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Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840-1900, by Maria E. Montoya

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habitat model, a vertebrate species richness model, and a visual preference model (or scenic attractiveness as expressed by local residents). When applied to the various scenarios, the models illustrate the nuances of change on the natural environment.

This book is important for several reasons. First, it brings together all of the issues related to the depletion of the San Pedro River aquifer in Southeastern Arizona. It describes not only how the key issues, such as hydrology, will be affected but also the effects on the different models. Secondly, the book displays the impacts of each component on a color map so that the reader can actually see the dramatic impacts of each scenario. The issues are more easily grasped because of the 170 some maps provided by the book. Third, the value of the book to the researcher or policy maker is enhanced by the voluminous number of photos included illustrating almost all aspects of the study area. The visual nature of the book greatly increases the ability of the reader to grasp the issues and impacts. Fourth, the book appears at a propitious time in the life of the river. It provides a wealth of relevant information at a time when local organizations such as the Upper San Pedro Partnership, a diverse group of organizations, are already developing policies and implementing projects to bring the river system into hydrologic balance. This book can help create more momentum for continued efforts to protect the aquifer. For one who wishes to understand the future (or *futures*) of the Upper San Pedro River Basin, *Alternative Futures* will serve as an able guide.

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Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840–1900. By María E. Montoya. Berkeley: University of California Press, 2002. Pp. 299. \$50.00 hardcover.

As its sub-title suggests, *Translating Property* traces the history of the Maxwell Land Grant in northern New Mexico. The real theme of the book, however, is how and why the American common law system has failed to recognize and incorporate Mexican notions of property, rights guaranteed by the terms of the 1848 Treaty of Guadalupe Hidalgo. In this ideologically charged and highly detailed historical analysis, María Montoya depicts the cultural, legal, and political conflicts that resulted from the clash between the American and Mexican systems as the United States gained sovereignty over the American Southwest.

The book is well timed. Recently, the Colorado Courts declared that descendants of Mexican settlers in San Luis possess historic rights to the common lands of the Sangre de Cristo Land Grant (*Lobato v. Taylor*,

2002 WL 1360432 (Colo.)). In recognizing these rights, the Colorado court did what Montoya says previous U.S. courts had been unable to do; it managed to “translate” Mexican property interests into the language of the American common law.

The Sangre de Cristo grant is on the opposite side of the Sangre de Cristo mountains from the Maxwell Grant and shares with the Maxwell Grant a history of Mexican settlement, communal land use, and high-profile law suits. In fact, Montoya relates many of the legal issues in the historic Maxwell lawsuit to those recently raised in *Lobato v. Taylor*, in which the plaintiffs asked Montoya to help them establish their historic rights to the Grant’s mountain tract, or *La Sierra*. Montoya’s research led to her rich, critical analysis of the conflicting property regimes under the Mexican and American systems.

In *Translating Property*, Montoya presents the Maxwell Land Grant as a case study in U.S. imperialism. The book generally follows the history of the land and its inhabitants, beginning with its settlement by Jicarilla Apaches sometime between the fourteenth and sixteenth centuries and culminating in the aftermath of the 1887 Supreme Court decision that nullified all prior property interests in the Grant. While the first chapters focus on early settlement and property rights under Spain and Mexico, the later chapters discuss the conflicts caused by the arrival of Anglos and the court battles that ensued. Montoya frequently interrupts this chronology to illuminate the role of race, culture, gender, and economic theory in the transformation of both the Grant and its surrounding context.

Translating Property initially provides a picture of the complex, informal property relationships before and during the early days of the Maxwell Land Grant. Montoya stresses the need to understand non-Anglo notions of property in order to appreciate the clash between the American system—with its emphasis on private property rights and de-emphasis on communal rights—and pre-existing notions of property on the Grant. Montoya briefly describes the subsistence land use of the Jicarilla Apaches before depicting the arrival of the Mexican settlers in the 1840s. Most importantly, she emphasizes the informal process by which Anglo settlers and miners and Jicarilla Apaches co-existed on the land before the property system on the land grant collided with the formalized legal regime of the United States after the Mexican-American War. While this first section verges on oversimplifying undoubtedly complicated and disorderly settlement patterns, it effectively sets the stage for the next 50 years of conflict, violence, and legal battles over property rights.

Montoya then describes in great detail the complex property rights that existed on the Maxwell Land Grant under Mexican law. For an entire chapter the book departs from its chronological structure to

highlight what she interprets as women's expansive property rights under Spanish and Mexican law and their relatively subordinate positions within the American system. Montoya explains that rather than modernize an oppressive feudal regime, as the United States argued it was doing by annexing Mexican territory, the common law and market capitalism did just the opposite with regard to women's property rights. Montoya focuses in length on the stories of individual women to illuminate these distinctions. However, she only briefly analyzes the actual legal differences between the two systems. Despite Montoya's historical detail, clear writing, and provocative analysis, this section steers off course from the book's central theme and can easily derail the reader.

The book next describes the arrival of land speculators to the Maxwell Land Grant. Montoya brings to center stage the role of the international market in disrupting existing property rights on the Grant. She argues that when the Maxwell family sold the land to the Maxwell Land Grant and Railway Company and its foreign investors, the Grant was subjected to a market that had no tolerance for its complex system of reciprocal relationships and overlapping rights. Instead, according to Montoya, the international economy demanded unencumbered, exploitable land in order to attract foreign investors. Interestingly, she likens the colonization of the Maxwell Grant to Dutch and British imperialism throughout the world by highlighting the role of the market economy and the "cozy relationships" between the Company and local officials.

In the following chapter, Montoya provides rigorous historical documentation about the impact of this new regime on the Grant's inhabitants, using an impressive number of well documented primary sources. During this time grant settlers resisted in guerilla style the incursions of the new Maxwell Land Grant and Railway Company, owned and managed by foreign investors. Montoya tells detailed stories of individuals who refused to relinquish their land to the Maxwell Land Grant and Railway Company. She also describes the interracial alliances formed by the settlers based on similar economic interests. Here Montoya's purpose seems to be to subvert traditional black-and-white notions about racial divisions on the western frontier. Although her analysis of interracial collaboration offers a new twist on the early history of the American West, the discussion is at times strained. As throughout the book, her overemphasis on postmodern themes of race, gender, and capitalism gives the book a self-conscious flavor and distracts the reader from her otherwise fluid and well supported historical analysis.

Nonetheless, Montoya has a talent for explaining complex themes. This is particularly apparent when she describes the final legal

battle over rights to the Maxwell Grant. In 1887, the U.S. Supreme Court determined that the Maxwell Land Grant and Railway Company, rather than any of the original setters or their successors-in-interest, held the only valid title to the 1.7 million acres. Montoya's criticism of the opinion is not new to land grant scholars; many have disparaged the Court for considering Congress's confirmation a "de novo" grant and disregarding relevant Mexican law. However, according to Montoya, the Court's action embodied an inevitable clash of two fundamentally conflicting property systems and cultures. She suggests that the American common law, with its emphasis on "vested" property rights, could neither accept nor integrate the implicit, reciprocal conditions of communal use that Montoya believes the Mexican government placed on the land in its 1841 conveyance to the Mexican grantees. Here Montoya analyzes methods of Mexican land distribution but provides a relatively cursory analysis of both American property law and the Court's reasoning. She also clearly underestimates the capacity of the common law to recognize Mexican and Spanish-derived property interests, as evidenced by the Colorado courts in *Lobato v. Taylor*. Nonetheless, she conveys the difficulty of translating the loose, informal property relationships under the land grant system to the formalized language of American courts and common law property principles.

This book was no easy undertaking for Montoya, given the multi-layered history, esoteric property law, and complex undercurrents of economics, gender, and race that she set out to dissect. While other scholars have written about land grants, sovereignty, and even the Maxwell Land Grant itself, *Translating Property* offers a unique and refreshing analysis of how global market forces inform the obscure world of property law. However, while *Translating Property* unravels complicated themes, it over-simplifies others by taking on more than it can appropriately handle. Thus, at times Montoya makes strained conclusions without acknowledging that they are controversial among land grant scholars. Furthermore, at times her analysis is overly academic and even redundant. Nevertheless, her graceful prose, diligent documentation, and remarkable lack of jargon manage to make *Translating Property* smooth, interesting, and provocative reading.

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