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The Blighted History of the Alameda Land Grant: Montoya v. Unknown Heirs of Virgil

Kristopher N. Houghton

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ABSTRACT

New Mexico is blessed with a unique and varied landholding history, as the arid land here has passed through the hands of several sovereigns with competing ideologies and interests. This article follows, through that conflicted history, a special tract of land nestled against the Rio Grande on the northwestern edge of the city of Albuquerque. The tract of land was once known as the Alameda Land Grant because of its beautiful grove of trees and the fact that it was granted to a Spanish officer and his family for his service to the throne. The story revealed here includes details on the granting of the Alameda Land Grant in 1710 under Spanish law, the Grant’s travels through the rigorous confirmation process required by U.S. law, and an in-depth legal analysis of the case that ultimately dismantled the Grant, Montoya v. Unknown Heirs of Vigil. While the main focus of this article is Montoya’s legal underpinnings, some time is spent discussing the consequences of those legal determinations, the characters involved in the case, and the many socio-economic factors leading to the dissolution of the Alameda Land Grant.

I. INTRODUCTION

The fascinating story of the Alameda Land Grant exemplifies how culture, ideology, and government clashed over scarce resources throughout the history of New Mexico. The story spans the laws of three sovereign
powers—Spain, Mexico, and the United States—and ranges across 210 years, from the granting date to the date of court-ordered dissolution in 1919. The story tells of a wild cast of characters from Spanish royalty to greedy land speculators, but the most interesting character of all is the Grant itself. The Alameda Land Grant is a dynamic character, as its form is known only through the eyes of the other characters; how they viewed it, used it, and the lengths they pursued to benefit from it. To hear the descendants of the Alameda Land Grant recount the story is to hear a mixture of nostalgia and bitterness for a lost way of life.

A source of constant controversy, the Alameda Land Grant was the subject of litigation in the Court of Private Land Claims, two state District Courts, the New Mexico Territorial Supreme Court, the New Mexico Supreme Court, and even the U.S. Supreme Court. The Alameda Land Grant’s real value, despite the fact that it was effectively dissolved in a court-ordered sale, stems from the enduring nature of the Spanish communal lifestyle. The communal way of life on the Grant survived a legally fictitious birth, the rigorous confirmation process (under various, biased regimes), challenges by a neighboring pueblo and neighboring land grant, and finally the attack of attorney land-speculators that pitted long-time settlers against heirs. And yet, having run the gauntlet of these constant challenges, the communal life eventually gave way to the surrounding economy and individual landholding system of its newly adopted country in the mid-twentieth century.

The story of the Alameda Land Grant, pieced together in this article, reveals the U.S. government’s disdain for communally held tracts of land, the absence of laws to protect such holdings, and the concerted effort by lawyer-speculators to open the grants to private sale at the expense of unequal-footed residents and heirs. The story of the Alameda Land Grant also runs counter to conventional land grant theories in that many of the heirs favored partition, and thus dissolution of the Land Grant, and the survival of the communal way of life depended on the vindication of the rights of squatters, settlers, and subsequent individual purchasers. Those rights were recognized in a New Mexico Supreme Court case that has been called “one of the greatest determinations of this nature in...the world’s...
legal history." Still, even the communal way of life gave way, proving that many factors, including modern socio-economic demands and not solely the efforts of greedy land speculators played into the loss of New Mexico’s agricultural, Spanish-derived communal way of life.

II. BIRTH OF THE ALAMEDA LAND GRANT

After the Pueblo Revolt of 1680 ejected Spain from New Mexico, it was clear that if Spain wanted to settle the land, it needed more people. Not unlike the Homestead Act of the United States in more modern times, Spain enticed settlers to occupy New Mexico with the promise of free land. Large tracts were given to communities, families, and to individuals to be settled, effectively occupying the land. Of course, the largest and best tracts of land were given to the elite upon petition or award from the Spanish government. Such was the case of the Alameda Land Grant.

Francisco Montes Vigil, then living with his family in Santa Fe, requested in 1710 such a parcel for his military service to the throne. He must have surveyed the land surrounding Santa Fe and found the tract known as Alameda to be particularly desirable, as he specifically requested the parcel. When formally petitioning Governor José Chacón Medina Salazar y Villaseñor for the tract of land, Vigil was careful to outline his faithful duty to the crown. He boasted that he had “emigrated to New Mexico from Zacatecas in 1695 and...had participated in all of the efforts to pacify the Indians.” He also mentioned his army career and the needs of his large family and their “small 'start' of cattle.” His Petition was approved when Vigil was officially granted the tract known as Alameda on
January 2, 1710, in “consideration of his faithful service and as an accommodation to his family.”

Vigil’s need for land was not as great as he pleaded, as he sold the tract for 200 pesos to Captain Juan Gonzales a mere two years later. It is not clear whether Vigil had even used the land, other than “observing the customary ceremonies” required to deliver possession. Alcalde Martín Hurtado performed these ceremonies with Vigil and also defined the boundaries of the Grant as follows:

On the north, the ruins of an old pueblo, such ruins being on the more northerly of the two in the area; on the east, the Rio Grande; on the south, a small hill which forms the boundary of the lands of Luis Garcia; and on the west, the prairies and hills for entrance and exits.

Vigil may have used the money to buy a different tract of land more suitable to his family or he may have used the money for another purpose. However Vigil dispensed the money, it was clear he used legal means to gain land from the Spanish government, and then re-sold the Grant for profit. It would not be the last time the Alameda Land Grant was transferred for solely monetary gain contrary to its original purpose.

By all accounts, the Gonzales family settled in Alameda shortly after the purchase on July 18, 1712, and remained there well into the twentieth century. Slightly more than a year after making the purchase, Gonzales had the conveyance approved and the Grant ratified by Governor

10. Id.

11. There is a discrepancy in the consideration paid to Vigil from Gonzales. Gilberto Espinosa, writing for the State Bar of New Mexico as an authority on New Mexico’s beginnings, reports that Gonzales paid 1,000 head of cattle for the tract. VICTOR WESTPHALL, MERCEDES REALES: HISPANIC LAND GRANTS OF THE UPPER RIO GRANDE REGION 126 (1983). However, J.J. Bowden pins the figure at 200 hundred pesos, as per Alejandro Sandoval’s Petition for confirmation of the Grant. Bowden, supra note 8, at 1670. It is possible they are both correct in that 1,000 cows were worth 200 pesos at the time.


13. Referred to in the official documentation as the Rio del Norte. Id. at 3.

14. The inhabitants of the Grant called the hill Lomita de Luis Garcia. Transcript of Examination at 6, Sandoval v. United States, U.S. Surveyor Gen. No. 91 (Court of Private Land Claims (hereinafter CPLC) 1892).

15. More easily referred to as the “ceja of the Rio Puerco,” or the ridge to the east of the Rio Puerco. Id. at 6.

16. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 677 (N.M. 1911) (explaining the Grant contained 89,346 acres of land “according to the official survey”).

17. Attorney for the Petitioners, John Gwyn, cites Grantor José Chacón Medina Salazar y Villaseñor as defining the purpose of the Grant as “for the accommodation of [Vigil’s] family,” and to “settle and enjoy the same for himself and his heirs.” H.R. EXEC. DOC. NO. 280, at 7 (1874).

18. Montoya, 120 P. at 688–89.
Juan Ignacio Flores Mogallón on September 18, 1713.19 As later discussed, this ratification saved the Grant from dissolution under U.S. law during the confirmation process more than 150 years later.

During the next century, the Gonzales family expanded and hundreds of settlers moved onto the Alameda Land Grant, creating a large community. Presumably some people moved onto the land as squatters, but the majority likely purchased rights from the Gonzales family or their heirs, or was given rights in exchange for settling the land. Under Spanish law it was customary for individual tracts of land near the river to be sold to outsiders.20 This was especially necessary in the case of large, unwieldy tracts of land that could contain upwards of 100,000 acres. Individuals, however, could not sell the community lands, such as grazing lands or acequia21 rights of way, as defined under Spanish tradition.22 Although there was much activity on the land itself, the legal scene was mostly23 silent until Mexico declared independence from Spain on September 16, 1810.24

Independence wasn’t fully realized until 1821,25 but that probably meant little to the people of the Alameda Land Grant. Life likely continued the way it had for more than a century. Communal life endured, and under Mexican rule such grants were respected legally. Mexican rule, however, did not last long in New Mexico. A mere 25 years later, Colonel Stephen W. Kearney marched troops down the Santa Fe Trail, swiftly capturing Santa Fe and declaring New Mexico a territory of the United States.26 Soon thereafter, U.S. troops invaded Mexico and occupied the capital. On

21. “Acequia” is the Spanish word for irrigation ditch.
22. Ebright, supra note 20.
23. Several property disputes arose under Spanish and Mexican law during this time period. Proceedings in the settlement of property boundaries between the Tafoyas and Garcias (1827) series I, Spanish Archives of New Mexico I [hereinafter SANM-I], item 1119; frame 161 (on file with the N.M. State Records Ctr. and Archives, Santa Fe, N.M. (NMSRCA)); Bibiana Martin, complaint against her son-in-law, Bisente Montaño, concerning deeds held by him (1812), series I, SANM-I, item 609, frame 1499 (on file with NMSRCA); Antonio Gurulé, proceedings against Juan Christóbal Gonzáles over lands near Alameda (1821–22), series I, SANM-I, item 384, frame 1167 (on file with NMSRCA); heirs of the Alameda Grant, proceedings against Pedro Barela for illegal purchase of lands (1778), series I, SANM-I, item 051, frame 398 (on file with NMSRCA); Petition by residents of Alameda against Joseph Montaño for encroachment (1750), series I, SANM-I, item 029, frame 267 (on file with NMSRCA).
25. Id. at 33.
February 2, 1848, the Treaty of Guadalupe Hidalgo, the central document in land grant studies, was signed, transferring 55 percent of Mexico to the United States for a sum of $15 million.27 A provision of the Treaty required that the United States “inviolably respect the established private property rights of Mexican citizens in the conquered territory and provide them with ‘guaranties equally ample as if the same belonged to the citizens of the United States.’”28

In order to invoke the protection provided by the Treaty for a particular land grant, the authenticity of each grant had to be confirmed by the U.S. government. Yet, New Mexican land grant dwellers were in no hurry to apply for confirmation, lest they invite their lands to be stripped from them by their new sovereign. It became clear, however, that each grant would need to undergo the process to receive good title and protection from hungry speculators. Thus, on March 1, 1872, “Antonio Lerma…petitioned Surveyor General T. Rush Spencer…seeking confirmation of the [Alameda Land] grant.”29

III. U.S. CONFIRMATION OF THE ALAMEDA LAND GRANT

The Alameda Land Grant had its veracity determined, for the purpose of confirmation, by three completely different regimes. The first to review the Alameda Land Grant was the Surveyor General’s Office as it operated under Surveyor General T. Rush Spencer (1869–72), James K. Proudfit (1872–76), and Henry M. Atkinson (1876–84).30 The acting Surveyor General at the time of Antonio Lerma’s initial Petition for confirmation was T. Rush Spencer, who left the office before making a recommendation. Surveyor General James K. Proudfit, however, “found the grant papers were genuine, and…recommended its confirmation by Congress to Vigil’s legal representatives.”31

Deputy Surveyor Robert G. Marmon, completed a preliminary survey in September of 1878 under the helm of Henry M. Atkinson, and found that the Alameda Land Grant consisted of approximately 106,300

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29. Bowden, supra note 8, at 1667.
30. Placido Gomez, The History and Adjudication of the Common Lands of Spanish and Mexican Land Grants, 25 NAT. RESOURCES J. 1039, 1071 (1985) (relating that “the Surveyor General became aligned with the Santa Fe Ring” and that each nurtured the special interests of the speculators and none appeared to have any trouble consolidating private business interests with his duties as Surveyor General”) (internal quotes omitted).
31. Bowden, supra note 8, at 1668.
acres. \(^{32}\) In Lerma’s initial Petition, he was careful to specify that the Grant’s riverfront boundary should be described according to the river’s position in 1710, rather than by the point it had migrated to as of 1872. \(^{33}\) By the time the preliminary survey was completed in 1878, the river had shifted back to its original position “and was once again flowing along the base of the foothills.” \(^{34}\) The Grant would have been confirmed by Congress had it not been for the questionable record of the previous three Surveyors General. \(^{35}\) Due to the Surveyors General involvement with the Santa Fe Ring, \(^{36}\) the Office had recommended “the confirmation of fraudulent and excessive Spanish and Mexican land grants.” This practice was followed in order to allow speculators to more easily obtain title from unknowing Spanish settlers—many of whom were unaware of their legal rights—rather than face the prospect of acquiring land from the equal-footed U.S. government. \(^{37}\) Once word leaked back to Congress regarding the excessive confirmations, Congress stopped confirming the Surveyors General recommendations altogether after 1879. \(^{38}\) The Alameda Land Grant remained in this unconfirmed status until 1886, when Surveyor General George Washington Julian reexamined its veracity. \(^{39}\)

President Grover Cleveland, upon learning of the Santa Fe Ring’s exploits, appointed Julian to head up the Office of the Surveyor General and break up the infamous Ring. \(^{40}\) Julian took his job sincerely and proved to be incorruptible. However, his heavy handedness often worked in favor of U.S. interests at the expense of land grant heirs, while the Santa Fe Ring was not so much prevented from obtaining land from the heirs as they were pushed to use different methods. \(^{41}\) Because Congress had refused to act on the confirmation recommendation for the Alameda Land Grant, Julian was the second to review the veracity of the Grant. As expected, Julian’s

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\(^{32}\) Id. at 1669.

\(^{33}\) The Rio Grande ran wild in those days and it was common for the river to shift from east to west by considerable distances. Paul Horgan, The Great River: The Rio Grande in North American History 347 (1991).

\(^{34}\) This issue was to resurface when the river shifted back to its current western position, leaving the Town of Alameda and the Church on the eastern side of the Rio Grande. Nativity of the Blessed Virgin Mary Catholic Church, http://www.n-bvm.org/church%20history.html (last visited July 14, 2009).

\(^{35}\) P. Gomez, supra note 30, at 1070–71.

\(^{36}\) The Santa Fe Ring was a group of attorneys and judges who worked together through the legal system to obtain large tracts of land grant land. Sharon K. Lowry, Mirrors and Blue Smoke: Stephen Dorsey and the Santa Fe Ring, 59 N.M. Hist. Rev. 395, 398–99 (1984).

\(^{37}\) Id.

\(^{38}\) Id.

\(^{39}\) Bowden, supra note 8, at 1669.

\(^{40}\) George W. Julian, Land-Stealing in New Mexico, 145 N. Am. Rev. 17 (1887).

\(^{41}\) These methods will be detailed in a subsequent section.
reexamination was not favorable. In short, he recommended outright rejection of the Grant to Congress in 1886. Julian “conceded that the grant papers were genuine but noted” the lack of evidence showing Vigil occupied the land, Lerma’s failure to show his title linked to Vigil, and the problem of Vigil’s heirs dispossessing “the inhabitants of the Town of Alameda,” should the Grant be confirmed. Fortunately for the heirs of the Grant, Congress did not act on Julian’s recommendation, which would have given title of the land to the U.S. government.

Instead, the Alameda Land Grant was to be reviewed a third time by Congress’s newly created Court of Private Land Claims (CPLC). This time, Alejandro Sandoval sought confirmation of the Alameda Land Grant “for himself and…the other heirs and legal representatives of Francisco Montes Vigil.” As opposed to the nonadversarial proceeding followed in the Surveyor General’s confirmation process, the CPLC allowed a government lawyer to oppose the confirmation of the Grant. Sandoval presented evidence of Admiral José Chacón Medina Salazar y Villaseñor’s grant to Vigil, the conveyance to Captain Juan Gonzales by Vigil, the subsequent ratification by the Governor of the Province of New Mexico in 1713, and the actual occupation of the land “for a period out of the memory of the witnesses.”

The government attorney conceded to the evidence presented, but raised two issues. The first issue questioned whether the king or the viceroy had ever approved the ratification, as required under Spanish law. The second issue raised the argument that the western boundaries should be curtailed to just a mile west of the river, limiting the Grant to 25,000–30,000 acres. The CPLC ruled in favor of the heirs based on the Law of

42. Bowden, supra note 8, at 1669-70.
43. If a Spanish or Mexican land grant was not confirmed under this process, the land was presumed to belong to the new sovereign, unless the inhabitants could show legal title through some other means, such as adverse possession.
44. P. Gomez, supra note 30, at 1072–73 (outlining that Congress was pressured on many fronts to create a court to adjudicate the land grants and “finally yielded to the pressure and created the Court of Private Land Claims on March 3, 1891”).
45. “At the end of the 19th century[,] Alejandro Sandoval moved to the [Corrales] village [within the Alameda Land Grant] and bought large tracts of land. He served in the New Mexico House of Representatives and had the name of Corrales changed to Sandoval in honor of his father.” However, residents later returned the name to Corrales in the 1960s. A History of the Village of Corrales, Sandoval County, New Mexico, http://www.premiersystems.com/corrales/history.html (last visited Jul. 8, 2008).
46. Bowden, supra note 8, at 1670.
47. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 689 (N.M. 1911).
48. Bowden, supra note 8, at 1671.
49. Id. at 1672.
Prescription\textsuperscript{50} and confirmed the Grant, subject to a resurvey. The government attorney wrote a report in 1891 to the Attorney General expressing his dissatisfaction with the ruling and promising to appeal should the resurvey place the western boundary at the \textit{ceja}, or ridge, rather than at his proposed boundary, one mile west of the river at the prairies and hills.\textsuperscript{51}

Although a final judgment had been reached, this was not the end of the lengthy confirmation process for the Alameda Land Grant. Two more parties would challenge the results of the survey before the Grant was finally confirmed. The resurvey, completed by Deputy Surveyor George H. Pradt in October of 1893, generally affirmed the preliminary survey done by Marmon, which set the total acreage at approximately 106,300 acres.\textsuperscript{52} The Elena Gallegos Land Grant was the first to object to the survey, alleging that the Alameda Land Grant’s southern boundary line overlapped their northern boundary line by six miles.\textsuperscript{53} The CPLC ordered a resurvey of the southern boundary that was completed by Pradt in April of 1895. The resurvey agreed with the Elena Gallegos Land Grant and moved the southern boundary line north so as to be in accordance with the Elena Gallegos's northern boundary.\textsuperscript{54}

This change reduced the total acreage of the Alameda Grant to 89,346 acres.\textsuperscript{55} Before the CPLC could finalize the confirmation, the Pueblo of Sandia took issue with the resurvey’s eastern boundary line. The Pueblo of Sandia asserted that its western boundary was the river, and since the river had shifted west, the Pueblo’s western boundary line should also shift west, so as to ensure Pueblo access to the precious water source.\textsuperscript{56} The survey, however, placed Alameda’s eastern boundary at the place where the river had run in 1710, thus infringing on Sandia’s “river frontage for irrigation” and allowing the heirs of the Grant access to farming lands on both sides of the river. The court side-stepped the issue by “approv[ing] the survey on October 19, 1895, but order[ing] the lands in conflict with Sandia

\begin{itemize}
\item \textsuperscript{50}Bowden, \textit{supra} note 8, at 1672 (Under the Law of Prescription approval of the ratification of the conveyance to Gonzales by the king would be assumed).
\item \textsuperscript{51}Id. at 1672-73. The resurvey, approved on Feb. 14, 1895, was not a welcomed Valentine’s gift for the government attorney, as it affirmed the western boundary at the ceja. The ceja, was reported to be approximately 16 miles from the eastern boundary. \textit{Montoya}, 120 P. at 684. The prairies and hills would have placed it a mere mile west of the southeastern boundary. Bowden, \textit{supra} note 8, at 1671-72. It is not clear why the government attorney did not appeal this issue.
\item \textsuperscript{52}Bowden, \textit{supra} note 8, at 1669.
\item \textsuperscript{53}Id. at 1673.
\item \textsuperscript{54}Id.
\item \textsuperscript{55}Id. at 1674.
\item \textsuperscript{56}Id.
\end{itemize}
Finally, after 23 years, three separate reviews and challenges by Surveyor General George Washington Julian, a U.S. District Attorney, the Elena Gallegos Land Grant, and the Sandia Pueblo, the Alameda Land Grant emerged a confirmed land grant.\footnote{58}

The timing of confirmation was fortunate for the Alameda Land Grant, as a mere two years later the U.S. Supreme Court decision in \textit{United States v. Sandoval}\footnote{59} would have certainly given title of the common grazing lands to the United States.\footnote{60} Under \textit{Sandoval}, the Court reasoned that since the sovereign retained ownership of the common lands under Spanish and Mexican law, then the United States gained ownership of those portions of the land grants when it became the new sovereign. The grazing lands of the Alameda Land Grant, as with many land grants, accounted for the vast majority of the total acreage. The ownership of that same grazing land, though spared for a time, would be challenged a decade later in \textit{Montoya v. Unknown Heirs of Vigil}.\footnote{61}

\section*{IV. MONTOYA V. UNKNOWN HEIRS OF VIGIL}

Though the Alameda Land Grant had successfully navigated the gauntlet to confirmation, friction was building inside the Alameda Land Grant community, while powerful land speculators coveted the Grant from outside. Alonzo B. McMillen, a particularly sly member of the Santa Fe Ring, must have been aware of the Legislature’s plans to enact legislation for the governance of land grants.\footnote{62} Divining that such an act would make it more difficult to partition and sell land grants, McMillen jumped at his chance to obtain the Alameda Land Grant. McMillen was no stranger to land grant chicanery, as he was fresh from breaking up the Las Trampas Grant from 1900–02.\footnote{63} Although he walked away from Las Trampas with...
the largest single share of that Grant, he had been unsuccessful at acquiring the whole lot and remained hungry for land. Thus, on the 12th day of June, 1906, McMillen filed an action in the District Court of Bernalillo on behalf of the plaintiff, Vicenta Montoya, for the partition of the entire Alameda Land Grant.

Filing an action for partition meant that the petitioner sought to determine “the settlement of his [individual] rights” and have such title given as an individual holding. In so doing, the petitioner, by implication, asked the court to determine all landholders’ rights and to partition them in one great division of a land grant, dissolving the joint ownership status of that grant. In New Mexico, “[u]nder section 3182, Compiled Laws 1897, the owner of…any part of the premises sought to be partitioned” could have brought such an action, “whatever the origin of his title.” Practically speaking, if an heir who had sold their individual tract wanted to bring a partition suit, they could do so lawfully. Further, even a squatter who simply moved onto a land grant and claimed some title through adverse possession could maintain such an action, resulting in the dissolution of that entire grant. Under Spanish law, such a division of a community land grant would have been untenable, given the joint ownership characteristics of the land grant. Unfortunately, legislation curtailing such actions was not enacted until 1913, two years after the legal partition of the Alameda Land Grant.

As revealed in court proceedings, Vicenta Montoya had sold her individually-owned strip of land years before, but claimed heirship to Francisco Montes Vigil as to the communal grounds. It is unclear how

64. The date of filing for partition was a mere year prior to the passage of the Community Land Grants Act.
65. Montoya v. Unknown Heirs of Vigil, Cause No. 7126 (Bernalillo County Dist. Ct. 1906). Had McMillen waited to file, the Community Land Grants Act would have required a Board of Trustees to oversee the Grant and a process for sale or partition of the Grant to be approved by a vote amongst the members of the Grant. Community Land Grants Act, 1907 N.M. Laws, page 57.
66. Montoya, 120 P. at 676.
67. Id.
68. deBuys, supra note 63, at 79 (“The suit for partition was an Anglo contribution to land grant litigation. The idea behind partition was that all land had title and could be conveyed and that the commons of a land grant was simply the aggregate of a large number of individual possessions….Under Spanish law this warped interpretation of the essential character of a community land grant would have been unthinkable, but in New Mexico, legislation to inhibit it was not enacted until 1913.”).
69. Also known as una tripa, meaning intestine in Spanish, to symbolize the long strips of land running from the river to the hills that was the common division of land on Hispano land grants.
70. Montoya, 120 P. at 679–80.
71. Remember that Vigil also had sold his land to Gonzales in 1712.
McMillen found Montoya, but some of the descendants of the Alameda Land Grant claim she was living in California at the time. McMillen served notice to all the unknown heirs by publication, which the court deemed sufficient. Almost a year later, the same McMillen filed an answer and entered his appearance on behalf of a handful of defendants who had come forward claiming to be heirs of the Grant. Thus, McMillen represented both the plaintiff and the defendants in the partition case. Although seemingly a conflict of interest, both defendants and plaintiffs were equally seeking partition. McMillen was to receive a fractional interest of the Grant as payment for legal services and had also purchased quitclaim deeds for shares of the Grant from his clients, thus acquiring an interest in the subject of litigation. The court made no mention of this arrangement and likely saw no problem with it because all parties were seeking the partition of the Grant.

Given the lack of opposition to partition, the court entered a judgment on March 17, 1907, for partition amongst more than 450 people and appointed commissioners on July 5, 1907, to execute the partitioning of the Grant. As predicted, the commissioners concluded that partition would be manifestly prejudicial due to the large number of owners and the nature of the land. Thus, the trial court judge ordered the sale of the Grant, the proceeds of which were to be divided among the heirs.

Only days before the sale could be completed, however, attorneys George S. Klock and A.A. Sedillo filed a timely motion to intervene in the action and answer the plaintiffs’ complaint on behalf of a large number of...
settlers on the Alameda Land Grant claiming to hold interests in severalty. The court granted the intervention and allowed the interveners to answer the complaint, which revealed an internal dispute, pitting settlers against heirs. Apparently, a great number of people living on the Grant, some for generations, were not heirs. The interveners’ answer claimed non-heir ownership of certain tracts in severalty due to their actual possession of the land for more than 50 years under color of title, given that no suit had challenged their rights. Although McMillen filed a response denying all claims, the court ruled in favor of the interveners as to their claimed tracts of land and reinstated the sale in favor of plaintiffs and defendants as to the remainder of the Grant, which was still the lion’s share. McMillen and his heirs weren’t satisfied with the decision nor were they willing to cease fighting for such a large chunk of the Grant.

So, as was his custom, McMillen appealed to the New Mexico Territorial Supreme Court on behalf of the plaintiffs and defendants. In retrospect it may have been better for another lawyer to appeal the case, as some of McMillen’s underhanded dealings had surfaced previously, before Judge John R. McFie in the Las Trampas litigation. And although Judge McFie was then writing for the Taos County Court, he was an Associate Justice of New Mexico’s Territorial Supreme Court in 1911, and was selected to write the Alameda opinion on appeal.

Another complication had surfaced during the period between the district court opinion and the appeal. The Alameda Land Grant had been “sold to the County of Bernalillo on a Tax Sale Certificate for the unpaid

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78. The court noted on appeal that some of the names of the interveners (settlers) were the same as the names of the heirs. Id. at 684–85. It is possible, McMillen’s shoddy attempt at notice deprived some heirs of actual notice until the decision for partition had been adjudicated, at which time they joined the interveners so as not to lose their land. See generally deBuys, supra note 63, at 80 (describing McMillen’s similarly inadequate notice in the Las Trampas case for partition).

79. Montoya, 120 P. at 679.

80. Roughly 75,000 acres. See infra, note 126.

81. During his tenure as lead-attorney, the prolific McMillen appealed more than 50 cases to the New Mexico Supreme Court. Westlaw search of “a.b. mcmillen” using Terms & Connectors in New Mexico State Cases database.

82. Montoya, 120 P. 676.

83. deBuys, supra note 63, at 83 (outlining an argument heard by Judge McFie of how prior to McMillen’s purchase of the Grant for 18 cents an acre, he had already contracted to sell it for $1.50 an acre).

84. This decision, reheard on Jan. 2, 1912, was one of the last cases to be heard under the Supreme Court of the Territory of New Mexico. New Mexico was admitted to the Union as the 47th State on Jan. 6, 1912, and the first justices of the New Mexico Supreme Court were elected on Jan. 10, 1912. Supreme Court Justices of the State of New Mexico Since Statehood, available at http://nmsupremecourt.nmcourts.gov/about/judges/judges_since_statehood.pdf.
Taxes were always a heavy burden on Spanish land grants, as that economy was largely a trade-and-barter system, with very little cash flowing in the poor but self-sustaining economy. It was common for locally appointed officials to collect taxes from all the tenants to pay a land grant’s dues as a community, but in this case, the emerging internal dispute likely made that impossible. Subsequently, “J.W. Norment purchased the...Tax Sale Certificate from the County and...took a Tax Deed,” which “included the whole of the Grant....[By] mesne conveyances and decisions of Courts the said tax title became vested in the Security Investment and Development Company, a corporation.”

McMillen, likely aware of McFie’s status and the tax title sale, forged forward nonetheless and raised the following questions on appeal: (1) was the decision to partition the Grant final, so as to bar allowance of the interveners into the case?; (2) was the court’s construction of section 2937 of the New Mexico Laws incorrect in allowing the interveners to be granted title, even though they could not trace their title to a sovereign?; (3) did the district court err by not specifically requiring the elements of adverse possession be met, as outlined in section 2938?; (4) are the interveners tenants-in-common or cotenants with the heirs of Gonzales, requiring that title should be given to the whole?; (5) were the heirs in actual occupancy of part of the tract, thus barring the interveners from possession?; and finally, (6) did the interveners meet the elements of section 2938, as to the mesa lands that they did not fence or have exclusive control over?

As expected with an intervention that was allowed so late in the case (i.e., after partition had been awarded and sale recommended), McMillen contended that the intervention was improper. Section 3182 of the 1897 Compiled Laws of New Mexico allowed interveners to appear and answer the petition during the pendency of a suit. Given that the court’s final confirmation was still pending, the interveners had a statutory right to intervene. However, McMillen contended that the first decree, approving

85. Note of Abstracter in Abstract for Transfer of Land from Nicholas Tafoya to Manuel Tafoya 15 (Jan. 12, 1948) (on file with CSWR); Espinosa, supra note 2, at 5-15.
87. Interview with David and Pamela Montoya, supra note 72.
88. Note of Abstracter in Abstract for Transfer of Land from Nicholas Tafoya to Manuel Tafoya 15 (Jan. 12, 1948) (on file with CSWR). When the lands were actually sold in 1920 at the conclusion of all appeals, some of the proceeds were most likely applied towards the tax deed.
89. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 681-94 (N.M. 1911).
partition, was final and “deprived the interveners of any claim or interest in the lands.”

This exact question had not been directly addressed in New Mexico, and so the court was willing to look outside its jurisdiction for support. McMillen used a series of compelling opinions from Texas, Tennessee, and Louisiana to buttress his argument. In the end, though, McFie sided with the interveners, who cited Missouri and New York case law. Justice McFie reasoned that since the Missouri and New York statutes were similar to New Mexico’s, the court should find in accordance with their opinions. The court adopted language from a Missouri case stating, “[a] judgment in [a] partition suit which declares the rights of the parties and orders partition is interlocutory only and is under the control of the court until the final decision of the suit, and may be modified or rescinded at any time before final judgment.” Furthermore, the court stated that since the “judgment relied upon by appellants was interlocutory…no error was committed by the court in allowing the intervention.”

As to the second issue raised on appeal, McMillen contended that section 2937 required the interveners to “trace by documents a derivative chain of title” to “a grant from Spain, Mexico, or the United States….” The court dismissed McMillen’s construction, reasoning that the “purpose of that statute [is] to cure titles which are imperfect, because some deed in the chain of title is imperfect.” Thus, to require perfect chain of title is “in direct conflict with [the statute].”

The court similarly dismissed McMillen’s third issue on appeal, again using statutory construction. McMillen contended the interveners claimed title under a general notion of adverse possession, which required at that time “color of title in good faith, payment of taxes,” and that the possession must be “actual, open, visible, notorious, continuous, exclusive, [and] hostile.” The court clarified the intervener’s actual claim under section 2937, as opposed to section 2938, which McMillen’s contention points toward. Under section 2937, the court explained, all that was required was “possession for ten years” of land “granted by the governments of Spain, Mexico, or the United States,” that was also under

90. Id. at 682.
91. Id. at 682–83.
92. Id. at 682 (citing to Aull v. Day, 34 S.W. 578 (Mo. 1896)).
93. Id. at 682. In effect, the court adopted the “Yogi Berra” theory, as taught by University of New Mexico School of Law Professor Ted Occhialino in his famous Civil Procedure classes, which claims “it ain’t over ’til it’s over.”
94. Id. at 689.
95. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 689 (N.M. 1911).
96. Id. at 689.
97. Id. at 690.
color of title, with “no claim by suit in law or equity effectually prosecuted…within…ten years.”98 The court further distinguished section 2938, which refers to adverse possession by name, from section 2937, by stating “that while section 2938 has been amended…section [2937] remains practically unchanged.”99 Furthermore, “the section under which [interveners] claim makes no mention of adverse possession.”100

The court briefly dismissed the fourth issue on appeal,101 but spent a great amount of time on the fifth and sixth issues. As to the fifth issue, McMillen contended that many of the heirs of the Alameda Land Grant were still living on parts of the Grant, and were thus in constructive possession under the Hunnicutt Doctrine. The U.S. Supreme Court in *Hunnicutt v. Peyton*102 announced, “Where the rightful owner is in the actual occupancy of a part of his tract, he is in the constructive…possession…of the whole…and where the possession is mixed, the legal seisen is according to the legal title.”103 Thus, under the Hunnicutt Doctrine, which New Mexico adopted in *Jenkins v. Maxwell Land Grant Co.*,104 the heirs would maintain title. Justice McFie again used section 2937 against McMillen to distinguish the interveners’ situation. McFie pointed out, “claimants by adverse possession...do not assert title, but merely the bar of the statute, [which] den[ies] a right of action...to the owner of the true title.”105 In contrast, the interveners did not use a “statute of limitation,” but instead claimed “fee simple title by deeds under the terms of...statute [2937].”106 McFie concluded that because “fee simple title...matured under section 2937...the title of the true owner[s]”107 has been divested. The real magic of the decision is in the distinction between types of adverse possession. McFie commented on this point, writing, “[it] is true, there is an adverse possession required to mature title under section 2937, but it is not the same as under section 2938”108 because the legislature amended section 2938 to require more, but left section 2937 substantially the same as the 1858 version. This distinction seems to be no more than splitting hairs, which may indicate McFie’s desire to prevent McMillen from selling the entire Grant.

98. *Id.* at 687.
99. *Id.* at 689–90.
100. *Id.* at 690.
101. *Id.*
102. 102 U.S. 333 (1880).
103. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 690 (N.M. 1911).
104. 107 P. 739 (N.M. 1910).
105. *Montoya*, 120 P. at 690.
106. *Id.* at 690–92.
107. *Id.* at 692.
108. *Id.*
The sixth issue on appeal was McMillen’s claim that because the interveners never fenced nor excluded outside use of the common grazing lands, they had not sufficiently possessed the land to ripen title under section 2937. Additionally, McMillen pointed out that the interveners not only used the grazing in common with other owners, but allowed non-owners to graze their livestock there, as well. The court acknowledged the peculiar use of the most westerly portion of the Grant:

By agreement, or common understanding, which has ripened into general custom, the interveners and their predecessors in claim of ownership have used those westerly portions of the strips they claimed in common with each other, and with others claiming ownership in the grant, no one attempting to keep his animals exclusively on the land he claimed nor requiring others claiming ownership to keep their animals off such land.109

In effect, the interveners (the settlers) still used their individual tracts of land communally in the Spanish tradition.110 The findings of fact stated, “the interveners claim, severally, strips of lands…accompanied by residence and cultivation as to bottom lands, and the timber and grazing lands were used for the only purpose for which they were suitable…for

109. Id.
110. The settlers in the Alameda Land Grant continued using the common lands communally for decades after the Grant was actually sold. By some accounts, this practice continued into the 1960s. Interview with David and Pamela Montoya, supra note 72. The following excerpt explains what is meant by “communal living in the Spanish tradition.”

In every...community land grant, farmland was apportioned among the original settlers in roughly equal amounts, each head of household receiving a certain amount of river frontage. From the river his property extended in a strip of even width across the irrigable bottomland and up through the dry hills...These strips of land...were acknowledged to be private property which might be freely bought and sold. Title to them...resided mainly in the actuality of occupation and use, as recognized by the community...Beyond the ridges that enclosed the privately owned land of the villages lay the land grant commons...[which] were open to all people...of the grant to use as they saw fit...[T]he people...had to make full use of all available resources, and they had to cooperate with each other...[T]he village irrigation ditches...were essential to the well-being of every member of the community...[and] were communally maintained and managed. [Many other resources were operated similarly:] the threshing floor, the church, the graveyard...[the] stubble that remained in the fields after harvesting, [etc.] [C]ash money, even after the turn of the century was relatively rare. [T]he entire community shared the pride of self-sufficiency...that instilled in their people a rich, proud sense of rootedness and permanence.

deBuys, supra note 63, at 73–76.
more than ten years." Thus, the court concluded without additional discussion, 
"[that] interveners, being actual occupants...in possession of the lands...would have the right to use them in such a manner as they saw fit."  

This particular decision was crucial as far as the number of acres that were at stake. The largest portion of the Grant, in terms of acreage, was in the grazing lands from the prairies west of the agricultural bottoms all the way to the ridge east of the Rio Puerco, some 14 miles away. Had the court sided with McMillen, the grazing lands that were part of the Alameda Land Grant and claimed by the settlers would have been partitioned and sold. But, the court ruled against McMillen and the heirs, effectively carving out a large portion of the Grant in favor of the interveners. Practically speaking, the decision validated the spirit and agricultural nature of the portion that the settlers claimed.

The court did find that two of the interveners had not met the elements of section 2937 due to the lack of actual possession, but the majority of the interveners were awarded fee simple title. The court reiterated that any of the Alameda Land Grant “not carved out...by...the interveners” was to be sold in accordance with the decree in partition. The actual number of acres “carved out” by the interveners seems to have been around 10,000 acres. Thus, a larger share, roughly 75,000 acres, was left to be sold. In anticipation of appealing to the U.S. Supreme Court, McMillen filed and was granted a motion for rehearing that asserted the unconstitutionality of section 2937 of the Compiled Laws of New Mexico. McMillen’s arguments persuaded only Justice Edward R. Wright, who “withdrew” his concurrence and...indicated...[his] dissent.” Thus, McFie’s opinion stood as the official opinion in the case.

Even though McMillen stood to earn a great sum of money, he still longed for an even larger share of the Grant and appealed the case to the U.S. Supreme Court in 1913, and argued the case on January 27, 1914. Justice Oliver Wendell Holmes wrote a brief opinion for the Court. He quickly found that the statute had been properly applied, given the record, and agreed with McFie that the Hunnicutt Doctrine was not controlling. As to the constitutional issues raised—that the statute deprived the appellants of due process and that it violated the equal protection clause—Holmes found no merit. Holmes reasoned that since a statute of limitation may give

111. Montoya v. Unknown Heirs of Vigil, 120 P. 676, 692 (N.M. 1911).
112. Id.
113. Id. at 694.
114. The total acreage of the Land Grant, after the interveners’ lands had been excepted, was roughly 75,000. See infra, note 126. So, if the total acreage was somewhere near 86,000, the interveners’ lands must have been roughly 10,000 acres.
115. Id. at 694.
McMillen finally conceded defeat in his attempt to have the entire Grant sold at auction, but much like his Las Trampas Grant grab, he nonetheless walked away a very wealthy man. At the time of the sale he already owned a large percentage of the Grant due to his legal fees and his practice of purchasing shares from his clients throughout the litigation. To be specific, his share at the conclusion of the case was “[a]n undivided 26887/60480 part of the Alameda Grant,” which he conveyed to the San Mateo Land Company in 1913.\textsuperscript{119} McMillen had incorporated the San Mateo Land Company on June 15, 1907,\textsuperscript{120} less than three months after the district court had ordered partition and before the interveners had answered. This convenient sequence of events suggests McMillen had been anticipating the sale of the Grant and wanted to hide his interest behind the auspices of a corporate moniker.

Before the public sale had taken place, Jesús María Sandoval, one of the interveners who had been awarded a tract of land in Montoya, brought a suit in Sandoval County District Court to quiet title against the unknown heirs of Francisco Montes Vigil and others.\textsuperscript{121} Sandoval apparently disagreed with the heirs as to which tracts he had been awarded in Montoya.
The San Mateo Land Company, which at the time held a share equal to approximately 33,400 acres of the Alameda Land Grant, through McMillen’s conveyance, appeared with the others named in the suit, answered, and filed a cross-complaint. McMillen was of course the counsel for the defendants, which included his land company and the heirs. Sandoval answered the cross-complaint and Judge M.C. Mechem, presiding over the district court case, ruled in favor of Jesús María Sandoval on “all tracts in question, save tracts 12 and 16,” which were quieted in favor of the defendants. The case was affirmed on procedural grounds when appealed to the New Mexico Supreme Court because the sufficiency of the counterclaim had not been raised below, the now-disputed evidence was not called to the court’s attention below, and the record provided by the appellant was incomplete.

McMillen’s corporate creation, the San Mateo Land Company, won the remainder of the Grant sold at the court-mandated auction for a sum of $15,000 on December 15, 1919. Reportedly, the price paid for the whole parcel was 19 cents per acre. Attorney fees, court fees, sale fees, and back taxes consumed roughly half of the proceeds and left approximately $8,000 to be distributed among the remaining heirs and shareholders, such as McMillen. McMillen’s share that had already been conveyed to the San Mateo Land Company was worth around $3,500 alone, leaving a pitiful amount to be divided among the heirs. A review of the hundreds of check
receipts from the sale reveals a dismal amount paid to each heir, with the majority receiving close to $10. 128 Whether the heirs of the Grant knew that their lawyer, through his corporate entity, acquired their collective patrimony at such a low price is unclear from the historical record. 129 Even so, the San Mateo Land Company had a few fights left before it could capitalize on its new acquisition.

The last case to surface concerning the Alameda Land Grant was litigated from 1921 to 1923 in regard to the per-acre value of the grazing lands for tax purposes. 130 "The state tax commission fixed the value...for the taxable year of 1921, at $2.25 per acre." 131 The various grazing-land owners, which of course included the San Mateo Land Company, 132 protested the valuation before the Board of Commissioners of Bernalillo County. The Board agreed with the protestors and reduced the value of the grazing lands to $1 per acre. Remember, this is the same land that, two years prior, was purchased for 19 cents per acre. The dispute emerged when the county tax assessor refused to abide by the Board’s reduction and vowed to enforce the state’s tax valuation.

Thereafter, the Board applied for and was granted a “peremptory writ of mandamus compelling the tax assessor to comply with the...reduction.” 133 The tax assessor appealed to the New Mexico Supreme Court, who quickly reversed the trial court’s decision and remanded to the trial court to discharge the writ. The reason given was that the Board was
“not a proper party plaintiff, because it [was] not the real party in interest, and that the owners of the lands involved [were] the proper, and the only proper, parties to maintain the suit.”134 Whether the tax was then reduced by the tax assessor or accepted by the parties is not clear from the published case record. This would be the last time the Alameda Land Grant would surface as the subject of litigation. Over time, the lands of the Grant continued to pass through the hands of ranchers, investors, and real estate developers.

The exact chain of conveyances is hard to determine, but a general understanding is possible by piecing together the various reports, warranty deeds, and newspaper articles available. By 1920, the San Mateo Land Company owned what remained of the Alameda Land Grant after the interveners’ lands were excepted, roughly 75,000 acres, through its public auction purchase. Some accounts suggest the San Mateo Land Company sold 55,000 acres to Robert Thompson in 1923, possibly as a response to the decision in the Board of Commissioners of Bernalillo County v. Hubbell135 case. However, a lease deed from Guy B. Ray and Albert F. Black to the Alameda Cattle Company for $1,000 to use 20,600 acres was recorded in 1931.136 The signing party for the Alameda Cattle Company was Robert D. Thompson, which suggests that Thompson merely held a lease to work the land, which Ray and Black actually owned. Ray and Black had purchased this share from the San Mateo Land Company in 1929 for $1.137 The Alameda Cattle Company reportedly used the land to herd “3,000 to 5,000 Herefords and [maintained]…about 150 thoroughbred horses.”138

An entity known as Brownfield & Koontz purchased 55,000 acres in 1948, possibly from the San Mateo Land Company, and established the “Koontz Ranch.”139 Under the Thompson Ranch and the Koontz Ranch, the land was still used for grazing, but that changed in 1959 when local investor

134.  Id.
135.  Id.
136.  See infra note 137.
137.  It’s not clear why the San Mateo Land Company sold the land for $1. It may have been part of another business deal. County of Bernalillo, 112 Warranty Deed Book 51 (1929) (recording transfer of “[a]ll that portion of the Alamed Land Grant which lies in Bernalillo County and West of the Rio Grande, except a small triangular piece in the Northeast corner thereof lying North of the South line of Candido G. Gonzales, containing 20,600 acres of land…..” from the San Mateo Land Company to Albert F. Black and Guy B. Ray).
139.  See History of Rio Rancho, supra note 126.
and developer Ed Snow organized a 55,000-acre sale to AMREP in 1961. AMREP, also known as “Rio Rancho Estates,” began selling “half acre and one acre lots to thousands of absentee property owners through mail order sales in the 60’s and 70’s.” Reportedly, “AMREP sold 77,000 lots to 40,000 buyers for $200 million [dollars]…, while retaining over 25% of the acreage for future development.”

The local residents also reported that prominent Anglo-European families, including the Black, King, and Fall families, owned large tracts of what was at one time the Alameda Land Grant. This assertion is partially verified by the warranty deed showing the San Mateo Land Company’s devise to Albert F. Black and AMREP’s purchase of 35,000 additional acres from the King Ranch in 1970, bringing Rio Rancho’s total acreage to 91,000 acres. Rio Rancho likely acquired some of the lands that were owned by the interveners. Also, it is possible the parties listed in the Board of Commissioners of Bernalillo County v. Hubbell, alongside the San Mateo Land Company, conveyed at least a portion of their lands to Rio Rancho. What is known is that most of the land acquired by the San Mateo Land Company is now held by Rio Rancho Estates (or AMREP).

Similarly, High Desert Investment Corporation is now developing a large upscale residential development, dubbed Mariposa, on the northeastern corner of what was once the Alameda Land Grant. High Desert is the investment arm of Albuquerque Academy, one of the most prestigious private schools in New Mexico; reportedly, a former student...
donated the Grant portion to the school.147 In addition to the Mariposa
development on the Grant, High Desert has developed land that was
originally part of the Elena Gallegos Land Grant.148 Albert Simms, a founder
of Albuquerque Academy, donated the Gallegos land to the school upon his
death in 1964.149 Through development, High Desert Investment
Corporation has turned these former land grant gifts into an $190 million
endowment for Albuquerque Academy.150

VI. CONCLUSION

Though the history of the Alameda Land Grant casts a complicated
web, various themes surface. The first is that, by and large, the laws in New
Mexico and the United States did not protect the communal grants
provided for in the Treaty of Guadalupe Hidalgo. Starting with Surveyor-
General George Washington Julian’s changes to the confirmation process,
where the burden was shifted to the heirs to establish an authentic grant, it
was apparent that the United States opposed these large grants from
previous sovereigns. Such vigorous opposition may have been a product of
the ideological difference between the capitalistic U.S. government and the
socialist way of life found on the land grants.151 Then, under the Court of
Private Land Claims, a U.S. attorney was appointed to oppose the parties
seeking confirmation. To make matters worse, the panel of judges openly
favored rejection of land grants to benefit the U.S. government.152

147. Id. ("The company’s two significant holdings…were both bequeathed to the school
wikipedia.org/wiki/Albuquerque_Academy (last visited Apr. 7, 2009) ("HDIC then
purchased a large tract of land in the northern section of Rio Rancho, which it is currently
developing as Mariposa.").
wildlife.state.nm.us/publications/documents/elena_gallegos.pdf.
149. Nancy VanDevender, The Role of the Trustees, ALBUQUERQUE ACADEMY NEWS, Aug.
May 11, 2009).
businessweek.com/research/stocks/private/snapshot.asp?privcapid=4171769 (last visited
Feb. 27, 2009).
151. History of Corrales, http://www.corrals-nm.org/History.htm (last visited July 3,
2008) ("Everybody had a farm and everybody was self-sufficient, living off the land. But they
all helped one another at harvest time…they all joined in harvesting each other’s fields. When
a pig was butchered, the fresh meat was shared with every other family in the valley. Fifteen
days down the line, somebody else would kill a pig and you’d share in that, too.—Tony
Garcia.").
152. P. Gomez, supra note 30, at 1074 (citing Judge Stone’s glee at the defeat of many land
grant claims, “the resultant reversion to the public domain of the general government of more
than 30,000,000 acres was one of the court’s major accomplishments…like a new cessation of
Additionally, prior to the Land Grant Act of 1907, any one person with any interest in a land grant could petition the court for complete partition of the land grant. Of course, opposition would be heard in the partition proceedings, but the lack of protection eased the path to partition immeasurably. Although Judge McFie’s analysis in *Montoya*,153 regarding section 2937, which related to grants from Spain, Mexico, and the United States, worked in favor of long-time settlers and against an unsavory lawyer-speculator, it also revealed the ease with which a settler could possess land from a grant. In comparison with section 2938, it was easier under section 2937 to establish possession of land grant land resulting in fee title, rather than a mere limitation. In other words, if the adverse possession was against a land grant as compared to non-land grant land, a person could get more (title) for less under section 2937.

The official inclusion—and even prominence—of unscrupulous lawyers such as McMillen into the legal hierarchy makes the history all the more disheartening.154 As a result of McMillen’s land grant successes, he and his wife established McM Corp., which today is still a multi-billion dollar company. McMillen’s lineal descendants are provided for under the McMillen Trust, which was created in 1925, almost immediately after McMillen’s 55,000-acre sale of the Alameda Land Grant. McMillen’s family continues to profit, while, as one Alameda Land Grant heir claimed in 1975, “we are on welfare.”155 In McMillen’s defense, neither he, nor the legal community that embraced him, likely saw anything wrong with his behavior. Examined by today’s professional code of legal ethics, McMillen’s legal (business) ventures would be grounds for disbarment.156

To be clear, McMillen’s actions alone did not break the communal spirit of the Alameda Land Grant. Many heirs who had sold their individual tracts of land were seeking what little profit they could squeeze from their lineage. And, although the Grant was destroyed legally by McMillen’s actions, the communal and agricultural way of life on the land

country to the United States”) (internal quotes omitted)).
154. McMillen was a former president of the New Mexico Bar Association as well as a former Chair of the Greater Albuquerque Chamber of Commerce and a former president of First National Bank. McMillen’s business partners in the San Mateo Land Company, Amado Chaves and Herbert F. Raynolds, were both prominent businessmen with intimate involvement in land grant chicanery. See *Woodson v. Raynolds*, 76 P.2d 34 (N.M. 1938). An interesting aside is that one of McMillen’s three daughters married Pearce C. Rodey, the founder of the Rodey Law Firm, one of New Mexico’s largest and most respected law firms. *Id.* at 36. Moreover, Rodey, who must have held McMillen in high esteem, named his son Alonzo McMillen Rodey. *Id.*
continued for years. The true breaking of the traditional life occurred “after 1940, [when] the modern world—swiftly, inexorably—began closing in, with its powerful pressures for assimilation into the dominant stream of national life.”157 These pressures—in addition to the steady increase of village populations and the declining productivity of the land base—worked against the sustainability of the Grant itself.158

Through history’s lens, with the ability to view the arsenal loaded against them, the land grants seem unavoidably ill-fated. Some claim the inclusion of land grant Hispanics into the mainstream economy was entirely necessary. And for that assimilation to occur, the population had to be severed from their lands and the communal existence that made them independent and self-sufficient. The loss of the land grants, however, was not altogether inevitable. A few grants have survived to the present day. And even though the communal life still found on these grants today seems at odds with U.S. ideology, like New Mexico’s pueblos and reservations, the remaining land grants coexist with the surrounding economy.159

Although a number of farmers, livestock owners, and vineyard owners still operate on the old Alameda Land Grant, it’s clear that under the present individual landholding regime, the land does not produce the way it did as a communal land grant. As a Land Grant the land was valued for what it produced through the richness of its soil, continually enriched by the sediment of the wild Rio Grande, and its access to grazing lands, woodlands, and the lifeblood of New Mexico: water. And yet, the land is more valuable, in monetary terms, than ever before. While still enjoying direct access to Albuquerque, the economic center of New Mexico, this land is highly valued for its relative remoteness which gives it vistas of the Sandia Mountains and easy access to trails and recreation.

One factor alone cannot be blamed for this radical change, nor can an inevitable conclusion be drawn. All that can be said is that each historic player had a hand in the demise of the Alameda Land Grant: the heirs who sold tracts of land from the 1700s to the 1840s; the settlers who came upon the land and operated in the spirit of the Grant; and the speculators/attorneys who pursued profits and development. Ultimately, the flawed legal regime at the turn of the twentieth century, which was tied too closely to the executive goals of our country, failed to protect the Alameda Land Grant—among others—from the era’s encroaching economy and ideology.

158. deBuys, supra note 63, at 76 (outlining factors that worked to bring about the demise of the Las Trampas Land Grant).
159. New Mexico’s pueblos and reservations have even thrived, and support the state through lucrative compacts. N.M. Gaming Control Bd., Revenue Sharing, http://www.nmgcb.org/tribal/revshare (last visited Apr. 7, 2009) (detailing the total casino revenue of each of the tribes under compacts and the percentage given to the state).