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## Land Grants and Lawsuits in Northern New Mexico, by Malcolm Ebrights

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## BOOK REVIEWS

*Land Grants and Lawsuits in Northern New Mexico*. By Malcolm Ebricht. Santa Fe, N.M.: Center for Land Grant Studies Press, 3rd Edition, 2008. Pp. 401. \$30, cloth; \$20 paper.

In 2008, the Center for Land Grant Studies published a handsome third edition of Malcolm Ebricht's opus, *Land Grants and Lawsuits in Northern New Mexico*. This expansive and engaging work by one of New Mexico's leading land grant scholars was originally published by the University of New Mexico Press in 1994, but it had been out-of-print for several years before the Center for Land Grant Studies took up the cause of making it available once again, complete with a new introduction by the author.

The 12 essays contained in this volume beautifully weave together history and law, disciplines that sometimes seem like incongruous bedfellows. History strives, however imperfectly, for an accurate retelling of the past. It remains open to new information and interpretations. Law, on the other hand, seeks to resolve conflicts and achieve closure. Truth is a secondary consideration at best. Yet *Land Grants and Lawsuits* manages to overcome this paradox and demonstrate that law and history have much to offer one another.

Ebricht draws on New Mexico's long and intricate legal record to document the history of northern New Mexico's land grants. As he notes in the second chapter of the book, the testimony recorded over the past several centuries in lawsuits over land and water is one of the richest sources of historical information not only about land and water rights, but also about the customs and values of the communities that held those rights.

The first chapter, "Land Grants and the Law: Spain, Mexico, and New Mexico," provides a sweeping overview of land grant history, offering an introduction to the subject to any readers unfamiliar with the field, and setting up a framework for the more detailed case studies that follow. This chapter begins with the first land grants that were established in Spain, then describes the granting procedures and customs in New Mexico; the Treaty of Guadalupe-Hidalgo; and the confirmation processes employed by the Surveyor General and Court of Private Land Claims.

Following chapters focus on case studies of particular land grants and lawsuits, using them to illustrate the major themes of the book. For example, Chapter 5, "The San Joaquín Grant: Who Owned the Common Lands?" traces the history of the San Joaquín Grant, showing how the Mexican courts determined that the common lands of the grant belonged to the community rather than the Mexican government. Ebricht notes that, under the international law doctrine of acquired rights, this decision should have been binding on the United States when it acquired the territory, yet

the U.S. courts instead held that the land had belonged to the Mexican government and that title had passed to the U.S. government.

Chapter 7, "The Las Trampas Grant: A Story of Duplicity and Legal Traps," uses the story of the Las Trampas Grant to show how deceptive and fraudulent practices by attorneys deprived land grant heirs of rights to their common lands which they believed they had secured with contracts. It also makes a powerful legal argument that the U.S. Forest Service, which ultimately received the lands, had inquiry notice of those rights, and therefore should be required to recognize them.

Other chapters focus on a dispute over a community ditch near Abiquiú during the period of Mexican sovereignty, which illustrates the importance of custom in Mexican law; the story of the Embudo Grant, which makes a compelling case for the unjustness of the procedures employed by the Court of Private Land Claims; the mismanagement and loss of the Cienega common lands of Santa Fe; the complicity of the state government and courts in the loss of the common lands of the Las Vegas Grant; and the tangled history of the Ramón Vigil Grant, which was confirmed based on a forgery, sold, and ultimately claimed by the federal government for the military complex of Los Alamos in 1942.

The third edition also includes a new introduction in which Ebright touches briefly on the developments that have occurred in the 14 years since the book was first published: the *Lobato v. Taylor* decision that upheld the rights of land grant heirs in southern Colorado; the legal victory of Pajarito Plateau homesteaders who were not fairly compensated when their land was taken for the creation of Los Alamos; and the controversial 2004 General Accounting Office land grant report.

Ebright's new introduction may leave readers wishing for additional and more detailed updates on some of the other grants discussed in the case studies. For example, in Chapter 8, "Settlement of the Las Vegas Grant and the Invisible Pueblo Rights Doctrine," Ebright discusses how the New Mexico courts misapplied the theory of the pueblo water rights doctrine to the city of Las Vegas, N.M., in the 1958 *Cartwright* decision. Ebright builds a cogent case against the doctrine and urges the court to overturn it. In 2004, the court in fact did so (*State of New Mexico v. City of Las Vegas*), and Ebright's analysis and evaluation of that decision would have been a valuable addition to this volume.

Regardless, *Land Grants and Lawsuits* is a remarkable collection. It is meticulously researched, with an extensive bibliography and nearly 100 pages of endnotes, yet it manages to combine this scholarly pedigree with an engaging, conversational tone. Ebright tells the stories of the many colorful characters involved in New Mexico's land grants in vivid detail, like an elder of the community recounting the tangled tales of its inhabitants. Every story is connected to another, and every person to many more; the tales of greed and loss, generosity and courage bring the

communities to life for the reader. Ebright uses these intimate histories to demonstrate the real, tangible effects of the law on the people of New Mexico's community land grants.

For in the end, Ebright's goal with this book is not only to use New Mexico's legal record to document the history of the land grants, but also to use that history to make the case for justice for the heirs of the land grant communities. These stories, he writes, "need to be told over and over again," because that is the only way to keep alive the culture of the communities and the hope for their eventual redress. In *Land Grants and Lawsuits in Northern New Mexico*, Ebright's skills as both a thoughtful historian and a passionate advocate for land grant communities have produced a rare work that is of great value to scholars and activists alike.

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