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Harold H. Dunham

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## NEW MEXICAN LAND GRANTS WITH SPECIAL REFERENCE TO THE TITLE PAPERS OF THE MAXWELL GRANT

*By* HAROLD H. DUNHAM \*

THE history of New Mexico during its territorial period necessarily includes mention of the Spanish and Mexican land grants that were placed under the jurisdiction of the United States government by the treaty of Guadalupe Hidalgo. The importance of these grants is evident by the fact that they covered tens of millions of acres, they were inexorably tied in with the political, economic and social life of the Territory, and they presented difficult problems to both Territorial and National officials during more than a half century. On the national level, the grants commanded more than their share of time in the General Land Office and the Interior Department, and they frequently required special congressional investigations, debate and legislation, in addition to difficult Supreme Court decisions. In view, then, of their national as well as their regional prominence, the grants warrant a place in any broad consideration of American public land policies.

The problems that arose from the grants are at least partially attributable to the vagueness or the irregularities found in their title papers. Even a casual study of land grant records will reveal the fact that some of the Mexican grants far exceeded the legal amount of 48,000 acres authorized for donation to any person;<sup>1</sup> some grants had mutually over-

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\* Professor of History, University of Denver, Denver 10, Colorado.

1. 36 Cong. 1 Sess., H. Rep. #321, passim; and *ibid*, Sen. Rep. #228.

lapping boundaries, even to the extent of several hundred thousand acres;<sup>2</sup> some grants have been proven to be completely, as well as at times, crudely, fraudulent;<sup>3</sup> and some grants required an unusual amount of litigation to determine their validity, extent, location or ownership.<sup>4</sup>

The reasons for these irregularities are not readily apparent. In part, they seem to have been obscured amidst the land schemes and manipulations of individuals prominently associated with New Mexican history from before the American occupation of the region, and also in the peculiarities of the legal provisions that were established for validating and confirming land grants subsequent to the occupation. It therefore is the purpose of this paper to reexamine briefly some of the developments and legislation surrounding the New Mexican land grant story of the middle of the 19th century, and then to analyze the title papers of one of the most prominent, important, controversial and fascinating of the grants, namely the Beaubien and Miranda grant, more commonly known as the Maxwell grant. Incidentally, such an analysis might contribute to meeting the challenge recently posted by Erna Fergusson, when she asserted that if it could be written, the "true story" of the Maxwell grant "would reveal the actual history of New Mexico."<sup>5</sup>

The reexamination will begin with a review of the circumstances surrounding the creation of the land grants in northeastern New Mexico during the latter period of Mexican control. One of the outstanding historians of that enchanting state, Ralph E. Twitchell, attributes their origin to the determination of New Mexican officials, having in mind the developments in Texas after 1821, to promote settlements that would protect the Department against possible ulterior designs of the American government.<sup>6</sup>

2. R. E. Twitchell—*Leading Facts of New Mexican History*. 5 vols. (1911-1917) IV, 211-213.

3. 49 Cong. 2 Sess., Sen. Ex. Doc. #37.

4. H. H. Dunham—*Government Handouts: A Study in the Administration of the Public Lands, 1876-1891*. (1941) pp. 212ff.

5. E. Fergusson—*New Mexico: A Pageant of Three Peoples*. (1951) p. 245.

6. Twitchell—*Leading Facts*, op. cit., II, 196-7. See also, H. M. Porter—*Pencilings of An Early Western Pioneer*. (1919) p. 17; and LeR. Hafen—*Colorado: The Story of a Western Commonwealth*. (1939) p. 94. These latter two sources mention the threat from Texas, too.

In support of this explanation, the title papers now extant show that after the establishment of Texan independence, Governor Manuel Armijo approved a number of land grants north and east of Taos, covering land that extended as far as the Arkansas River. For example, in 1841 Charles Beaubien, a naturalized Mexican citizen and a resident and merchant of Taos, and Guadalupe Miranda, Secretary of the New Mexican government received a grant covering the upper portions of the Colorado (present Canadian) River.<sup>7</sup> This grant was later patented by the United States government for approximately 1,700,000 acres. On December 9, 1843, Governor Armijo approved a grant to Cornelio Vigil, Alcalde of Taos, and Ceran St. Vrain, a Santa Fe trader and part owner of the famous Bent's Fort on the Arkansas River, for a tract lying north of the Beaubien and Miranda grant. The later claimed area of this grant was approximately 4,000,000 acres, although only a fraction of that amount was patented by the United States government.<sup>8</sup> A few weeks after the recorded approval of the Vigil and St. Vrain grant, Governor Armijo acted favorably on a petition from Stephen Louis Lee, American born distiller of Taos, and Narciso Beaubien, son of Charles Beaubien, for land that became known as the Sangre de Cristo grant. The land lay adjacent to and northwest of the Beaubien and Miranda grant, and southwest of the Vigil and St. Vrain grant. It was later patented by the United States government for approximately 1,000,000 acres.<sup>9</sup> There were other grants of considerable size south and west of the above mentioned grants that indicate an effort to carry out the purpose that Ralph Twitchell suggests, but these grants need not be detailed here.

Rather it is necessary to call attention to an additional factor that somewhat modifies Mr. Twitchell's explanation. That factor is the role which United States citizens played in intentionally promoting the grants. Specifically, the creation of at least several of these grants was an outcome of a sugges-

7. W. A. Keleher—*Maxwell Land Grant: A New Mexico Item.* (1942); and F. Stanley—*The Grant That Maxwell Bought.* (1952).

8. LeR. Hafen—"Mexican Land Grants in Colorado," *The Colorado Magazine*, Vol. IV, #3, May 1927, pp. 87-8.

9. H. O. Brayer—*William Blackmore.* 2 vols. (1949) Vol. I. *The Spanish and Mexican Land Grants*, pp. 126ff.

tion from members of John Charles Fremont's second western expedition, 1843-1844. The suggestion was made to certain New Mexican merchants, traders and officials, to obtain grants in their own name and then bring in as associate owners, other individuals whether they were Mexican citizens or not. This plan was carried out. The plan apparently was based on the assumption that sooner or later New Mexico would become a part of the United States, and thus claimants to large tracts of New Mexican land would benefit by the ensuing American development of the region.

Whether or not the above hypothesis as to purpose is correct, it is possible to document the role of Fremont's party in proposing the creation of the grants. One member of the expedition in particular, William Gilpin, claimed credit for originating the proposal.<sup>10</sup> Gilpin, later the first Territorial Governor of Colorado and a man closely associated with, as a part owner and promoter of, at least two Mexican grants,<sup>11</sup> made his boast in 1872, while testifying in a law suit concerning the ownership of the Vigil and St. Vrain grant. He was then supporting the point that Eugene Leitensdorfer, a Santa Fe trader, was one of the early owners, when he stated that the grant "was made, perhaps on his [Gilpin's] suggestion, to apply to the Mexican authorities for grants of land, and they did so; and that this, with other grants, were made accordingly; that he had and held relations of personal friendship with all the parties at the time and that by that means was made acquainted with nearly all circumstances attending this grant and others. . . ."

Before analyzing the significance of Gilpin's assertion, it might be well to cite some supporting evidence. In addition to the collateral information found in H. H. Bancroft's life of Gilpin,<sup>12</sup> there is evidence presented in a land prospectus privately printed in London in 1869.<sup>13</sup> This prospectus, issued by William Blackmore, an English barrister and pro-

10. *Craig vs Leitensdorfer*, Transcript of Record, Vol. IV. U. S. Supreme Court, October Term, 1887. pp. 291-2.

11. H. H. Bancroft—*History of the Life of William Gilpin*. (1889) passim.

12. *Ibid*, p. 48.

13. (No author)—*Colorado: Its Resources, Parks and Prospects as a New Field for Emigration, With an Account of the Trenchara and Costilla Estates, in the San Luis Park*. (Privately printed in London, 1869) Introduction, pp. 6-7.

moter seeking to encourage British investment in New Mexican land grants, explained that: "About 25 years ago the attention of Mr. Charles Beaubien, an intelligent Frenchman and naturalized citizen of Mexico, was directed by some scientific gentlemen and officers attached to one of the United States Exploring Expeditions, to the extreme fertility, salubrity and mineral wealth of the San Luis Park. . . . Mr. Beaubien proceeded to the spot and having verified their representations by personal examination, upon his return applied to the Governor General of [New] Mexico for a grant [the Sangre de Cristo grant] of the best portion of the Park. . . . The grant was made to him by the [New] Mexican Government in 1845. . . ."

There is no reason to question the basic accuracy of this statement. Of course it differs as to the date of the grant's origin and the name of the claimant given in the title papers and mentioned above. But it is possible to explain the difference in names in either one of two ways. First would be the fact that Charles Beaubien did acquire sole title to the grant under tragic circumstances, for in the Taos Revolt of January 1847, both Narciso Beaubien and Stephen L. Lee were killed.<sup>14</sup> So, by inheritance from his son and purchase from Lee's estate, Charles Beaubien obtained ownership of the grant. On the other hand, Charles may have been considered the principal original owner, for the grant papers are drawn up chiefly in his own handwriting, including his son's signature, and his son was only 13 years old when the grant reputedly was made (1843).<sup>15</sup> At that time, Charles was part owner of the Beaubien and Miranda grant, and so probably did not want to apply in his own name for a second grant.

Gilpin's assertions that not only the Vigil and St. Vrain grant but "other grants" were prompted by his suggestion, and his claim to have held relations of personal friendship with all the parties acquiring grants, indicates that numerous individuals benefited by his suggestion. That this was in fact true is shown by the considerable number of grantees,

14. Hafen—"Mexican Land Grants," *op. cit.*, p. 84.

15. The original title papers of the Sangre de Cristo Grant, The State Historical Society of Colorado, Denver, Colo.

as well as the other New Mexicans and Americans that came into the picture.

For example, Eugene Leitensdorfer drafted the petition requesting the Vigil and St. Vrain grant, and ostensibly in 1844 he also received a one-sixth share of the grant.<sup>16</sup> Charles Bent, one of the owners with Ceran St. Vrain of Bent's Fort on the Arkansas River, and later to become the first American civil governor of New Mexico, also received a one-sixth share of the grant. So likewise did Donaciano Vigil, later Secretary and then acting Governor of New Mexico in 1847. Furthermore, Charles Bent and Eugene Leitensdorfer used their influence with Governor Manuel Armijo to secure approval of the grant, an effort which may be related to the fact that, in 1844, Governor Armijo obtained a one-sixth share of the grant.<sup>17</sup> Two of these men, that is Bent and Armijo, also obtained, in 1843, one-fourth shares in the Beaubien and Miranda grant.<sup>18</sup> There are other instances in which American traders to New Mexico and New Mexican residents, including Governor Armijo, held claims to New Mexican land grants, but a sufficient number of examples have been cited to indicate the pattern.

A considerable body of evidence indicates that irrespective of earlier dates appearing in the title papers to many Mexican grants, the grants actually were drawn up in, or revised into, their present form during the period 1845-1846, when General Armijo had returned to power as Governor after a brief period of retirement. An example of this evidence will be considered later in the analysis of the Beaubien and Miranda title papers, but now it is appropriate to turn to a description of the character of the legal provisions established by the United States for validating and confirming Spanish and Mexican land grants after the American occupation of New Mexico.

The long standing dispute between the United States and Mexico reached a climax when, on May 13, 1846, the United

16. *Craig vs Leitensdorfer*, Case #79, U. S. Circuit Court, Denver, Colo. (Testimony of W. A. Bransford.)

17. *Ibid*; and the National Archives, Records of the Department of the Interior, General Land Office, New Mexico Private Land Claims, Docket #17. (Package marked "Armijo." Power of Attorney to John Gwynn, Jr., January 15, 1872.)

18. Dunham—*Government Handout*, op. cit., p. 215, fn. 16.

States Congress declared war on the latter country. Within a short time, Colonel (later General) Stephen W. Kearny's Army of the West began marching toward New Mexico. On August 18, 1846, the capital city of Santa Fe was occupied by General Kearny without a struggle, after Governor Armijo had fled precipitously southward under a cloud of suspicion because of secret negotiations with such American-Mexican traders as James Magoffin.<sup>19</sup> Whether or not the possibility of American ratification of Governor Armijo's land claims affected his decision not to fight the American Army remains an open question.

The peaceful conquest of New Mexico paved the way for carrying forward the ostensible purpose of the Gilpin proposals regarding the acquisition of Mexican land grants. The owners of these grants undoubtedly knew that they faced a potential difficulty in securing recognition of their land titles that violated the provisions of the Mexican land laws and that were based on documents not deposited in the office of the Secretary of the Territory. The solution to this difficulty seemed to lie in securing the appointment of officials and the enactment of legal provisions that would safeguard the steps already taken. There is presently available only circumstantial evidence, not direct proof, that planning for and fulfillment of such safeguards ensued, but this evidence needs to be considered.

Charles Bent and Ceran St. Vrain were well acquainted with Colonel Kearny. The latter had been entertained at Bent's Fort on the Arkansas during his 1845 tour of the West.<sup>20</sup> Moreover, he consulted with Bent and St. Vrain at Fort Leavenworth during the time he was preparing his forces for the invasion of New Mexico.<sup>21</sup> Bent had come to Fort Leavenworth fresh from a visit in Santa Fe where he had consulted with Governor Armijo and others, and so was

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19. The Magoffin Papers, General Accounting Office, Washington, D. C. (Photostats in the possession of the author); R. E. Twitchell—*The Military Occupation of New Mexico from 1846 to 1851*. (1909) pp. 378-9; and S. M. Drumm, ed.—*Down the Santa Fe Trail and Into Mexico: The Diary of Susan Shelby Magoffin, 1846-47*. (1926) pp. 96-7, fn.

20. H. Dunham—"Governor Charles Bent: Pioneer and Martyr," *Denver West-erners Brand Book*, 1951, p. 261.

21. *Ibid*, pp. 257-261.

able to provide Colonel Kearny with an up-to-date analysis of New Mexican conditions and prospects.

Furthermore, Charles Bent was well acquainted with David Waldo, a man who played a key role in advising General Kearny, after he reached New Mexico, on the appointment of civil officials for the Territory in the preparation of its code of laws.<sup>22</sup> Waldo had proposed Bent as Captain of the 1829 Santa Fe caravan that was escorted by Major Bennett Riley. Waldo, himself, had engaged in the Santa Fe Trade at least since 1830, and had amassed a fortune in it. Ralph Twitchell notes that Waldo "knew all the people of New Mexico of consequence, socially and in a business way." When the Mexican War broke out he enlisted in the Missouri forces and became Captain of the First Missouri Mounted Volunteers. Incidentally, he was a good friend of William Gilpin, who became a Major in Colonel A. W. Doniphan's Regiment, and in 1843 Waldo had loaned Gilpin part of the money necessary for his trip to Oregon, prior to Gilpin's falling in with the Fremont expedition.<sup>23</sup>

Although the preparation of the Kearny Code for New Mexico had been assigned to Colonel Doniphan, most of the actual work on it was performed by Private W. P. Hall, with assistance from Captain Waldo.<sup>24</sup> The latter was an excellent Spanish scholar and he translated the Code into Spanish. He also translated into English all the Spanish papers and documents that fell into General Kearny's hands.

How much effect, if any, these connections and activities had in the matter, it is a fact that General Kearny included in his selection of civil officials such men as Charles Bent, Governor, Donaciano Vigil, Secretary, Eugene Leitensdorfer, Auditor of Public Accounts and Charles Beaubien, Judge.<sup>25</sup> In addition, the sections of the Kearny Code for protecting land titles reveal some astonishing features. They provided for the establishment of an office of Register of Lands, which office was to be filled by the Secretary of the Territory, then Donaciano Vigil. It became his duty

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22. S. M. Drumm, ed.—*Down the Santa Fe Trail*, op. cit., pp. 64-5 fn.

23. Twitchell—*Military Occupation*, op. cit., pp. 325.

24. *Ibid.*, p. 233.

25. 30 Cong. 1 Sess., H. Ex. Doc. #60, pp. 220-1.

to "record all papers and documents of and concerning lands . . . issued by the Spanish or Mexican government, *remaining*<sup>25a</sup> [!] in the archives of the secretary of the Territory. . . ." But in addition, every person in the Territory claiming a land grant "may deliver to the register . . . for the purpose of being recorded" his muniment of title. No time limit was set for this process. It appears strange that, since Mexican law had required the retention of original title papers in the Secretary's office and had provided the grant claimant only a duplicate copy,<sup>26</sup> the Register of Lands had to make a double recording. However, the *permissive* feature of the system left the door open to fraud.

The open door proved to be an irresistible invitation to immediate and subsequent fraudulent manufacture of land grant papers. Within less than a year after the termination of the Mexican War, official and unofficial reports revealed that this new industry was in full swing. For instance, in a letter from Santa Fe dated December 12, 1848, an American Army officer, using the initials J. H. D., reported the fabrication of grant titles. His letter was first printed in a Mississippi newspaper and reprinted in the *Daily National Intelligencer of Washington*, on March 31, 1849.<sup>27</sup> Among other items, the officer wrote:

"The Prefecto at El Paso del Norte has for the past few months been very active in disposing (for his own benefit) of all lands in that vicinity that are valuable, antedating the titles to suit purchasers. These lands will be made a source of profitable litigation when a few more enterprising lawyers get out here. . . . Many of the tracts have such indefinitely defined boundaries as the following: 'A piece of land bounded by the suburbs of Santa Fe;' 'A piece of land lying north of said irrigation ditch.' . . ."

This letter was officially corroborated by Indian Agent James S. Calhoun, who arrived in Santa Fe to take up his duties on July 22, 1849. On the following October 13, Agent Calhoun reported to the Commissioner of Indian Affairs in

25a. The author underlined the word.

26. 51 Cong. 2 Sess., Sen. Ex. Doc. #30 (G. Miranda's testimony). See also, Survey Office Archive #1325, wherein M. Armijo, on March 16, 1846, requests the original grant papers for the Sandia Grant. Bureau of Land Management, Santa Fe, N. M.

27. Report of the General Land Office, 1871. p. 68.

Washington that the residents of New Mexico held possession of the lands they occupied and tilled by special grants from the government of Mexico or Spain, but "the extent of these grants are not well understood. . . ." <sup>28</sup> Commenting on grants to villages, Calhoun declared: "The extent of the grants and privileges to the proprietors of these Villages is not yet known, and [but] the spurious claims will be in proper *form* in time to meet the legislation of the Congress of the United States."

A few days later, Calhoun reported again, and wrote that the extent of the Indian Pueblo grants was "unknown." Furthermore, he noted that some prominent men in New Mexico were intending to keep American settlers out of the country for as long as possible, for these settlers might "put an earlier end to their [the prominent men's] designs upon the land of the country, in covering the most desirable spots [of the Territory] with fictitious grants."

If the extent of the Pueblo grants was unknown in 1849, it later developed that eleven of them claimed a definite amount of land based on the title papers purportedly issued in 1689. Fraud became evident in these cases, however, when it was shown that on the title papers the signature of the Secretary of the Government was obviously spurious, because no such individual had then served as Secretary. <sup>29</sup> The carelessness with which the fraud had been attempted was evident from the fact that the grant to Laguna was "made" ten years before the Pueblo was founded.

The Supreme Court of New Mexico in 1855 commented revealingly on the traffic in Pueblo grants made possible by extracting Pueblo titles from the public archives, if not by reason of manufacture, in one of the most flowery, imaginative and gently sarcastic products of the judicial bench. <sup>30</sup> The famous Pueblo of Acoma was suing an individual by the name of Victor De La O to obtain its title papers without paying the \$600 that De La O demanded. The decision in the

28. A. H. Abel, ed.—*The Official Correspondence of James S. Calhoun*. (1915) pp. 44-52, *passim*.

29. H. O. Brayer—*Pueblo Indian Land Grants of the "Rio Abajo"*. (1939) pp. 14-15

30. Victor De La O vs The Pueblo of Acoma. 1 N. M. 226. The order of the quotations in the text has been reversed from that in the original.

case was handed down by Justice Kirby Benedict in favor of Acoma. In the course of his analysis, the Justice commented: "We do not deem it irrelevant to remark, that the abstraction from the archives of this territory of pueblo titles at a period not very remote has become a matter of general notoriety from their nature and importance, and from their diffusion throughout the territory, and the frequent attempts at extorting money from pueblos by means of these documents. We feel authorized to allude to the fact as one that has assumed the dignity of an historical event. . . . De La O admits substantially that he did speculate in pueblo Indian documents. . . . he obtained the title to the pueblo of Laguna . . . , which he swears he sold to General Armijo for the sum of two hundred dollars. . . ."

Returning now to more direct and pertinent evidence on the manufacture of land grant papers in New Mexico, the instances of the reputed sale in 1846 of both the Vigil and St. Vrain grant and the Beaubien and the Miranda grant are cases in point.<sup>31</sup> Of course there is a distinction to be made between the outright fabrication of land titles and the attempted transfer of titles by means of spurious documents, but the methods are the same. The records show that during December, 1846, some of the claimants to each of the above mentioned grants ostensibly sold their interest in the grants to officers serving in Kearny's Army of the West. The details of the sale of the Vigil and St. Vrain grant only will be examined here, for the original title papers, not copies as in the case of the Beaubien and Miranda grant, are readily available.

The sale seemed to have taken place on December 12, 1846, at Taos by means of a deed attesting to the payment of \$12,000 for five-sixths of the grant by Major Benjamin Walker, Major Dunham Spalding, Lt. Colonel D. D. Mitchell, Captain Thomas B. Hudson, Charles Bent and Joab Houghton.<sup>32</sup> The owners of the grant at that time were Ceran St. Vrain, Cornelio Vigil, Donaciano Vigil, Charles Bent,

31. *Henry Clark, et al. vs The Maxwell Land Grant Company*. Case 768. Brief in the files of the Fourth Judicial District, District Court, Colfax County, Raton, N. M.

32. The National Archives, Records of the Department of the Interior, General Land Office, New Mexico Private Land Claims, Docket #17. (Photostat in the possession of the author.) See also, H. O. Brayer—*William Blackmore*, op. cit., I, 129, fn. 11.

Manuel Armijo and Eugene Leitensdorfer, but not all of them signed the deed. Manuel Armijo did not, possibly accounting for the sale of only five-sixths of the grant. And, while the name of Leitensdorfer was referred to in the body of the deed, he did not sign it. Ceran St. Vrain, Cornelio Vigil and Donaciano Vigil apparently did sign the deed, and Charles Bent's name is included over the signature of the administrator of his estate, for Bent was recorded as deceased.

This reference to Charles Bent provides a key to the true character of the document, for Bent was murdered during the Taos Revolt of January 17, 1847, more than a month after the deed reputedly was drawn up. The deed was drawn up some time after January 17, 1847, and dated back to December 12, 1846. Moreover, Cornelio Vigil also was killed during the Revolt, yet his name is subscribed to the deed as though he signed it himself. Such a crudely compiled spurious grant document was later recognized as such, but it was allowed to remain with the records of the grants as a legal conveyance of the interests of Cornelio Vigil, Ceran St. Vrain, and Donaciano Vigil!<sup>33</sup>

The manufacture of fraudulent private land claim documents was not confined alone to the period associated with the Mexican War, but continued well down toward the close of the 19th century. In the Ralph Twitchell Collection of the Historical Society of New Mexico there are blank samples of officially stamped Mexican paper that Mr. Twitchell obtained from a New Mexican resident who, according to a notation by Mr. Twitchell, was noted as an "expert in penmanship" during the first decade of American occupation when the fabrication of grant documents was a common industry.<sup>34</sup> Even after the Private Lands Claim Court had been established in 1891, skilled penmanship continued to be manifest, for William Keleher testifies that: "Forgery and the fabrication of documents proved a fine art in connection with claims before the Court of Private Land Claims."<sup>35</sup>

33. Brayer, loc. cit.

34. R. E. Twitchell Collection, Historical Society of New Mexico, Santa Fe, N. M. Document #154.

35. W. A. Keleher—"Law of the New Mexican Land Grant," *NEW MEXICO HISTORICAL REVIEW*, Vol. IV, #4, Oct. 1929, p. 356.

The government in New Mexico as well as in Washington early recognized the attempts at frauds, but took only half-hearted and insufficient measures to prevent their successful consummation. For instance, in 1851, after Congressional authorization of a Territorial Government for New Mexico, the Kearny Code provision for recording claimant submitted titles was officially rescinded by the Territorial Legislature.<sup>36</sup> And in 1853, when the Gadsden Purchase Treaty brought additional Mexican land under United States ownership, a section of the Treaty provided that land titles in the area so acquired would be considered valid only if confirming evidence were found in Mexican Archives.<sup>37</sup> Of course, this provision did not affect the land obtained under the Treaty of Guadalupe Hidalgo ending the Mexican War.

In 1854, Congress established a Surveyor General's Office for New Mexico, with an accompanying requirement that the Surveyor General investigate the validity of all New Mexican land grants and report them to Congress for consideration.<sup>38</sup> Under this system, the Surveyor General was able to secure, with the assistance of Donaciano Vigil, land grant titles and related documents from the New Mexican Archives. These archival documents were placed in the Surveyor General's office for reference in land grant cases. And yet the initiative for securing confirmation of titles rested with the grant claimants, by the requirement that they submit their title papers to the Surveyor General. Again, as in the case of the Kearny Code, no time limit was set within which claimants must attempt to prove up. Meanwhile, however, the right of a claimant to the use of his land was specifically protected under provisions of the Treaty of Guadalupe Hidalgo.

The inappropriateness of requiring the New Mexican Surveyor General to combine surveying duties with land grant duties became all too obvious after 1854. According to their own testimony, these officials lacked the time, skill and

36. Twitchell—*Military Occupation*, op. cit., p. 198.

37. U. S. Statutes at Large, 10 Stat. 1035; and *Congressional Globe*, 33 Cong. 1 Sess. Vol. 28, Part 1 and Part 2 (especially pp. 984-5). The Senate met in Executive Session, and so there is no report of its debate.

38. Twitchell—*Leading Facts*, op. cit., II, 457ff; and 34 Cong. 1 Sess., H. Ex. Doc. #1, Part I, pp. 158 and 301-3.

authority to conduct more than a superficial investigation, before forwarding the claims, with their recommendations, to the government at Washington.<sup>39</sup>

Furthermore, Congress and its committees lacked competence in the matter. The first set of New Mexican claims to reach Washington brought forth the admission of a Congressional Committee on Private Land Claims in 1860 that it was not possible for the Committee to conduct a satisfactory examination of the grant papers so as to do justice to the government and protect legitimate claimants' interests.<sup>40</sup> For this and other reasons, Congress later ceased to review the accumulating numbers of private land claims. Repeated efforts to provide a better system,<sup>41</sup> such as the establishment of a Private Land Claims Court similar to that for California, proved fruitless until 1891. Then, partly because of the bitter disputes and even bloodshed over the validity of the Maxwell Grant title to 1,700,000 acres, partly because of the long period of shameless Congressional neglect of the Territory's needs, and partly through the organized efforts sparked by the Maxwell Land Grant Company's able attorney, Frank Springer, Congress created a New Mexican Private Land Claims Court.<sup>42</sup> It took this Court thirteen years of laborious, conscientious work to complete the task of confirming valid titles, reducing bloated claims and rejecting invalid ones.

Prior to this time, that is from the close of the Civil War to 1891, the leaders of the dominant political party in New Mexico, comprising what was known as the Santa Fe Ring, had supported claimants' titles to and use of land grants, frequently to the detriment of the Territory's sound development.<sup>43</sup> In passing, it may be noted that George W. Julian, appointed Surveyor General of New Mexico by President Grover Cleveland in an attempt to straighten out public land

39. 41 Cong. 2 Sess., H. Ex. Doc. #1. Report of the General Land Office, 1870, pp. 109-10; and 44 Cong. 1 Sess., H. Ex. Doc. #1. Report of the General Land Office, 1875, pp. 44-5.

40. 36 Cong. 1 Sess., H. Rep. #321.

41. cf. 47 Cong. 1 Sess., H. Rep. #173.

42. Twitchell—*Leading Facts*, op. cit., II, 463ff; and Report of the Attorney General, 1904, passim but especially pp. 97-8.

43. R. E. Twitchell—*Old Santa Fe*. (1925) p. 394; and W. A. Keleher—*The Fabulous Frontier: Twelve New Mexico Items*. (1945) p. 104.

matters as much as possible, blamed the Santa Fe Ring for the sorry state of private land claim affairs.<sup>44</sup> However, Mr. Julian erred in not taking into account the open door feature of the Kearny Code and the use earlier New Mexican residents made of it.

Turning now to an analysis of the Beaubien and Miranda, or Maxwell, land grant, it will be possible to illustrate more completely than was done above how the official machinery for handling private land claims facilitated land grant title confusion and manipulation. Perhaps the best way to begin the analysis is to summarize an account of a hitherto neglected feature of the Maxwell grant story. Behind the brief recital of the origin of the Beaubien and Miranda grant given above, lies the fact that in 1841 Charles Beaubien and Guadalupe Miranda each obtained a grant within the area later covered by their joint grant.<sup>45</sup> The grant to each man was approved by the Provincial Deputation, not Governor Armijo. Then later, it appears, Governor Armijo did make to the two men the joint grant as it is known today. Nevertheless, the title papers of the joint grant were so drawn up as to seem to involve some of the same action that occurred in connection with the two former grants. Thus, anachronisms, title paper inconsistencies with other contemporary documents, and confusion for contemporary as well as subsequent individuals were perhaps inevitable results. From the same fact of replacement stem many of the subsequent legal and armed conflicts associated with the Beaubien and Miranda grant.

In passing, it should be observed that although the present title papers superseded former grant papers under peculiar circumstances, no one can challenge the legality of the existing title. This title rests upon documents that were the basis for Congressional confirmation of the grant in 1860,<sup>46</sup> and that confirmation, with the patent issued pursuant to it, was upheld by the United States Supreme Court decisions of 1887 and 1888.<sup>47</sup> Nevertheless, unquestioned

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44. G. Myers—*History of Great American Fortunes*. (1936) pp. 657-8.

45. Report of the General Land Office, 1855-56. pp. 227-246 and 247-253.

46. U. S. Statutes at Large, 12 Stat. 71.

47. U. S. vs The Maxwell Land Grant and Railway Company, 121 U. S. 325 and 122 U. S. 365.

security of title is no bar to proof of elaborate and skillful manipulation of title papers. And if a material basis is needed to help explain the reasons for such manipulation, it may be found in the 1909 estimate of the value of the grant as amounting to \$50,000,000.<sup>48</sup>

The question might well be raised as to what is the proof of shuffling Beaubien and Miranda grant papers, and of including certain facts and dates connected with the two separate grants in the present title papers? First, there is the record found in the Surveyor General's report for 1855-56.<sup>49</sup> He there lists documents under the heading "Abstract to grants of land," that were obtained from the New Mexican Archives. For grant number 22 he records Charles Beaubien, et. al., under the name of the grantee; 1841 as the date of the grant (month and day not given); the Provincial Deputation of New Mexico as the grantor; and Taos County as the location of the grant. For grant number 116, the Surveyor General listed a grant to Guadalupe Miranda, et. al.; 1841 as the date of the grant (month and day not given); the Provincial Deputation of New Mexico as the grantor; and Taos County as the location of the grant. There is no doubt but that these comprise two separate grants, although a curious feature of the Surveyor General's handling of the documents is that he assigns both of them his own index or archival number of 150. This assigned number will be discussed later as no longer attached to grant title papers. Furthermore, additional evidence will be cited below in support of the statement that there were originally two separate grants.

A second step in proof of the juggling of the Beaubien and Miranda grant papers results from comparing three different sets of its title papers. These sets are: (1) the title papers submitted by the claimants to the Surveyor General of New Mexico in 1857;<sup>50</sup> (2) the title papers as recorded in 1847 in the Register of Land Titles maintained under the

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48. Twitchell—*Military Occupation*, op. cit., p. 268.

49. See Note 40 above; and J. J. Webb—*Adventures in the Santa Fe Trade*, (R. P. Bieber, ed., 1931) p. 68. Webb states that there were three original proprietors of the grant, viz: Beaubien, Miranda and Abreu.

50. Original title papers of the Beaubien and Miranda Grant, Office of the Bureau of Land Management, Santa Fe, N. M.

Kearny Code;<sup>51</sup> and (3) a printed copy of the title papers, with an accompanying translation, that was the basis for Congressional confirmation of the grant in 1860.<sup>52</sup> Though supposedly these all should be alike, each of the sets contains revealing differences from the others.

Among the differences that stand out, there is an original letter found among the papers submitted to the Surveyor General in 1857, which is not found duplicated in the printed copy sent to Congress. This letter was written by Manuel Armijo from Albuquerque to Charles Beaubien under the date of May 23, 1846. It gave the latter power of attorney to dispose of Armijo's share in the Beaubien and Miranda grant. Whether Beaubien exercised this power is not clear, but it is clear, in the light of the letter, and the later efforts of the Armijo family lawyers, that Manuel Armijo claimed a share in the grant. Incidentally, the Armijo letter is mounted upon a blank sheet of official Mexican paper bearing the date 1840-41.

Furthermore, the title papers copied in 1847 into what became Book A of the Register of Land Titles under the Kearny Code contain a record of a donation of one-fourth of the grant to Charles Bent, dated March 2, 1843, and this item does not appear in the other sets. This record serves as evidence of Bent's ownership of a share of the grant, despite Beaubien's seeming denial of such ownership in 1844. This denial is contained in a document that forms part of the title papers, and will be noted more fully below.

From such discrepancies, then, as well as others, it appears that the title to the Beaubien and Miranda grant was manipulated after the American occupation of New Mexico. Moreover, since the evidence of Armijo's part ownership and Bent's part ownership, as well as the record of the 1846 sale to the officers in Kearny's Army, was not forwarded to Congress by the Surveyor General's office, it is evident that Congress confirmed the grant without a full knowledge of its disposition to 1860.

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<sup>1</sup> 51. Book A, Register of Land Titles, 1847. Maintained under the Kearny Code. Bureau of Land Management, Santa Fe, N. M. pp. 19-23.

52. 36 Cong. 1 Sess., H. Rep. #321.

The final step in the analysis of the peculiarities of the Beaubien and Miranda grant title papers will entail a checking of the papers against other contemporary records. First of all the title papers submitted by the claimants to the Surveyor General in 1857 purport to show that Beaubien and Miranda petitioned for a grant on January 8, 1841. A minor variation from form results from the fact that the signature for Beaubien at the end of the petition is not in his own handwriting.

Though obtaining Armijo's approval of the grant on January 11, 1841, it was not until 1843 that Beaubien and Miranda applied to Cornelio Vigil, the Taos Alcalde, for the necessary investiture of title and laying out of the grant boundaries. Then Vigil testified that between the dates February 13 and February 22, 1843, in company with a party of witnesses, he had taken Beaubien and Miranda to the grant region, set up seven stones as boundary markers, and given the claimants evidence of possession.

Adopting the droll observation of Colorado Historian Le Roy Hafén for the Sangre de Cristo grant,<sup>53</sup> a skeptical observer might doubt that the Beaubien and Miranda survey party actually erected several of the stone markers on the tops of high mountains in the dead of winter. But it is not necessary to rely on conjecture in questioning the hardihood of these New Mexican residents, because a contemporary letter indicates that the expedition did not take place as reported. The letter is one written by Charles Bent in Taos and dated February 5, 1843, while the survey supposedly was in progress.<sup>54</sup> It was addressed to Manuel Alvarez, acting American Consul, in Santa Fe, and it contained a postscript written in French by Charles Beaubien. The latter requested Alvarez to tell Guadalupe Miranda in Santa Fe that he (Beaubien) could not come to Santa Fe during the following week, but that he would come as soon thereafter as he could.

This letter, unconnected as it was with any phase of land grant activities, could be taken as more reliable in its facts, than the Beaubien and Miranda title papers with their many

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53. Hafén—"Mexican Land Grants," op. cit., p. 84, fn. 8.

54. Charles Bent to Manuel Alvarez, Feb. 15, 1843. Letter #62, B. M. Read Collection of Bent Letters. Historical Society of New Mexico, Santa Fe, N. M.

discrepancies. Consequently, it would seem that neither Beaubien (who was in Taos) nor Miranda (who seemingly was in Santa Fe) was sojourning in the Colorado River area during the time that the title papers show that Alcalde Vigil was marking the grant boundaries and giving the claimants personally their evidence of title.

The title papers also show that during the latter part of 1843, the leading clerical figure of Taos, Padre Antonio Jose Martinez, and the chiefs of the Taos Pueblo, protested to the Mexican and the New Mexican governments the granting of illegally large tracts of land such as that to Beaubien and Miranda.<sup>55</sup> And they also charged that these latter claimants had illegally taken in Charles Bent as an associate in the grant. In response, the government suspended use of the grant on February 27, 1844. To meet this challenge, on April 13, 1844, Beaubien drew up a lengthy and enigmatic petition in his own name and that of his associate Miranda and sent it to the government. The petition protested the suspension of the grant, and maintained that the Padre and the Chiefs were mistaken both as to the size of the grant and the report that Bent was supposed to have any claim to it. In support of his contention that the grant was not illegally large, Beaubien's petition asserted that it contained only 17 or 18 square leagues, as shown by the title papers submitted with his petition. The grant title papers further indicate that the Departmental Assembly discussed Beaubien's petition, rejected the Martinez protest, and recommended that the Governor rescind the order suspending use of the grant. Ostensibly, an acting governor accepted the recommendation and removed the decree of suspension, April 18, 1844, so that shortly Beaubien and Miranda were reinstated to full rights of possession.

However, several questions have to be raised about the character of Beaubien's petition and the official action it supposedly induced. For instance, how could it be maintained truthfully that Bent had no connection with the grant, when the title papers copied into the register of titles under the Kearny Code show that Bent was given a one-fourth interest

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55. See also, W. A. Keleher—*Turmoil in New Mexico, 1846-1868*. (1952) pp. 67ff; and P. Sanchez—*Memoirs of Father Antonio Jose Martinez*. ms. (1903) Translated by M. Campos (1942). Historical Society of New Mexico, Santa Fe, N. M.

in the grant on March 2, 1843? And how could the grant have contained only about 18 square leagues (roughly 80,000 acres) if its boundaries were the basis for the United States patent covering 1,700,000 acres? And finally, how can this petition be reconciled with another Beaubien petition that now resides in the archives of the former Surveyor General's office?

This second petition, not a part of the grant title papers, is dated June 8, 1844, nearly two months after the purported petition in the title papers.<sup>56</sup> It is written in Beaubien's handwriting, in his own behalf and in "the name of the settlers of the Ponil"—there is no mention of Miranda. It refers to the suspension of the grant on May 25, 1844 (not February 27, as in the title papers), and requests that the settlers be permitted to reap the harvest of crops they have sown on their land. According to Ralph Twitchell, no action was taken on this petition.<sup>57</sup> Whether it was or was not is immaterial to the present analysis, but it is material to observe that this petition appears to be bona fide, that it indicates a grant in Beaubien's name only at that date, and that it casts serious doubts on the validity not only of Beaubien's petition included in the grant title papers, but more significantly on the purported action of the Departmental Assembly in response to that petition.

In order to discuss this Assembly action more fully, it is necessary to recall the reputed character of the documents numbered 150 in the Surveyor General's archives. This number had been assigned to two different sets of documents, namely the grants made separately by the Provincial Deputation to Beaubien and Miranda and their respective followers. There seems to be no reason for questioning the accuracy of the Surveyor General's classification of these documents as grants. He had taken pains to classify the many types of documents he had received from the New Mexican Archives, such as wills, petitions, transfers of lands, etc., and a random sampling by the present author of the classification of many of the documents as they exist today supports the accuracy

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56. Public Survey Archive #153. Bureau of Land Management, Santa Fe, N. M.

57. R. E. Twitchell—*The Spanish Archives of New Mexico*, 2 vols. (1914) I,

of the Surveyor General's listings, with the exception of documents numbered 150.

At present, these documents consist of one sheet of folded paper (four pages), apparently extracted from the Departmental Assembly's legislative journal.<sup>58</sup> The main portions of this extract record action at two different sessions, but they certainly are not land grant title papers. However, the report of one day's session shows that the Assembly had considered the Padre Martinez's protest concerning the Beaubien and Miranda grant, and also Beaubien's petition of April 13, 1844. It also shows that the Assembly decided to accept Beaubien's assertions, and to recommend that the Governor remove the act of suspension from the grant. This reported record of action is reproduced in all essential parts in the grant title papers as noted above, under the date of April 18, 1844, and apparently in the same handwriting as that in the Assembly minutes.

It would seem, nevertheless, that Beaubien's petition of June 8, 1844, makes impossible any such Assembly action on the grant on April 18. Furthermore, a further question on the validity of the Assembly minutes, based on internal evidence, arises from the fact that at the top of the first sheet of the minutes, are the signatures of the Assembly members and officers, and that one of these shows a different President from that listed below the day's action on the Beaubien and Miranda grant. In the first instance, J. Manuel Gallegos signs as President of the Assembly, and in the second, Felipe Sena so signs. There was no day-to-day change of Assembly presidents, in New Mexico, and when one officer had to be absent from meetings another man took his place and signed in an "acting" capacity. It also might be noted that on the second set of documents comprising archive number 150, J. Manuel Gallegos twice signs as president. Consequently, only for the minutes recording action on the Beaubien and Miranda grant does Felipe Sena sign as president.

Another official document appears to contest the genuineness of Beaubien's petition of April 13, 1844, and the ensuing official removal of suspensory decree. A Mexican general by

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58. Public Survey Archive #150. Bureau of Land Management, Santa Fe, N. M. There is no date to be found in the document.

the name of Francisco Garcia Conde made an inspection tour of the northeast frontier of New Mexico late in the summer of 1845. After his return to Santa Fe, General Conde wrote the Governor a brief report on his findings under the date of September 20, 1845.<sup>59</sup> Among other items he asserted: "And beyond Taos in the settlement known as the Ponil, there is also a farm belonging to Don Carlos Hipolito Beaubien, where he has several foreigners employed and has as an associate Don Carlos Bent . . . I am assured that Senor Martinez ordered that this farm be destroyed while he occupied that office [the Governor's], but afterwards his decision was forgotten and it [the farm] is growing. . . ."

While this report does not prove directly that the reputed decree of suspension was never revoked, it does support the accuracy of Beaubien's petition of June 8, 1844, it attests to Beaubien's ownership of a farm, and it again demonstrates that Charles Bent was associated with Beaubien in the development of the farm.

There are other discrepancies and questions to be noted in connection with the Beaubien and Miranda grant title papers, but enough have been cited to show that they were not the papers originally issued to the two claimants and to indicate that though they were the basis for what has become a valid title, they were not drawn up in accordance with the dates they contain. The official acceptance of such papers was facilitated by the land registration provisions of the Kearny Code and the later system established in the office of the Surveyor General of New Mexico. The details of the subsequent official handling of the grant, through the time of the Supreme Court's decisions in 1887 and 1888, have been given elsewhere and need not be repeated here.

As a concluding thought, it may be remarked that if any purpose has been served by the foregoing discussion, it has been to show how and why many of the private land claims of New Mexico need restudying so that their stories can be properly fitted into both their own State's history and that of national land policies.

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59. Public Survey Archive #1128. Bureau of Land Management, Santa Fe, N. M.