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Working Paper #114

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AND THE TREATY OF GUADALUPE HIDALGO**

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In 1848 the United States and Mexico ratified the Treaty of Guadalupe Hidalgo ending the Mexican War, a conflict that cost more than 30,000 lives and resulted in the United States taking a large portion of Mexican territory. The Treaty of Guadalupe Hidalgo's various provisions, particularly those dealing with the rights of the inhabitants of the ceded territory, soon became subjects of litigation within the United States courts. When it was promulgated by President James Polk on July 4, 1848, the Treaty of Guadalupe Hidalgo achieved the status of a law of the United States. Since that time more than two hundred federal, state, and district court decisions have interpreted this treaty. As a result, a significant number of judicial interpretations have expanded and changed the meaning of the original treaty.

American historians have not yet analyzed the post-1848 legal history of the Treaty of Guadalupe Hidalgo but have largely been concerned with studying how it came to be drafted. The most thorough histories of the treaty's origins appear in David Hunter Miller's Treaties and Other International Acts of the United States and David M. Pletcher's The Diplomacy of Annexation: Texas, Oregon and the Mexican War.¹ Both these works, and the handful of articles that have appeared on the treaty, have tended to view the treaty as an antiquarian artifact of the Mexican War, not as a document that has continuing importance. Yet, as Professor Donald Cutter has recently emphasized, the treaty has exerted an influence on a wide spectrum of

issues ranging from water disputes over the Rio Grande and Colorado Rivers to Mexican American and Indian civil rights. Cutter considers the treaty as "a major item of unfinished business on the agenda of cultural conflict throughout the Southwest."²

This essay analyzes how the United states courts have interpreted the Treaty of Guadalupe Hidalgo since 1848.³

To conduct a systematic analysis of such a large sample of court cases, it is useful to think of them as reflecting either liberal or strict interpretations of the treaty. Liberal interpretations tended to go beyond the narrow legal language of the original treaty and to expand its power and importance as a document conferring and protecting rights. Strict interpretations tended to restrict the protection offered by the treaty and to limit its utility as a human-rights document. These two stances were not always apparent at the time and it required some judgment on my part to determine them. Nevertheless, the conceptual scheme is a useful vehicle for conceptualizing a wide variety of legal opinions.

There have been roughly three historical periods of judicial interpretation, corresponding to the ascendancy of either liberal or strict construction of the treaty. The first period dates from 1850 (the year of the first court ruling involving the treaty) and ends in 1889 (the year of the landmark Botiller v. Dominguez case). During this period, seven of ten court judgments tended to be liberal interpretations of the Treaty of Guadalupe Hidalgo. The

second period began with the strict constructionalist opinion in the Dominguez case and lasted until the first years of the New Deal, in the 1930s. During this period of forty years, conservative interpretations of the treaty prevailed. Eighteen of twenty five major court rulings tended to limit and constrict the meaning of the treaty. The last period, since 1930, has generated a relative balance of liberal and strict interpretations. Ten of eighteen court decisions can be categorized as liberal and eight as strict.

The periodization that emerges from this analysis of the court cases roughly parallels the political history of the United States. The Civil War and Reconstruction period was one of great expansion in civil and political rights in American jurisprudence with the ratification of the 13th, 14th and 15th amendments, abolishing slavery, defining citizenship, and expanding the electoral franchise. The period after Reconstruction until the early 1930s was, with the exception of a progressive reform movement in the first two decades of the twentieth century, largely one of conservative politics. Juridical settlements mirrored a society caught up in a struggle for wealth and preoccupied with the supremacy of the white race. Plessy v. Ferguson, affirming segregation in public facilities; In re Debs, undercutting labor unions; and United States v. E.C. Knight Co., vitiating anti-trust legislation, are major examples of this conservative trend. The last period, since 1930, has been reflected in a seesaw resurgence and decline of

liberal and conservative political philosophies. In this period the U.S. Supreme Court lost its liberal majority and became more balanced politically. Neither political party has enjoyed a monopoly of both the legislature and the presidency.

The political history of the United States has influenced the juridical interpretations of the Treaty of Guadalupe Hidalgo. Oliver Wendell Holmes, in The Common Law, stated it best:

The felt necessities of the time--the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even prejudices which judges share with their fellow men--have had a good deal more to do than syllogisms in determining the rules by which men should be governed.⁴

The U.S. Supreme Court decided almost half the major cases interpreting the Treaty of Guadalupe Hidalgo. The political evolution of the Court influenced how the justices regarded the treaty. Prior to the Civil War, the Court has been concerned primarily with the nation-state relationship and the preservation of the union. During the tenure of Chief Justice Taney, the Court sought ways to avoid a civil war over the issue of slavery and sectionalism. The sanctity of property was foremost in the reasoning as they rendered their famous Dred Scott opinion in 1857, stating that Congress had no power to exclude slaves as property from the territories.

After the Civil War the Court turned to the relationship between government and private business and manifest a tendency to favor the latter. Many Court decisions opposed governmental attempts to regulate or restrain the excesses of capitalism. Not surprisingly, in the decades following Reconstruction, the Court opposed interpretations of the Treaty of Guadalupe Hidalgo that might hinder the growth of the American economy in the Southwest.

Supreme Court historians date 1937 as a turning point in that body's history. In that year the Court abandoned its opposition to government programs that had challenged private business. Increasingly thereafter the Court adopted a more balanced opinion of the role of government in the economy.⁵ After World War II the Court was more inclined to concentrate on the relationship of the individual to the government, and specifically on civil rights.

The other half of the court cases that have interpreted the treaty were decided by district, territorial, and state Supreme Courts. These judgments usually reflected the pressures of regional interests and local concerns. Most came from courts in California and dealt with the issue of property rights, a concern emerging out of that state's growing population pressures on natural resources. Court cases coming from Arizona and New Mexico focused on Indian- and tribal-rights questions as well as challenges to Hispano community grants. Cases decided in

Texas reflected a recognition of the Mexican common-law traditions in that state but only those that did not conflict with Anglo Saxon rule.

1848-1889

In the first period of juridical interpretation, federal and state courts issued judgments that tended to interpret the treaty liberally. Generally the court bolstered the status of the treaty as a document confirming and protecting rights. On the subject of property rights, the courts sought to clarify the meaning of the language in Article VIII and the Protocol of Queretaro. In 1850 the California Supreme Court ruled that an inchoate title (i.e., not clearly a legal Mexican title) was protected by the treaty and that its legitimacy could be affected or questioned only by the federal government. This construction went far beyond the implied guarantees in the stricken Article X and the Protocol of Queretaro. Even landholders lacking clear titles would be protected until the grants could be examined by the American courts.⁶

Sixteen years later, in Mintern v. Bower et al., the California court further expanded this concept to include perfected land grants. This interpretation was that land grants that had fulfilled the terms of the Mexican laws were not liable to review by the courts and were protected by the treaty. This meant that those individuals who held perfect titles needed not submit them before the California Land Commission established in 1851 to validate titles. In Mintern v. Bower et al., the court decided "that perfect

titles to lands which existed at the date of the Treaty of Guadalupe Hidalgo in Mexicans then established in California, were guaranteed and secured to such persons not only by the law of nations, but also by the stipulations of the treaty."⁷ This position, which recognized the primacy of federal treaty obligation over congressional legislation, would guide California until it was overturned in the federal case of Botiller v. Dominguez in 1889.

Other court findings also interpreted the Treaty of Guadalupe Hidalgo liberally. In United States v. Reading (1855) the Supreme Court ruled that the treaty protected the property rights of a Mexican citizens who had fought in the United States army against Mexico at the very time his land grant was pending certification by the Mexican government. The court ruled that his military action did not result in a forfeit of land rights because of the treaty's protection. In Palmer v. United States (1857), the court argued that the dates given in the Protocol of Queretaro were not limiting and that in New Mexico and California legitimate titles might have been made by Mexican officials after May 13, 1846. In Townsend et al. v. Greeley (1866) the court held that town or community grants as well as private ones were protected by the treaty.⁸

In other rulings the court interpreted the treaty to legitimize the transfer of Mexican common law to the conquered Southwest. In United States v. Moreno (1863), the Supreme Court affirmed that the treaty protected land

grants that were legitimate under Mexican law; in 1884 the Court ruled that treaty stipulations did not invalidate the powers of local officials, acting under Mexican law, from making legitimate land grants prior to the implementation of American laws; and in Philips v. Mound City the court advanced the position that the treaty also protected partitions and divisions of land made prior to July 4, 1848 under Mexican laws.⁹

In this period the implications of the treaty for the civil rights of former Mexican citizens was also a concern of the courts. In 1870 the De la Guerra case in California interpreted the treaty as confirming U.S. citizenship for Mexicans. In New Mexico the presence of a large group of Hispanicized Pueblo Indians complicated the issue of citizenship. The territorial government in New Mexico did not give Indians citizenship, but in 1869 the New Mexico Supreme Court ruled that by virtue of the treaty the Pueblo Indians were citizens of the territory and of the United States. In United States v. Lucero the justices analyzed the treaty extensively to support this view. After reviewing Article 9, Justice Watts, writing for the court, stated:

This court, under this section of the Treaty of Guadalupe Hidalgo, does not consider it proper to assent to the withdrawal of eight thousand citizens of New Mexico from the operation of the law, made to secure and maintain them in their liberty and property, and consign their liberty

and property to a system of laws and trade made for wandering savages.¹⁰

The justices thus proposed that the Pueblo Indians were not tribal Indians subject to laws administered by the Department of Indian Affairs. This interpretation regarding the treaty status of the Pueblo Indians was later reaffirmed by the New Mexico Supreme Court in 1874 but later reversed by the U.S. Supreme Court in 1940.¹¹

A more narrow view of the meaning of the treaty in this period was largely limited to the question of the application of the treaty to Texas. In 1856 the Supreme Court heard a case involving a land-grant claim in Texas that sought remedy under the treaty. The McKinney v. Saviego verdict ruled that the treaty did not apply to Texas lands. Justice Campbell, writing for the Court, summarized Article VIII in the treaty and asked, "To what territories did the high contracting parties refer to in this article? We think it is clear that they did not refer to any portion of the acknowledged limits of Texas." The Court argued that Texas had been recognized by the U.S. government as an independent country and had been annexed as a state prior to the Mexican War. Therefore, the Treaty of Guadalupe applied only to those territories annexed by the United States in 1848. This interpretation was sustained by several subsequent decisions, and it stands as law today.¹²

1889-1930

A liberal view of the meaning of the Treaty of Guadalupe Hidalgo prevailed in the period prior to the landmark judgment of Botiller v. Dominguez in 1889. This case inaugurated a decidedly conservative attitude regarding the extent to which the treaty was important in protecting the property of the former Mexican citizens. The most long-reaching impact of the Botiller case was summarized in the statement written by Justice Miller for the court:

If the treaty was violated by this general statute (the Land Law of 1851), enacted for the purpose of ascertaining the validity of claims derived from the Mexican government, it was a matter of international concern, which the two states must determine by treaty or by such other means as enables one state to enforce upon another the obligations of a treaty. This court, in cases like the present, has no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation which the government of the United States, as a sovereign power, chooses to disregard.¹³

In Botiller v. Dominguez the Supreme Court held that the sovereign laws of the United States took precedence over international treaties. This appeared to be in direct contradiction of the Constitution which (in Article VI, Section 2 and Article III, Section 2, Clause 1) gave treaties the same status as the Constitution. The Supreme

Court's decision, some argued, sanctioned the confiscation of property and violated the due process provision of the Constitution.¹⁴ Nevertheless the case became an important precedent guiding the court in its future interpretation of conflicts between treaty obligations and domestic laws. This judgment declared that the United States courts had no responsibility to hear cases involving violations of the Treaty of Guadalupe Hidalgo. To resolve conflicts arising over the treaty there was no recourse but to international diplomatic negotiation.

Eventually the Botiller case would be cited as a basis for denying lands to the California Missions Indians, who had legal title to their ancestral lands under Mexican law but had not filed their title before the Court of Land Claims as stipulated in the 1851 law. For the court the right of the government to provide "reasonable means for determining the validity of all titles within the ceded territory" superseded the inhabitant's treaty rights.¹⁵

Just as the Botiller decree became a rule of law in subsequent years, the Courts confirmed over and over again, the right of Congress and the courts to implement the treaty through laws "to ascertain the legitimacy of title." If these implementing laws ran counter to the protections of the treaty, the congressional laws would take precedence. This principle was affirmed in California Powderworks v. Davis (1894), in United States v. Sandoval et al. (1897), and in Arisa v. New Mexico and Arizona Railroad (1899).¹⁶

The courts also interpreted the treaty so that it would be more restrictive as to the land rights claimed by former Mexican citizens and those who had acquired their lands. The Supreme Court determined that the treaty "did not increase rights" and that "no duty rests on this government to recognize the validity of a grant to any area of greater extent than was recognized by the government of Mexico."¹⁷ This in itself might have been a reasonable assertion but it hinged on the government view of the scope of legitimate Mexican laws, and increasingly the courts took a narrow view.

One question that arose was whether or not Mexican land-holders would be protected from squatters and speculators during the time it took the U.S. courts to determine the validity of their Mexican titles. In 1901, in Lockhart v. Johnson, the Supreme Court ruled that neither Articles VIII or IX gave such protection. In this case a portion of the Canada de Cochiti land-grant in New Mexico had been purchased from the U.S. government by a mining company while the grant was pending action by the Surveyor General's office. An American who had purchased the original grant argued that the mining company's occupancy had violated the Treaty of Guadalupe Hidalgo. Justice Peckham for the Supreme Court:

There are no words in the treaty with Mexico expressly withdrawing from sale all lands within claimed limits of a Mexican grant, and we do not

think there is any language in the treaty which implies a reservation of any kind."¹⁸

This 1901 doctrine, that the treaty did not protect land claims from public sale, differed from the long-standing policy of the Land Department, which had interpreted the treaty to mean that "all land embraced within the Mexican and Spanish grants were placed in a state of reservation for the ascertainment of rights claimed under said grant."¹⁹ In California the courts also ruled that the treaty would not provide special protection for Mexicans who owned property. In 1913 the California State Supreme Court argued that "the Treaty of Guadalupe Hidalgo requires only that the rights of Mexican grantees in their property shall be equal to that of citizens of the United States." And in 1930 it ruled that the treaty did not bind the government to follow the Spanish or Mexican statute of limitations with regard to land or water rights.²⁰

Article X in the original treaty which had been stricken out by the U.S. Senate, was not part of the official document proclaimed as law in 1848. Among other things Article X had specified, "All grants of land made by the Mexican government . . . shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico." The act of striking out this article emerged as a point of law for the courts and became a basis for rejecting land claims.

In Interstate Land Co. v. Maxwell Land Co. (1891) the U.S. Supreme Court rejected the assertion that a grant was invalid because it had been declared so by a Mexican law prior to 1848. After analyzing the circumstances surrounding the removal of Article X by the Senate, including President Polk's message to Congress, the Court stated that "this claim was one of the class which was expressly refused to be recognized by the treaty" (more accurately by the absence of Article X).²¹ In another case, Cessna v. United States et al. in 1898, the Supreme Court interpreted the absence of Article X to rule against a New Mexican land claimant whose grant had been rejected by the Court of Land Claims. Accordingly, "when the U.S. received this territory under the Treaty of Guadalupe Hidalgo, they refused to recognize as still valid and enforceable all grants which had been assumed to be made prior to thereto by the Mexican authorities. Article X, as proposed by the commissioners, was rejected by this government."²²

Thus the absence of Article X, with its specific guarantees of due process after 1848 under Mexican laws provided a basis for the courts to restrict further the meaning of the treaty. The Protocol of Queretaro which had been drafted to assure the Mexican government that the spirit of Article X would be retained was not a matter of juridical consideration.

The final area of conservative interpretation of the treaty in the period 1889-1930 was in Indian affairs.

Three cases illustrate the trend. In 1897 the Supreme Court construed the treaty in a way to benefit the government and to undercut historic understandings between Mexican and Indian communities in New Mexico. The pueblo of Zia claimed proprietary and grazing rights in northern New Mexico by virtue of their use of land with the agreement of the Mexican settlers. The Court, however, ruled that the treaty, by ceding Mexican lands to the public domain, provided the basis for revoking these prior concessions as well as for denying any claims of land ownership on the part of the Indians. The Court also moved to question any extension of citizenship rights to Indians. In an 1869 judgment the New Mexican territorial court had ruled that the treaty confirmed U.S. citizenship on Pueblo Indians. In a 1913 case the Supreme Court stated that "it remains an open question whether they have become citizens of the U.S." Also, "We need not determine it now, because citizenship is not in itself an obstacle to the exercise by Congress of its power to enact laws for the benefit and protection of tribal Indians as dependent peoples."²³ The next year the Court ruled that the California Indians had not been given citizenship by the Treaty of Guadalupe Hidalgo. Chief Justice White attacked the argument that the California Indians were entitled to citizenship by virtue of the treaty as "so devoid of merit as not in any real sense to involve the construction of the treaty." It remained for a later court to arrive at

similar conclusions regarding the status of the Pueblo Indians in New Mexico.²⁴

Although the bulk of Court constructions of the treaty in the period 1880-1930 were based on a conservative reading of the document, there were a few cases in which the courts expanded its meaning. Despite earlier indications by the U.S. Supreme Court, in McKinney v. Saviego, that the treaty would not apply to Texas, the Texas Supreme Court made a series of rulings that validated the treaty as applying to certain regions of the state. In Texas Mexican Rail Road v. Locke, the Texas Supreme Court ruled that Mexicans holding valid titles on March 2, 1836, and continuing to hold them until July 4, 1948, "were protected in them by Article 8 of the Treaty of Guadalupe Hidalgo." In a 1914 verdict the same court ruled that the treaty had the "force of law in Texas," and this same principle was affirmed by at least two other Texas rulings.²⁵ In these decisions the Texas Supreme Court asserted the right of the state to incorporate the treaty into its local laws even while the U.S. Supreme Court refused to do so with respect to the national law. One basis for this difference of interpretation was that in Texas the treaty was being invoked to preserve the rights of property owners who had purchased the lands of former Mexican holders.

In a similar vein the treaty became a weapon in a struggle between the state and the federal government over the use of the Rio Grande. In 1897 commercial interests in

New Mexico sought to construct a dam near Las Cruces to divert water for irrigation projects. The federal government sued the private company, charging that, among other things, the dam would violate Article VII of the Treaty of Guadalupe Hidalgo, which had stated that "the navigation of the Gila and of the Bravo Rio Grande . . . shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right." While not addressing the international question directly, the Supreme Court did find that "if the proposed dam and appropriation of the waters of the Rio Grande constitute a breach of treaty obligations or of international duty to Mexico, they also constitute an equal injury and wrong to the people of the United States."²⁶ The U.S. government was lobbying for the right of the people of the El Paso region to the water and was using the treaty of buttress their position. The result was that the Supreme Court found in favor of the U.S. government and the project was halted. A subsequent lawsuit, in 1902, after securing an agreement with Mexico through an international treaty, the federal government itself undertook the project, constructing the Elephant Butte Dam.²⁷

1930 to the Present

The Great Depression which began in 1929, marked the beginning of a liberal political response that lasted well

into the 1960s. Conservative reaction to the social and economic policies of the Democrats occurred during the 1950s, 1970s, and 1980s. Thus the political environment surrounding the juridicial interpretation of the treaty became more polarized. Neither strict nor liberal interpretations predominated. Increasingly the treaty became a tool for advancing the interests of various interest groups. Various governmental agencies used the treaty with mixed success to enlarge their powers. Corporate interests sought to interpret the treaty to bolster their positions. Native Americans, mobilized by the New Deal and Vietnam War eras, sought redress for past injustices. Mexican Americans began to use the treaty as a weapon to reclaim lands and right lost to the Anglos.

The treaty became part of the struggle between the federal government and the western states. As early as 1932 the states of the Colorado River basin had agreed to a division of the waters of that great river, and in the early 1930s the federal government neared completion of the Hoover Dam project. In 1931 the federal government successfully asserted its control of the nonnavigable sections of the Colorado River in United States v. Utah, citing the Treaty of Guadalupe Hidalgo as a basis for its claim against the rights of the states. The treaty provided the legal basis for federal control of dam projects on the river. Similarly, in this same period, the federal government used the treaty to justify its rights to the California tidelands.²⁸ In the 1960s the federal

government sued the gulf states of Louisiana, Alabama, Florida, and Texas in an attempt to control oil-rich lands beyond the three mile limit. The states of Texas and Florida cited the treaties which had settled their international boundaries to successfully retain control of lands three miles off shore. The state of Texas cited Article V of the treaty which stipulated that the Texas Mexico boundary would begin "three leagues from land opposite the mouth of the Rio Grande." The Florida treaty with Spain contained similar language. Since a league was approximately two miles, both states could claim a six mile limit. Using this same wording in the treaty, the Mexican government had, since 1936, asserted a three-league offshore limit on its gulf coast. Consequently the Supreme Court found in favor of Texas and Florida but against the other states citing the Treaty of Guadalupe Hidalgo as a major basis for its decision.²⁹ Corporate interests also have had some success in using the treaty to their benefit. In 1940 in Chadwick et al. v. Campbell the Circuit Court of Appeals for New Mexico gave a lengthy interpretation of the treaty in deciding a corporate struggle over land containing valuable oil and gas leases. Campbell, representing one group of investors, successfully sued Chadwick and the trustees of the Sebilleta de la Joya grant, who controlled 215,000 acres in Socorro County. The trustees had lost title to the lands following nonpayment of taxes. Chadwick argued that the treaty guaranteed protection of Mexican land-grants. The court ruled that

the treaty did not exempt Mexican landholders from taxes but that "under the Treaty of Guadalupe Hidalgo, private rights of property within the ceded territory were unaffected by the change in sovereignty"³⁰ In Summa Corporation v. California (1984) an investment corporation successfully challenged an attempt by the State of California to declare their lands as part of the public domain. The corporation persuaded the court that the treaty had been legitimately implemented in the actions of the California Land Commission. The court ruled that the right of the corporation to lands derived from Congress's interpretation of the treaty in law.³¹ This, of course, had been the argument employed by the federal government in earlier periods to justify its appropriation of the public domain.

Native Americans in this period, seeking redress for the loss of their tribal lands and liberties used the treaty as one of many treaties that courts might consider. On the whole their efforts were frustrated. The bulk of judicial decisions were against the Indians' rights and in favor of a limited interpretation of the treaty.

In Tenorio v. Tenorio (1940) the New Mexico Supreme Court echoed an earlier suggestion of the federal court that the Treaty of Guadalupe Hidalgo did not embrace Pueblo Indians. This judgment reversed an earlier territorial court position in the Lucero case, which had applied the treaty to the Pueblo peoples. In 1945 the Supreme Court also ruled that the treaty could not be used to give

support to the land claims of Shoshonean Indians, many of whom had lived within the Mexican Cession in Utah, Nevada, and California. The courts also rejected California Indian claims, refusing to agree that the treaty was a substantive basis for a fiduciary duty towards these people. In Pitt River Tribe et al. v. United States (1973) two members of this California tribe sued the government to recover the true value of lands that had been settled in a financial agreement in 1964. The court rejected their appeal which had been based largely on the treaty.³²

Two of the most significant interpretations of the Treaty of Guadalupe Hidalgo as affecting American Indians were made in April and May of 1986; they represented both a victory and a defeat for Indian rights.

On January 4, 1985, an officer of the Department of the Interior charged Jose Abeyta, an Isleta Pueblo Indian, with violating the Bald Eagle Protection Act because he had killed one of these birds to use its feathers in religious ceremonies. Abeyta defended himself before the U.S. District Court in New Mexico by asserting that Indians were protected in the exercise of their religion by Article 9 of the Treaty of Guadalupe Hidalgo which had promised that all Mexican nationals would be "secured in the free exercise of the religion without restriction." The District Court, at this time, reversed, yet again, the 1945 Tenorio ruling that the Pueblo Indians were not protected by the Treaty of Guadalupe Hidalgo. Judge Burciaga ruled for the court:

Because the Treaty of Guadalupe Hidalgo afforded protections to the Pueblos, however, it is in this dimension more than a settlement between two hostile nations: it is a living Indian treaty.³³

The court then moved to dismiss the charges against Abeyta based entirely upon the protections of religious liberty contained in the First Amendment and the Treaty of Guadalupe Hidalgo. This was a significant finding in that, for the first time, the language of the treaty itself was the primary basis for a legal decision.

One month later, on May 5, 1986, the U.S. Court of Appeals in California decided another case involving Indian rights, specifically the claim of the members of the Chumash tribe of the Santa Barbara, Santa Cruz, and Santa Rosa islands. The Chumash peoples claimed that they had occupied the islands since "time immemorial" and that the Treaty of Guadalupe Hidalgo, by failing to mention the islands as part of the ceded territories, left the tribe in legal possession. The court, in a footnote, issued its opinion of this argument: "While the court generally must assume the factual allegations to be true, it need not assume the truth of the legal conclusions cast in the form of factual allegations."³⁴ The Indians further argued that if the treaty did apply to them, then "the aboriginal title of the Chumash Indians to the islands came to be recognized by Article VIII and IX of the 1848 Treaty of Guadalupe Hidalgo." The court responded that this argument

was "novel and creative but does not appear to have any merit." In rejecting the tribal claims, Judge Fletcher maintained (1) that Indian title to land "derives from their presence on land before the arrival of white settlers: and (2) that the treaty did not convert Indians claims into recognized titles, because only the Court of Land Claims could do this, and the Chumash had failed to present their claim within the stipulated time limits.

Since the 1930s the treaty has been an instrument most widely used by non-Mexican origin plaintiffs seeking a variety of remedies. Only a few court cases have been initiated by those whom the treaty was intended to protect. In this period, six court cases citing the treaty directly impinged on the fate of the Mexican-American population. In the 1940s the state of Texas and the Balli family engaged in a series of legal battles over ownership of Padre Island. Alberto Balli had inherited what he thought was a legal Mexican land-grant from his family. In 1943 the state of Texas sued them to recover the land grant, arguing that it had not fulfilled the technical requirements of Mexican statutes. The District Court in Texas found that the Balli family had met most of the requirements of the law and that their rights were protected under the Treaty of Guadalupe Hidalgo. In a series of rulings, the court resoundingly supported Balli against the state. The Texas Supreme Court later affirmed this verdict on appeal. This was a major land-grant victory for Tejanos, and it was based squarely on an

interpretation of the treaty. It also was an indication that, notwithstanding previous court decisions exempting Texas from application of the treaty, it was still possible to interpret the document as applying to land-grant cases in that state.³⁵

A few years later the courts faced this issue again but ruled in the opposite direction, to divest a Mexican family of its land. In 1946 Amos Amaya and his family, all citizens of Mexico, sued the Texas-based Stanolind Oil and Gas Company to recover lands allegedly taken illegally under the Treaty of Guadalupe Hidalgo. The Circuit Court judge, in his ruling, cited Article VIII of the treaty, specifically that portion requiring the title of Mexican citizens to be "inviolably respected." Judge Waller:

We regard the phrase as a covenant on the part of the United States to respect from thenceforth any title that Mexicans had, or might thereafter acquire, to property with the region, but not that it would guarantee that those Mexicans would never lose title to persons by foreclosure, sales under execution, trespass, adverse possession, and other non-government acts.³⁶

The Amaya family having failed to follow the timetable for land recovery under Texas statutes, the judge sustained the lower court's ruling against recovery of their lands. As he put it, "The provisions of the treaty do not save the Appellants from the fatal effect of the passage of time

under the statutes of limitations in the State of Texas."³⁷

The issue of the property rights of Mexican citizens reemerged in 1954 during the height of a nationwide campaign to deport or repatriate Mexican immigrants. Robert Galvan, a legal Mexican immigrant accused of being a communist, was brought for deportation hearings before the U.S. District Court in Southern California. He, in turn, filed for a writ of habeas corpus arguing that his deportation would violate the Treaty of Guadalupe Hidalgo's provision that protected the property of Mexican citizens. The court responded that while the treaty was entitled to "juridical obeisance" it did not specify that Mexicans were entitled to remain in the U.S. to manage their property.³⁸

Another Mexican American land rights issue came before the court in a series of cases launched by Reies Tijerina and the Alianza Federal de Mercedes Libres in New Mexico. In the 1960s a group of Hispano land-grant claimants led by the charismatic Reies Lopez Tijerina sought to regain their lost community grants. Concurrent with their court battles, the organization sponsored a series of meetings and rallies that eventually erupted in violent confrontations, a take over of Tierra Amarilla court house, shootings, and a state-wide manhunt for the leaders of the Alianza. In 1969, with the land-grant struggle still fresh, Tijerina launched another campaign to change the public school system in New Mexico by forcing

reapportionment on local school boards of education and by requiring the teaching of all subjects in both Spanish and English. As in the land-grant wars Tijerina relied heavily on the legal and moral force of the Treaty of Guadalupe Hidalgo. In a class action law suit on behalf of the "Indio-Hispano" poor people of New Mexico, Tijerina sued the State Board of Education. On December 4, 1969 the District Court handed down its findings, dismissing the suit for a variety of causes including the court's opinion that Tijerina had misinterpreted the scope of the treaty. Tijerina had based his suit for bilingual education on Article VIII and IX of the treaty but the court found that "The Treaty does not contemplate in any way the administration of public schools. In addition we are not of the opinion that the treaty confers any proprietary right to have the Spanish language and culture preserved and continued in the public schools at public expenses."³⁹ Of Tijerina's contention that the rights of poor people were being violated, the court ruled "This is an unsound position as that treaty has nothing to do with any rights that 'poor' people may have."

Tijerina appealed the District Court's ruling to the Supreme Court and on May 25, 1970 that court also dismissed the appeal. Justice Douglas wrote a dissenting opinion arguing that while the treaty was not a sound basis for the case, it could be argued on civil rights under the 14th and 15th amendments.⁴⁰

Another land rights case appeared in 1984 when the Texas Mexican property holders who were members of the Asociacion de Reclamantes brought a case before the federal courts.⁴¹ They sought reimbursement for the lands that had been taken from them in violation of the treaty. Due to counterbalancing international claims, the Mexican government had become liable to compensate the heirs of Tejano landholders for their losses. In the 1984 case the Asociacion members outlined the damages they sought from the Mexican government. The U.S. Court of Appeals, however, declined to hear the case on the basis that the violation had not occurred within the U.S. Of significance, however, was the statement of the judge recognizing that the Tejano landholders had rights which "were explicitly protected by the Treaty of Guadalupe Hidalgo." This suggested a reversal of the McKinney v. Saviego 1856 opinion by which the treaty was interpreted to exclude application to Texas. In fact the U.S. acceptance of the 1941 treaty with Mexico settling the outstanding claims against Mexico appeared to be an admission of the validity of the Tejano land claims under the treaty. This point, however, has not been explicitly tested in the courts.

Conclusion

It is indeed difficult to characterize in a few words the direction the American legal system has taken in interpreting the Treaty of Guadalupe Hidalgo during the

past 138 years. The courts have changed their opinions several times on a number of issues, most notably regarding the applicability of the treaty of Texas and the Pueblo Indians. About half of the cases with a major interpretation of the treaty have involved Mexican American or Indian litigants. In these court cases, defeats outnumbered victories by about two to one. The treaty has been more important in legitimizing the status quo, particularly in justifying federal, state and corporate ownership of former Spanish and Mexican land-grants. About three fourths of the cases decided since 1848 have been about land ownership rights and only a small percentage were about civil rights under the treaty.⁴²

Over the entire time period liberal and strict court interpretations have been about equal and frequency: 31 cases could be characterized as being strict and 33 as liberal. There were significant regional differences in the distribution of kinds of interpretations. In California 60 percent of the verdicts were of the liberal sort and the same percentage held for Texas. In the New Mexican courts the percentage of liberal decisions was only 40 percent. The Supreme Court of the U.S. decided about half of all the cases sampled and a little more than half of these rulings reflected a strict interpretation of the treaty. Litigants were more likely to encounter a liberal interpretation in the state supreme courts.

Contrary to what might be supposed the Treaty of Guadalupe Hidalgo has remained a viable part of our

country's system of laws as it has been interpreted again and again by the federal and state courts. It has not been a document whose primary importance has been to protect and enlarge the civil and property rights of Mexican Americans. The treaty in American courts has served other purposes. The apparently unfulfilled promise of the treaty, from the point of view of Mexican Americans provided additional impetus for a political movement in the 1970s that sought to achieve a justice that they felt the American political system had denied.

FOOTNOTES

1. David Hunter Miller, Treaties and Other International Acts of the United States, 5 vols. (Washington D.C.: Government Printing Office, 1937), vol. 5 "Mexico: 1848." David M. Pletcher, The Diplomacy of Annexation: Texas, Oregon and the Mexican War (Columbia, Missouri: University of Missouri Press, 1973).
2. Donald Cutter, "The Legacy of the Treaty of Guadalupe Hidalgo," New Mexico Historical Review, 53, no. 4 (October 1978).
3. The procedure followed to analyze United States court cases dealing with the Treaty of Gualalupe Hidalgo was to utilize the on-line computerized reference system called Lexis-Nexis. This system enables a user to access all court cases mentioning a specific treaty or law and to generate paragraphs where the treaty was referenced in the court ruling. Shephard's Citations were also used to access references to the treaty that did not appear in the Lexis-Nexis system. In this way more than 200 court cases were singled out along with some detail on the interpretation given by the court of the treaty.

The focus of my study was how the court interpreted the treaty, not how defendants and plaintiffs argued using the treaty. Only direct references to the treaty were the subject of this study, not the hundreds of cases flowing from land grant litigation where the treaty was not a substantive concern. Of the 200 cases sampled, only 64 were found to be substantial interpretations of the treaty. My judgment as to what constituted an important interpretation depended both on the length to which the court went in discussing the treaty as well as the importance ascribed to the treaty by the court. Most references to the treaty were minor ones in passing, using it as a point of reference to make some larger legal argument.
4. Oliver Wendel Holmes Jr., The Common Law (Boston: Little Brown and Co., 1881), p. 1. "The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."(p. 1).
5. Robert McCloskey, The American Supreme Court (Chicago and London: University of Chicago Press, 1960), pp. 103-105.
6. Reynolds v. West 1 Cal. 322 (1850).

7. Mintern v. Bowers et al. 24 Cal. 644 (1864) at 672.
8. United States v. Reading 59 U.S. 1 (1855); Palmer v. United States 65 U.S. 125 (1857); Townsend et al. v. Greely 72 U.S. 326 (1866).
9. United States v. Moreno 68 U.S. 400 (1863); City and County of San Francisco v. Scott 111 U.S. 768 (1884); Phillips v. Mound City 124 U.S. 605 (1888).
10. United States v. Lucero 1 N.M. 422 (1869) at 441.
11. Tenorio v. Tenorio 44 N.M. 89 (1940) reversed the Lucero decision and ruled that the treaty had not made the Pueblo Indians citizens of the United States and that they were not entitled to the protections of Article VIII and IX.
12. McKinney v. Saviego 59 U.S. 365 (1856) at 263; This was affirmed at the state level with The State of Texas v. Gallardo 135 SW 644 (1911).
13. Botiller v. Dominguez 130 U.S. 238 (1889).
14. See John Currey, The Treaty of Guadalupe Hidalgo and Private Land Claims and Titles Existing in California at the Date of the Treaty (San Francisco: Bancroft Whitney, 1891).
15. Baker et al. v. Harvey 181 U.S. 481 (1901); United States v. Title Insurance Co. et al. 265 U.S. 472 (1924).
16. California Powderworks v. Davis 151 U.S. 389 (1894); United States v. Sandoval et al. 167 U.S. 278 (1897); Arisa v. New Mexico and Arizona Railroad 175 U.S. 76 (1899).
17. United States v. Green et al. 185 U.S. 256 (1901).
18. Lockhart v. Johnson 181 U.S. 516 (1901) at 528.
19. Ibid. at 523.
20. City of Los Angeles v. Venice Peninsula Properties et al. 31 Cal. 3d 288 (1913); City of San Diego v. Cuyamaca Water Co. 209 Cal. 105 (1930).
21. Interstate Land Company v. Maxwell Land Co. 80 U.S. 460 (1891) at 588.
22. Cessna v. United States et al. 169 U.S. 165 (1898) at 186.

23. Pueblo of Zia v. United States et al. 168 U.S. 198 (1897); United States v. Lucero 1 NM 422 (1869); United States v. Sandoval 231 U.S. 28 (1913) at 39, 48.
24. Apapos et al. v. United States 233 U.S. 587 (1914); Tenorio v. Tenorio 44 NM 89 (1940).
25. McKinney v. Saviego 59 U.S. 365 (1856); Texas Mexican Rail Road v. Locke 74 Tex. 370 (1889); State of Texas v. Gallardo et al. 106 Tex. 274 (1914); State of Texas v. Sais 47 Tex. 307 and Clark v. Hills 67 Tex. 141.
26. United States v. Rio Grande Dam and Irrigation Co. et al. 175 U.S. 690 (1899), at 699, 700.
27. United States v. Rio Grande Dam and Irrigation Co. et al. 184 U.S. 416 (1901).
28. United States v. State of Utah 238 U.S. 64 (1931); United States v. O'Donnell 303 U.S. 501 (1938).
29. United States v. States of Louisiana et al. 363 U.S. 1 (1960); For a discussion of the diplomacy surrounding the negotiation of Mexico's off shore limit see 99 Cong. Rec. 3623-3624, June 3, 1936.
30. Chadwick et al. v. Campbell 115 F. 2d 401 (1940).
31. Summa Corporation v. State of California ex rel. State Lands Commission et al. 104 S.Ct. 1751 (1984), at 1754.
32. Tenorio v. Tenorio 44 N.M. 89 (1940); Pitt River Tribe et al. v. United States 485 F. 2d 660 (1973).
33. United States v. Abeyta 632 F. Supp. 1301 (1986); at 1301.
34. United States ex rel. Chunie v. Ringrose 788 F. 2d 638 (1986).
35. State of Texas v. Balli 173 S.W. 2d 522 (1943).
36. Amaya et al. v. Stanolind Oil and Gas Co. et al. 158 F. 2d 544 (1946).
37. Ibid., at 337.
38. Application of Robert Galvan for Writ of Habeus Corpus 127 F. Supp. 392 (1954).
39. Lopez Tijerina v. Henry 48 F.R.D. 274 (1969).

40. Tijerina et al. v. United States 398 U.S. 922 (1970).
41. Asociacion de Reclamantes et al. v. United Mexican States 735 F. 2d 1517 (1984); See Treaty of Final Settlement of Certain Claims, United States and Mexico, 56 Stat. 1347, T.S. No. 980 (Nov. 19, 1941).
42. The following is a statistical breakdown of the salient characteristics of the sample cases:

LIBERAL OR STRICT INTERPRETATION OF THE TREATY

	N	%
Liberal	33	52
Strict	31	48

GEOGRAPHIC DISTRIBUTION OF CASES

California	25	39
Arizona	3	5
New Mexico	18	28
Texas	10	16
Other	8	12

KINDS OF LITIGANTS

Hispanic	22	35
Indians	13	20
Corporation	15	23
Other	14	22

VERDICTS RENDERED

In favor of Hispanics or Indians	10	16
Against Hispanics or Indians	24	37
Not applicable	30	47

LEVEL OF COURT DECISION

U.S. Supreme Court	36	56
State Supreme Courts	18	28
Other lower courts	10	16

VERDICT RENDERED BY LEVEL OF COURT

	Pro Hispanic	Contra Hispanic	N/R
U.S. Supreme Court	1	15	20
State Supreme Courts	6	3	9
Other lower courts	3	6	1

INTERPRETATION BY LEVEL OF COURT

	Strict		Liberal	
	N	%	N	%
U.S. Supreme Court	19	53	17	54
State Supreme Courts	6	33	12	33
Other lower courts	7	14	4	12