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Book review: Land Grants and Lawsuits in Northern New Mexico by Malcolm Ebright (UNM Press, 1994)

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SMALL SCHOOL.
BIG VALUE.

Land Grants and Lawsuits in Northern New Mexico, by Malcolm Ebright. Albuquerque: University of New Mexico Press, 1994; 399 pp., illustrations, notes, bibliography, glossary, index; \$27.50, paper.

Malcolm Ebright's *Land Grants and Lawsuits in Northern New Mexico* contributes significantly to the history of private land grants in New Mexico. Having first established the broader legal and historical context, Ebright explores the subject through the disputes over five land grants. In these case studies Ebright seeks to explain how and why New Mexico Hispanics lost considerable land and water rights under the American legal system. He traces the history of the settlement of each selected land grant under the laws and customs of New Mexico prior to 1846 and then examines their adjudication by the United States.

The book's central theme is that an injustice was perpetrated by the United States on Hispanic land grant claimants. Ebright asserts that the U.S. Court of Private Land Claims rejected most of the land claims after misapplying the law. The crucial failure of the American courts, according to Ebright, was in not recognizing that the settlers on a community land grant possessed both communal rights—designed to remain inalienable—and rights to alienable, private lots. The court's disregard for this distinction led to erroneous legal decisions denying claims, as well as to practices (such as partition suits) that wrongfully converted community land into private property.

Ironically, the source of the book's strength is also its primary weakness. Ebright's strongest suit is the clarity of his argument and his systematic assembly of evidence supporting his conclusion of inequitable adjudication of these claims. The single-mindedness of his argument establishes his book as forensic or argumentative history. Ebright employs alternative arguments to advance his central conclusion (a time-honored technique in legal argumentation) and marshals evidence to buttress his claim that earlier courts committed reversible error. Ebright states his objective clearly: "It is necessary to acknowledge the error of earlier court decisions if there is to be any hope for justice in current litigation with the government (state or federal) concerning land and water rights in New Mexico" (p. 54). Indeed, "[b]y documenting the unfairness and injustices that accompanied land loss in New Mexico, history can be made to bear witness to current policy and legal decisions" (p. 272).

There is nothing inherently wrong with forensic history; indeed, as legal historian John Phillip Reid has pointed out, it

may very well serve salutary contemporary purposes. Rectifying unjust past judicial decisions arguably constitutes such a purpose. But the point is to recognize forensic history for what it is and is not. Ebright acknowledges that much study of New Mexican land grants has been stimulated by ongoing litigation, but too lightly dismisses its consequences for historical inquiry. Quite simply, history in the service of legal goals begins with a conclusion and works backwards to advance the best evidence consistent with its objectives. On the other hand, the goal of studying history is to approach the past on its own terms, striving to assess historical sources objectively and control one's preconceptions about the meaning of those sources. The attainment of historical objectivity—which ultimately is impossible—is less the point than the self-conscious subordination to that ideal. Forensic history not only eschews the constant struggle to deal even-handedly with historical evidence, but explicitly embraces that which most historians try hardest to avoid: partisan interpretation.

The ultimate problem with forensic history is that by its nature it rigorously oversimplifies the past, driven by the necessity to establish a winning argument supported by incontrovertible evidence. The past on its own terms is rarely so uncomplicated, and New Mexico's land grant history is no exception. The loss of land is clear, but in characterizing that loss Ebright cannot afford to dwell on ambiguities and undercurrents that undermine his central theme that bad faith by the United States in the adjudication of the land grants warrants contemporary legal relief. No matter that much of the underlying dynamic entailed sheer ignorance rather than bad faith and that considerable land losses occurred at the hands of Hispanic speculators and sharp-dealers as well as government officials. Ebright is too conscientious not to acknowledge, if only parenthetically, such countervailing trends. But he deals with them as aspects of the historical record that need to be minimized because they undermine the depiction of the United States government as liable in deliberately denying valid land claims.

In the final analysis, *Land Grants and Lawsuits in Northern New Mexico* represents thorough research into the primary documents dealing with land grant legal history in New Mexico. It is an important achievement and a valuable contribution to our knowledge. However, the full and balanced story of New Mexico's land grants—with all their complexities, subtleties, and ironies—still remains to be written.

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