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Bringing Reason and History onto the Same Page: Lobato v. Taylor and the Struggle over the Common Lands of Spanish and Mexican Land Grants

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BRINGING REASON AND HISTORY ONTO THE SAME PAGE: *LOBATO V. TAYLOR* AND THE STRUGGLE OVER THE COMMON LANDS OF SPANISH AND MEXICAN LAND GRANTS

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Lawyers, scholars and commentators have struggled for decades to articulate the proper role of Spanish and Mexican law and culture in the context of land grant litigation. Historians and legal scholars have suggested that the clash of two distinct and incompatible land tenure systems was, and still is, at the core of the issue.[1] Other scholars and commentators posit that land grant policy and litigation was driven by the United States' early twentieth century quest to organize its public domain[2] and the unscrupulous efforts of land speculators.[3] The efforts of academics, for the most part, did not provide the assistance or guidance needed by litigators advocating for the descendants of the original land grant settlers in twentieth and twenty-first century American courts. Certainly, the litigation did not solve the disputes over the common lands of the southern Colorado and northern New Mexico land grants.[4]

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1. *See* John R. Van Ness, *Spanish American vs. Anglo American Land Tenure and the Study of Economic Change in New Mexico*, 13 THE SOC. SCI. J. 45 (1976) [hereinafter Van Ness]; *see also* Placido Gomez, *The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants*, 25 NAT. RESOURCES J. 1039 (1985) [hereinafter Gomez].

2. *See* ROXANNE DUNBAR ORTIZ, ROOTS OF RESISTANCE, LAND TENURE IN NEW MEXICO, 1680-1980 95 (1980) [hereinafter DUNBAR ORTIZ]; FRANCES LEON SWADESH, LOS PRIMEROS POBLADORES, HISPANIC AMERICANS OF THE UTE FRONTIER 70 (1974).

3. *See* VICTOR WESTPHALL, MERCEDES REALES, HISPANIC LAND GRANTS OF THE UPPER RIO GRANDE REGION 98-103 (1983) [hereinafter WESTPHALL]; WHITE, KOCH, KELLY AND MCCARTHY, LAND TITLE STUDY 3 1 (1971) [hereinafter LAND TITLE STUDY]. The LAND TITLE STUDY was a report commissioned to a major New Mexico law firm to study land title issues in northern New Mexico. The study noted the influence of the infamous Santa Fe Ring, a group of ambitious, unscrupulous Anglo lawyers who regarded the confused legal status of the land grants as an ideal opportunity for adding money and land to their personal assets. *Id.* at 31 (quoting ROBERT W. LARSON, NEW MEXICO'S QUEST FOR STATEHOOD, 1846-1912 157 (1968)).

4. Gomez, *supra* note 1, at 1039-41. Historian Richard Tawney writes:

> [C]ommon action, which is in effect communal action, is quite possible without those who act either possessing, or feeling the need of possessing, any definite status. It is perhaps not too presumptuous to suggest that the very precision with which the lawyer applies his keen analysis of juristic conceptions to remove the misconceptions of the lay mind, is sometimes an obstacle to the understanding of forms of organisation created by the daily routine of men quite unversed in the law.

Disputes regarding Spanish and Mexican land grants have engaged local and national courts for more than 150 years.[5] None has invoked more litigation,[6] academic literature,[7] and lore[8] than those addressing the use of the common lands of the former Sangre de Cristo Land Grant.[9] The latest chapter in the litigation concerning the common lands of the Sangre de Cristo Grant is documented in *Lobato v. Taylor*,[10] the Colorado Supreme Court's most recent attempt at resolving a dispute that has consumed local residents for the greater part of two centuries.

Scholars and academics have analyzed the common lands in historical context.[11] The Mexican government's practice of ceding large parcels of

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RICHARD HENRY TAWNEY, THE AGRARIAN PROBLEM IN THE SIXTEENTH CENTURY 160-61 (1912) [hereinafter TAWNEY].

5. *See generally* United States v. Santa Fe, 165 U.S. 675 (1897); United States v. Sandoval, 167 U.S. 278 (1897); Maxwell Land-Grant Case, 121 U.S. 325 (1887); Tameling v. U.S. Freehold and Emigration Co., 93 U.S. 644 (1876).

6. *See generally* Tameling, 93 U.S. 644; Sanchez v. Taylor, 377 F.2d 733 (10th Cir. 1967); Taylor v. Jaquez, 126 F.3d 1294 (10th Cir. 1997); Lobato v. Taylor, 70 P.3d 1152 (Colo. 2003) (Lobato II); Lobato v. Taylor, 71 P.3d 938 (Colo. 2002) (Lobato I); Lobato v. Taylor, 13 P.3d 821 (Colo. Ct. App. 2000); Rael v. Taylor, 832 P.2d 1011 (Colo. Ct. App. 1991); Rael v. Taylor, 876 P.2d 1210 (Colo. 1994); Aragon v. Rio Costilla Coop. Livestock Ass'n, 812 P.2d 1300 (N.M. 1991).

7. *See generally* Richard D. Garcia & Todd Howland, *Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre de Cristo/Rael Cases*, 16 CHICANO-LATINO L. REV. 39 (1995); Jeffrey A. Goldstein, *Panel Presentation: Lobato v. Taylor*, 5 SCHOLAR 183 (2003) [hereinafter Goldstein]; Gomez, *supra note* 1; MARIA E. MONTOYA, TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840-1900 168-70 (2002) [hereinafter MONTOYA]; Maria E. Montoya, *Dividing the Land: The Taylor Ranch and the Limited Access Commons*, *in* LAND IN THE AMERICAN WEST: PRIVATE CLAIMS AND THE COMMON GOOD, (William Robbins, ed., 2000); Peter L. Reich, *Panel Presentation: Litigating Property Under the Guadalupe Hidalgo Treaty: The Sangre De Cristo Land Grant Case*, 5 SCHOLAR 217 (2003) [hereinafter Reich]; Marianne L. Stoller, *Grants of Desperation, Lands of Speculation: Mexican Period Land Grants in Colorado*, *in* SPANISH AND MEXICAN LAND GRANTS IN NEW MEXICO AND COLORADO 22 (John R. & Christine M. Van Ness eds., 1980) [hereinafter Stoller].

8. *See generally* Calvin Trillin, *U.S. Journal: Costilla County, Colorado, A Little Cloud on the Title*, 52 NEW YORKER 122 (1976); Earle, *Land War Renewed in Costilla County*, DENVER POST, Nov. 30, 1975, at 1; *Taylor Hand Shoots Self in Gun Battle*, LA TIERRA, July 1982, at 7-8; Endley, *Poachers Sought After Shooting*, THE VALLEY COURIER, May 13, 1982, at 1, col.1.

9. The dispute involved approximately 77,000 acres of mountain property traditionally used for hunting, fishing, firewood, timber and recreation by residents of southern Colorado mountain villages. However, the litigation provides insight to "other conquered peoples attempting to preserve their traditional usufructuary rights in common law judicial fora." Reich, *supra note* 7, at 218.

10. *Lobato II*, 70 P.3d at 1152.

11. *See* LAND TITLE STUDY, *supra* note 3, at 9-13; Malcolm Ebright, *The San Joaquin Grant, Who Owned the Common Lands? A Historical - Legal Puzzle*, 57 N.M. HISTORICAL REV. 1 (1982); Malcolm Ebright, *Mexican Land Grants: The Legal Background*, *in* LAND, WATER, AND CULTURE: NEW PERSPECTIVES ON HISPANIC LAND GRANTS (Charles L. Briggs and John R. Van Ness, eds., 1987). *See generally* Gomez, *supra* note 1, at 1066; Christopher David Ruiz

land to entrepreneurs and others played a significant role in the development of Mexico's mid-19th century northern frontier. Mexican officials intended the northernmost grants to provide a buffer that would insulate Mexico from the land-hungry United States.[12] Drawing on a unique system of land grants and public land ownership developed and perfected by Spain during the re-conquest of Castile and the subsequent subjugation of Mexico, the Mexican government used the grants to encourage settlement and secure its legal claim to the territory.[13]

Political turmoil and the reality of life on the frontier blurred legal aspects of the land grants.[14] Legal titles were vague and "land ownership and usage [was] established by custom," not legal documents.[15] A unique culture evolved. The culture had as its foundation a land tenure system that combined features of both the indigenous and Spanish designs.[16] Communal property, mutual cooperation, possession based on use, and an indelible attachment to the land were at the core of the tenure system that evolved in what is now northern New Mexico and southern Colorado.[17] Although the law in Mexico's northern provinces was, at times, indiscernible, custom and usage enjoyed the force of law.[18]

Cameron, *One Hundred Fifty Years of Solitude: Reflections on the End of the History Academy's Dominance of Scholarship on the Treaty of Guadalupe Hidalgo*, 5 SW. J. L. & TRADE AM. 83, 84 (1998); Richard D. Garcia & Todd Howland, *Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre De Cristo/Rael Case*, 16 CHICANO-LATINO L. REV. 39 (1995); Guadalupe T. Luna, *"Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy*, 26 N.M. L. REV. 9 (1996).

12. Gomez, *supra* note 1, at 1066.

13. *Id.*

14. *See* Whitney v. United States, 181 U.S. 104, 108 (1901) ("[It was] an exceedingly difficult matter . . . to determine with anything like certainty what laws were in force in Mexico at any particular time . . . . because of the frequent political changes that took place . . . [r]evolutions and counter-revolutions, empires and republics [which] followed each other with great rapidity and in bewildering confusion . . . ."). *Id.*

15. LAND TITLE STUDY, *supra* note 3, at 83.

16. GEORGE MCBRIDE, THE LAND SYSTEMS OF MEXICO 123. "[T]he Spanish government recognized the collective system of landholding which had prevailed among the agricultural Indians of Mexico, modified it slightly to make it conform more nearly to Castilian institutions, and gave it a legal status by the enactment of appropriate legislation." *Id.*

17. Gomez, *supra* note 1, at 1066.

18. Under Spanish law, custom was the unwritten law, supported by the force of law. THE LAWS OF THE SIETE PARTIDAS, Book 1, Title 2, Laws 4 and 6, 13-14 (Lislet and Carlton, trans. 1820) (Spain). Custom developed from usage. "Usage arises from certain things which men say, and do, and practise, uninterruptedly, for a great period of time." *Id.* at Law 1, 12; Joaquin Escriche y Martin, a commentator on Spanish law wrote:

> Custom . . . is the practice long used and received, which has acquired the force of the law. . . *not only where there is no law to the contrary*, but, also, when its effect is to abrogate any former law which may be opposed to it, as well as to explain that which is doubtful.

The political reality and instability of mid 19th century Mexico and the flexibility of the Spanish and Mexican legal systems engendered a unique culture in the northern provinces. In two years, from 1841 to 1843, Governor Manuel Armijo transferred almost ten million acres, much of which is located in present-day Colorado, to businessmen who agreed to attract permanent settlers to the land.[19] The settlers, far from any formal government, and further isolated by the region's mountainous terrain, formed autonomous ranching and farming communities "characterized by multiple forms of land tenure [including] private agricultural landholding(s), encumbered by various collective constraints and communal pasturages with individual rights of usufruct."[20]

Communal lands were the foundation of the subsistence economy that evolved in southern Colorado and northern New Mexico.[21] Settlers cultivated and maintained individual tracks of land surrounding a plaza. However, villagers enjoyed the right to collectively use the surrounding grasslands, woodlands and mountains for grazing livestock, fishing, firewood and recreation.[22] The common lands were necessary to the survival of the village[23] and thus central to the plan of the Mexican government to secure its claim to the northern provinces by settling the region.[24]

In addition to altering international boundaries,[25] the United States' victory in its war with Mexico set into motion a process that would significantly alter life in the small villages of northern New Mexico and southern Colorado.[26] This process, designed to organize the United States' public domain,[27] stripped the villages of their common lands.[28] Generally,

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JOAQUIN ESCRICHE, DERECHO ESPANOL 23-24 *quoted in* Panaud v. Jones, 1 Cal. 488, 498 (1851).

19. Stoller, *supra* note 7, at 34.

20. John R. Van Ness, *Introduction to* SPANISH AND MEXICAN LAND GRANTS IN NEW MEXICO AND COLORADO, 8, 8-9 (J. Van Ness ed. 1980); *see also* Van Ness, *supra* note 1, at 47.

21. Gomez, *supra* note 1 at 1058-59.

22. *See* WESTPHALL, *supra* note 3.

23. *See generally* TAWNEY, *supra* note 4. Tawney writes: "Commons and common rights, so far from being merely a luxury or a convenience, were really an integral and indispensable part of the system of agriculture, a linchpin, the removal of which brought the whole structure of village society tumbling down." *Id.* at 238-39.

24. David J. Weber, *The Mexican Frontier, 1821-1846, in* THE AMERICAN SOUTHWEST UNDER MEXICO, xvii (1982).

25. *See* Cameron, *supra* note 11, at 84 (citing Lalo Lopez, *Legacy of a Land Grab*, HISPANIC MAGAZINE, Sept. 1997, at 23).

26. Gomez, *supra* note 1, at 1067.

27. DUNBAR ORTIZ, *supra* note 2, at 95.

28. United States v. Sandoval, 167 U.S. 278 (1897). *Sandoval* held that the previous sovereign, that is Mexico, held the title to the common lands of land grants in northern New

courts addressing villagers' rights to use communal lands ignored the Treaty of Guadalupe Hidalgo[29] and the globally accepted international doctrine of acquired rights.[30] Although villagers continued to use the common lands, their rights were tenuous. Private owners could now block the villagers' use of the common lands and undermine the subsistence culture that had developed and thrived.[31] And, significantly, the litigation left the settlers and their descendants with "a deeply rooted cynicism toward the American legal and political systems and the values upon which they are based."[32]

Lawyers representing descendants of land grant settlers, while aware and sensitive to the historical context of land grant litigation, struggled to find the relevance of the realities of life in the villages of northern New Mexico and southern Colorado to property principles embodied in American jurisprudence. By necessity, litigators focused on traditional Anglo-American property law; success was limited.[33] The major obstacle

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Mexico and southern Colorado. Thus, when the United States won sovereignty over the region, the settlements' common lands became part of the victor's public domain. *Id.* at 296-97. For a critique of *Sandoval*, *see* Gomez, *supra* note 1, at 1076-80.

29. Charles DuMars & Malcolm Ebright, *Problems of Spanish and Mexican Land Grants in the Southwest: Their Origin and Extent*, 1 SOUTHWEST REV. OF MGMT. & ECON. 177, 182; *see also* MONTOYA, *supra* note 7, at 168-70; Cameron, *supra* note 25, at 87; Federico M. Cheever, *A New Approach to Spanish and Mexican Land Grants and the Public Interest Doctrine: Defining the Property Interest Protected by the Treaty of Guadalupe Hidalgo*, 33 UCLA L. REV. 1364, 1369-74; Garcia & Howland, *supra* note 7, at 39; Jon Michael Haynes, *What Is It About Saying We're Sorry? New Federal Legislation and the Forgotten Promises of the Treaty of Guadalupe Hidalgo*, 3 SCHOLAR 231, 257 (2000); Christine A. Klein, *Treaties of Conquest: Property rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M. L. REV. 201, 209-210 (1996); Guadalupe T. Luna, *Chicana/o Land Tenure in the Agrarian Domain: On the Edge of a Naked Knife*, 4 MICH. J. RACE & L. 39, 43-44, 102-03 (1998); Peter Reich, *The "Hispanic" Roots of Prior Appropriation in Arizona*, 27 ARIZ. ST. L. J. 649, 653-54 (1995).

30. *See* United States v. Percheman, 32 U.S. (7 Pet.) 51 (1833). *Percheman* was a Florida land grant case. Chief Justice Marshall wrote about the concept of acquired rights:

> [I]t is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.

Id. at 86-87.

31. O. LEONARD, THE ROLE OF THE LAND GRANT IN THE SOCIAL ORGANIZATION AND SOCIAL PROCESSES OF A SPANISH AMERICAN VILLAGE IN NEW MEXICO 131 (1970).

32. Clark S. Knowlton, *Violence in New Mexico: A Sociological Perspective*, 58 CALIF. L. REV. 1054, 1056 (1970).

33. *See, e.g., Sanchez*, 377 F.2d at 733. Although the *Sanchez* court addressed historical concepts, the case was decided on traditional notions of profits *a prendre*, adverse possession, and the interpretation of deeds. *Id.*

was the inability of the litigators to bring reason and history onto the same page.[34]

The history of the Sangre de Cristo land grant was unique, yet not unusual. In 1843, Manuel Armijo, the Mexican provincial governor of the New Mexico Territory, granted the one million acre Sangre de Cristo Land Grant to Narciso Beaubien and Stephen Lee.[35] Beaubien and Lee had filed a petition with Armijo requesting the land to settle the valleys of the Costilla, Culebra, and Trinchera rivers.[36] In 1948, the Treaty of Guadalupe Hidalgo ended the war between the United States and Mexico.[37] In the 1850s, Carlos Beaubien, the grant's successor in interest, began to induce villagers to settle the northern part of the grant using the traditional settlement design of Spain and Mexico.[38] In 1860, the Sangre de Cristo Grant was confirmed by Congress as the property of Carlos Beaubien.[39]

In 1863, one year before his death, Beaubien drafted a document granting common rights to a specific area near the village of San Luis.[40] That same document, now known as the Beaubien Document, guaranteed that all the inhabitants of the grant would have the enjoyment of benefits of pastures, water, firewood and timber, always taking care that one does not injure another.[41] A year later Beaubien died and, pursuant to a previous

34. Brief for Respondent at 5, Taylor v. Lobato, 124 S. Ct. 922 (2003), (No. 03-364 2003) WL 22683773 at 5 (Colo. Nov. 6, 2003). In its Brief in Opposition to a petition for a writ of certiorari to the Supreme Court of Colorado, Respondent argues that in *Lobato I*, the Colorado Supreme Court correctly applied state property law to bring reason and history onto the same page. *Id.*

35. J.J. BOWDEN, PRIVATE LAND CLAIMS IN THE SOUTHWEST 885 (1969) [hereinafter BOWDEN]. Narciso was the thirteen year-old son of Carlos Beaubien; Lee was Carlos' brother-in-law. Carlos Beaubien could not be the grantee of the Sangre de Cristo grant because Governor Armijo had already granted Carlos one-half interest in the Beaubien/Miranda grant. MONTOYA, *supra* note 7, at 212. Narciso died in the 1848 Taos Rebellion and Carlos subsequently bought Lee's share of the grant. *Id.*

36. BOWDEN, *supra* note 35, at 885.

37. Treaty of Peace, Friendship, Limits, and Settlement (Treaty of Guadalupe Hidalgo), Feb. 2, 1848, U.S.-Mex., 2 Stat. 922.

38. *Lobato I*, 71 P.3d at 943. "[S]trips of arable land called vara strips were allotted to families for farming, and areas not open for cultivation were available for common use. These common areas were used for grazing and recreation and as a source for timber, firewood, fish, and game." *Id.*

39. 12 Stat. 71 (1860). Other grants confirmed the same day were the Tierra Amarilla (600,000 acres), Beaubien and Miranda (1.7 million acres), and Vigil and St. Vrain (100,000 acres). Stoller, *supra* note 7, chart 1, at 26.

40. *Lobato I*, 71 P.3d at 946-47.

41. *Id.* The deed was dated May 11, 1863 and read: "[T]odos los habitantes tendran con arreglo conveniente de gozar de los beneficios de los pasteos, agua, lena y madera, siempre cuidando que no prejudicarse uno con otro. . . ." 1 Costilla County Records 226 (1863).
The English translation of a larger portion of the document articulated by the *Lobato I* court reads:

agreement, his heir sold the grant to William Gilpin, Colorado's first governor.[42] The agreement transferring the land to Gilpin specified that Gilpin would provide settlers deeds to vara strips.[43] Gilpin further agreed to respect "settlement rights before then conceded . . . to the residents of the settlements" and to confirm those rights.[44] For almost one hundred years, residents of the villages around San Luis used the adjoining land to hunt, fish, gather firewood, and harvest timber.[45]

In 1960, Jack Taylor purchased 77,000 acres of the grant from Gilpin's successor in interest.[46] The tract, which became known as the Taylor Ranch, was located southeast of the village of San Luis.[47] The deed transferring the land indicated that Taylor's purchase was subject to "claims of the local people by prescription or otherwise to right to pasture, wood, and lumber and so-called settlement rights in, to, and upon said land."[48]

Taylor, a North Carolina resident, invoked diversity jurisdiction and filed a Torrens title[49] action in the United States District Court for the

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> Plaza of San Luis de la Culebra, May 11, 1863.
>
> It has been decided that the lands of the Rito Seco remain uncultivated for the benefit of the community members (gente) of the plazas of San Luis, San Pablo and Los Ballejos and for the other inhabitants of these plazas for pasturing cattle by the payment of fee per head, etc. and that the water of the said Rito remains partitioned among the inhabitants of the same plaza of San Luis and those from the other side of the vega who hold lands, that are not irrigated with the waters of the Rio Culebra. The vega, after the measurement of three acres from it in front of the chapel, to which they have been donated, will remain for the benefit of the inhabitants of this plaza and those of the Culebra as far as above the plaza of Los Ballejos. . . . Those below the road as far as the narrows will have the right to enjoy the same benefit . . . . [*No one may*] *place any obstacle or obstruction to anyone in the enjoyment of his legitimate rights* . . . . Likewise, each one should take scrupulous care in the use of water without causing damage with it to his neighbors nor to anyone. According to the corresponding rule *all the inhabitants will have enjoyment of benefits of pastures, water, firewood and timber, always taking care that one does not injure another.*

Lobato I, 71 P.3d at 946-47 (emphases added by the court).

42. *Id.* at 943.

43. *Id.*

44. *Id.*

45. Goldstein, *supra* note 7, at 186.

46. *Lobato I*, 71 P.3d at 943. Taylor paid less than $7.00 an acre for the mountain property. Goldstein, *supra* note 7, at 186. Commentators attribute the low cost to the "cloud" on the title - the claim of the local residents to use the land for hunting, fishing, firewood, etc. *Id.* at 186-87. *See also* Calvin Trillin, *U.S. Journal: Costilla County, Colorado, A Little Cloud on the Title*, 52 NEW YORKER 122 (1976).

47. *Lobato I*, 71 P.3d at 948.

48. *Id.* at 943.

49. *Sanchez*, 377 F.2d at 733. For an in-depth description of the Torrens Title Registration Act *see Rael*, 876 P.2d at 1219-23. Generally, a Torrens title registration statute simplifies the process of transferring land. The Torrens Title Registration Act seeks to enhance certainty of titles by establishing mechanisms to resolve all adverse claims to real property in one

District of Colorado.[50] Local residents responded, claiming "unlimited equitable rights . . . with respect to grazing cattle, taking timber, hunting, fishing, water and recreational uses . . . ." by virtue of grant or dedication from Beaubien and Gilpin and prescription or adverse possession.[51] In *Sanchez v. Taylor*, the Tenth Circuit Court of Appeals affirmed the trial court's summary judgment confirming title and registration of the disputed land in Taylor, and ruling that any rights the residents may have enjoyed "under Mexican law or the original grant . . . considered in light of Mexican law and the Treaty of Guadalupe-Hidalgo," were extinguished by Congress' confirmation of the grant as the property of Carlos Beaubien in 1860.[52]

The appellants argued that the court should consider Mexican law as "an interpretive factor in understanding the meaning of 'settlement rights' allegedly granted by Beaubien in 1863 and reaffirmed by Gilpin in 1864."[53] The court noted that both Beaubien's and Gilpin's instruments were fully discussed by the trial court when it granted summary judgement.[54] Further, the Court held that, even though the local residents had used the unfenced lands of the grant "from the earliest time of settlement . . . for pasturing, wood, and recreation," this use did not vest in them any usufructuary rights.[55]

Notably, the *Sanchez* court attempted to address the combination of specificity and ambiguity contained in the Beaubien document.[56] The court did so first by pointing out the specificity of the document when describing the lands of the Rito Seco and the Vega, two smaller tracts of land near the village of San Luis.[57] Next, the court avoided the ambiguity of the portion of the document that arguably grants usufructuary rights in a much larger

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proceeding . . . . In contrast to other recording systems, the Torrens system is based on the principle that once title to land is registered pursuant to the statutory procedures and a certificate is issued by the court, subsequent good faith purchasers for value may ascertain all matters relating to the validity of the title from the certificate alone.

Id. at 1219. In return for this certainty, the Torrens Act incorporates substantial notice requirements. *Id.* at 1222.

50. Taylor v. Jaquez, No. 6904 (D. Colo. Oct. 5, 1965) *cited in Lobato I*, 71 P.3d at 943.

51. *Sanchez*, 377 F.2d at 734.

52. *Id.* at 737.

53. *Id.* at 737, n. 3.

54. *Id.*

55. *Id.* at 738. The Court held that "such usage in common by the inhabitants of the area did not vest in them or the general public such rights as are claimed. It is settled that the public cannot acquire by custom or common prescription profits *a prende* in another's land." *Id.*

56. *Sanchez*, 377 F.2d at 737-38.

57. *Id.* at 737.

tract of land to "all the inhabitants."[58] Finally, the court rejected the residents' prescription and adverse possession claims, stating that the law was settled: "[T]he public cannot acquire by custom or common prescription profits *a prendre* in another's land . . . ." and "each of the defendants had acquired no rights individually to the Mountain Tract by prescription, adverse possession, or otherwise."[59]

In 1981, local residents filed suit in Costilla County claiming usufructuary rights in the Taylor Ranch.[60] The district court granted summary judgment, holding the Torrens Title actions and the Tenth Circuit's decision in *Sanchez* binding, thus barring the suit by res judicata.[61] The Colorado Court of Appeals affirmed.[62] However, the Colorado Supreme Court reversed and remanded the case to the trial court to determine "the constitutional adequacy of the publication notice in the 1960 Torrens action."[63] The trial court, in bifurcated proceedings, dismissed most of the plaintiffs on the due process issue and then ruled against the remaining residents after a trial on the merits regarding the substantive issues.[64] The Colorado Court of Appeals did not reach the due process claims because it ruled against the residents on the substantive issues, relying on traditional property concepts as a basis to dismiss the petitioners' claims.[65] First, the court held that the residents acquired no rights in the mountain tract based on Mexican Law and Custom.[66] Second, the court rejected the residents' claims of enforceable use rights based on

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58. The court stated:

> While it may have been possible to make a valid dedication of the privileges claimed here, such dedication can be established only when the purpose and intent of the grantor are clearly manifest. We agree with the trial court that to construe the instrument as a dedication of the lands to the extent claimed by the appellants would be inconsistent with the contemplated sale of the lands remaining unsold at the time, and to apply it only to the Mountain Tract would require a rewriting of the instrument.

Id. at 737-38 (citations omitted).

59. *Id.* at 738.

60. Rael v. Taylor, No. 81CV5 (Costilla County Ct. Sept. 22, 1986). Residents also claimed usufructuary rights to a 2,500 acre parcel of land owned by Taylor known as the Salazar Estate. "Together, the mountain tract and the Salazar Estate are known as the Taylor Ranch." *Lobato I*, 71 P.3d at 944. Like the mountain tract, the Salazar Estate had been the subject of a Torrens Title action which vested title in Taylor's predecessor in interest and "determined that local landowners had no rights in the estate." *Id.*

61. Rael v. Taylor, No. 81CV5. (judgment for defendant on motion for judgment on the pleadings or for summary judgment).

62. Rael v. Taylor, 832 P.2d 1011 (Colo. Ct. App. 1991).

63. Rael v. Taylor, 876 P.2d 1210, 1228 (Colo. 1994).

64. *Lobato I*, 71 P.3d at 944.

65. Lobato v. Taylor, 13 P.3d 821 (Colo. Ct. App. 2000).

66. *Id.* at 827.

the Beaubien Document.[67] Lastly, the court ruled that the rights claimed by the residents, described by the court as profits *a prendre* in gross, could not be acquired by prescription.[68] The Colorado Supreme Court granted certiorari and reversed the Court of Appeals.[69]

The Colorado Supreme Court's decisions in *Lobato I* and *Lobato II* marked the first time in over forty years of litigation that any court was willing to look at the reality of the land and its history.[70] *Lobato I* held that the present-day descendants of the original settlers of the Sangre de Cristo Land Grant have property rights, as successors in title to the original settlers, to access the Taylor Ranch for grazing, firewood, and timber through a prescriptive easement, an easement by estoppel, and an easement from prior use.[71] In *Lobato I,* the Colorado Supreme Court retained jurisdiction in order to examine which descendants had been denied due process and could therefore pursue claims.[72] In *Lobato II*, the Colorado Supreme Court ruled that landowners who are able to trace the settlement of their property to at least the time of William Gilpin's ownership of the Taylor Ranch, shall be deemed successors in title to the original settlers of Beaubien's grant.[73] Further, the Court ruled that all successors in title, except "landowners and their successors who were personally named and served in the 1960s Torrens Title action," could also pursue claims.[74]

In *Lobato I*, the petitioners argued that their rights to use the Taylor land arose from three sources: Mexican law, prescription, and an express

67. *Id.* at 831-33. Regarding the Beaubien Document, the court decided three issues: First, the court held that under the laws of Colorado in effect in 1863, the Beaubien document did not satisfy the formal requirements to transfer real property. The court ruled that the Beaubien Document did not designate the "christian and surnames" of the grantees or "identify . . . the property to be burdened" as the law required. *Id.* at 831. Instead, the document referred to the grantees as "community members" and "inhabitants" of the villages. *Id.* at 831. The court also pointed out the absence of the words of limitation "and heirs and assigns" and noted that, at most, the document transferred a life estate in a profit *a prendre* in gross. *Id.* at 831. Second, the court of appeals agreed with the trial court that the Beaubien Document was "patently unambiguous" and that the trial court correctly excluded extrinsic evidence. *Id.* at 831-32. Finally, the court ruled that the Beaubien Document did not create any rights by implication. *Id.* at 832-33.

68. *Id.* at 833-35.

69. *Lobato I*, 71 P.3d at 942-943; *Lobato II*, 70 P.3d at 1156.

70. Goldstein, *supra* note 7 at 191.

71. *Lobato I*, 71 P.3d at 942-43.

72. *Id.* at 957. The Court stated:

> As a matter of judicial economy, and as a matter of fairness, given the forty-one year denial of access to the Taylor Ranch and this twenty-one year litigation, we decline to remand this case to the court of appeals for determination of this issue. Rather, we will revisit the due process issue after a full briefing, in a separate opinion.

Id. at 957.

73. *Lobato II*, 70 P.3d at 1156.

74. *Id.*

or implied grant from Beaubien.[75] The right to use communal lands, they maintained, was recognized by Mexican law.[76] Moreover, settlement of the area, Mexico's objective when it granted the land to Beaubien, and Beaubien's objective when it granted the land to the original settlers, would not have been feasible without use of communal lands.[77] The petitioners also argued that, based on over one hundred years of regular use, they had prescriptive rights to use the Taylor Ranch.[78] Finally, the appellants claimed that the Beaubien Document articulated either an express or implied grant from Carlos Beaubien to use the Taylor Ranch.[79]

The Colorado Supreme Court rejected the claim based on Mexican Law.[80] Significantly, however, the court stated: "Mexican land use and property law are highly relevant in this case in ascertaining the intentions of the parties involved."[81] The court then used evidence of Mexican law to find that the landowners had rights to use the Taylor Ranch based on traditional property concepts. Like previous courts that had considered the Beaubien Document, the Supreme Court of Colorado found that the document failed to meet the "formal requirements for an express grant of rights."[82] Contrary to those other courts, the Colorado Supreme Court considered extrinsic evidence to interpret the document.[83] After ruling that the document was ambiguous,[84] the court concluded that the location of the settlement rights embraced the Taylor Ranch[85] and that Beaubien's intent was "to grant permanent access rights that run with the land."[86]

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75. *Lobato I*, 71 P.3d at 945.
76. *Id.*
77. *Id.* at 945-46. The court called these rights settlement rights. *Id.*
78. *Id.* at 946.
79. *Id.*
80. *Id.* The Court reasoned that the grant was not settled until after the land was ceded to the United States and thus their use rights developed under United States law. *Id.*
81. *Lobato I*, 71 P.3d at 946.
82. *Id.* at 947.
83. *Id.* The Court stated: "it would be the height of arrogance and nothing but a legal fiction for us to claim that we can interpret this document without putting it in its historical context." *Id.*
84. *Id.* at 948. The court noted:

> [T]he contrast between the specificity of the majority of the Beaubien Document and the casual reference to the settlement rights at the end of the document can best be explained by events surrounding the execution of the document. Beaubien penned the document at a time when settlement was moving to the northern area of the grant, which lies northwest of the Taylor Ranch area. At that time, he wrote the Beaubien Document to establish common rights to the area in and around San Luis and at the same time memorialize settlement rights that had already been in existence in the more southern areas of the grant, where Taylor Ranch is located.

Id.
85. *Id.*
86. *Id.*

Significantly, the court used evidence of the traditional settlement system under colonial and Mexican law and the integral nature of the common lands in that system.[87]

The Supreme Court next analyzed the traditional settlement practices in the context of the traditional property concept of implied servitudes holding that "traditional settlement practices, repeated references to settlement rights in documents associated with the Sangre de Cristo grant, the hundred year history of the landowners' use of the Taylor Ranch, and other evidence of necessity, reliance, and intention[,] support a finding of implied rights in this case."[88] Finally, the court analyzed the extent of the rights and limited the landowners to the rights articulated in the Beaubien Document - pasture, firewood, and timber.[89]

So, after more than forty years of litigation regarding the common lands of the Sangre de Cristo land grant, the legal system was able to bring history and reason onto the same page. Perhaps justice will follow. Clearly, the litigation will not end until the concerns of the original villagers' descendants are addressed fairly and comprehensively. The struggle over the common lands of the Sangre de Cristo land grant binds many stories. Like any litigation, at its core is a disagreement. However, the ongoing nature of the case reflects its multi-dimensional character. *Lobato* is a story about survival: survival of individuals and families; survival of a small, rural community; survival of a unique culture. The case also highlights one of the many mechanisms the United States has developed and employed to accomplish the dispossession of Mexican communities. By considering extrinsic evidence that placed the case in its historical context, the Colorado Supreme Court gave life to the petitioners' claims, even within the parameters of traditional American property concepts. Moreover, the evidence encouraged the Court to fashion an opinion that reflected appropriate consideration of both the historical role of common lands and the realities of modern life.

87. *Id.* at 948-49. "Common areas were not only a typical feature but a necessary incentive for settlement . . . . [and] because the settlers and Beaubien were so familiar with the settlement system, it is highly relevant in ascertaining the parties' intentions and expectations." *Id.*

88. *Lobato I*, 71 P.3d at 950. The court proceeded to analyze the claims in the context of easements by prescription, easements by estoppel, and easements implied from prior use. *Id.* at 950-56.

89. *Id.* at 956. Judge Martinez' dissent presents a compelling case for expanding the use rights to include fishing, hunting, and recreation. *Id.* at 957-62 (Martinez, J., dissenting).