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Manifest Destiny's Legacy: Race in America at the Turn of the Twentieth Century

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Race in America at the Turn of the Twentieth Century

This chapter elaborates on the three central themes of this book as they relate to the national scene: (1) the centrality of colonialism in constituting Mexican Americans as a racial group; (2) the important links between the experience of Mexican Americans and the broader patterns of racial formation and racial ideology in the United States; and (3) the crucial role of law in the social construction of race.

One of the major effects of the American colonization of Mexico was to transform property ownership and the regime of property law itself.[1] These effects of colonialism led to the loss of the land base on which both elite and lower status Mexicans had depended (in the latter case, for subsistence farming and ranching). Although some Mexicans either held onto their land or gained new opportunities for ownership under American rule,[2] the vast majority of land that previously had been owned collectively by Mexicans—via community land grants awarded by the Spanish or Mexican governments—came to be owned by the U.S. Government or by Euro-American individuals or corporations. The process by which this massive transfer of property occurred is illustrated with the story of one Mexican American community's forty-year legal struggle to retain its land. Their lawsuit eventually ended in failure in the U.S. Supreme Court in 1897.[3]

The formation of Mexican Americans as a racial group was closely linked to the broader evolution of the American racial order in the nineteenth century. This process worked in two directions: Manifest Destiny was an important factor driving broader changes in the racial order, and the larger racial order in turn shaped the particular trajectory of Mexican Americans. Usually, the Civil War and Reconstruction are viewed as

the key events shaping the nineteenth-century racial order because they so fundamentally transformed the black experience. However, we cannot fully comprehend those events without understanding their links to the earlier conquest of northern Mexico. Manifest Destiny was a catalyst for the Civil War in that the acquisition of the vast Mexican Cession brought to a head the question of whether black slavery would be allowed to expand beyond the American South. Specifically, the question of the constitutionality of the Missouri Compromise—which had banned slavery in the northern section of the new lands, but allowed it in the southern section—gained urgency once the United States had taken control of more than one million square miles of Mexican territory. We explore these connections by examining the Supreme Court's 1857 ruling in the *Dred Scott* case,[4] as well as the ways in which the subordination of blacks and Mexican Americans was intertwined.

Manifest Destinies has developed a third theme centered around the law's role in the social construction of race and racial ideology. We continue that discussion by returning to the phenomenon of the legal definition of Mexican Americans as white. Whereas we previously examined legal whiteness in the context of the early processes that incorporated Mexicans into the United States—such as the collective grant of American citizenship to more than 115,000 Mexicans and the extension of the franchise to Mexican men in New Mexico, this chapter considers the later consolidation of the legal definition of Mexicans as white at the turn of the century. Using the context of a federal immigration case,[5] we explore the larger tapestry of racial ideology, the law, and the social construction of race. On the one hand, at this time, the one-drop rule for African Americans was coming into being: one drop of black ancestry made someone black. On the other hand, with respect to Mexican Americans, a kind of reverse one-drop rule was emerging: one drop of Spanish ancestry made someone white. At the end of the day, these very different racial ideologies worked together to entrench white supremacy and to facilitate the racial subordination of African Americans and Mexican Americans, even as they promoted a gulf between these two groups. Only by looking at the history of Mexican Americans alongside that of African Americans can we see the full arc of the American racial order as it existed at the outset of the twentieth century.

Colonialism and the Property Rights of Mexican Americans

Exactly a century after Spanish authorities had given their ancestors title to the community land grant known as San Miguel del Vado, Julian Sandoval, Gregorio Roybal, José Angel Dimas, Catarino Sena, Tomás Gonzáles, Juan Gallegos, and Román Gallegos petitioned the U.S. Court of Private Land Claims to ask for American recognition of their collective ownership of 315,000 acres in northeastern New Mexico.[6] In 1894 when they went before the court, these men were the elected representatives of more than a thousand families who lived on the grant started with thirteen families in 1794.[7] In 1846, on the eve of the U.S. invasion of New Mexico, Kearny delivered one of his rooftop speeches in San Miguel—the largest village located on the grant—promising to protect the civil, religious, and property rights of the native people. The San Miguel petitioners claimed collective ownership of more than 300,000 acres that included small, individually allotted plots of land for a house and subsistence farming, but most of which was used collectively for woodcutting, sheepherding, hunting, and the like.

The word "vado" means ford in Spanish, and as lawyer Malcolm Ebright has described it, the center of the San Miguel del Vado grant was "where the trail to the plains, used by *comancheros* [Comanche Indians] and *ciboleros* [buffalo hunters], crosses the Pecos River," thus giving the grant its name.[8] When Spanish authorities issued the grant in 1794, this region of New Spain was controlled not by the Spanish crown but by the Comanche Indians. The San Miguel grant was awarded at the apex of Comanche control of northeastern New Mexico, roughly a decade and a half after the peak of hostilities between the Comanches and the Mexican settlers and Pueblo Indian communities.[9] As folklore scholar Enrique La Madrid puts it,

> The Comanches had the future of the province in their hands. The economic and political hegemony they established on the southern plains was without parallel. . . . Better armed than the presidial soldiers, the militia, and the Pueblo [Indian] auxiliaries, it was within their power to have driven everyone from their homes and destroyed the province completely had they so desired.[10]

The Spanish strategy was to give community land grants to mestizo settlers and Pueblo Indian communities willing to live in areas like these,

where Spanish authority was precarious at best.[11] When the Spanish returned to power in 1692 after the Pueblo Revolt, they could not continue to exploit the Pueblos on *encomiendas* (large agricultural production sites that depended on coerced Pueblo labor), but instead turned to a system that provided the various Pueblo communities with substantially more autonomy than prior to the revolt.[12] The new system hinged on increasing the number of mestizo settlements in the outlying regions, where they could be a buffer to potentially hostile Pueblo and other Indian communities. The grants were attractive to mestizo settlers seeking upward social mobility and, especially, to *genízaros*—the nomadic Indians who had joined, voluntarily or by force, mestizo communities. In exchange for land and the opportunity for social and ethnic mobility (as previously noted, over time and sometimes rapidly *genízaros* moved into the general mestizo population), the *genízaro* or mestizo grantees organized militias to defend against Indian attacks. Anthropologist Claire Farago notes that *genízaro* settlers "established themselves as an upwardly mobile social class consisting of farmers and artisans in Abiquiu, Carnuel, San Miguel del Vado, Belén, Tomé, and elsewhere."[13]

The five conditions attached to the San Miguel grant in 1794 reveal the challenges anticipated by both the grantors and the grantees.[14] First, unlike grants awarded by the Spanish and Mexican governments to individuals (sometimes as rewards for military service or political patronage), the San Miguel grant was awarded "in common" to fifty-two male heads of household and to all future settlers of the grant.[15] Private grants would have been unreasonable on New Mexico's eastern plains at this time, given the Comanches' control of the region. As legal scholar Placido Gómez has noted, community grants also reflected the melding of Spanish and indigenous systems of settlement in the arid northern territories of New Spain.[16] In this circumstance, community land grants had to be more extensive in regions like New Mexico, where they were centered in valleys (where narrow strips of land that attached to a water source could be allotted to individual families for a dwelling and a small farming plot), and the surrounding mountains could be used collectively for hunting, fishing, woodcutting, and grazing.[17]

The second condition of the original grant is equally revealing: the settlers had to agree to equip themselves with firearms and bows and arrows to defend the new settlement from Indian attacks. In 1794, the settlers mustered twenty-five firearms and an unrecorded number of bows and arrows to defend themselves.[18] The third condition was that the settlers

build a fortified plaza, or town center; before this ambitious construction was completed, they were to reside at the largely vacant Pecos Pueblo.[19] By 1811 the settlers had built a church, and shortly thereafter the priest at Pecos Pueblo requested permission to move to the new church in San Miguel.[20] The fourth condition, read together with the first, clearly indicates the fact that the grantees collectively owned the vast majority of the land: individually owned land was strictly limited to allotments to the leader (*alcalde*) and to future leaders of the community. Similarly, the fifth condition emphasizes the point: all work, from building the plaza to digging and maintaining the *acequias* (irrigation canals), was to be done "by the community with that union which in their government they must preserve."[21] Read together, the grant conditions established a political community as much as they constituted a contract for property transfer from the crown to the settlers.

The surviving written records tell us relatively little about the original thirteen grantees or the fifty-two families listed as maintaining the grant a decade later. The 1805 families included thirteen male heads of household who were formally designated as *genízaros* (which probably means that there were other *genízaros* among the group, who were not officially designated as such).[22] According to historian Ramon Gutiérrez, *genízaros* made up a significant portion of the eighteenth-century settler population, and they were, as a class, at the bottom of New Mexico's racial hierarchy.[23] This provided them with strong incentive to participate in the high-risk but potentially high-yield investment as settlers in frontier regions still controlled by nomadic tribes. Anthropologist Paul Kraemer has estimated that marital ties and economic success (linked in some cases to settlement on a community grant) allowed many to transform their status from *genízaro* to mestizo settler in the late colonial period, when the San Miguel grant began.[24]

The San Miguel grant was one of more than 150 community land grants awarded in New Mexico by the Spanish or Mexican governments.[25] Although the federal government eventually certified many of these grants, it generally did so by confirming only the small, individually owned plots of land and rejecting the notion of communally owned property.[26] This is precisely what occurred in the case of the San Miguel grant—the petitioners claimed collective ownership of 315,000 acres, and the U.S. Court of Private Land Claims agreed with their claim, but the Supreme Court disagreed and confirmed a mere 5,000 acres.[27] The Court reasoned that the other 310,000 acres belonged to the sovereign—the Spanish government

as the original grantors, the Mexican government when it controlled the region, and now the U.S. federal government. The result was that more than 300,000 acres now went into the "public domain," to be owned and operated by the federal government.

In this way, millions of acres of land in New Mexico were transferred from collective ownership by Mexican Americans to the federal government, which could do any number of things with the property. Some of this "public domain" land was distributed to individuals for farming or ranching enterprises (under the Donation Act, Homestead Act, and Desert Lands Acts, for instance, the government gave individual users 160 acres each); the federal government also sold land to private buyers.[28] But these uses of federal land—which, in the 1850s, 1860s, and 1870s in New Mexico accounted for only 1.2 million acres[29]—paled in comparison to another use of public domain land: the U.S. Forest Service. In the early 1900s, the U.S. government transferred approximately 13.6 million acres of land in New Mexico from the public domain to the Forest Service.[30] The massive Carson and Santa Fe National Forests in north central New Mexico, with a combined area of 2.4 million acres, are located on lands that came primarily from community land grants. Geographer Jake Kosek has described the effects of the transfer of lands from community ownership to the U.S. Forest Service:

> The creation of these federal lands, especially the national forests, amounted to an effective closure of the de facto commons of forest and pasture and the conversion of locally controlled and defined places into national "productive" spaces. This closure threatened not only access to resources but also the identity of indigenous Hispano communities whose national allegiance was tied more to Mexico or Spain than to the United States of America.[31]

To understand how this happened we must return to the peace treaty of 1848. With the end of the war, the United States gained sovereignty over Mexico's vast northern territory, but the U.S. government did not "own" the land. Over time, however, as more and more of the former Mexican lands went into the public domain, the federal government became the owner of a large portion (perhaps most) of the land ceded by Mexico.[32] Simultaneously with ownership, the federal government became a land *manager*, with all three branches participating: Congress created the laws to settle land claims in California and New Mexico, which then were implemented by the executive branch's Department of the Interior; when disputes arose,

they were adjudicated by federal trial and appellate courts. For example, solely to administer land claims in the Mexican Cession, Congress created three novel mechanisms that involved intensive executive branch and judiciary roles, as well as ongoing congressional administration.

In 1851, in the wake of the California gold rush and the land speculation that accompanied it, Congress hurriedly passed the California Land Act.[33] Under the law, a board administered by the Department of the Interior heard claims, which could then be appealed directly to the federal district court and then to the U.S. Supreme Court (bypassing the federal circuit court). Remarkably, the legislation specified only a two-year window for filing claims, after which all land not claimed in this way would revert to the public domain.[34] In contrast, in the rest of the former Mexican territory, Congress established itself as the arbiter of land claims by instituting the cumbersome surveyor-general system.[35] Under this process, landowners in New Mexico filed claims with the federal surveyor general's office in New Mexico, then waited in a queue for their land to be surveyed; eventually, the surveyor general made a recommendation to Congress, which ultimately decided whether to certify the claim.[36] The entire process could take several decades, and there was no possibility of judicial review.

The differences in the two systems reflected two important facts. First, there was the differential strategic and economic value of California and New Mexico, as viewed by Euro-American elites, particularly those in Washington, D.C. Simply put, California was far more desirable than New Mexico to gold miners and land speculators alike. Second, there were notable differences in the racial composition of the two regions. Within months of the peace treaty's ratification, Euro-Americans outnumbered Mexicans in California, whereas in New Mexico Euro-Americans always remained a numerical minority. Land was both less desirable given these demographics and less easy to control given New Mexico's Mexican and Indian majority and its community of Mexican elites. In contrast to California's rapid adjudication, in New Mexico, 205 claims were filed with the surveyor general between 1854 and 1885; almost half of them (95) were left in limbo because Congress never formally acted on them.[37]

Congress recognized the failure of the surveyor-general system in 1891, when it created the Court of Private Land Claims to attempt to put to rest land claims in the Mexican Cession (other than California).[38] By then, land in New Mexico had become more desirable, not the least because there was now a steadily increasing stream of Euro-American immigrants to the

region. Congress now took the unprecedented step of creating a specialized federal court to hear only land claims. This court operated without lay juries, and appeals from it went directly to the U.S. Supreme Court (bypassing *both* the federal trial court and the federal appeals court). As the last chapter showed, Mexican Americans dominated juries in most New Mexico counties (and at all court levels), yet by design in this legislation, majority-Mexican juries would have no role to play in the new land claims court. Both the creation of a specialized federal court and the automatic appeal to the Supreme Court reflected the congressional agenda to transfer as much land as possible, as quickly as possible, into the public domain.

The case of *United States v. Sandoval* has come to symbolize the failure of the U.S. government to adhere to the property rights provisions of the Treaty of Guadalupe Hidalgo.[39] Under Article VIII of the treaty, the United States pledged to respect the property rights of Mexico's citizens living in the ceded territory.[40] At the same time, contemporary events during the ratification process suggest reasons to conclude that the United States hoped to avoid this obligation whenever it saw fit. For one, upon recommendation from President Polk, the U.S. Senate refused to approve Article X of the treaty (as drafted by U.S. and Mexican diplomats and as ratified by the Mexican legislature), which would have even more directly governed grants of land awarded by the Spanish and Mexican sovereigns.[41] The language of the proposed but never ratified Article X was forceful in its assertion that Mexican property rights in the ceded territory would be protected under American law to the same extent that they would have been protected under Mexican law: "All grants of land made by the Mexican Government or by the competent authorities . . . 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*."[42]

The Mexicans strenuously objected to the provision's removal and later demanded a diplomatic accord to attempt to restore some of its meaning in non-binding diplomatic clarifications.[43] The resulting Querétero Protocol, signed by diplomatic representatives of the two nations just prior to the treaty's formal ratification, contained the following statement about the excised Article X:

> The American Government, by suppressing the Xth article of the Treaty of Guadalupe Hidalgo did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants of land, notwith-

> standing the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.[44]

The inclusion of Article X by the Mexicans, its removal by the Americans, and the Querétero Protocol suggest that there was a strong contemporary concern (later borne out) that Mexican landowners in the ceded territory might well lose their property in the wake of the transfer of sovereign control over the region. Seen in this light, we may wonder why it took so long for the Americans to dispossess the Mexicans of their land, rather than why the law allowed it to happen.[45] Ultimately, what is more surprising than the Supreme Court ruling against Julian Sandoval and his neighbors is that the legal procedures so blatantly constructed by Congress to increase federal land ownership in New Mexico sometimes proved susceptible to interim victories and delayed losses on the part of Mexican American land grant heirs.

The Sandoval lawsuit's path illustrates the consolidation of federal power (across all three branches of government) over the new "Western" lands of the United States. For twenty-two years, the Sandoval litigation wound its way through the surveyor-general process, resulting in an 1879 recommendation that Congress partially confirm the grant, but failing to result in any congressional action. When in 1891 Congress created a second process for adjudicating land grant claims in New Mexico, the Court of Private Land Claims, Sandoval and his neighbors appeared within a year to restate their claim in this new forum. Thus, the Sandoval litigation illustrates the two congressionally devised processes for settling land claims in New Mexico: the more legalistic, judicial process created by Congress (largely in response to intense criticism of the first process)[46] and the surveyor-general system it had instituted thirty-six years earlier. Just over a decade after the start of the American occupation, in 1859, the local justice of the peace in the village of San Miguel, Faustin Baca y Ortiz, filed a petition with the surveyor general, seeking recognition of the land as a community-owned grant.[47] It would take a staggering twenty years for the surveyor general to act on the San Miguel claim.

Finally, in 1879, Surveyor General Henry M. Atkinson recommended to Congress (via the Interior Secretary), that the San Miguel del Vado grant be confirmed as the *private* grant of Lorenzo Márquez and his heirs.[48] Although the petition had come from all the current residents of the grant, as a request for recognition of communal ownership, Atkinson reasoned that

the fact that only Márquez, and not the fifty-one other original grantees, was listed in a 1794 document showed that "title vests solely in the grantee named."[49] Atkinson made this ruling despite the fact that subsequent documents, including those signed by Spanish authorities in 1798 and 1803, contained the names of all the original male heads of families (including Márquez). Atkinson's position paralleled that of other San Miguel heirs, led by Márquez, who argued that they privately owned the entire grant.[50] The evidence strongly suggests, though we cannot be certain, that Atkinson aimed to facilitate Márquez's private ownership of the grant, so that Márquez could in turn sell it to Euro-American land speculators.[51] In this respect, the case also illustrates the not infrequent dynamic of Mexican American complicity in the transfer of land out of *collective* ownership by Mexicans.

When Atkinson's recommendation reached Washington in 1879, Congress refused to confirm any additional grants in New Mexico. Allegations of fraud and rampant land speculation were offered as explanations, and no action was taken on the San Miguel petition.[52] Atkinson was viewed as a prime suspect and was accused of promoting his personal financial interests through his position as surveyor general.[53] By this time, it appears that the Márquez faction had sold their interests in the grant to Euro-American land speculators, who probably were heavily lobbying Atkinson. In 1885, President Grover Cleveland appointed a purportedly reform-oriented successor to Atkinson, George Julian. But Julian's public comments revealed contempt for New Mexico's native Mexican and Indian people that resonated with the dominant racial narrative. In 1887, just two years after he had been sent to New Mexico, he wrote in the *North American Review* that the territory needed more Euro-American settlers so that "an intelligent and enterprising population [would build] a temple of civilization . . . [on] the ruins of the past."[54] Although he went to New Mexico as a self-proclaimed reformer, he seemed to offer an apology for men like Atkinson: "Official life in an old Mexican province, and *in the midst of an alien race*, offered few attractions to men of ambition and force."[55]

In 1886, Julian wrote to Congress to criticize Atkinson's recommendation. Under Mexican law, he said, the grant should be confirmed to the heirs of the fifty-two original settlers as well as all those settlers (and their heirs) residing on the grant in 1846, when the American occupation began (more than six hundred families).[56] The radical shift in recommendations by the two surveyors general probably made Congress even more reluctant to confirm or deny the San Miguel petition, and it would be more than a

decade before the litigation was resolved. Was Julian a friend of Mexican Americans since he was supporting the community grant, rather than the notion of the grant as owned by the small number of heirs, as Atkinson had recommended?[57] To understand how the positions of both Atkinson and Julian were contrary to the interests of the majority of Mexican Americans (although Atkinson's position favored Mexican American land speculators), we must understand that Euro-American elites were deeply split on the question of land use and distribution. The Atkinson camp promoted property as an investment strategy and so welcomed the role played by land speculators in driving up prices. The Julian camp favored getting land into the public domain, with the hope that it eventually would go into the hands of yeoman farmers in the homesteading tradition.

Both groups supported Manifest Destiny in both its ideological and material senses, and neither supported following Spanish-Mexican property law to its natural limits because that meant upholding the concept of communally owned land. It was the public domain faction of Euro-American elites (those against land speculators) who won out in 1891, when Congress created the five-judge U.S. Court of Private Land Claims to resolve claims stemming from the territory gained after the Mexican War.[58] One of the principal criticisms of the surveyor-general system had been that it did not provide for judicial review and the associated legal protections of claimants.[59] The new system attempted to cure this defect by creating a new court from which the losing party could appeal directly to the Supreme Court. One of the most contentious issues was how the new process differed from that created by the California Land Act of 1851. Under the California law, land claims initially were heard by a presidentially appointed board, then appealed to the federal district court, then to the Supreme Court.[60]

The transition from the surveyor-general system to the land claims court was intensely resisted by the cadre of lawyers in New Mexico who most frequently had petitioned the surveyor general and who were themselves among the wealthiest landowners in New Mexico as a result of their legal work. (As noted, lawyers often were paid in the form of title to property.) Their recognized leader was Thomas B. Catron, who at this time was the largest individual landowner in New Mexico. According to 1910 tax rolls, Catron owned $200,000 in assets—more than six times the wealth of the next richest Euro-American serving at that time with Catron in the territorial legislature and more than ten times the wealth of the richest Mexican American legislator.[61]

Two days before the Court of Private Land Claims first met in Santa Fe, Catron convened an emergency meeting of the New Mexico Bar Association and garnered the attendance of the five newly appointed judges.[62] The bar association voted to recommend substantial amendments to the 1891 Act and selected a committee to present them to Congress, to be headed by Catron.[63] In the end, Catron decided to work with the new court. He was involved with the San Miguel del Vado grant as attorney to Levi P. Morton, who had purchased land from the Márquez faction and stood to lose it if the court adopted the community theory of the grant.[64] Morton and Catron nicely illustrate the land speculators' strategy. Morton was a former New York congressman (1879–81) and former vice president of the United States under President Benjamin Harrison (1889–93). When he appeared before the land claims and Supreme Court, Morton was governor of New York.[65] His financial agenda was to buy land and sell it quickly at a profit. As his attorney, Catron likely was paid in land—if he won.

By the time the case was heard by the Court of Private Land Claims in 1894, more than one thousand families lived in eight villages (as well as in many communities too small to be described as villages) on the San Miguel del Vado land grant.[66] A century after their ancestors had received the original grant, the grandchildren and great-grandchildren of the original grantees made the trip to Santa Fe to testify. The judges were Euro-Americans whose states of origin included Iowa, North Carolina, Kansas, Tennessee, and Colorado, and who very likely did not speak Spanish.[67] The transcript of examinations and cross-examinations of witnesses shows that most of the witnesses testified in Spanish, with an interpreter translating the attorneys' questions to the witnesses and the witnesses' responses to the judges and audience. Fifty-nine-year-old Celso Baca testified that his grandfather was an original grantee and that his wife's great-grandfather also was an original settler of the grant.[68] Eighty-year-old Mariano Barros, of La Cuesta, spoke about how each family on the grant had an area of a few acres to cultivate for their own subsistence, and about how the common areas of the grant were collectively used for grazing sheep, cutting timber, and other activities.[69]

Euro-American lawyer John Veeder represented the petitioners and explained to the court that the case involved "a community grant" in which each settler was given "a place for planting and his house," with the rest of the land "to be in common for all the people who resided upon the grant."[70] In a preview of his lone dissent, Judge William W. Murray, a Tennessee Democrat, interrupted Veeder: "Do you claim it as a town or cor-

poration grant?" "We claim it as a *pueblo* grant," responded Veeder, "we call it a town grant or a community grant" (the Spanish word *pueblo* means town).[71] During the trial, Veeder objected repeatedly to the questioning of witnesses by U.S. Attorney Matthew Reynolds about *individual* parcels of the grant used for subsistence farming, reminding the court that these facts were irrelevant to the *community* claim before it.[72] In the end, the court voted four to one to confirm *collective* ownership of the grant by the descendants of the original fifty-two grantees and all others who had settled there prior to December 1848, when the Treaty of Guadalupe Hidalgo was assumed to have taken effect in New Mexico (that is, when word of its ratification would have reached New Mexico).[73]

Under the California land law, a parallel ruling appealed by the losing party would have gone to the federal district court and then, if again appealed, to the Supreme Court. But under the 1891 law, the U.S. attorney's appeal went straight to the Supreme Court. It reversed the ruling of the Court of Private Land Claims, deciding to confirm only the individually allotted portions of the grant, totaling about five thousand acres. Prior to a series of cases decided around this time, the Supreme Court had essentially deferred to federal judicial interpretation of the Treaty of Guadalupe Hidalgo as requiring that Spanish and Mexican legal principles be applied to land claims in the former Mexican territories.[74] The Court of Private Land Claims had relied on these prior rulings when it confirmed the San Miguel grant.

In an opinion written by Chief Justice Melville W. Fuller, the Supreme Court decided that the differences between the congressional acts that created the California land court in 1851 and the 1891 court revealed Congress's intent to make the 1891 law more stringent than the surveyor-general standard.[75] Under this reading of the case, "the sovereign retained fee title to all communal lands."[76] In other words, because the prior Spanish and Mexican sovereigns had retained control of the common lands in community grants, the United States, as the current sovereign, now did so as well. The argument flipped on its head the notion of a community grant as recognized under Spanish-Mexican jurisprudence. Instead of acknowledging that the vast majority of the grant (310,000 acres in this case) was collectively owned and operated, and that only a small portion of it (5,000 acres) was allocated to individuals for farming plots, they argued that the only valid portions of the grant were the individual allotments.

Yet it probably was this kind of outcome that Congress sought when it created the specialized court in 1891. In this respect, I differ with those

who claim that cases like *Sandoval* violated the spirit of the peace treaty. From a realpolitik perspective, this was precisely the outcome envisioned by the United States when it started the war and negotiated the treaty—it just took Congress some time to get there. If Article X, as proposed by the Mexicans, had been included in the treaty, then it was precisely the shift in congressional legislation and judicial rulings that occurred in the 1890s that would have been prohibited (which is not to say the Court would not have been able to use other avenues to achieve its ends). With the ratification of the Treaty of Guadalupe Hidalgo in 1848, the United States gained sovereignty over the Southwest and West. But it was not until fifty years later that the federal government truly began to realize the fruits of Manifest Destiny as it gained ownership over the Mexican Cession lands.

The tens of thousands of Mexican Americans in New Mexico who lost their communally owned lands at this time and in this manner reacted in two ways. The loss of these lands required many of them who had been subsistence farmers and ranchers, living close to the land, to become wage-laborers who often had to migrate out of the region seasonally to earn a living.[77] Yet many Mexican Americans who lost their communal lands did not simply sit idly by but instead participated in a variety of political mobilizations closely linked to their status as a colonized, racially subordinated group. An early movement called Las Gorras Blancas (the White Caps), which directly challenged the transfer of lands, thrived in the late 1880s and early 1990s in and around the San Miguel del Vado land grant. Sociologist Phillip Gonzáles describes the movement thusly:

> Covering riders and horses with white sheets, armed bands of Hispanos rode at night, killing livestock, knocking down fences, and tearing out railroad tracks. The movement posed considerable threat to the order that the territorial administration sought to maintain. . . . The organization won political support and influence in San Miguel and nearby counties.[78]

Though short-lived, Las Gorras Blancas demonstrates that some Mexican Americans, conscious of their status as a colonized people, became radicalized as a result of the loss of their community land grants.

Manifest Destiny as a Catalyst for the Civil War

Manifest Destiny was central to the larger nineteenth-century processes that restructured the American racial order. This section explores the connections between the conquest of northern Mexico and the Civil War that began just over a decade after the U.S.–Mexico War concluded. The role of Manifest Destiny as a catalyst for the Civil War remains almost entirely unrecognized. Yet a careful review of the historical record reveals that U.S. conquest of the expansive territory that had belonged to Mexico brought to a head the question of whether slavery would expand beyond the South, a question decided by the Supreme Court in the *Dred Scott* case. Understanding the connections between the two elucidates the similarities and differences between the racial subordination faced by Mexican Americans and that faced by African Americans.

The question of whether slavery would be legal in the newly acquired territories west of the original thirteen colonies arose almost with the birth of the nation, but it grew more acute as the federal government annexed ever-larger parcels of land, culminating in the Mexican Cession of 1848.[79] In perhaps the preeminent historical analysis of the *Dred Scott* case, Don Fehrenbacher identifies three important moments in this early history: Congress's prohibition of slavery in the Northwest Ordinance of 1787, which established federal administrative authority over the trans-Appalachian west; Congress's silence on slavery in the 1804 annexation of the Louisiana Territory; and, Congress's so-called Missouri Compromise of 1819–20. The Missouri Compromise actually consisted of three separate congressional actions, bundled together to accumulate sufficient numbers of votes for passage: (1) Missouri joined the Union as a slave state; (2) Maine joined as a free state; and, (3) slavery was prohibited in the remainder of the Missouri Territory (what remained of the Louisiana cession, after removing the states of Missouri and Louisiana and the Arkansas Territory) north of the 36th parallel but allowed south of that line.[80]

This national compromise did not last long; debates about slavery arose again in the context of various efforts to annex Texas. First in 1837 and again in 1844, northerners blocked the admission of Texas on the slavery question.[81] Southerners got the upper hand in 1845, and Texas was admitted as a state where slavery was legal. That result certainly pleased Euro-American settlers in Texas (both legal and illegal immigrants), who had for years advocated for Texas independence largely in order to protect the right to hold black slaves in the face of Mexico's anti-slavery laws. In

August 1846, when President Polk initially sought congressional funding to pursue negotiations with Mexico over the question of Texas's southern boundary, Congressman David Wilmot, a Pennsylvania Whig, attached an amendment to provide that slavery would be banned in any additional lands obtained from Mexico.[82] Whigs viewed Polk's efforts as the first step toward a war with Mexico, which itself, they believed, was a thin guise for acquiring more territory in which to expand slavery.[83] The so-called Wilmot Proviso passed the House in 1846, but did not make it to the Senate; in 1847, the House again endorsed the Wilmot Proviso, but it failed in the Senate.[84]

When Congress debated the ratification of the Treaty of Guadalupe Hidalgo in early 1848, the question of whether slavery would be allowed in the newly ceded territories figured prominently. During the presidential campaign later that year, Polk argued that the Missouri Compromise should be extended west to the Pacific Ocean—that slavery would be allowed south of the 36th parallel, but not north of it.[85] No agreement was reached until almost two years later, with the "Compromise of 1850." This congressional action consisted of a series of votes taken in the summer of 1850, each bearing on slavery.[86] First, Congress admitted California as a free state. Second, Congress designated the remainder of the Mexican Cession as the Utah and New Mexico territories, without specifying any policy on slavery in them. Third, Congress settled the question of the boundary between Texas and New Mexico, putting it considerably further east than Texas had wanted, but providing Texas monetary compensation for doing so.[87] Finally, it included a strengthened Fugitive Slave Act, demanded by southern slaveholders to protect against the increasing threat of slaves escaping to jurisdictions where slavery was illegal.[88]

With the 1850 actions, an earlier shift in federal policy on slavery in the territories became institutionalized. Congress began its regulation of newly annexed lands in 1787 with a prohibition on slavery in the Northwest Ordinance; by 1850, however, Congress had adopted the position euphemistically referred to as "nonintervention" in the territories. The positive gloss on nonintervention was that popular sovereignty in each territory would be allowed to run its course to decide whether or not to legalize slavery. But the reality was that nonintervention meant a victory for white slaveholders, who were free to settle in the new territories with their slaves knowing their "private property" would be respected.[89] At the same time, the enhanced fugitive slave law gave federal officials—from U.S. marshals

to federal judges—a greater role in protecting the rights of slaveholders in all the states and territories. All in all, the increased rancor of the congressional debates about slavery in Texas, California, New Mexico, and the other far western territories revealed a federal legislature increasingly unlikely to resolve the slavery question, making judicial intervention almost inevitable.[90]

The Supreme Court finally did speak to the question of slavery in the territories in 1857, when it decided *Scott v. Sandford*.[91] Most narrowly, Scott's lawsuit involved his right as a slave to sue in federal court. Then and now, only certain types of cases can be brought in federal court, as a court of limited rather than general jurisdiction. Scott alleged that his case was appropriate for federal court due to the parties' diversity of citizenship—he, as the plaintiff, and Dr. Sanford, as defendant, were citizens of different states, Missouri and New York, respectively.[92] The substance of Scott's suit for freedom was that, because he had lived for substantial periods in states and territories where slavery was illegal, he was now free. Scott's travels were an integral part of his theory of the case, but they also reveal another layer of connection between Manifest Destiny and the Civil War, one typically neglected in historical accounts.

At around age thirty, Scott was purchased for $500 by Dr. John Emerson from the estate of Peter Blow.[93] When Emerson entered the military service as a surgeon in 1834, he took Scott with him from Missouri to Fort Armstrong, Illinois (about two hundred miles north of St. Louis). While at Fort Armstrong, Emerson took up land speculation, purchasing multiple lots in both Illinois and what would become Iowa; he directed Scott to build a log cabin on one lot in order to improve his claim. In 1836, Emerson was transferred to Fort Snelling (in the Wisconsin Territory) and again took Scott with him.[94] While at Fort Snelling, Scott married Harriet, the young female slave of the Indian agent stationed at the fort.[95] Emerson left Fort Snelling in 1837, but Scott and his family remained there, as he had been hired out to other officers. About a year later, Emerson, now living at Fort Jessup in the Louisiana Territory, sent for Scott, who traveled (unescorted) with his family by steamboat to join Emerson in St. Louis.

Once again, Emerson was transferred, and he returned with his own family and with his slaves, the Scotts, to Fort Snelling. When in 1840 Emerson was transferred to Florida where the Seminole War was in progress, Mrs. Emerson took their slaves with her to her family home in St. Louis.

In early 1843, Emerson died, and, perhaps to earn extra income, Emerson's widow rented Scott to her brother-in-law, Captain Bainbridge. Scott accompanied Bainbridge to army posts in Florida, the Louisiana Territory, and Texas.[96] From 1844 to 1846, Bainbridge served under General Taylor's command on the Texas border with Mexico, accompanied by Scott. At the very moment when the United States declared war against Mexico, Scott was with the U.S. Army in Texas. It was upon his return from Texas that Scott initiated his first suit for freedom, also claiming emancipation for his wife and two daughters.[97]

The Supreme Court might have dispensed with Scott's case in any number of ways in order to avoid reaching the merits of the larger claims as they related to the freedom of a slave who had lived in free territory.[98] In a sweeping decision, however, Chief Justice Roger B. Taney ruled that blacks, whether they were free or enslaved, stood outside the American polity: they were not citizens nor did they have the privilege of suing in federal court.[99] The *Dred Scott* case is considered a precursor to the Civil War, which erupted only a few years later.[100] As significant as the ruling on black exclusion from citizenship was, an equally important aspect of the case—and arguably one that was a more important catalyst for the Civil War—was the Court's ruling that the Missouri Compromise of 1850 was unconstitutional.

When a Supreme Court dominated by southerners heard Scott's case in 1857, it was poised to reach well beyond the narrow confines of the dispute between Scott and Sanford. Taney wanted desperately to reach the question of whether Scott had become free by virtue of his owner taking him into free territory under the Missouri Compromise, and hence the issue of Congress's power to prohibit slavery in the territories.[101] Like most white southerners, Chief Justice Taney perceived the question of slavery in the territories as central to the larger goal of maintaining slavery in the nation.[102] Fehrenbacher identifies the dilemma faced by Taney: "In short, while the power to prohibit slavery in the territories must be nullified, the power to protect [slavery] must be not only affirmed but converted into an obligation."[103] Taney accomplished this goal by way of a three-part argument: (1) the federal government had no power to govern new territories (other than a limited, temporary power to govern them until they were to be admitted as states);[104] (2) this limited governing power meant that the federal government was also limited in its regulation of the rights of "citizens" of the territories, including those Americans who had migrated from states to territories;[105] and (3) as a result, the federal government

(Congress, in this case) could not in any way restrict the property rights of citizens of the territories, making the prohibition of slavery north of the 36th parallel unconstitutional.[106]

The American colonization of northern Mexico brought to a head the question of whether slavery would expand beyond the South. It pointedly raised the issue of whether white slaveholders would be allowed to share equally in the profits of imperialism. If white slaveholders could not take their property in slaves with them into the vast new territory, then, according to Taney's view of the world, they were not equal beneficiaries of America's imperial enterprise. Relative to white Americans who did not own slaves, they would be held to second-class citizenship if the Missouri Compromise was enforced. Ironically, Taney's view of the case may have inadvertently led him to expand the rights of Mexican American citizens in the territories.

As one of the pillars for his argument about black inferiority, Taney pointed to the categorical exclusion of non-whites from the ability to become naturalized American citizens.[107] In doing so, however, he ignored the recent act of "collective naturalization" of more than 115,000 Mexicans under the Treaty of Guadalupe Hidalgo. Most of the Mexicans living in the vast region ceded by Mexico after the war were racially mixed and very likely would have been considered non-white by Taney and his brethren. The Mexican War had ended less than a decade before the Supreme Court decided the *Dred Scott* case, and the Taney Court already had decided several cases involving the peace treaty and the war.[108] Taney's omission of Mexicans' questionable racial status produced two outcomes. At least as a formal legal matter, it effectively ranked the nation's brand-new Mexican American citizens above African Americans in the U.S. racial hierarchy.[109] In so doing, Taney perhaps inadvertently expanded the rights of those Mexican Americans who held only federal (but not state) citizenship, such as Mexicans in New Mexico.

In invalidating the Missouri Compromise, the Court emphasized that the ban on slavery south of the 36th latitude violated the due process rights of slaveholders who had migrated or who might immigrate to the new territories. Taney framed the Missouri Compromise as a law that discriminated against territorial citizens, who by virtue of their migration west no longer held state citizenship:

> It is a total absence of power everywhere within the dominion of the United States, and *places the citizens of a Territory*, so far as these [property and

> liberty] rights are concerned, *on the same footing with citizens of the States*, and guards them as firmly and plainly against any inroads which the General [i.e., federal] Government might attempt, under the plea of implied or incidental powers.[110]

As legal scholar Ediberto Román has noted, Taney's interest was in protecting the rights of white "settler citizens" to the federal territories, not the rights of territorial citizens per se.[111] While Taney's interest clearly was in protecting the property rights of white, slaveholding newcomers to the territories, the opinion applied to all "citizens" of all federal territories—including Mexican Americans who held only federal citizenship in New Mexico.

Implicit in Taney's logic was that the United States should not hold territories unless they would eventually become states.[112] From this vantage point, the western territories all were temporary territories: American citizens residing there might for awhile be only federal citizens, but once the territory achieved statehood, they would hold both state and federal citizenship. Under the Treaty of Guadalupe Hidalgo, Mexicans in the federal territories were similarly situated to white settler citizens in that they held federal but not state citizenship (though the settler citizens had formerly held state citizenship).[113] The case arguably enhanced the rights of Mexican Americans living in federal territories. That may not at all have been the Court's goal. But Taney was so determined to invalidate the Missouri Compromise that he was willing to open the door to an expansion of the rights of the newly incorporated Mexican Americans—or at least he did not expressly reject the implication.

Racial stratification in the nineteenth century was closely linked to questions of citizenship and inclusion in the polity.[114] Membership in nonwhite racial groups corresponded to degrees of exclusion from citizenship (understood as having both state and federal elements), the ability to become a naturalized citizen, and enfranchisement for men of color. Moreover, these more strictly legal dimensions of citizenship corresponded to racial groups' more general level of inclusion and belonging in American society.[115] For instance, over the course of the nineteenth century, white Euro-American men greatly improved their citizenship position with the lifting of property and other (non-racial) restrictions on the franchise. By the end of the century, white men and women who emigrated from Europe had full access to American naturalization and held (or could hold) both state and federal citizenship, and white men generally held federal

and state political rights without regard to property ownership.[116] Each non-white racial group faced a different mix of formal and informal barriers to equality.

A mixed picture emerged for African Americans, as their fortunes shifted greatly over the course of the half-century before 1900. Under the Supreme Court's ruling in *Scott v. Sandford*, neither free nor enslaved blacks possessed federal citizenship, which meant virtual exclusion from the American polity. Even in the northern states where slavery was banned, blacks did not hold equal civil rights. According to political scientist Rogers Smith, in most northern states, blacks possessed legal rights (such as the right to property, liberty, and to sue in court), but they did not have full political rights (such as voting and running for office).[117] With the enactment of the Civil War Amendments to the Constitution, however, African Americans received full federal citizenship and African American men received the right to vote. And, in 1870, Congress amended the naturalization laws to allow immigrants of African descent to become American citizens.[118] But with the Supreme Court's 1896 ruling in *Plessy v. Ferguson*, the limits on African Americans' inclusion in American society reappeared in a more familiar form.[119] The Court's distinction between political rights and social rights legitimated state and local efforts to further white supremacy by segregating blacks from whites in all facets of American life. (We will return to this case later in this chapter.) By the turn of the century, despite the Civil War and the amendments to the Constitution, black racial status reflected the paradigmatic instance of racial inferiority and subordination in the United States.

American Indians' racial status can be understood as more ambiguous. Indians certainly were viewed as non-white and as racially inferior.[120] Moreover, status as a member of an Indian tribe was, over the course of the nineteenth century, an impediment to U.S. citizenship.[121] Racial status as Indian, tribal membership status, as well as local contexts interacted to determine the extent to which Indians, individually or as part of particular tribes, participated as state citizens.[122] The Chinese faced different roadblocks to citizenship than either blacks or Indians. Actively recruited from thousands of miles to be laborers, they could not become citizens no matter how long they had lived in the United States. After Congress passed the Chinese Exclusion Act of 1882, Chinese laborers were barred from entering the United States.[123] The Chinese were viewed as racial others and were largely excluded from political rights and from even being part of society.[124]

Compared to these groups, the citizenship status of Mexican Americans might well have been enviable. Under the Treaty of Guadalupe Hidalgo, Mexicans held American citizenship—more legalistic than real, second-class yet still desired citizenship. Mexicans gained this "collective naturalization" at a time in American history when only white immigrants could naturalize. As a result, the treaty's citizenship provisions can be read as conferring white legal status on Mexicans. In California and Texas, some Mexican American men possessed state and federal citizenship and participated as fully enfranchised members of the polity. But state lawmakers in both states also made sure that not *all* Mexican American men did. Whiteness was defined locally, by law and custom. Frequently, local practices and institutions excluded Mexican Americans from full rights. This likely fell more harshly on the majority of Mexican Americans who were predominantly indigenous and of lower economic status.

For Mexicans in New Mexico, who substantially outnumbered Euro-Americans, the mechanisms blocking full inclusion varied. New Mexico's Mexican Americans were excluded from full rights via the limitations of *federal* citizenship and the subordinate status of federal territories as compared to states. Nonetheless, Mexican American men in New Mexico, and some in California and Texas, participated on an equal footing with Euro-American men in terms of formal political rights. Moreover, the rights of Mexican Americans as *federal* citizens living in a federal territory were arguably strengthened by *Scott v. Sandford*, the same Supreme Court case that so unequivocally excluded both free and enslaved blacks from the polity. The logic of the Court's ruling in that case was to enlarge the scope of citizenship rights of non-blacks living in the federal territories. The unintended consequence was that the rights of Mexican American citizens in the federal territories also were expanded. This meaning of the *Dred Scott* case, however, was never tested in the legal system since there was so little time between the Court's decision and the Civil War.

Race, Law, and Contrasting "One-Drop" Rules

As legal scholar Ian Haney López has noted, one of the first laws passed by Congress after it ratified the Constitution was to limit naturalization to "free white persons," meaning that only white immigrants to the United States could become citizens.[125] In the wake of the Civil War, amid the passage of the Reconstruction Amendments to the Constitution, Congress

amended the law to allow white persons as well as "persons of African nativity or African descent" to become American citizens.[126] In 1848, more than 115,000 Mexicans were *collectively* naturalized under the Treaty of Guadalupe Hidalgo. We have explored the resulting paradox—that the collective grant of American citizenship in some senses conferred legal whiteness on Mexicans as a group with a distinctly non-white history. Now we turn our attention to the fates of Mexicans who sought U.S. naturalization after 1848. Were Mexicans to be allowed to become American citizens, given that naturalization was limited to whites until 1870 and after that to whites and blacks only?

Two caveats are in order. First, the two-thousand-plus-mile U.S.–Mexico border was more symbolic than real in the late nineteenth and early twentieth centuries.[127] Substantial numbers of Mexican nationals crossed the porous border without any difficulty whatsoever, as did Americans entering Mexico.[128] Historian George Sánchez has described the social construction of the border, arguing that procedures to regulate Mexican immigration did not become institutionalized until the 1940s.[129] Prior to that time, Mexicans entered the United States freely and blended into Mexican American communities, in many cases without perceiving formal naturalization as necessary or desirable.

Second, naturalization occurred at the local level and very rarely resulted in the kinds of court records studied by legal scholars (typically, appellate decisions).[130] As a result, we cannot with confidence know how Mexicans who sought naturalization fared in these various jurisdictions. We do know that, at least in particular contexts, the federal law limiting naturalization to blacks and whites often made little difference. In my research on nineteenth-century New Mexico courts, for example, I routinely came across uncontroversial instances of the court's naturalization of Mexican nationals as American citizens. But we cannot extrapolate from New Mexico to other parts of the country; in other places, formal racial restrictions likely were used to prevent certain classes of Mexicans from becoming U.S. citizens.

The only precedent-setting legal case involving a Mexican seeking American naturalization is *In re Rodriguez*, decided by a federal judge in Texas in 1897. The essential logic of *Rodriguez* was that Mexicans were *white enough*, despite not being truly white. The case emphasized the prior collective naturalization of Mexican citizens in 1848 as setting the precedent for finding that Mexicans are white persons, given that the law then limited naturalization to white persons. But the social context probably

was more important in determining the outcome of the case. Largely because of the exclusion of Chinese workers from the American labor market beginning in 1882, the United States, and especially certain industries in the Southwest and West, faced a labor shortage.[131] For more than two decades, Japanese immigrants filled this void, but when that flow was cut off in 1907, Mexican immigrants were recruited to replace them.[132] In the early decades of the twentieth century, Mexican immigrants became the workforce of choice for a wide range of agricultural and industrial sectors of the U.S. economy.[133]

Judge Thomas Sheldon Maxey began his opinion in *Rodriguez* by acknowledging "the delicacy and gravity of the question" presented, a candid admission about the delicate racial issue presented in the case and its likely broader impact.[134] We can only speculate as to how Maxey's own experience, as a native of Mississippi and veteran of the Confederate Army, may have influenced his estimation of the importance of the case or his resolution of it.[135] His requests for additional briefing may indicate that he was disturbed by the degree to which local politicians and the press had inserted themselves into the case. According to historian Arnoldo De León, Euro-American politicians in San Antonio openly sought it out as a "test case," hoping they could block any widespread Mexican naturalization in order to stem the rising numbers of Mexican American voters.[136] In any event, Maxey ruled in Rodríguez's favor, against the interests of the Euro-Americans seeking to have Mexicans declared unfit for naturalization because they were not white.

Rodríguez had lived in San Antonio, Texas, for ten years prior to his application for citizenship; the court records do not indicate where in Mexico he was born. According to Judge Maxey, Rodríguez was illiterate in English (we do not know whether he was literate in Spanish);[137] the record does not say, but it seems that Rodríguez testified in English. Maxey described Rodríguez as "lamentably ignorant" and as "a very good man, peaceable and industrious, of good moral character, and law abiding."[138] Rodríguez's racial phenotype and ancestry are discussed in some detail in the case. Rodríguez testified that he was a "pure-blooded Mexican," which carries with it great irony given the mestizo racial character of the Mexican people as part Spanish, African, and indigenous.[139] Maxey interpreted Rodríguez's statement to mean he did not have ancestral "relation to the Aztecs or original races of Mexico."[140] Yet Maxey and other Euro-Americans present in court viewed him as "looking Mexican," meaning having dark skin and Indian features.[141]

The opinion suggests that Maxey was quite perplexed with the case. He acknowledged, on the one hand, that "if the strict scientific classification of the anthropologist should be adopted, *he would probably not be classed as white*. It is certain he is not an African, or a person of African descent."[142] But he rejected the idea that social-scientific views of race were the appropriate measure.[143] He similarly rejected the idea that Mexicans were nonwhite because they were racially similar to American Indians, saying forcefully that "the dissimilarity [between Mexicans and American Indians] is so pronounced."[144] Instead, Maxey's strategy ultimately was to emphasize the laws that gave Mexicans political rights, suggesting that these laws had earlier conferred white status on Mexicans.[145] Maxey suggested that his choice to treat Mexicans as "white" for purposes of the naturalization law was natural and legally inevitable.[146] But he reached this conclusion by ignoring law and custom that indicated, with at least equal force, that Mexicans were anything but white.

Consider two of the laws upon which Maxey relied—the 1836 constitution of the Republic of Texas and the 1845 Texas state constitution. The 1836 document conferred citizenship on all men *except "Africans and their descendants" and "Indians*," thereby including Mexicans by default.[147] When Congress voted to annex Texas as a state in 1845, it incorporated the former Mexican citizens who were at that time citizens of Texas. Both instances elide the vigorous, ongoing debate at the time about Mexicans' racial status. For example, in the context of the implementation of these provisions, some Mexicans were deemed not *white enough*—or too Indian and/or too black—to become Texas citizens.[148] Similarly, while the Treaty of Guadalupe Hidalgo did not itself contain racial restrictions, racial prerequisites were included in the constitutions of several states carved from the Mexican Cession lands, as well as in the federal legislation creating the New Mexico Territory.[149]

Rodriguez is perhaps surprising in that, as historian Mae Ngai puts it, "Mexicans were thus deemed to be white for purposes of naturalization, an unintended consequence of conquest."[150] The case becomes less startling if one pays close attention to the larger forces swirling around immigration—the cutting off of Chinese immigration in 1882 and Japanese immigration in 1907, and the reform of immigration law that followed in later decades. The exclusion of Chinese and Japanese laborers created a labor shortage that Mexicans were filling at the time *Rodriguez* was decided. Euro-American elites were divided on how to confront this new reality. No doubt influenced by the racism and xenophobia that had

driven out Asians, some wanted to prevent Mexicans from voting and in any sense becoming Mexican *American* (like the San Antonio politicians who objected to Rodríguez's naturalization application). Others wanted the United States to remain attractive for Mexican workers.

In 1917, Congress passed a major immigration bill that consolidated the anti-Chinese efforts into a virtual ban on immigration from *any* Asian country (creating the so-called Asiatic barred zone).[151] In the same law, Congress created the first exception for temporary Mexican workers—sojourners who would be allowed into the United States as contract laborers for a limited period of time. Actively recruited by employers and U.S. government agents, more than 400,000 Mexicans entered the United States in this fashion to work in the 1920s.[152] For these workers, naturalization was not an option; the United States invited them only as temporary workers and did not give them the choice to become permanent citizens. If the 1917 immigration law permitted some Mexicans the opportunity for short-term economic improvement, it also constituted a huge exception to the naturalization opportunities created by *Rodriguez*.[153]

We have explored the significant wedge that whiteness constituted between Mexican Americans and Pueblo Indians. By allowing Mexican Americans legal whiteness while denying it to Pueblo Indians, American colonizers strengthened their position and disrupted a potential alliance between two native groups. In the larger American racial order, what effect did granting Mexicans legal whiteness—in cases like *Rodriguez*—have on African Americans and on Mexican/black relations? The formal "white-enough-to-naturalize" status afforded by *Rodriguez* encouraged many Mexican Americans to further distance themselves from blacks and other non-white groups. In this context, any group or person seeking equality appreciated the extent to which it paid to be perceived as white (or white enough) under the law. For many Mexican Americans, that meant distinguishing themselves from blacks, but also from Indians, the Chinese, and the Japanese, depending on the region. In this way, New Mexico's racial order came to influence the evolving national racial order.

Indeed, by the turn of the century, we can perceive mutually reinforcing racial logics involving blacks and Mexican Americans. For blacks, the turn of the century signaled the beginning of the entrenchment of the one-drop rule: one drop of African ancestry was sufficient to confer black status, and black status signified a host of legal and social disabilities. For Mexican Americans, a kind of reverse one-drop rule was in play: one drop of European ancestry (Spanish in this case) was sufficient to confer some

modicum of white status, and thus a host of corresponding legal rights.[154] The silence in American public discourse about the reverse one-drop rule as it governed Mexican Americans is significant. To talk openly about the way the one-drop rule operated for Mexicans would have exposed the tensions and contradictions in the racial order. In this respect, collective silence about the reverse one-drop rule for Mexicans helped perpetuate the subordination of blacks, even as it promoted Mexican Americans' permanent insecurity as "off-white."

Another result of this dynamic was to view American race relations as involving white-over-black subordination, to the exclusion of the subordination by whites of other non-white groups. This perhaps allowed for the more total subordination of blacks. Intermediate racial groups like Mexican Americans were bought off with honorary white status and so became complicit in policing the one-drop rule for African Americans. Finally, Mexican access to the white category promised an easier path into legal whiteness for other groups. If Mexicans had been admitted, how long could whiteness be foreclosed to groups like the Irish, Italians, and Jews?[155]

When, instead of ignoring it, we examine closely the reverse one-drop rule, the American racial system seems far more fluid and malleable than typically portrayed. Instead of seeing a racial system that has hard, closed categories (such as the one-drop rule operating to define blackness), we begin to see the contours of an American racial system in which mobility occurs. Identifying Mexicans' trajectory as off-white allows us to see with more clarity the movement of other off-white groups into the white category in the early and middle twentieth century. Americans (scholars included) have tended to avoid identifying these patterns by classifying them under the "ethnic" or "immigrant" rubric, rather than by seeing them as about race. This tendency is misplaced and has prevented us from fully understanding American racial dynamics. A common rhetorical move has been to characterize dynamics involving African Americans as "racial" and those involving Mexican Americans as "ethnic" (or as "immigrant"). Yet the dynamics involving Mexicans tell us a great deal about the American *racial* order. And by continuing to uncritically reproduce the standard account of race in the United States, we may inadvertently reinforce white supremacy.

The *Rodriguez* case was decided in 1897, a year after the Supreme Court's infamous *Plessy v. Ferguson* opinion.[156] While Mexican Americans had experienced de facto segregation in the West (and would continue to

do so until the 1960s in some places), blacks experienced a heightened level of legalized (de jure) segregation after *Plessy*. The case helped entrench the hypo-descent rule for blacks, but, before *Plessy*, it was not at all inevitable that the one-drop rule would become dominant in the United States. In fact, for centuries before then, there had been many definitions of black status vying for supremacy. The American revolutionary generation defined someone as black only if one or more of their grandparents was black.[157] Between 1850 and 1920, the census identified not only blacks in the United States but also mulattos, suggesting that the government viewed black/non-black mixing as substantial enough to be counted.[158] The 1890 census, the one that preceded *Plessy*, actually counted quadroons and octoroons, in addition to blacks and mulattos.[159] Not until the 1920s and 1930s did the hypo-descent rule hastened by *Plessy* become consolidated as the American rule for defining black status.[160]

In part, it was the instability and variety of definitions of blackness that led to Mr. Homer Plessy's case. Plessy was seven-eighths white and one-eighth black and was phenotypically white.[161] Yet, under various Louisiana definitions of race in its Jim Crow laws, Plessy's legal identity varied, despite the fact that he self-identified as black and participated fully in black community life (in other words, Plessy did not seek to "pass" for white). As legal scholar Cheryl Harris has observed, it was precisely Plessy's appearance as white that made him an ideal candidate for the test case that would challenge Louisiana's mandate that railway cars provide separate cars for whites and "colored persons."[162] It is telling that for Plessy's case to receive the court's review, a deal had to be struck between his civil rights attorneys and the Louisiana and Nashville Railroad to arrest him for violating state law. Without the deal, train personnel, like others in his day-to-day interactions, may well have assumed he was white and accordingly *not* challenged his selection of a seat in the white car.

Plessy's lawyers made a number of arguments designed to expose the fallacies of Jim Crow laws. They argued that the laws were unenforceable—in the first instance, by those people who decided who was in the wrong railway car, for example, and also by appellate courts deciding whether the law had been correctly applied—because racial mixture in Louisiana's population sometimes made it impossible to visibly ascertain an individual's race and to definitively prove a person's racial status in court.[163] Since segregation laws could not be enforced consistently (and often were enforced in contradictory ways), Plessy's attorneys argued, the Court should look for the underlying purpose of the law and, on that basis, find it un-

constitutional. Plessy's brief made the point this way: "Why not count everyone as white in whom is visible any trace of white blood? There is but one reason to wit, the domination of the white race."[164]

The Supreme Court majority largely ignored these issues (though Justice Harlan, dissenting, did not). They did so because the mere fact of debating them would have loosened the boundaries of racial categories, thereby disrupting the myth of race as fixed and stable. The majority's one concession to Plessy's powerful arguments was, in the penultimate paragraph of its opinion, to acknowledge the variety of existing definitions that determined who was black:

> It is true that the question of the proportion of colored blood necessary to constitute a colored person, as distinguished from a white person, is one upon which there is a difference of opinion in the different states; some holding that any visible admixture of black blood stamps the person as belonging to the colored race; others, that it depends upon the preponderance of blood; and still others, that the predominance of white blood must only be in the proportion of three-fourths. But these are questions to be determined under the laws of each state, and are not properly put in issue in this case.[165]

In the end, the Court's ruling fueled the most extreme definition: the hypo-descent rule under which any visible proportion of African ancestry, however slight, marks a person as black.

Although cases like *Plessy* contributed to American ideas that race was immutable and fixed, the reality was that race was more fluid. A powerful example comes from the Senate's 1902 debates on the Omnibus Statehood Bill (see Chapter 2), which sought to admit Oklahoma, New Mexico, and Arizona as new states. The racial composition of each of the proposed states was a major topic of floor debate. Senator Matthew S. Quay of Pennsylvania used official census numbers to estimate the *non-Indian* population of New Mexico at just under 200,000.[166] But Indiana senator Albert Beveridge, who as we know from earlier discussions strenuously opposed New Mexico statehood, said emphatically, "There is no ground for [the] assumption [that Mexicans are white]."[167] Beveridge was supported by senators Knute Nelson of Mississippi and Eugene Hale of Maine, among others, who refused to countenance the census's inclusion of Mexicans in the white category. Mexicans had been "white enough" to be collectively naturalized in 1848 and to be counted as white in 1897 under the natural-

ization laws, but, here, U.S. senators decided they were not white enough to warrant the full citizenship statehood would have provided.

These conversations in 1902 suggest that fluidity has been an enduring quality of American racial dynamics (especially in the construction of racial categories), rather than a feature unique to Mexican Americans. A similar conversation to the one involving New Mexico arose soon thereafter, when Congress took up the proposed state of Oklahoma, to be formed largely from the Indian Territory. The very senators who, by refusing to include Mexican Americans in the "white" category, argued that New Mexico's white population was too small to warrant the territory's admission as a state now argued that Oklahoma should be admitted because the number of "pure Indians" there was very small. Senator Nelson argued that, of Oklahoma's 87,000 Indians enrolled in tribes, "a very small part are pure Indians and a very large portion of them are *practically white men*." Senator Hale supported admission of Oklahoma because it possessed "just as pure and clean a white population as exists in Indiana or Pennsylvania or Maine." Senator Beveridge made a parallel argument about the Indian Territory, saying, "Only a very small number, to wit 87,000 [of 400,000 persons] at most, are classed as Indians, and of those who are classed as Indians *a very large number are pure white men*, so far as blood is concerned, *quite as white as we are*."[168]

By this point, the direction of the conversation had begun to seriously bother Senator Benjamin Tillman of South Carolina. He asked, indignantly,

> How [have] white men as pure blooded as he or I . . . gotten the right to all that Indian land, and how [is it] that the 87,000 Indians, so called, are nearly all white people? Some stealing has been done somewhere, or something, and I should like to know how it happened. *I know a bleaching process is going on over there; but still that does not make them as pure white men as he and I, because I do not think either of us could be suspected of having anything else but Caucasian blood in our veins*." (emphasis added)

Tillman's annoyance reveals the American racial order as, at once, fluid and rigid. Like the Mexican and Latin American process of "whitening" described earlier, he acknowledged "a bleaching process" in the United States. In the same breath, he embraced the primacy of blood purity, which invokes a more inflexible racial hierarchy and categorization. Senator Beveridge's response to Tillman was to say that white men had become

Indians by marriage and by adoption into tribes. But a more accurate and honest approach would have acknowledged that, despite the presence of Indians in the region, it should be admitted as a state because the Indians there would be dominated by whites.[169] The Indians in the proposed state of Oklahoma did not then pose a threat to political domination by Euro-American men; in stark contrast, New Mexico's Mexican men did, as the majority of those to be enfranchised in the proposed state.

This conversation in Congress belies the claim that American racial categories were perceived and employed by social actors, even one hundred years ago, as immutable and fixed. American racial dynamics were and are often seen as the mirror opposite of Latin American race relations on this point. While Spanish-Mexican categories are viewed as flexible, American categories are viewed as historically fixed. In reality, the Spanish-Mexican system regularly produced racial dynamics that were harder than they appeared to be, while the Anglo-American system regularly produced dynamics that were more malleable than they appeared to be.[170] Of course, the United States actually includes both models of race relations. By virtue of Manifest Destiny and the conquest of northern Mexico, the United States inherited the Spanish-Mexican racial order. Over time, the national racial order evolved to include substantial elements of the Southwest's racial order.