of Judge Caldwell Yeaman of the District Court, which stated that no one was eligible for jury duty unless he could understand the English language. About one thousand Mexican Americans who met to discuss the matter voted to adopt resolutions censuring the judge.[112] It was not until 1885 that the General Statutes of the State of Colorado included an act that required 240 copies of the General Statutes of 1883 to be printed in Spanish and 240 copies in German with the proviso that: "The statutes shall first be published in the Spanish language, before any expenditure shall be made for publishing in the German language." The General Statutes of 1885 also included an act that disallowed discrimination against "any person, otherwise qualified, on account of such person speaking the Spanish or Mexican language and not being able to understand the English language."[113]

Education in the Territory of Colorado also became the target of venomous debate in the conflict between the English-speaking Protestant population in the north and the Spanish-speaking Catholic residents in the south over the separation of Church and State.[114] On February 23, 1871, the *Colorado Weekly Chieftain* wrote: "Resolved: That no Mexican be allowed to educate his children in our common school. If they object to

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[111] Ibid, July 7, 1870.
[112] *Alamosa Journal*, March 6, 1884.
[113] Colorado. *Laws Passed at the Fifth Session of the General Assembly of Colorado.* 1885 (Denver: Collier and Cleaveland Ltd., 1885), S.B. 145, p. 244 and S.B. 78, 263.
[114] Lamar, *The Far Southwest*, 293.

paying taxes to fund education for our children we will use the school treasury to colonize them in New Mexico or Arizona."[115] The next month a column entitled *From the Huerfano,* from St. Mary's, Colorado Territory, appeared that supported the other side of the question. In a well-reasoned response, the author wrote that it would be wise to educate people who would one day represent them and whose assistance was needed to enforce "our laws" (American). How could one tax people on the one hand and not allow them to benefit from the "privilege paid for?" The column concluded with a pointed question that exposed both the hypocrisy of some European Americans and also reflected the complicated ethnic and sexual relations of the nineteenth-century Southwest: "Do those fathers who attend the Mexican fandangos think their families are more disgraced by allowing their children to a day school with Mexican children than by dancing, drinking and carousing at their *bailes* [dances] all night?"[116]

As in Colorado, American attitudes towards the "native population" in New Mexico also remained mixed. Within a three-month period the *Rio Grande Republican* newspaper expressed opposing views about "Mexicans". The Saturday, June 4, 1881 edition reported: "Trouble still exists in Rio Arriba County but now it seems to be altogether among the inhabitants, principally Mexicans who are unable to agree among themselves as to local matters."[117] The tone of an opinion piece on August 13, 1881, however, contrasted sharply with the previous article:

> Some people are prejudiced against New Mexico on account of its native population. Answer: Spanish people of New Mexico are almost uniformly generous, warm-hearted, honorable and honest—alive to progress—good neighbors and fast friends. One of the pleasantest features of life in New

[115] *Colorado Weekly Chieftain,* February 23, 1871.
[116] Ibid, March 16, 1871
[117] *Rio Grande Republican*, June 4, 1881.

Mexico is the society of the cultured, generous-hearted descendants of the soil.[118]

American institutions followed the growth of the United States but the territory wrested from Mexico did not resemble the eastern culture familiar to the basically middle-class population that moved into the Southwest. Historians have speculated that if a large Mexican middle class had existed at the initial point of contact with the American newcomers, the process of adjustment might have been easier.[119] New Mexican society consisted of a small, elite class, and a much larger group of farmers and rural laborers who were tied to the land that they worked. Besides a widely dissimilar legal system, a dominant religion, language, and tightly-knit community structure challenged the newcomers, some of whom were willing to try to understand the new subjects but many of whom were not. The conservative Mexican elite joined Americans in an attempt to preserve their own power and privilege. Educated, wealthy, and politically influential amongst their countrymen, their co-operation and co-optation was essential to the reception and integration of American institutions in New Mexico.[120]

Research in the Costilla County records exposes the overlapping nature and continuity of Mexican and American administration. The justice of the peace courts handled cases such as trespass; debt; damages to property by animals; and smaller disagreements that involved who owed whom a number of fanegas of wheat, for example, that would have earlier been dealt with in the *alcalde* courts. These courts adjudicated the concerns of both European Americans and Hispanics. For example, in

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[118] Ibid, August 13, 1881.
[119] Edward Murguia and Ralph B. Cazares, "Intermarriage of Mexican Americans," *Marriage and Family Review* 5:1 (September 1982): 95.
[120] See Laura Gómez, "Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico," *Law and Society Review:* 34:4 (December 2000): 1133.

1862, fourteen years after the change from Mexican to American jurisdiction, Probate Justice Miguel Vallejos, whose office was in Culebra, Colorado Territory, witnessed the reappraisal of the goods and estate of one Francis Blair. The Hispanos functioned as local officials well after the end of the Mexican-American War in 1848. Moreover, Hispanos continued to deal with the affairs of non-Hispanics and, in this case, continued to use the name Culebra, the original name of the village of San Luis.[121]

The preceding paragraphs describe a zone of cultural and legal conflict, in which two strong cultures struggled, one that tried to assert its dominance over a vast, ceded territory, and the other unwilling to yield a culture that had allowed its communities to survive successfully in a harsh environment. New Mexico was a unique case because it had inherited a centuries-old legal code that, while modified on the frontier, nevertheless reflected the Spanish-Mexican cultural values of its communities. The Anglo-American judicial wave that tried to engulf the annexed territory refuted the idea of gradual legal change that followed society instead of leading it. In the case of New Mexico, the revolution was imposed upon the people; Americans sought to instruct and change society in order to further their economic dominance, to gain land, and to provide space for settlers.

At the local and territorial level the large Hispanic population maintained some influence in both the legislature and in positions such as that of sheriff and officers of the court, but some of these men formed part of the elite class and did not represent the majority of Hispanics.[122] As Laura Gómez noted, Mexican Americans frequently served

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[121] Estate of Francis Blair, May 26, 1865, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, 1.

[122] For a detailed analysis of "racial pragmatism" in the New Mexican criminal court in San Miguel County, New Mexico and the "partial incorporation of Mexicans as jury commissioners, grand jurors, petit

as jurors simply because there were too few European Americans "for the legal system to function."[123] And a nineteenth-century visitor noted: "In Arizona . . . all the officers of the law were Americans. In New Mexico, on the contrary, they were almost without exception Mexicans, and the legal practice was entirely different from our own, as were the usages and customs of various kinds."[124] However, demographic necessity dictated that the jury lists noted in the Colorado cases used in this study generally consisted of an equal number of Hispanic and European American names. Mexican American men and women acted as witnesses in the county courts.[125] As the following chapters will demonstrate "Mexican American" or Hispanic women also acted in other ways as they increasingly turned to chancery courts or courts of equity when they judged their briefs to be without remedy under the common law.

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jurors, and bailiffs" see Laura Gómez, "Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico," *UCLA Law Review* 49:15 (June 2002): 1395-1416. See also Lewis Hector Garrard, *Wah-to-Yah and the Taos Trail* (Norman: University of Oklahoma Press, 1955), 184-185. "The installation of judges, attorneys, sheriffs, and the form of Anglo-American jurisprudence aided in the Americanizing of New Mexico."

[123] Laura Gómez, *Manifest Destinies: The Making of the Mexican American Race* (New York: New York University Press, 2007), 89.

[124] John Gregory Bourke, *On the Border With Crook* (New York: Charles Scribner's Sons, 1891), 72.

[125] Ibid, 88.

Chapter Five: "A Prevailing Custom": Love and Loss on the Frontier

Louis Cohn faced a dilemma. One of several German-Jewish merchants who had moved to the San Luis Valley in the nineteenth century, Cohn was writing his will, which in itself was not so unusual.[1] But he had an intimate secret that weighed upon his conscience, a secret that linked many of the topics that were inseparable in nineteenth-century northern New Mexico and southern Colorado. Cohn had a family in Colorado the existence of which his family in Prussia knew nothing about. He had been living with Juana María Ruperta Valdez de Lucero, the widow of the late Ricardo Lucero with whom she had one child, José Tomas Lucero. Juana María Ruperta Valdez de Lucero bore four of Cohn's children during their relationship, Luisita, Estrellita, Ricardo and Ruperto Cohn born in 1878, 1881, 1884, and 1887 respectively Even this fact was not so unusual, for many foreigners who came to the "southern counties" formed intimate relationships with Hispanic women and had children with them. In addition, consensual unions had existed in northern New Spain long before the American takeover.[2] However Louis Cohn's problem arose because his will stipulated that his estate should be divided, with one half to be given to Juana María Valdez and their four children and the other half to his sister, Fraulein Malvine Cohn of Breslau, in the Kingdom of Prussia, Germany. Therefore the will, written December 15, 1888, included a letter to Fraulein Cohn in which Louis Cohn stated that he had not married Juana María Ruperta Valdez de Lucero nor had he promised her marriage. He went on to explain that he felt compelled to explain his

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[1] See Virginia McConnell Simmons, *The San Luis Valley: Land of the Six-Armed Cross* (Niwot: University Press of Colorado, 1999).

[2] See Jane Dysart, "Mexican Women in San Antonio, 1830-1860: The Assimilation Process," *Western Historical Quarterly* 7:4 (October 1976): 365-375.

personal circumstances to his sister so that she should not feel deceived and that he had not previously informed her of the existence of his companion and their children "for reasons of delicacy, due her sex and position and out of respect to her."[3] Apparently these reasons did not extend to Juana María Ruperta Valdez de Lucero.

The estate in question included 2040 acres of mountain lands, one store building, and three warehouses in San Luis valued at $8000, but because Louis Cohn's personal estate was insufficient to pay his debts, the estate was insolvent by $6000 and the real estate had to be sold.[4] Francisca Sánchez paid $530 for the 2060 acres; and Juana María Ruperta Valdez de Lucero, although she had initially resisted the sale, bought three lots. The list of debts on Cohn's books included the names of fifteen women as well as men who owed him money but many of the accounts were deemed doubtful or worthless. Juana María Ruperta Valdez de Lucero petitioned for and received the guardianship of minors Ricardo and Ruperto Cohn. She did not receive, however, the promissory note for $400 drawn up in 1883 upon which Louis Cohn had promised to pay her one percent interest to be paid every three months. At the time of the probate of the will in 1890 the note was disallowed, barred by the statute of limitations. Interestingly, on May 1, 1884 Juana María had registered her own cattle brand to which she had exclusive rights as provided for by the law. Louis Cohn witnessed the transaction. She "adopted [the brand] for the purpose of branding cattle with KALB (the A is boldfaced) on the left side of the

[3] Estate of Louis Cohn, August 21, 1899, Colorado State Archives, Denver, Box 68736, File PR5. By "sex" Cohn meant gender.

[4] During Louis Cohn's lifetime a large number of settlers in Costilla County were made defendants in suits for water rights that were still pending in the United States Circuit Court for the District of Colorado. They had formed a committee and supplied funds for lawyer's fees. Louis Cohn had been made treasurer and sole custodian of the funds in the amount of $416.96 that also had to be repaid out of the estate. Probate Court, Costilla County Record, Costilla County Courthouse, San Luis, January 29 1900, 375. This was an uncatalogued volume housed in the courthouse.

animal and . . . she had exclusive rights to . . . as provided by law." Witness L. Cohn.[5]

It is evident from probate court records that not only had Louis Cohn acted as attorney for Juana María Ruperta Valdez de Lucero in 1876, after the death in 1875 of her husband, Ricardo Lucero, but also that she resorted to the courts as needed. She appeared in person with a formal petition written in Spanish which began "Ante su honorable corte" (before your honourable court) on February 7, 1876 before the probate judge, A. A. Salazar, to complain that the administrators of Ricardo Lucero's estate had not given her any of the goods to which she was entitled. On April 3, she presented a claim for $20.00 in consideration of a further claim against the estate. Valdez de Lucero required money and she asked for an allowance of $20.00 which was granted although whether this consisted of a lump sum or funds to be released at intervals is unclear. This is an example of the change imposed by common law because under Mexican law the estate would have passed to her automatically.[6]

The relationship between Louis Cohn and Juana María Ruperta Valdez de Lucero illustrates the connections of ethnicity, religion, gender, and class that coloured many aspects of social culture in the latter half of nineteenth-century New Mexico and southern Colorado. Although she and Cohn had children together they apparently did not share the same residence: the 1880 federal census listed a Juana Lucero (24) widowed, Tomas

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[5] Juannita M. Ruperta Valdez, Valdés Family tree. http://trees.ancestry.ca/tree/43844724/person/12733905843?ssrc=. Accessed March 28, 2013.

[6] Estate of Ricardo Lucero, April 3, 1876, Costilla County, Box 68738, File PR 79, Colorado State Archives., Denver. On April 7, 1885, the General Assembly of the State of Colorado amended Chapter CXV of the General Statutes, State of Colorado, Entitled "Wills," Section 83. The amendment read that items of property allowed to the widow out of the personal estate to which she was entitled must be set apart within thirty days after written application by the widow. Failure to do so by an executor or administrator required him or her to pay the widow twenty dollars a month for each month's delay. The1885 amendment incorporated specific penalties for failure to provide the widow with the goods to which she was entitled, penalties that had not existed in 1875 when Juana María Ruperta Valdez de Lucero made her plea for funds. The threat of a penalty could deter executors or administrators from delaying delivery of the personal portion of an estate and perhaps the interference of family members.

Lucero (7), Luisita Cohn (2), and Adolfo Cohn (3 months) as living in San Pedro, Costilla, Colorado. It is likely that Aldolfo died for he is not mentioned in any later censuses. The 1885 Colorado state census recorded J.M.R. Lucero (30) widowed as head of the household who lived with her children Tomas (12), daughters Luisita (6) and Estrellita (3), and a baby son, Pedro R. (11 months) who was likely Pedro Ruperto. The last three children were those born to Juana and Louis Cohn: their father is recorded as being from Prussia. In 1900 Juanita Lucero only had two children living with her, Ricardo Cohn (14) and Ruperto Cohn (12). The census also listed an adopted daughter, Silviana Sena (9). Juanita Lucero lived next door to Tomas and his wife and their three children.[7] By 1910 Juanita M. Valdez age 54 lived with her son Ricardo Cohn, spelled as Chon by the census enumerator, and in 1920, at age 63, she was living alone.[8]

Baptismal records also provide evidence that Louis Cohn was the father of Juana María's two daughters; they are recorded as María Ernestina Luisa Cohn and María Luisa Josefa Ernestina Cohn.[9] The Hispanicized "Ernestina" in both girls' name may have indicated a nod to Cohn's Prussian family. Cohn acknowledged his four children with María Juana Ruperta Valdez de Lucero in his will as "her and my children" and he allowed their children to be baptized. It is notable that the children's first names and religion followed the culture of their mother. He also made provision for them in addition

[7] Information on María Juana Ruperta Valdez de Lucero was extracted from the following; Juana Lucero, 1880 census, San Pedro, Costilla, Colorado, Roll 89, Film 1254089, Page 243A, ED 31, Image 603, Ancestry.ca (August 2, 2013) ; J.M.R. Lucero, Colorado State Census, 1885 [database on-line] Provo, UT, USA, Ancestry.ca (August 2, 2013); Juanita Lucero, 1900 census, San Luis, Costilla, Colorado; Roll 122, Film 1240120, Page 15A, ED 0010, Ancestry.ca (July 31, 2013).

[8] Juanita A. Valdez, 1910 census, San Pedro, Costilla, Colorado; Roll T624_113, Film 1374126, Page 8A, ED 0020, Ancestry.ca (August 25, 2014); Juanita Valdez, Los Ojitos, Guadalupe, New Mexico; Roll T625_1077, Image 160, Page 1A, ED 83.

[9] Taos County Baptisms, Sacred Heart Catholic Church, Costilla, New Mexico, 1865-1885. Electronic resource http://www.kmitch.com/Taos/costillbaps.html. Accessed July 31, 2013. The dates of birth and baptism differ from the years mentioned in Louis Cohn's will.

to any children born within nine months of his death but as he stated in his letter to his sister, he had never promised marriage to his lover. Perhaps the ethnic barrier was too great, for Louis Cohn was a Prussian Jew and Juana María Ruperta Valdez de Lucero a Catholic *mestiza*. However class was important, too, as evidenced in Cohn's regard for the delicate sensibility and "position" of his sister but circumstances or personal choice may not have allowed him to marry a Christian and thus provide the protection that marriage would have provided his partner and their children.

As with all of the themes covered in this study, the personal relationships of women and men in the region proved to be as complex, shifting, and varied as the individuals involved. Some marriages lasted a lifetime, others persisted for years only to end in divorce when it became available, and still others turned out to be short-term. Some informal relationships endured for many years as couples lived together and raised their families while others dissolved after people had spent only a short time together. This chapter examines women's options through the practice of informal unions, formal alliances, and divorce, in a period of upheaval that affected more than just the property rights of women.

European American men had engaged with New Mexican women since the Spaniards arrived in the New World. Some of the encounters were violent or coercive while others had formed through mutual agreement. Historian Ramón Gutiérrez addressed the gendered nature of conquest, the efforts of authorities to control sexuality in Indian communities, and the violent nature of intimate contact between European newcomers and the indigenous populations.[10] In his book, *Archives of the Archdiocese of Santa Fe, 1678-*

[10] Ramón A. Gutíerrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Stanford: Stanford University Press, 1991). For California see also Albert L.

1900, FrayAngelico Chavez included orders sent to the *alcaldes* in 1785 that quoted the laws "regarding the freedom of Indians to marry and condemning Indian officials who impede intermarriage among pueblos; nor can anyone stop them from marrying Spaniards."[11]

Since the majority of European American immigrants to the Southwest in the Territorial Period were male, marriage and informal sexual unions existed almost solely with Hispanas. The French, American, and Canadian fur trappers, traders, and merchants who began to arrive in northern New Mexico in the early 1800s frequently married Mexican women or pursued informal alliances with them. One study based on church records estimated that: "as many as 75 percent of Anglo newcomers to New Mexico between the 1820s and 1840s married Mexican women, though the figure could have been higher as many entered into common-law unions."[12] As David Weber noted, "After being deprived of female companionship for many months, trappers and traders were willing to overlook behavior that might ordinarily displease them."[13] However, he added, "many relationships with Mexican women were clouded with a sense of impropriety."[14]

Hurtado, *Intimate Frontiers: Sex, Gender, and Culture in Old California* (Albuquerque: University of New Mexico Press, 1999).

[11] Fray Angelico Chavez, *Archives of the Archdiocese of Santa Fe, 1678-1900* (Washington, D.C.: Academy of American Franciscan History, 1957), 46.

[12] Richard Griswold del Castillo and Arnoldo de León, *North to Aztlán: A History of Mexican Americans in the United States* (New York: Twayne Publishers, 1996), 21.

[13] David J. Weber, *The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846* (Norman: University of Oklahoma Press, 1968), 7. See William R. Swagerty, "Marriage and Settlement Patterns of Rocky Mountain Trappers and Traders," *Western Historical Quarterly* 11:2 (April, 1980), 159-180. See also Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 73. González noted that the 1850 census of Santa Fe "revealed nearly fifty percent of all Euro-American men in Santa Fe resided with Spanish-Mexican women who appear to have been their wives." Ramón Gutiérrez estimated that ninety foreigners became Catholics in New Mexico between 1821 and 1846 so that they could marry New Mexican women. *Supra* n. 3, 246.

[14] Weber, *The Taos Trappers*, 1968, 7. See also Chavez, *Archives of the Archdiocese of Santa Fe*, 1957, 217. He listed a document that noted "many American converts by Cura Martínez, not all with matrimony in view."

Informal unions occurred in different contexts. In her study of Arizona gold-mining camps Susan Johnson observed that some men entered temporary unions as they did not intend to stay in the camps, others had families elsewhere, and still others considered marriage inappropriate both racially and socially.[15] Whereas some men married for romantic reasons others saw the possibilities for material advancement and access to land if they converted to Catholicism, became Mexican citizens, and married a local woman.[16] The bonds of *compadrazgo* wherein one became a *padrino* or *madrina* (godfather or godmother) and acted as a co-parent further strengthened the links to New Mexican society.[17] Indeed, Daniel Tyler quoted Santiago Abreú, a territorial delegate to the Diputación of New Mexico, who in 1826 advised New Mexicans to be wary of *los extranjeros* (the foreigners) in their midst: "They are inclined towards rooting themselves, buying lands and marrying. This would be fine and perhaps beneficial to our arts if it were not for the fact that our system is so basic and rudimentary."[18] In Taos, European American men admired Mexican women although they "despised" Mexican men; one observer termed the women "Spanish" and the men "Mexican."[19]

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[15] See Susan Johnson, "Sharing Bed and Board: Cohabitation and Cultural Difference in Central Arizona Mining Towns, 1863-1873" in Susan Armitage and Elizabeth Jameson, eds., *The Women's West* (Norman: University Oklahoma Press, 1987), 77-91. See also her work, *Roaring Camp: The Social World of the California Gold Rush* (New York: W.W. Norton and Company, 2000). Also see Darlis Miller, "Cross-Cultural Marriages in the Southwest: The New Mexico Experience, 1846-1900," *New Mexico Historical Review* 57:4 (October 1982): 335-359.

[16] See Roxanne Dunbar Ortiz, *Roots of Resistance: Land Tenure in New Mexico, 1680-1980* (Los Angeles: Chicano Studies Research Center Publications and the American Indian Center, 1980), 13. "Taos, which was the port of entry between 1821and 1846, became the headquarters of affluent traders and trappers who intermarried with the elite Mexican families of New Mexico and formed a small but powerful clique known as the "American party." See also Gutiérrez, *When the Corn Mothers Came*, 246. Ninety foreigners became Catholics in New Mexico between 1821 and 1846 so that they could marry New Mexican women.

[17] See Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 49. See also James F. Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Carolina Press, 2002), 34, 230.

[18] As quoted in Daniel Tyler, "Anglo-American Penetration of the Southwest: The View from New Mexico," *Southwestern Historical Quarterly* 75:3 (January 1972), 329.

[19] Weber, *The Taos Trappers*, 7.

In 1868, the *Colorado Weekly Chieftain* reported the presence of about fifty men of American and foreign birth in the San Luis Valley, which was otherwise populated entirely by Mexicans.[20] Apparently the charms of Mexican women continued to inspire the admiration of European American men, for the next year an item in the same newspaper noted: "W.R. Thomas, Esq. of the *News*, gave us a call on Monday evening. He had just returned from a trip to Santa Fe, combining the business of his journal with the pleasure of making the personal acquaintance of some of the dark-eyed señoritas of that ancient and interesting burg. He departed the same night for home."[21]

In his study of nineteenth-century Los Angeles Richard Griswold del Castillo noted: "There is some evidence that during the Mexican era unmarried couples were accepted by society."[22] This simple statement indicates another area in which Hispanic custom collided with mid-nineteenth-century American culture. Immigrants who brought new concepts of marriage and appropriate feminine behaviour to the region met a people with differing cultural constructs of intimacy. The expectations of love, fidelity, and companionate marriage that characterized the Victorian era wherein the husband provided for the family and the wife maintained their home as a haven from a rapidly industrializing economy had little basis in the reality of life in the small, isolated villages of northern New Mexico where women had historically played a vital role in a subsistence economy.[23] Of

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[20] *Colorado Weekly Chieftain*, Pueblo, August 6, 1868.
[21] Ibid, March 11, 1869.
[22] Richard Griswold del Castillo, *The Los Angeles Barrio, 1850-1890: A Social History* (Berkeley: University of California Press, 1979), 68.
[23] Robert L. Griswold, *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities* (Albany: State University of New York, 1981), 5. Griswold asserted that the record showed that people of all social classes in California believed in these ideals. For an assessment of middle-and working-class divorce in a different time and place see Paula Petrik, "If She Be Content: the Development of Montana Divorce Law, 1865-1907," *Western Historical Quarterly* 18:3 (July 1987): 261-291. Also see Silvia Arrom, *The Women of Mexico City: 1790-1857* (Stanford: Stanford University Press, 1991), 261.

course, these ideals were directed toward the urban middle-and upper classes at a time when the majority of nineteenth-century Americans lived and worked in rural areas.[24]

Barraganería or concubinage was not uncommon in Hispanic culture where higher status Europeans took mestiza women as sexual partners. Historically, informal unions in the Spanish world had legal status. Because it was regarded as a more lasting relationship than a mere transitory sexual union, *concubinato* or concubinage was a licit, although illegitimate, union.[25] A woman in such a relationship might be termed an "*amica*" or more bluntly a "*concubina.*" Thus the informal union of a lower-class woman and a higher-class man retained sufficient legal status such that the woman could not be prosecuted for adultery. Sherburne Cook noted that *union libre* had official status in Mexico where children had no rights of inheritance but were otherwise accepted socially.[26]

Linda Peavy and Ursula Smith noted that European Americans were "shocked to find that some Native American and Hispanic cultures had different ideas about the

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Arrom noted that a few Victorian notions regarding women surfaced in Mexico in the 1840s and 1850s, most notably those that exalted motherhood.

[24] See Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18:2 (Summer 1966): 151-174. On the application and not of prescriptive behaviour in the West see Elizabeth Jameson, "Women as Workers, Women as Civilizers: True Womanhood in the American West," in Susan Armitage and Elizabeth Jameson, eds., *The Women's West* (Norman: University of Oklahoma Press, 1987), 145-164. See also Robert L. Griswold, "Anglo Women and Domestic Ideology in the American West in the Nineteenth and Early Twentieth Centuries," in *Western Women: Their Land, Their Lives*, eds. Lillian Schlissel, Vicki L. Ruiz, and Janice Monk (Albuquerque: University of New Mexico Press, 1988), 15-34.

[25] See Alfredo Di Pietro, *Derecho Privado Romano* (Buenos Aires: Ediciones De Palma, 1999), 329. A concubine could also be termed a *barragana* and the state of being a *barrangana* is defined as *barranganería.* (These are the definitions in Arturo Cuyas, *Appleton's Revised English-Spanish and Spanish-English Dictionary* (New York: Appleton-Century-Crofts, 1962). For *barranganería* in Texas see Alicia V. Tjarks, "Comparative Demographic Analysis of Texas, 1777-1993," *Southwestern Historical Quarterly* 77:3 (January 1974): 291-338 Also see Johnson, "Sharing Bed and Board: Cohabitation and Cultural Difference in Central Arizona Mining Towns, 1863-1873," and Jane Dysart, "Mexican Women in San Antonio, 1830-1860: The Assimilation Process." For a more prejudiced observation see William Watts Hart Davis, *El Gringo; or New Mexico and Her People* (New York: Arno Press, 1973), 221. Davis asserted that "It is the custom for married men to support a wife and mistress at the same time, and but too frequently the wife also has her male friend."

[26] Sherburne F. Cook, "Type of Marriage Ceremony as a Carryover in Acculturation of Mexicans in the United States," *Ethnohistory* 23"1 (Winter 1976), 45.

propriety of living with men to whom they were not formally married."[27] For years the exorbitant fees charged by the Catholic Church to perform a legal marriage deterred poor couples from sanctifying their unions until such time as they could afford to get married.[28] Soldier John Ayers commented that when he first came to New Mexico "the lower class were married generally by the *alcalde,* and married for three or six months if they so desired."[29] It is unclear whether he referred to temporary or permanent unions. However he was less ambiguous when he stated: "The Mexican clergy of course could not marry, but lived openly with their mistresses."[30] In 1868 John Lawrence noted in his diary: "Often visiting priests legalized a whole batch of marriages on their infrequent visits, baptizing the offspring at the same time."[31] Communities tolerated consensual relationships but some outsiders misunderstood the reasons for their existence.[32] However, Frank Edwards who campaigned in New Mexico during the Mexican American War expressed a more sympathetic view. He recounted the story of a young couple who wanted their priest's permission to marry; unfortunately his fees were so high that they had a fandango in place of a marriage ceremony. In the opinion of Edwards, "This little incident may account for the general licentiousness in Mexico. Does not a priest of God thus become a minister of the devil?"[33] One newspaper writer compared the Pueblo Indians' "sacred" attitude

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[27] Linda Peavy and Ursula Smith, *Pioneer Women: The Lives of Women on the Frontier* (Norman: University of Oklahoma Press, 1996), 72.
[28] For high marriage fees, see Davis, *ElGringo: or New Mexico and Her People,* 221, 276.
[29] John Ayers, A Soldier's Experience in New Mexico," *New Mexico Historical Review* 24:4 (October 1949): 262.
[30] Ibid.
[31] *Frontier Eyewitness: Diary of John Lawrence, 1867-1908.* Edited and Annotated by Bernice Martin (Saguache: Saguache County Museum, 1990).
[32] In January 1768 the alcaldes mayores of Alburquerque [sic] and Santa Fe received edicts against concubinage from Mexico City in an attempt to regulate moral conduct on the northern frontier. The edicts are listed in *the Calendar of the Microfilm Edition of the Spanish Archives of New Mexico 1621-1821* (Santa Fe: State of New Mexico Records Center, 1987), 60.
[33] Frank S. Edwards, *A Campaign in New Mexico with Colonel Doniphan* (Ann Arbor: University Microfilm, 1966), 100-101.

towards marital relations with the condition of the majority of Mexicans "a large portion of whom live in a state of concubinage and raise families illegitimately.[34]

Nevertheless, the custom of keeping mistresses met with disapproval by other military men. For example, in 1847 his fellow officers criticized Second Lieutenant Benjamin Talbot of Company D of First Regiment of the Missouri Mounted Volunteers for living publicly with his mistress, a thirteen-year-old Mexican girl, and wanted him broken of his commission. But these officers were not taking the moral high ground. They accepted the situation in which some officers kept mistresses, even two or three at a time. The real concern was the public nature of the relationships: "This conduct might be somewhat [condoned] if it was carried on with privacy and decency; but when an officer makes a public exhibition of his moral depravity and a boast of his vices, to becomes shocking to the feelings of even the worldly minded and viciously inclined."[35]

Adultery, however, proved to be a different matter. Adultery, defined as sexual intercourse between a married person and another not the spouse, was a punishable offence in colonial Mexico under Spanish law. As mentioned in Chapter Three the sometimes gendered nature of Hispanic law meant that unlike her husband an adulterous

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[34] *Colorado Weekly Chieftain*, August 20, 1868. On "concubinages" and illegitimate children in eighteenth-century New Mexico see Alicia V. Tjarks, "Demographic, Ethnic and Occupational Structure of New Mexico, 1790," *The Americas* 35:1 (July 1978): 67 and 70. Tjarks concluded that "the concealment of many concubinages is obvious; many illegitimate couples with children are identified in the census as married." Baptismal records also contained examples of "irregular matings." 67. She also noted that temporary unions were a feature of frontier society and not exclusive to New Mexico.

[35] Abraham Robinson Johnston, Marcellus Ball Edwards [and] Philip Gooch Ferguson. ed., Ralph B. Bieber *Marching With the Army of the West, 1846-1848* (Phildelphia: Porcupine Press, 1974), 344, 347. See also Sandra L. Myres. "Army Women's Narratives as Documents of Social History: Some Examples From the Western Frontier, 1840-1900," *New Mexico Historical Review* 65:2 (April 1990): 193. Some married officers "engaged in sexual affairs with Indian and Mexican women-sometimes black women. Others, both married and single, regularly visited local brothels and some kept mistresses." For the age of consent in New Mexico see Carroll D. Wright, *A Report on Marriage and Divorce in the United States, 1867 to 1886* (Washington, D.C.: Government Printing Office, 1891), 29. In New Mexico males could marry at eighteen and females at fifteen with either verbal or written parental consent. However, it seems that the consenting age could be flexible for some females listed as married in the census were younger than fifteen.

woman could lose her dowry and her share of the community property. It was not until 1919 that the Supreme Court of New Mexico ruled that Spanish-Mexican law did not govern the state unless adopted by statute. Thus an adulterous wife did not lose her one-half share of the community property and retained her share as her right when divorce ended the community.[36] However in the small villages of northern New Mexico where deviation from social norms soon became known to the community at large, and the family, church, and the *alcalde* courts provided the necessary regulation, adultery was not considered a crime.[37]

Colorado on the other hand deemed fornication and adultery illegal well before the addition of the Edmunds-Tucker Act to the General Statutes of the United States in 1887, a law that was largely aimed at polygamy, wherein adultery became a federal crime "against the peace and dignity of the United States."[38] The territory treated offenses against public morality seriously, perhaps reflecting eastern ideals that the family formed

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[36] Jan P. Charmatz and Harriet S. Daggett, eds., *Comparative Studies in Community Property Law* (Baton Rouge: Louisiana State University Press, 1955), 191. See also James M. Murphy. *The Spanish Legal Heritage in Arizona* (Tucson: Arizona Pioneers Historical Society, 1966), 37, who noted: "New Mexico for a period of times did in fact rule that adultery was sufficient cause for the wife to lose her interest in community property but Arizona quickly shed itself of this unfair and arbitrary ruling--as New Mexico did much later.".

[37] See John D'Emilio, and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper and Row Publishers, 1988), xvi. The authors noted the imposition of white, middle-class values and sexual meanings upon other groups that affected how others saw them as well as how these groups saw themselves, and questioned who had the authority to regulate sexuality. For cases of adultery in pre-territorial New Mexico see Janet Lecompte, "The Independent Women of Hispanic New Mexico: 1821-1846," *Western Historical Quarterly* 12:1 (January 1981): 71-35. See also David A. Reichard who argued that federal prosecution of adultery shifted mediation away from local to territorial District Courts. David A. Reichard, "'*Justice is God's Law*"*: The Struggle to Control Social Conflict and U.S Colonization of New Mexico, 1846-1912*" (PhD diss., Temple University, 1996), 231.

[38] *Statutes of the United States of America* (Washington, D.C.: Government Printing Office, 1886) included the penalties for adultery, 635-636. Section Three stated: " That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery." Furthermore Section Five stated: "That if a married man or woman commit fornication each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars." http://constitution.org/uslaw/sal/024_statutes_at_large.pdf. Accessed September 16, 2013.

the backbone of the nation. Although Colorado Territory adopted the common law, it did have ecclesiastical courts like England where adultery had been dealt with as a civil, personal, and ecclesiastical matter. In 1861 Colorado's Legislative Assembly passed An Act Concerning Criminal Jurisprudence that included Offenses Against the Public Morality, Health and Police, Section 107 which mandated that:

> Any man or woman who shall live together in an open state of adultery or fornication, every such man and woman shall be indicted, and on conviction, shall be fined in any sum not exceeding two hundred dollars each; this offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense, such man or woman shall be severally punished twice as much as the former punishment, and for the third offense, treble; and thus increasing the punishment for each succeeding offense: *Provided, however,* That it shall be in the power of the parties offending to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized upon the payment of the costs of the prosecution.[39]

The problem of course lay in this proviso because adultery cases could be bound over until the next court session thus continuing for some months if not years; most Hispanic defendants did not have the funds to pay for the prosecution costs and the marriage fees.

Thus when the *Colorado Weekly Chieftain* newspaper in 1871 published a list of criminal proceedings from a recent court session held at Badito, Huerfano County which bordered the northeast of Costilla County, in 1871, the cases that dealt with adultery predated the federal act by twenty-six years.[40] Although this example is outside the geographic boundaries of the dissertation it is cited here to illustrate the illegality of adultery in Colorado. The cases included the names of one Hispano male found not guilty

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[39] *First Session of the Legislative Assembly of the Territory of Colorado Begun and Held at Denver, Colorado Ter.,* Sept. 9th. 1861. (Denver: Thos. Gibson, Colorado Republican and Herald Office, 1861), 312-313.

[40] Huerfano County is one of the original counties formed in Colorado Territory in 1861 along with Conejos and Costilla counties.

of fornication and three women who were involved in different stages of the court process. María Francisca Archuleta had been found guilty of adultery and fornication; the plaintiff in the case against María Feodora Martin had decided not to proceed with the charges of adultery and fornication against her; and the case of the People vs. María Antonia Lujan was to be continued.[41]

It is instructive but not surprising given the racial attitudes of the period that when the names of Hispanas finally appeared in some of Colorado's early newspapers it was in a negative context. Between 1902 and 1909 in Conejos County seven Hispanic women were cited in divorce suits as having committed adultery. In Costilla County between 1868 and 1908 four women were the defendants in divorces based on adultery. However it is unclear whether these cases correlated with the federal act on adultery or not. It is also unstated if the adulterous women lost their share of the community property or not. Finally it is unknown if desertion or abandonment by Hispanas of their partners stemmed from adulterous relations with another or not or if they engaged in adultery because they had been abandoned, and lacked support.[42]

Initially the Edmunds-Tucker Act sought to abolish polygamy in Utah by the criminalization of adultery, but because New Mexico was a federal territory, the law also applied there. Historians Larry Ball and David Reichard argued that the act caught up many poor Hispanos who married in the Catholic Church but who did not have a civil

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[41] *Colorado Weekly Chieftain*, February 2, 1871. This must have been a busy court session because in addition to the three adultery cases listed above, the docket also included the conviction of María Antonia Manzanares who was sentenced to life in the Penitentiary for murder, the divorce of Quiriano Crescencio Maez from María Viviana Sisneros, and the divorces of two European American couples.

[42] The cases of adultery for Conejos County were aggregated from the Colorado State Archives, Conejos County District Court Record, Vols. D and F. The cases for Costilla County were recorded in the Colorado State Archives, Costilla County, Civil Cases 1880-1953, Boxes 68742 and 68743, and in the Costilla County Record, n.d.

marriage license which resulted in a number of them being sent to the state penitentiary.[43] In 1905 law followed practice when marriages without license that predated 1905 were validated and legalized.[44]

U.S. administration brought new laws that tried to control interracial relationships. Whereas colonial Mexico had an intricate racial classification system that was also flexible enough to accommodate relationships and marriages based upon one's *calidad* or personal qualities and social standing, race-conscious American authorities introduced rigid laws against miscegenation into an essentially mestizo world.[45] In 1857 Section Three of the New Mexico Statutes stated that:

> If any negro or mulatto, being free or a slave, shall marry or cohabit with any woman of the white race of this Territory, said negro or mulatto shall be liable to be presented by indictment, and on conviction shall be sentenced to hard labor in the penitentiary for a term of not less than two years, nor more than three years.[46]

As historian Peggy Pascoe observed, miscegenation laws affected Hispanics least severely, a group "whose women were historically likely to marry white men."[47] States gained authority over new residents "partly by legitimating marriages made according to other forms, such as Spanish law or Indian custom."[48] The laws against interracial

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[43] See Larry D. Ball, *The United States Marshals of New Mexico and Arizona Territories, 1846-1912* (Albuquerque: University of New Mexico Press, 1978), 143-145, and Reichard, "'*Justice is God's Law": The Struggle to Control Social Conflict and U.S. Colonization of New Mexico, 1846-1912*", 251.
[44] *New Mexico Statutes.* Chapter 40. Domestic Affairs. Article 1: Marriage in General, 40-1-20. http://statutes.laws.com/new-mexico/chapter-40. Accessed September 16, 2013.
[45] By the end of the colonial period in Mexico racial mixing had become so confusing that "mixed race groups were often designated collectively as *castas.*" See Michael C. Meyer, William L. Sherman, and Susan M. Deeds *The Course of Mexican History* (New York: Oxford University Press, 1999), 196. Jesús de la Teja noted that in San Antonio de Béxar "people registered multiple racial identities within a single lifetime." Jesús de la Teja, *San Antonio de Béxar: A Community on New Spain's Northern Frontier* (Albuquerque: University of New Mexico Press, 1995), 10.
[46] New Mexico Statutes, 1857, Section 3.
[47] Peggy Pascoe, "Race, Gender, and Intercultural Relations," *Frontiers: A Journal of Women's Studies* 12:1, (1991): 7.
[48] Ibid, 23.

marriage were repealed in 1866 but Colorado did not repeal until 1957 Section Two of the Colorado Statutes of 1864 which decreed "That all marriages between negroes and mulattoes, of either sex, and white persons, are . . . declared to be absolutely void ." However, although the law prohibited marriage between whites and negroes or mulattoes, it included the proviso that those inhabitants from "that part of the state acquired from Mexico may marry according to the custom of that country."[49] The issue in this region is extremely complicated because, as Pascoe noted, the law protected the racial purity of whites whereas other races were free to marry each other.[50] Hence there is an inherent contradiction between the ability of the former inhabitants of Mexico to marry "according to the custom of the country" and the classification of Mexicans as white which illustrates the tensions between law and historical constructions of race.

In 1884 an item in the *Alamosa Journal* illustrated one of the most important changes that occurred under the American administration of the formerly Mexican territories.

> On Thursday last, Pedro Madril, a bad Mexican, was tried before Justice Lewis on charge of beating his wife. Pedro, as shown by the evidence, is a vicious and uncomfortable person for a wife to have around. The fine was—on the wretch at three dollars and costs. In a wife beating case it would be a good idea to inaugurate the whipping post. The wife claims her intention of commencing proceedings for divorce. Earlier in her community conciliation or separation from bed and board might have been counselled.[sic] [51]

The wife of Pedro Madril had the legal right to absolute divorce and the option to remarry, rights that she did not possess under the Spanish and Mexican civil codes. As previously noted, formerly a spouse who desired to leave an untenable marriage only had the right to

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[49] Wright, *A Report on Marriage and Divorce in the United States, 1867 to 1886*, 1891 , 37.
[50] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009), 120.
[51] *Alamosa Journal*, May 22, 1884.

a permanent separation and this only after enormous pressure had been put upon the couple to reconcile. Something else is revealed in the quotation, for obviously the writer had some familiarity with Spanish law when he noted the options that a mistreated wife would have had "in her community" under Mexican administration. Under Mexican law it was not until 1870 that an individual could seek a civil separation, and absolute divorce became possible only in 1917.[52] For example, Cornelio Vigil, (the Probate Judge of Taos County) who owned one-third of the Las Animas Grant, had been legally separated from his wife for more than twelve years prior to his death in 1847. As he had no children, his property was divided between his two brothers and three sisters.[53] Only adultery provided the grounds for a perpetual and not a temporary divorce that would still have been valid for only a certain period of time.

Although formal courts of conciliation were not available after 1848, the use of reconciliation as a method to help a couple who had marital problems continued to be employed well into the twentieth century. An Act Regulating Marriages contained in The Laws of the Territory of New Mexico, 1862-1863, included provision for married couples with difficulties. Section Twelve stated that the injured party could go to the Justice of the Peace, make a complaint, and demand "judicial action for relief." The law further required the Justice of the Peace to try to effect reconciliation between the couple. If the disagreement arose as a consequence of adultery, cruelty, or ill temper "rendering the life

[52] Arrom, *The Women of Mexico City, 1790-1857*, 208.
[53] *Colorado Weekly Chieftain*, March 30, 1871. Cornelio Vigil (1788-1847) was a magistrate (*alcalde*), prefect (chief civil officer of the district), and probate judge in Taos. He was murdered on January 9th, 1847 along with Governor Charles Bent in the Taos uprising.

of the consort insecure" the law required the Justice of the Peace to send the case to the district court.[54]

In some cases couples made more than one attempt to reconcile as María Sara Trujillo and Donaciano Lopez did in Rio Arriba in April 1870 when they appeared in Chancery Court and reached "conciliation by agreement." However five months later they reappeared in the same court although there was no reason given in the document.[55] Obviously the couple must have stayed together as they appeared in the County District Court again in April, 1874 in a case against María Josefa Trujillo, apparently the sister of María Sara Trujillo. The reason for the complaint was not given.[56]

The tradition of reconciliation in the "Mexican" counties continued after U.S. conquest, evident in the work of two Jesuits who lived in nineteenth-century Conejos County. Marianne L. Stoller and Thomas J. Steele, S.J. edited the diary of the Jesuit Fathers of Our Lady of Guadalupe Parish in Conejos County, a journal that dated from December 1871 to December 1875. Referenced in Chapter Two, the diary revealed the work of the local priests to legalize what they termed "bad" marriages. For instance the entry for March 11, 1873 noted that "Father Leone went to Los Pinos to fix up a bad marriage, and God blessed him."[57] Two days later, on March 13, 1873, Father Leone managed to validate a bad marriage in La Isla which meant in effect that a putative

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[54] *Laws of the Territory of New Mexico (1862-1863)*, (Washington, D.C.: Statute Law Book Co., 1930), 13.
[55] María Sara Trujillo vs. Donaciano Lopez, April, 1870, Rio Arriba County, NMSRC, County District Court, Number 70.
[56] Donaciano Lopez and Sara Trujillo de Lopez vs. María Josefa Trujillo, April, 1874, Rio Arriba County, NMSRCA, County District Court, Number 102.
[57] Marianne L. Stoller and Thomas J. Steele, S.J., eds., *Diary of the Jesuit Residence of Our Lady of Guadalupe Parish Conejos, Colorado: December 1871-December 1875* (Colorado Springs: The Colorado College, 1982), xiii, 46. Validation of a marriage meant making a putative marriage a valid one. The introduction noted that "more forcefully and pervasively brought into contact with the large numbers of Anglo settlers in the San Luis Valley after the 1870s than perhaps were their cousins in Hispanic villages in New Mexico, the people assimilated to this culture faster in some respects." The number of Anglo names increased dramatically after 1880 with the coming of the railroad.

marriage became a valid one. On one afternoon in March, Father Fede officiated at five weddings. The authors observed that the large number of weddings may have been due to the custom of not marrying during Lent, the increase in a youthful population, and to "the Jesuits' efforts to sanctify alliances previously formed without proper ceremony."[58] Some relationships endured for many years before a formal marriage took place as in the July, 1873 instance of two people who had been living "a bad life" for twenty years. Clearly couples continued to live in informal unions, perhaps due to isolation, lack of access to a priest, high fees, or, simply, habit. On August 9, 1873 another entry read "Two sinful lives have been eradicated and two married couples have been reconciled."[59] Evidently on this visit, the serving priest had married one couple who had been living together and saw to it that two more couples reached reconciliation. However, the people were not named so it is not obvious if the reconciliations were permanent or if the couples later divorced. Two weeks later, on August 23, 1873 the diary noted that "Another broken marriage has been reconciled."[60] However reconciliation did not always occur. Father Leone went out the evening of October 5, 1873 evening to reconcile a broken marriage in La Plaza: "God, however, did not grant His blessing to this reconciliation."[61]

November proved to be a busy month for the Jesuit Fathers; two more invalid marriages were revalidated on November 9 and 10; on the morning of November 24, 1873, the nuptial benediction was given to a couple who had been married for a period of time. In fact, on November 9, 1873, the Fathers received a two-year-old colt as payment for

[58] Ibid., March 24, 1873, 42.
[59] Ibid., August 9, 1873. 74
[60] Ibid., August 23, 1873. 75.
[61] Ibid., October 5, 1873. 82.

officiating at a marriage.[62] On the final day of 1873 the diary recorded that the Fathers had performed 208 baptisms of children and forty-nine marriages throughout the year.[63] I included a number of examples of reconciliation and delayed marriages from the diary because it is a rare source both for its historical significance, time frame, and geographic setting, and for the confirmation of the continuity of local custom after U.S. conquest. Although divorce was an option that Hispanas used the new law infrequently is evident in the use of reconciliation as a strategy to preserve marriages. Religious, cultural, and economic factors limited women's opportunity to take advantage of divorce laws.

When in 1865 the case of Francisca Trujillo (referenced in Chapter One) appeared for a decision before Chief Justice Kirby Benedict of the Supreme Court of the Territory of New Mexico it incorporated many of the themes and topics in this study. Francisca Trujillo had married Blas Trujillo in 1863 in Rio Arriba County. At the time of the marriage she brought only her clothes, but her husband owned a substantial amount of property. Prior to and in consideration of the marriage Blas Trujillo had given Francisca Trujillo a marriage gift of an undivided one-half parcel land at Los Ranchos de San Juan; however, he did not execute a title deed or conveyance. She had also received other goods as her separate and exclusive property. Francisca Trujillo also made reference to their joint labour and industry and stated that the gains and increase thus belonged to the marriage community. The Bill of Complaint brought forward by Francisca Trujillo declared that Blas Trujillo had been physically abusive, had ejected her from their home, and had refused to allow her to return to bed and board. She demanded relief from the Court of Chancery, itself a new concept in New Mexico, instituted under Anglo-American law, as

[62] Ibid., November 9, 1873, 89.
[63] Ibid, December 31, 1873, 98.

she was without adequate relief at the common law and looked to Chancery "where matters of this nature are properly cognizable." Francisca Trujillo made numerous demands that included title to the property owed her, alimony, her share of the communal gains, legal damages, and a decree of separation "a mensa et thoro." She asked to have all the rights, privileges, and immunities of a *femme sole* restored to her. (In addition the property was not to be sold.) Finally, Francisca Trujillo noted that she had conducted herself "as a chaste, virtuous, industrious, and obedient wife and performed her obligations to him, the duties due the marriage contract."

The language of the suit would have been designed to appeal to an all-male court where the majority of the senior officials would have been from the eastern U.S. and therefore familiar with the largely formal legal language of the law. For example, the Laws of the Territory of New Mexico, 1862-1863, deemed the husband to be the head of the family; as such he owed fidelity, favor, support and protection to the wife in addition to the provision of necessities. The wife owed fidelity and obedience to the husband; she had to live with him, and was required to accompany him to places "that he deemed proper and advantageous."[64]

The father was assumed to be the natural guardian of any children born during a marriage, followed by the mother. Francisca Trujillo then became dependent upon her brother for her "necessaries of life."[65] Although her testimony does not strictly reflect Victorian sentiments of companionate marriage Francisca Trujillo's language was designed to appeal to the U.S.-controlled district courts. In reality many Hispanas were more

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[64] *Laws of the Territory of New Mexico Passed by the Legislative Assembly Session of 1862-63,* Section 11, (Albuquerque: Rio Abajo Press, 1864), 68. Electronic resource http://books.google,cabooks. Accessed October 30, 2012.

[65] Francisca Trujillo vs. Blas Trujillo, Bill of Complaint, April 1865, Rio Arriba County, NMSRCA, County Records 1847-1957, Box 1, Number 58a.

concerned with the maintenance and support of their families than with the sentiments of a companionate marriage.

For his part, Blas Trujillo refuted many of his wife's claims. He acknowledged the marriage promise of land or *dote*, but noted some of the gains of the community property resulted from the labour of his three children by his former wife, Jesus, Refugia, and Basilio, who also had rights to the property. He denied all abuse; declared that Francisca had left on her own and would not return; stated that he did not want *her* to sell the land; and rejected her claim that he would not allow her to return to his bed and board. On the contrary, Blas Trujillo wanted Francisca Trujillo to return and "perform her duties towards him as a wife."[66] The outcome of this case is not known.

The overlapping nature of the law in northern New Mexico is evident in the Trujillo petition. Francisca Trujillo appeared not before an *alcalde* or a court of conciliation but before an American judge in a district court. An *hombre bueno* did not advise her but European American lawyers represented both wife and husband, Charles P. Clever for the plaintiff and Merrill Ashurst for the defendant. On the other hand, Francisca Trujillo appeared to portray herself as a Mexican woman who was using the justice system in a traditional sense. She requested a separation from bed and board, not an absolute divorce. She addressed the court in humble terms and behaved as a woman might be expected to when navigating her way through an all-male judicial system. References to community property and the fruits and gains achieved by the joint efforts of husband and wife remind one that New Mexico maintained the civil law tradition of community property in marriage. This case speaks to how women negotiated the law during a period of legal change.

[66] Ibid.

Wives, too, demanded that their spouses fulfill their marital duties as documented in the 1887 divorce petition of Juana María Maes de Mestas whose husband, José Jesus Mestas, had deserted her. He refused to live with her "or demean himself toward her as by his said marriage vow he is bound to do." The petition stated that Juana María Maes de Mestas was entitled to the relief prayed for in her desire to end her marriage. The couple had married at La Costilla, Taos County in November 1856 but it is not clear when José Jesus Mestas initially deserted.[67] The couple had no children (no reference is made as to whether there had ever been any children) nor did the plaintiff request any alimony.[68]

After U.S. conquest divorce became available but it was under the jurisdiction of the states which set the grounds. Divorce was rare in nineteenth-century New Mexico Territory but women and the courts elsewhere worked to widen the grounds for divorce. In California and Montana expanded notions of cruelty that justified divorce included grounds of mental cruelty.[69] In New Mexico these included adultery, cruel and inhuman treatment, abandonment, habitual drunkenness, and failure on the part of the husband to support his wife, but they did not permit divorce for impotence. Interestingly New Mexico was the first state that amended its laws in 1933 to include incompatibility as grounds for divorce. District courts had administration over divorce cases. In Colorado, however, one

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[67] At the time the San Luis Valley was included as part of New Mexico. See Virginia McConnell Simmons, *The San Luis Valley: Land of the Six-Armed Cross* (Niwot: University Press of Colorado, 1999), 65-66.

[68] Juana María Maes de Mestas vs. José Jesus Mestas, Petition for Divorce, January 20, 1887, Colorado State Archives, Costilla County Civil Cases, 1878-1908, Box 68742, Number 62.

[69] In the West divorce laws were somewhat more liberal than in the rest of the United States, in part to encourage women to settle there. For example in 1851 California's first divorce law allowed the dissolution of a marriage based on adultery, impotence, extreme cruelty, desertion or neglect, habitual intemperance, fraud, and conviction of a felony. See Griswold, *Family and Divorce in California*, 182. Griswold cited U.S. Census figures that showed from 1867 to 1929 the U.S. population rose 300 percent, the number of marriages 400 percent, and the divorce rate 2000 percent. See also Glenda Riley, *Divorce: An American Tradition* (New York: Oxford University Press, 1991). Riley found that the divorce rate was higher in the West than in the North and South and that the rate was high in both urban and rural areas. The desertion rate exceeded the national average from 1887-1906. The number of divorces increased faster than the number of marriages. Also see Petrik, "If She Be Content: the Development of Montana Divorce Law, 1865-1907," 261-291

could obtain a divorce when either party, at the time of marriage was, and continued to be, impotent, or in consequence of immoral or criminal conduct subsequent to marriage became impotent. Additional grounds included having a wife or husband living at the time of the marriage; adultery; desertion for one year; desertion without the intention of returning; failure of the husband to provide for one year; habitual drunkenness for the space of two years or guilty of extreme cruelty; and the commission of a felony or infamous crime.[70]

Hispanic and European American women sought justice in the U.S. courts of chancery or equity that they could not as easily obtain under the common law. The District Court, sitting as a Court of Chancery where trials were based on what was equitable and fair, had jurisdiction over cases of divorce and alimony unless the alimony requested did not exceed $2000, in which case the suit could be entered in the county court.[71] If the defendant appeared in court and denied the charges of the complainant, the case would be tried by a jury but if the defendant confessed to the bill of divorce, the case was referred to open court or to the Master in Chancery.

The refrain "I am without remedy under the common law" echoed throughout the divorce cases. In 1876 Ellen Meyer appeared in the Court of Chancery in Rio Arriba County pleading that she was "without remedy by the strict rules of the common law." She had married Frithjof Meyer in the belief that he was an engineer. To her dismay she discovered that not only was her husband not an engineer, he was also a gambler who sold the goods she had brought to the marriage and who eventually gambled all of the

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[70] Carroll D. Wright, *A Report on Marriage and Divorce in the United States, 1867 to 1886 Including an Appendix Relating to Marriage and Divorce in Certain Counties in Europe* (Washington, D. C.: Government Printing Office, 1891), 91.
[71] Ibid., 79.

family's money away. He had also been adulterous throughout the marriage, infected her with venereal disease, and abandoned her. In October of 1876, Ellen Meyer requested an absolute divorce and "the resumption of her maiden name together with the all the rights and privileges which pertain to unmarried women." Using the parlance of companionate marriage she declared in court that she had "tried to be a true, faithful, affectionate and obedient wife." The divorce appeal ended with the statement: "In tender consideration of . . . premises and inasmuch as your orator is without remedy by the strict rules of the common law she refers all the matters and things aforesaid to your honor's court in chancery sitting where the laws are properly cognizable and relievable."[72]
Chief Justice L. Bradford Prince granted the divorce and restored to Ellen Meyer "all rights, privileges, and immunities of free, single, sole, and unmarried women." [73]

The language used in the case of Ellen Meyer also occurred in divorce cases in Conejos and Costilla counties. In 1887 in Costilla County Juana María Maes de Mestas, who appeared earlier in this chapter in a divorce suit against her husband José Jesus Mestas, declared that she was entitled to the relief prayed for under the common law.[74] And when María Simona Johnston, a Hispana, sued for divorce from Joseph Johnston in Conejos County in 1892, the petition used almost identical words when it stated that all of the alleged claims including habitual drunkenness "proved sufficient in law to entitle her to the relief prayed for in her said complaint."[75]

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[72] Petition of Ellen Meyer vs. Frithjof Meyer, October 1876, Rio Arriba County, NMSRCA, District Court Records, Civil Cases 1877-1881, unnumbered.
[73] Ibid.
[74] Juana María de Mestas vs. José Jesus Mestas, Petition for Divorce, January 20, 1887.
[75] Simona Johnston vs. Joseph Johnston, Petition for Divorce, June 7, 1892, Colorado State Archives, Denver, Conejos County District Court, Civil Docket, Page 41, Number 108.

A woman who was too poor to afford the expense of pursuing a divorce might prosecute her suit without cost. Such was the case for Maríá de los Angeles Montes when she sued for a divorce from Juan Montes in 1888 in Costilla County. The couple had married in 1878 but Juan Montes had been convicted of rape, a felony and infamous crime and sentenced to the state penitentiary. María de los Angeles Montes admitted that she was poor, unable to pay the costs of the suit, and wanted the court to prosecute without costs. She received the decree and guardianship of their children, Ramon age nine and Natividad age seven years.[76]

A point that is worth considering concerns the locale in which divorces took place. For example, a Hispanic woman, whether plaintiff or defendant, whose marriage ended for whatever reason, generally stayed within familiar surroundings where she had some sort of network or support, however fragile it might be. A European American woman who had moved to nineteenth-century northern New Mexico or southern Colorado might have lacked such connections. Thus desertion and abandonment might have meant different things to Hispanic and European American women. The decision to seek a divorce could be much more difficult for some women than for others.

As the grounds for divorce expanded nationally, Hispanas in northern New Mexico and southern Colorado took advantage of the opportunity to leave unsatisfactory marriages. However it is extremely difficult to determine the precise rate of divorce for several reasons. Some respondents to the census in the three counties in this study may have referred to themselves as either single or widowed. For example, the 1910 census for Colorado stated that: "The percentages of those reported as divorced, 0.0 and 1.2,

[76] María de los Angeles Montes vs. Juan Montes, July 19, 1888, Colorado State Archives, Denver, Costilla County Civil Cases, 1878-1908, Box 68742, Number 91.

(males and females) respectively, are believed to be too small because of the probability that many divorced persons class themselves as single or widowed."[77] Precisely the same wording is used in describing the divorced population of New Mexico; only the percentages, 0.7 and 0.9, changed.[78] Whether this was due to religion or a conservative society is unknown. Census returns, too, are not always reliable. In Rio Arriba County for example, the 1880 census returns listed fifty-three Hispanas and twenty-eight Hispanos as divorced; however, included in this number are seven couples each with a D beside the name of both husband and wife although they were occupying the same premises. In the same period no European American women were listed as divorced but four European American men were.[79] The status of some residents could also vary wherein they might be counted as divorced in one census and widowed in the next or they might have obtained a divorce elsewhere. Thus the number of divorces recorded in the census returns may not correspond with the number of petitions for divorce in archival or court records. The divorce cases cited for this study are therefore suggestive rather than definitive and are used to indicate the causes for divorce that women implemented.

A court docket or a newspaper might list the names of the couples from different counties involved in divorce suits but with no supporting detail. Those petitions for divorce filed in archival collections, however, provided the reasons for the divorce, who initiated the action, where and when the couple had been married, and whether the divorce had been granted or was to be delayed. A list of divorces in the Conejos County

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[77] *Thirteenth Census of the United States: 1910,* pt. 2 (Washington, D.C.: U.S. Census Office, 1910), 210. See also Deena J. González, "The Widowed Women of Santa Fe: Assessments of the Lives of an Unmarried Population, 1850-1880," in Arlene Scadron, ed., *On Their Own: Widows and Widowhood in the American Southwest, 1848-1939* (Urbana: University of Illinois Press, 1988), 65-90.

[78] Ibid.

[79] United States Bureau of the Census. Population Schedules. *Tenth Schedule of the United States. 1880* (Washington, D.C.: Government Printing Office, 1883). The divorce numbers are the result of a line-by-line examination of the 1900 manuscript schedules of the three counties under study.

Divorce Records dating from July 7, 1899 to September 20, 1915 listed the names of both the plaintiffs and the defendants in divorce suits. Women were the plaintiffs in seventy-seven of the 115 European American divorces and men in thirty-eight. But Hispanic women and men acted as plaintiffs in almost equal numbers. Of the thirty-eight divorces Hispanas appeared as plaintiffs in seventeen and men in twenty-one.[80] Obviously the list extends beyond the timeframe of the dissertation and covers only sixteen years but it does suggest a lower divorce rate for Hispanas.[81]

The Denver Public Library's Colorado Divorce Record, 1861-1941 is comprehensive, although it does not indicate causes for divorce. Because it is alphabetical by name, I recorded the divorces of Hispanas and European Americans in each year for Conejos and Costilla counties and combined the numbers for the decades 1880-1899. I did not include divorce numbers for 1900 as they would have been used as the basis for a new decade. I then incorporated the numbers for Hispanas and European American women fifteen years and over obtained from the manuscript censuses. In this period the number of Hispanas in Conejos County increased 46 percent in raw numbers from 566 to 1237 but decreased from 59 to 55 percent of the female population fifteen years and over. In the same period Hispanas experienced nineteen divorces or 2 percent of the female population fifteen years and over. European American females fifteen and over increased from 394 to 1000 in Conejos County, a 39 percent rate of growth that also represented an increase from 41 percent to 45 percent of the adult female population. The

[80] Conejos County Divorce Records, 7/31/1899-9/20/1915 by Connie and Jesse Ryan, Colorado State Archives Volunteers. http://www.colorado.gove/dpa/doit/archives/divorce/1conejos.htm. Accessed 6/2/2009.
[81] Colorado State Archives Divorce Records: Conejos County Divorce Records, July 31, 1899-September 20, 1915. http://www.colorado.gov/dpa/doit/archives/divorce/1conejos.htm. Accessed June 2, 2009.

number of European American divorces totaled 72 or 7 percent of the adult female population over the almost two decades.

Costilla County presented a somewhat different picture. The number of Hispanas changed from 655 and 82 percent of the adult female population to 801 and 65 percent respectively, an increase in actual numbers of only 8 percent. The size of the European American adult female population grew from 394 and 18 percent to 436 and 35 percent, an increase of 32 percent. There was only one divorce of an Hispana and two for European American females listed in the entire period. Thus again, the statistics show that in the time span from 1880-1899, the divorce rate of Hispanas, at least in Conejos County was lower than that of European American women. The Colorado Divorce Index listed twenty-five Hispanas and fifty-six European American women engaged in divorce proceedings in Conejos County from 1900-1910.[82]

In this study, divorce statistics for Rio Arriba County rely on the federal censuses and scattered archival documents. For example, Rio Arriba County district court records contain the names of three couples who were engaged in divorce proceedings before 1880: a divorce suit for María Referina Montoya versus Pedro Martinez had been entered in 1868, one in chancery court in 1873 for María N. Vigil versus José de la Ruiz and a divorce suit in chancery for José Guadalupe Lopez versus María Manuela Romero de Lopez in 1873-1874.[83] The 1900 Rio Arriba County census recorded thirty-four divorced Hispanas and twenty-four Hispanos. There were no European American divorces

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[82] Denver Public Library, Colorado Divorce Index, 1861-1941. https://history.denverlibrary.org/sites/history. Accessed September, 2014.

[83] María Referina versus Pedro Martinez, April 1868, NMSRCA, Rio Arriba County District Court, Number 2; María N. Vigil versus José de la Ruiz, September 1873, NMSRCA, Rio Arriba County District Court, Number 88, (the last surnames for this couple were unclear in the record); José Guadalupe Lopez versus María Manuela Romero de Lopez, September 1873, NMSRCA, Rio Arriba County District Court, Number 9, (brief for divorce entered 1873 and case in chancery, 1874).

enumerated. Both the 1880 and 1900 censuses indicated that some divorced Hispanas found employment in traditional domestic occupations such as laundresses, washerwomen, milliners, and seamstresses. These numbers reflect the fact that throughout the latter half of the nineteenth century, Rio Arriba County had a larger Hispanic population that had been born in New Mexico, fewer foreigners (those born outside of the United States) and a greater number of residents than the two Colorado counties.[84] As the federal censuses classified the Hispanic population as white, and added new racial categories over the decades, I did a line-by-line analysis of the three counties in order to determine the precise proportion of Hispanics to non-Hispanics. Moreover, not all censuses distinguished between native born, meaning those born in the U.S. and those born in the state or territory.

Both Hispanas and European American women cited desertion and lack of support in a substantial number of divorce cases in the two Colorado counties. The survival of a family depended upon a breadwinner and the ability to obtain a divorce allowed for eventual remarriage and the possibility of a more secure future. The eight adultery cases in Conejos County occurred between 1902 and 1909. Five additional divorces in Costilla County did not specify the reason for the separation. Two of the plaintiffs were female and three were male. Admittedly the numbers of divorce are small and it would be convenient to over-interpret the data, but it is striking that almost as many men as women served as the plaintiffs in the cases of adultery and desertion in both

[84] Exact numbers of divorces listed in the manuscript censuses can be difficult to determine depending on both the response of the enumerated and the manner in which the enumerator recorded them. Not only were apparently divorced couples occupying the same establishment but women as young as eighteen years of age had a D beside their names that suggests the malleability of responses. A young woman with a very young child could have sought to hide her true status and it is doubtful whether the enumerator demanded documentary proof of legal status. The possibility also exists that if the census taker came from the same community he might have been familiar with familial circumstances and recorded responses at face value or to protect someone he knew.

Conejos and Costilla counties, which may illustrate both the fluid nature of Hispanic society on the northern frontier and the historical difficulty of paying the high marriage fees required by the Catholic church. It may also reflect, for Hispanas, the availability of wage work or the other potential marriage partners. (See Table 10)

Table 10: Specified Grounds for Hispanic Divorces in Conejos and CostillaCounties: 1868-1915

Cause	Conejos-Divorces		Costilla-Divorces	
	Female Plaintiff	Male Plaintiff	Female Plaintiff	Male Plaintiff
Desertion	9	8	10	8
Adultery	8	0	1	4
Cruelty	4	3	1	--
Non-Support	3	--	1	--
Felony	1	--	--	--
Unknown			2	3

Statistics compiled from Box 68908, Volumes A, D, and F of the Conejos County Court Records, Civil Cases 1878-1896, and Boxes 68742, 1878-1908, 68743, 1893-1909, and 68745, 1877-1903 of the Costilla County Court Records, Civil Cases 1880-1953, Colorado State Archives, Denver, Colorado. (Cases dated earlier than the above collections indicated were also included.)

References to the divorces of non-Hispanics suggest not only their early presence in the south central Colorado counties but also their increased numbers after 1880 with the arrival of the railroad. For example in Conejos County the preliminary research on actual divorce files indicates that one couple divorced in 1879 and twenty-six others divorced between 1880 and 1907. But the Conejos County Court Divorce Record located in the Colorado State Archives for 1908-1915 listed at least ninety-five divorces between European Americans, seventy-two of which provided the reasons for ending the marriage. Female plaintiffs cited the cruelty, both physical and mental, of their husbands in twenty-four of the suits whereas only five men accused their wives of the same. Lack of support by husbands was listed in twenty-two cases. Men and women appeared to desert their spouses in almost equal numbers; nine men and eight women left their

marriages. It is interesting that in this period four defendants accused their wives of adultery but there were no cases of a wife doing the same which suggests that male adultery was more socially sanctioned. (See Table 11)

Table 11: Specified Grounds for European American Divorces in Conejos County: 1908-1915

Cause	Female Plaintiff	Male Plaintiff
Cruelty	24	5
Lack of support	22	--
Desertion	9	8
Adultery	--	4

Statistics compiled from Conejos County Divorce Record Volume A, unnumbered, Colorado State Archives, Denver.

Some of the divorce decrees in this chapter are dated later in the twentieth century than the period under study but merit inclusion because in many cases the marriages occurred much earlier. In addition one or both of the partners might have been born or married in one of the three counties in New Mexico Territory or Colorado and subsequently divorced in another territory or state. When Escolastica Gurulé sued Vidal Garcia for divorce on August 31, 1908, Garcia did not appear or answer the summons by Sheriff José S. Trujillo of Rio Arriba County, Territory of New Mexico on April 4, 1908. It appears that because the couple had been married on January 31, 1876 in Conejos which was then part of New Mexico Territory, the case involved authorities from both the state of Colorado and New Mexico Territory. Although Vidal Garcia had abandoned his wife and child in 1889 after thirteen years of marriage, Escolastica Gurulé chose not

to institute a suit for divorce until 1908, presumably because her child, Onofre Garcia, was "now of age and living to himself."[85]

The relatively early divorce of a European American couple in Costilla County in 1869 reveals something of the stresses that a settler society might impose upon a marriage. On July 22 of that year a notice appeared in the *Colorado Weekly Chieftain* that H.E. (Harvey Evan) Easterday had appeared as a Complainant in Chancery in the district court of the Third Judicial District where he sought a divorce from Lideyan (Lydia Ann) who was then a non-resident of the Territory of Colorado. The court required her return to San Luis in Costilla County or a decree for divorce would be entered and her action taken as confessed. The district court granted the divorce.[86]

Based on these few facts the suit looked like a simple case of desertion on the wife or the husband's part. Married in 1840, further research revealed that after the birth of eight children the Easterdays separated in 1861 and Lydia Ann Easterday moved back east, taking at least some of the children with her. One daughter had previously died in 1850 and by 1862 another daughter and a son had died. Of the eight children, five had been born in five different places in the East, two more were born in New Mexico Territory (before Colorado became a territory) and one in Colorado Territory. By 1870 Lydia Ann Easterday was living in Illinois with her youngest surviving son, William, age twelve.[87]

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[85] Escolastica Gurulé vs. Vidal Garcia, August 31, 1908, Colorado State Archives, Denver, Conejos County Divorce Record, Volume A, unnumbered.

[86] *Colorado Weekly Chieftain*, July 22, 1869. Additional information on Lydia Ann Easterday can be found at: Ladian Easterday [Lydia Ann Easterday], 1860 census, Culebra, Taos, New Mexico Territory, roll M653_715, page 136, image 136, *Ancestry.ca* (July 30, 2013; Lydia Ann Easterday, 1880 census, Junction, Davis, Kansas, roll 379, page 257D, ED 054, image 0075, *Ancestry.ca* (July 30, 2013; and Lydia Easterday, 1900 census, Mena, Polk Arkansas, roll 72, page 4B, ED 0096, *Ancestry.ca* (July 30, 2013).

[87] L.A. Easterday, 1870 census, Quincy War 3, Adams, Illinois, roll M593_187, page 487B, image 223, *Ancestry.ca* (July 30, 2013).

In 1880 they lived in Kansas, and by 1900 she was living in Arkansas with her son Albert Easterday. She died in 1904 in San Luis, Costilla County. At no time in this peripatetic existence did any of the censuses refer to Lydia Ann Easterday as anything but widowed. In 1870 Harvey Evan Easterday had a housekeeper, Elizabeth Ann Moore, and her thirteen-year-old daughter, Alice, living with him. By 1880, Elizabeth Ann Moore had become Mrs. E. A. Easterday.[88]

The divorce of Henry and Caroline Niles might have seemed inevitable if one read the newspapers of the day. When the *Las Animas Leader* announced that H.J. Niles and Caroline Niles were commencing divorce proceedings on August 27, 1873, it would not be the only time that Henry Niles' name appeared in the newspaper. A week earlier an item from the "Grapevine" observed: "If you want fun go to Henry Niles' Shindingos, if you are fond of the Senoretas there is where you find them, young and blithe, old and stale. Performance evry Sunday night. Good music in attendance." [sic][89] Later the same year Niles was charged with keeping a tippling house open on Sabbath day as well as a lewd house.[90] Obviously Caroline Niles had had enough of her husband's illegal business enterprises when she filed for divorce but Henry Niles apparently did not change his ways for the next year Nancy Gilman charged him with possession of her property and requested that he pay the court costs.[91]

Hispanic husbands filed for divorce, too. In 1867 the plaintiff was a husband who desired a divorce from his wife for adultery. Jesus María Silva, a resident of San Luis,

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[88] H.E. Easterday, 1870 census, Precinct 3, Costilla, Colorado Territory, roll M593_94, page 188B, image 378, *Ancestry.ca* (September 10, 2013); and H.E. Easterday, 1880 census, Alamosa, Conejos, Colorado, roll 89, Family History Film: 1254089, page 158B, image 0433, *Ancestry.ca* (September 10, 2013).
[89] *Las Animas Leader*, August 30, 1873.
[90] Ibid., October 25, 1873.
[91] Ibid., May 22, 1874.

Costilla County married Julianita Padilla in 1846 in Santa Fé where they lived for seven years. Upon his return from an obviously lengthy business trip to the City of Chihuahua, Mexico, Jesus María Silva found that not only had Julianita Padilla abandoned him but that she was living in adultery with Ignacio Tapia with whom she had one child. No children had been born of the legal marriage and Julianita Padilla had not brought any property to the union. The plaintiff claimed that not only had the defendant deserted him for the year before but that she had left for the fourteen years before that, although he had been a careful and prudent husband. The reasons for the delay in petitioning for divorce were not explained.[92] In 1895 in the same county José Vicente Sanchez sued for a divorce from his wife Josefa Sanchez. Married in San Pedro, Costilla County in 1883, Josefa Sanchez had willfully deserted and abandoned her husband and their son Jacobo, on or about December 20, 1894 "without any cause or fault of this plaintiff." José Vicente Sanchez stated that the defendant was not a fit or proper person to have charge of children and therefore desired the custody and control of his son. He also swore that no agreement of collusion between the plaintiff and the defendant had been entered into for the purpose of obtaining a divorce.[93]

Elisaida Martinez faced divorce suits for committing adultery not once but twice. Her first husband, Felix Martinez entered a statement in court that stated the couple had married in Conejos County on September 21, 1894, that during the marriage sometime in the month of November, 1902, and at "divers [sic] times thereafter" his wife had

[92] Petition for divorce of Jesus María Silva vs. Julianita Padilla, July 9, 1867, Colorado State Archives, Denver, Costilla Courts: District Court, Civil, Box 68745, 1877-1903, File Number Ten.
[93] José Vicente Sanchez vs. Josefa Sanchez, December 15, 1898, Costilla County District Court Record, San Luis, Volume 4.

committed adultery.[94] Eleven years later, Patricio Gallegos appeared before Judge José A. Garcia, declared that he had married Elisaida Martinez Gallegos on March 7, 1908 and that she had had adulterous relations with Domingo Quintana and subsequently left her husband. Although summoned by Epifanio Martinez, the deputy sheriff of Huerfano County, Elisaida Martinez Gallegos did not appear to face the court.[95]

It is not always clear why some couples took so long to divorce. Women, both Hispanic and European American, had few choices economically if they left a marriage, and once children were born it would have been very difficult to make a living unless the estranged spouse were willing and able to pay support or alimony or if they had extended families with sufficient resources to add members to the household. Even those women who had some property would have required enough labour to make the land economically viable. Some couples divorced within one or two years of marriage and others separated after eighteen or twenty or twenty-two years in a marital union. It is difficult to detect a trend in the number of years of marriage before divorce in either of the Colorado counties because both short and long-lived marriages ended from the mid- to the end of the nineteenth century.

One of the most extreme examples of a delayed divorce occurred in the relationship of Jacob and Mary Piercy of Conejos County. Married in Derbyshire, England in 1856, they had raised ten children. Jacob Piercy petitioned for a divorce in 1900 after forty-four years of marriage charging that Mary Piercy had "committed extreme and repeated acts of mental cruelty that caused great mental suffering." They had

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[94] Felix Martínez vs. Elisaida Martínez, November 28, 1904, Colorado State Archives, Denver, Conejos County Divorce Record, Volume D, unnumbered.
[95] Patricio Gallegos vs. Elisaida Martínez Gallegos, November 24, 1913, Colorado State Archives, Denver, Conejos County Divorce Record, Volume A, Number 649.

not lived together as man and wife since January, 1897 and their children were then all of age. Although not stated explicitly it may have been that Jacob Piercy felt that he had fulfilled his responsibilities to the family and it was time to end the marriage.[96]

The divorce case of María Antonia Bartlett versus Thomas Bartlett is illustrative of the many factors hidden in the background of what seemed to be a fairly straightforward case of two people trapped in an unhappy marriage. The couple had married on September 15, 1867 at Fort Garland, Colorado Territory. The thirty-three-year-old groom had been recently discharged from the Union army and the twenty-year-old bride was a young widow with one child, John Lewis. Antonia Bartlett stated that she had lived with the defendant for more than twelve years and during that time had "always acted and demeaned herself towards said defendant as a true, faithful and dutiful wife." Two children resulted from the marriage, a son, Thomas Medina Bartlett of eight years and the other a daughter who later died. Antonia complained that she had suffered almost continual abuse since the marriage and that in March, 1880, her husband had struck her on the head with his fist several times, dragged her from her bed by the hair, and forced her from the house. Two months later he kicked her out of the house in a violent manner stating that he did not wish her to remain there any longer. The next month, by then with her mother, Matiana Medina, and sixteen-year-old son, John, María Antonia filed for divorce from her husband who by then occupied the post of county sheriff.[97]

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[96] Petition for divorce of Jacob Piercy vs. Mary Piercy, January 29, 1900. Colorado State Archives, Denver, Conejos County Court Divorce Record, Volume D, 1899-1907, 20630, Item No. G, 6.

[97] María Antonia Bartlett vs. Thomas Bartlett, June 9, 1880, Colorado State Archives, Denver, Costilla County, County Court Divorce Records, Box 68742, 1878-1902, Number 14, 59. For her residence in 1880 see Antonia Bartlett, 1880 census, Lower Trenchera, Costilla, Colorado, roll 89, Family History Film 1254089, page 224B, ED030, Ancestry.ca (September 10, 2013).

Antonia Bartlett further stated that at the time of her marriage she possessed property in her own name consisting of a mare and thirty-four head of cattle and their increase that she regarded as her own separate property, property that had been under the exclusive control of the defendant. She valued the livestock at $1800, did not seek alimony in excess of $2000, and declared that she was well able to maintain both herself and her son, John. It is presumed that Thomas, the youngest, remained with his father. The counsel for the plaintiff, in a move that reflected how local politics could intrude upon the judicial process, swore in a deposition that he wished to have the trial moved to the County Court of Conejos County as he did not believe that the plaintiff could have a fair and impartial trial as the judge had expressed himself adversely to her interests.[98]

Thomas Bartlett denied all charges, asserted that María Antonia Bartlett had not always acted and demeaned herself [as a true, faithful, and dutiful wife], and swore that he had not alienated the affections of their young son. He did admit that his wife had come into possession of a mare and some cattle after their marriage, some of which she had apparently sold. Finally Thomas Bartlett also noted that the suit did not state the value of his property nor his annual income, that therefore the request for alimony was "ambiguous and uncertain," and requested the dismissal of the suit at the cost of the plaintiff. The Costilla County court granted the divorce in 1881 and María Antonia Bartlett received alimony of $1000. Thomas Bartlett, however, received custody of their young son. The reasons for the decision are not stated; thus, more questions were raised than answered in the legal record.[99]

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[98] Ibid.

[99] María Antonia Bartlett vs. Thomas Bartlett, June 9, 1880, Colorado State Archives, Denver, Costilla County, County Court Divorce Records, Box 68742, 1878-1902, Number 14, 59.

A closer look at this divorce suit provides a glimpse of both the shifting nature of social relationships and the peripatetic life some Americans in nineteenth-century New Mexico and Colorado. María Antonia was born in Taos, the daughter of New York-born Henry Phillips and Matiana Medina, a native of New Mexico. María Antonia, too, had a child with a man with a European name, John Lewis, and their son, also John Lewis, was born in 1864, a year before his father's death.[100]

However the process by which one might obtain a divorce in Colorado had proved to be problematic. A month before the approval of the legislation on divorce in 1861, Governor William Gilpin vetoed the territorial legislature's act to legalize the first divorce in Colorado Territory. He objected to legislative divorce, arguing that a married couple entered a civil contract and that if one of them wished to terminate said contract they had a right to trial by a jury who would listen to the evidence, determine the facts, and decide upon the disposition of any children involved as well as property.[101] In 1884, the *Colorado Law Reporter* noted the rise in the number of divorces in Colorado, the collusive nature of divorce suits between husband and wife, and the simple judicial process that enabled couples to obtain a divorce. The journal argued that as "the family relation constitutes the chief corner-stone of the peace and good order of society" every divorce suit should be defended on behalf of the people and not only for the interests of the concerned parties.[102]

Hispanics employed the legal language of Anglo relationships in the notices of the local newspapers as they tried to find errant wives and free themselves from the debts of

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[100] Further research is required to ascertain the relationship between John Lewis and María Antonia Phillips y Medina, her maiden name.
[101] Thomas L. Karnes, *William Gilpin Western Nationalist* (University of Texas Press, 1970), 263. Karnes added that the state of Colorado also followed this precept.
[102] *Colorado Law Reporter*, 1884, 4:45, 761.

their spouses. For example, in 1874 Riley V. Dunton, who appeared in Chapter Four, posted a notice in the *Trinidad Enterprise* that forbade "all persons from trusting my wife, Pollonia C. Dunton, on my account as I shall pay no debts of her contracting, after this date."[103] By 1880, Riley Dunton was mining in Ramsey Canyon with three of his children and although the census referred to him as married, Pollonia, who appeared as Apolonia Crespine when they married in Trinidad, Las Animas County in 1869, was not listed.[104] The family eventually moved to Arizona but further research is required to determine the final marital status of the couple, who died in the first decade of the twentieth century.

Rafael Esquivel used the same newspaper in 1878 to give notice to the public "that my wife, María Guadalupe Borrego, having come back to my house and resumed her duties as my legal wife, a certain notice published by me in the *Chieftain* of Pueblo, Oct. 31, 1878, shall be null and void, and from that date I am myself responsible for the acts of my wife."[105] Apparently the two remained together and María Guadalupe Borrego "resumed her duties" for the 1885 Colorado State Census listed them as a couple who lived in Costilla with their two children, ages fourteen and eight years of age.[106]

Josepha and Manuel Mondragón who married on November 16, 1894 in San Luis, Costilla County had lived together for eleven years until November 5, 1905 when she petitioned for a divorce.[107] Josepha Mondragon stated that her husband was cruel and had become enamored with one Manuelita Montoya. The marriage had resulted in two

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[103] *Trinidad Enterprise*, January 9, 1874.
[104] R.V. Dunton, 1880 census, Luttrell, Pima, Arizona, Roll 36, Film 1254036, Page 345D, ED 40, Image 706, Ancestry.ca (May 11, 2014).
[105] Ibid., October 26, 1878.
[106] Rafael Esquivel, *Colorado State Census, 1885*, Costilla, Roll T158, page 32, ED 01, *Ancestry.ca* (September 10, 2013).
[107] The Spanish name Josefa is also spelled Josepha in many of the documents of this period.

children, Maclovia, six years old, and Edulia, eleven months. Apparently it was a contentious divorce. On January 30, 1906, the court ordered the Sheriff of Costilla County to place Josepha Mondragón in possession of the household property "heretofore used by the plaintiff and defendant while living together as husband and wife." The list of items included the following personal property: one sewing machine; five pictures and frames; one table with dishes; one large chair; one clock; one woolen mattress; six blankets; one heating stove; one cooking stove; one cupboard with dishes; one kitchen table; two small chairs; one bucket; and two water buckets. C.A. Meyer witnessed the court decree. The list is worth quoting because it shows the items accumulated during the marriage, the economic position of a couple who afforded a sewing machine as well as other larger items of household furniture, and the specificity of a court order. It is not stated whether Josepha Mondragón was still living in the family home or whether Manuel Mondragón had removed the listed items and had to return them to the house. The court record noted that Josepha Mondragón gained custody of her two children. Whether she regained her property is unknown.[108]

This section on divorce opened with the case of an assault by a husband against his wife, an incident unfortunately not uncommon in the latter half of the nineteenth century in northern New Mexico and southern Colorado or in other times and places.. The derogatory and racist newspaper account of a barbaric attack by a Hispano against his wife in 1869 does not disguise the fact that some Hispanas suffered violent marriages. The *Colorado Weekly Chieftain* reported: "An artist has come to grief. He is a Mexican who drew a wood-cut across his wife and was gobbled by a Justice of the Peace on the

[108] Josefa Mondragón vs. Manuel Mondragón, January 30, 1906, Colorado State Archives, Denver, Costilla Courts, District Courts, Civil, Box 68743, File Number 217.

Huerfano. He is expiating his artistic genius in the jail. High art does not flourish in this locality."[109] But such violence was nothing new for it is recorded in centuries-old documentation. For example, after six years of marriage, in 1616 Catalina Díaz petitioned for a divorce from her husband, Manuel García who had mistreated her by word and by deed, "*bañandole en sangre*" (bathing her in blood).[110] Newspapers were sometimes less likely to report abusive European American husbands in such pejorative terms.

Still other women sought to escape an abusive marriage not through divorce but by appealing to a court for protection. In a case cited in a previous study, the seemingly standard will of María Deluvina Salazar, an intestate Hispana living in Rio Arriba County who died in 1886, lay in a file that contained two damning documents. The first, dated September 18, 1882, four years before the decedent's passing, concerned an order against J.A. Quintana that requested him to respond to a complaint by Deluvina Salazar, his wife. She stated that she sought "justicia y el amparo de la ley" (justice and the protection of the law) since she could no longer suffer the cruel treatment of her husband, and named Francisco Martínez as her agent. The next year, the second document indicated that Donaciano Salazar, Deluvina Salazar's brother, had petitioned the court on his sister's behalf to put her and her family under state guardianship as his brother-in-law was in the habit of being drunk and exhibited bad behaviour. Juan Quintana's continued abuse of his wife did not prevent him from eventually inheriting his half of the estate, serving as its administrator, and receiving the bequests for the three minor children of the marriage.

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[109] *Colorado Weekly Chieftain*, July 2, 1869.
[110] Catalina Díaz contra Manuel García, 1616, AGN, Matrimonios, Caja 5173, Expediente 8, 1616.

The presence of male family members who could intervene on a woman's behalf might sometimes help her but such was not always the case.[111]

On the other hand, some women were capable of acts of physical cruelty too. In 1870 the *Colorado Weekly Chieftain* reported that the wife of Manuel Sandoval had poisoned him with strychnine mixed with *atole*, although her motive is not given.[112] The authorities arrested her but the outcome of the case is not known. José M. Sandoval married Carlota M. Sandoval in Santa Fé, New Mexico Territory in 1906 but four years later he sued for divorce in Conejos County when he alleged that Carlota had assaulted him, cut him in the arm, and shot him, thus causing him great mental and physical pain.[113]

The availability of absolute divorce in northern New Mexico and southern Colorado in the latter half of the nineteenth century meant that some Hispanic women, unable to bear the strain of an unhappy marriage any longer, could finally escape its bounds. Desertion, lack of support, adultery, habitual drunkenness, and cruelty, both physical and mental provided the grounds for the dissolution of a marriage. Often the wife was the partner who willfully deserted and abandoned the marital union or who committed adultery. Generally, however, the number of divorces in the Hispanic community remained low, for religion, community mores, and the actual process of ending a marriage would have been formidable obstacles. Legal differences in New Mexico and Colorado did not outweigh culture and custom in the legal management of intimacy in Rio Arriba versus Conejos and Costilla counties as evidenced by the lower

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[111] Estate of Deluvina Salazar, November 12, 1886, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 280.
[112] *Colorado Weekly Chieftain,* June 30, 1870.
[113] José M. Sandoval vs. Carlota M. Sandoval, May 31, 1910, Colorado State Archives, Denver, Conejos County Divorces, Volume A, unnumbered.

divorce rate of Hispanas. Furthermore the opportunity to divorce had to be balanced against loss of income and support and depended to a great extent on the ability of a woman, particularly a woman with children, to survive on her own or at least with familial support. Thus, just as the absence of convents limited the options of Hispanas seeking to leave abusive marriages before 1848, the lack of economic options continued to limit their use of divorce courts

Chapter Six: "For One Dollar and Other Valuable Considerations": Hispanas and Property

Hispanas in New Mexico retained more control over their ownership of property than those in Colorado because the Kearny Code, in effect until 1884, decreed that all of the Spanish and Mexican law existing at the time of the American takeover that was not in conflict with U.S. law or the Code itself would continue.[1] The retention of community property law by which a wife and husband shared equally in the gains of the marriage partnership, and the maintenance of Spanish-Mexican legal customs not at variance with U.S. law, meant that Hispanas had legal claim to joint rights in property.[2] The laws of coverture in Colorado's common law limited the property rights of married Hispanas and European American women in that husband and wife were considered to be one as the legal existence of the woman was suspended during marriage.[3] It is interesting to note that in all three counties married Hispanas continued to use their maiden names in property transactions.

When the United States took over Mexican territory it encountered a system of land tenure that had developed in part to ensure the defense of the northern borders of New Spain. From the end of the seventeenth century until the mid-nineteenth century, the

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[1] Dana V. Kaplan, "Women of the West: The Evolution of Marital Property Laws in the Southwestern United States and Their Effect on Mexican-American Women," *Women's Rights Law Reporter* 29:2 and 3 (Spring/Summer 2005): 155.

[2] Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley: University of California Press, 1995), 82. Haas observed that in the case of California: "Across the social spectrum, their rights to land and compensation for their labor were most fully exercised by unmarried and widowed women, though some married women with property managed it apart from that which they owned jointly with their husbands." See also Kaplan, "Women of the West," 144. Kaplan argued that "Americans in 1848 operated on the assumption that the term 'landowner' applied only to men." Therefore although the ratified Article IX of the Treaty of Guadalupe Hidalgo stated that Mexicans would receive all the rights of Americans, " if Mexican women were to take on the rights of American women, it is unclear what the legal status of their property holdings would have been."

[3] William Quimby DeFuniak, *Principles of Community Property* (Tucson: University of Arizona Press, 1971), 4.

Spanish government instituted a policy of issuing grants to land on its northern frontier in order to encourage settlement, to reward those who supported the government, and to form a defensive zone between Indian attacks and the populated areas of the country's interior. Originally the Mexican Colonization Law of 1824 restricted the size of the grants to eleven square leagues per claimant. In the northern province of New Mexico, the Spanish government made private grants to individuals, communal or community grants for settlement purposes and land grants to the pueblos for the lands they occupied.[4] Community grants formed around a central plaza where settlers, often under the leadership of a *patrón* or local leader, received space for a house, a tract of land to farm, and access to common land for pasturage. They raised subsistence crops in small areas of arable land and grazed their livestock in mountainous pastures. Several plazas, often named after the founding family, would form a small community. Community land grants that included ten or more families were more common in northern New Mexico whereas individual grants, used primarily for ranching, were more common in southern and eastern New Mexico.[5]

Mexico maintained the land grant policy following independence from Spain in 1821, and the last governor of New Mexico, Manuel Armijo, (1793-1854), dispensed immense grants to both New Mexicans and to newly arrived emigrants. Historian Andrés Reséndez described Armijo's grants as some of the largest in New Mexico history. By the mid-1840s "the most promising land and settlement ventures were in the hands of a small group of Anglo-American entrepreneurs of Rio Arriba together with their Mexican

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[4] Howard Lamar, *The Far Southwest, 1846-1912, A Territorial History* (New Haven: Yale University Press, 1966), 139. See also DeFuniak, *Principles of Community Property*, 177-178. DeFuniak addressed the question of grants of public land and how they should be defined within the community property system.
[5] David A. Reichard, "'*Justice is God's Law': The Struggle to Control Social Conflict and U.S. Colonization of New Mexico: 1846-1912*" (Ph.D diss., Temple University, 1996).

allies."[6] Some of the grants overlapped what would become the New Mexico-Colorado boundary line. For instance 40,000 acres of the Tierra Amarilla Grant (1832) in New Mexico extended up into Conejos and Archuleta Counties in southern Colorado and the Conejos Grant (1833) covered much of the western half of the San Luis Valley, including Conejos and Rio Grande Counties. The Sangre de Cristo Grant (1843) covered all of present-day Costilla County as well as some territory in New Mexico.[7]

The subject of land grants in Mexico and Colorado is a huge topic in itself, one that has been studied extensively by historians, and a comprehensive treatment of the subject is beyond the scope of this study.[8] However, the significance of the grants cannot be overstated, for claims over their ownership and use are disputed to the present day. Article X of the Treaty of Guadalupe Hidalgo that ended the Mexican American War in 1848 stipulated that Mexican land grants were to be protected and that the people who were living in the ceded territory should enjoy their liberty and property. The U.S. Senate struck out the article on the grounds that it "would revive old land grants" especially

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[6] Andrés Reséndez, *Changing National Identities at the Frontier: Texas and New Mexico* (New York: Cambridge University Press, 2005), 248.
[7] Howard Lamar, *The Far Southwest*, 51.
[8] See for example William A. Keleher, *Maxwell Land Grant: a New Mexico Item* (Santa Fe: William Gannon, 1975 (copyright 1942, 1964); Ralph Carr "Private Land Claims in Colorado," *Colorado Magazine* 24:6 (November 1947): 11-30; Richard Wells Bradfute, *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles: 1891-1904* (Albuquerque: University of New Mexico Press, 1975); Victor Westphall, *Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region* (Albuquerque: University of New Mexico Press, 1983); Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1990); Maria E. Montoya, *Translating Property: The Maxwell Land Grant and the Conflict Over Land in the American West: 1840-1900* (Berkeley: University of California Press, 2002); Phillip B. Gonzales "Struggle for Survival: The Hispanic Land Grants of New Mexico: 1848-2001," *Agricultural History* 77:2 (Spring 2003): 293-324; and Joseph P. Sánchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History: 1692-1968* (Norman: University of Oklahoma Press, 2008).

those made by the Texas government after the 1836 achievement of Texas independence (declared in 1835).[9]

The shift in attitudes towards land meant that mid-nineteenth-century Hispanas encountered a world in which the very institutions by which they had lived for so long changed with startling rapidity. How could such a seemingly fragile thing as a line drawn upon a piece of paper exert such power over their lives? New Mexico women, both single and married, had long enjoyed property ownership, both conveyed and inherited. Fray Angelico Chávez referred to an early instance of female property ownership when he noted that "the first landowner named Fernández was a Spaniard who had come to the valley around 1744, where his wife owned considerable ancestral property."[10]

Traditionally Hispanic couples in northern New Mexico conducted property sales and transfers in an appearance before a local official, in some cases the resident *Capitán de Milicias* or, as is more likely, the *Alcalde Constitucional.* The names of both husband and wife invariably appeared in the transaction documentation. Such was the case when Cristobal Montolla, with his wife María Manuela Martin, sold Julian Lucero seventy-five *varas* of land that she had inherited from her parents. The couple appeared before Capitan de Milicias, Don Manuel García de la Mora in Rio Arriba on August 15, 1803.[11] On occasion a woman appeared in the local court on her own. In 1828 in the Jurisdiction of

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[9] Richard Griswold del Castillo, *The Treaty of Guadalupe Hidalgo: A Legacy of Conflict* (Norman: University of Oklahoma Press, 1990), 44. The original language of Article X stipulated that Mexicans who wished to become U.S. citizens would be "protected in the enjoyment of their liberty, their property, and the civil rights invested in them according to the Mexican laws." This article changed to the general statement that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property."

[10] Fray Angelico Chávez, *Archives of the Archdiocese of Santa Fe: 1678-1900* (Washington, D.C.: Academy of American Franciscan History, 1957), 26.

[11] Cristobal Montolla and María Manuela Martin to Julían Lucero, August 3, 1803, Rio Arriba County Records 1847-1857, NMSRCA, Box 1, Number 327. This box contained earlier records than the dates would indicate as Rio Arriba County did not exist until 1852.

San Juan de los Caballeros, Doña María Manuela Garcia appeared before Gregorio Lucero, *Alcalde Constitucional,* when she sold a piece of land to Don Matias Velarde she had inherited from her father Don Salvador Garcia. The land bordered the land of Doña Josefina Garcia, the property of Doña Juana Garcia, and some land that María Manuela Garcia already owned. Although Garcia is a common surname it is likely that this was family land linked by extended kinship.[12]

When the United States assumed administration of New Mexico it encountered a property system based not upon the common law concept of fee simple absolute in which one gained title to, and possessed exclusive ownership of a piece of land, but upon a configuration of personal relationships, usufructuary rights, and civil law that protected women's property holdings. The voracious appetite for land by newcomers to northern New Mexico and southern Colorado, informed by the historical precedent of American expansion, eventually led to a massive loss of land suffered by the inhabitants of the region. Differing attitudes towards the acquisition of land and its intrinsic value, and the institution of new legal procedures emphasized the transfer of property. The acquisition of land by European Americans essentially underscored the transfer to U.S. sovereignty of former Mexican territory. The record of property transactions reveals the emergent power of one group and the loss of a fundamental element of Hispanic existence since land was valued for what it could provide for one's very survival. Therefore property losses marked the continued transfer of property from European Americans to Hispanos for besides the loss of private holdings families also lost communal grazing and water rights on land that the United States deemed to be part of the public domain. New

[12] Dona María Manuela Garcia to Don Matias Velarde, December 27, 1828, Embudo, Jurisdiction of San Juan de los Caballeros, NMSRCA, File 248. (Rio Arriba County did not exist until 1852.)

Mexico, settled longer than Colorado and inhabited by a Hispanic majority population, suffered the greatest loss of property. Historian Deena González estimated that ten years after the Treaty of Guadalupe Hidalgo ended the Mexican-American War in 1848, 90 percent of cash-poor New Mexicans had lost their land due in part to tax bills, lawyer's fees (often paid in land), and blatant manipulation.[13] It is unclear how prepared Hispanos were for the rapidity with which they lost their land.

Certainly Hispanos had gained and lost property before the U.S. takeover. For example, on December 14, 1837, María Candelaria Valdez and Antonio María Trujillo appeared personally before *Alcalde Constitucional* Tomas de Herrera in Rio Arriba, County concerning a *partido* contract that they had drawn up with Don Juan Estéban Pino. Under the *partido* system, a herder rented a number of ewes from a sheep dealer for a term of three to five years. He or she paid "rent" in the form of so many pounds of wool and a prescribed number of lambs.[14] With the understanding that they would receive a portion of the offspring in return for 974 sheep received from Don Juan Estéban Pino, the couple promised to return the said sheep and 195 lambs. Not only did they fail to fulfill the contract, they also lost the promissory note that recorded the contract, their four room house, corral, and the 204 *varas* of land that bordered the property of Doña Juana Garcia and María Encarnacion Romero, land they had used as security against the contract.[15]

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[13] Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 61.

[14] Under the *partido* system, a herder rented a number of ewes from a sheep dealer for a term of three to five years. He paid "rent" in the form of so many pounds of wool and a prescribed number of lambs. See William deBuys, *Enchantment and Exploitation: The Life and Hard Times of a New Mexico Mountain Range* (Albuquerque: University of New Mexico Press, 1985), 204-205.

[15] María Candelaria Valdez and Antonio María Trujillo, December 14, 1837, Rio Arriba County, NMSRCA, County Records, 1847-1857, Box 1, Unnumbered. (Earlier dated cases were also included in this box.)

In his study of Texas, Armando Alonzo described New Mexico as unique in its pattern of land tenure. Besides the number of community grants, the length of occupation and the number of land grants (about one thousand during Spanish and Mexican rule) distinguished the territory from Arizona, California, and Texas. Moreover, land changed hands when it was re-granted following Indian attacks that killed the original grantees and also when the Spanish and Mexican regimes recognized "the property rights of the preexisting Pueblo communities."[16] Because New Mexico's Hispanic population remained in the majority until the twentieth century, unlike Arizona, California, Colorado, and Texas, the territory retained its cultural heritage of property holding longer than in other areas of American annexation.[17]

The U.S. Congress established the Office of Surveyor General in 1854 to sort out disputed land claims, but the Civil War intervened before the work could be completed. The former Mexican citizens were forced to prove their land claims under a complex process that required genuine documentary evidence of title and possession. The problem of determining land titles, based on Spanish and Mexican land grants proved to be extremely complicated owing to the number and variety of types of grants, since communal and individual grants existed in addition to those made to the Pueblos. Moreover, land grants had been variously awarded by the King of Spain, by the Republic of Mexico after 1821, and by the provincial governors. Fraud, absence of adequate proof of title, and the inability of many New Mexicans to pay lawyers' fees, meant that the

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[16] Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas: 1734:1900* (Albuquerque: University of New Mexico Press, 1998), 260. This study also refers to the holding of land grants in Texas by Hispanic women. See also José de Onís, *The Hispanic Contribution to the State of Colorado* (Boulder: Westview Press, 1975), who noted that New Mexican governors issued approximately 210 Mexican land grants.

[17] Richard Griswold del Castillo, and Arnoldo de León, *North to Aztlán: A History of Mexican Americans in the United States* (New York: Twayne Publishers, 1997), 25.

majority of land grant claims were rejected. Marta Weigle noted that some New Mexicans who were afraid of losing their land paid their taxes on it by giving some to bondholding companies.[18]

Sections Five and Six of the Register of Lands in the 1846 Laws for the Government of the Territory of New Mexico set out the terms by which persons could claim lands received under a Spanish or Mexican land grant. The law required the delivery of a notice in writing, stating the nature of the claim, and also delivery of written evidence (grant, order of survey, deed, conveyance) of the claim. In the absence of an official document, one could take written evidence of the nature and extent of the claim, the length of time that the land had been cultivated and inhabited, and an explanation of the existence and subsequent loss of any record that might have proved claim to the land. However, Section Ten of the Register of Lands closed these options to married women for it stated: "Nothing contained in the fifth and sixth articles of this law shall be taken to include infants, married women, persons of unsound mind, nor those without the government of the United States, while such disabilities continue."[19]

The United States Court of Private Land Claims, formed in 1891 to adjudicate the validity of Mexican land grants also referred to the disabilities of married women. Section Twelve of the Act Creating the Court of Private Land Claims stated that if it came to the knowledge of the court that minors, married women, or persons *non compos mentis* were interested in a land claim, the law required the court to appoint a guardian *ad litem* (a party to act in a lawsuit on behalf of another) for such persons under disability

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[18] Marta Weigle, ed., *Hispanic Villages of Northern New Mexico* (Santa Fe: The Lightning Tree-Jene Lyon, 1975), 83.

[19] *Laws for the Government of the Territory of New Mexico; September 22, 1846* , The Avalon Project: Documents in Law, History and Diplomacy, http://avalon.law.yale,edu/19th_century/kearney.asp. Accessed August 23, 2010.

and required a petition to be filed in their behalf. All imperfect claims had to be filed within two years from the date of the act (no later than March 3, 1893) or they would be forever barred from pursuing those claims except once more in the cases of minors, married women, or persons *non compos mentis*. Counsel was to appointed to protect their rights.[20] Specifically Section Twelve of the Act Creating the Court of Private Land Claims asserted that all claims authorized to be prosecuted must have a petition submitted within two years of the act's taking effect or be forever abandoned and barred:

> Provided:
>
> That in any case where it shall come to the knowledge of the court that minors, married women, or persons non compos mentis are interested in any land claim or matter brought before the court it shall be its duty to appoint a guardian ad litem for such persons under disability and require a petition to be filed in their behalf, as in other cases, and if necessary to appoint counsel for the protection of their rights. The Court of Private Land Claims also covered lots under town grants that originated from Spanish and Mexican grants.[21]

Richard Bradfute's work on land claims includes an Appendix of List of Cases Before the Court of Private Land Claims from the Annual Report of the Attorney General in the New Mexico District, 1904. The list includes the names of eighteen Hispanic women who pursued land claims in New Mexico and one in the Arizona district. In addition Bradfute listed one Euro-American woman who argued for a land claim and one who sought a money judgment for land where the title had been assigned to another individual.[22]

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[20] See Bradfute, *The Court of Private Land Claims*, 100-109, 240. See also Dana V. Kaplan, "Women of the West, 161, who concluded that "land grant adjudication, while inconsistent with the promises of the Treaty of Guadalupe Hidalgo, and unjust to Mexicans, was not used to target women property owners in the Southwest."
[21] Ibid., 240.
[22] Ibid.

Many New Mexico documents that recorded property transfers contained the names of European American men engaged in the acquisition of real estate. Samuel B. Axtell, John S. Watts, Theodore Wheaton, Thomas Catron, Merrill Ashurst, and Stephen B. Elkins all acted as judges, lawyers, advisors, clerks, deputies, and "next friends," persons who acted without formal appointment for the benefit of an infant, a person of unsound mind not judicially declared incompetent, or someone under some disability that included being a married woman, for both Hispanas and European American women.[23] Thomas Catron and Stephen B. Elkins in particular reigned at the centre of the infamous Santa Fe Ring, a non-partisan group of judges, lawyers, politicians, and businessmen that controlled New Mexico territorial affairs from the late 1860s to the mid-1880s. Members of the Ring supported political candidates who could best advance their interests in exploiting the potential of New Mexico Territory.[24] The Hispanic elite also lent its political support to the Ring in return for the promotion of the elite's land claims.[25]

By 1895 Thomas Catron, who controlled 240,000 acres of land, had an interest in at least thirty-four grants.[26] In 1871 he acted as a "next friend" for Guillermina Sledd against her husband, Joshua Sledd. She objected to a deed of trust created by her husband that in essence kept the couple's property holdings within the family. Guillermina Sledd, Marcelino Gallegos, another plaintiff, and Thomas Catron all protested the fact that she was not absolutely free to dispose of the property as she wished. The legal suit did not

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[23] Judge John S. Watts was handling forty-three land title cases in the 1850s. Howard Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 140.
[24] Ibid., 150.
[25] Lamar, 144.
[26] Kathleen P. Chamberlain, "Billy the Kid, Susan McSween, Thomas Catron, and the Modernization of New Mexico, 1865-1912" in Richard W. Etulain, ed., *New Mexico Lives: Profiles and Historical Stories* (Albuquerque: University of New Mexico Press, 2002), 199. Mexico's Colonization Law of 1824 had limited the size of individual grants to about 97,000 acres, a guideline used by the U.S. Congress. However lawyers managed to stretch the limits.

state precisely why Catron was so anxious that Sledd be free to sell her property but we might assume that his primary goal was not to protect Mrs. Sledd.[27]

A case in point that reflected the names of European men who were acquiring property at this point in time as well as the nature and frequency of property transfers can be found in the real estate activities of Nicolasa Baca. Although the documents stem from the jurisdiction of Santa Fe, they contain the names of men who formed part of the Santa Fe Ring and are useful as an example of the transfer of land from Hispanic to European American possession. In 1878 María Tomasa Romero sold Nicolasa Baca a portion of land for $26 pesos [sic] "dinero de los Estado Unidos de América," the same piece of land she had purchased from Jesús María Deherrera and his wife, María Prudencia Mestas in 1873.[28] The land sold with all the rights of *dote, dotes o derechos de dote* (dowry rights); María Tomasa Romero made her mark on the document.[29] Almost ten years later Nicolasa Baca sold the piece of land for $100 to Samuel B. Axtell, a prominent member of the Santa Fe Ring; one boundary of the land was near property that he, Axtell, already owned.[30] Another boundary bordered the land of Frederick Parrish who was married to Brigida Silva de Parrish. Witnesses for the sale included the notary public, Edwin B. Seward, and Candelaria María de Gallegos. The deed referred to Nicolasa Baca as unmarried; thus, the section of the document that referenced a woman as not being under the influence of her spouse for the sale was crossed out.[31] As with

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[27] Marcelino Gallegos and Guillermina Sledd, Bill to Change a Deed of Trust Made by Joshua Sledd, November 1871, NMSRCA, Doña Ana County, Civil Case Files 1851-1909 and 1886-1909, Box 30, Mixed Numbers.
[28] "Dinero de los Estados Unidos de América" translates as United States of America money.
[29] María Tomasa Romero to Nicolasa Baca, May 9, 1878, NMSRCA, Avery Papers, Folder Number 19.
[30] Samuel B. Axtell served as Governor of New Mexico from 1875-1878 and was appointed as Chief Justice of New Mexico in 1882.
[31] Nicolasa Baca to S.B. Axtell, Quit-Claim Deed, December 26, 1887, NMSRCA, Avery Papers, Folder Number 38.

other legal instruments in this research, these documents reflect the intercultural contacts between Hispanics and European Americans. Hispanas continued to buy and sell land at the same time as European American men and women were acquiring real estate, Hispanas and European Americans were intermarrying, and witnesses to a transaction might include both Hispanas and European American males.

The next year Samuel Axtell acquired another parcel of land from Meregilda López de Hunter for $200, again bordered by some land that he owned as was another boundary line. She, too, was acting on her own and thus she did not have to acknowledge that she was not under the compulsion of her husband in the sale of property.[32] Here, too, a closer look at a straightforward real estate transaction reveals how fluid, transitory, and elusive the nature of relationships in the nineteenth-century Southwest could be. In 1870 María M. López, whose name was listed first in the household of the census of that year (that generally indicated who was the head of the household), lived with James Hunter and four children--Lucy López, age twelve, Francisco López age thirteen, Santiago López age six, and Augustus López age three years. James Hunter worked as a merchant and claimed assets of $20,000. María M. López owned real estate valued at $800 and a personal estate of $400. The names of two of the children were anglicized.[33] However by 1880 Lucy had become Luz and Augustus, Agustín, for the 1880 census listed Meregilda López (but not James Hunter) as married and living with five children, all of whom had

[32] Meregilda López de Hunter to Samuel B. Axtell, December 13, 1888, NMSRCA, Avery Papers, Folder Number 42.

[33] María M. López, 1870 census, Santa Fe, Santa Fe, New Mexico Territory, roll M593_896, page 366B, image 116, *Ancestry.ca* (March 19, 2014); It is difficult to distinguish the initial after the first name María. The transliteration puts an H but the letter in the manuscript form of the census seems to be an M and this would correlate with the rest of the information contained in the census entry.

Spanish names.[34] In 1910, at age seventy-one, Maryilda Hunter (Merjilda Hunter), again listed as head of the household in the census, made her home with her son Francisco López, Luz Hunter age seven, Ramoncita López age five, and Virginia López, age seventeen.[35] The inclusion of four different names or spellings for the same woman is deliberate in order to show the difficulty in tracing an individual through time. Although Meregilda López's marital status was not clear in the available documents, what is certain is that European Americans were buying land from Hispanic women who possessed the right to sell parcels of land. The reasons for the sales are not stated, but some vendors may have been unable to pay property taxes or other fees and thus sold their land through necessity.

The activities of the Santa Fe Ring also extended into southern Colorado as evidenced from the local press. In May, 1874 the *Trinidad Enterprise* declared that "Southern Colorado wants no Ring candidates or land grabbers as Delegate to Congress" and in September of the same year it advised people to vote anti-Ring for the "land grabbers were still at work."[36]

However, Colorado had attracted land speculators well before the operations of the Santa Fe Ring. After the territory's first governor, William Gilpin left office in 1862 he bought all but one-sixth of the Sangre de Cristo grant by early 1863 and in an attempt to develop the property brought a group of potential investors to the San Luis Valley:

> They came to Culebra (present day San Luis) [sic] and the inevitable fandango. Gilpin in red sash and frock coat led the grand march; the Mexican girls

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[34] Meregilda López, 1880 census, Santa Fe, Santa Fe, New Mexico, roll 804, page 64B, image 0131, *Ancestry.ca* (March 19, 2014);
[35] Merejilda Hunter, 1910 census, Santa Fe Ward 3, Santa Fe, New Mexico, roll T624_918, page 7A, no image number.
[36] *Trinidad Enterprise*, May 21, 1874 and September 5, 1874.

> in bright curtain calico, rolled and lighted cigarettes when the gentlemen bought them drinks. The press reported Gilpin and friends finally wrapping themselves in blankets, and falling asleep on the dirt floor at daylight. The town required three days to return to normal.[37]

As noted in the introduction to this chapter Hispanic land conveyance depended to a great extent upon personal and familial relationships. Minette Church noted: "Hispanic landholding boundaries in Mexico and New Mexico had long been negotiated between members of community and kin, as much a matter of mutual agreement as of documentary deeds . . . ."[38] María Montoya described New Mexico as "criss-crossed with a fine network of property understandings" when the Americans arrived in 1846.[39] Conveyance of property tended to occur within families related by birth, marriage, or *compadrazgo* (godparentship) as "village mores militated against selling land to an outsider and the buyer and seller would be ostracized."[40]

The sequence of property transactions of the Marquez family in Conejos County is representative of how closely held real estate might be. The January 1885 probate of the estate of Antonio Abad Marquez contained the standard division of one half of his property to his widow, María Cecelia Marquez, and the other half to his two daughters

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[37] Thomas L. Karnes, *William Gilpin: Western Nationalist* (Austin: University of Texas Press, 1970), 320.
[38] Minette C. Church, "The Grant and the Grid: Homestead Landscapes in the Late Nineteenth-Century Borderlands of Southern Colorado," *Journal of Social Archaeology* 2:2 (June 2002): 233. See also Louis H. Warner, "*Conveyance of Property, the Spanish and Mexican Way*," *New Mexico Historical Review* 6:4 (October 1931): 352. "Because the legal paper mandated for use in real estate conveyances among other transactions was so expensive during the Spanish and Mexican eras, people would merely endorse over a deed to the next purchaser, or if a family member was involved, there would be no endorsement at all." General Kearny abolished the use of legal paper in 1846.
[39] Maria E. Montoya, *Translating Property: The Maxwell Grant and the Conflict Over Land in the American West, 1840-1900* (Berkley: University of California Press, 2002), 12.
[40] Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), 16. See also Armando C. Alonzo, *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* (Albuquerque: University of New Mexico Press, 1998), 64. Alonzo also asserted that "property changes ownership but remains in the family."64. Also see Sánchez, *Between Two Rivers: The Atrisco Land Grant in Albuquerque History, 1692-1968.*

and two sons. One of the sons, Antonio José Marquez married María Rita Villalpando who on August 17, 1901 granted a trust deed (a conveyance of property) to William A. Braiden, a native of Ohio and prominent cattleman, who owned land in Conejos County.[41] In fact Braiden owned a great deal of land. In an interview in the 1944 edition of *The Colorado Magazine* Braiden revealed that he had accumulated 20,000 acres of deeded land and leased a further 15,000 acres.[42] Only once in the interview did Braiden mention the existence of the "Spanish" in the San Luis Valley: "I had many business transactions with the Spanish element in the Valley, but rarely any trouble. I knew and liked all the early Spanish settlers. They used to say among themselves:" 'Braiden, he do what he say, and he make you do what *you* say'." [sic].[43] In 1902 the *Alamosa Journal* reported that María Rita's brother-in-law, Diego Marquez had received a patent for some land from the U.S. government and Braiden had granted a trust deed to María Rita Vialpando [sic] subsequent to which she then enacted a warranty deed to Diego Marquez. It is unclear exactly what the series of transactions meant without further research but it is evident that the land remained in the family.[44]

A similar situation occurred with the estate of Juan de Jesus Gomez who died in 1887, leaving his wife of fifty-four years, María Guadalupe Martínez, and two surviving children of the eight born to the couple, María Juliana Gomez and Fermin de Jesus Gomez. Two years later mother and daughter sold the son 170 acres of land for $275 so the land passed from the women to the surviving male. The next month it was water,

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[41] Virginia McConnell Simmons, *The San Luis Valley: Land of the Six-Armed Cross* (Niwot: University Press of Colorado, 1999), 225.
[42] Irma S. Harvey, "Early Days in the San Luis Valley," *The Colorado Magazine* 21:2 (March 1944): 50.
[43] Ibid., 51.
[44] Estate of Antonio Abad Marquez, January, 1885, Antonito, Colorado, Conejos County, County Court Records, Estates, p. 165, and *Alamosa Journal*, November 2, 1902.

more specifically a ditch, not land, that left the family's possession. Fermin de Jesus Gomez and his sister, María Juliana Sanchez (her married name), granted John S. Braiden a warranty deed for a ditch that used water from the Alamosa River for a specified number of cubic feet of water per second, the appropriation of which dated from May 1, 1869.[45] Thus the heirs of Juan de Jesus Gomez relinquished an historical water right for the sum of $300. The impetus behind the sale of a valuable commodity is not revealed in the documentation.[46] The result of these transactions was the transfer of land to the male heir and of water to an Anglo male.

Seventeen land conveyances that involved Hispanas in Rio Arriba County between 1800 and 1858 illustrated the close-knit and reciprocal nature of property transactions within the Hispanic community before European Americans began to acquire land. Women bought and sold land, often inherited from parents and grandparents; exchanged property; received the return of dower or community property from spouses; and received houses, trees, and real estate in return for the care and maintenance of aged family members. In four transactions the seller sold land bordered by land that she already owned and in five situations Hispanas sold property that was bordered by land owned by another woman.[47] Thus one of the changes created by the U.S. take-over would have been the sale (forced or otherwise) of land to outsiders and foreigners.

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[45] William A. Braiden had a brother, John Charles Braiden. It is unclear at this point as to whether John S. Braiden is the same person.

[46] Estate of Juan de Jesus Gomez, February 21, 1887, Antonito, Colorado, Conejos County Courthouse, Record of Wills, page 29; María Guadalupe Martinez and María Juliana Gomez to Fermín de Jesus Gomez, July, 1889, Alamosa County Office, Conejos County, Warranty Deed Record D-H, Volume 5, 457; Fermín Gomez and María Juliana Sanchez to John S. Braiden, September 20, 1901, Alamosa County Office, Conejos County, Warranty Deed Record, Volume 45, 4.

[47] Cases compiled from Rio Arriba County Records, NMSRCA, County Clerk Records, Box 1, Folder 1c, Series 1; Deed Record Book 1852-1884, Box 1, Folder 1; Probate Court Records, 1847-1957, Box 4, Number 374; County Records, 1847-1857, Box 1.

Besides the sale of land to outsiders another difference between the Hispano population and European American settlers concerned notions over the measurement, use, and ownership of land that led to confusion over landholding in the San Luis Valley in the latter part of the nineteenth century. Hispanic families worked to wrest a subsistence living from the combination of an irrigated agricultural plot, access to communal grazing, and adequate wood and water, whereas Anglos saw land as a commodity to be bought and sold for profit. As John-Michael Rivera noted "Mexicans' inability to work the land into a viable capitalist resource fueled the rhetoric of filibusterers and was used to argue that Mexicans were unfit for democracy. Mexicans' relationship to the land became central to how they should be viewed as political subjects."[48] Thus the potential for conflict was inherent in such opposing attitudes toward the land and its use. The same dismissive attitude towards the absence of Mexican industry also occurred in New Mexico. George W. Julian, appointed Surveyor-General of the Territory of New Mexico on July 22, 1885, with the task of sorting out corruption in land claims, commented: "The influx of an intelligent and enterprising population will insure the development of the vast mineral wealth of the Territory, as well as the settlement of her lands."[49]

Under Spanish and Mexican law, land was measured by "metes and bounds" that identified boundaries by natural objects and configurations whereas Anglos employed the "plat" or grid system to measure land. Although the Hispanic families that first settled in the San Luis Valley divided their landholdings according to traditional patterns, Anglos who arrived in the 1860s after the Civil War found the non-Spanish grant sections of the

[48] John-Michael Rivera, *The Emergence of Mexican America: Recovering Stories of Mexican Peoplehood in U.S. Culture* (New York: New York University Press, 2006), 179.
[49] Julian, "Land Stealing in New Mexico," 31.

Valley had been surveyed under the U.S. Public Land Survey or grid system. It divided land into rectangular Townships that ran north and south and Ranges that ran east to west but ignored the natural contours of mountains, plains, and river valleys as well as access to water for irrigation. The township system that divided land into sections, townships, and counties originated from the U.S. Land Ordinance Act of 1785 and provided settlers with standardized quarter sections of 160 acres ostensibly suitable for cultivation.

By custom, Hispanics took possession of their land by walking over it, pulling up a few weeds, scattering a handful of dirt around, or by piling up some stones. For example, when Louis Cohn died in Costilla County on August 21, 1899, he owned 2060 acres of mountain land which were thus advertised for sale in the Hooper Press: "Beginning at a rock with a niche in the top in the front of Baker and Hamilton's house at or near the sawmill and five links from the main wall, up the north branch of the Culebra. Then two miles, seventy chains north 150 chains to a pile of rock with a cross cut in the top, then to a pile of rocks."[50]

Some Anglos derided the practice of using natural objects to measure boundaries. As one Colorado newspaper article noted "He gave us an amusing description of the manner in which the boundary marks are sometimes placed by a Mexican riding in any direction until his horse gives out when he piles up a few stones and the new land grant is complete."[51] The same writer opined that New Mexico was twenty-five years behind Colorado due to the system of land grants which had kept out settlers, as private grantees bought and sold huge tracts of land.[52] An article that appeared in the July, 1887 issue of the *North American Review* evoked a similar reaction to the metes and bounds approach

[50] Estate of Louis Cohn, August 21 1899, Colorado State Archives, Box 68736, File PR5.
[51] *Colorado Chieftain*, December 22, 1870.
[52] Ibid.

to land measurement: "A rude sketch-map was drawn up by some uneducated herdsman giving a general outline of the tract, with some of the prominent natural objects indicating its boundaries. These boundaries were necessarily vague and indefinite, while the natural objects which marked them often became obliterated by time."[53] Perhaps the boundaries were vague, but this Eurocentric view conveniently ignored the fact that those who had occupied the land for generations remembered where one tract ended and the next one began.

John Ayers, who had campaigned in New Mexico during the Mexican American War, wrote that there had been no proper survey of property after the Treaty of Guadalupe Hidalgo. "The *alcaldes* were generally ignorant, and they had given people pieces of paper on which they stated that such and such a person being good and poor and wanting a piece of land to support his wife and family, the *alcalde* had given him a piece of land, commencing at a certain hill and running down to a certain ravine."[54] Americans would then buy the bits of paper from the heirs and subsequently change the figures of the boundaries.

Hispanas acquired land from parents and grandparents as will be seen more extensively in Chapter Seven, a tradition that is reflected in pre-territorial inheritance records where one can see land ownership by women both as they bequeathed land and in the description of holdings that were bordered by the land holdings of other women. Valentin Martín appeared before Don Esteban García de Noriega, *alcalde mayor* and *Capitán de Guerra* of the Villanueva de Santa Cruz de la Cañada in 1785, to act in the

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[53] George W. Julian, "Land Stealing in New Mexico," *North American Review* 145:368 (July 1887): 19. See also Church, "The Grant and the Grid": 220-244.
[54] John Ayers, "A Soldier's Experience in New Mexico." *New Mexico Historical Review* 24:4 (October 1949): 265.

sale of 250 *varas* (a *vara* equaled approximately 2.8 feet) of land owned by his deceased mother, Rosa Martín. The *linderos* or borders of the property touched the land of Manuela Gallegos on its northern side and the property of the aforementioned Rosa Martín bordered on the southern side. The document reflected several interesting elements of life in eighteenth-century northern New Mexico. One is the formality of the language of the written instrument itself and the required appearance of the seller before the local official. Another is the evidence of the separate property-holding capability of a Hispana that is clearly delineated in the document. Rosa Martin owned more property in addition to the piece being sold to Francisco Isidro Gallegos. Manuela Gallegos also owned property in her own name and it may well have been that either the Gallegos family sought to enlarge its landholdings or that the families were related.[55]

The tradition of identifying property borders by people's names continued into the twentieth century and frequently those names belonged to women. In 1900 when Albina Montoya who lived in Truchas, in Rio Arriba County, received some cultivated land from her deceased mother, María Lorenza Clara Romero, in "el mismo rancho que era de mi finada madre" (the same ranch that was my mother's), it was measured from the land that belonged to her sister Macedonia Montoya. Albina Montoya also inherited a small house on the land, a room in a house situated on the plaza as well as the household furniture and other special bequests. Again more is revealed about the life of a Hispana who died at the end of the nineteenth century in the legal record than a straightforward distribution of resources. As well, it is apparent that Rio Arriba County retained its Hispanic character as the entire document is in Spanish although U.S. administration had been in place for

[55] Valentin Martin to Francisco Isidro Gallegos, 25 April, 1785, Rio Arriba County, NMSRCA, Deed Record Book, 1847-1857, Box 1, Number 395. This box contained some records dated earlier than 1847.

more than fifty years. Albina Montoya was seemingly illiterate as were many nineteenth-century Hispanas, for she made her mark instead of signing her name. Hispanos served as court officers: Honorable José Damian Duran as the probate judge Manuel García as the court clerk. Older terminology was still used since the document referred to Manuel García as the *escribano,* the very position the scarcity of which was lamented by judicial officials in early nineteenth-century New Mexico. The land itself was enmeshed in the family for Albina Montoya's brothers also received land nearby.[56]

Unfortunately Hispanas could lose land in other circumstances. Spanish law stipulated that women were liable for debts or obligations that concerned their own property, but under community law conjugal property was also liable for debts. When María Rosalia Trujillo of Rio Arriba sold some land and trees to Juan de la Cruz Borrego in 1854, six years after the American takeover, it was not for her own profit but to pay a debt incurred by her husband, José Ramón Martín, who had left New Mexico Territory for California four years before. He had inherited the property from his deceased mother but it had to be sold for unpaid debts.[57] The examples given illustrate how the women of Spain and Mexico had customarily controlled and conveyed their own property.

The most confusion originated in the concept of community property. After American annexation, lack of access to source material on the community system and "the tendency of the courts to attempt the interpretation and decision of community problems by the application of common law principles, has led to many glaringly

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[56] Estate of María Lorenza Clara Romero, 5 March 1900, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 4, Number 374. See also Leyva, "A Poor Widow Burdened With Children," 1997, and González, *Refusing the Favor,* 1999, for how widows and single women bequeathed land to kin and fictive kin.

[57] María Rosalia Trujillo to Juan de la Cruz Borrego, 25 October 1854, Rio Arriba County, NMSRA, Deed Record Book 1852-1884, Box 1, Folder 1, Number 242.

inaccurate and erroneous decisions in the field of community property law."[58] Under Spanish and Mexican law, the husband had an administrative duty only over community property; he did not control it in the common law sense (as in being the virtual owner) and could not apportion it to himself for his own use. DeFuniak described the differences between civil and common law regarding a wife's property ownership:

> The wife's rights of ownership must be gauged by the Spanish law of community and not by principles of English-derived common law relating to a wife's inchoate right of dower or similar principles. The situation in the Spanish law has been most properly translated into English legal terminology by most of the courts of our community property states as meaning a present and equal ownership during the the marriage between the spouses in the common property, with the power of administration of the common property placed in the husband's hands, that he is the managing partner of the partnership property or managing agent of the conjugal partnership. This, in effect, is what the Spanish law of community property amounts to in our terminology.[59]

While both spouses shared equally in the gains accrued in the community property, they also shared in any losses that were not caused by the fault of either spouse.[60]

Community property assumptions continued to guide many couples in all three counties after 1848. Under Hispanic law community property could not be recovered "if unforeseen circumstances had caused the community property to dwindle or if her spouse, albeit incompetent, was well intentioned."[61] When María Manuela Gallegos died intestate in 1870 her husband, Sixto Chavez, who petitioned to be the administrator of the estate, declared that after deducting the goods that belonged to his wife and the communal debts from the marriage, he had the right to partition the rest of the wealth. He

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[58] For a closely argued discussion concerning the confusion between community and common property see Donna C. Schuele, "Community Property Law and the Politics of Married Women's Rights in Nineteenth-Century California," *Western Legal History* 7:2 (Summer/Fall 1994): 245-281.
[59] DeFuniak, 254-255.
[60] Ibid., 58.
[61] Silvia Arrom, *The Women of Mexico City, 1790-1857* (Stanford: Stanford University Press, 1985), 68.

also noted that his wife's property had diminished in value as there had been no administrator to take care of it.[62] Fifteen years later in Rio Arriba County María Barbara Martinez's will voiced the same sentiment toward her husband, José Gabriel Valdez, when she divided her estate, leaving one half to the six living children of the twelve she had borne and one half to her husband. The will referred to various goods including those she had inherited from her parents as well as those for which they had worked together.[63]

In his will written in 1874 in Rio Arriba County Donaciano Martin acknowledged the right of his spouse to hold her own property. He also acknowledged his community property obligations and responsibilities when he noted that he had paid his wife, María Ginia Archuleta, in land for land of hers that he had sold. After any debts were paid, the remaining estate went to his wife to maintain their two children. Donaciano Martin also stipulated that if his wife remarried she would still receive the estate "with no impediment from anyone."[64] Similarly in the same county Jesus Roybal stated that when he married Petra Advincula Aragon she brought 400 pesos worth of animals from her parents. In an 1878 deed he acknowledged that he had used 200 pesos worth of the stock which he was now repaying by giving her 371 varas of land; the part he owned in two houses; one mule; one ass; some furniture in their house; part of the bridal furniture that was his, and a small orchard. Aware of his obligation Jesus Roybal declared "I owe and I pay with all my will."[65] And in 1891 María Paula de Herrera, wife of Juan Lorenzo de Herrera of Conejos County, acknowledged that the property and chattels noted in her will

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[62] Estate of María Manuela Gallegos, September 17, 1870, NMSRCA, Rio Arriba County, Civil Cases 5-298, 1849-1880, Box 7, unnumbered.
[63] Estate of María Barbara Martinez, March 18, 1874, Rio Arriba County, NMSRCA, Box 3, Number 219.
[64] Estate of Donaciano Martin, April 23, 1874, Rio Arriba County, NMSRCA, Box 3, Number 222.
[65] Jesus M. Roybal to María Petra Advincula Aragon, December 15, 1878, Rio Arriba County, NMSRCA, Deed Record Book, 1852-1884, Box 1, Folder 1, Number 426. For calculation of the worth of goods in a cash-poor society, see Warner, "Conveyance of Property, the Spanish and Mexican Way"; 334-359.

were "all the effect of our labor."[66] Although María Paula de Herrera who died of pneumonia at the age of fifty-six lived in a common law county, her will reflected a more traditional note in that she mentioned that the property in her estate had resulted from the hard work of both her and her husband.

Records indicate that European Americans were not the only people intent on amassing land. Hispanos, too, sought to enlarge their own holdings, either through purchase from their neighbours, through litigation, or by marriage. They quarreled over land ownership in lengthy complex legal suits that lasted for many years, suits that could erode the value of an estate and lead to its eventual sale. Some Hispanics used land laws to obtain private title to communal lands. Others executed mortgage deeds, some successfully and others less so, and still others used U.S. homesteading law to acquire land.[67]

The Homestead Act of 1862 required settlers to improve the land and to reside on it for seven months a year for five years. Eligible homesteaders were required to be over twenty-one years of age, (both men and women), single or the head of a household, a U.S. citizen, or an immigrant who had declared intent to become a citizen. Thus unmarried women (single, widowed, divorced, or head of the household) applied for land under basically the same conditions as men except that they could not be married.[68] Homestead Acts required the consent of the wife in the alienation of the family homestead. However, the form of land ownership exemplified by the settlement of 160

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[66] Estate of María Paula de Herrerra, February 12, 1891, Antonito, Colorado, Conejos County Courthouse, Record of wills, 40.
[67] For Mexican American women as homesteaders, see Katherine Benton-Cohen, "Common Purposes, Worlds Apart: Mexican-American, Mormon, and Midwestern Women Homesteaders in Cochise County, Arizona," *Western Historical Quarterly* 36:4 (Winter 2005): 429-452.
[68] See Robert V. Hine and John Mack Faragher, *The American West: A New Interpretative History* (New Haven: Yale University Press), 2000.

acres of homestead land differed sharply from that of Hispano culture where people survived through communal ownership, mixed farming, and small stock-raising enterprises. In the townships those persons who had been on any tract of land not exceeding more than 160 acres for more than twenty years, and those who could prove that their ancestors or grantors became citizens of the United States under the Treaty of Guadalupe Hidalgo and who had possessed 160 acres of land for twenty years could acquire their holding without fees, purchase money, or commissions.[69]

By the 1860s and 1870s both Hispanic and Anglo families homesteaded their quarter sections in the San Luis Valley and male names did not always dominate the property records. As single women, including widows and divorcees could claim homesteads, some Hispanas took advantage of this provision of U.S. law that permitted them to claim land in their own names just as single and widowed women did elsewhere.[70] Women had to be single when they filed for land but not when they made final proof. In 1884, in Conejos County, María Apolina Alivez paid $4.50 to the U.S. government, the balance of payment required by law for her entry of land, Application Number 827, containing one hundred and twenty acres.[71] Francisquita Chávez, widow of José Abrau Chávez, applied for and received Homestead Certificate number 390 for a claim, presumably entered by her husband that had been "established and duly

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[69] Bradfute, *The Court of Private Land Claims*, 1975, 25. "In townships already surveyed, those persons who, or their ancestors, grantors, or lawful successors in possession, became citizens of the United States by the Treaty of Guadalupe Hidalgo and had resided on the land twenty years before such survey, could get title to one hundred and sixty acres by applying to the register and receiver of the proper land district."

[70] For more on Mexican American women and homesteading see Benton-Cohen, "Common Purposes, Worlds Apart: Mexican-American, Mormon, and Midwestern Women Homesteaders in Cochise County, Arizona", : 428-452. Benton-Cohen argued that in many cases the acquisition of land through filing for homesteads by Mexican American women was based on a family strategy with the aim of increased landholding as was true for Anglo women.

[71] U.S. Receiver to María Apolina Alivez, 8 August , 1884, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 4, 25. The deed records volumes for Conejos and Costilla Counties are housed here.

consummated" in Del Norte, Colorado by 1891.[72] And in 1898, Escolástica Chacon de Trujillo, the administratrix of the estate of her husband, Genovevo Trujillo, appeared in probate court "in her own proper person" as a petitioner. On August 19, 1896 the couple received a Receiver's Receipt from the U.S. government for 160 acres of land. Escolástica Chacon de Trujillo asserted that she had lived with her husband as his lawful wife, "and by her works and efforts assisting him in conforming to the requirements of the law under which he received receipt" wished to have the homestead awarded to her. She also made her mark on the document.[73] However, European American women were already making use of the Homestead Act as evidenced by Emily V. Hartley, the widow of James Hartley, who in 1869 gave notice to prove her right to enter "property under the Homestead Act of May 20, 1862."[74] As further detail was not available in this case the context in which Mrs. Hartley proved her right is unclear.

Additional land might also be acquired under the Timber Culture Act of 1873 whereby a person could receive 160 acres in return for a promise to plant one-fourth of the acreage with trees. In 1875 the *Colorado Weekly Chieftain* reported that the Commissioner of the Land Office "decides that a single woman, duly qualified, who has made an entry under the Timber Culture Act, and subsequently marries, is not thereby debarred from acquiring a title to land."[75] On the other hand, as reported in the *Las Animas Leader*, a Land Office decision in 1874 decreed: "If a single woman marry after filing her declaratory statement, she abandons her right as a preemptor under the act of

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[72] U.S. Patent Office to Francisquita Chávez, 3 December , 1891, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 8, 401.
[73] Estate of Genovevo Trujillo, 28 March, 1898, Conejos County Courthouse, Probate Record C, p. 54. Escolastica is also referred to as María Scolastica Chacon in baptismal records.
[74] *Colorado Weekly Chieftain*, August 19, 1869.
[75] *Enterprise and Chronicle*, June 25, 1875.

1841, Jun. 6, 1872."[sic][76] Thus when the *Montezuma Journal* reported that a "Mary Hall of Cortez made final proof under the preemption law" she would have sworn to her status as an unmarried woman.[77] Had she married she would have had to have given up her right to buy the preempted land.

However, while some Hispanas and their spouses were acquiring land, others were losing it. A detailed examination of the estate of Miquela Garcia de Salazar reveals how the settlement of a will that took a number of years to execute eventually diminished its value. Although this estate might have been more properly included in Chapter Seven on wills it is discussed here to indicate how losses of property could occur under American administration and legal procedures when in pre-territorial New Mexico the estate might just have been conveyed in a more informal manner. Colorado inheritance law required those who were to serve as administrators and executors to enter into a bond "with good and sufficient security, to be approved by the County court, in a sum double the value of the personal estate." If it became necessary to sell the real estate of the deceased, additional bond was required.[78] When Miquela Garcia de Salazar, born in Abiquiú, Rio Arriba County, New Mexico in 1844, died on March 28, 1883 she appointed her father and her son-in-law as guardians of her minor children. She left property valued at $4488.70, a substantial estate for the period. She bequeathed three cows, one brood mare, and ten cows (five with calves) to her servant María Antonia Salazar who may have been a relative or a female who received the family name through adoption. Mrs. Elena Salazar de Valdez, the oldest of eight children born to Miquela

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[76] *Las Animas Leader*, June 12, 1874.
[77] *Montezuma Journal*, May 3, 1897.
[78] *Laws Passed at the Fifth Session of the General Assembly of Colorado* (Denver: Collier and Cleaveland Ltd., 1885), 390-391.

Garcia de Salazar and her deceased husband Epifanio Salazar, received as part of her proportional share as heir the remainder of the cattle on shares to Manuel Garcia and Donaciano Garcia. By April, 1884 some property had still not been returned to the estate, specifically some cattle, and Crescencio Valdez, Abelino Aguirres, and Meliton Martinez were cited to appear. In July, 1884, the three men wanted to withdraw from the said contract and agreed to return what belonged to the estate. At this time the estate had $914.95 owed to it. However in November, 1884, the parties who had stock on shares belonging to the estate could not give the necessary bonds to serve the executors and heirs of the estate; a sale was then in the hands of the executors who were required to pay more for their bonds in the amount of $6600.[79]

The next month the executor, Crescencio Valdez indicated that he had been unable to sell any of the personal property belonging to the estate and that he wanted more time. In May, 1886, matters of the estate came to be heard upon the application of J.F. Chacon by his attorneys Charles Holbrook and C.A. Johnson; personal property was to be sold at private sale. In December of that year Abram Lobato, one of the bondsmen of the executors, asked to be relieved of the bond. It was not until July 1890 that the estate finally closed when Elena Valdez, José María Salazar, and Salvador Salazar and three minor heirs divided equally their inheritance of seventeen acres in the town of Guadalajara as well as the buildings and improvements. The amount of $2870.65 was distributed after the payment of $1610 against the estate. As a footnote, Elena Valdez died six years later, little time in which to enjoy a bequest, however small.[80]

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[79] Estate of Miquela (Miguela) María Garcia de Salazar, November 1884, Antonito, Colorado, Conejos County, Conejos County Record of Wills, 155.
[80] Estate of Miquela (Miguela) María Garcia de Salazar, February 28, 1883, Antonito, Colorado, Conejos County, Conejos County Record of Wills, 13.

The legal precepts and language of Anglo-American law soon permeated many aspects of court procedure. When Antonio María Vigil and his wife María Manuela Chaves y Vigil executed a mortgage deed in Conejos County with Gerard Austin for $100.00 in 1886, she was "examined separate and apart and out of the hearing of her husband . . . she acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands . . . without compulsion of her husband and that she does not wish to retract the same."[81] The intrusion of the vocabulary and procedure of the common law is also evident in the wills and documents found in the legal record. Ignacita Salazar (who appears again in Chapter Seven) died intestate in Conejos County on May 13, 1896, and left no personal property but she did have an undivided one-quarter interest in a section of land that amounted to 152 acres. In 1906, ten years after her death, when José García, Beatrice García, Emilio García, and Juan Salazar brought an action against the Manassa Land and Irrigation Company for damages to the decedent's land, Juan Salazar acted as the "next friend" for his son Ignacio Salazar, a minor. Juan and Ignacio Salazar, the sole surviving heirs of Ignacita Salazar and joint owners of the above described property, eventually agreed to a trade of the old land for some land undamaged by the river.[82]

But more than language reflected the presence of Anglos in the San Luis Valley. By 1880, the number of warranty deeds and quit claims for land found in the legal records had increased and very often it was Hispanic grantors of deeds to Anglo grantees.

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[81] Gerard Austin and Antonio María Vigil and María Manuela Chaves y Vigil, 7 April , 1886, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 4, 362.

[82] Estate of Ignacita Salazar, May 13 1896, Antonito, Colorado, Conejos County Probate Court, Box 68907. *General Laws, Resolutions, Memorials, and Private Acts passed at the First Session of the Legislative Assembly of the Territory of Colorado* (Denver: Thos. Gibson, Colorado Republican and Herald Office, 1861), 182. Suits in chancery could be commenced and prosecuted by infants, either by guardians or next friend. Chancery or equity courts dealt with cases not provided for by the law.

Early in 1883, in Conejos, José Ignacio Martínez and his wife María Antonia Quintana sold their 160 acres to R.K. Brown, the District Clerk, for $400.00. The underlining of María Antonia Quintana's name may have indicated that Anglos remained uncertain about the fact that customarily Hispanic women retained their maiden names after marriage.[83] Later the same year, George W. Bardsley bought a warranty deed for $1000 from Claudio Martínez and María Nestora Martínez for the sale of 160 acres, "more or less." [84] In 1885, Juan C. Martínez and his wife, María Matiana Martínez, sold 160 acres to Henrique Aguilar for $300 dollars, but by 1888 he had sold it to Samuel H. Ball for $600 dollars.[85] Entries such as these occurred regularly in the deed records; only the names and the amounts changed.

Still, it must not be assumed that the only land sales that occurred existed between Anglo purchasers and Hispanic vendors. The Hispanos of Conejos and Costilla counties continued to convey land among themselves, sometimes between males and females and sometimes between females; some women acted on their own and others in concert with their husbands. Nor did all real estate transactions take place in separate Hispanic and European American communities. In 1899 Juanita Baca bought a lot from Mrs. Elizabeth J. Ottaway for $135; when she died in 1909 an inventory of Juanita Baca's estate listed her ownership of fractions of three lots in Alamosa.[86] It is revealing but not unusual that the European American woman's name is preceded by the honorific Mrs. (whether

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[83] José Ignacio Martínez and María Antonia Quintana to R.K. Brown, 6 February, 1883, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume F, 244.
[84] Claudio Martinez and María Nestora Martínez to George W. Bardsley, 12 October, 1883, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume F, 285.
[85] Juan C. Martínez and María Matiana Martínez to Henrique Aguilar, 15 January, 1885, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 5, 262.
[86] Mrs. Elizabeth J. Ottaway to Juanita Baca, 19 September, 1899, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 44, 66.

married, widowed, or divorced in not known) whereas the marital status of the Hispana is not accorded any such respect. This also happened frequently in the newspapers of the time.

Hispanas possessed clearly-defined water rights in the many *acequias* that irrigated the fields of the San Luis Valley. A list compiled in 1905 of those who had water rights in the ditches included many women's names. Fifty-eight ditches were listed. The names of twenty-three Hispanas appeared on the records of nine ditches surveyed, including one Hispanic couple. Some women had rights in more than one ditch. For example, Acequia Chiquita Ditch, Number 25, listed Emelia Padilla, Petra Maes, Donaciana A. Martínez, Anastacia de Herrera, Petra Montano, Hermanina Jaramillo, and Placida de Gallegos as among those who could draw water. Interestingly, the Clarita Vigil Ditch Number Thirty-Six was owned outright by the woman of the same name.[87]

In an arid region like the San Luis Valley water rights frequently became the subject of claims, deeds, and court cases. Irrigation occurred largely by ditches that ran into fields fed by the *Acequia Madre* or mother ditch, a continuation of the Spanish irrigation system.[88] Water rights provided to families were strictly allocated and enforced. For example, a quit claim executed between María Elijia de Herrera de Lucero and James H. DePriest was settled for one dollar and other good and valuable considerations. It stated: "This deed is made to correct the error in the deed made by María Elijia de Herrera de Lucero to María de la Cruz de Herrerra de Martínez subsequently deeded to

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[87] Ownership of Ditches, 14 December , 1905, Costilla County Courthouse, District Court Record, Volume 5, p. 328. Fifty-eight ditches are listed with ownership by individuals and companies. The examples included in the thesis represent only a small portion of the total of women's names who owned ditches. Time constraints prevented the investigation of all fifty-eight ditches.

[88] See William DeBuys, *River of Traps: A Village Life* (Albuquerque: University of New Mexico Press, 1990).

James H. DePriest wherein the water right was deeded from the J.D. Martínez ditch number 38 rather than from the Martínez ditch number 47.[89] This land was then deeded by warranty deed to James H. DePriest by María de la Cruz de Herrera de Martínez for $1000. The deed of trust granted by Florentino Gallegos and his wife Candelaria Olgin de Gallegos to Charles Brickenstein in 1892 for 120 acres in Conejos County at a price of $300 stipulated that the land came with water rights and privileges.[90] Similarly, Manuelita de Madril sold forty acres "with water rights in Los Sauces Irrigation Ditch Number 30" to Juan de Jesús Aragon in 1902 for $50.[91]

One could also obtain a warranty deed for water rights alone. In 1897, Marcelino Vigil sold forty acres with all interest in the Llano Ditch to Elena S. Ortiz in Conejos.[92] In 1902 J. Nestor Ortiz granted a warranty deed to Eliza C. Ortiz for the El Llano Ditch right.[93] The women of the Ortiz family were active property owners; the *Alamosa Journal* recorded that Elena S. Ortiz gave a warranty deed to Eliza C. Ortiz for a tract of property in 1902.[94] The ten acres that Juan N. Chacon sold to María Martina de Archuleta in 1907 presumably had ample water because the price for only ten acres and "pertaining water" was $225.[95]

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[89] María Elijia de Herrera de Lucero to James H. DePriest, 30 March, 1904, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume 51, 161. A warranty deed meant that the grantor (person who makes) assured the grantee (person to whom a grant is made) that he or she would enjoy the premises under conveyance free from interference by any person claiming under a superior title.
[90] Florentino Gallegos and Candelaria Olgin de Gallegos, 8 January, 1892, Alamosa County Courthouse, Office of the County Clerk, Conejos Deed Records, Volume H, 369.
[91] Manuelita de Madril to Juan de Jesus Aragon, 28 October, 1902, Alamosa County Courthouse, Office of the County Clerk, Volume 49, 240.
[92] Marcelino Vigil to Elena S. Ortiz, 29 March, 1897, Alamosa County Courthouse, Office of the County Clerk, Volume 40, 218.
[93] J. Nestor Ortiz to Eliza C. Ortiz, May 29, 1902, *Alamosa Journal*, May 29, 1902.
[94] Elena S. Ortiz to Eliza C. Ortiz, *Alamosa Journal*, May 15, 1902.
[95] Juan N. Chacon to María Martina de Archuleta, 7 January, 1907, Alamosa County Courthouse, Office of the County Clerk, Volume 59, 415.

It was common procedure for the names of both spouses to be listed in court records, especially in property conveyances. In 1858, Agustin Lucero and his wife, María Guadalupe Trujillo sold land and a house to Jesusita Trujillo, wife of Diego Archuleta, for 910 pesos [sic] in fee simple.[96] The land was bounded on one side by land owned by María Antonia Lucero. María Guadalupe Trujillo appeared before the *Juez de Paz Alcalde,* Manuel Antonio Pachuco, and in a separate interview apart from her husband, swore that she had not been unduly influenced by her husband and sold the property voluntarily.[97] Other types of cases such as complaints also listed both of a married couple's names. José Ignacio Martín and María Rita, his wife, filed a complaint of trespass against José de Jesus Mestas and Juana María, his wife, in 1865. The probate judge, Francisco Sanches [sic] ruled in favor of the plaintiffs and the defendants were required to pay the trial costs.[98]

In the late-nineteenth century, terms such as quit claim, warranty deed, and deed of trust began to appear regularly in the court records of both Conejos and Costilla counties, legal terms that in many cases reflected the transfer of land from Hispanic to European American possession. In 1874 the *Las Animas Leader* newspaper helpfully noted that one might buy quit claim deeds at the newspaper office.[99] Government taxes and fees forced many Hispanos to sell their landholdings as they did not have available cash in a basically cash-poor economy. The transactions in which Hispanas were involved do not, of course, represent the total number of Hispanic property losses.

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[96] The term pesos continued to be used in documents at this time.
[97] Agustin Lucero and María Guadalupe Trujillo to Jesusita Trujillo, 30 December, 1858, NMSRC, Rio Arriba County, Deed Record Book, 1852-1884, Box 1, Folder 1, Number 266.
[98] José Ignacio Martin and María Rita vs. José de Jesus Mestas and Juana María, n.d. October, 1865, Costilla County Record, Probate Court, 41.
[99] *Las Animas Leader*, November 27, 1874.

However the records indicate the presence of Hispanas in land negotiations that suggested the transfer of land from Hispanic ownership to European American possession as well as continued land conveyance between members of the Hispanic community itself. Between 1886 and 1908 in Conejos County the names of Hispanas appeared on warranty deeds (a guarantee that the seller held clear title to a piece of real estate and had the right to sell it or the transfer of real property from one person to another) twenty-five times, but as previously mentioned the number is representative only and not definitive.[100] However limited as the number of warranty deeds are, it is noticeable that fifteen of the twenty-five are between Hispanos and Hispanas, nine granted by a Hispana to a Hispano and six for the reverse. Three Hispanas granted quit claim deeds, one to a European American male and two to other Hispanas. Hispanic female names occurred in eight deeds of trust or trust deeds (wherein good and property are transferred in confidence of future payment) four of which were granted to European American males between 1884 and 1902. Of three quit claim deeds in which all rights, title and interest in property were relinquished, a Hispana granted a deed to a European American male and two Hispanas granted them to Hispanos.[101]

The real estate transactions in Costilla County that included Hispanas again do not represent the total of Hispanic land losses. The names of Hispanas appeared on twenty-five warranty deeds between 1883 and 1908. Six Hispanas transferred their land to other Hispanics, five of them to males and one to a female. They were the grantees or

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[101] The numbers compiled for both Conejos and Costilla counties are housed at the Office of the County Clerk, Alamosa County Courthouse, Alamosa, Colorado. I used volumes F, G, and H, the Deed of Trust Release Book; Volume 4 Mortgage Deeds; Volumes 5, 28, and 44 Warranty Deeds; Volumes 10, 16, 29-31, 34-35, 40, 49, 51, 55-56, 59, and 68. There are numerous volumes which will lead to a wider number of property transfers by Hispanos.

recipients of warranty deeds, all from Hispanos; one Hispana received a deed from a European American female. Four Hispanic couples sold their land to European males. Five trust deeds recorded the names of Hispanas, two of which were transacted with European Americans and of the six quit claims, four showed Hispanas giving up their titles to other Hispanas. Clearly the numbers are too small to draw any firm conclusions, and further research is needed, but they do suggest that although European Americans were acquiring real estate, Hispanos were still engaged in the conveyance of property among themselves.[102]

The newspapers of the time frequently recorded taxes owed by both Hispanas and European American women and their respective spouses and on occasion published lists of those delinquent in the payment of their taxes. In 1874 the Colorado newspaper *Las Animas Leader* noted that Virginia Fitzpatrick was selling real estate to pay taxes owing and John and Charlotte Anderson had to auction off property in a trustee's sale to pay a promissory note to John B. Smith.[103] High interest rates on loans also proved to be a burden on those who tried desperately to hold onto their own land or to protect property that had been entrusted to them as executors and administrators of estates. For example in April 1888, in Conejos County, José Bonifacio Romero petitioned for the custody of Teresita Romero, the daughter of Carpio Romero, and the following August as her official guardian asked the county court for permission to borrow $500. Apparently the estate of Carpio Romero consisted of a pre-emption (right of purchase before others) but as there was no fund belonging to the estate with which to pay the government charges for the said land, José Bonifacio Romero required a loan of $500 with the interest "not to

[102] Ibid.
[103] *Las Animas Leader*, July 31, 1874 and November 13, 1874.

exceed ten percent." It is not known if the pre-emption rights belonged to a homestead claim or not. If so, the fee usually amounted to $1.25 an acre. It is also not known if José Bonifacio Romero received the loan, or if so, whether the interest proved to be too onerous to retain the land.[104] The administrators of the estate of Juan de Dios Vigil faced a similar problem in 1890 when Edwin French wished to have his note settled and thus proposed foreclosure on a deed of trust. The business was settled when the executors agreed to pay $300 on the note and interest with the balance to be paid at 8 percent per annum.[105]

In 1888, Pablo de Herrera, from San Miguel County, New Mexico Territory, and his wife, Escolástica Aragon, sold and executed a quit claim (relinquished their rights, title and interest) to 160 acres of land in Conejos County to Samuel H. Ball for $300 that was duly sworn before Pedro A. Garcia, *Juez de Paz*. [106] García examined Escolástica Aragon separately to discover whether or not she agreed with the sale. The document appeared in both English and Spanish. Eugene Engley, a Populist lawyer and later state attorney general, who translated the document, stated that he was learned in the Spanish language:

> . . . the changes made therein in the use thereof by the Mexican race or people and the . . . acknowledgment in English from Spanish-Mexican . . .of the execution written upon the back of the—deed , and that it is often the custom of the Spanish-Mexican race or people, especially among the unlettered, to write the maiden name of the wife only in the body of any writing which accounts for the

[104] Estate of Carpio Romero, April 1888, Conejos County Record, Estates, p. 435, and August, 1888, 458.
[105] Estate of Juan de Dios Vigil, February, 1890, Antonito, Colorado, Conejos County, County Court Records, Estates, 557.
[106] Juan Pablo de Herrera and Escolástica Aragon de Herrera to Samuel H. Ball, August 27, 1888, Alamosa, Colorado, Alamosa County Office, Conejos County Deed Records, Volume 10, 405.

> absence of the word "D. Herrera" to the name of the wife in—said acknowledgment. [107] [sic]

This deed record is informative on many levels but in particular it illuminated how much Americans had to learn about Spanish-Mexican customs. Eugene Engley's use of the term "the Spanish-Mexican race or people" seemed to indicate a hesitation even forty years after annexation as to how to define the populations of New Mexico and Colorado. As was the custom of the country, Escolástica Aragon used her maiden name. Furthermore as will be explored later the deed illustrates the pattern of land loss sustained by the Mexican population.[108] As a side note, when the December term of the District Court opened in Conejos in 1891, the record indicated that Celestino García had been appointed interpreter by the court and sworn to interpret the Spanish language into the English language and from the English language into the Spanish language and proceeding as he might be called upon before the court.[109]

Although Juan Pablo de Herrera and Escolástica Aragon de Herrera lived in San Miguel County they possessed a tract of land in Conejos County as did de Hererra's parents, Diego de Herrara and Crisostoma Montoya de Herrera, who also sold their 160 acres to Samuel H. Ball on the same date, August 27, 1888.[110] Ball and his family, born

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[107] Alamosa County Office, Alamosa, Colorado, Conejos Deed Record, Volume 10, page 405-406. Eugene Engley (1852-1910) was active in the 1894 Cripple Creek strike, and generally championed the rights of working people versus capital. He served as Colorado's Attorney General during 1892-1894.

[108] On January 15, 1885, *The Alamosa Journal* included a small entry: "Good Bye Eugene Engley and E.A. Limberg. Two more of the corrupty [sic] county ring sat down on. Engley, the discharged attorney cannot work any more of his low-lived schemes on Conejos County." On January 13, 1885, the Board of County Commissioners removed Engley for malfeasance in office. The "county ring," generally referred to as the Santa Fe Ring, was a land grant syndicate composed of politicians, lawyers, and businessmen who acquired vast tracts of land grant property by accepting land in lieu of fees. Engley served in the government of Populist Governor Davis Waite, and Republicans and the wealthy hated him.

[109] Conejos County District Court, Conejos, Colorado, December 1, 1891, Record C, 195.

[110] Diego de Herrera and María Crisostoma Montoya de Herrera to Samuel H. Ball, August 27, 1888, Alamosa, Colorado, Alamosa County Office, Conejos County Deed Records, Volume 10, 407-408.

in Virginia, apparently moved to Conejos to take advantage of the opportunities presented with the advent of mining in the San Juan Mountains.[111] Indeed Ball seemed intent upon amassing as much land as possible as his name appeared in a land sale in the previous year by which he purchased 160 acres "less a strip of land fifty yds. wide off of the northern part of same" from Francisquita Chavez for $325.[112] Five years later he obtained a quite claim from María Encarnacion Lucero for $150 although the amount of land is not stated.[113] The family is listed in the Colorado census of 1885, in the settlement of Rio Grande del Norte (later shortened to Del Norte.)[114] They did not remain long for by 1900 they were again living in Virginia.[115]

To be sure not all quit claims were enacted between European Americans and Hispanos. In 1907 María Ignacia M. Casias granted a quit claim to Alice Sabino and a group of Hispanic women and men for $1.00 and other valuable considerations for land embraced within the plot of the town of Los Pinos, Conejos County.[116] Yet this transaction was only one of many conducted by María Ignacia Casias, the widow of José María Casias, a Civil War veteran, homesteader, and sheep-raiser southwest of Antonito,

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[111] Simmons, *The San Luis Valley: Land of the Six-Armed Cross*, 281.
[112] Francisquita Chavez to Samuel H. Ball, April 9, 1887, Alamosa, Colorado, Alamosa County Office, Conejos, Vol. 5, p. 258. Volumes held in the Alamosa County Office that dealt with land transactions in Conejos and Costilla counties are labeled as such on the spine of each volume.
[113] María Encarnacion Lucero to Samuel H. Ball, January 21, 1892, Alamosa, Colorado, Alamosa County Office, Conejos, Vol. G, 313.
[114] S.H. Ball, Colorado State Census, 1885, M158, *Ancestry.ca* (July 7, 2014).
[115] Samuel H. Ball, 1900 census, Leesburg, Loudoun, Virginia, roll 1716, page 15A, ED0047, *Ancestry.ca* (July 7, 2014).
[116] María Ignacia Casias to Alice Sabino, May 15, 1907, Alamosa, Colorado, Alamosa County Office, Conejos, Vol. 51, 433.

Colorado.[117] She engaged in sheep and cattle contracts, made loans to many Hispanos, some of them interest-free, leased land, and sold hay and other agricultural products.[118]

Anti-Mexican sentiment in Colorado continued throughout the territorial period and well into statehood driven by the fractious debate over land ownership. As more settlers flooded into Colorado searching for good land, the invective increased and local newspapers became the perfect vehicles to disseminate anti-Mexican views. In the April 13, 1871 *Colorado Weekly Chieftain* a column appeared entitled "From the Huerfano" in which the author wrote:

> There are more Montezumas than Americans in this neighborhood, consequently there is but little progress, but if this land grant question were only settled people who now live in holes in the ground and on dirt floors could go to work and build themselves good houses, barns, etc.[119]

And in 1890, the *Pagosa Springs* newspaper contained the following item: "The Mexican people in Conejos are leaving in large numbers for old Mexico. They are disposing of their farms at a very low figure, to white settlers who are improving [sic] them. So says the *Antonito Sentinel.*"[120] It is striking that forty-two years after the end of the Mexican American War, the imposition of American administration, and the promise of the protection of property rights under the Treaty of Guadalupe Hidalgo, the residents of Conejos were referred to as "Mexicans." Some people still do so.

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[117] Simmons, *The San Luis Valley*, 254. The surname of the family has also been spelled as Casillas and Cassias.
[118] Estate of María Ignacia Casias, January 16, 1914, Antonito, Colorado, Conejos County Courthouse, Inventory Record, Volume C, 93.
[119] *Colorado Weekly Chieftain,* April 13, 1871.
[120] *Pagosa Springs*, April 24, 1890. See María E. Montoya, *Translating Property: The Maxwell Land Grant Grant and the Conflict Over Land in the American West, 1840-1900,* 13. Montoya observed that "Anglos eventually came to equate landlessness with ethnicity, and particularly with being Indian or Mexican."

The interweaving of the presence of Hispanas in the record of property transactions in the northern New Mexican county of Rio Arriba and the southern Colorado counties of Conejos and Costilla has been intentional because it highlights the regional nature and cultural continuity of the two territories and the process of land transference within a community bound by strong family ties. Daughters and sons received equal inheritances of land and goods and parents took care in the equitable division of their estates. However, the community property system in New Mexico meant that upon the death of a spouse Hispanas received one-half of everything that a couple had acquired within the marriage community, thus recognizing the importance of the wife's contribution to the marital partnership. In Colorado, widows were only entitled to the "widow's thirds" of the estate. Homesteading in all three counties allowed Hispanic families to acquire more land; unfortunately the tremendous loss of land to European American newcomers was more common.

Chapter Seven: "It Is My Last Wish"

On April 18, 1800 at the military post of Nuestra Señora de la Salidad del Rio Arriba, Don Manuel Garcia de la Mora, *Alcalde Mayor* and Captain of the Militia of the jurisdiction of *Santa Cruz de la Cañada*, drew up a document for Juana Padia. It stated that Juana Padia gave Juan Pacheco, the husband of her niece, Monica, one hundred *varas* of land. Monica would also receive one half of a house, and one half of the fruit trees on the property. She was to receive these items for helping her aunt and uncle and for looking after them. In return Monica, who had been raised by her aunt, promised to maintain and bury Juana Padia in the company of Francisco Lucero, presumably her husband. [1]

The case of Juana Padia and her niece, Monica Pacheco, is one example of how Hispanas were using the law in New Mexico at the turn of the 19th century. Although related to one another and despite the fact that Monica Pacheco been raised by her aunt, Juana Padia desired a formal document that outlined precisely the exchange of services for property. Juan Pacheco, her nephew-in-law, received land, whereas Monica Pacheco received part of a house and some fruit trees. Had this been a will drawn up by Monica Pacheco's parents, she would have enjoyed an equal share of the total estate under the civil code rules of partible inheritance. This chapter looks at Hispanas in northern New

[1] Juana Padia to Monica and Juan Pacheco, Rio Arriba County, April 18, 1800, NMSRCA, Deed Record Book 1852-1884, Box 1, Folder 1, Number 173. This box contained many deeds, some dated earlier than indicated on the box. For the reciprocal nature of some bequests see Yolanda Chávez Leyva, "A Poor Widow Burdened With Children: Widows and Land in Colonial New Mexico," in Elizabeth Jameson and Susan Armitage, eds., *Writing the Range: Race, Class, and Culture in the Women's West* (Norman: University of Oklahoma Press, 1997): 85-96. Also see Deena González, "The Widowed Women of Santa Fe: Assessments of the Lives of an Unmarried Population, 1850-1889," in Ellen Carol DuBois and Vicki L. Ruiz , eds., *Unequal Sisters: A Multicultural Reader in U.S. Women's History* (New York: Routledge, 1990): 34-50.

Mexico and Colorado's San Luis Valley, the roles they assumed in the settlement of estates, and in inheriting and bequeathing property. An heiress might be a wife, daughter, mistress, long-term partner, or an Indian captive/servant.[2]

The region that came under U.S. administration with the Treaty of Guadalupe Hidalgo in 1848 retained a distinctive character after conquest. If one engaged in a close reading of the *Revised Statutes and Law of the Territory of New Mexico,* published in 1865, one would discover a clause that not only clearly delineated the dramatic history of the area but also suggested the continuity of a practice that existed well into the 1860s. That clause specified those who could inherit and those who could not. Amongst a number of reasons that concerned disinheritance one seems more distinctive than the other more standard items. Article II, Section Nine, Item Ten stated that testators could deny heirs "for not redeeming them from captivity, being able to do so." Conversely, descendants could disinherit their ancestors for the same reason.[3]

The transfer of property in northern New Mexico and southern Colorado through inheritance required precise legal procedure that is evidenced in archival documents both pre-and post-American conquest. Community property law in Rio Arriba County meant that each spouse had a one-half ownership in the community and each had testamentary rights over that one-half, although until 1973 only the husband had the right to will his one-half of the community property. The wife's half automatically went to her husband if

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[2] For an in-depth study of Indian captivity see James Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Caroline Press, 2002). See also Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999).

[3] *Revised Statutes and Laws of the Territory of New Mexico Session at the Legislative Assembly in Force at the Close of the Session of the Legislative Assembly Ending February 2, 1865* (St. Louis: E.P. Studley and Co., 1865). The issue of the purchasing of Indian captives is covered in Chapter Three of the dissertation.

she predeceased him.[4] In Conejos and Costilla counties, administered under common law, the husband controlled the property until Colorado Territory enacted Married Women's Property laws in 1874 after which a married woman gained control of her separate and real property. The wife, however, could will her property. Despite the differences, the essence of succession practices continued within a culture that focused upon family and the retention of property within the family that might also include fictive kin.

Hispanas paid careful attention to the writing of their last wills and testaments because for many women it might be the only opportunity by which they were able to make known their private wishes in a public instrument and to reward those who had cared for them. *Testamentos* provide an excellent record of the property that women owned, inherited or acquired during their lifetimes. They listed the order in which debts were to be paid, determined heirs and the goods assigned to them, and frequently attached inventories of property that not only reflected an agricultural lifestyle but also included the few precious or beautiful or treasured items that a woman had acquired either through inheritance or by the odd purchase. Religious articles and pictures might be left to special friends and relatives. Angelina F. Veyna viewed wills as valuable "because they provide intimate and systematic information regarding the testators, and they exist for persons of varying social levels."[5]

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[4] Helen S. Carter, "Legal Aspects of Widowhood and Aging." in Arlene Scadron, ed., *On Their Own:Widows and Widowhood in the American Southwest, 1848-1939* (Urbana: University of Illinois Press, 1988), 27

[5] Angelina F. Veyna, "'It Is My Last Wish That. . . ' A Look at Colonial Nuevo Mexicans Through Their Testaments," in Adela de la Torre and Beatríz M. Pesquera, eds., *Building With Our Hands: New Directions in Chicana Studies* (Berkeley: University of California Press, 1993), 91.

I used the estate documents of both women and men in Rio Arriba, Conejos, and Costilla counties which revealed a great deal about the lives of nineteenth-century Hispanas, and the roles played by women who not only inherited from their husbands but who also acted as executrixes and administrators despite differences in wealth and marital status. And there were differences. When she died in 1913, María Ignacia Casias of Conejos County left an estate that consisted of a large quantity of personal property as well as real estate, notes, book accounts, contracts, cash in the bank, and $3349.00 in a trunk. Her personal property included 123 cows, calves and bulls; 6131sheep, thirty-five buck lambs, seventy-four rams, sixty-six hogs, 123 cows, calves and bulls, and sixteen horses. The estate was divided equally among María Ignacia's two sons, three daughters, and the two grandchildren of a deceased daughter whose share was held in trust for them by their father. The heirs also had a one-sixth interest in the other personal property. In order to defray the costs of feeding the livestock, each heir received $1000 from cash in the bank and the proceeds of sales, rents and collections. In monetary terms the deceased's real and personal property amounted to $6830.90 and her chattels, $9562.15. As well, the inventory of her estate included $3401.25 worth of notes (loans) deemed as good and $991.83 considered doubtful. The final recapitulation of María Ignacia Casias' estate listed in a five page inventory valued it at $45,975.29.[6]

It is clear that some Hispanas were women of property who engaged in business activities and, in María Ignacia M. Casias' case, quite extensive enterprises. More than that, however, the inventory of her personal property revealed the comfortable life of a nineteenth-century Hispana who was rich by the standard of the time. Among many other

[6] In the matter of the estate of María Ignacia M. Casias, June 18, 1913, Colorado State Archives, Conejos County Court, Box 68905, Number 117.

items, María Ignacia M. Casias owned a sewing machine and a gramophone as well as a gold necklace valued at $125, a not inconsiderable sum for the time, in addition to items like a Winchester Repeating rifle and a Colt revolver.[7]

Natividad M. de Quintana of Rio Arriba County also proved to be a woman of property as evidenced in the inventory of her will in 1911. The administrators of her will, J. Quintana and Balthasar Quintana, listed her assets including accounts on the books at $19,983.35. With debts to be paid of $5190.37 ($1000 to Rufina M. de Lopez alone) Natividad M. de Quintana left an estate worth $14,702.98 that included 170 acres of land and a house and lot in Park View. It is interesting to note that although over sixty years had passed since the institution of American administration, the inventory was written in Spanish and submitted to Pedro Maez (s), a Hispanic Probate Court Judge.[8]

Hispanas served as administrators and executors, either alone or as co-administrators with other family members, friends, or respected members of the community. María Ramona Vigil and Jesus M. Roybal served as co-administrators for the estate of María Relles Fernandes in 1879. As Roybal was also an heir, he received his maternal share *por parte maternal* from María Ramona Vigil in her role as administrator as did his brother, José de la Cruz Roybal. In addition, María Ramona, a daughter-in-law, received the inheritance of her deceased husband, José Demetrio Roybal from Jesus M. Roybal in his role as administrator. Both administrators delivered a share to Pedro Antonio Sanches as an heir of his *finada madre* (deceased mother), but because the surname differed, this may have been a son from another marriage or an adopted son or a god-son. Although some items in the inheritances varied, the three Roybal brothers

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[7] Ibid.

[8] Estate of Natividad M. de Quintana, December 28, 1911, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 4, Number 391. The spelling of names often varied.

received almost identical inheritances; Pedro Antonio Sanches however inherited almost $100 less. According to the documentation, the estate totaled $1289.31 pesos.[9] The analysis of María Relles Fernandes' will is somewhat detailed but it illustrates the integral role Hispanas filled in the administration of estates and the care taken in the distribution process.[10]

In 1887 Margaritas Sanches de Jaquez and Juan Antonio Jaquez appeared before the Probate Court in Rio Arriba to file their last report as administrators of the estate of Ricardo Jaquez as required by law, in which they stated that they had truly executed those financial affairs conferred upon them as administrators, completed all distributions to the heirs, and that they wished to be discharged of their duties.[11]

On occasion a woman could not fulfill her duties and requested that others take her place. Such was the case with María Soledad Martin who was named as the heir (along with her fourteen-month-old son) and administrator of the will of her husband, Nicolas Martin, in Abiquiú in 1875. In October of that year she wanted to be excused from assisting in drawing up an inventory of the estate as she was ill and indicated that she wished her power of attorney be authorized to her father, Don Juan Martin, and also that he be named as a second administrator with her. Nicolas and María Soledad Martin owned fifty *varas* of land in the Plaza de los Martines and additional land inherited from

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[9] It was not unusual to find references to pesos instead of dollars in the documents consulted. According to Donald Worcester, the peso and American dollar were about equal in value for much of the nineteenth century. Donald Worcester, "The Significance of the Spanish Borderlands to the United States," *Western Historical Quarterly* 7:1 (January 1976): 5.

[10] Estate of María Relles Fernandes, May 19, 1879, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 235.

[11] Estate of Ricardo Jaquez, June 1, 1887, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 278. This estate had been labeled as that of María Pabla Valdez de Casados which was incorrect.

his parents in Vallecito, Ojo Caliente, and in Cañon de Rio De Chama as well as a small number of livestock.[12]

In other cases a woman might exclude the name of her husband completely from her will and name someone else as administrator of her estate. When María Archuleta de Torres died in 1911, her husband, Benedito Torres, petitioned to be the administrator of the estate as he had not been named as such in the will although he was the principal beneficiary.[13] Ten years earlier María Cornelia Herrera de Jaramillo left a four-room house and land adjacent to the residence to her four children, one daughter and three sons. Amalia, the daughter, also received a sewing machine and some jewelery whereas the sons inherited items such as saddles, harnesses, and some livestock. María Cornelia Herrera de Jaramillo was only thirty-five years old at the time of her death and there is no mention of her husband, José de Jesus Jaramillo, nor is it clear why she named her father, José Vicente de Herrera as the guardian of her sons, Abelino, Jesus María, and Amabiles, and her mother, María Rufina Abeitia (Abeyta), as the guardian of Amalia. Preliminary research indicates that José de Jesus Jaramillo may have lived for some years after his wife's death.[14]

As mentioned in Chapter Two, at times wills revealed the reality of women's private lives as they distributed their estates, appointed guardians, and mandated who should be the executors and administrators of their affairs. It appears that wills could also be used as instruments of revenge against spouses. When María Emilia Suaso de García,

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[12] Estate of Nicolas Martin, January 4, 1875, Rio Arriba County, NMSRCA, Probate Court Records, Box 4. This will was filed with Number 209 which was the estate of María de Cordoba.
[13] Petition of Benedito Torres, Sept 1, 1911, Rio Arriba County, NMSRCA, Probate Court Records, Box 4, Number 390.
[14] Estate of María Cornelia Herrera de Jaramillo, December 28, 1891, Rio Arriba County, NMSRCA, Probate Court, Box 4, Number 314.

who died on August 19, 1894 in Abiquiú, Rio Arriba County, wrote her will she named others as administrators, forcing her husband, J. Concepcion García to complain to the probate court that he had been disentitled. He declared that he was María Emilia Suaso de García's legal husband and thus entitled by law to be the legal administrator. J. Concepcion García stated that he knew himself to be "injured" and swore faithfully to administer the goods of his dead wife. Unfortunately we do not learn why Señora Suaso de García appointed others to look after her estate, or the outcome of her husband's challenge.[15]

Inevitably estates varied in value but even the most modest wills reflected the care and attention to detail with which the documents were drawn up. María Manuela Trujillo, resident in the Plaza de San Francisco in Rio Arriba County, who had been married first to Cristobal Mestes and subsequently to Juan Ignacio Villalpando, died childless in 1874. Her will stated that she had left her husband two rooms in a house worth eight pesos, a piece of tillable land fifty *varas* wide on the river side and nine *varas* on the hillside worth thirty-five pesos, a cow and calf worth ten pesos each and twenty pesos in cash for a total of eighty-three pesos.[16] The equally modest will of María Juana de los Dolores Valerio who died the same year amounted to $467.50 but it had to be divided among her husband, Manuel Valdes, who received one-half of the estate and their eight children. The three older heirs received their share, twenty-three pesos and nineteen centavos each upon settlement of the estate but Manuel Valdes retained administration of the remaining amount until the five minor heirs, María Manuela, María Amada, María Juana Anastacia,

[15] Estate of María Emilia Suaso de Garcia, September 3, 1894, Rio Arriba County, NMSRCA, Probate Court, Box 4, Number 337.
[16] Estate of María Manuela Trujillo, May 19, 1874, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 222.

María Aniceta, and María Rafaela attainted their majority. Each daughter received a receipt indicating the amount so that she should know her part of the maternal inheritance. Deductions from the estate included a horse worth fifty pesos delivered to Manuel Valdes in place of the mule María Juana de los Dolores Valerio brought to the marriage and the costs of her burial, which were paid for from agricultural produce in order to protect the wealth of the estate. The estate was so painstakingly partitioned that the documentation referred to four centavos left over that could not be divided.[17]

The examination of the wills of both sexes revealed that women and girls received land in addition to goods in equal portions with male family members. Although Deena González argued that after U.S. administration began, Hispanas began leaving property to their sons rather than to their daughters, wills in Rio Arriba, Conejos, and Costilla counties revealed that men and women left their property to their respective spouses and divided bequests, including land, equally amongst their children.[18] Of the forty-eight wills found that were written by Hispanas and Hispanos in Rio Arriba between 1828 and 1912, there was little distinction between the inheritances received by daughters and sons.[19] Of the forty-eight, thirty-two belonged to Hispanas. A further eight wills mention bequests received from either a mother or a grandmother. In addition, the eight wills written by males left bequests to wives and children in equal portions. The majority of the

[17] Estate of María Juana de los Dolores Valerio, July 6, 1874, Rio Arriba County, NMSRA, Probate Court Records, Box 3, Number 220.

[18] See Deena J. González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 102. However, González noted: "Generalizations about the uniform impact of these changes must, of course, be avoided because there is some evidence that poor women writing wills in the 1870s retained the longer prayers and appeared preoccupied with equitable dispensations, with listing even the smallest of articles."

wills reflected the community property law of New Mexico whereby the spouse received one-half of the estate and the other half was divided amongst the children.[20]

The pattern remained the same in Conejos County for the thirty-four wills located that dated from 1880 to 1911. In this case, twenty-two testaments belonged to males and twelve to females, some more detailed than others. The greatest number of wills followed the community property concept of one-half for the spouse, one-half for the children. Only fifteen wills were found for Costilla County dating from 1865 to 1909, nine that belonged to Hispanos and six for Hispanas. Undoubtedly others wrote wills in Costilla County but I located only fifteen written wills filed in the Colorado State Archives and at the Costilla County courthouse in San Luis. It may be that not all wills were filed with the court and of course, if there was no property, there was no need for a will. Although not directly comparable with those in Rio Arriba and Conejos counties, these wills, too, basically adhered to the same method of property division.

José Ignacio Archuleta, who died in March 1874 in Abiquiú, left one-half of his estate to his wife, María Guadalupe Sanchez, and the other one-half to be divided equally amongst his eight living daughters and sons (of the thirteen children who had been born to the couple). However two daughters and one son were married at the time of their father's death and José Ignacio Archuleta made specific bequests to his two unmarried daughters and three bachelor sons wherein each received fifty sheep as did his adoptive son. He also listed how he had acquired his real estate by both purchase and inheritance, including the purchase of forty-one *varas* of land from Loreta Martin. The widow, a son-

[20] Carter, "Legal Aspects of Widowhood and Aging,", 276.

in-law, and a son all served as executors. Unfortunately María Guadalupe Sanchez was ill and begged the court to excuse her non-appearance at the proceedings.[21]

In January, 1886 in Conejos County the court declared the estate of Antonio Abad Marquez to be ready for distribution. His widow, María Cecilia Marques [sic] received the house and household furniture; two dollars in cash; two-fifths goats; part of one buck; part of one bull; three and two-fifths cows; part of one mule; one hundred sheep; and one hundred and fourteen and three-fifths sheep; twenty sheep; twelve sheep; three-fifths of one sheep; and two-fifths of one kid, part of one heifer and part of one mare. We do not learn why the numbers of sheep were separated; perhaps they were different breeds or ages. It is also unstated as to why some animal numbers were designated in fractional amounts. María Victoria Marques, Diego A. Marques, María Juanita Marques, and Antonio José Marques each received two dollars in cash; one hundred and fourteen and three-fifths sheep; three-fifths of one sheep; twelve sheep; three and two-fifths cows; twenty wethers (yearlings); a portion of one buck; a portion of one heifer; a portion of one bull; two-fifths of one kid; two and two-fifths of one goat; a portion of one mare; and a portion of one mule. Such detail may appear tedious, but the figures illustrate how meticulous the division of an estate could be. Two months later, in March 1886, María Cecilia Marques received a final distribution of $356.16 and each of the four children received exactly $216.16.[22]

In some instances the person writing the will would add a codicil in order to make provision for grandchildren. Such was the case with Jesus María Chávez y Lucero of

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[21] Estate of José Ignacio Archuleta, March 2, 1874, Rio Arriba County, NMSRCA, District Court Civil Cases 1849-1880, Box 7, Number 5-208.
[22] Estate of Antonio Abad Marquez, January 1886, Antonito, Colorado, Conejos County, County Court Records, Estates, 224.

Conejos County who on March 4, 1914 added a codicil in which the fifty-five acres of his undivided one half of the described lands was changed to read forty-five acres of his undivided one half so that his grandson, Silviano Gallegos, son of his son Camilo Gallegos, might receive ten acres, "being those taken proportionately from the shares of the heirs mentioned' in his will.[23] The daughters and sons of Jesus María Chávez y Lucero shared equally in their father's estate. Eliza Chávez and Anna B. Trujillo received fifty-one acres of undivided lands. Two more daughters, Agapita Chávez de Trujillo and Teresa Chávez de Salazar, sons José, Faustino, Marcelino, and Fructuoso, and the two children of Mariano, a deceased son, who received what would have been their father's share, were to share equally in fifty-five acres of undivided land and personal property except for that previously given to the two daughters first mentioned. All of the heirs shared in the water rights to the land. The above bequests were to be reduced according to the codicil. Jesus María Chávez y Lucero named his daughter Eliza and son Fructuoso as executors.[24] Unfortunately partition of the land ultimately reduced the size of farms so that it became difficult to support a large family.

Grandparents also frequently filled the role of guardian as Jesus María y José Maes did in 1891 in Costilla County when the court appointed him guardian of Carolina Martin age five and Repito Martin age two. Apparently their father, Policarpio Martínez, had no home or place of residence and their mother, Manuela Maes, a daughter of Jesus María y José Maes, had died. Jesus María wanted to sell her personal property, and nine acres of land and a two-room house in San Pedro, Costilla County that had been left to

[23] Camilo Gallegos apparently lived with the family for a time at the age of eight years and his son, Silviano, is listed as a grandson of Jesus María Chavez in the 1910 Federal Census. 1910 Census, La Isla, Conejos, Colorado. Roll T624_113, Film 1374126, Page 4B. Ancestry.ca (December 4, 2013).
[24] Estate of Jesus María Chávez, March 4, 1914, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 145.

the children in a bequest from their maternal great-grandmother, María Dolores Vigil, in order to invest the proceeds for the gain of the children. The law required him to post a bond that was double the value of the property.[25] It is interesting that any property accruing to the two children came to them through the maternal line.

When Juan E. Lucero died in Conejos County in 1896 the private sale of his estate brought in $3200. This included land plus the water rights in the Santiago Ditch which measured two cubic feet of water per second. His widow, Asuncion Lucero de Cantu, and their five children, Sara, Amarante, Agapita, Francisco, and Leofredo, each received exactly $533.34.[26] In the same year Rufina L. de Salazar left exactly nineteen and one-third *varas* of land to each of her six sons and nineteen *varas* to her daughter Antonia López. Her granddaughter also received nineteen and one-third *varas* of land.[27]

A number of Hispanas inherited land from parents and grandparents. In 1900 Vicente Martínez inherited one half of a house used as a stable from his grandmother, María Lorenza Clara Romero, mentioned in Chapter Six. This was a small bequest to be sure but it indicates that not only was the grandson remembered in the will of his grandmother but also that it was her property to bequeath.[28]

In some cases children renounced their share of an inheritance from their father in favour of their mother, either completely or for her use during her lifetime, as did three sons and two daughters of José Francisco García who died in 1885. All five received the same numbers of livestock in addition to eighteen *varas* of land each that they transferred

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[25] Jesus María y José Maes, April, 1891, San Luis, Costilla County Courthouse, Costilla County Record, 245.
[26] Estate of Juan E. Lucero, 1896, no month, Colorado State Archives, Conejos County Courts, Probate Court, Box 68906, unnumbered.
[27] Estate of Rufina L. de Salazar, February 4, 1896, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 4, Number 355.
[28] Estate of María Lorenza Clara Romero, February 24, 1900, Rio Arriba County, NMSRCA, Probate Court Records, Box 4, Number 374.

in favour of their mother, Guadalupe Martínez, to use as best suited her. A third daughter kept her inheritance that consisted of a cow, calf, and ten sheep. The reason for the difference in bequests in not stated.[29] Four years later José Eufemio Archuleta, José Florencio Archuleta, and Juan de la Cruz Archuleta advised that they had exercised of their own will their paternal inheritance in favour of their mother, María Teresa Romero de Archuleta. In total the three brothers relinquished five acres, a house and furniture, three horses, seven sheep, four burros, two mares, a colt, and some cattle. It is unknown why María Teresa Romero de Archuleta needed the inheritance of her sons as she should have received one-half of the community property upon her spouse's death.[30]

Still, renouncing an inheritance in favour of a parent could be problematic as in the case of María del Refugio Cordoba and María Andrea Cordoba who in 1887 left their inheritances from their deceased mother, María Petrona Espinosa, in favour of their father until the end of his days. However as they complained to Judge Prudencio Borrego, their father's will did not include what should have originally come to them from their mother.[31]

Not all widows were fortunate enough to enjoy a full inheritance as evidenced in the estate of José Atenacio Lucero. The administrators of the will collected all of the sheep reported in the inventory and placed them in the care of a herder. Seventy-one ewes died of old age and the rest of the sheep were delivered to the widow as well as all of the horses and other property belonging to the estate except the cows—only one was

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[29] Estate of José Francisco García, October 1, 1885, Rio Arriba County, NMSRCA, Probate Court Records, Box 4. This document was filed with the estate of María Jesus Cordoba, Number 209.
[30] Estate of María Teresa Romero de Archuleta, December 11, 1899, Rio Arriba County, NMSRA, Probate Court Records. This document was filed with the estate of María Lorenza Clara Romero above in Box 4, Number 374.
[31] Estate of María Petrona Espinosa, 1887, Rio Arriba County, NMSRCA, Box 3, Number 278. This document had the name of María P. Valdez de Casados on the cover page but it did not include any material on her.

delivered to her. The administrators had travelled at great expense to the Navajo River in Archuleta County where they were grazing. They managed to retrieve six, two others were lost, and two died in the corral of alkali water. Eventually the administrators declared the estate to be insolvent as there was no property left and they asked the court to be discharged of their duty.[32] Legal fees for contested wills could also render an estate insolvent. However in New Mexico funeral expenses were chargeable against the separate estate of the decedent or his or her share of the community property but not against the survivor's share of the community property.[33] Colorado law classified all funeral expenses as first-class demands against the estate of any deceased person, testate or intestate.[34]

Although fathers were considered to be the natural guardians of their children, Rio Arriba County legal records included a number of cases in which husbands petitioned the courts in order to fulfill this role. Guardians of the estate of any minor were required to give a bond that was double the amount of the estate in order to safeguard the inheritance of a child or children.[35] In 1870 in the Plaza de Rito Colorado in Rio Arriba County, Sixto Chavez who appeared in Chapter Six presented a petition before Probate Judge Juan García. The widower of María Manuela Gallegos applied to become the guardian of Siria Jaramillo, two years old, and Adela (Adelia) Chávez, three months old.

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[32] Estate of José Atenacio Lucero, June 1887, Antonito, Colorado, Conejos County, County Court Records, Estates, 384. Hispanas frequently owned water rights in ditches and as water was so valuable in an arid region, so were the water rights that people inherited. In Costilla County in 1905 a list of the ownership of fifty-eight ditches included at least twenty-one women's names. The Clarita Vigil Ditch was totally owned by Clarita Vigil herself. Costilla County, District Court Record, Vol. 5, 328.
[33] William DeFuniak, *Principles of Community Property* (Tucson: University of Arizona Press, 1971), 493.
[34] *General Laws, Joint Resolutions, Memorials, and Private Acts Passed at the First Session of the Legislative Assembly of the Territory of Colorado* (Denver: Thos. Gibson, Colorado Republican and Herald Office, 1861), Section 105, 431.
[35] The Avalon Project, Documents in Law, History and Diplomacy, *Laws for the Government of the Territory of New Mexico; September 22, 1846* Laws, Section 4.

The documents referred to the older girl as an orphan because her birth mother had died (who was in fact María Manuela Gallegos) and the father was unknown. The 1870 federal census listed Sisto and Manuela Chavez, Ciria Chavez, and Avela (Adela) Chavez as well as three of Sisto's siblings living in El Rito, Rio Arriba County[36]. The deceased woman left a considerable estate that amounted to over $8000 pesos which Sixto Chavez stated belonged exclusively to the two girls. He also declared that it was his right and privilege to be the guardian of his legitimate daughter who subsequently died the same year.[37] It is unclear whether Sisto Chavez's petition was granted. By 1880 Siria Chavez had become Siria Jaramillo who lived with her paternal uncle, Pedro Jaramillo.[38] It is also not stated whether Siria received her inheritance or not.

Nine years later José Rafael Gallegos' wife, María Concepcion Vigil, died leaving six children who were minors and as there was not a person legally authorized to take care of them, and to mind the inheritance left them by their deceased mother, José Rafael Gallegos petitioned to fill that role. He also offered sufficient surety for the faithful fulfillment of his office to ensure that his act could not be viewed as malicious or suspect.[39]

Unfortunately, a child could be caught in a struggle for guardianship. Such was the case with twelve-year-old Liberata Jacques in 1894, who was an heir to the estate of José María Jacques. The deceased had selected Manuel Martínez y Jacques to act as the testamentary guardian of the girl but Martínez y Jacques was forced to go to court to

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[36] Sisto Chavez, 1870 census, El Rito, Rio Arriba, New Mexico Territory: Roll M593_894, Page 436A, Image: 327, Ancestry.ca (July 9, 2014).
[37] Estate of María Manuela Gallegos, August 17, 1870, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 208.
[38] Siria Jaramillo, 1880 census, Rio Arriba, Rio Arriba, New Mexico: Roll 803, Page 173D, ED 0 27, Image: 0348, Ancestry.ca (July 9, 2914).
[39] Estate of María Concepcion Vigil, 1879, Rio Arriba County, NMSRCA, Probate Court Records, Box 3, Number 233.

maintain his position for as he testified "certain parties are endeavoring to obtain the appointment of guardian to said child of one Placida García (Placida García de Cantu) contrary to the expressed wishes of her deceased father."[40] On August 26 of the following year Manuel Martínez y Jaques [sic] resigned as guardian, refusing to file bond or to take the letters of guardianship, thus opening the way for any other person to be appointed. Liberata Jacques(z) moved between several homes until her marriage on January 9, 1897 at the age of sixteen to Epifanio Ortiz, a man who was more than twelve years her senior.[41]

The analysis of wills also allows one to gain a closer look at contentious relations and the dynamics within a community. Conflicts between and among family members as well as those concerning neighbours over the property of the deceased were not uncommon and a widow could find herself embroiled in a fight to retain her rights in an estate. In May 1851, after an accident, Pedro Antonio Martínez wrote his will in which he bequeathed his estate to his wife, Ana María Olivas, until her death, at which time whatever remained would be divided amongst the five surviving children unless their mother had determined otherwise. However, Pedro Antonio Martinez named his brother, José Manuel Martinez as his executor in order to prevent any arguments among the children over the estate. It is interesting to note that the previous month María Concepcion Rodarte sold part of a house and a piece of land to Pedro Antonio Martinez for thirty-nine pesos when they appeared before the *alcalde* Francisco Martínez y

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[40] Petition of Manuel Martínez y Jacques for guardianship of Liberata Jaquez, August 27, 1895, Colorado State Archives, Conejos County Courts, Probate Records, Box 68906, unnumbered. After several fruitless searches I have not been able to determine the names of the parents of Liberata Jaquez nor have I found a baptismal record for her which is curious as all infants born within the Catholic Church at this time, whether natural or spurious (bastard or illegitimate) children, or adopted Indian captives, were christened. It is entirely possible that there was a name change that I missed. Further work may yet clarify the mystery.
[41] *Colorado Marriages 1858-1939, An Index Compiled by The Denver Public Library* (Denver: Colorado Genealogical Society, 2004). CD.

Romero to perform the property transaction as they would have done for decades before American administration.[42]

Unfortunately, lengthy litigation could diminish or destroy the value of an estate as happened with the estate of Guadalupe Vigil y Quintana in Conejos County in 1886. She left 160 acres of land that became embroiled in a legal action with a neighbour, known only as Montoya.[43] The debt of the estate amounted to $100 and medical and funeral expenses, administrative costs of the estate, and the bill for legal services to defend the suit brought by Montoya against the property meant that the four minor heirs of Guadalupe Vigil y Quintana were living upon the bounty of their relatives and required means for their proper education. As the land was worth $500 the document noted that the suit could be settled and the land sold "upon terms favorable to the estate and the property of the minors preserved, which by long litigation will become exhausted." It is not clear what that property might have been as presumably any funds from the land sale would have been used to provide for the minor heirs.[44] As well, we do not know who the petitioners were although the law partners of Hughes and Engley acted as their attorneys. We do know that the three oldest heirs, Andrés Francisco Quintana, Margareta Aguilar, and Guadalupe Francisco Quintana had attained the age of majority but whether it was they, or other family members, who were supporting their younger siblings, is not known. Another question that arises in this case is whether the legal suit against the land would have been less costly if it had been adjudicated under Mexican administration.

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[42] Estate of Pedro Antonio Martínez, May 29, 1851, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 3, Number 150.
[43] 160 acres would be the measure of a homestead. We do not know if this is a coincidence.
[44] Estate of Guadalupe Vigil y Quintana, July 28, 1886, Antonito, Colorado, Conejos County Courthouse, County Court Records, Estates, 301.

Occasionally the choice of executors and administrators of an estate met with opposition within families. When María de la Luz López de Chacon, who died on August 7, 1910, named in her will Flavio A. García and Louis O. Chacon as executors, they declined. The statement to the Honourable Judge José A. García read: "There being some objection to the undersigned acting as executors for María de la Luz López de Chacon, deceased, on the part of some of the heirs, we therefore decline to act as executors and withdraw our petition for letters testamentary." Unfortunately the documents do not reveal the reasons for the objection but they were apparently serious enough for the two men to resign their authority. Eliseo López and Francisco López were appointed as administrators on September 21, 1910. The deceased woman left a considerable estate that included 160 acres of land valued at $3000, 300 sheep, three horses, five cattle, a buggy and harness, a drill, one-third of a grain crop, and household furniture.[45] As in the preceding will of Guadalupe Vigil y Quintana, the number of acres of land suggests that Hispanos were homesteading in Colorado.

Family members kept a close eye on the distribution of goods and property in order to ensure that they received what they perceived to be their fair portion of an estate. In 1866, eighteen years after the signing of the Treaty of Guadalupe Hidalgo, María de la Luz Martínez presented a petition that included certain claims from and objections to the will of her husband, Pedro Duran, who had died that year. He bequeathed to his wife a house minus a quarter that was left to his daughter, Andrea Duran, land, a cart, and thirty sheep, ten mutton, and a yoke of oxen. The three sons and three daughters of the couple received 100 *varas* of land (whether that meant each is unclear) and all of Pedro Duran's

[45] Estate of María de la Luz López de Chacon, August 29, 1910, Colorado State Archives, Conejos County Courts, Probate Court, Box 68905, Number 117.

goods excepting some stock to the servants and twelve sheep to his niece, María Dolores Duran. María de la Luz Martínez renounced the will and claimed one half of the estate as was her right under Colorado law, which the court approved. She also claimed $190 as money received and appropriated to her aforesaid husband during his lifetime that the court acknowledged and approved as a just claim, allowing her to select items from the estate for the value of the sum.[46]

When María Rosa García died in 1891 her brother-in-law, Luciano de Herrera, petitioned the Probate Judge, Francisco Serna, to be named as the administrator of the estate, stating that the deceased woman's sister, María Andreyita García de Herrera, and he were entitled to a portion of the inheritance according to the Compiled Laws of New Mexico, thus ensuring that they too would receive their fair share of the estate.[47]

In a similar case Pedro Salazar y Valdez and Apolonio Vigil petitioned Probate Judge Manuel Valdez to be appointed as the executors of the estate of María Josefa Vigil who died in the Plaza de San Juan de Chama on April 22, 1878. They stated that her real estate and rights faced the possibility of being lost without an administrator who could legally take care of them. It remains unstated as to why they might be lost. María Josefa Vigil's husband, José María Serna was entitled to one-half of the wealth and the inheritance she had brought to the marriage; David Serna age twenty-one (although he was somewhat lacking in complete sense) and María Desideria Serna, also age twenty-one were to receive the other half of the estate. Although this will is useful as an example of the community property system in force in New Mexico, it is the wording that reflects both the isolation of northern New Mexico from the metropole, the continued use of

[46] Estate of Pedro Duran, April 19, 1866, San Luis, Costilla County Courthouse, Costilla County Record, 4.
[47] Estate of María R. Garcia, March 6, 1891, Rio Arriba County, NMSRCA, Probate Court, Box 4, Number 309.

somewhat archaic language, and the strength of Hispanic culture. The petitioners addressed the judge "very respectfully" as they opened their statement and ended it with the "highest respect" from his servants.[48] Pedro Salazar Valdez and Antonio Vigil also referred to the judge as "your *honorabilidad*" that essentially translates as "your honorableness."

In 1896 in Rio Arriba County, María Josepha Medina de la Peña was named as the *administradora* and *ejecutora* of the estate of her mother, María Guadalupe Baca de Medina. However, her father, José Medina, filed a protest in which he stated that his wife had left some property in her will consisting of 100 *varas* of land, a grinding mill, a building lot, and wooden shed that belonged to him. It is not known how so much property could have been included in an estate in error but perhaps the will reflected deeper problems concerning property ownership within the relationship.[49]

The residents of a small village invariably encountered problems in legal procedures, for families intermarried with one another, everyone knew everyone else, and disputes over land ownership, property rights including tenancy, and stock could be protacted. When it appeared that Noberto Marques, one of the evaluators of the estate of Jesus María Sánchez, was married to one of the heirs, he notified the court that he would provide security for twice the value of the estate after the required inventory had been registered.[50] In another case, not only the legal complications but also the personal entanglements that arose from the institution of litigation in a closely-knit community

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[48] Estate of María Josefa Vigil, July 1, 1879, Rio Arriba County, NMSRCA, New Mexico Records, 1847-1957, Box 3, Number 285.
[49] Estate of María Guadalupe Baca de Medina, September 7, 1896, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 3, Number 351. Some of the documents for this estate were included with those of Number 358.
[50] Estate of Jesús María Sánchez, n.d, 1865, San Luis, Costilla County Courthouse, Costilla County Record, Probate Court, 26-27.

became painfully evident. Genoveva M. Valdes, the administratix and heir of her deceased husband, José F. Valdes who died on June 9, 1898, found herself embroiled in a complex property dispute that dragged on from July, 1899 until December, 1900, at which time the court decided in her favour but also allowed the defendants to appeal the judgment. Land ownership lay at the heart of a case in which the widow faced a group of defendants who sought to quiet title (establish ownership of real property) attached to property that consisted of a tract conveyed by the state of Colorado to the deceased and which he had owned at the time of his death. It appears a verbal agreement had existed between the deceased and his brother, Jesús María Valdez, concerning the use of some land in return for certain payments, a contract with which the brother could not comply. To complicate matters, Jesús María Valdez had attaching creditors who wished to take the said property by writ, a formal legal document that would give them title. The court found that the plaintiffs held title to the land in question but did not grant them a half interest in the Martínez Ditch and the accompanying water rights as they had yet to be determined. Delfin Espinosa, the tenant, retained two-thirds of the crops grown on the disputed land and one-third was returned to the plaintiffs. [51]

The above paragraph provides the barest outlines of what seemed to be a standard case. The court felt compelled to include a statement in its judgment that stated it was neither prejudiced against the defendants nor opposed to any of them in any way nor was it influenced against them by the officers of the court. The court's statement also noted that if any officers of the court were prejudicial against the defendant, the court was not aware of it. In addition the court attested to the fact that no interpreters had been used at

[51] Estate of José F. Valdez, October 29, 1898, Antonito, Colorado, Conejos County Courthouse, Inventory Record A, 46.

the trial other than the two regular official and sworn interpreters of the court and that the interpreting was "honestly and correctly done." But here the court included an interesting declaration in which it noted that one of the interpreters had married one of the plaintiffs, adding "if his interpreting was honestly and correctly done, as the court believes it was, his subsequent marriage to one of the plaintiffs is not grounds for a new trial." Furthermore the interpreter had done little of the interpreting in the case.[52]

Affairs apparently became even more chaotic as the court threatened to send the said defendant (and tenant) Delfin Espinosa to jail if he repeated "loud, boisterous language and highly uncivil conduct in court, such as no respectable court could permit and that such threatened action did not constitute grounds for a new trial." Espinosa's statement that Genoveva M. Valdez "a total stranger to the Court, a woman whom the Judge of the Court (Charles Holbrook) had at that time never seen . . . 'had pull with the Court' is shown to be false. The Court is satisfied that she never said it, and that the statement was made in the hope of prejudicing the Court against her."[53]

The Valdez case was extremely detailed and only the outlines of the legal proceedings have been presented here. Numerous actors appeared throughout the documentation, both Hispanic and European American, who sought title to the land or who acted as guardians to the minor children. But it was Genoveva Valdez who had to protect the interests of those minor children, three of whom were over the age of fourteen and four of whom were younger. The outcome of the final appeal is not known. What is also unknown is how Genoveva Valdez provided for her children, and how much the estate was worth after court costs had been paid.

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[52] Estate of José F. Valdez, 1900, Antonito, Colorado, Conejos County Courthouse, District Court Record E 1897-1901, 452.
[53] Ibid.

On February 5, 1912, Ruby A. Ortiz, the administratrix of her father, José M. Archuleta's estate, reported that she had not found any real estate standing in the name of the decedent but that "she is informed and believes that a large amount of land lying in said County of Colorado" belonged to the decedent in his lifetime and that evidence of possession could be found in the books, papers, deeds, and conveyances mentioned in her report. Ruby A. Ortiz also said that no chattel property of any kind had come into her hands as administratrix, that "she is informed and believes and alleges that there is a large amount of personal property and that it is now taken, kept, detained, driven away and embezzled by Carlota Archuleta, and by her converted to her own sole, separate and secret use." There were also many notes, assaults, claims and demands due the decedent that were now due and owing to the admininistratrix.[54]

Challenges to the administration of an estate were not uncommon. For example, Desiderio Córdova who died April 9, 1910, left as his heirs his wife Carlota de Córdova and his three children, Rodolfo, Ramoncita, and Augustina Córdova. Carlota de Córdova claimed that Rodolfo Córdova as administrator had not submitted reports to her and that she wanted "due and proper" administration of her late husband's estate. The administrator was summoned to appear before the court to answer Carlota de Cordóva's petition and to show why the letters of administration should not be revoked and repealed. The final settlement of the estate took place in 1912 with the final report of Rodolfo Córdova for the period May 31, 1910 to March 18, 1912.[55]

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[54] Inventory of the estate of José M. Archuleta, February 5 1912, Antonito, Colorado, Conejos County Courthouse, Inventory Record A, 233.
[55] Estate of Deciderio Córdova, April 9, 1910, Antonito, Colorado, Conejos County, Probate Court, Box 68905.

The social structure and functioning of a village might also be reflected in the wills of Hispanos and Hispanas. For example, lists of debts owed to an estate frequently included the names of women; these debts might be listed in different classes that determined the probability of eventual repayment. But estate planning also laid bare personal stories that illustrated the precarious nature of existence in the late-nineteenth century in a region where childbirth could be dangerous. Mothers were often young, puerperal fever an ever-present possibility, and the absence of a nursing mother could mean eventual death for a newborn child. When María Pabla Martínez de Sanches [sic] and her husband, Pablo Sanches wrote their wills in Embudo, Rio Arriba County, on April 23, 1884, she was three months pregnant. The couple had married on August 15, 1874 and had subsequently lost two sons, Manuel and Ignacio, each at an early age. The will stated that María Pabla brought a mare to the marriage and Pablo, a horse, and that each would become the other's universal heir. Sadly María Pabla died on October 2, of the same year. Her heir, a daughter, Pabla, had died twenty days after her birth and although unstated, it seems reasonable to assume that the mother had died in childbirth. What is unusual in this case is the young age (about 25) at which María Pabla wrote her will. Did she have a history of risky pregnancies and had the births of her two sons been complicated? Was she so unwell during her last pregnancy that she and her husband felt it would be wise to write their wills as a precaution in the event of an early death?[56]

One of the most intriguing wills that bore some similarities to the case above concerned that of María Paubla [sic] Valdez de Casados who died in Villita in Rio Arriba

[56] Estate of María Pabla Martínez de Sanches, April 23, 1884, Rio Arriba County, NMSRCA, Probate Court Records 1847-1957, Box 3, Number 250.

County in 1893 at the age of approximately thirty.[57] She and her husband, José Gregorio Casados, who had been married previously, were the parents of one child, María Gertrudes Casados, age one year and ten months. María Paubla made her daughter her sole heir to the extensive property she had brought to the marriage in addition to the *donas* or wedding gifts given her by her husband. But what makes this document so unusual is that at the time of the writing of her will, María Paubla was suffering a pistol wound in her arm which rendered her right hand useless so that she was unable to sign the paper. Don José Salazar signed for her "the same as if I had signed it." Numerous questions abound. How had she received the wound and who shot her? Was it accidental or intentional? Was it so serious that she felt it necessary to write her will in the case of imminent death? It is possible that further investigation might provide the truth but the available documentation at the present leaves a mystery.[58]

When José Eulalio Gallegos died in 1880 he left two sons from his first marriage to María Annamaria Ruival (Roybal) and two daughters from his second marriage to Margarita Vigil de Gallegos, who inherited one half of his property with the other half to be divided equally among his four children. The will stated that his second wife had brought four cows to their marriage that must be returned out of his property. However, Margarita Vigil de Gallegos, who left a relatively substantial estate in 1910 that included sixty acres of land that was to be divided among her remaining daughter, María Clarita G. de Gallegos and her two grand-daughters, inserted a sharper note into her will when she

[57] The precise date of María Pabla Valdez de Casados' death is unclear but her will is dated August, 18, 1893 and she is referred to as *difunta* or deceased by March 1894.
[58] Estate of María Paubla [sic] Valdez de Casados, March 6, 1894, Rio Arriba County, NMSRCA, Probate Court, Box 4, Number 340.

declared that "whoever of the parties are not satisfied I ordain not to give anything."[59] She apparently saw a need to forestall any disagreements that might arise from her testamentary wishes.

Hispanas also adopted children so that they might have an heir to their estate or, as Yolanda Chávez Leyva noted, to ensure support in their old age.[60] María de la Cruz Giron adopted her nephew, fifteen-year-old Teofilo Giron in 1885, with the consent of her sister and the boy's mother, Francisca Beatrice Giron de Martínez. The adoptive mother desired to "make him capable of inheriting her estate as provided by the act of the General Assembly of the State of Colorado." The law further stated that when a child was adopted, he or she was free of all legal obligations of obedience and maintenance to his or her former parent or parents.[61] Nevertheless it may have been that María de la Cruz Giron's motives were not entirely altruistic, for she was a widow, with no surviving children, and census records indicate that in 1920 seventy-six-year-old Crucita Jiron was living with Teofilo Jiron and his family.[62] The estate in question was fairly large, for María de la Cruz Jiron had inherited forty acres and three rooms with their outlets in a seventeen-room house, additional bequests, and a share in a house and some land in New Mexico from her father, José Guadalupe Jiron, who commanded that all of his sons comply in the division of assets.[63]

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[59] Estate of José Eulalio Gallegos, December 2, 1881, Antonito, Colorado, Conejos County Courthouse, Record of Wills, p. 1 and 2, and Estate of Margarita Vigil de Gallegos, October 21, 1910, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 93.
[60] Leyva, "A Poor Widow Burdened With Children: Widows and Land in Colonial New Mexico," 91.
[61] Petition of María de la Cruz Giron, May 1, 1901, Antonito, Colorado, Conejos County, Probate Record C, 525. The surname Giron was also spelled Jiron in some instances.
[62] Teofilo Jiron, 1920 census, Cenicero, Conejos, Colorado, roll T625_157, page 6B, image 136, *Ancestry.ca* (January, 2014).
[63] Estate of José Guadalupe Jiron, August 1, 1893, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 44.

María Desideria Trujillo and her husband, José Ramón Trujillo, also adopted a child in 1885, as they had no living children of their own. A nephew, José Francisco Valdes, became their legal son with the consent of his parents, Jose Felix Valdes and María Ramona Marquez. When José Ramon Trujillo died on August 20, 1886, his wife and adopted son became his legal heirs with each to receive one-half of his property. Three years later María Desideria Trujillo wished to sell the existing inherited real estate as she and her adopted son jointly owned a large number of cattle that required better range and she had the opportunity to sell at a good price and to buy another property. However she required court authority to do so as José Francisco Valdes was still a minor. He appeared in court with David Gold, his guardian *ad litem,* and stated that indeed the sale of the real estate would be advantageous.[64]

It was not unusual for a couple or a widow to adopt a child as in the case of María de la Cruz Giron, who would then inherit their estate but single women also adopted children. In 1891 Guadalupe López de Barela adopted thirteen-year-old Jesusita Barela with the consent of both of her parents. According to the document Guadalupe López de Barela was an unmarried woman "desirous of making the said Jesusita Barela her heir, and to rear and educate her in a proper manner and that she has sufficient property in her own right and name to carry out said object." The child became the legal heir "subject to all the obligations of a child . . . begotten in lawful wedlock." As an unmarried woman Guadalupe López Barela would indeed have been legally able to possess property in her own right and name.[65] This case also reflects the transfer of property. The names of both

[64] María Desideria de Herrera vs. José Francisco Trujillo, May 28, 1889, San Luis, Costilla County Courthouse, Costilla County Record, 105. María Desideria Trujillo remarried and thus the name change.
[65] Adoption of Jesusita Barela, September 28, 1891, Conejos County Courthouse, Probate Record B, 1890-1897, 3.

women appeared in documents in 1901 by which time the adopted child had married and become Jesusita Barela de Aragon. In March of that year Guadalupe López Barela granted her a warranty deed and two months later Jesusita granted a warranty deed to Antonio G. Martínez.[66]

Like their compatriots in Rio Arriba County, the Hispanas of Conejos County sought to avoid intra-familial conflicts and to ensure the security of a spouse, as did María Pabla de Herrera (who first appeared in Chapter Six) in 1891. She and her husband, Juan Lorenzo de Herrera, were the parents of eight children, five boys and three girls, five of whom were married. Each of the wedded children had the same amount of money expended at their marriages and the three single children were to receive the same sum when their time came to marry. María Pabla de Herrera specified that her husband would be the only heir of the property remaining for his lifetime: "I hope and I will that my children will permit or leave this same property to my husband 'til dead." After his death, the estate was to be divided into equal parts, and to guarantee the compliance of the heirs, they were required to sign the document before two witnesses. María Pabla obviously left nothing to chance and her care in the wording of the will may have avoided future conflict.[67]

Husbands, too, wrote wills designed to protect the interests of their spouses and their children. The 1887 will of Juan de Dios Vigil of Conejos County is notable because it illustrated the precarious nature of nineteenth-century life, especially for women, the traditional pattern of inheritance in Hispanic society, and the meticulous adherence to

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[66] Guadalupe López de Barela to Jesusita Barela de Aragon, March 29, 1901, and Jesusita Barela de Aragon to Antonio G. Martinez, May 26, 1901, Alamosa County Courthouse, Office of the County Clerk, Volume 44, p. 420-421.

[67] Estate of María Pabla de Herrera, February 12, 1891, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 40.

marital obligations and partible inheritance. Juan de Dios Vigil had three wives, not entirely unusual at a time when many women died in childbirth and many men and women died of disease. He and his first wife, María Esquipula Córdova, had four children, Petra, Marina, Meliton, and Henriques, noted as his proper and legitimate heirs "to whom I have already delivered the inheritance from their mother excepting Henriques and I direct it delivered to him."

Juan de Dios Vigil then married María Francisca Sánchez with whom he produced Juan Miguel, María Manuela, Felis, and María Francisca. The will directed that their inheritance from their mother be delivered to them in accordance with the inventory and also their inheritance from their grandfather, Tomás Sánchez, deceased. Juan de Dios Vigil and Josefa Sánchez, his third wife, had three children together, Virginia, Alfredo and "one to be born." His will stated that he had 240 acres as shown by his patents and deeds and he left a farm of eighty acres and their house to his surviving wife. Josefa Sánchez also received two horses and harness and a spring wagon "in payment of one hundred dollars that I owed her as a dower." After the deduction of the property obligations previously mentioned in his will, Juan de Dios Vigil divided his remaining property with one-half left to his wife Josefa and the other half to his children, recognized as his legitimate heirs, to be divided equally.[68]

In 1909 Manuel Martínez's will too seemed to anticipate problems within the family as he put in safeguards for his wife's inheritance. A resident of Ortiz, Conejos County, Martin Martinez appointed his wife, María Gregoria Jaramillo de Martínez, as the sole executor of his estate. The twenty-five acres deeded to her included a "water

[68] Estate of Juan de Dios Vigil, October 31, 1887, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 31.

right being as adjudicated out of the El Llano Ditch and another twenty-four acres (whole of said land as deeded to me containing forty-five acres more or less but I have deeded from that twenty acres to Francisquita de Duran) and water rights from El Codo Ditch and a small holding claim of 144 acres." María Gregoria's share also consisted of stock and farm equipment. The balance of the estate was to be divided equally amongst the couple's children Gerónimo, Juan Esteban, Felipe, and Francisquita Martínez de Duran, the wife of Alfredo Duran each of whom received three horses, eleven cattle, 128 sheep, and three bucks. At first glance the document appeared to be a standard division of assets but Manuel Martínez further stated: "It being further understood that in no case shall any of the above named children shall [sic] attempt to or in any manner interfere or take away any of the legacies bequeathed above to my beloved wife, María Jaramillo de Martínez."[69]

Henry Johnson's 1911 will in which he sought to protect not only his living step-children but those not yet born contains many of the themes evident in this period. He made his wife, Zenaida Chávez Johnson, whom he had married on April 20, 1910, the executrix of his will. The widow of Amadeo Hernández, Zenaida was to receive one half of Henry Johnson's estate with the other half to go to her children, Arturo Hernández, age ten, Celia Hernández, age eight, and Isabel Hernández, seven months, and "to such other children as shall be born unto my said wife during the period of my natural life or within nine months after my death." If any of the children died, their part was to be divided among the survivors or passed onto their children. These were standard elements in a will. However, Henry Johnson added another proviso:

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[69] Estate of Manuel Martínez, December 17, 1909, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 77.

> In the making of this will and testament I have neither forgotten or ignored my former (divorced) wife or my children whom she bore me but I feel that have already made ample provision according to my means for them and what little property I now have and what I may be able to accumulate between this time and my death should go to my present wife and her children, whether by me or her husband, her or their surviving me. [sic][70]

Henry Johnson was the plaintiff in the divorce from Anna Johnson in Conejos County but research has not revealed the cause of the separation as yet.[71]

Of course, despite the precautions taken to ensure the future well-being of a spouse, events did not always unfold as planned. In 1881 José Simon García willed one half of his personal property and real estate to his beloved (second) wife, Juana Epifania de Jesus Valdez, and the remaining one half to his four children Flavio, Josefa, Emilia, and María Ignacia and to such other child or children that might yet be born. If there were underage children at his death, he left their guardianship, custody, and education to his wife during their minority. However, Juana Epifania de Jesus Valdez died intestate in 1893, before her husband, who then became her heir in addition to her grandson, Ignacio Salazar, whose mother, María Ignacia (referred to as Ignacita Salazar in Chapter Six) had died in childbirth in 1896. She owned forty acres of land and possessed rights in Lafayette Head's mill and in an irrigation ditch. The real estate sold for $1100. Thus José Simon García received one-half of the estate and Ignacio Salazar and his father Juan

[70] Estate of Henry Johnson, September 8, 1911, Antonito, Colorado, Conejos County Courthouse, Record of Wills, 110-111.
[71] Conejos County Divorce Records, 7/31/1899-9/20/1915 by Connie and Jesse Ryan, Colorado State Archives Volunteers. http://www.colorado.gov/dpa/doit/archives/divorce/lconejos.htm. Accessed 6/2/2009.

María Salazar (husband of Juana Epifania's deceased daughter, Ignacita), inherited one quarter each.[72]

The 1906 will of Martin Rodríguez of San Rafael, Conejos County, contained an extremely definitive proviso when he left his wife, María Antonia Vigil, fifty acres of land with all the improvements and registered water rights that belonged to him. She also received stock and any real estate that pertained to him. In order to reinforce María Antonia Vigil's right to the estate, Martin Rodríguez declared that "from this day forward she would be the owner of all of the above mentioned such that no heirs, administrators, nor any other person could have rights in the property belonging to me." Curiously, the couple had eleven children but the document, which was written in Spanish, did not mention them.[73]

One of the most interesting components of wills written at this time concerns Indian servants who received bequests from their owners' estates, specifically females who are pertinent to the topic of this dissertation. The wills consulted revealed that Hispanos left land and livestock to their domestic help and acted as guardians to them or to their children (who were in some cases their own children, too.) I made use of the wills of males in the following examples because they included Indian females. José Dario Gallegos, lived in San Luis and operated a general store still in existence in 2014. Gallegos, who died in 1883, wrote his will in 1877, in which he left all of his real estate to his wife, Eulogia Valdez, including a half interest in 480 acres of land. He also bequeathed a two-room house to María Guadalupe Gallegos and a smaller one that

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[72] Estate of José Simon García, December 22, 1881, Antonito, Colorado, Conejos County Courthouse, Record of Wills, page 9; Estate of Juana E. García, January 3, 1893, Antonito, Colorado, Conejos County, Probate Court, Box 68905, Number 117.

[73] Estate of Martin Rodríguez, April 7, 1906, Alamosa, Colorado, Alamosa County Office, Volume 56, 33, Number 25323.

Ignacia Martínez inherited.[74] Adopted by Dario Gallegos at the age of five María Guadalupe was one of several captive Navajo children integrated into the Gallegos family.[75] She remained with the family after his death, as the 1900 census listed her living with Eulogia Gallegos, then a widow.[76]

When José Celedon Valdez died in 1884, his two daughters and one son were to divide his estate equally. Luis Valdez and María Paula Valdez (it is unclear as to whether they were married), the two servants of José Celedon Valdez, also received generous bequests from his estate. María Paula acquired all of his goats, a burro with a yearling, one cow and calf, two beds, one piece of domestic carpet, two rooms lying to the side of those given to Luis and forty acres of land. Luis received a similar amount of land. Both servants also received one-half of the crop yields to be divided equally. One bequest seems particularly noteworthy, for each of María Paula's three children inherited one yearling heifer calf.[77] It is odd that they are referred to only as María Paula's children; thus, it is entirely possible that Luis was not their father. It is known that José Celedon Valdez owned three captives: Gertrudes, a Paiute purchased at the age of twenty-four from Mexicans in New Mexico Territory in 1848; nine-year-old Luis, classified as a "half-breed"; and Paula, an eleven-year-old Pah-Ute bought from the Utes in 1858.[78]

In a similar case, when José Patricio Trujillo died in Los Cerritos, Conejos County in 1893, his father-in-law, José Victor García, and his wife, María Placida

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[74] Estate of José Dario Gallegos, March 13, 1883, Antonito, Colorado, Conejos County Courthouse, Conejos County Record of Wills, 125. See also James Brooks, *Captives and Cousins. Slavery; Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Carolina Press, 2002).
[75] Indian Captives Reported by Indian agent Lafayette Head, 1865 [electronic resource], Virginia Sánchez, compiler, Virginia Sánchez@comcast.net (Accessed August 4, 2013).
[76] Eulogia Gallegos [Eulogia Gallager], San Luis, Costilla, Colorado, roll 122, page 20B, microfilm 1240120, *Ancestry.ca* (Accessed March 12, 2014).
[77] Estate of José Celedon Valdez, June 17th, 1885, Antonito, Colorado, Conejos County Courthouse, Conejos County Record of Wills, 21.
[78] Ibid.

Delfina García y Trujillo, acted as administrators. The will stated that his wife had all of his papers and that everything belonged to her. It also indicated that he owed about $80 and that his Indian girl owned four head of cattle.[79] A list of Indian captives indicated that an eight-year-old Navajo girl named Gertrudes had been purchased from the Utahs by a J. Trujillo in Los Cerritos in 1863, José Patricio Trujillo's father.[80] In 1870, at age twelve, she was living in his household, but by 1880 she worked for José Patricio and María Placida Trujillo.[81]

In some cases the owners of captive Indian servants became formal guardians. In 1884 in Conejos County, J.M. Archuleta petitioned for the letters of guardianship for Jacinta Archuleta, a minor of seven years. Her mother, Guadalupe Archuleta, appeared before the court and consented. J.M. Archuleta promised "to manage her property frugally, and without waste or destruction and to improve and account for the same."[82] Further research discloses that the Archuleta family counted several Cheyenne Indians among its members including María Guadalupe, Juliana, Jacinta, and Dolores. By 1885 the Colorado State Census recorded nineteen persons in the household that contained the same four Indian females.[83]

The Hispanas in northern New Mexico and southern Colorado continued to be the practitioners of and heirs to inheritance practices long established in a cultural tradition

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[79] Estate of José Patricio Trujillo, March 20th, 1884, Antonito, Colorado, Conejos County Courthouse, Conejos County Record of Wills, 20.
[80] Indian Captives Reported by Indian Agent Lafayette Head, 1865 [electronic resource], Virginia Sánchez, compiler, Virginia.Sánchez@comcast.net, (Accessed August 4, 2013).
[81] Gertrudes Trujillo, 1870 census, Conejos, Colorado Territory, roll M593_94, page 149B, image 301, *Ancestry.ca* (March 12, 2014); Patricio Trujillo, 1880 census, Conejos Valley, Conejos, Colorado, roll 89, page 170A, image 0456, *Ancestry.ca* (March 12, 2014).
[82] Petition for guardianship of Jacinta Archuleta, June 13, 1884, Antonito, Colorado, Conejos County, County Court Records, Estates, 108.
[83] Jacinta Archuleta, 1885 census, Colorado State Census, roll T158_3, page 90, M158, *Ancestry.ca* (March 12, 2014). The four Indian females are listed in Virginia Sánchez, Indian Captives, supra note 53.

that stemmed from a Spanish civil code despite the differences in legal administration between community and civil property laws. One of the greatest differences between the Hispanas of Rio Arriba County and those who lived in Conejos and Costilla counties lay in the fact that in Rio Arriba County they enjoyed a community property system wherein each spouse inherited one-half of the estate that had accumulated through the efforts of both partners. Wills frequently acknowledged the contribution that a partner had made to the marriage community. Anglo American law, on the other hand, guaranteed only one-third of the estate to the surviving spouse, so that Hispanas who settled in Colorado faced a real loss of property. Thus, the use of wills continued the traditional division of property under community property laws. On the other hand some women claimed 160 acre homesteads.

In the absence of resources such as diaries and letters, wills allow one a glimpse into nineteenth-century Hispanic society. The estates of Hispanas varied in size from women who owned large property holdings and material possessions to smaller estates, but the even division of assets remained the same. Servants, some of whom were captives, received bequests from their masters and mistresses, reflecting the often intimate, if sometimes coercive, nature of family relationships.[84] The priority of the family and the meticulous division of assets amongst children continued to be vital elements in Hispanic society in both northern New Mexico and in the southern counties of Colorado despite differences in the law. Unfortunately careful division of an estate, no matter how large or small, could not stem the losses of property to Anglos in New

[84] For domestic servants in the borderlands, see Dedra Shawn McDonald, *Negotiated Conquests; Domestic Servants and Gender in the Spanish and Mexican Borderlands, 1598-1860* (Ph.D diss., University of New Mexico, 2000). See also James Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Carolina Press, 2002).

Mexico and Colorado. Wills present an intimate look at the daily lives of Hispanas as they raised their families, engaged in legal disputes over estates, and adjusted to the larger political, economic and social impact of U.S. administration.

Chapter Eight: "Against My Honor, Delicacy, and Reputation"

The greater part of this dissertation treats the subjects of property rights, inheritance, guardianship, and divorce, as experienced by Hispanas in northern New Mexico and southern Colorado in the mid-nineteenth-century transition from Mexican to American administration. But Hispanas appeared in other sorts of legal cases that reflected the nature of social life in the region. As Armando Alonzo observed, "unfriendly lawsuits or *pleitos* were part of the Hispanic cultural legacy these *pobladores* brought to the Rio Grande settlements."[1] The nature of the cases in this chapter reflect how some custom prevailed in the context of new laws and that the use of new law terms and procedures such as the use of juries were often used as previously, to resolve personal and community conflicts.

While judges' dockets do not always fully outline a case or provide much detail, they are helpful not only in noting the presence of Hispanas in a range of legal proceedings; they also demonstrate how women sought out the protection of the courts if they felt threatened. Some of the suits also indicate the transitional nature of the proceedings as Spanish/Mexican law encountered Anglo-American law.

Property did not always mean real estate although it was an important factor in some of the cases in this chapter. However, a number of cases concerned the minor problems that could arise in an agricultural, pastoralist society, problems that would seem familiar in many farming communities. Some of the lawsuits involved the trespass of livestock on another's fields with claims for the subsequent property damage. Others sued for harm to trees, a fairly serious offense in an arid landscape where trees, especially fruit

[1] Alonzo, Armando C., *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* (Albuquerque: University of New Mexico Press, 1998), 48.

trees, were considered to be so valuable that people bequeathed them in their wills. In certain cases people lent out animals which were not returned or else another animal, in worse shape than the original, was foisted upon the lender. Irrigation disputes over water rights arose, another important issue in an agricultural area with a limited water supply. The lack of payment for agricultural products, particularly for the delivery of wheat, formed the basis for a number of suits by Hispanas in Rio Arriba County. Women also went to court if they felt that their honour and reputation had been impugned. By using the cases of individual women and the ways they used the courts we can gain a greater understanding of the issues that concerned them such as their control of property, both real and personal, that was often complicated by conflicts generated by kinship ties. The Hispanas of long-settled northern New Mexico were enmeshed in a web of kin and community that in many instances framed their legal problems and concerns.

After the institution of American administration, Hispanas continued to pursue old complaints in new venues. In December, 1866, in Costilla County Probate Court, plaintiff Antonio Gallegos charged Rosalia García with trespass and damages in the amount of two hundred dollars. He asked for a jury "according to the form of statutes in such cases made" and the defendant appeared with Jesus María Barela, her attorney. Rosalia García won the case in which it was stated that "she has justice so that the house in question and the land from the wall within shall be in her favor."[2] Clearly not only was the jury system established but Hispanics were using it. It should also be noted that Rosalia García had a Hispanic attorney, relatively rare at the time, although it is not known whether she had employed him privately or whether he had been appointed by the court. The following year, she was the plaintiff versus Carlos Deus, Eutimio Gallegos,

[2] Antonio Gallegos vs. Rosalia García, 4 December, 1866, Costilla County Record, Probate Court, 61.

and Antonio Archuleta, again for trespass and damages and once more she appeared with her attorney.[3] Carlos Deus was Charles Deus, a wealthy Prussian stockraiser, married to Juana María Gallegos and it appears that Antonio Gallegos, the plaintiff in the first case with Rosalia García was in fact Deus's brother-in-law. Further research is necessary to establish the relationship of Eutimio Gallegos to the others in the case.

This suit illustrates both the interconnections among community members and the challenges Hispanas sometimes faced as they strove to protect their property. The 1860 federal census listed a Rosalia García age 21, who lived with Juan Archuleta age 40 in Costilla, Taos Territory as it was then known. The household also included Vicente Antonio Archuleta age 15 and José de la Luz Archuleta, an infant of nine months. Family relationships were not included in the 1860 census but it appears that the fifteen-year-old male may have been the son of the head of the family and thus Rosalia García's stepson. He may also have been the Antonio Archuleta in the first case against her.[4]

Although U.S. authorities might have complained about the difficulties in the establishment of a properly functioning legal system in New Mexico, the experience of María Benigna Salazar in Rio Arriba County in 1855 provides evidence of just how rapid the transformation of the judicial system could be. In that year the widowed Hispana appeared before the Honourable Perry G. Brocchus in the September term of the second Judicial District. She complained that on May 1, 1855, Antonio María Vigil had ejected her from the possession of a certain tract of land with a dwelling house and other buildings bounded in part "by the foot of the hill on which is situated the pueblo of

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[3] Rosalia García vs. Carlos Deus, Eutimio Gallegos, and Antonio Archuleta, 3 June, 1867, Costilla County Record, Probate Court, 63.

[4] Rosalia García, 1860 census, Costilla, Taos, New Mexico Territory, Roll M653_715, Page 119, Image 119, Ancestry.ca (October 8, 2014).

Abiquiu."[5] This was the same house and land formerly owned and occupied by Alonzo Bowman, deceased. María Benigna Salazar prayed for the judgment of $500.00 for her damages, the return of the said premises, and a further $500.00 for the rents and profits of the property during her unlawful ejection. She also requested the damages for the cost of her suit. The law firm of Watts and Wheaton served as attorneys for the plaintiff. Antonio María Vigil, although commanded to appear in court three times, did not attend. On January 22, 1857 a jury of twelve "good and lawful men", all Hispanos, rendered a judgment of $10.00 in damages for the plaintiff as well as the return of her property. The judgment required the defendant to pay $22.54 in court costs; if unable to pay he would be put into the common jail.[6] The documentary evidence does not indicate whether or not there was any family relationship between the plaintiff and the defendant or whether or not María Benigna Salazar acted on her own. The reason for the discrepancy between the amount for damages claimed and the judgment allowed is not clear, for the documentation ended at this point.

The preceding case is revealing on many levels. It was heard in the U.S. district court, the judge and the clerk were European Americans, and the jury system had been instituted. The jurors were all Hispanos, due in part to their numerical majority in the population and all were men as women could not serve on juries. Watts and Wheaton, the attorneys who appeared for the plaintiff, referred to John S. Watts and Theodore Wheaton, mentioned earlier, who were "pioneer lawyers" involved in what Howard

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[5] Perry G. Brocchus had been an associate justice in Utah. One historian described him as one of a number of "political hacks who came to Utah expecting to handle court, executive, and Indian office patronage." See Howard R. Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 328.

[6] María Benigna Salazar vs. Antonio María Vigil, September 1855, Rio Arriba County, NMSRCA, Rio Arriba County District Court, Civil Cases 1849-1880, Numbers 5-208, Box 7, Number 58.

Lamar termed "the land-title business."[7] Part of the measurement of the land was described in the traditional New Mexican manner as "by the foot of the hill." What is not explicitly stated in the document is that Alonzo Bowman, deceased, was an American doctor who had been married to María Benigna Salazar, an early example of intermarriage between a Hispana and a European American. Finally, the litigation reveals the sometimes precarious position of widows as they struggled to protect their property against those who tried to eject them from what they considered rightfully theirs.

Two years later in the September term of the District Court María Antonia Martínez notified James Barry, Clerk of the District Court, that she was withdrawing her suit against Ramón Salazar "he having agreed to pay for and in consideration thereof and of all my other claims which I have or may have against him." He agreed to pay $100.00 a month up to the sum of $1000.00 to her daughter María Manuela or her guardian or legal representatives and the fees of the witnesses while she paid the balance of the costs. John H. Mink and Diego Archuleta witnessed the agreement. The document did not disclose the relationship between the plaintiff and the defendant nor the age of María Manuela. Obviously Ramón Salazar was a person of some means if he were able to pay such a large amount of money. Apparently the problems between them continued, for the next year María Antonia Martínez charged him with trespass.[8]

Of course not all suits involved large sums, but the people concerned still sought justice, despite the changes in the courts and legal systems although in this instance the case retained the overtones of a previous era and illustrates the overlap of legal systems

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[7] Lamar, *The Far Southwest*, 140.

[8] María Antonia Martínez vs. Ramón Salazar, September 19, 1859, Rio Arrriba County, NMSRCA, , Civil Cases 5-208, Box 7, unnumbered. I have not determined whether the plaintiff and defendant had a family connection yet although I have done some research in the census records.

in the early days of U.S. administration. In 1865 María Meregilda Abeyta was engaged in a suit with Reducindo Torres that concerned the payment of twenty-one pesos for some wheat, a debt that was apparently guaranteed by his brother, Fernandes Torres. *El solo aguacil* (the peace constable), Encarnacion Espinosa, proposed an act of reconciliation that would have been the preferred solution under Mexican administration, but the plaintiff and defendant demanded a jury decision and the court ordered a list of six good men to be drawn up. The jury which met in a separate room to examine the arguments and the evidence ordered the *fiador* (guarantor), Fernandes Torres, to pay Reducindo Torres. The president of the jury addressed Judge Pedro Salazar García as *Señor Alcalde* and Salazar signed the court order as *Juez de Paz Alcalde* as he would have been termed under the Spanish/Mexican system of civil law.[9] The clerk, M.M. Gwynne, filed the case in 1866 indicating the intrusion of European Americans into the court system and their role as court officers.

Isabel Apodaca and Agapito Apodaca claimed a much smaller sum of money in Rio Arriba in 1893 when they assessed the damage caused by a mare and her foal to the wheat of Eutimio López. The owner of the mare was unknown but the damage amounted to one dollar and fifty cents and the Apodacas claimed two dollars for their work.[10] The dollar amount the Apodacas claimed seems relatively insignificant but they clearly felt entitled to justice, especially in a farming community dependent upon hard physical labour for survival.

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[9] María Meregilda Abeyta vs. Reducindo Torres, September 1865, Rio Arriba County, NMSRCA, Rio Arriba County Records 1847-1957, Box 1, Number 11.

[10] Isabel Apodaca and Agapito Apodaca, May 22, 1893, Rio Arriba County, NMSRCA, JP Civil and Criminal File 99, Number 57.

When María Catarina Alarid sued Juan de Jesus Trujillo for damages and a $3000.00 debt in Rio Arriba County in 1870 she faced more than a local issue for she asserted that "he is about to move his property and effects out of this territory." Thus, the court filed a writ of attachment against the defendant in April, 1871, a seizure of property to prevent its dissipation before trial or to acquire jurisdiction over it. It is unstated where Juan de Jesus Trujillo planned to move or the nature of the relationship between the two persons involved.[11]

Some cases cited the names of both husband and wife in the proceedings. In 1865 in Costilla County José Martin and María Rita, his wife, charged José de Jesus Mestas and Juana María, his wife, with trespass. The court found for the plaintiffs and assigned costs to the defendants.[12] As mentioned in Chapter Five, in 1887 Juana María Maes de Mestas sued José Jesus Mestas for a divorce on the grounds of desertion. Court cases such as the two above can be useful in that Juana María Maes de Mestas and José Jesus Mestas made court appearances over time that give some indication of a fractious relationship. The two were charged with trespass, although the circumstances are not detailed, and their marriage ended twenty-two years later on the grounds of desertion, although it is not clear whether José Jesus Mestas left to live with another woman or if he disappeared altogether.

In 1866 Alexander St. Clair, who wanted his three "*fenegas* of wheat" [sic] requested that Juan Pacheco and his wife appear before the court. The suit was dismissed

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[11] María Catarina Alarid vs. Juan de Jesus Trujillo, September 1870, Rio Arriba County, NMSRCA, District Court, Civil Cases 5-208, Numbers 5-208, Box 7, Number 78.

[12] José Ignacio Martin and María Juana Martin vs. José de Jesus Mestas and Juana María Mestas, October, 1865, San Luis, Costilla County Courthouse, Costilla County Record, Probate Court, 41.

at the cost of the plaintiff who paid $3.50 court costs.[13] But in the case of Luciano Lucero and María Francisca Martínez Lucero versus Juan Roque Córdova and María de Jesus Sánchez in 1886 in San Luis, the value of the property involved was much higher and they filed for a writ of attachment, in which they wished formally to take property before it could be removed. The plantiffs sought to recover $856.00 and interest at 10 percent on a partido contract in which they had delivered to the defendants 800 ewes and fifteen rams. Repayment in the form of 1000 good ewes, "fresh and without blemish" and thirty rams was due on July 1, 1886. However the defendants only delivered 979 ewes and owed the remainder of the contract which was overdue at the time of the lawsuit. Luciano Lucero and María Francisca Martínez alleged that Juan Roque Córdova and María de Jesus Sánchez "had fraudulently concealed, removed and disposed of their property and effects so as to hinder and delay their creditors and particularly this plaintiff: and are about to conceal, remove and dispose of their property and effects for said purposes." The plaintiffs further complained that "by false representations, false pretenses and other fraudulent conduct, defendants obtained of plaintiffs, the property which is the foundation of this action."[14] Clearly Hispanos used the law in new ways to meet their needs as evidenced when the Luceros filed a writ of attachment in order to prevent the removal of their property from New Mexico Territory.

Additional Anglo-American legal terms such as *detinue, replevin,* and *assumpsit* began to appear in judicial proceedings in northern New Mexico and southern Colorado with the advent of U.S. administration as Hispanos took advantage of new laws in order

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[13] Alexander St. Clair vs. Juan Pacheco and wife, March 21, 1866, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, Probate Court, 48.
[14] Luciano Lucero and María Francisca Martínez Lucero vs. Juan Roque Córdova and María de Jesus Sánchez Córdova, July 28, 1886, Colorado State Archives, Costilla County Court, Civil Cases 1880-1953, Box 68742, Number 58.

to meet the needs of a litigious community. For example, in Rio Arriba County in 1871 María Antonia Martínez charged Ramón Salazar with *assumpsit,* a legal claim that concerned breach of contract.[15] Antonio Enriques Córdova, appointed administrator of the estate of María Josefa Córdova, charged José Ramón Córdova with breach of contract three years later in the same county.[16] In that same year Vicente Romero sued Nerio Casados and his wife, Estefana García, under the same charge.[17]

It should be noted that documenting Hispanas in legal documents and lawsuits does not mean that they were always the plaintiffs in lawsuits for they were often the defendants. In 1865, in Costilla County, Juan de la Cruz Vigil, the plaintiff, and Guadalupe Vallejos, the defendant, were involved in an action of detinue, to recover the wrongful taking of personal property. The case was resolved through compromise and the plaintiff paid the costs. In a small community, compromise would have been the customary solution to minor problems and might have led to fewer hard feelings and less resentment.[18] Some plaintiffs may have taken a complaint to court either to make a point or to stress how seriously the person or persons felt over a particular issue. These sparse details lead to more questions than answers. Were the two people related and why did the plaintiff have to pay the costs? Was the suit spurious or serious enough to require a

[15] María Antonia Martínez vs. Ramón Salazar, April 1 1871, Rio Arriba County, NMSRCA, District Court, Civil Cases 5-208, Box 7, unnumbered.
[16] Antonio Enriques Córdova vs. José Ramón Córdova, September 1874, Rio Arriba County, NMSRCA, District Court, Civil Cases 5-208, Box 7, Number 89.
[17] Vicente Romero vs. Nerio Casados and Estefana García, September 1874, Rio Arriba County, NMSRCA, District Court, Civil Cases 5-208, Box 7, Number 85.
[18] On the maintenance of community tranquility, see Ana María Alonso, *Thread of Blood: Colonialism, Revolution, and Gender on Mexico's Northern Frontier* (Tucson: The University of Arizona Press, 1995), 222.

lawsuit?[19] It is interesting that the same plaintiff and defendant had appeared in court earlier in 1865, he represented by Blackwood and Price and she by George A. Hinsdale, evidence of the sometimes contentious nature of Hispanic community life. Although we do not learn the reason for the suit, it was dismissed "by reason of informality of the plaintiff," and Juan de la Cruz Vigil paid the costs. Again we are left with questions. What did "by reason of informality of the plaintiff" mean? What was the underlying reason for the charges and their subsequent dismissal?[20]

Suits to recover goods appeared frequently in court dockets. In 1869 Rafaelita Archuleta Barthe and Francisco Barthe charged Gabino Archuleta with *replevin*, an action for recovery of goods or chattels wrongfully taken or detained, but the court dismissed the suit the first day. The following year the roles were reversed when Sigmund Seligman and Bros. took the couple to court for a debt of $215.00, a considerable sum in late-nineteenth-century New Mexico. In both cases the name of the woman appeared first which may have been a clerical procedure or it might have indicated that Rafelita Archuleta Barthe had initially incurred the debt with Seligman and Bros.[21]

In 1897 Juan Martínez appeared in Costilla County Court in another case of *replevin* against Francisca Vigil. Although she had been regularly served with process she defaulted and did not come to court. The judge ruled that the plaintiff should recover

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[19] Juan de la Cruz Vigil vs. Guadalupe Vallejos, n.d., San Luis, Colorado, Costilla County Courthouse, Costilla County Record, Probate Court, 45. This entry did not have a date but as it was listed just after the previous case, which was on p. 31, it was close in time.

[20] Juan de la Cruz Vigil vs. Guadalupe Vallejos, 1865, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, Probate Court, 31.

[21] Rafaelita Archuleta and Francisco Barthe vs. Gabino Archuleta, September 1869, Rio Arriba County, NMSRCA, District Court, Civil Cases 1849-1880, Numbers 5-208, Box 7, Number 55; Sigmund Selligman and Bros, vs. Rafaelita Archuleta and husband Francisco Barthe, 1870, Rio Arriba County, NMSRCA, District Court, Civil Cases 1849-1880, Numbers 5-208, Box 7, unnumbered, and County District Court, Civil Cases 1849-1880, Numbers 5-208, Box 7, unnumbered.

$27.95 and Francisca Vigil was to return the goods and chattels. Cases were often based on intra-familial disputes but with only a few details contained in a judge's docket, further genealogical research is needed to determine the relationship between the protagonists in a legal suit.[22]

It was not unusual for some Hispanas to appear in the legal record on more than one occasion. In 1873, Costilla County resident Mariana Martínez sued Juan de Jesus Areano [sic] for debt. The court dismissed the case and assigned costs of $11.05 to the plaintiff. Just four months later Mariana Martínez appeared again in an incident of assault and battery in which she paid costs and a fine of $5.00. Unfortunately, the documentation in this instance was incomplete as it is not known who else was involved in the assault and it is unclear who assaulted whom.[23]

In addition to complaints about small debts or trespass Hispanas engaged in claims concerning water and irrigation. In December, 1901, María de la Luz López de Chacon, whose estate appeared in Chapter Seven, petitioned for a change in the point of diversion in Water District number twenty-two. The court set the trial date for April 17, 1902. Although incomplete documentation precludes full knowledge of the outcome of the petition, the case indicates how important the diversion of water would be in a dry, agricultural area and the potentially dramatic effect on the relationships within a small community.[24]

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[22] Juan Martínez vs. Francisca Vigil, September 9, 1897, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, 337. Juan Martínez's surname is not legible in the record. It is listed as Martínez y Portuo or Portue or possible Pacheco so I referred to him by the name that was clearest.

[23] Mariana Martínez vs. Juan de Jesus Areano [sic], October 7, 1872, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, Probate Court, 83, and Mariana Martínez, Assault and Battery, January 28, 1873, San Luis, Colorado, Costilla County Courthouse, Costilla County Record, Probate Court, 89.

[24] Application of María de la Luz López, April 17, 1902, Antonito, Colorado, Conejos County Courthouse, District Court, Civil Docket B, number 387, 207.

The title of the chapter indicates the concern for honour that continued to be a strong thread in the cultural fabric of Hispanic village life in northern New Mexico.[25] As Deena González noted, nineteenth-century New Mexican society codes of behaviour included a regard for the virtue, honour, and reputation of women. However the reality of life in northern New Mexico where families struggled to make a living meant that breaches of the code of conduct had to be weighed against the possible damage to family survival if a member was banished from the community.[26] In Colorado, for example, the criminalization of adultery might mean a prison sentence in the state penitentiary. In her article "Popular Speech and Social Order in Northern Mexico, 1650-1830," Cheryl English Martin observed that "women took charges of sexual dishonor just as seriously as men" and if they lacked a male family member to defend their honour, pressed charges against the perpetrator on their own initiative.[27] But Hispanas did not always win their suits. For example, historian Charles Cutter cited a case that dated from 1768: "In a suit involving slander, for example, Asesor Licenciado Antonio Lavandera's *dictamen*

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[25] On honour, see Ramón A. Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846* (Stanford: Stanford University Press, 1991).

[26] Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999), 59-60.

[27] Cheryl English Martin, "Popular Speech and Social Order in Northern Mexico, 1650-1830," *Comparative Studies in Society and History* 32:2 (April 1990): 313. See also Julia Kirk Blackwelder, *Women of the Depression: Caste and Culture in San Antonio, 1929-1939* (College Station: Texas A&M University Press, 1984), 162. "While the attempt to link Hispanic women's participation in particular activities and not in others to their roles as submissive home workers is speculative, another category of court proceedings dominated by Mexican American plaintiffs and defendants substantiates the view that ethnic values are reflected in court records. In this instance Mexican American values encouraged Hispanic women to press their cases when other women did not. Blackwelder noted that seven Mexican American women appealed convictions on morals charges "revealing a concern for the protection of a woman's moral reputation that other racial groups did not demonstrate." Also see Asunción Lavrin, ed., *Sexuality and Marriage in Colonial Latin America* (Lincoln: University of Nebraska Press, 1989), 10. Lavrin asserted that in colonial Mexico one maintained honour in order to guarantee the legitimacy of children and to uphold the socio-economic position of the family.

(judgment) called for the defendant, Mariano Baca, to be set free and for the plaintiff, María Manuela de la Luz Romero, to pay court costs."[28]

Personal honour did not depend upon wealth or ethnicity and sexual slurs in particular were designed to "assert one person's dominance over another."[29] Laura M. Shelton noted that once in court, proceedings were "conditioned by an Iberian legal legacy where conduct was more important than bloodline in how people defined honor or *buenas costumbres.*"[30] It is clear that the customary concern for one's honour continued to be important in an isolated society despite the fact that the struggle for survival was so difficult.[31] In 1864 the Laws of New Mexico contained an act that focused upon the issue of honour:

> That every person, or persons, who shall, in a gross, insolent, or angry manner, insult another personally, against his honor, delicacy, or reputation, shall be deemed guilty of having committed an Assault and Battery and shall be punished before any Justice of the Peace, Probate Judge, or District Judge.[32]

The accused had the right to call witnesses and if what was said proved to be true and had been committed to correct the behaviour of the defendant in injury to public society and "offensive to the dignity of the Territory" he or she would be declared not guilty. A guilty verdict could mean imprisonment in the county jail or Territorial prison, for a term of not less than two months or more than six months or a fine of not less than $25 or more than $100.00. However the court might use its discretion when trying to weigh the cause of

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[28] Charles R. Cutter, *The Legal Culture of Northern New Spain, 1700-1810* (Albuquerque: University of New Mexico Press, 1995), 14.
[29] Martin, "Popular Speech and Social Order in Northern Mexico, 1650-1830," 323.
[30] Laura M. Shelton, *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850* (Tucson: University of Arizona Press, 2010), 150.
[31] For honour in California, see Christian G. Fritz, *Federal Justice in California: The Court of Ogden Hoffman, 1851-1891* (Lincoln: University of Nebraska Press, 1991), 281. Fritz observed: "Virtually all of the suits based on rudeness and verbal abuse involved women."
[32] Laws of the Territory of New Mexico (1863-1864), sec. 1.

the crime against the seriousness of the offense, a more realistic approach in small communities where it was necessary to maintain harmonious relations.[33]

In 1905, in Costilla County, however, Donaciano García was accused of a criminal act when the People vs. Donaciano García charged that he did "willfully publish obscene, lewd, indecent, and lascivious writing." His act was "against the peace and dignity of the People of the State of Colorado" for he was "unlawfully and willfully guilty of open lewdness and other notorious acts of public indecency, lending to debauch public morals by publishing a lewd and indecent letter." Genoveva L. Sanchez swore that the offense was true.[34] It was incumbent upon her to take the matter to court both to illustrate how seriously she took the situation and to demonstrate that she was not the sort of woman to accept the insult of such an abusive letter.

Like the wills of women in Chapter Seven, challenging others over relatively small claims and injuries reflected not only the litigious nature of the women and men in the three counties, they are also useful in illustrating how and when Hispanas exercised their right to petition and the issues important to them. In a region where both men and women worked hard to create homes for themselves and their families and where goods were often scarce, it is not surprising that one would engage in legal suits to recover property, receive redress for damage by livestock, or to obtain payment for a commodity delivered to another. It is clear that Hispanas in Rio Arriba, Conejos, and Costilla Counties had no hesitation in seeking justice by initiating legal proceedings to redress wrongs committed against them whether it was a relatively small debt owed, a case of trespass, or an insult to their honour and reputation.

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[33] Ibid.
[34] The People vs. Donaciano García, August 7, 1905, Colorado State Archives, Denver, Colorado, Costilla County, Criminal Cases, 1874-1884, Box 68739, 57.

Conclusion

The nineteenth-century conquest of the present states of New Mexico and Colorado by American troops in the Mexican American War of 1846-1848 resulted in the acquisition of a unique cultural region, the domination of which proved to be contested politically, legally, and socially for decades to come. This was a permanent colonial settler society contiguous to the U.S. that differed from the imperial British model that was characterized by a sense of impermanence, as most Britons planned to return to England. It retained more similarity to British settlers in Canada and more specifically, British Columbia, whose settlers, although they were not from a contiguous land mass, intended to stay to creat new lives. European Americans brought with them racial and gendered assumptions about the roles of women and men that had been influenced by slavery, middle-class values, Anglo-American property rights, Protestant Christianity, and much more.

A new border did not erase a complex borderland that in turn contained legal, social, racial, and gendered borderlands. Howard Lamar wrote that the American conquest of New Mexico was an "incomplete revolution." Local political customs remained and "there was a clear cultural distinction between Spanish and Anglo-American habits and attitudes."[35] That they resided in a foreign culture was not lost upon the European Americans who lived in the new territories, for as a local newspaper noted: "To the historian this portion of our Territory presents an interesting field of study. Here are blended the Spanish, the Aztec and the irrepressible Yankee. Here is the field of battle

[35] Howard Lamar, *The Far Southwest, 1846-1912: A Territorial History* (New Haven: Yale University Press, 1966), 500.

between the old civilization and the new."[36] The excerpt came from the San Luis Valley section of the Colorado *Weekly Chieftain* newspaper twenty years after the change from Mexican to American administration. The "portion of our Territory" alluded to in the article referred to Saguache, Conejos, and Costilla counties.

As I worked with the documentary evidence it became clear that Rio Arriba, Conejos, and Costilla counties were better viewed as a region than as separate entities. The timelines of Hispanic settlement differed for both Conejos and Costilla counties were initially settled by Hispanics who moved north from Rio Arriba County into the San Luis Valley. The Hispanic population remained in the majority in Rio Arriba whereas large numbers of European Americans settled and acquired land in the Colorado counties but essentially it retained much of its cultural identity. My exploration of the role of Hispanas in the transition from Spanish civil law to Anglo-American law and the impact of legal change in their use of the law and courts evolved into a portrait of a mid-nineteenth-century society that was undergoing a dramatic shift as the United States attempted to incorporate what it perceived as a foreign population into an American framework. Many of the cases in the dissertation are cited in considerable detail in order to keep Hispanas, whose use of the law seemed at times to be less by statute than by cultural values, at the centre of their own stories as reflected in the legal record. As well, married women are represented more than single women and widows, both because it was their property rights that faced restrictions under the new administration and the advent of the common law, and because married women formed the largest portion of the adult female population.

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[36] *Colorado Weekly Chieftain*, June 11, 1868.

It has been difficult to assemble the story of Hispanas through the lens of their own engagement with an imposed legal system not only because sources were scattered and records partial but also because the federal censuses contained name changes or abbreviations that made it tricky to identify particular women through time. Untangling relationships frequently required extensive genealogical research. Although Sarah Deutsch included Rio Arriba County in her book *No Separate Refuge*, and Deena González wrote about the women of Santa Fe, less has been written about the lives of the women who moved into Conejos and Costilla counties.[37] In addition, the Hispanas in these counties left few diaries or letters, unlike their European American counterparts, through which to gain an understanding of their world in their own words. Nonetheless, it is evident from the legal documentation that Hispanas in Rio Arriba County and Conejos and Costilla Counties shared many of the same concerns. Identified as white in the federal census, many Hispanics were categorized as "Mexicans" and treated accordingly. Hispanas in all three counties engaged in both the buying and selling of land, left detailed wills that ensured the equitable division of their estates, and used the courts to aid them in solving domestic and marital problems, although European American women divorced at a higher proportional rate than Hispanas. Some women possessed more resources than others, but records reveal that even poorer women sought justice for the real and perceived wrongs committed against them. Many Hispanas continued the practice of retaining their maiden names after marriage. Widowed women, both Hispanic and European American, either lived with their families, or if they were widowed heads of

[37] See Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987), and Deena González, *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880* (New York: Oxford University Press, 1999).

families, lived next to their relatives or, in most cases, shared their residence with a grandchild or another young family member.

However, shared concerns should not obscure the diverse, complex nature of the world in which Hispanas lived. Some women were legally married but others shared informal arrangements with male partners. Some women had children from more than one relationship, whereas others maintained a long married life and produced large families. Some women either married or engaged in informal liaisons with European American men. Although Hispanas lived in a *mestiza* society, some women were Navajo or Ute or in a few cases, Comanche. In some families in both northern New Mexico and southern Colorado, Hispanic parents went to great lengths to ensure the equitable partition of their estates amongst their children. But the presence of captive servants, many of whom were children, in some households illustrated a persistent practice from the Spanish colonial and pre-Spanish-conquest eras.

Differences between the New Mexico and the Colorado counties did exist. For example because New Mexico was settled earlier than Colorado, there were more cases settled by *alcaldes* than in the Colorado counties where litigants used the American court system and more lawyers. Colorado permitted informal unions whereas New Mexico required a binding marriage. The most dramatic difference between Rio Arriba County and the two Colorado counties was evidenced in the area of married women's property rights wherein the Hispanas of northern Mexico enjoyed a community property system in which they legally held their own property brought into the marriage as well as a right to one half of the property gained during their marriage. However, until 1973, only the husband could will his share whereas the wife's one half automatically went to her

husband, although many husbands left their portion to their wives. In both New Mexico and Colorado women had testamentary rights over their own property, apart from the community property holdings in New Mexico. The concept of dower rights had different connotations, too. Defined as the goods or wealth a wife brought to the marriage that might be used by the husband, they were in fact owed to the wife and expected to be returned intact. Women in southern Colorado lived under the common law in which a widow had a right to "the widow's third" of the marital property.[38] Colorado enacted married women's property laws in 1874 and New Mexico in 1897.

It must also be considered whether U.S. law was sometimes more effective at solving problems than Hispanic law; this is a question for further research. For example, if a woman complained of being ejected from her property, the common law, imbued with the concept of title to and ownership of private property, might have applied more stringent punishment or removed the guilty party in a more timely fashion than the civil tradition. In other words the opportunity to employ a possibly more objective court system might have been more beneficial to a Hispana than the previous custom of approaching the local *alcalde* or justice of the peace, who, aware of community concerns, relationships, and repercussions, sought to retain balance and order in the village and who might or might not have given the plaintiff or the defendant a sympathetic hearing.

In the final analysis, what do all of the legal cases and documents cited tell us about the lives of the Hispanas who lived in northern New Mexico and southern Colorado? We know that they inherited and bequeathed property, challenged wills, acted as administrators, executors, adopted the children of others and acted as the guardians of

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[38] See Helen S. Carter, "Legal Aspects of Widowhood," in Arlene Scadron, ed., *On Their Own: Widows and Widowhood in the American Southwest, 1848-1939* (Urbana: University of Ilinois Press, 1988), 272. Dower rights were not abolished in New Mexico until 1907. They were abolished in Colorado in 1868.

their own children. They created homes, raised families, and strove to maintain their property rights within the broader context of conquest, administrative change, and the invasion of newcomers. They tried to maintain a flexible cultural balance and a Hispanic identity while selectively choosing those elements of Anglo-American law that would most benefit them. All of these actions took place within a nineteenth-century gendered environment wherein society acknowledged men as the responsible head of the family and the sole breadwinner.

Some intriguing questions remain. For example just how closely did the U.S. Southwest align with an imperial colonial model? A definitive answer is elusive because the region was doubly colonized, first by Spain in the sixteenth-century and later by the United States in 1848. Linda Colley described a contiguous land-based empire that had been acquired by force, purchase, and migration. The colonization of New Mexico and the Pueblo Indians more closely followed the traditional paradigm of empire-building based on white power and privilege but a lack of numbers dictated the eventual emergence of a majority *mestizo* population. The settlers who moved into southern Colorado were not foreign but an extension of the population in northern New Mexico.

The region also defied Frederick Jackson Turner's theory of a series of succeeding frontiers marching across a heretofore unoccupied space. For example, in 1848 the new border came to New Mexico whose residents had lived there for generations. Historians also assigned different meanings to the concept of frontiers. Whereas Sarah Deutsch argued for an economic frontier that was also a continuous frontier defined not by a line but by a "range of situations," Peggy Pascoe saw the frontier as a cultural crossroads.

Ann Stoler, on the other hand, imagined an "interior frontier" wherein one preserved one's national identity despite the fact that one no longer resided in one's own nation.

The lack of personal diaries and letters also leaves some questions unanswered. We do not know precisely how Hispanas saw themselves and their lives and what they actually thought about the change in justice systems. Even with the existence of court records and archival documents one cannot ignore the fact that their legal experiences were filtered through the words of a male-dominated court process. The question also remains as to what may have deterred Hispanas from accessing the courts. What is clear is that although not all Hispanas shared the same financial resources or the same social position, or used courts of law, those who did expected justice and legal redress, "el amparo de la ley." [39]

[39] *El amparo de la ley* translates as the shelter of the law.

BIBLIOGRAPHY

Archival Sources

Avery Papers. New Mexico State Record Center and Archives. Santa Fe, New Mexico.

Archivo General de la Nación. Mexico City.

_____Bienes de Difunto. Caja 5230, Expediente 25.

_____Instituciones Coloniales. Indiferente Virreinal. Clero Regular y Secular. Caja 2018,

_____Expediente 25.

Instituciones Coloniales. Indiferente Virreinal. Judicial. Caja 2030, Expediente 34; Caja 2194, Expediente 19; Caja 2261, Expediente 18; Caja 3150, Expediente 18; Caja 5518, Expediente 72; Caja 5583, Expediente 65; Caja 6521, Expedientes 14, 66.

_____Matrimonios Caja 14, Expediente 14; Caja 5568, Expediente 25; Caja 5173, Expediente 8.

Colorado State Archives. Denver, Colorado.

Conejos County

Divorce Record Volume A, unnumbered

Conejos County Volumes D-H. Alamosa County Office. Alamosa, Colorado.

_____County Court Record. Estates. Antonito, Colorado.

_____Criminal Docket Volume A.

_____District Court. Civil Docket Volume B. Conejos County Courthouse. Antonito, Colorado.

_____District Court Record Volumes C, F-G 1890-1894; Volume E 1897-1901 Conejos County Courthouse. Antonito, Colorado.

_____Inventory Record A. Conejos County Courthouse. Antonito, Colorado.

_____Probate Record B 1890-1897. Conejos County Courthouse. Antonito, Colorado.

_____Record of Wills. Antonito, Colorado.

Costilla County.

Civil Cases. Boxes 68742, 1878-1908; 68743, 1893-1909; 68744, 1909-1914; 68745, 1877-1903; 68746, 1892-1899; 68747, 1899-1902; 68748, 1902.

County Court Records. Court Practice. Alamosa County Office. Alamosa, Colorado.

County Record, 3 Vols. Costilla County Courthouse, San Luis, Colorado.

Criminal Cases. Box 68739, 1874-1884

Deeds of Trust, Vols. F-H. Alamosa County Office, Alamosa, Colorado.

District Court Record, Vols. 1-1877, 4-6, Costilla County Courthouse, San Luis, Colorado.

Judge's Docket. Probate. Costilla County Courthouse, San Luis, Colorado.

_____Mortgage Deeds, Vols. 4, 16. Alamosa County Office, Alamosa, Colorado.

_____Quit-Claims, Vol. 30. Alamosa County Office, Alamosa, Colorado.

_____Miscellaneous, Vols. 1, 8, 10, 29, 34, 40, 44-45, 46, 48-49, 51, 56, 59. Alamosa County Office, Alamosa, Colorado.

_____Warranty Deeds, Vols. 5, 28, 39, 44. Alamosa County Office, Alamosa, Colorado.

Conejos County.

Denver Public Library. Clipping Files. Denver, Colorado.

Colorado Divorce Index, 1861-1914

Colorado Marriage Index, 1858-1939

State Records Center and Archives, Santa Fe, New Mexico

Rio Arriba County

Probate Court Records. 1870-1912

Deed Record Book. 1852-1884

District Court: Civil Cases. 1849-1880

District Court: Civil Cases. 1877-1881

District Court: Criminal and Civil Docket. 1860-1875

District Court: Journal Record. 1867-1870

District Court: Judgment Docket. 1891-1905

Primary Sources

Aldrich, Lorenzo D. *A Journal of the Overland Route to California and the Gold Mines.* Lansingburgh: Alexander Kirkpatrick, 1851.

Alexander, Eveline M. *Cavalry Wife: The Diary of Eveline M. Alexander, 1866-1877; being a record of her journey from New York to Fort Smith to join her cavalry-officer husband, Andrew J. Alexander, and her experiences with him on active duty among the Indian Nations and in Texas, New Mexico, and Colorado.* Edited by Sandra Myres. College Station: Texas A & M University Press, 1977.

Ayers, John. "A Soldier's Experience in New Mexico." *New Mexico Historical Review* 24:4 (October 1949): 259-266.

Baldwin, Alice Blackwood. *An Army Wife on the Frontier: The Memoirs of Alice Blackwood Baldwin, 1867-1877.* Salt Lake City: University of Utah Press, 1975.

Bandelier, A.F. *A Scientist on the Trail: Travel Letters of A.F. Bandelier, 1880-1881.* Berkeley: The Quivira Society, 1949.

Bennett, James A. *Forts and Forays: A Dragoon in New Mexico: 1850-1856.* Albuquerque: University of New Mexico, 1996.

Bourke, John Gregory. *On the Border With Crook.* New York: Charles Scribner's Sons, 1891.

Boyd, Mrs. Orsemus Bronson. *Cavalry Life in Tent and Field.* Lincoln: University of Nebraska Press, 1982.

Brahan, Robert Weakley. "Texas in the 1850's, As Viewed by a Recent Arrival." *Southwestern Historical Quarterly* 70:2 (October 1966): 281-88.

Brewer, William H. *Up and Down California in 1860-1864.* Berkeley: University of California Press, 1966.

Bryant, Edwin. *What I Saw in California: being the journal of a tour by the emigrant route and South Pass of the Rocky Mountains, across the continent of North America, the Great Desert Basin, and through California, in the years 1846-1847.* Santa Barbara: Narrative Press, 2001.

Clyman, James. *James Clyman Frontiersman: The Adventures of a Trapper and Covered Wagon Emigrant as Told in His Own Reminiscences and Diaries.* Portland: Champoeg Press, 1960.

Connelley, William E. "A Journal of the Santa Fe Trail." *The Mississippi Valley Historical Review.* 12:2 (September 1925), 227-255.

Dakin, Susanna Bryant: *A Scotch Paisano: Hugo Reid's Life in California, 1832-1852.* Berkeley: University of California Press, 1939.

Diary of the Jesuit Residence of Our Lady of Guadalupe Parish Conejos, Colorado. December 1871-December 1875. Colorado Springs: The Colorado College, 1982.

Edwards, Frank S. *A Campaign in New Mexico with Colonel Doniphan, by Frank S. Edwards, a Volunteer: with a map of the route, and a table of the distances traversed.* Philadelphia: Carey and Hart, 1847.

Espinosa, J. Manuel. "Memoir of a Kentuckian in New Mexico, 1848-1884." *New Mexico Historical Review.* 13:1 (January 1938): 1-14.

Gibson, George Rutledge. *Journal of a Soldier Under Kearny and Doniphan, 1846-1847.* Phildelphia: Porcupine Press, 1974.

Over the Chihuahua and Santa Fe Trails, 1847-1848. Albuquerque: University of New Mexico Press, 1981.

Gregg, Josiah. *Diary and Letters of Josiah Gregg: Southwestern Enterprises, 1840-1847.* Norman: University of Oklahoma Press, 1941.

Grierson, Alice Kirk. *The Colonel's Lady on the Western Frontier: the Correspondence of Alice Kirk Grierson.* Lincoln: University of Nebraska Press, 1989.

Hill, Nathaniel. "Nathaniel Hill Inspects Colorado: Letters Written in 1864." *Colorado Magazine.* 33:4 (October 1956): 241-276, and 34:1 (January 1957): 22-27.

Hughes, John T. *Doniphan's Expedition: Containing an Account of the Conquest of New Mexico: General Kearney's Overland Expedition to California; Doniphans's Campaign Against the Navajos; His Unparalleled March Upon Chihuahua and Durango; and the Operations of General Price at Santa Fé: With a Sketch of the Life of Col. Doniphan.* Cincinnati: J.A. and U.P. James, 1848.

James, Thomas. *Three Years Among the Indians and Mexicans.* Waterloo: Office of the War Eagle, 1846.

Johnston, Abraham Robinson, Marcellus Ball Edwards [and[Philip Gooch Ferguson. Edited by Ralph B. Bieber. *Marching With the Army of the West, 1846-1848.* Philadelphia: Porcupine, 1974.

Kendall, George Wilkins. *Dispatches From the Mexican War.* Norman: University of Oklahoma Press, 1999.

Krönig, William. "William Krönig, New Mexico Pioneer." Edited by Charles Irving Jones. *New Mexico Historical Review* 19:3 (July 1944): 185-224 and 19:4 October 1944): 271-311.

Lane, William Carr. "Diary." *New Mexico Historical Review* 39:3 (July 1964): 181-234 and 39:4 (October 1964): 274-332.

Lawrence, John. *Frontier Eyewitness: Diary of John Lawrence, 1867-1908.* Edited by Bernice Martin. Saguache: Saguache County Museum, 1990.

Magoffin, Susan Shelby. *Down the Santa Fe Trail and Into New Mexico: The Diary of Susan Shelby Magoffin, 1846-1847.* New Haven: Yale University, 1962.

Nielsen, George R. "Lydia Ann McHenry and Revolutionary Texas." *Southwestern Historical Quarterly* 74:3 (January 1971): 393-408.

Ostrander, Romine H. *This Soldier Life: The Diaries of Romine H. Ostrander, 1863 and 1865 in Colorado Territory*. Boulder: Colorado Historical Society, 2006.

Perkins, William. *Three Years in California: William Perkins' Journal of Life at Sonora, 1849-1852.* Berkeley: University of California Press, 1964.

Poldervaart, Arie. *New Mexico Probate Manual.* Albuquerque: University of New Mexico Press, 1961.

Russell, Marian. *Land of Enchantment: Memoirs of Marian Russell Along the Santa Fe Trail*. Albuquerque: University of New Mexico Press, 1981.

Sanford, Mollie Dorsey. *Mollie: The Journal of Mollie Dorsey Sanford in Nebraska and Colorado, 1857-1866.* Lincoln: University of Nebraska Press, 2003.

Three New Mexico Chronicles: the Exposición of Don Pedro Bautista Pino, 1812: and the additions by Don José Agustín de Escudero, 1849. Albuquerque: The Quivira Society, 1942.

Townshend, Richard Baxter. *A Tenderfoot in Colorado.* Boulder: University Press of Colorado, 2008.

Turner, Henry Smith. *The Original Journals of Henry Smith Turner With Stephen Watts Kearny to New Mexico and California, 1846-1847.* Norman: University of Oklahoma Press, 1966.

Wallace, Andrew. "Duty in the District of New Mexico: A Military Memoir." *New Mexico Historical Review*. 50:3 (July 1975): 243-246.

Whilden, Charles E. "Letters From a Santa Fe Army Clerk, 1855-1856." *New Mexico Historical Review*. 40:2 (April 1965): 141-164.

Workman, William. "A Letter From Taos, 1826." *New Mexico Historical Review* 41:2 (April 1966): 155-164.

Newspapers

Alamosa Journal

Colorado Weekly Chieftain

La Voz del Valle

Las Animas Leader

Montezuma Journal

Pagosa Springs

Revista de Taos

San Juan Prospector

San Luis Valley Courier

Rio Grande Republican

Unpublished Dissertations

McDonald, Dedra Shawn. "Negotiated Conquests: Domestic Servants and Gender in the Spanish and Mexican Borderlands, 1598-1860." Ph.D. dissertation, University of New Mexico, 2000.

Reichard, David. "'Justice is God's Law': The Struggle to Control Social Conflict and U.S. Colonization of New Mexico, 1846-1912." Ph.D. diss., Temple University, 1996.

Secondary Sources

Abbott, Carl, Stephen J. Leonard, and David McComb. *Colorado: A History of the Centennial State*. Boulder: Colorado Associated University Press, 1982.

Acuña, Roldolfo. *Occupied America: A History of Chicanos.* New York: Longman, 2000.

Adams, Kevin. *Class and Race in the Frontier Army: Military Life in the West, 1870-1890.* Norman: University of Oklahoma Press, 2009.

Jeremy Adelman and Stephen Aron. "From Borderlands to Borders: Empires, Nation-States, and People in Between in North American History." *American History Review*. 104:3 (June 1999): 814-41.

Ahlborn, Richard. "The Will of a New Mexico Woman in 1762." *New Mexico Historical Review.* 65:3 (July 1990): 319-339.

Alonso, Ana María. *Thread of Blood: Colonialism, Revolution, and Gender on Mexico's Northern Frontier.* Tucson: The University of Arizona Press, 1995.

Alonzo, Armando C. *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900.* Albuquerque: University of New Mexico Press, 1998.

Andrews, Thomas G. "Tata Atanasio Trujillo's Unlikely Tale of Utes, Nuevosmexicanos, and the Settling of Colorado's San Luis Valley." *New Mexico Historical Review* 75:1 (January 2000): 5-37.

Aragón, Janie Louise. "The People of Santa Fe in the 1790's." *Aztlán* 7:3 (1976): 391-417.

Arellano, Anselmo F. *La Tierra Amarilla: The People of the Chama Valley.* Tierra Amarilla: Chama Valley Schools 1978.

Armitage, Susan and Elizabeth Jameson, eds. *The Women's West.* Norman: University of Oklahoma Press, 1987.

Arrom, Silvia M. "Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884." *Journal of Family History* 10:3 (Fall 1985): 305-317.

_____*The Women of Mexico City, 1790-1857.* Stanford: Stanford University Press, 1985.

Aviña, Rose Hollenbaugh. *Spanish and Mexican Land Grants in California.* New York: Arno Press, 1976.

Bakken, Gordon Morris. *The Development of Law on the Rocky Mountain Frontier: Civil Law and Society, 1850-1912.* Westport: Greenwood Press, 1983.

_____"The Influence of the West on the Development of Law." *Journal of the West* 24:1 (January 1985): 66-72.

_____Practicing Law in Frontier California. Lincoln: University of Nebraska Press, 1991.

Ball, Larry D. *The United States Marshals of New Mexico and Arizona Territories, 1846-1912.* Albuquerque: University of New Mexico Press, 1978.

Barrera, Mario. *Race and Class in the Southwest: A Theory of Racial Inequality.* Notre Dame: University of Notre Dame Press, 1979.

Basch, Norma. "The Emerging Legal History of Women in the United States: Property, Divorce, and the Constitution." *Signs: Journal of Women in Culture and Society* 12:1 (Fall 1986): 97-117.

_____*Framing American Divorce: From the Revolutionary Generation to the Victorians.* Berkeley: University of California Press, 1999.

_____*In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York.* Ithaca: Cornell University Press, 1982.

Benton, Lauren. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900.* Cambridge: Cambridge University Press, 2002.

Benton-Cohen, Katherine. "Common Purposes, Worlds Apart: Mexican-American, Mormon, and Midwestern Women Homesteaders in Cochise County, Arizona." *Western Historical Quarterly* 36:4 (Winter 2005): 428-452.

Blackmar, Frank Wilson. *Spanish Institutions of the Southwest.* Baltimore: Johns Hopkins University Press, 1891.

Bloom, John Porter. "'Johnny Gringo' in Northern Mexico, 1846-1847." *Arizona and the West* 4:3 (Autumn 1962), 237-248.

_____"New Mexico Viewed by Americans, 1846-1849." *New Mexico Historical Review* 34:3 (July 1959): 165-198.

Blume, William Wirt. "California Courts in Historical Perspective." *Hastings Law Journal* 22:1 (November 1970): 121-195

Bolton, Herbert Eugene. *The Spanish Borderlands: A Chronicle of Old Florida and the Southwest.* New Haven: Yale University Press, 1921.

Borah, Woodrow and Sherburne F. Cook. "Marriage and Legitimacy in Mexican Culture: Mexico and California." *California Law Review* 54:2 (May 1966): 946-1008.

Bouvier, Virginia M. *Women and the Conquest of California, 1542-1840.* Tucson: University of Arizona Press, 2001.

Bowden, J.J. *Spanish and Mexican Land Grants in the Chihuahuan Acquisition.* El Paso: Texas Western Press, 1971.

Bradford, Helen. "Women, Gender, and Colonialism: Rethinking the History of the British Cape Colony and Its Frontier." *The Journal of African History* 37:3 1996, 351-370.

Bradfute, Richard Wells. *The Court of Private Land Claims: The Adjudication of Spanish and Mexican Land Grant Titles, 1891-1904.* Albuquerque: University of New Mexico Press, 1975.

Broyer, Herbert O. *William Blackmore: The Spanish Mexican Land Grants of New Mexico and Colorado, 1863-1878.* New York: Arno Press, 1974.

Brooks, James. *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands.* Chapel Hill: University of North Carolina Press, 2002.

Buettner, Elizabeth. *Empire Families: Britons and Late Imperial India*. Oxford: Oxford University Press, 2004.

Camarillo, Albert. *Chicanos in a Changing Society: From Mexican Pueblos to American Barrios in Santa Barbara and Southern California, 1848-1930.* Cambridge: Harvard University Press, 1979.

Campa, Arthur L. *Hispanic Culture in the Southwest.* Norman: University of Oklahoma Press, 1979.

Cantú, Norma E.and Olga Nájera-Ramírez, eds. *Chicana Traditions: Continuity and Change.* Urbana: University of Illinois Press, 2002.

Carlson, Alvar W. "Seasonal Farm Labor in the San Luis Valley." *Annals of the Association of American Geographers* 63:1 (March 1973): 97-108.

Carter, Susan B. et al. *Historical Statistics of the United States: Earliest Times to the Present.* Cambridge: Cambridge University Press, 2006.

Casas, María Raquél. *Married to a Daughter of the Land: Spanish-Mexican Women and Interethnic Marriage in California, 1820-1880.* Reno: University of Nevada Press, 2007.

Castañeda, Antonia. "Gender, Race, and Culture: Spanish Mexican Women in the Historiography of Frontier California." In *Unequal Sisters: A Multicultural Reader in U.S. Women's History,* edited by Vicki Ruiz and Ellen Carol DuBois. New York: Routledge, 2000.

_____"Women of Color and the Rewriting of Western History: The Discourse, Politics, and Decolonization of History." *Pacific Historical Review* 61:4 (November 1992): 514-519.

Caulfield, Sueann. "The History of Gender in the Historiography of Latin America." *Hispanic American Historical Review* 81: 3 and 4 (August/November 2001), 449-490.

Charmatz, Jan P. and Harriet S. Daggett, eds. *Comparative Studies in Community Property Law.* Baton Rouge: Louisiana State University Press, 1955.

Chávez, Fray Angélico. "New Names in New Mexico, 1820-1850." *El Palacio* 64 (September/October 1957): 291-319 and (November/December 1957): 367-381.

Chávez, John R. *The Lost Land: The Chicano Image of the Southwest.* Albuquerque: University of New Mexico Press, 1984.

Chávez-García, Miroslava. *Negotiating Conquest: Gender and Power in California, 1770s to 1880s.* Tucson: University of Arizona Press, 2004.

Cheetham, Francis T. "First Term of the U.S. Court in Taos." *New Mexico Historical Review* 1:1 (January 1926): 23-41.

Chipman, Donald. *Spanish Texas, 1519-1821.* Austin: University of Texas Press, 1992.

Church, Minette C. "The Grant and the Grid: Homestead Landscapes in the Late Nineteenth-Century Borderlands of Southern Colorado." *Journal of Social Archaeology* 2:2 (June 2002): 220-244.

Chused, Richard H. "Late Nineteenth-Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures." *The American Journal of Legal History* 29:1 (January 1985): 3-35.

Clark, Robert. "Management and Control of Community Property in New Mexico." *Tulane Law Review* 26:13 (1951-1952): 324-343.

Colorado. First Session of the Legislative Assembly of the Territory of Colorado Begun and Held at Denver, Colorado Territory, September 9th, 1861. Denver: Thos. Gibson. Colorado Republican and Herald Office, 1861.

Colorado. *Laws Passed at the Fifth Session of the General Assembly of Colorado.* Denver: Collier and Cleaveland Ltd., 1885.

Colorado Marriages 1858-1939. An Index Compiled by The Denver Public Library. Denver: Colorado Genealogical Society, 2004.

Colorado Society of Hispanic Genealogy. *Hispanic Pioneers in Colorado and New Mexico.* Denver: Alliance Press, 2006.

Combs, D. Gene. "Enslavement of Indians in the San Luis Valley of Colorado." *San Luis Valley Historian* 5 (1973): 1-29

Cook, Sherburne F. "Type of Marriage Ceremony as a Carryover in Acculturation of Mexicans in the United States." *Ethnohistory* 23:1 (Winter 1976): 45-63.

Córdova, Theresa, ed., *Chicana Voices: Intersections of Class, Race, and Gender.* Albuquerque: University of New Mexico Press, 1993.

Cotera, Martha, *Diosa y Hembra: The History and Heritage of Chicanas in the U.S.* Austin: Information Systems Development, 1977.

Cott, Nancy F. *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835."* New Haven: Yale University Press, 1977.

_____"Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts." *William and Mary Quarterly* 33:4 (October 1976): 586-614.

_____"Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records: *Journal of Social History* 10:1 (Autumn 1976): 20-43.

Couturier, Edith. "Women and the Family in Eighteenth-Century Mexico; Law and Practice." *Journal of Family History* 10:3 (September 1985): 294-304.

Craver, Rebecca McDowell. *The Impact of Intimacy: Mexican-Anglo Intermarriage in New Mexico, 1821-1846.* El Paso: Texas Western Press, 1982.

Cutter, Charles R. *The Legal Culture of Northern New Spain, 1700-1810.* Albuquerque: University of New Mexico Press, 1995.

Davis, William Watts Hart. *El Gringo; or New Mexico and Her People.* New York: Arno Press, 1973.

Dayton, Cornelia Hughes. *Women Before the Bar: Gender, Law and Society in Connecticut, 1639-1789.* Chapel Hill: University of North Carolina Press, 1995.

DeBuys, William. *Enchantment and Exploitation: The Life and Hard Times of a New Mexico Mountain Range.* Albuquerque: University of New Mexico Press, 1985.

_____*River of Traps: A Village Life*. Albuquerque: University of New Mexico Press, 1990.

D'Emilio, John and Estelle B. Freedman. *Intimate Matters: A History of Sexuality in America.* New York: Harper and Row Publishing, 1988.

DeFuniak, William Q. *Principles of Community Property.* University of Arizona Press, 1971.

De La Torre, Adela and Beatriz M. Pesquera. eds. *Building With Our Hands: New Directions in Chicana Studies.* Berkeley: University of California Press, 1993.

De León, Arnoldo. *They Called Them Greasers: Anglo Attitudes Toward Mexicans in Texas, 1821-1900.* Austin: University of Texas Press, 1983.

Deutsch, Sarah. *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940.* New York: Oxford University Press, 1987.

_____"Women and Intercultural Relations: The Case of Hispanic New Mexico and Colorado. *Signs* 12:4 (Summer 1987), 719-739.

Deverell, William. ed. *A Companion To The American West.* Malden: Blackwell Publishing. 2004.

Dillard, Heath. *Daughters of the Reconquest: Women in Castilian Town Society, 1100-1300.* Cambridge: Cambridge University Press, 1984.

Downs, Fane. "'Tryels and Trubbles': Women in Early Nineteenth-Century Texas." *Southwestern Historical Quarterly* 90:1 (July 1986-1987): 35-56.

DuBois, Ellen Carol and Vicki L. Ruiz. eds. *Unequal Sisters: A Multicultural Reader in U.S. Women's History.* New York: Routledge, 1990.

Dubbs, Henry A. "The Unfolding of Law in the Mountain Region." *The Colorado Magazine* 3:4 (October 1926): 113-132.

Dunbar-Ortiz, Roxanne. *Roots of Resistance: A History of Land Tenure in New Mexico.* 1980. Reprint, with a forward by Simon J. Ortiz. Norman: University of Oklahoma Press, 2007.

Dysart, Jane. "Mexican Women in San Antonio, 1830-1860: The Assimilation Process." *Western Historical Quarterly* 7:4 (October 1976): 365-375.

Eder, Phanor J. *A Comparative Survey of Anglo-American and Latin-American Law.* Littleton: Fred B. Rothman and Company, 1981.

Ellis, Richard N., ed., *New Mexico Historic Documents.* Albuquerque: University of New Mexico Press, 1975.

Elsasser, Nan, Kyle Mackenzie, and Yvonne Tixier y Vigil. *Las Mujeres: Conversations From a Hispano Community.* New York: McGraw-Hill Book Company, 1980

Etulain, Richard W. ed. *New Mexican Lives: Profiles and Historical Stories.* Albuquerque: University of New Mexico Press, 2002.

Flexner, Eleanor. *Century of Struggle: The Woman's Rights Movement in the United States.* Cambridge: Harvard University Press, 1959.

Foley, Neil. *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture.* Berkeley: University of California Press, 1997.

Foos, Paul A. *A Short, Offhand, Killing Affair: Soldiers and Social Conflict During the Mexican-American War.* Chapel Hill: University of North Carolina Press, 2002.

Foote, Cheryl J. *Women of the New Mexico Frontier, 1846-1912.* Niwot: University Press of Colorado, 1990.

Forrest, Suzanne. *The Preservation of the Village: New Mexico's Hispanics and the New Deal.* Albuquerque: University of New Mexico Press, 1989.

Fowler-Salamini, Heather and Mary Kay Vaughan, eds., *Women of the Mexican Countryside, 1850-1990.* Tucson: University of Arizona Press, 1994.

Frank, Ross. *From Settler to Citizen: New Mexican Economic Development and the Creation of Vecino Society, 1750-1820.* Berkeley: University of California Press, 2000.

Fregoso, Rosa Linda. *meXicana Encounters: The Making of Social Identities on the Borderlands.* Berkeley: University of California Press, 2003.

Friedman, Lawrence H. and Robert V. Percival. *The Roots of Justice: Crime and Punishment in Alameda County, California: 1870-1910.* Chapel Hill: University of North Carolina Press, 1981.

García, Mario T. "The Chicana in American History: The Mexican Women of El Paso, 1880-1920." *Pacific Historical Review* 49:2 (May 1980): 315-337.

_____*Desert Immigrants: The Mexicans of El Paso, 1880-1920.* New Haven: Yale University Press, 1981.

García, Nasario, ed. *Comadres: Hispanic of the Río Puerco Valley.* Albuquerque: University of New Mexico Press, 1997.

Garrard, Lewis. *Wah-to-Yah and the Taos Trail*. Norman: University of Oklahoma Press, 1955.

Gates, Paul W. "Adjudication of Spanish-Mexican Land Claims in California." *Huntington Library Quarterly* 21:3 (May 1958): 213-236.

Gilbert, Fabiola Cabeza de Vaca. *We Fed Them Cactus.* Albuquerque: University of New Mexico Press, 1994.

Gómez, Laura E. "The Birth of the 'Hispanic' Generation: Attitudes of Mexican-American Political Elites Toward the Hispanic Label." *Latin American Perspectives* 19:4 (1992): 45-58.

_____*Manifest Destinies: The Making of the Mexican American Race.* New York: New York University Press, 2007.

_____"Race, Colonialism, and Criminal Law: Mexicans and the Criminal Justice System in Territorial New Mexico." *Law and Society Review* 34:4 (December 2000), 1129-1202.

_____"Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico." *UCLA Law Review* 49:5 (June 2002): 1395-1416.

_____"'What's In a Name'" The Birth of the 'Hispanic' Generation: Attitudes of Mexican-American Political Elites Toward the Hispanic Label." *Latin American Perspectives* 75 (1992): 45-58.

Gonzales, Phillip B. "Struggle for Survival: The Hispanic Land Grants of New Mexico, 1848-2001." *Agricultural History* 77:2 (Spring 2003): 293-324.

González, Deena J. *Refusing the Favor: The Spanish-Mexican Women of Santa Fe, 1820-1880.* New York: Oxford University Press, 1999.

_____"The Widowed Women of Santa Fe: Assessments of the Lives of an Unmarried Population, 1850-1880." In *Unequal Sisters: A Multicultural Reader in U.S. Women's History,* edited by Ellen Carol DuBois and Vicky L. Ruiz. New York: Routledge, 1990:34-50.

González, Gilbert G. *Culture of Empire: American Writers, Mexico, and Mexican Immigrants, 1880-1930.* Austin: University of Texas Press, 2004.

González, Gilbert G. and Raul A. Fernández. *A Century of Chicano History: Empire, Nations, and Migration.* New York: Routledge, 2003.

_____"Transcending Cultural Models."*Pacific Historical Review* 63:4 (November 1994): 469-497.

González, Nancie L. *The Spanish-Americans of New Mexico: A Heritage of Pride.* Albuquerque: University of New Mexico Press, 1967.

González-Berry, Erlinda and David R. Maciel, eds., *The Contested Homeland: A Chicano History of New Mexico.* Albuquerque: University of New Mexico Press, 2000.

Gordon, Michael Wallace. "Legal Cultures of Latin America and the United States: Conflict or Merger." *Florida Law Review* 55:1 (January 2003): 115-120.

Griswold, Robert L. *Family and Divorce in California, 1850-1890: Victorian Illusions and Everyday Realities.* Albany: State University of New York Press, 1982.

Griswold del Castillo, Richard. *The Los Angeles Barrio, 1850-1890: A Social History.* Berkeley: University of California Press, 1979.

_____*The Treaty of Guadalupe Hidalgo: A Legacy of Conflict.* Norman: University of Oklahoma Press, 1990.

Griswold del Castillo, Richard and Arnoldo De León. *North to Aztlán: A History of Mexican Americans in the United States.* New York: Twayne Publishers, 1996.

Grivas, Theodore. "Alcalde Rule: The Nature of Local Government in Spanish and Mexican California." *California Historical Society Quarterly* 40:1 (March 1961): 11-32.

Grossberg, Michael. *Governing the Hearth: Law and the Family in Nineteenth-Century America.* Chapel Hill: University of North Carolina Press, 1985.

Gundersen, Joan R. and Gwen Victor Gampel. "Married Women's Legal Status in Eighteenth-Century New York and Virginia." *William and Mary Quarterly* 39:4 (January 1982): 114-134.

Gutiérrez, David G. "Significant to Whom? Mexicans Americans and the History of the American West." *Western Historical Quarterly* 24:4 (November 1993): 519-539.

_____*Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity.* Berkeley: University of California Press, 1995.

Gutiérrez, Ramón A. Marriage, Sex, and the Family: Social Changes in Colonial New Mexico, 1690-1846. PhD. diss., Madison: University of Wisconsin, 1980.

_____*When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846.* Stanford: Stanford University Press, 1991.

Gutiérrez, Ramón A. and Richard J. Orsi. eds. *Contested Eden: California Before the Gold Rush.* Berkeley: University of California Press, 1998.

Haas, Lisbeth. *Conquests and Historical Identities in California, 1769-1936.* Berkeley: University of California Press, 1995.

Hahner, June E., ed., *Women Through Women's Eyes: Latin American Women in Nineteenth-Century Travel Accounts.* Wilmington: Scholarly Resources Inc., 1998.

Hall, Catherine. *White, Male, and Middle Class: Explorations in Feminism and History.* Cambridge: Polity Press, 1992.

Hall, Thomas D. *Social Change in the Southwest, 1350-1880.* Lawrence: University Press of Kansas, 1989.

Hamilton, William Baskerville. *Anglo-American Law on the Frontier: Thomas Rodney and His Territorial Cases.* Durham: Duke University Press, 1953.

Hardaway, Roger D. "Unlawful Love: A History of Arizona's Miscegenation Law." *Journal of Arizona History* 27 (Winter 1986): 377-390.

Harvey, Irma S. "Early Days in the San Luis Valley." *The Colorado Magazine* 21:2 (March 1944): 41-51.

Herget, James E. *An Introduction to the Mexican Legal System.* Buffalo: W.S. Hein, 1978.

Hernández, Edward, ed., *Spanish-Mexican Influence in U.S. History.* Las Cruces: New Mexico State University, 1976.

Hernández, José, Leo Estrada, and David Alvírez. "Census Data and the Problem of Conceptually Defining the Mexican American Population." *Social Science Quarterly* 53:4 (March 1973): 671-687.

Hicks, Gregory A. "Memory and Pluralism on a Property Law Frontier: The Contested Landscape of the Costilla Valley." *New Mexico Historical Review* 81-3 (Summer 2006): 299-335.

Hogan, Richard. *Class and Community in Frontier Colorado.* Lawrence: University Press of Kansas, 1990.

Holcombe, Lee. *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England.* Toronto: University of Toronto, 1983.

Huie, William O. "The Texas Constitutional Definition of the Wife's Separate Property." *Texas Law Review* 35: (1956-1957): 1054-1070.

Hunt, Aurora. *Kirby Benedict, Frontier Federal Judge: An Account of Legal and Judicial Development in the South-West, 1853-1874.* Glendale: A.H. Clark, 1961.

Hurtado, Albert L. *Indian Survival on the California Frontier*. New Haven: Yale University Press, 1988.

_____*Intimate Frontiers: Sex, Gender, and Culture in Old California.* Albuquerque: University of New Mexico Press, 1999.

Hyslop, Stephen G. *Bound for Santa Fe: the Road to New Mexico and the American Conquest, 1806-1848.* Norman: University of Oklahoma Press, 2002.

Jacobs, Margaret D. "The Eastmans and the Luhans: Interracial Marriage Between White Women and Native American Men, 1875-1935." *Frontiers: A Journal of Women Studies* 23:3 (2002): 29-54.

Jameson, Elizabeth. *All That Glitters: Class, Conflict, and Community in Cripple Creek.* Urbana: University of Illinois Press, 1998.

_____"Bringing It All Back Home: Rethinking the History of Women and the Nineteenth-Century West." in William Deverell, ed. *A Companion to the American West*. Malden: Blackwell Publishing Inc., 2004: 761-791.

_____"Frontiers." *Frontiers: A Journal of Women Studies* 17:3 (1996): 6-11.

_____"Toward a Multicultural History of Women in the Western United States." *Signs: Journal of Women in Culture and Society* 13:4 (Summer 1988): 761-791.

Jameson, Elizabeth and Susan Armitage. eds. *Writing the Range: Race, Class, and Culture in the Women's West.* Norman: University of Oklahoma Press, 1997.

Jaramillo, Cleofas M. *Romance of a Little Village Girl.* Albuquerque: University of New Mexico Press, 2000.

Jeffrey, Julie Roy. *Frontier Women: The Trans-Mississippi West, 1840-1880.* New York: Hill and Wang, 1979.

Jenkins, Myra Ellen. "Taos Pueblo and Its Neighbors, 1540-1847." *New Mexico Historical Review* 41:2 (April 1966): 85-114.

Jensen, Joan. *With These Hands: Women Working on the Land.* San Francisco: McGraw-Hill Book Co., 1981.

Jensen, Joan and Darlis A. Miller. eds. *New Mexico Women: Intercultural Perspectives* (Albuquerque: University of New Mexico Press, 1986).

Jensen, Joan and Darlis A. Miller. "The Gentle Tamers Revisited: New Approaches to the History of Women in the American West." *Pacific Historical Review* 49:2 (May 1980): 173-213.

Johnson, Susan Lee. *Roaring Camp: The Social World of the California Gold Rush.* New York: W.W. Norton, 2000.

_____"Sharing Bed and Board: Cohabitation and Cultural Difference in Central Arizona Mining Towns, 1853-1873." In *The Women's West*, edited by Susan Armitage and Elizabeth Jameson. Norman: University of Oklahoma Press, 1987.

Jones, Oakah L. *Los Paisanos: Spanish Settlers on the Northern Frontier of New Spain.* Norman: University of Oklahoma Press, 1979.

_____"Spanish Civil Communities and Settlers in Frontier New Mexico, 1790-1810." In *Hispanic-American Essays in Honor of Max Leon Moorhead*, edited by William S. Coker. Pensacola: The Perdido Bay Press, 1979.

Julian, George W. "Land Stealing in New Mexico." *North American Review* 145:368 (July 1887), 17-31.

Kanowitz, Leo. *Women and the Law: The Unfinished Revolution.* Albuquerque: University of New Mexico Press, 1969.

Kaplan, Dana V. "Women of the West: The Evolution of Marital Property Laws in the Southwestern United States and Their Effect on Mexican-American Women." *Women's Rights Law Reporter* 26: 2 and 3 (Spring/Summer 2005): 139-166.

Karnes, Thomas L. *William Gilpin Western Nationalist.* Austin: University of Texas Press, 1970.

Kearney, Milo. *Medieval Culture and the Mexican American Borderlands.* College Station: Texas A & M University Press, 2001.

Keleher, William A. *Maxwell Land Grant: A New Mexico Item.* Santa Fe: William Gannon, 1975.

_____*Turmoil in New Mexico.* Albuquerque: University of New Mexico Press, 1952.

Kessell, John. *Kiva, Cross, and Crown: The Pecos Indians and New Mexico, 1540-1840.* Washington, D. C.: U.S. National Park Service, 1979.

Knafla, Louis A. and Susan W.S. Binnie. *Law, Society, and the State: Essays in Modern Legal History.* Toronto: University of Toronto Press, 1995.

Knaup, Kathianne. "The Transition From Spanish Civil Law to English Common Law in Missouri." *Saint Louis University Law Journal* 16 (Winter 1971): 218-231.

Krainz, Thomas. "Culture and Poverty: Progressive Era Relief in the Rural West." 74:1 (February 2005): 87-120.

Lacy, James M. "New Mexican Women in Early American Writings." *New Mexico Historical Review* 34:1 (January 1959): 41-51.

Lamar, Howard R. *The Far Southwest, 1846-1912: A Territorial History.* New Haven: Yale University Press, 1966.

Langum, David J. *Law and Community on the Mexican California Frontier: Anglo-American Expatriates and the Clash of Legal Traditions, 1821-1846.* Norman: University of Oklahoma Press, 1987.

Larsen, Arthur J. ed., *Crusader and Feminist: Letters of Jane Grey Swisshelm, 1858-1865.* Saint Paul: Minnesota Historical Society, 1934.

Larson, Robert W. *New Mexico's Quest For Statehood, 1840-1912.* Albuquerque: University of New Mexico Press, 1968.

Lavrin, Asunción. ed. *Latin American Women: Historical Perspectives.* Westport: Greenwood Press, 1978.

_____*Sexuality and Marriage in Colonial Latin America.* Lincoln: University of Nebraska Press, 1989.

Lazarou, Kathleen E. *Concealed Under Petticoats: Married Women's Property and the Law of Texas, 1840-1913.* New York: Garland Publishing, Inc., 1986.

Lecompte, Janet. "The Independent Women of New Mexico, 1821-1846." *Western Historical Quarterly* 12:1 (January 1981): 17-35.

_____*Pueblo, Hardscrabble, Greenhorn: The Upper Arkansas, 1832-1856.* Norman: University of Oklahoma Press, 1978.

Leonard, Stephen J., Thomas J. Noel, and Donald L. Walker. *Honest John Shafroth: A Colorado Reformer.* Denver: Colorado Historical Society, 2003.

Limerick, Patricia Nelson. *Legacy of Conquest: The Unbroken Past of the American West.* New York: W.W. Norton & Company, 1987.

Limerick, Patricia Nelson, Clyde A. Milner II, and Charles Rankin, eds. *Trails: Toward a New Western History.* Lawrence: University of Kansas Press, 1991.

Lorey, David E. *The U.S.-Mexican Border in the Twentieth Century: A History of Economic and Social Transformation.* Wilmington: Scholarly Resources, 1999.

Lothrop, Gloria Ricci. "Rancheras and the Land: Women and Property Rights in Hispanic California. *Southern California Quarterly* 76:1 (Spring 1994): 59-84.

Luna, Guadalupe T. "'This Land Belongs to Me:' Chicanas and Land Grant Adjudication and the Treaty of Guadalupe Hidalgo." *Harvard Latino Law Review* 3 (Fall 1999): 115-162.

McCaa, Robert. "Calidad, Class, and Marriage in Colonial Mexico: The Case of Parral, 1788-1790." *Hispanic American Historical Review* 64:3 (August 1984): 477-501.

McDonnell, Jeanne Farr. *Juana Briones of 19th Century California.* Tucson: University of Arizona Press, 2008.

McKnight, Joseph. "Law Books on the Hispanic Frontier." *Journal of the West* 27:3 (July 1988): 74-83.

_____"The Spanish Influence on the Texas Law for Civil Procedure." *Texas Law Review* 38:1 (November 1959): 24-54.

_____"Spanish Legitim in the United States: Its Survival and Decline." *American Journal of Comparative Law.* 44:1 (Winter 1996): 75-107.

_____"Texas Community Property Law: Conservative Attitudes, Reluctant Change." *Law and Contemporary Problems* 56:2 (Spring 1993): 71-98.

McMurray, Orrin K. "The Beginnings of the Community Property System in California and the Adoption of the Common Law." *California Law Review* 3 (July 1915): 359-380.

McWilliams, Carey. *North From Mexico: The Spanish-Speaking People of the United States.* New York: Greenwood Press, 1968.

Martin, Cheryl English. "Popular Speech and Social Order in Northern Mexico, 1650-1830." *Comparative Studies in Society and History* 32:2 (April 1990): 305-324.

Matsuda, Mari J. "The West and the Legal Status of Women: Explanations of Frontier Feminism." *Journal of the West* 24:1 (January 1985): 47-56.

Meinig, Donald W. *Southwest: Three Peoples in Geographical Change, 1600-1970.* New York: Oxford University Press, 1971.

Melville, Margarita. *Twice A Minority: Mexican American Women.* St. Louis: C.V. Mosby, 1980.

Menchaca, Martha. *The Mexican Outsiders: a Community History of Marginalization and Discrimination in California.* Austin: University of Texas Press, 1995.

Metzgar, Joseph V. "The Ethnic Sensitivity of Spanish New Mexicans: A Survey and Analysis." *New Mexico Historical Review* 49:1 (Winter 1974): 49-73.

Meyer, Michael C. "The Living Legacy of Hispanic Groundwater Law in the Contemporary Southwest." *Journal of the Southwest* 31:3 (Autumn 1989): 287-299.

Meyer, Michael C., William L. Sherman, and Susan M. Deeds. *The Course of Mexican History.* New York: Oxford University Press, 1999.

Meyers, Todd Mitchell. "A 'Fantasy Heritage'?: A Review of the Changing Literature on Hispano Identity in New Mexico." *Journal of the Southwest* 51:3 (Autumn 2009): 403-421.

Miller, Darlis A. *The California Column in New Mexico.* Albuquerque: University of New Mexico Press, 1982.

_____Cross-Cultural Marriages in the Southwest: The New Mexico Experience, 1846-1900." *New Mexico Historical Review* 57:4 (October 1982): 335-359.

_____"The Women of Lincoln County 1860-1900." In *New Mexico Women: Intercultural Perspectives,* edited by Joan m. Jensen and Darlis A. Miller. Albuquerque: University of New Mexico Press, 1986.

Mirandé, Alfredo and Evangelina Enríquez. *La Chicana: The Mexican-American Woman.* Chicago: University of Chicago Press, 1979.

Mitchell, Pablo. "You Just Don't Know Mrs. Baca: Intermarriage, Mixed Heritage, and Identity in New Mexico." *New Mexico Historical Review* 79:4 (Fall 2004): 437-457.

Mocho, Jill. *Murder and Justice in Frontier New Mexico, 1821-1846.* Albuquerque: University of New Mexico Press, 1997.

Monroy, Douglas. *The Borders Within: Encounters Between Mexico and the U.S.* Tucson: University of Arizona Press, 2008.

Montejano, David. *Anglos and Mexicans in the Making of Texas, 1836-1986.* Austin: University of Texas Press, 1987.

Montgomery, Charles. *The Spanish Redemption: Heritage, Power, and Loss on New Mexico's Upper Rio Grande.* Berkeley: University of California Press, 2002.

Montoya, María E. *Translating Property: the Maxwell Land Grant and the Confllict Over Land in the American West, 1840-1900.* Berkeley: University of California Press, 2002.

Mora, Magdalena and Adelaida R. Del Castillo, eds. *Mexican Women in the United States: Struggles Past and Present.* Los Angeles: University of California, 1980.

Morris, Richard B. *Study and History of American Law With Special Reference to the Seventeenth and Eighteenth Centuries.* Philadelphia: Joseph M. Mitchell Company, 1959.

Morrow, William W. *Spanish and Mexican Private Land Grants.* San Francisco: Gale Publishing Company, 1923.

Murguia, Edward and Ralph B. Cazares. "Intermarriage of Mexican Americans." *Marriage and Family Review* 5:1 (September 1982): 91-100.

Murphy, James M. *The Spanish Legal Heritage in Arizona.* Tucson: Arizona Pioneers Historical Society, 1966.

Murphy, Lawrence R. "Reconstruction in New Mexico." *New Mexico Historical Review* 43:2 (April 1968): 99-115.

Myres, Sandra L. "Army Women's Narratives as Documents of Social History: Some Examples From the Western Frontier, 1840-1900." *New Mexico Historical Review* 65:2 (April 1990): 175-198.

_____"Mexican Americans and Westering Anglos: A Feminine Perspective." *New Mexico Historical Review* 57:4 (October 1982): 317-332.

_____*Westering Women and the Frontier Experience: 1800-1915.* Albuquerque: University of New Mexico Press, 1982.

New Mexico. *Laws for the Government of the Territory of New Mexico, September 22, 1846.* The Avalon Project: Documents in law, History and Diplomacy. http://Avalon.law.yale.edu/19th_century/Kearney.asp.

New Mexico. *Laws of the Territory of New Mexico Passed by the Legislative Assembly, 1863-1864.* An Act Amending the Criminal Law. Section One.

New Mexico. *Revised Statutes and Laws of the Territory of New Mexico Session at the Legislative Assembly in Force at the Close of the Session of the Legislative Assembly Ending February 2, 1865*. St. Louis: E.P. Studley and Co., 1865.

N. M. Stat.§ 40-1-20.

Nieto-Phillips, John. *The Language of Blood: The Making of Spanish-American Identity in New Mexico, 1880s-1930s.* Albuquerque: University of New Mexico Press, 2004.

Noggle, Burl. "Anglo Observers of the Southwest Borderlands, 1825-1890: The Rise of a Concept." *Arizona and the West* 1:2 (Summer 1959): 105-131.

Nostrand, Richard L. "The Century of Hispano Expansion." *New Mexico Historical Review* 62:4 (October 1987): 361-386.

_____"The Hispanic-American Borderland: Delimitation of an American Culture Region. *Annals of the Association of American Geographers* 60:4 (December 1970): 638-661.

_____"Mexican Americans Circa 1850." *Annals of the Association of American Geographers* 65-3 (September 1975): 383-386.

Onís, José de. *The Hispanic Contribution to the State of Colorado.* Boulder: Westview Press, 1976.

Ord, Angustias de la Guerra. *Occurrences in Hispanic California.* Washington, D.C.: Academy of American Franciscan History, 1956.

Pascoe, Peggy. "Race, Gender, and Intercultural Relations." *Frontiers: A Journal of Women's Studies* 12:1 (1991): 5-18.

_____*Relations of Rescue: The Search for Female Moral Authority in the American West, 1874-1939.* New York: Oxford University Press, 1990.

_____"Western Women at the Cultural Crossroads." in Patricia Nelson Limerick, Clyde A. Milner II, and Charles Rankin. eds. Lawrence: University Press of Kansas, 1991.

_____*What Comes Naturally: Miscegenation, Law, and the Making of Race in America.* Oxford: Oxford University Press, 2009.

Paul, Rodman W. *Mining Frontiers of the Far West: 1848-1889.* New York: Holt, Rinehart and Winston, 1963.

Payne, Melissa. "Lessons From the Rio Abajo: A Colonial Patron's Contested Legacy." *New Mexico Historical Review* 80:4 (Fall 2005): 397-416.

Peavy, Linda and Ursula Smith. *Pioneer Women: The Lives of Women on the Frontier.* Norman: University of Oklahoma Press, 1996.

Penyak, Lee M. and Verónica Vallejo. "Expectations of Love in Troubled Mexican Marriages During the Late Colonial and Early National Periods." *Historian* 65 (Spring 2003): 563-586.

Perales, Marian. "Empowering the 'Welder': A Historical Survey of Women of Color in the West." in Elizabeth Jameson and Susan Armitage, eds. *Writing the Range: Race, Class, and Culture in the Women's West.* Norman: University of Oklahoma Press, 1997: 21-41.

Perrigo, Lynn I. "New Mexico in the Mexican Period, as Revealed in the Torres Documents." *New Mexico Historical Review* 29:1 (January 1954): 28-40.

Perry, Adele. *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871*. Toronto: University of Toronto Press, 2001.

Petrik, Paula. "If She be Content: The Development of Montana Divorce Law, 1865-1907." *Western Historical Quarterly* 18:3 (July 1987): 261-291.

Pitt, Leonard. *The Decline of the Californios: a Social History of the Spanish-Speaking Californians, 1846-1890.* Berkeley: University of California Press, 1971.

Prager, Susan Westerberg. "The Persistence of Separate Property Concepts in California's Community Property System, 1849-1975." *UCLA Law Review* 24:1 (October 1976): 1-82.

Prince, L. Bradford. *General Laws of New Mexico From the Kearny Code of 1846 to 1880.* Albany: Torch Press, 1880.

Reséndez, Andrés. *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850.* New York: Cambridge University Press, 2005.

Riley, Glenda. *Divorce: An American Tradition.* New York: Oxford University Press, 1991.

Rivera, John-Michael. *The Emergence of Mexican America: Recovering Stories of Mexican Peoplehood in U.S. Culture.* New York: New York University Press, 2006.

Robbins, William G. *Colony and Empire: The Capitalist Transformation of the American West.* Lawrence: University Press of Kansas, 1994.

Rock, Rosalind Z. "Mujeres de Substancia: Case Studies of Women of Property in Northern New Spain." *Colonial Latin American Review* 2:4 (Fall 1993): 425-440.

_____"'Pido y Suplico': Women and the Law in Spanish New Mexico, 1696-1763." *New Mexico Historical Review* 65:2 (April 1990): 145-159.

Rodríguez, Clara E. *Changing Race: Latinos, the Census, and the History of Ethnicity in the United States.* New York: New York University Press, 2000.

Rosenbaum, Robert Johnson. "Mexicano vs. Americano: A Study of Hispanic-American Resistance to Anglo-American Control in New Mexico Territory, 1870-1900." Ph.D. diss., University of Texas, 1972.

Rosen, Deborah A. "Acoma v. Laguna and the Transition from Spanish Colonial Law to American Civil Procedure in New Mexico." *Law and History Review* 19:3 (Fall 2001): 513-546.

_____"Women and Property Across Colonial America: A Comparison of Legal Systems in New Mexico and New York." *William and Mary Quarterly* 60:2 (April 2003): 355-381.

Ruiz, Vicki L. *Cannery Women, Cannery Lives: Mexican Women, Unionization, and the California Food Processing Industry, 1930-1950.* Albuquerque: University of New Mexico Press, 1987.

_____*From Out of the Shadows: Mexican Women in Twentieth-Century America.* New York: Oxford University Press, 1998.

Ruiz Vicki L. and Susan Tiano. *Women on the U.S.-Mexican Border: Responses to Change.* Westminster: Allen and Unwin, 1987.

Ruiz de Burton, María Amparo. *The Squatter and the Don.* Houston: Arte Público Press, 1992.

Said, Edward, *Orientalism.* New York: Pantheon, 1978.

Salmon, Marylynn. *Women and the Law of Property in Early America.* Chapel Hill: University of North Carolina Press, 1986.

Sánchez, Joseph P. *Between Two Rivers: The Atrisco Land Grant in Albuquerque History, 1692-1968.* Norman: University of Oklahoma Press, 2008.

Sánchez, Rosaura. *Telling Identities: The Californio Testimonios.* Minneapolis: University of Minnesota Press, 1995.

Sandos, James A. "From 'Boltonlands' to 'Weberlands': The Borderlands Enter American History. *American Quarterly* 46:4 (December 1994): 595-604.

Saunders, Myra K. "California Legal History: A Review of Spanish and Mexican Legal Institutions." *Law Library Journal* 87 (Summer 1995): 487-514.

Scadron, Arlene. *On Their Own: Widows and Widowhood in the American Southwest, 1848-1930.* Urbana: University of Illinois Press, 1988.

Schuele, Donna C. "'No One Could Deny the Eloquence of This Lady': Women, Law, and Government in California, 1850-1890." *California History* 81:3-4 (2003): 169-198.

Seed, Patricia. "American Law, Hispanic Traces: Some Contemporary Entanglements of Community Property." *William and Mary Quarterly* 52:1 (January 1995): 157-162.

_____"Marriage Promises and the Value of a Woman's Testimony in Colonial Mexico." *Signs* 13:2 (Winter 1988):253-276.

_____*To Love, Honor, and Obey in Colonial Mexico: Conflicts Over Marriage Choice, 1574-1821.* Stanford: Stanford University Press, 1988.

Segale, Blandina. *At the End of the Santa Fe Trail.* Albuquerque: University of New Mexico Press, 1999.

Shelton, Laura M. *For Tranquility and Order: Family and Community on Mexico's Northern Frontier, 1800-1850.* Tucson: University of Arizona Press, 2010.

Simmons, Marc. *New Mexico: a Bicentennial History.* New York: Norton, 1977.

_____*Spanish Government in New Mexico.* Albuquerque: University of New Mexico Press, 1968.

Socolow, Susan M. *The Women of Colonial Latin America.* New York: Cambridge University Press, 2000.

Staples, Robert. "The Mexican-American Family: Its Modification Over Time and Space." *Phylon* 32 (Summer 1971): 179-192.

Stoler, Ann Laura. *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule.* Berkeley: University of California Press, 2002.

_____ "Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion" in Frederick Cooper and Ann Laura Stoler, eds. *Tension of Empire: Colonial Cultures in a Bourgeois World.* Berkeley: Los Angeles, 1997: 198-237.

Stoller, Marianne. "Grants of Desperation, Land of Speculation: Mexican Period Land Grants in Colorado." *Journal of the West* 19 (July 1980): 22-39.

Stratton, Porter A. *The Territorial Press of New Mexico, 1834-1912.* Albuquerque: University of New Mexico Press, 1969.

Stuntz, Jean A. *Hers, His, and Theirs: Community Property Law in Spain and Early Texas.* Lubbock: Texas Tech University Press, 2005.

_____"Spanish Laws for Texas Women: The Development of Marital Property Law to 1850." *Southwestern Historical Quarterly* 104:4 (April 2001): 543-559.

Sunseri, Alvin R. *Seeds of Discord: New Mexico in the Aftermath of the American Conquest, 1846-1861.* Chicago: Nelson-Hall, 1979.

Swadesh, Frances Leon. *Los Primeros Pobladores: Hispanic Americans of the Ute Frontier.* Notre Dame: University of Notre Dame Press, 1974.

Swagerty, William R. "Marriage and Settlement Patterns of Rocky Mountain Trappers and Traders." *Western Historical Quarterly* 11:2 (April 1980): 159-180.

Taylor, Morris F. "A New Look at an Old Case: The Bent Heirs' Claim in the Maxwell Grant." *New Mexico Historical Review* 43:3 (July 1968): 213-227.

Taylor-Montoya, Amanda. "'Under the same glorious flag': Land, Race and Legitimacy in Territorial New Mexico." PhD. diss., University of Oklahoma, 2009.

Tittmann, Edward D. "The Last Legal Frontier." *New Mexico Historical Review* 2:3 (July 1927): 219-227.

Tjarks, Alicia V. "Demographic, Ethnic, and Occupational Structure of New Mexico, 1790." *The Americas* 35:1 (July 1978): 45-88.

Trulio, Beverly. "Anglo-American Attitudes Toward New Mexican Women." *Journal of the West* 12:2 (April 1973): 229-39.

Twinam, Ann. *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America.* Stanford: Stanford University Press, 1999.

Tyler, Daniel. "Anglo-American Penetration of the Southwest: The View From New Mexico. *Southwestern Historical Quarterly* 75:2 (January 1992), 325-338.

United States Bureau of the Census. *Report on the Population of the United States at the Eleventh Census*: 1890. Washington, D.C.: Government Printing Office, 1895.

_____*Statistical View of the United States.* Washington, D.C.: Senate Printer, 1854.

_____*Statistics of the Population of the United States at the Tenth Census.* Washington, D.C.: Government Printing Office, 1883.

_____*Statistics of the United States in 1860.* Washington, D.C.: Government Printing Office, 1866.

_____*Statistics of the Population of the United States at the Ninth Census.* Washington, D.C.: Government Printing Office, 1872.

_____*Thirteenth Census of the United States with Supplement for New Mexico.* Washington, D.C.: Government Printing Office, 1913.

_____*Twelfth Census of the United States.* Washington, D.C.: Government Printing Office, 1901.

Van Kirk, Sylvia. *Many Tender Ties: Women in Fur Trade Society, 1670-1870.* Norman: University of Oklahoma Press, 1980.

Vance, John Thomas. *The Background of Hispanic-American Law: Legal Sources and Judicial Literature of Spain.* New York: Central Book Company, 1943.

Warbasse, Elizabeth Bowles. *The Changing Legal Rights of Married Women, 1800-1861.* New York: Garland Publishing Inc., 1987.

Warner, Louis H. "Conveyance of Property the Spanish and Mexican Way." *New Mexico Historical Review* 6:4 (October 1931): 334-359.

Weber, David J. ed. *Foreigners in Their Native Land: Historical Roots of the Mexican Americans.* Albuquerque: University of New Mexico Press, 1973.

_____*The Mexican Frontier, 1821-1846: The American Southwest Under Mexico.* Albuquerque: University of New Mexico Press, 1982.

_____*Myth and the History of the Hispanic Southwest.* Albuquerque: University of New Mexico Press, 1988.

_____*The Spanish Frontier in North America.* New Haven: Yale University Press, 1992.

_____*The Taos Trappers: The Fur Trade in the Far Southwest, 1540-1846.* Norman: University of Oklahoma Press, 1968.

_____"Turner, the Boltonians, and the Borderlands." *American Historical Review* 91:1 (February 1986): 66-81.

Welter, Barbara. "The Cult of True Womanhood: 1820-1860." *American Quarterly* 18:2 (Summer 1966): 151-74.

Westphall, Victor. *Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region.* Albuquerque: University of New Mexico Press, 1983.

Weigle, Marta. ed. *Hispanic Villages of Northern New Mexico.* Santa Fe: Jene Lyon Publisher, 1975.

Wood, Andrew Grant. *On the Border: Society and Culture Between the United States and Mexico.* Boulder: SR Books, 2001.

Worcester, Donald E. "The Significance of the Spanish Borderlands to the United States." *The Western Historical Quarterly* 7:1 (January 1976): 4-18.

Wright, Carroll D. *A Report on Marriage and Divorce in the United States, 1867 to 1886* Washington, D.C.: Government Printing Office, 1891.

Yankwich, Leon R. "Social Attitudes as Reflected in Early California Law." *Hastings Law Journal.* 10:1 (August 1958-1959): 250-270.

Zeleny, Carolyn. *Relations Between the Spanish-Americans and Anglo-Americans in New Mexico: A Study of Conflict and Accommodation in a Dual-Ethnic Situation.* New York: Arno Press, 1974.