

7-1-1974

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Recommended Citation

Westphall, Victor. "Fraud and Implications of Fraud in the Land Grants of New Mexico." *New Mexico Historical Review* 49, 3 (2021). <https://digitalrepository.unm.edu/nmhr/vol49/iss3/2>

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*FRAUD AND IMPLICATIONS OF FRAUD
IN THE LAND GRANTS OF NEW MEXICO*

VICTOR WESTPHALL*

IN THE HISTORY of New Mexico there has been more land claimed, in one way or another, than there is land in the state. On its face, this statement surely warrants a careful examination and analysis of the extent and validity of the area claimed, a substantial amount of which was in the large grants of land made by the governments of Spain and Mexico.

George W. Julian came to think exactly this soon after he became surveyor general of New Mexico. "Julian, who had cast his first presidential ballot for General Harrison in 1840, was seventy years old when, on July 22, 1885, he assumed the duties of his new office."¹

His first attention was paid to the despoilers of the public domain. Evidence was everywhere at hand that this land was being harvested by fraud at an unprecedented rate. "No early problem of his administration worried [President] Cleveland so much as this wholesale spoliation of the West."² This worry was honestly shared by Julian, who acted vigorously to save the public lands so they could be disposed of in the manner prescribed by law. But he also became interested in possible chicanery in land grant dealings when he became aware of this problem soon after he entered upon his official work. The result was an order from the General Land Office instructing him to re-examine the cases acted upon by his predecessors.

* The author would like to thank Michael J. Rock for his interest and suggestions.

In 1887 Julian presented a summary of the results of these re-examinations in a hypercritical article in the *North American Review* entitled "Land Stealing in New Mexico." He declared that

forged and fraudulent grants, covering very large tracts, were declared valid, and that the Surveyor-General's office very often became a mere bureau in the service of grant claimants, and not the agent and representative of the Government. Instead of construing these grants strictly against the grantee, and devolving upon him the burden of establishing his claim by affirmative proofs, the Surveyor General acted upon the principle that Spanish and Mexican grants were to be presumed, and all doubts solved in the interest of the claimant.³

Julian overlooked the important point that there was at least some reason for the first surveyors general to act upon the principle that these grants were to be presumed. The United States had just finished the Mexican War in which its motives were not entirely pure; there was reason for contemporaries to be conscience stricken. Then too, native American generosity inclined both public and officials to as liberal a view as the law allowed. The instructions to the first surveyor general, William Pelham, made it abundantly clear that property rights were to be fully protected. Almost all of the 7,401,637 acres in the grants confirmed by Congress were so confirmed upon the recommendation of Pelham, who was in office from 1854 to 1860, and his chief clerk, Alexander P. Wilbar who succeeded Pelham and served for little more than a year.

Pelham's duties in connection with Spanish and Mexican land grants were of a minor but important character. Tasks dealing with the public domain were his major work, and were outlined in seven sections of his instructions. The last section authorized him to "ascertain the origin, nature, character and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico"⁴ originating before the Treaty of Guadalupe Hidalgo of 1848,

and to report his opinion thereon for final action by the United States Congress. Ironically, this supposedly minor duty could well have consumed all of his time and energy. Records were often fragmentary; furthermore, lands were abundant and cheap so Spanish and Mexican governments had granted them in lavish quantities.

It can be conjectured that had the claims approved by Pelham and Wilbar been submitted at a later date to the Court of Private Land Claims, 1891-1904, for final adjudication, rather than to Congress, the area confirmed might well have been greatly diminished; nevertheless, it must be remembered that substantially half a century had elapsed, with consequent changes in traditions and attitudes. Moreover, the Court's findings were based on judicial practices while Congress was largely motivated by political considerations, not the least of which was to get out of what was a badly conceived plan from the beginning with at least some kind of action.

The record of Pelham and Wilbar has stood the test of time quite well; especially, they carried out their companion duties concerning the public domain with far less cause for censure than any of their successors. Julian, however, did not spare them even though they were fellow Democrats. He laid about him almost universally with a heavy cudgel of indignant reproof. All of the intervening surveyors general were Republicans; none were spared.

Julian selected for special consideration thirteen claims, totaling 3,073,812 acres, approved by a surveyor general but not confirmed by Congress.⁵ Of these, one was never submitted to the Court of Private Land Claims and five were entirely rejected. The seven partially approved claims totaled only 117,640 acres. This was less than three per cent and certainly indicates that Julian was involved in something more than a witch hunt. He also singled out three claims, confirmed by Congress but not yet patented, totaling 664,449 acres. One of these was never submitted to the Court, and one was approved for 1,085 acres. The third, the Las Vegas Grant, was approved by a special ruling of the General Land Office and was patented in 1903 for 431,653 acres.

Looking at the matter from an even broader view than Julian's findings, that is, comparing all of the grants approved by various surveyors general with their eventual disposition by the Court of Private Land Claims, calls for some startling observations. Six surveyors general preceding Julian acted upon 136 claims, of which 24 were patented by Congress, and only five rejected by a surveyor general. Three of the five were later carried to the Court, two of which were finally rejected and one approved. There were 7,313,450 acres in the 108 approved but unpatented claims; however, only 1,155,438 acres were approved by the Court. Of the total, 30 were never submitted to the Court, 35 were entirely rejected, 40 were partially approved, and seven had their acreages increased by the Court.⁶

It is apparent that Julian's observations concerning the enlargement of existing grants were valid, even considering the different attitudes that might have governed the Court's rulings, had it been sitting in judgment at an earlier date. Significantly, though, in his introductory remarks Julian refers to forged and fraudulent grants,⁷ yet when he comes to cases he cites almost entirely instances of grants with enlarged boundaries. The Court found an abundance of enlarged grant boundaries, but very little actual forgery of grant titles. We can only surmise that he saw about him a great deal of obvious manipulation of the laws for the disposal of the public domain and concluded that comparable deviousness must surely also have been the case in connection with land grants. Nevertheless, his larger consideration appears to have been the public domain in which there was demonstrably fraud of many kinds and degrees. Apparently he was convinced that, since this was true, there must have been a close parallel in land grant matters, especially since the same persons were often involved in both instances. He overlooked the complications in land grant speculation imposed by grantees and their heirs holding title to individual land grants as tenants in common, a practice which made it impossible to give a marketable title without first acquiring title to the entire grant. It was much easier to claim an excessive amount of land in existing grants than to manufacture a grant out of whole

cloth, and land grant speculators almost exclusively followed the path of least resistance.⁸

Julian's leading contemporary detractor was Stephen W. Dorsey who wrote a rejoinder to Julian's charges, which also appeared in the *North American Review* in 1887. Their dispute was essentially over possible fraud in land dealings, both land grants and the public domain. Dorsey's rejoinder was slick and persuasive; he apparently proceeded on the premise that a good defense is a strong attack. Dorsey harked back to earlier years in assaulting Julian's personal integrity, but this had no real relevancy to the verbal controversy. Despite these accusations, Julian must be accorded a good grade for honest effort in New Mexico. "He was a politician and a *good* Government man, and tried to comply with the details of the law as he saw it. Above all, he could not be *bought* at any price. It was undoubtedly this unimpeachable honesty that endeared him so little to his contemporaries in New Mexico."⁹ More to the point was Dorsey's statement that

mainly through Mr. Julian's exertions, nearly four hundred citizens of New Mexico have been indicted on charges similar to those made in the July number of the REVIEW. Yet up to this time, every man tried has been acquitted. There is not a grain or a shadow of truth that there have been or are now frauds committed to any extent in New Mexico under the homestead and pre-emption laws.¹⁰

Dorsey was demonstrably in error; his article appeared in 1887 and, through 1891, there were 641 criminal cases involving land fraud tried in the district courts of New Mexico. There were only fifteen cases with a jury verdict of guilty, but this does not tell the entire story.

In 82 cases the defendant was not found by a United States Marshal, and these marshals repeatedly wrote on subpoenas that after a diligent search they were unable to find the defendants and did not believe that person existed. This was probably true, because one grant jury foreman pointed out that many entries were made with fictitious names. Some of these defendants may have skipped the country, but in either instance they were presumably guilty. Also,

in 209 dismissed cases, all or part of the records were missing from the transcript. Many dismissed cases were not prosecuted by the U.S. Attorney because records were lost or stolen from the files. At that time this was a serious difficulty, because all affidavits, etc., were in longhand, and only single copies existed. Thus, if they were missing, it was difficult to duplicate them. Without the missing transcripts, it is impossible to say how many of these cases were not prosecuted because the records had already been stolen at the time of the prosecution. The fact that the records were lost or stolen is a strong presumption of guilt in all these cases. Then too, in 28 cases the verdict is in neither the docket nor the transcript, and here also there is a possibility of guilt.¹¹

It should be remembered that these cases were for violation of laws governing disposal of the public domain. As Dorsey well knew, in fact tacitly admitted,¹² there were no cases tried involving land grant dealings. There is a very persuasive reason why no fraud cases involving grants were brought to the attention of the courts. As the Court of Private Land Claims later declared, fraud in land grants was limited primarily to enlarging grant boundaries. Given the passage of time and the ambiguity of grant boundaries, it would surely have been fruitless to prosecute for this cause; furthermore, fraud connected with the public domain did not necessarily imply comparable malfeasance related to grant titles. The fact is that the public domain involved a neat parcel easily acquired, which often controlled water. This was the valuable land and much sought after. On the other hand land grants were held almost entirely by tenants in common, and it was extremely difficult and time consuming to acquire all interests; consequently, dealing in grants was largely speculative against the day when all interests might be acquired. Smaller parcels of public domain could readily be used as the nucleus controlling water for a cattle ranching enterprise.

Dorsey was well acquainted with this procedure. He was a member of half a dozen cattle corporations in Colfax County, lands of which were carefully selected with the view of encompassing water which would control land for miles around. He claimed the Uña de Gato

Grant of about 600,000 acres in Colfax County; and when its forgery was demonstrated in 1879, he thought it unsafe to rely on the spurious title and sought instead to secure the land by means of homesteading and pre-emptions. He was unable to do this legally, since the land was claimed as a grant and was, therefore, reserved from settlement. Nevertheless, the Commissioner of the General Land Office ordered the land surveyed and opened to settlers. This was a convenience to Dorsey, who promptly arranged for conveyance of land titles to his own ownership in wholesale lots by fictitious persons or those under his influence or in his employ.¹³

In one instance he owned all the springs on 160 acres and this controlled "the whole 10,000 acres back of it."¹⁴ "One contemporary source says that in 1881 Dorsey had the largest individual range in the Territory—about forty miles square just east of the Maxwell Grant."¹⁵ This is hardly in keeping with his statement that he was among the smaller landowners in New Mexico. Also suspect is his assertion that he paid more money than the same number of acres would cost in Iowa.¹⁶

Dorsey attempted to conceal his true relations with the Uña de Gato Grant by maintaining that it was he who discovered its fraudulency and then applied to the Secretary of the Interior to have it thrown open for settlement.¹⁷ What Dorsey neglected to mention was that the Honorable Secretary was so touched by his misfortune that he violated the law in complying with Dorsey's request.¹⁸ The grant was approved by Surveyor General James K. Proudfit in 1874 less than two months after it was filed. Even though its forgery was demonstrated, it remained legally reserved from settlement unless acted upon by Congress. It was never submitted to the Court of Private Land Claims; this neglect finally extinguished the claim because that Court had legal authority for final settlement of all claims.¹⁹

To Dorsey's credit he did "demonstrate clear, sound, thinking when dealing with the future with reference to rainfall, irrigation works, the livestock industry, and the uses generally to which, in his opinion, public domain and large tracts of privately owned land in New Mexico could be put."²⁰

Whatever his own actions, Dorsey did present clear and concise suggestions as to a proper mode of adjudicating land grant claims in New Mexico. He suggested a tribunal, which was clearly a forerunner of the Court of Private Land Claims later created for that purpose.²¹ Julian, on the other hand, took the position that Congress should refer all cases to the Secretary of the Interior for final decision;²² nevertheless, his pugnacious rôle in bringing clearly into focus the need for these settlements was the opening wedge in the eventual creation of the Court.

As stated, Julian was a *good* Government man, so perhaps it was inevitable that his loyalty to his superior should dictate his advocacy of this method of settlement. One has the feeling that this plan might have worked had it been applied from the beginning, but that to saddle an already overburdened Washington department with this onerous responsibility, given the complications added by the passage of time, would have been unwise policy. Of more importance, a procedure was finally adopted and, ironically, each of these bitter disputants had a part in bringing it about.

Two happenings in 1890 helped bring the land court to reality the following year. The first was an address on January 6 at Santa Fe entitled "The Land Titles in New Mexico" by Frank W. Springer, retiring president of the New Mexico Bar Association. While rebuking Julian, he called urgently for final settlement of grant boundaries and titles, the very thing that Julian had most wanted. Significantly, the divergent pressures of Julian, Dorsey, and Springer were taking effect, and the long delay was drawing inexorably to a close. Later in 1890 a delegation of New Mexicans to Washington urging statehood failed in its primary mission but was more successful in urging the creation of a land court. It was established the following year.

Julian had also named five patented grants as being largely excessive and singled out the Maxwell Grant for particular attention.²³ The most extensive analysis of the validity of this grant was made by Harold H. Dunham,²⁴ who precedes his analysis of the Maxwell Grant title with the general conclusion that fraudulent

methods were used extensively to manufacture grant titles in New Mexico. This proposition does not appear to stand up under careful scrutiny. Dunham thought it astonishing that the Kearny Code provided for establishment of an office of Register of Lands, which office was filled by Secretary of the Territory Donaciano Vigil. It became Vigil's duty to record all papers and documents then in the archives issued by the Spanish and Mexican governments. Dunham considers it significant that, in addition, every person in the Territory claiming a land grant was permitted to have his muniments of title recorded. He believes that this permissive feature left the door open to fraud.²⁵ His premise, while unstated, appears to be that valid claims would already have been recorded under the governments of Spain or Mexico.

To take for granted that an alien government taking over a new land would have proceeded under such an assumption appears to this writer to be a very dubious idea. It would have been more reasonable to invite submission of all possible claims and then to judge each on its merits, which is what was subsequently done. The instructions to William Pelham, the first surveyor general, required him to publicly proclaim that written notice of the details of all claims must be submitted to the surveyor general's office. Pelham was directed to safeguard all files and to permit access only to landowners who might find it necessary to refer to their title records. So, in effect, there was an entirely clean slate under American government regardless of what might have appeared in the old records. Nevertheless, the old records were carefully protected and available for comparison.

In pursuance of his imputations alleging fraud in general, Dunham cites a letter of December 12, 1848, from an American Army officer in Santa Fe reporting unspecified fabrication of grant titles.²⁶ Pelham's instructions referred to this same letter and he was put on notice that: "It will be your duty to subject all papers under suspicion of fraud to the severest scrutiny and test, in order to settle the question of their genuineness."²⁷ Dunham maintains that this letter from Santa Fe was officially corroborated by

Indian Agent James S. Calhoun. Calhoun made unsupported references to "spurious claims" and "fictitious grants"²⁸ which were hardly an official corroboration of anything.

Dunham further states that fraud became evident in eleven Pueblo claims, based on title papers issued in 1689, when it was shown that the signature of the Secretary of the Government was obviously spurious because no such individual had then served as secretary.²⁹ The source of this information is Herbert O. Brayer, who points out that this was of little fundamental consequence because the removal of the spurious documents, as the legal basis for the Pueblo grants, established earlier ordinances as the fundamental basis for Pueblo land grants in New Mexico. Furthermore, the essential purpose of the spurious documents had been to make a specific grant to each Pueblo in accordance with a general formula to be applied to all Pueblos.³⁰

Such generalizations scarcely point to widespread fraudulent manufacturing of grant titles. Equally misleading is the imputed significance of blank samples of official stamped Mexican paper which Ralph E. 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."³¹ This allegation is supported by no definite information, nor is the charge that "skilled penmanship continued to be a fine art in the forgery and fabrication of documents in claims before the Court of Private Land Claims."³² William A. Keleher is the source here and he offers no specific basis for this conclusion.³³

When Dunham finally comes to grips with the Maxwell Grant, he states the most important information in a single sentence:

In passing it should be observed that although present title papers superseded the former grant papers under peculiar circumstances, no one can challenge the legality of existing titles.³⁴

In fairness, though, the thrust of his contentions should be set forth. He sums up:

[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 full knowledge of its disposition to 1860.³⁵

Dunham's final conclusion is that the "official acceptance of such papers was facilitated by the land registration provisions of the Kearny Code and the later system established by the office of Surveyor General of New Mexico."³⁶ The complicated maneuvering over interests in ownership prior to submission of the grant to Congress for confirmation does not alter the fact that a legal grant had been made. More germane is the size of the grant, and this will be duly considered.

Dunham deduces with more validity that during Manuel Armijo's governorship of New Mexico under Mexico there was an attempt, possibly motivated by some degree of patriotism, to create a buffer against westward-moving Americans by making large land grants in the path of the movement.³⁷ This idea was earlier promulgated by Ralph E. Twitchell.³⁸ Morris F. Taylor summarizes with added twists of his own:

There was an easy chance taken that if American sovereignty should be extended south of the Arkansas, existing patterns of land ownership would not be seriously disturbed, and a favored few would have control of tracts far larger than those permissible under American law. At any rate, the first American system of law imposed on New Mexico, *The Laws of the Territory of New Mexico* (commonly known as the Kearny Code) promulgated on October 7, 1846, provided for the preservation of such land patterns, and the Treaty of Guadalupe Hidalgo, 1848, did the same.³⁹

That such grants were made is undeniable. Heretofore overlooked, however, is the relative magnitude of the 8,062,757 acres in 41 claims granted by Armijo in ten years, by far the largest

percentage in his last two years. These figures are for New Mexico; there was additional land in Colorado. This is more than a third of the 22,063,211 acres of claims granted by all authorities of both Spain and Mexico in 160 years.⁴⁰

Questionable, though, was his authority to make these grants for an area of more than eleven square leagues, or about 48,000 acres, to each claimant as stipulated by the Mexican Colonization Law of August 18, 1824, and the regulation for acquisition of property by foreigners of March 12, 1828. If, indeed, it was calculated that existing patterns of land ownership would not be seriously disturbed under United States law should it come into force, the eleven square league provision might be thwarted. It worked out as a practical reality that this became the case in some instances, although a vast amount of subsequent litigation bears testimony that such a prediction at the time could hardly have been counted on as a certainty. But there is reason to believe Armijo might have thought he could possibly justify this excessive acreage even though New Mexico remained under Mexico.

Let us first understand exactly what grants this discussion encompasses. Despite the large amount of land granted by Armijo, only nine claims in New Mexico and Colorado for 3,047,243 acres were patented by the United States Government. But only four, the Maxwell (#15), Sangre de Cristo (#4), Las Animas (#17), and Rio Don Carlos (#48), were claimed for an amount exceeding the eleven square league provision. The only grant made prior to Armijo's governorship claimed for an amount in excess of that provision was the Tierra Amarilla (#3). Of the five, only the Maxwell, Sangre de Cristo, and Tierra Amarilla were patented for amounts in apparent violation of the eleven square league provision.⁴¹ Reading generally about New Mexico land grants, one gets the impression that they were far more numerous.

There has been no substantial reason advanced for belief that requests for the Sangre de Cristo and Tierra Amarilla grants were not substantially the amount that was approved by a surveyor general and later confirmed and patented by the United States Congress. There has been, however, considerable conjecture that

the Maxwell Grant was patented for more land than was requested. Names associated with the early history of the Maxwell Grant include Carlos Beaubien and Charles Bent. These were Mountain Men who knew the geography of northern New Mexico and southern Colorado better than most tourists do today with a road map. In those days, if one didn't watch where he was going he damn well got lost.

How much land was requested in the case of the Maxwell Grant? The boundaries of the grant, as described in the original petition, were as follows:

Commencing below the junction of the Rayado river with the Colorado, and in a direct line toward the east to the first hills, and from there running parallel with said river Colorado in a northerly direction to opposite the point of the Uña de Gato, following the same river along the same hills, to continue to the east of said Uña de Gato river to the summit of the table-land (mesa); from whence, turning northwest, to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running toward the east from those running toward the west, and from thence, following the line of said mountain in a southwardly direction until it intersects the first hill south of the Rayado river, and following the summit of said hill toward the place of beginning.⁴²

If one tried to follow this description from certain landmarks as they are known today one would, again, be lost. But consider this: The surveyor general maps down to 1876 show the Rayado to be the present Cimarron, while the Colorado is the present Canadian. Now go back, making these two substitutions, and the description follows closely the boundaries as they were patented.

What mesa is more prominent than that north and west of Raton? It has been surmised that the description must have referred to the mountains east of the Moreno Valley,⁴³ but these have no watercourses running toward the west. The description could only refer to the Continental Divide where the patented boundary was located. There might be some question as to how

far south of the Rayado (Cimarron) the line was meant to run; however, Agua Fria Peak is prominent enough to be noted on maps today and the patented boundary intersects that peak.

It is true that in 1844 Beaubien went on record as claiming only seventeen or eighteen square leagues. This disclaimer was in a petition to have the grant reinstated after it was suspended following a protest by Padre Antonio José Martínez as to its illegally large size. The grant was reinstated to all rights of possession with no clarification made as to size. It is probable that Beaubien's petition professing the smaller size was made with tongue in cheek only to gain reinstatement. Despite this contradiction, it doesn't strain credulity to believe that the grantees knew exactly what they were asking for, at least concerning the Maxwell, Tierra Amarilla, and Sangre de Cristo grants.

But the question remains: Why were these three grants approved by Congress for substantially the amount requested while the Las Animas and Rio Don Carlos were limited by the eleven square league provision? No better reason has yet been advanced than that by Morris F. Taylor. Their origins were so similar that it would seem some of the grantees and their successors had more influence in Washington than others. "And it should be noted that the Vigil and St. Vrain [Las Animas] and the Nolán No. 48 [Rio Don Carlos] were north of the Raton Mountains and east of the Sangre de Cristos, a region in which Spanish-Mexican culture had not taken deep root. Perhaps there was tacit agreement in Washington that those two grants might better be left mainly as public domain and subject to American laws."⁴⁴

An examination of the language used in surveyor general approval of these grants helps to explain the similarity of their origins and, as we shall see, points toward a reason why Governor Armijo may have thought their largeness could be sustained under Mexican law. The Rio Don Carlos was the last of the five to be approved, which was done in 1860 by Surveyor General Wilbar. In recommending the grant he raised no question of Mexican law, saying that the papers were in order, and then referred to

implied extraordinary powers of the governor in making grants of land. He specified

that the supreme authority of New Spain—afterward the Republic of Mexico—exercised from time immemorial certain prerogatives and powers which, although not positively sanctioned by congressional enactments, were universally conceded by the Spanish and Mexican governments; and there being no evidence that these prerogatives and powers were revoked or repealed by the supreme authorities, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obeyed these orders of the governors, which were continued for so long a period that they became the universal custom or unwritten law of the land wherein they did not conflict with any subsequent congressional enactment.⁴⁵

Wilbar's emphasis on the extraordinary power of the governor had precedents in Surveyor General Pelham's approval of the Sangre de Cristo Grant in 1856 and of the Las Animas Grant in 1857. On the same day he approved the Las Animas Grant—September 17—he also recommended the Maxwell Grant. In the Maxwell instance he made no mention of the prerogatives of supreme authority in remote provinces simply saying that Armijo had, " 'in conformity with the laws,' granted the land to the petitioners to make such use of it as they saw proper."⁴⁶ Pelham followed language of comparable tenor in his recommendation of the Tierra Amarilla Grant.

The provincial deputation was authorized by the laws of the Republic of Mexico to make donations of land to individuals; and this case being covered by the treaty of Guadalupe Hidalgo and the decision of the Supreme Court of the United States in the case of J. C. Fremont vs. the United States, the grant made to Manuel Martinez of which Francisco Martinez is the present claimant is deemed by this office to be a good and valid grant and the Congress of the United States is hereby respectfully recommended to con-

firm same and cause a patent to be issued therefor, and the land embraced within the boundaries set forth in said grant to be observed [surveyed?].⁴⁷

Significantly, in no instance did either Pelham or Wilbar raise any question about the eleven square league provision. It is possible that they were not aware of it, at least in any detail. While instructions to them were detailed in many regards, they apparently received none (other than what might be gleaned from legal references) about this limiting regulation. At that time it apparently was not in the forefront of the minds of land officials. Had it been as controversial then as it became at a later date, very likely the limiting feature would have been carefully delineated. But as late as 1873, Surveyor General James K. Proudfit wrote that "This office is not supplied with any laws or reports of law decisions, either Spanish, Mexican or American, except the United States Statutes at Large, nor is counsel provided for the United States . . . I have not been able to find, and have never seen the Act said to have been made by the Mexican Congress, August 18, 1824, or the regulations said to have been made under it."⁴⁸

So it cannot be assumed that either Pelham or Wilbar was part of any sinister plot to thwart adherence to the eleven square league provision. Some clue is provided in what they did say rather than what they did not say. The approval of the Rio Don Carlos, Sangre de Cristo, and Las Animas grants referred to the extraordinary powers of the governor, while the Maxwell and Tierra Amarilla approvals simply stated, in effect, that the laws had been complied with. The most reasonable assumption is that Pelham and Wilbar followed the thrust of their instructions, and of contemporary thinking, in their decisions for approval.

There is a reason why the eleven square league provision may have been so universally ignored at this time. In 1879 Emilio Pardo, a Mexican attorney, in a communication to William Pinkerton, prominent New Mexico land grant speculator, stated his opinion that the Colonization Law of 1824 had been abrogated by a Mexican law of April 4, 1837.⁴⁹

There can be little doubt that Governor Armijo was aware of this question when he made the grants, and it is also possible that Washington officials, no more than a decade later, were silent in the matter in their instructions to the surveyor general because of a prevailing feeling that the law had been abrogated. In the late 1890's the United States Supreme Court, while stating the difficulty of the problem, largely skirted the issue. The opinions more or less support Pardo's position even though they reject certain appeals from the Court of Private Land Claims on other legal grounds.⁵⁰ A portion of one opinion sheds much light on the difficulty of the problem and presents the situation as it may well have been viewed by Governor Armijo, hence his approval of several grants in excess of the eleven square league provision.

In viewing questions arising out of Mexican laws relating to land titles we recognize what an exceedingly difficult matter it is to determine with anything like certainty what laws were in force in Mexico at any particular time prior to the occupation of the country by Americans in 1846-1848. This difficulty exists because of the frequent political changes which took place in that country from the time the Spanish rule was first thrown down to the American occupation. Revolutions and counter-revolutions, empires and republics, followed each other with great rapidity and in bewildering confusion, and emperors, presidents, generals and dictators, each for a short period, played the foremost part in a country where revolution seems during that time to have been the natural order of things. Among the first acts of each government was generally one repealing and nullifying all those of its predecessors.⁵¹

There is precedent in Supreme Court opinions specifically concurring with Armijo's approvals. Justice McKenna said: "by a law passed April 4, 1837, all colonization laws were certainly modified and may be repealed."⁵² Justice Lamar considered this question at length:

Passing now to the merits of the controversy, the first question to be disposed of relates to the patented grant of the defendant. We

have already stated that, in the *Maxwell Land Grant Case*, it was held that the grant to Beaubien and Miranda, which is the foundation of the defendant's title, was a valid grant, and that the decision of the court in that case is not directly assailed. The effect of the decision in that case, however, is evidently misunderstood by the appellant; for one of the main points urged on this appeal is, that that grant was void *ab initio*, for the reason that, being an alleged *empresario* grant, authority for it must be found in the colonization laws of Mexico, and those laws had been repealed by a law of the Republic passed in 1837, four years prior to the date of that grant. It becomes necessary, therefore, to state with some degree of particularity what was actually decided in that case.

A reference to that decision will show that the validity of the grant was one of the principal questions there considered. As stated in the opinion, the first question presented for consideration was: 'Do the colonization laws of Mexico, in force at the time the grant was made to Beaubien and Miranda, namely, the decree of the Mexican Congress of August 18, 1824, and the general rules and regulations for the colonization of the territories of the Republic of Mexico of November 21, 1828, render this grant void, notwithstanding its confirmation by the Congress of the United States?' 121 U. S. 360. The court then discussed that question very fully, and came to the conclusion that the grant certainly partook very largely of the nature of an *empresario* grant, and was evidently so considered by Congress when it was confirmed. . . . But the decision was not rested solely upon the fact that the grant was generally understood to be an *empresario* grant, but upon the proposition that the action of Congress in confirming it as made to Beaubien and Miranda, and as reported for confirmation by the surveyor general of New Mexico, without any qualification or limitation as to its extent, was conclusive upon the court. In this connection the court said, (pp. 365-6:) 'But whether, as a matter of fact, this was a grant, not limited in quantity, by the Mexican decree of 1824, or whether it was a grant which in strict law would have been held by the Mexican government, if it had continued in the ownership of the property, to have been subject to that limitation, it is not necessary to decide at this time. By the treaty of Guadalupe Hidalgo, under which the United States acquired the right of property in all the public lands of that portion of New Mexico which was ceded to this country, it became its right, it had the authority, and it engaged itself by

that treaty to confirm valid Mexican grants. If, therefore, the great surplus which it is claimed was conveyed by its patent to Beaubien and Miranda was the property of the United States, and Congress acting in its sovereign capacity upon the question of the validity of the grant, chose to treat it as valid for the boundaries given to it by the Mexican governor, it is not for the judicial department of this government to controvert their power to do so,' citing *Tameling v. United States Freehold &c. Co.*, 93 U. S. 644.⁵³

So it cannot come as a complete surprise that "Armijo's approvals of land grant petitions suggest, in their brevity and perfunctoriness, that he acted on such a premise" as the extraordinary powers of the governor, as implied in surveyor general approvals. The form of the grants he made indicates that he may have had, or could assume, some freedom of hand in his granting powers. But "it is difficult to believe that the extent of a claim would not have been clarified in terms of Mexican land laws before final confirmation could have been obtained from the Republic of Mexico. That, of course, is an academic point, because sovereignty changed so soon after the grants were made."⁵⁴ Armijo may have considered the possibility of later gaining Mexican congressional approval. One can conjecture what might have been the course of events had New Mexico remained under Mexico. Certainly, ultimate solutions would have been required just as was the case under United States control.

The development of these solutions under United States government is evidence of the complications that can arise in jurisprudence. The first patent issued to any of the five grants was made to the Rio Don Carlos on March 3, 1875, and limitation to 48,000 acres reflected an interpretation of Mexican law that would seem to have provided guidelines for settlement of future cases, but a civil suit then in progress would alter the circumstances. The United States Freehold and Emigration Company had commenced litigation to evict John G. Tameling from a parcel of land in the Sangre de Cristo Grant claimed by that company. The case was finally taken to the Supreme Court of the United States in 1876. In finding against Tameling the high court rested

its opinion on the doctrine that the Act of Congress confirming it constituted, in effect, a new grant, and, there being no limitation in the Act, it became effectual and operative for the entire tract recommended by the surveyor general notwithstanding the eleven square league restriction.⁵⁵

Whatever its logic, or however much it may have circumscribed the will of Congress, the decision probably made inevitable that the claimants to the Sangre de Cristo, Maxwell, and Tierra Amarilla grants would receive the entire acreage within their alleged outboundaries. Any question of validity under Mexican law was irrelevant when Congress created a grant *de novo*—a new grant. The Tameling decision did not apply to the Las Animas nor to the Rio Don Carlos grants which had been limited by the earlier acts which had confirmed them for an amount in keeping with the limiting provision of Mexican law.⁵⁶

The Tameling ruling became a key factor in the opinion of the Supreme Court of the United States in upholding the Maxwell Grant patent in 1887, and was also decisive in litigation aimed at setting aside the patent to the Tierra Amarilla Grant. In 1885, with the start of Grover Cleveland's first administration, there commenced nearly a decade of controversy in which the patent was unsuccessfully attacked by the United States Government. Surveyor General Julian followed up an accusation brought to his attention that, based on the Wheeler and Hayden geological survey, there was an excess of about 60,000 acres in the grant because of an improper survey of the eastern boundary. Julian reported that not only was this accusation justified, but also that there were three other good reasons why the patent should be vacated. He maintained that the patented survey included the pasture, woods, and watering places which, under the grant, were left free and common to all with the fee reserved by the Mexican Government. Furthermore, the grant was made under the Colonization Law of 1824 and the regulation of 1828, and therefore it should be restricted to eleven square leagues. Julian also alleged that the recommendation of the surveyor general for confirmation by Congress did not show what grant he considered to be good

and valid; consequently Congress was left entirely in the fog as to what land was meant.⁵⁷

The Tierra Amarilla Grant has been acclaimed as the *cause célèbre* of injustices to grant heirs. Blame has even been cast on the United States for violating its treaty with Mexico. Title to the grant came into Thomas B. Catron, who has been widely charged with chicanery in his methods of acquisition. These included purchases at delinquent tax sales, purchase of quitclaim deeds from claimants of remote interests, and actions in court. With at least forty-two conveyances, he acquired all interests in the grant. For these he paid nearly \$200,000, largely with borrowed money.⁵⁸

It has been popularly supposed that Catron virtually stole much of the land that he acquired in the form of land grants. This is not substantiated in the case of the Tierra Amarilla. Land grants were sold for minimal amounts in the 1860's and the first few years of the 1870's, but prospective sellers seem to have realized the potential value of property by the middle 1870's. Persons who were initially satisfied with the price they received later thought they had been bilked when the economy of the Territory became more affluent, and the price of land increased.⁵⁹

Gilberto Espinosa, Albuquerque attorney, has stated, with reference to Catron's methods of acquiring land:

These facts perturb me little, despite that fact that the original Grantee, José Manuel Martinez, was the great-grant [great?] grandfather of my mother, Rafaela Martinez. If my Martinez ancestors abandoned their interests, neglected to occupy these lands or failed to pay taxes, or parted with their interests by selling their birthright for a mess of pottage, there is little that can be done now to disturb these long established titles. One thing is certain, no violation of Treaty rights is involved.

Assuming the rights of these heirs have been trespassed upon, in the name of reason why should anyone who is not a descendant or transferee of José Manuel Martinez question this alleged fraud or complain of violations of his inheritable rights to lands his ancestors never heard of?⁶⁰

Espinosa's contention does not go unchallenged. A counterclaim holds that Spanish (and in turn Mexican) law made title to the common lands subject to usufruct. "Usufruct can be owned in common, but the owners do not possess the land; they possess the right to use it."⁶¹ The assertion continues that this legal right should have been maintained by the United States government because of its obligations under the Treaty of Guadalupe Hidalgo. Had this been done instead of making such land part of the public domain for granting purposes, grantees of community grants, and their heirs, would not have had the right to sell land thus held in common.

All of this involves legal questions entirely too lengthy to be presented here in detail; nevertheless, Michael J. Rock has presented a sound case holding that decisions of the New Mexico Supreme Court have evaded this issue when that Court could have defined and established usufructary right over common lands had it faced the issue squarely. He contends with justification that, for all practical purposes, the only remedy for those who might seek it is action by the United States Congress.⁶²

As a result of the United States Government's effort to set aside the patent to the grant, Catron engaged the services of James M. Freeman, a Denver attorney, to protect the title to his property. Freeman commenced his argument by calling attention to a well-settled rule of law that a suit to vacate a patent can only be successfully maintained upon a ground of fraud or mistake, and then showed clearly that there had been neither in the Tierra Amarilla Grant patent controversy. He continued:

There is no specific allegation of fraud in this case against either the Surveyor General or the Commissioner of the General Land Office, nor does it appear that the claimants were consulted in the execution of the survey upon which the patent was issued, but on the contrary it was a proceeding by the Government from beginning to end.⁶³

Freeman also pointed out his failure to see where the case in question differed from that of the Sangre de Cristo, confirmed by the same Act of Congress which confirmed the Tierra Amarilla Grant and in precisely the same language. He concluded his argument by referring to the recent Supreme Court decision in the Maxwell Grant case.

That grant was confirmed by the same Act of Congress as the Tierra Amarilla. In fact it appears in the same line of the same section and the principle of that decision should govern in this case because there was not only an allegation of fraud there but there was also an allegation that the survey was largely in excess of what was granted and confirmed.⁶⁴

Catron eventually prevailed in his effort to protect title to his property, but only after it became evident that the action was a petty prosecution prolonged by personal spite on the part of Secretary of the Interior John W. Noble.⁶⁵

Despite this explanation, it is possible that die-hard detractors will still consider Tierra Amarilla Grant transactions as the personification of land grant evils and use it as a scale for measuring alleged malfeasance throughout the entire spectrum of land grant dealings. This is not to say that there may not have been wrongdoing; it is to say that constructions of wickedness have been generally attached to an unwarranted degree. This writer here renews his long-standing invitation for interested persons to submit documented examples of land grant chicanery. Such examples should be brought to light; conversely, unwarranted and unsubstantiated generalizations should be exposed, for they are as mischievous in their way as the alleged corruption they are aimed against.

To adequately sum up this study, certain statistics are necessary. Statistics can be interesting if they are startling enough and those related to the land grants of New Mexico are, indeed, startling.

In the 127 years from 1693 through 1820 there were 130 grants totaling 8,675,050 acres of land claimed from Spain. In the 32 years from 1821 through 1853, there were only 76 grants claimed

from Mexico, but these totaled 61,455,617 acres of land. This includes three small grants made by the United States: The Arkansas Colony or Beales' claim of 45,000,000 acres; the Uña de Gato Grant of 600,000 acres; and the Peralta Grant of which there was an estimated 2,467,456 acres in New Mexico. These three grants, all claimed from Mexico, were subsequently determined to be fraudulent. While only three in number, their total acreage is a shocking revelation of the avarice possessed by some individuals, when one realizes that only 13,388,161 acres were actually granted by Mexico. Thus there were 70,130,667 acres claimed as grants. There are only 77,568,640 acres of land in New Mexico. There were 7,401,637⁶⁶ acres of patented land grants prior to the adjudications of the Court of Private Land Claims. Therefore, exclusive of the Arkansas Colony and Uña de Gato claims, which were never submitted to that Court, there were 17,129,030 acres claimed but not yet patented when the Court began its work. It is interesting to note that nearly the same amount, 17,358,034 acres, was submitted in claims presented to the Court, even though several grants claimed earlier were never submitted, and approximately the same number not claimed earlier were submitted.⁶⁷

The Las Vegas Grant was patented by the General Land Office in 1903, and this claim, added to the area approved by the Court of Private Land Claims and the United States Congress, makes the total 9,768,277 acres. Compared to the area claimed, this is a relatively small amount, especially when one considers that some seventy-five per cent was approved by the somewhat impetuous action of Congress.

Further comparison shrinks the appearance of these patented grants even more. There have been large amounts of other land in New Mexico granted to entities other than individuals. These include 43,492,683 acres in Indian, Federal and State land,⁶⁸ as well as 3,590,281 acres granted for railroad purposes. Then too, in the heyday of the public land disposal program, there were 6,256,486 acres benefitting individuals for varying lengths of time by virtue of unlawful inclosures of the public domain and

uncompleted entries under the land laws. These were used somewhat in the same manner as Spanish and Mexican grants that were claimed but not yet patented. These, added to the 70,130,667 acres of land grant claims, total 123,470,117 acres of land claimed at one time or another in New Mexico.

If we consider only land to which title was actually conveyed (Indian, Federal, State, railroad and patented grants), we still have 56,851,241 acres, or seventy-three per cent of the land in New Mexico. This seems, by any reckoning, a startling dispersal of our landed patrimony. This is neither a condemnation nor an approval of that dispersal; rather, an indication that the 9,768,277 acres in patented Spanish and Mexican land grants was not relatively quite so large an amount as has been generally imagined.

The area claimed but not yet patented, however, was of far greater significance to the advancement of New Mexico. Federal land laws decreed that any claims be reserved from settlement and public disposal until they were adjudicated by the Federal Government. As a consequence, settlers could never be certain that they were not settling on land that was claimed, or might later be claimed, as a private grant. This situation was widely known throughout the nation and resulted in a

'deep and acknowledged distrust of land titles in New Mexico. . . .'
that retarded immigration and rapid settlement of the Territory. Likewise, owners of valid claims could realize only depreciated prices on their property. The only ones who stood to profit by the delay and uncertainty were holders of doubtful claims, who had use of the land until true ownership was legally determined.⁶⁹

This brings up the final question: To what extent were these claimed grants fraudulent? Before the work of the Court of Private Land Claims, it was commonly believed that many of the grants were illegal, forged, or fraudulent, and that the Court would so find. To the contrary, the Court found that the notorious Peralta Grant involving James Addison Reavis was the only one to fit this description. It should be noted that the fraudulent nature of a few grants was established prior to the adjudications

of the Court. Among these were the Uña de Gato and Arkansas Colony claims. The latter was alleged to have been made by the governor of Chihuahua and Texas to Beales and Royuela in 1832. Of this grant Surveyor General George W. Julian wrote, in 1889:

such a claim was filed in this office several years ago, but it has never been acted upon, or recognized in any manner by the government, for the reason that it is palpably fraudulent and invalid. The ground claimed has mostly been surveyed and taken up under our public land laws by private individuals, who, it is safe to say, will never be disturbed in the possession of their homes by any claimant under this alleged 'Arkansas grant.'⁷⁰

How is it then that the Court validated only a fraction of the amount submitted for adjudication? Besides the aforementioned stretching of boundaries, a number of grants were made by officials without proper authority to do so, although the grants were made in good faith.

Under such conditions many grants, made perhaps a century before the court was established, had existed with titles undisputed by the people and by the Government under which they were granted, and in strict equity were justly entitled to be held good, but had to be rejected by the court, which required proof of strict legal authority in the granting powers, and a rigid compliance with the law in the form and manner of its execution.⁷¹

To conclude that fraud in New Mexican land grants was largely confined to stretching of boundaries may tamper with the cherished tradition that grant titles were manufactured wholesale; nevertheless, these enlargements involved millions of acres of land and affected the destiny of New Mexico for half a century. This practice, together with the abundant infighting among grant claimants over who would get what, can better be described by the appellation "greed" rather than "fraud." Reprehensible as this practice was, the greater crime was the apathy of Congress in allowing grants to remain for so long in an unsettled condition.

This illustrates the truism that greed and apathy can be more devastating in their consequences than outright attempts to defraud. Fraud is more easily detected and corrected, and this is amply borne out by the long and muddled history of land grants in New Mexico.

NOTES

1. Victor Westphall, *The Public Domain in New Mexico, 1854-1891* (Albuquerque, 1965), p. 33.

2. Allan Nevins, *Grover Cleveland: A Study in Courage* (New York, 1933), p. 225.

3. George W. Julian, "Land Stealing in New Mexico," *North American Review*, vol. 145 (1887), p. 18.

4. Annual Report of the Commissioner of the General Land Office of the United States (hereafter referred to as LOR), 11/30/54, 33 Cong., 2 Sess., HED No. 1, p. 87 (777).

5. Julian, pp. 20-23. These grants were: Pedernales, Cañada Ancha Tract, Cañon de Chama, Estancia, Ignacio Chaves, Socorro, Bernardo Miera y Pacheco and Pedro Padilla, Cañada de Cochiti, San Joaquín del Nacimiento, José Sutton, Arroyo de Lorenzo, Vallecito de Lovato, and Bernabé M. Montano.

6. These compilations involved some estimating; certain information is lacking and, in other instances, is contradictory.

7. Julian, p. 18.

8. Julian has not been alone in this kind of surmise; Harold H. Dunham, during his lifetime, was the leading exponent of this thinking. This writer should confess that he also was inclined to fall into this trap until a great amount of study warned him of the pitfalls to be encountered in pursuing this oversimplification. Thus it is that he fell perilously close to entrapment in *The Public Domain in New Mexico*. Only innate caution prevented this; even so, he would write certain passages differently today. Lena Paulus' *Problem of the Private Land Grant of New Mexico* (Pittsburgh, 1933, unpublished M.A. thesis), pp. 58-62, devoted to fraudulent manipulations of laws concerning disposal of the public domain, uses this discussion to indicate fraud in land grants.

9. Westphall, *Public Domain*, p. 33.

10. Stephen W. Dorsey, "Land Stealing in New Mexico, A Rejoinder," *North American Review*, vol. 145 (1887), p. 401.
11. Westphall, *Public Domain*, p. 103.
12. Dorsey, p. 401.
13. Westphall, *Public Domain*, pp. 55, 56.
14. *Ibid.*, p. 79.
15. Morris F. Taylor, "Stephen W. Dorsey, Speculator-Cattleman," NMHR, vol. 49 (1974), p. 29.
16. Dorsey, p. 401.
17. *Ibid.*, pp. 400, 401.
18. Westphall, *Public Domain*, p. 56.
19. In a comparable case, the Arkansas Colony claim, Surveyor General Julian was careful to refrain from guaranteeing that persons who settled on the area claimed would not be disturbed in their ownership, but the claim was so manifestly preposterous that he felt it safe to assume that this would not happen. Julian to Edwin A. Thomas, Feb. 1, 1889, Denver Federal Records Center (hereafter referred to as Denver FRC).
20. William A. Keleher, *Maxwell Land Grant* (Santa Fe, 1942), p. 131.
21. Dorsey, pp. 404, 405.
22. Julian, p. 30.
23. *Ibid.*, pp. 24, 25. These grants, besides the Maxwell, were Ortiz Mine, Armendaris, Tierra Amarilla, and Mora.
24. Harold H. Dunham, "New Mexican Land Grants with Special Reference to the Title Papers of the Maxwell Land Grant," NMHR, vol. 30 (1955), pp. 1-22.
25. *Ibid.*, pp. 9, 15. His implication that Surveyor General Julian could have unearthed fraudulently created titles if he had investigated this open-door feature of the Kearny Code is purest conjecture.
26. *Ibid.*, p. 9. This officer used the initials J. H. D.
27. LOR, 11/30/54, 33 Cong., 2 Sess., HED No. 1, p. 92 (777).
28. Dunham, p. 10.
29. *Ibid.*
30. Herbert O. Brayer, *Pueblo Indian Land Grants of the "Rio Abajo," New Mexico* (Albuquerque, 1939), pp. 14, 15.
31. Dunham, p. 12.
32. *Ibid.*
33. William A. Keleher, "Law of the New Mexican Land Grant," NMHR, vol. 4 (1929), p. 356.
34. Dunham, p. 15.
35. *Ibid.*, p. 17.

36. *Ibid.*, p. 22.

37. *Ibid.*, pp. 2, 3.

38. Ralph E. Twitchell, *Leading Facts of New Mexican History*, vol. 2 (Cedar Rapids, Iowa, 1912), pp. 196, 197.

39. Morris F. Taylor, "The Two Land Grants of Gervacio Nolán," NMHR, vol. 47 (1972), p. 152.

40. This figure includes, for Spain, 7,463,480.25 acres in grants; 1,166,679.70 acres to the Pueblos; and an estimated 44,890.00 acres in small holding claims—a total of 8,675,049.95 acres. For Mexico the figures are 13,188,956.15 acres in grants, and 199,205.45 acres granted by the United States—a total of 13,388,161.60 acres. This figure does not include the Uña de Gato, Peralta, or Arkansas Colony grants which were subsequently determined to be forgeries.

41. The other grants were San Cristobal, San Pedro, Town of Tejon, Cañon del Agua, and Bosque del Apache.

42. LOR, 10/22/85, 49 Cong., 1 Sess., HED No. 1, pp. 277, 178 (2378).

43. Lawrence R. Murphy, *Philmont: A History of New Mexico's Cimarron Country* (Albuquerque, 1972), p. 126.

44. Taylor, "Nolán," p. 165.

45. As quoted in *ibid.*, p. 157.

46. As quoted in *ibid.*, p. 158.

47. *Docket* 3458, PC29 305, Box 1, Thomas Benton Catron Papers, University of New Mexico Library, Albuquerque (hereafter referred to as Catron Papers).

48. White, Koch, Kelley and McCarthy, *Land Title Study* (Santa Fe, 1971), p. 54, n. 157.

49. Emilio Pardo to William Pinkerton, Fort Union, New Mexico, July 14, 1879 (as printed in the *Las Vegas Gazette*, Aug. 23, 1879).

50. For example see *Whitney vs. United States*, 181 U. S. 104. Justice Murray of the Court of Private Land Claims (p. 107) essentially summed up the opinions of both Courts, rejecting the appeal of the Estancia Grant as follows: "while concurring in the conclusion to reject the claim, [he] was of opinion that the law of 1824 and the regulations of 1828 had been entirely repealed by the law of April 4, 1837, but he did not think that the governor had the power merely as representative of the supreme executive to make the grant, and there was no evidence of any special power having been delegated to him."

51. *Ibid.*, p. 108.

52. *United States vs. Coe*, 170 U. S. 681, p. 696.

53. *Interstate Land Grant Company v. Maxwell Land Grant Company*, 139 U. S. 569, p. 578. Justice Stone of the Court of Private Land Claims "was of the opinion that the making of the grant in question [Estancia] was within the competency of the supreme executive, and that Governor Armijo was his appropriate ministerial agent in its execution." *Whitney vs. United States*, 181 U. S. 104, p. 108.

54. Taylor, "Nolán," p. 157.

55. *Docket 3458*, PC29 305, Box 1, Catron Papers.

56. Taylor, "Nolán," p. 164.

57. George W. Julian to William A. J. Sparks, March 28, 1887, PC29 305, Box 1, Catron Papers.

58. Victor Westphall, *Thomas Benton Catron and His Era* (Tucson, 1973), pp. 47, 48.

59. *Ibid.*, p. 48.

60. Gilberto Espinosa, "About New Mexico Land Grants," *The State Bar of New Mexico Bulletin*, vol. 6 (Nov. 2, 1967), p. 261.

61. Michael J. Rock, *The Change in Tenure New Mexico Supreme Court Decisions Have Effected Upon the Common Lands of Community Land Grants in New Mexico*. A paper delivered at the 16th annual Conference of the Rocky Mountain Social Science Association, El Paso, Texas, April 26, 1974, p. 3.

62. *Ibid.*, p. 20.

63. *Docket 3458*, PC29 305, Box 1, Catron Papers.

64. *Ibid.*

65. Westphall, *Catron*, pp. 53-55.

66. This figure includes 1,166,679 acres granted to the Pueblos, and an estimated 44,890 acres in small holding claims not actually patented prior to the Court of Private Land Claims, but title to them was at all times recognized and protected.

67. This compilation, as in some other instances, involved some estimating because sources are contradictory and incomplete.

68. White et al., pp. 246, 247.

69. Westphall, *Public Domain*, p. 51.

70. Julian to Thomas, Feb. 1, 1889 (FRC). Julian was essentially correct but did indulge, to some extent, in his customary habit of exaggeration. The area claimed was 45,000,000 acres and, in 1889, only 48,401,179 acres in New Mexico had been surveyed, of which amount only about a million acres had been deeded to individuals under land laws.

71. Annual report of the Governor of New Mexico. 9/15/1903, 58 Cong., 2 Sess., HED No. 1, pp. 383, 384 (4649).