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MANUEL MARTÍNEZ'S DITCH DISPUTE:
A STUDY IN MEXICAN PERIOD
CUSTOM AND JUSTICE

MALCOLM EBRIGHT

THE YEAR WAS 1832, the place was Abiquiu, New Mexico, and the subject was water. The month was July, the peak of the growing season and also the rainy season. The Rio Chama, which watered the fields of the village, regularly flooded during this season and in so doing it washed out the dam feeding the *acequia* of one of Abiquiu's leading citizens, Don Manuel Martínez. When Don Manuel attempted to build a new dam and *acequia* on the lands of his neighbor Ramón Martínez, he was forcibly prevented from so doing by Ramón, and a legal battle ensued. The resulting litigation before the *ayuntamiento* or council of Abiquiu and the governor of the province, documented by papers in the Mexican Archives of New Mexico, helps illuminate some dark corners of New Mexican history.¹

The story of the dispute, as told through the documents, rounds out the character of Don Manuel, who is better known as the principal petitioner for the Tierra Amarilla grant. The famous grant was made in this same year, 1832; in fact, it was also in July that Don Manuel was petitioning Governor Santiago Abreu to make the Tierra Amarilla grant a private rather than a community grant.² In the grant papers he urged the governor to overrule the *ayuntamiento*, but in the ditch dispute he was trying to get the *ayuntamiento* to overrule the governor, and he was saying contradictory things in each. His petitions reveal a man determined to use every available legal procedure to obtain what he considered to be justice.

The documents show us the working out of conflict over water through customary legal forms, based more on tradition than legal codes. The path of this tradition is marked by dramas similar to the one here recounted, from fifteenth-century Valencia³ to twentieth-century fictional Milagro.⁴ The study of Spanish customary law regarding land and water is largely a study of such disputes.

Also clarified is the interrelationship between the central government in Santa Fe and the local *ayuntamiento* during the Mexican Period in New Mexico. The head of the *ayuntamiento* was the *alcalde mayor*, his precursor. New Mexico historians like France Scholes have minimized the power of the *alcalde*: "These men were obliged, in the main, to carry out the orders which came to them from Santa Fe. In certain instances, moreover, they were nothing more than tools of the governors."⁵ While this was true for the Spanish period, it appears that by the Mexican period local government, especially in the Rio Arriba area, had become more developed and strong to the point where, as here, they in effect overruled the governor. Local officials, who were generally in office longer than the governor, began to become jealous of their power, sometimes fighting among themselves over the extent of their respective jurisdictions.

One such jurisdictional dispute is found in the history of the Rio del Pueblo grant in Taos County, made in 1832. The first petition for the grant in 1829 was referred to the *ayuntamiento* of Santa Cruz which recommended in favor of the grant. But before the grant was made, a protest was filed objecting to the making of the grant for several reasons, one of which was that the land was under the jurisdiction of the *ayuntamiento* of Taos. Three years later a new petition was filed, complaining that the jurisdictional dispute between the two *ayuntamientos* was working a hardship on the petitioners because they did not know which had authority. This time the territorial deputation referred the petition to the *ayuntamiento* of Taos, which also recommended in favor of the grant. Governor Abreu made the grant on July 22, 1832, after a special three-man committee appointed by the territorial deputation had also recommended that the grant be made.⁶ The strength of these local officials indicates that the later American Court of

Private Land Claims may have been in error when it rejected land grants made by local officials on the ground that they lacked the power to make them.

The specifics of Don Manuel Martínez's conflict emerge from the documents in fragments. After his dam was destroyed, he went to see the constitutional *alcalde* of Abiquiu, Pedro Ignacio Gallegos, asking that a new site for his dam be indicated to him. According to the custom followed as early as in fifteenth-century Spain, Gallegos appointed three experts to accompany him on an inspection of the dam and of Don Manuel's land in general.⁷ After visiting the land, described as "abounding in all seeds and beneficial to the tithe," the party proceeded to the site of the old dam. It had been made of branches and stones (*rama y piedra*) which had washed into the river making a backwater near the lands of Ramón Martínez. After observing that there was no place downstream from Ramón's land suitable for a dam, the experts, whose names or qualifications are not stated, indicated a site for the new dam on Ramón's land, described as a marsh, unplowed and unplanted. They noted that it was the custom for *acequias* to pass through the land of others and that Ramón Martínez would not be harmed by Don Manuel's ditch.⁸ Ramón Martínez apparently did not agree with this determination however; before Don Manuel could begin to build his new dam, Ramón stopped him. That Ramón had no liking for Don Manuel is apparent from statements made later in the litigation, but what makes this case more than a dispute between neighbors is the repercussions it was to have in the chambers of the *ayuntamiento* of Abiquiu and in the governor's palace.

Don Manuel, not one to brook opposition easily even though he was sick in bed, fired off the first of many petitions to Governor Abreu.⁹ This petition of July 3 was apparently drafted by Don Manuel, for it contains phraseology characteristic of documents signed by him, but this one was signed on his behalf by José María Chávez, who was a member of the five-man *ayuntamiento* of Abiquiu. This would seem in retrospect to be a serious conflict of interest, since the *ayuntamiento* was usually called upon to make an impartial report to the governor regarding the facts claimed by the petitioner and in this instance it rendered the *de facto* decision.

In the beginning sentences of his petition, Don Manuel came into direct conflict with statements he made two and a half months earlier in his petition for the Tierra Amarilla grant. As principal petitioner for that grant, he was not allowed to own a substantial amount of land, so he stated in the grant petition that his lands were "so worn out, and so much impoverished and sick, that with the most exquisite care, they will not produce even what is necessary."¹⁰ But when he was required to show the importance of his *acequia* in this new litigation, he wrote of his "considerable sown land" which he specified to have been five *fanegas* of wheat and two of corn. In addition he had two or three *fanegas* of land ready for sowing beans. It is apparent that Don Manuel had a facility for saying whatever the occasion demanded.

Continuing his petition, he told Governor Abreu the story related above, adding that before he could complete his dam and *acequia*, his neighbor Ramón had protested to Alcalde Gallegos who had then ordered Don Manuel to suspend work. He ended by asking the governor to order the *ayuntamiento* to allow his work on the dam and *acequia* to continue. The same day, Governor Abreu ordered the *ayuntamiento* to report back to him as to whether the dam in question would harm Ramón's land and whether there were a more suitable place where the dam might be built without prejudice to Ramón's land.

The next day, the *ayuntamiento* met in the *casa consistorial* and drew up its report, which basically corroborated what Don Manuel had said. It was their considered opinion, as well as that of the experts, that the dam would not harm Ramón's land since it was already a marsh.¹¹ When Governor Abreu read this report, he ordered Alcalde Gallegos to carry out what had been decided by the *ayuntamiento* and the alcalde then ordered that Don Manuel could continue work on his dam and *acequia*. It looked like an easy victory for Don Manuel, until Ramón's petition of July 7 reached the governor, disclosing that he had a few tricks remaining.

Ramón started by flatly denying the finding of the three experts and of the *ayuntamiento*. He said that the *acequia* ran through the middle of his field and did in fact harm it. He then referred the governor's attention to a decree from an earlier ditch dispute

which Don Manuel had lost and which Ramón claimed was binding on him in this new case. The most damaging part of the older decree was the accusation that Manuel attempted to bribe the judge with two fat cows (*dos bacas gordas*)! The new evidence was enough for Governor Abreu, who voided the *ayuntamiento's* decision of July 4 and nullified his decree of the same date, stating that these were rendered without full disclosure of the facts.¹²

Don Manuel must still have been in poor health, for it was nine days before he fired off the first of a brace of petitions, using an arsenal of legal procedures which in the end proved to be too much for his opponent. Moreover, his rubric was a bit shaky. Don Manuel directed his latest petition to Alcalde Gallegos asking him to order Ramón to produce the 1816 document and to provide Don Manuel with a witnessed copy. He wrote that he intended to prove that Ramón had lied, that he did not attempt to bribe the judge commissioned to decide the earlier lawsuit, that actually he was never even notified of the action or given the opportunity to be heard.¹³ The second part of his two-pronged attack on Ramón's attempted character assassination came in yet another petition to Alcalde Gallegos (made on the same day) asking him to summon citizen Marcos Delgado before him to answer certain questions regarding the alleged bribe. Delgado, who listed his occupation as parish choir master, was the one who Ramón claimed to have carried the bribe offer to the judge.¹⁴ The key questions which Don Manuel wished Gallegos to ask Delgado were whether or not Don Manuel had given him a message of an offer to Judge Juan Rafael Ortiz of two fat cows if he would decide in Don Manuel's favor and, if so, the day, hour and place that this happened. He mentioned incidentally that Ortiz was a very dear friend of his opponent in that case, Mariano Martín. Mariano was the *alferez* (standard bearer) for the Abiquiu militia and (coincidentally) Ramón's father.¹⁵

July 16 was evidently a day of tremendous activity for Don Manuel, for besides these two petitions to Alcalde Gallegos he also wrote one to Governor Abreu protesting the earlier report of the *ayuntamiento* regarding his petition for the Tierra Amarilla grant. This was a long elaborate document continuing the argument that the Tierra Amarilla grant should be a private grant to Don

Manuel and his family instead of a community grant as the *ayuntamiento* had recommended. But he was not successful with this one, for the Tierra Amarilla was declared a community grant by the territorial deputation.¹⁶ Don Manuel must have been sorely disappointed, as a lot of work had gone into the petition. Indeed, two drafts of this petition still exist. It is quite possible that the first draft was prepared by Don Manuel, but the final copy by someone else, maybe José María Chávez who had signed an earlier petition.¹⁷

Don Manuel was not fazed by his output of the 16th, however, for the next day he prepared and presented in person another petition to Alcalde Gallegos. In an apparent attempt to reopen the 1816 case, he asked the alcalde to certify at the foot of the document the procedure used to take Don Manuel's ditch from him by *juéz comisionado* Juan Rafael Ortiz. Don Manuel seemed to be appealing for Alcalde Gallegos, whose "well known integrity" is mentioned, to assert jurisdiction in that case since he had been serving as alcalde at that time as well. There is also a hint of rivalry between the two alcaldes, since Ortiz was a prominent Santa Fe citizen and politician.¹⁸

Though the facts of the earlier case were extraneous to this one, the document illustrates the role played by local officials in determining what custom was. The questions asked of Alcalde Gallegos in the petition and his answers reveal that he was considered a sort of arbiter of custom, as when he wrote that, "the force of custom in this jurisdiction is so great that existing *acequias* which were built long ago cross the lands of different owners and no dam has been located [solely] on private property."¹⁹ Don Manuel realized that the words and prestige of Alcalde Gallegos, who also served a term in the territorial deputation,²⁰ would have a powerful effect in determining the outcome of the contest with Ramón.

Armed with Alcalde Gallegos's answers, Don Manuel continued his barrage of petitions, addressing one to the full *ayuntamiento* the next day, July 18. He attacked the statements made by Ramón concerning the alleged harm accruing to his field from Don Manuel's dam and *acequia*. This indeed was the crux of the conflict and Don Manuel proved himself to be a master of belittlement when he referred to Ramón's "imaginary field." It was not a field

at all, he wrote, for "it is public knowledge that his ranch has gone uncultivated because of the irremediable impossibility of having even remote hopes of an *acequia* for farming it." He then reminded their excellencies that they themselves ordered him to build his dam and run his ditch where he did.²¹ He was clearly playing to the *ayuntamiento's* sense of honor (as well as his own, which he claimed had been badly injured) and to their sense of jurisdictional power when he stated that under the governing law of 1813 they had been charged with protecting life and property in their jurisdiction.²²

What he asked the *ayuntamiento* to do, essentially, was to inform the governor that the statements in Ramón's July 7 petition were not true. But before they could do so, they had to serve the papers Don Manuel had set in motion in his attack of the 16th, the interrogatory to Marcos Delgado and the request to Ramón to produce the 1816 document. Each of these produced some surprises.

On July 18, cantor Marcos Delgado appeared before Alcalde Gallegos and two witnesses and answered under oath that he knew nothing of the alleged bribe offer he was said to have carried to Juan Rafael Ortiz. He mentioned that after the 1816 lawsuit, Don Manuel was compelled to move a dam he had on the lands of Mariano Martínez and (by inference) that it was Ortiz himself who made the allegation about the bribe. Delgado, however, was sure that Ortiz couldn't prove his charge.²³ Also on the 18th, Alcalde Gallegos issued a summons directing Ramón to appear and to produce the 1816 document.²⁴ But on the same day Ramón replied and refused to do so, stating that his mother said that only the governor could make him produce documents, and if Don Manuel wanted a copy he could go to the courthouse in Santa Fe and get one!²⁵

The tone of the reply rather clearly demonstrated Ramón's bad faith, and Don Manuel was cleared of the bribery charge by Delgado's testimony. The *ayuntamiento* had all it needed to make its report to the governor as Don Manuel had requested. On July 19 the *ayuntamiento* met in its official chambers (*sala constitucional*) and considered Don Manuel's latest petition regarding the *acequia*. The resulting statement (*manifestación*) had a strongly indignant tone, suggesting to Governor Abreu that he should have

asked for another report from the *ayuntamiento* after Ramón's July 7 petition, "for this step would have resulted in the complete disclosure of the deception with which the said Ramón Martínez deceived your excellency in everything he stated to you." Because the governor relied solely on Ramón's petition regarding a matter already decided by the *ayuntamiento*, that body felt that its honor and decorum had been compromised. The report went on to reiterate the key points in the dispute, first that the *ayuntamiento* had already made a determination of where Don Manuel's dam should be built, based on the opinion of the three experts; second, that it was also determined that Ramón's land would not be harmed by the dam and *acequia*; and third, that Ramón was told to appear at the time this determination was made to state the motives he had for preventing Don Manuel's *acequia* from passing across his land, as well as to present any documents he might have relating to the matter. Ramón answered that he had no documents, but simply did not want a ditch of Manuel Martínez to pass through any part of his land, a very capricious attitude in the opinion of the council. The final and most important point, one that Don Manuel completely overlooked because of his outrage at the bribe charge, was that the 1816 document did not "have the slightest connection with a new dam which the *ayuntamiento* in view of its powers gave and had the power to give," because "by its time, difference in place and circumstance, [it] has not the slightest relation to what the *ayuntamiento* decided." Here again was a strong appeal for the primacy of local court decision. For all these reasons, Governor Abreu was asked to reverse his decision of the 7th which had been in Ramón's favor.²⁶

But before the governor could consider the *ayuntamiento's* petition, Don Manuel executed still another petition to Abreu on July 20, dealing with the bribery charge. Apparently Don Manuel felt compelled to bring to the governor's attention the favorable testimony of Marcos Delgado and the refusal of Ramón to produce the 1816 document, neither of which was mentioned in the *ayuntamiento's* report. Don Manuel attached copies of each of these, and asked the governor to make a decree in view of the new testimony, so that he could "defend himself as an upright man against the bribe charge made against him." Governor Abreu answered in the

margin that he should file a complaint in the proper court against the man he claimed had injured his honor.²⁷ Don Manuel, however, was not satisfied with this answer, so on July 27, he sent his seventh and final petition in this litigation, again directed to Governor Abreu. This time he simply asked the governor to make a decree in this lawsuit in the space at the bottom of his petition. Governor Abreu acceded to the request and on July 28, in effect terminated the lawsuit in Don Manuel's favor by ordering the *ayuntamiento* to decide the case "according to what you believe is . . . justice and . . . according to the uses and customs which have been observed in your jurisdiction."²⁸ Since the *ayuntamiento* had already decided in Don Manuel's favor, he had clearly won his victory. Presumably, he could irrigate his fields, protected by the *ayuntamiento's* decision which Alcalde Gallegos stood ready to enforce, and secure in the knowledge that his honor (and that of the *ayuntamiento*) had been vindicated.

The *ayuntamiento's* forceful petition of July 19, which turned the tide in Don Manuel's favor, was not unique in this period of New Mexico history. The *ayuntamiento* of Taos was also exhibiting its independence and jurisdictional power, even to the point of refusing to obey an order from Governor Facundo Melgares. This occurred in 1822, when the governor granted the petition of a group of Jicarilla Apaches who wanted to settle at the village of Cieneguilla. No report on the petition had been requested from the *ayuntamiento* of Taos and when they were summarily ordered to allot land to the Jicarillas, they wrote a strong protest to the governor citing numerous reasons why the village did not want the Indians. The land had already been granted to the Spanish (in 1795 by Governor Fernando Chacón), wrote the Taos council, and this argument was presumably enough to induce Melgares to rescind his order.²⁹

Also involving the Taos *ayuntamiento* were two attempts (one in 1827 and the other in 1837) to obtain a farming grant on land previously given as a grazing grant (the Rancho del Rio Grande grant) for the benefit of the Cristóbal de la Serna grant. When asked by the governor for its report, the *ayuntamiento* recommended that the petitions be denied because the first grant was still valid and it was necessary to protect the water supply of the

settlement of San Francisco de las Trampas by preventing any irrigation of land immediately upstream. The governor followed their recommendation each time.³⁰

The Martínez affair in Abiquiu and the instances in Taos show fairly clearly that local government in the north had acquired a substantial amount of autonomy in the Mexican period. Local councils expected to be consulted on all matters affecting their jurisdictions, and their procedures had developed to the point where they sometimes appointed special committees to make recommendations to the full *ayuntamiento*.³¹ They were a far cry from the one-man local government that existed during much of the Spanish period and were anything but "tools of the governor." Another aspect of local government illuminated by these documents is the administration of justice.

So little is known about the court system in New Mexico during the Mexican period that Bancroft's analysis of 1889 still holds true today, that "all is very confusing."³² This confusion is compounded by the loss or destruction of the archives of the *ayuntamientos*, especially in the north. The archives of the Taos Council were seized from the alcalde's house during the 1847 rebellion and destroyed.³³ The archives of the Santa Cruz *ayuntamiento* were removed from the custody of the Museum of New Mexico during the early statehood period and sold to a Kansas City book dealer. The New Mexico State Records Center and the Federal Government each unsuccessfully attempted to replevin these records.³⁴ The archives of the Abiquiu *ayuntamiento* are still missing. All these archives probably contain records of other litigation involving land and water, which would tell us more about what procedures were used and what laws, if any, were followed in deciding these disputes.

No formal legal system was ever established in New Mexico by either the Spanish or Mexican authorities, though one was provided for in 1828. The plan called for a district judge, an attorney general, a clerk and a constable, but it was never put into effect, even though funds had been appropriated for salaries, because of the lack of trained lawyers in New Mexico. Instead, *Licenciado* Antonio Barreiro was sent in 1831 to act as *asesor* or legal adviser to the territorial authorities.³⁵ Barreiro only stayed three years, but

in that time he formed a rather low opinion of the condition of the administration of justice. In 1832 he expressed these views in his famous *Ojeada Sobre Nuevo México*: "Whoever has a slight conception of the ignorance which reigns in this country, will not require other colors to paint vividly the deplorable and doleful state in which the administration of justice finds itself." There was no one in the territory, he believed, capable of preparing legal procedures.³⁶

Lic. Barreiro was undoubtedly mistaken in this, given the evidence presented here. There was at least one person, Don Manuel Martínez. The variety of legal procedures which he used, including counterparts to pretrial interrogatories and motions to produce documents used now, is surprising, and his skill in arguing his case is impressive. His case demonstrates how custom often took the place of a formal legal system in New Mexico. Custom is the practice of the majority of the people in a particular place in all things including lawsuits, the "unwritten law that has been introduced by use," which has influenced society from medieval Spain to the present.³⁷ Certainly in Manuel Martínez's time, custom governed the settlement of disputes and likely also the granting of land much more than written law.³⁸

NOTES

1. Mexican Archives of New Mexico (MANM), Reel 15, frames 171-96, State Records Center and Archives, Santa Fe.

2. Malcolm Ebright, "The Tierra Amarilla Grant: A History of Chicanery," paper presented at the annual meeting of the Western Social Science Association, Denver, Colorado, April 1975.

3. Thomas F. Glick, *Irrigation and Society in Medieval Valencia* (Cambridge, Mass., 1970), p. 69. Violence sometimes surfaced in conflicts over water, especially when tensions were high during periods when water was short.

4. John Nichols, *The Milagro Beanfield War* (New York, 1974). The mythical village of Milagro bears a close resemblance to a village near Taos, New Mexico.

5. France V. Scholes, "Civil Government and Society in New Mexico in the Seventeenth Century," *New Mexico Historical Review* 10 (1935):92.

6. New Mexico Land Grants—Public Land Grants, Reel 41, case 65.

7. Glick, *Irrigation*, p. 40.

8. MANM, Reel 15, frame 173.

9. MANM, Reel 15, frames 171-73.

10. New Mexico Land Grants—Surveyor General, Reel 12, case 3, frame 15, the Tierra Amarilla grant.
11. MANM, Reel 15, frame 173.
12. MANM, Reel 15, frames 174-75.
13. MANM, Reel 15, frames 176, 195.
14. MANM, Reel 15, frame 191.
15. Frances Leon Swadesh, *Los Primeros Pobladores* (South Bend, Ind., 1974), p. 51.
16. New Mexico Land Grants—Surveyor General, Reel 12, Report 3, frames 18-19.
17. New Mexico Land Grants—Surveyor General, frames 176 and 195.
18. Juan Rafael Ortiz was chief alcalde of Santa Fe as early as 1802. Deed from Rafael Martín to Don Manuel Delgado, Catron Collection, Box 38, case 214, Cieneguilla grant. In 1814 he was elected as the New Mexico representative to the provincial assembly of the *Provincias Internas de Occident*. Marc Simmons, *Spanish Government in New Mexico* (Albuquerque, 1968), p. 209. By 1825 he was an alternate deputy to the first territorial deputation and in 1830 was a full deputy on the fourth territorial deputation. Lansing Bartlett Bloom, "New Mexico under Mexican Administration," *Old Santa Fe* 1 (1913):242, 271-72. He was constitutional alcalde of Santa Fe and a member of the Santa Fe *ayuntamiento* in 1829. Bancroft Collection, translation of *Diario, Ayuntamiento of Santa Fe, 1829-36*.
19. MANM, Reel 15, frames 193-94.
20. Gallegos was a member of the second territorial deputation which was elected in 1826. Bloom, "New Mexico under Mexican Administration," p. 246.
21. MANM, Reel 15, frames 177-79.
22. Decree of the Spanish Cortes, June 23, 1813. This law remained in effect until 1837. Bloom, "New Mexico under Mexican Administration," p. 48.
23. MANM, Reel 15, frame 192.
24. MANM, Reel 15, frame 196.
25. MANM, Reel 15, frame 187.
26. MANM, Reel 15, frames 181-84.
27. MANM, Reel 15, frame 190.
28. MANM, Reel 15, frames 185-86.
29. J. J. Bowden, "Private Land Claims in the Southwest," 6 vols. (LLM thesis, Southern Methodist University), 4:1017-18.
30. Bowden, "Private Land Claims," 4:986-89.
31. An example is the Rancho del Rio Grande grant. Bowden, "Private Land Claims," 4:988.
32. Hubert Howe Bancroft, *History of Arizona and New Mexico, 1530-1888* (Albuquerque, 1962), pp. 312-13, note 5.
33. Testimony before the Surveyor General in the San Cristóbal grant, in Bowden, "Private Land Claims," 4:918.
34. Interview with Dr. Myra Ellen Jenkins, New Mexico State Archivist, April 25, 1978.
35. Bloom, "New Mexico under Mexican Administration," p. 271.

36. Lansing B. Bloom, ed., *Antonio Barreiro's Ojeada Sobre Nuevo Mexico*, Historical Society of New Mexico, Publications in History, No. 5 (1928), p. 39.

37. Joaquin Escriche, *Manuel del Abogado Americano* (Paris, 1863), pp. 8-9.

38. The importance of customary law in connection with land grants was due to the power exercised by the *ayuntamientos* in the process of making land grants. Their reports to the governor often determined the outcome of a petition for a grant and since there were no lawyers or law codes to guide them, they had to rely on custom. Simmons, *Spanish Government*, p. 176. Swadesh, *Los Primeros Pobladores*, p. 51, indicates that Don Manuel lost this litigation and had to destroy his dam, probably confusing it with the 1816 lawsuit. This interpretation could have arisen from a reading of Don Manuel's second petition for the Tierra Amarilla grant.