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Various forms of common land found in New Mexico's Spanish land grants lie at the heart of several controversial cases adjudicated by the U.S. federal courts.[1] Portions of grants, or entire conveyances, that had lands designated as *ejidos* (multipurpose commons) or pasture lands were rejected under various theories of law. After the U.S. Supreme Court denied claims to the common land in *United States v. Sandoval* (1897), the U.S. Court of Private Land Claims rejected similar claims to the ownership of common land in subsequent grants.[2] Legal historians, however, have noted that common lands have a long history in Castilian law, in which villages, towns, and cities exercised dominion over these lands or maintained usage rights.[3] These understandings raise questions concerning the decisions of American courts, which had the difficult task of adjudicating Spanish (and Mexican) land grants, some of which dated to the 1600s.

The following pages discuss how a fifteenth-century lawsuit between the villages of Algodre and Coreses in Castile-León addresses the issue of the ownership of common lands later found in New Mexico. The Castilian *Audiencia*—an appellate court staffed by eight learned justices and established by the Crown of Castile in 1371—heard this case on appeal. During the proceedings, both villages presented arguments that supported their claims to ownership of the commons, outlining the principles of law that demonstrated that villages, towns, and cities

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Image 1. Interior courtyard of the Palacio de los Viveros, Valladolid, Spain. The *Audiencia* decided cases, such as Consejo de Algodre v. Consejo de Coreses, in the late-fifteenth century in this complex. Photo courtesy of James E. Dory-Garduño.

owned their commons. These principles have implications for grants conveyed in New Mexico's Spanish period, which colonial governors issued under the same principles of law.

In identifying these legal principles, the following discussion will address how the Audiencia drew from this law, but also how the principles the Audiencia applied remained influential. For the Crown of Castile—her viceroys, governors, and *alcaldes*—later applied them in her possessions in the New World: lands that fell solely under the jurisdiction of the Crown of Castile. Understanding the origins and development of this legal tradition helps unravel the complexities of the Castilian land tenure system established in the Iberian Peninsula and later transmitted to the Americas. This study therefore focuses on how the villages of Algodre and Coreses understood the various forms of common land and how they argued for ownership of them before the Audiencia at Valladolid in the kingdom of Castile. The arguments presented by their attorneys tell us unequivocally that villages, towns, and cities could and did own common lands. These arguments and the decision of the *Audiencia Real Castellana* in *Consejo de Algodre v. Consejo de Coreses* (1457) moreover clarifies the meanings of land designations found in the Peninsula and in New Mexico. Altogether, this evidence indicates an inveterate tradition of villages, towns, and cities exercising dominion over common lands—a tradition later brought to and applied in New Mexico.

Scholars have cited the *Siete Partidas* as an early source that mentioned common lands. Law 9, title 28, partida 3 described various types of commons that

inhabitants of a *lugar* (place), *villa* (town), or *ciudad* (city) controlled.[4] The *Espéculo de las Leyes*, another source of thirteenth-century Castilian law, also stated that lugares, villas, and ciudades had *señorío* (ownership or dominion) over certain common lands—ejidos, *montes* (woodlands), and *dehesas* (fenced commons).[5] The *Fuero Viejo de Castilla*—a fourteenth-century compilation of earlier Castilian law also mentioned villas and ciudades and their control of their ejidos.[6] In addition to these sources, *fueros* (charters with enumerated privileges or laws) from the thirteenth century and earlier, also contained evidence of common lands belonging to communities or municipalities.[7] Royal concessions (land grants) also mention "montes, aguas, pastos, y ejidos" and state that they were granted to the grantees.[8] Concessions given as early as the ninth century in the Iberian Peninsula and those issued in New Mexico in the eighteenth century described these types of land designations as integral to the granted land. Royal decrees later published in Castilian compilations of law, such as the *Recopilación de las leyes destos Reynos* mention these elements as well.[9] In book 2, title 1, laws 1 and 2, the *Recopilación de leyes de los reynos de las Indias* incorporated the *Siete Partidas* and Castilian law in general, as supplemental law in the Spanish possessions of the New World.[10] The *Recopilación* (Indias), book 6, title 3, law 8 explicitly cited in New Mexico, featured the formulaic provisions for pastos, montes, and an ejido.[11] The origins and meaning of Castilian law prior to 1492 is therefore relevant to cases adjudicated in the Americas, where Spanish officials issued grants with designated common lands and water sources.

Despite these textual examples of written law, confusion among scholars has and still surrounds these unique sources of land and water. Some in describing land grants have used terms such as "usufructs," when most conveyances never mention this term; fewer conform to the requirements of a usufruct as laid out in the *Siete Partidas* or Roman law found in the Emperor Justinian's *Corpus iuris civilis*.[12] The idea that only equitable rights attached to common land, which formed part of a royal concession, also conflicts with the historical record and the very text of the land grants themselves. In these conveyances, officials gave the grantees legal title and placed them in possession of that land. The Act of Possession publicly indicated a transfer of legal, not equitable, title. It notified people of transfer and gave them an opportunity to object to the transfer of title. Still, in the late nineteenth century, the Court of Private Land Claims asserted that certain grants, because of their intended uses and the language utilized in their petitions, represented conveyances in which the grantor never conveyed an ownership interest, but rather, some sort of usage or equitable right.[13] These theories underlie the reasoning that federal courts used to deny land claims. Yet, they are neither based on principles of Castilian law concerning common land,

nor any Castilian legal writings or precedent in the form of adjudications.

Previously, scholars have attempted to remedy these errors by identifying land disputes in New Mexico where governors and other officials protected Native lands by recognizing ejidos and other concepts of law. Others have looked to sixteenth-century Castile to examine how commons were understood and adjudicated in that era. More compelling evidence, however, lies deeper in the history of Castile-León, where disputes over land were adjudicated before the royal court and in courts the crown later established, such as the Audiencia. Evidence of these hearings date to at least the tenth century for the kingdom of León and the County of Castile. Eventually, land disputes were adjudicated by the audiencias of Castile-León. Enrique II (r. 1366–1367, 1369–1379) established the first Audiencia Real Castellana in 1371; Juan II (r. 1406–1454) permanently situated it at the town of Valladolid in 1442, where it served as the model for all future audiencias, including those established in the Americas.[14] Cases involving land fell first within the jurisdiction of the Royal Audiencia, and by the mid-fifteenth century, the tribunal heard them on appeal from cases tried by *corregidores* or other royal officials.[15]

These adjudications provide vital evidence as to how litigants understood common lands described in fueros, royal concessions, and legal writings, such as the *Siete Partidas*. They more precisely demonstrate how Castilians applied principles of law formed in the thirteenth and fourteenth centuries—principles later applied in the Americas. In *Consejo de Algodre v. Consejo de Coreses*, two villages argued over control of the surrounding lands and resources between their villages, lands, and water they described as the montes, pastos, aguas, and ejidos.[16] These terms of land and water appear in the *Siete Partidas*, *Espéculo de las Leyes*, *El Fuero Viejo de Castilla*, fueros, and royal concessions from as early as the ninth century, but also in legal writings applicable to the Spanish possessions in the Americas, such as the *Ordenanzas de descubrimiento, nueva población y pacificación de las Indias* (1573) and the *Recopilación de leyes de los reynos de las Indias* (1681).[17] Villages, towns, and cities owned common land of which their residents had a right to use them. They owned this land by law, through royal concession, or through decisions handed down by the royal courts, such as the Audiencia.

Algodre v. Coreses also provides an interesting case study, as no underlying conveyance granting any common lands to the villages survives. While Queen Urraca of León-Castile included Algodre in a royal concession given to the Order of the Cistercians in the twelfth century, no other grant or fuero has emerged concerning the village.[18] Unlike other villages or municipalities that received a fuero or royal charter, Algodre and Coreses were within the jurisdiction of the ancient city of Zamora.[19] Zamora, which straddles the Rio Duero and is situated sixty miles west of Valladolid in Castile-León, received

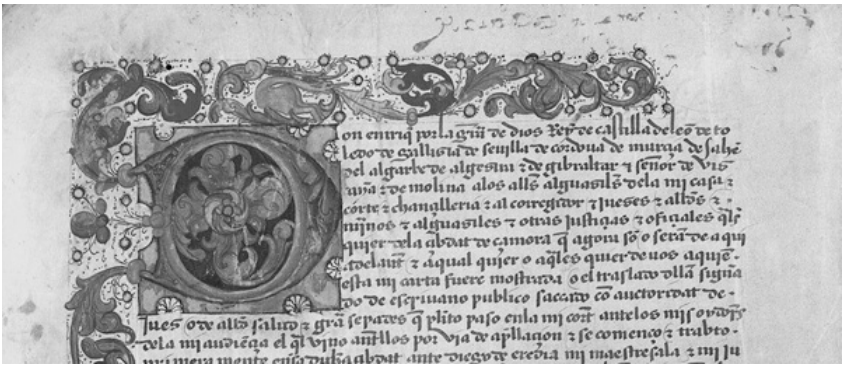


Fig. 1. Consejo de Algodre v. Consejo de Coreses, *Carta Ejecutoria*, Valladolid, 8 August 1464, España. Ministerio de Educación, Cultura y Deporte. Archivo de la Real Chancillería de Valladolid. PERGAMINOS, CAJA, 5, 2, fol. 1v. Upper area of the document. Courtesy of the Archivo de la Real Audiencia y Chancillería, Valladolid, Spain.

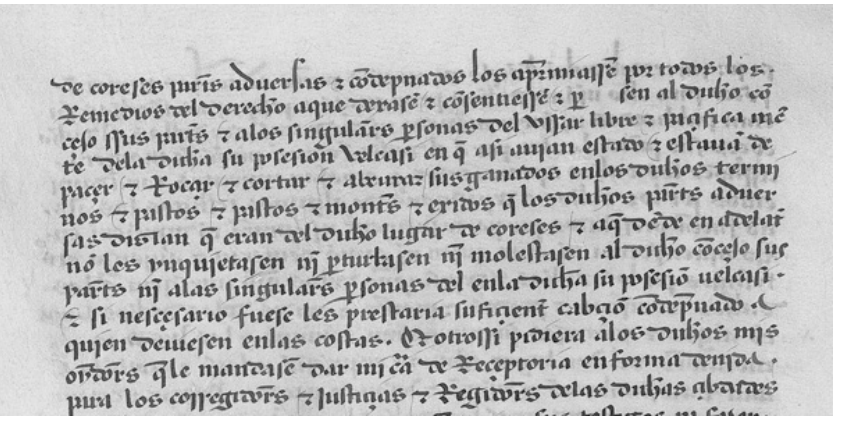


Fig. 2. Consejo de Algodre v. Consejo de Coreses, *Carta Ejecutoria*, Valladolid, 8 August 1464, España. Ministerio de Educación, Cultura y Deporte. Archivo de la Real Chancillería de Valladolid. PERGAMINOS, CAJA, 5, 2, fol. 3v. Upper left area of document. Courtesy of the Archivo de la Real Audiencia y Chancillería, Valladolid, Spain.

a fuero in the twelfth century. However, it does not elaborate on the communal land associated with the villages within the city's districts. As such, no local law applied to the conflict. This meant that the *Siete Partidas*, as generally applicable law, applied. Had a grant been given to Algodre or Coreses, the nature of the dispute would have changed, as written evidence concerning property carried greater weight than testimony in land disputes. [20] As such, *Algodre v. Coreses* allows us to evaluate not only how villages fought over common lands, where no underlying grant existed, but also how villages within

the jurisdiction of a Castilian-Leonese city could make claims of ownership to montes, pastos, and ejidos.

In the Castilian-Leonese tradition, villages, towns, and cities fit within a hierarchy in which they received certain rights based on their size and status. A Castilian villa ranked above a lugar, but below a ciudad in terms of municipal rights, prestige, and size. Like a ciudad, it could have numerous *aldeas* (villages) within its jurisdictional boundaries. As a villa, it was entitled to be represented as a corporate entity as was a ciudad. Alfonso X's (r. 1252–1284) *Espéculo de las Leyes*, book 5, title 8, law 2 later expanded upon by the *Siete Partidas*, provided that a lugar could also form a *consejo* (council), which could represent the village.[21] These concejos could file suit in the name of their village as a corporate entity against another lugar, town, or city over land or other issues.

In 1457 the consejo of Algodre sued the consejo of Coreses over an incident that occurred within the contested boundaries between the two villages, which they both allegedly used as commons.[22] In proceedings preserved on twenty leaves of parchment (forty pages *verso* and *recto*) the Audiencia issued a *sentencia definitiva* (definitive sentence) and recorded it in a *carta ejecutoria* (executory letter). The carta ejecutoria presented the procedural background of the case, the disputed issues, and an elaboration of the arguments that the Audiencia considered to reach its decision. It also served as a judgment for the prevailing party. In the proceedings, both villages would refer to portions of these *términos* (the surrounding land between the villages) as "prados et pastos et montes et exidos" (meadows, pastures, woodlands, and multipurpose commons).[23] These terms had technical, legal meanings: they designated common lands, some with valuable resources, in which certain usage rights or full ownership could be attached.[24] Villages, towns, and cities valued these rights and frequently pursued litigation to defend them.

Algodre v. Coreses allows us to see how the Audiencia adjudicated a complex boundary dispute that resolved several possibilities. For example, did Algodre and Coreses each own its own montes, ejidos, and pastos distinct from Zamora and other places? Or did Algodre and Coreses share ownership of these common spaces? Did the crown or Zamora have any claim or interest to the lands in question? Analysis of these issues, the circumstances surrounding the dispute, and the Audiencia's decision provides answers to these questions. Those answers enable us to reach a better understanding of how numerous trained legal professionals—who studied, practiced, lived, and breathed the law concerning these common lands—understood the applicable Castilian law later transmitted to the New World.

The conflict between Algodre and Coreses erupted on a winter day in February 1457. Martín Rodríguez, Marina Alfonso, and Marina Matheos, villagers from

Algodre, were grazing their sheep in the términos between the two villages.[25] In the surviving documents, they claim that several men from Coreses assaulted them, injured them, and seized their livestock. The men from Coreses proceeded to take eleven rams, which they allegedly sold, and they injured or scattered as many as five hundred sheep from the herd.[26] As had been common with villages and towns in the Peninsula, residents often herded their livestock together—assembling them, naturally, in the commons.[27] The sheep that were lost probably hurt more people financially than just the three villagers named in the suit. The village of Algodre, through its *procurador* (legal representative) filed a complaint in the City of Zamora against the village of Coreses and the men involved in the seizure of the livestock. According to the carta ejecutoria, Algodre named the men from Coreses: Benito de Cubillos, Alfonso Cadenado, Juan Carretero, Antón Martín, Juan de la Plaza, Nicolás Risa, Pedro Garzón, and Juan Sanchino.[28]

Algodre submitted its complaint to Diego de Heredia, the corregidor in Zamora. As corregidor, Heredia presided over the city council and represented royal authority by enforcing royal law.[29] Algodre requested that Heredia proceed against the men of Coreses and impose the highest penalties allowed under the law. Throughout the case, both parties refer to rights and law as justifying their claims, not custom. Numerous bodies of law—the *Fuero Real*, *Siete Partidas*, and the *Fuero Juzgo*—had been set in place and could be applied to the case.[30] Alfonso XI (r. 1312–1350) had established this hierarchy of legal authority at the legislative assembly (*cortes*) held at Alcalá de Henares in 1348 (see table 1). Royal law that specifically addressed the issue would be applied first, then any local fuero, including the *Fuero Juzgo*, a Castilian translation of the laws of the Visigoths also known as *Liber Iudiciorum*. If neither of these bodies of law applied, the *Siete Partidas* would serve as a source of law of general applicability. The principles applied in settling the dispute between Algodre and Coreses would be relevant in resolving disputes in New Mexico and other places in the Americas.

Algodre's complaint originally focused on the assault and seizure of animals, not the boundaries between the two villages. Algodre sought compensation and punishment of the assailants. Within his duties as corregidor, Heredia could hear, decide, or delegate cases.[31] He chose to delegate this case. He, along with the *regidores* (councilors) of the city council of Zamora, selected the regidor Fernando Núñez to investigate.[32] They commissioned Núñez to conduct a *pesquisa* (investigation), which the laws of the Visigoths, the *Siete Partidas*, and the *Ordenamiento de Alcalá de Henares* of 1348 all provided for in land disputes. Núñez, in the course of his investigation, decided that the two villages had distinct boundaries. This fundamentally undercut Algodre's claims that its residents had been grazing within its boundaries or within space they had the right to use. Rather,

Table 1. The Formation of Castilian Law, circa 1000–1821 (often imprecisely referred to as "Spanish Law").

Applicable in Castile; applicable in Castile-León after 1230	Chronology	Applicable in Castile and the Americas	*"Derecho Indiano" (Applicable only in the overseas American possessions of the crown of Castile-León)*
Royal Concessions, *mercedes reales* "land grants"	AD 1035 (counts of Castile issued land grants beginning in the 9th century)	1492–1821	
Fueros (charters listing rights and privileges)	Ca. 9th Century	1492–1821 (In the Americas through the Council of the Indies after 1524)	Royal Concessions and Provisions, Decrees, Ordinances, Custom, and Local Ordinances
Legislation from the *Cortes* (Parliaments)	Ca. 1188(9)	(Principles applied through later bodies of law in the Americas)	
Lex Visigothorum (dates to the Seventh Century, but translated into Castilian Spanish in the thirteenth century and known as the *Fuero Juzgo*.)	Ca. 7th Century–1240s as the *Fuero Juzgo*	(Principles applied through later bodies of law in the Americas)	
Fuero Real	Ca. early 1250s	1492	
Las Siete Partidas	Ca. 1250s formally promulgated in 1348	1492/1520s–1821	American Royal *Audiencias* Orders, Decisions, and Doctrine

(continued to next page)

Table 1 *(continued)*

Royal *Audiencia* (*High Tribunal*)	1371	1505	
Orders, Decisions, Doctrine		1567	
	1505		
Leyes de Toro		1681	*Recopilación de leyes de los Reynos de las Indias*. (This expressly states that Castilian law applies where its laws are silent)
	1567		
Recopilación (Castilla)			
Novísima Recopiación			
	1805	1805	

Note: This table is based on the following sources: Ordenamiento de Alcalá de Henares de 1348, Capítulo lxiv; "How the fueros ought to be observed" in *Cortes de los antiguos reinos de León y de Castilla*. 7 vols., ed. Manuel Colmeiro (Madrid: Real Academia de la Historia, 1861–1903), 1:541–43; Leyes de Toro, law 1, in *Glosa de Miguel de Cifuentes sobre las Leyes de Toro* (Medina del Campo: Matheo and Fracisco del Canto, 1555); book 2, title 1, law 2 in *Recopilación de leyes de los reynos de las Indias*, 4 vols, preliminary study by Juan Manzano Manzano (Madrid: Julián de Paredes, 1681; facsimile reprint, Madrid: Ediciones Cultura Hispánica, 1973); and Book 2, title 2, laws 1–12 in *Novísima recopilación de las leyes de España*. 12 vols. (Madrid, 1805–1807). Table courtesy of James E. Dory-Garduño.

the determination that distinct boundaries existed provided support to Coreses's defense, or theory of the case, which asserted that the villagers from Algodre had trespassed onto their commons. Núñez marked off the boundaries between the two villages, assigning the commons to Coreses and set in place official boundary monuments. His actions were not arbitrary or based on custom.

The *Siete Partidas* speaks directly to the claims that the litigants were making.[33] Firstly, it declares the principle that certain areas of a town or city were communal, such as ejidos, montes, dehesas, and other places. It then adds that these communal spaces were established and granted to places (lugares), towns, and cities. As Concejos (councils) represented the lugares of Algodre and Coreses, law 9 applied to the dispute. Book 5, title 8, law 2 of the *Espéculo de las Leyes*, which is likely the predecessor of law 9, makes clear that lugares had dominion over common lands: "las plazas, e los exidos, e los montes, e los términos."[34] They along with towns and cities controlled these spaces, which the crown or lawful officials established or granted to the locale. The *Siete Partidas* also provides that all inhabitants of the village, town, or city—"poor as well as rich"—could use them and that non-residents could be excluded from them.[35] For Coreses, the principles in law 9 permitted it to exclude the villagers from Algodre from entering its commons; commissioned judge Fernando Núñez—deciding the case in favor of Coreses—delineated the boundaries between the two villages. The boundaries that he marked gave Coreses the area in which the alleged assault took place.

The village of Algodre objected to Núñez's conception of the dispute as simply a matter of identifying boundaries, which would imply Algodre's villagers were trespassers. After receiving Núñez's sentence, it appealed the case to the Audiencia in Valladolid.[36] Pedro López de Nájera represented Algodre as its procurador. In the pleadings he submitted to the court, he argued that the Audiencia should declare void the boundary indicators and monuments set by Fernando Núñez along with his decision.[37] López de Nájera then explained that by conceiving the case as a boundary dispute, Fernando Núñez exceeded the form and scope of his commission. He asserted that the original filing was a criminal complaint for assault against certain individuals from Coreses and that Algodre, and its citizens involved in the incident, sought damages for the stolen rams and lost sheep. Algodre did not ask to have the términos partitioned because they had been used as commons by both villages.[38] Only the matter of the assault was presented to Núñez.

López de Nájera then turned to the evidence produced, claiming that Núñez neglected to swear in several witnesses, depose them, or present them to the representatives of Algodre, who could have contradicted what they said. Consequently, their testimony was not published; yet Núñez's reliance on that testimony prejudiced the village of Algodre, as the location of his boundary

indicators and markers were based on their testimony.[39] López de Nájera also stated that other witnesses contradicted those that supported Coreses; they stated that the "dichos terminos et prados et montes et exidos de los dichos lugares algodre et coreses fueran et eran comunes" (the said boundaries, meadows, woodlands, and ejidos of the said places of Algodre and Coreses were [preterit] and were used [imperfect] as commons).[40] These witnesses also said that residents of Algodre and Coreses had used these commons to herd, stubble-graze, and cut timber in the términos of both places longer than anyone could remember. It had been so since time immemorial.[41] Under a time immemorial claim, an argument for ownership could be made based on how long the lands had been used—fifty years according to the *Fuero Juzgo* (*Lex Visigothorum*), or forty years under the *Siete Partidas*, depending on the circumstances.[42]

While the *Siete Partidas* states that commons could not be acquired by an individual through prescription, attorneys in other cases argued before the Audiencia that a town's council could claim ownership of commons based on possession over extended periods of time.[43] López de Nájera, to cover all plausible time periods that legitimate a claim of ownership found in the *Fuero Juzgo* and the *Siete Partidas*, said that Algodre had been in possession of the land for more than "ten, twenty, thirty, forty, fifty, and sixty years." He added that there were more witnesses to this view than those who said the lands at issue had been divided.[44] The claim of having more witnesses was not mere argument; it had a technical purpose. It served to rebut the legal presumption that the *Fuero Real* gave in favor of defendants if both litigants presented an equal amount of credible witnesses.[45] By claiming Algodre had more witnesses, López de Nájera added support to his central claim that Núñez's sentence should be reversed. He continued that the Audiencia should order the residents from Coreses to refrain from disturbing, disrupting, or bothering anyone using the "pastos, montes and exidos" to pasture, stubble-graze, water their livestock, or cut wood.[46] He also requested that the Audiencia issue an injunction that would order the officials in Zamora not to take any further action until the court viewed the entire appeal.[47]

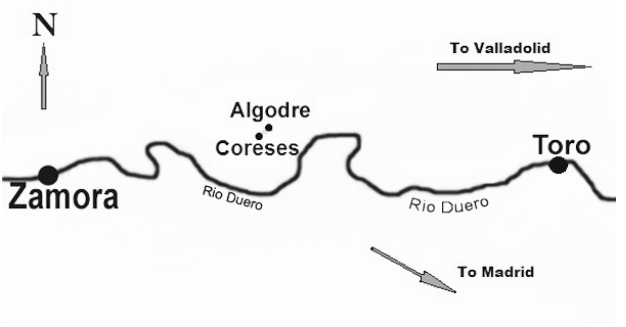
Representing the "council and good men" of Coreses, Martín Alfonso de Bolaño appeared before the *oidores* (justices) of the Audiencia.[48] He first argued that Algodre had consented to the commission of Fernando Núñez. This argument was based in the long-standing right found in the *Lex Visigothorum* that judges could be delegated or consented to by the parties.[49] There was no issue over whether Núñez should have handled the case. Alfonso de Bolaño emphasized that this occurred with no objection from Algodre at the time, so they should not be allowed to bring it up again. He continued, arguing that Algodre had accepted Núñez's sentence and that the issues being appealed were *res adjudicata*, or they had been decided and therefore should be barred from

an additional adjudication.[50] He then urged the Audiencia to confirm the lower decision and order Algodre to pay the costs of the new proceedings.

Moving from arguments based on procedure, Alfonso de Bolaño turned to the facts of the case. He stated that Algodre had not been in continuous possession of the lands in question, but that Coreses had had possession of them, which they held separately from Algodre.[51] The lands in question were indeed commons, but they belonged to Coreses: they were his exclusive commons in which Algodre and residents of other places had been excluded. Alfonso de Bolaño continued that Coreses could rightly seize anyone lacking permission or license who attempted to use its términos. The right of one locale to defend its commons and deny non-citizens access to them is provided for in title 28, law 9, division 3 of the *Siete Partidas*. In making this assertion, Alfonso de Bolaño also provided a definition for términos. In the context of boundaries surrounding a locale, términos meant pastos, prados, montes, aguas, and ejidos collectively: these were all forms of commons that individuals from a village, villa, or ciudad could exclusively use, but were owned—as demonstrated through the rights to possess, use, defend, and exclude—by that village, villa, or ciudad not any individual. Alfonso de Bolaño then stated that Fernando Núñez properly marked the boundaries.[52] He urged for the Audiencia to defend and protect Coreses in its possession of its términos and order all others to refrain from entering them. He reiterated that the residents of Algodre or any others should be warned against disrupting or disturbing the inhabitants of Coreses.[53]

Pedro López de Nájera, representing Algodre, responded by stating that the Audiencia should have jurisdiction and should decide the case as an appeal.[54] He argued that the Council of Coreses never held the términos in question—prados, montes, and pastos—separately from Algodre nor prevented its inhabitants from entering them.[55] He also stated that this included the land marked by Fernando Núñez, which Algodre had peacefully possessed since time immemorial. He admitted that although some of this land may have belonged to Coreses, Algodre through uncontested use should at the least have a servitude (*servidumbre*) to those portions.[56] A servidumbre could be a usage right in the form of an easement, which represented a stronger and distinct right from the contractually created usufruct.[57] López de Nájera also added that Algodre had established usage rights to *cotos* (fenced reserves) under the conditions of use and custom in other places, some as far away as "three shots of a crossbow" as opposed to the close proximity of Coreses.[58] By claiming Algodre should at least have a usage right, López de Nájera, through his time immemorial claim, argued that at most Algodre should have outright title to the commons. He then requested the Audiencia to decide the case in Algodre's favor and condemn Coreses for taking away the common land and award Algodre all the remedies the law afforded.[59]

Map 1. Map of the Iberian Peninsula, c. 1457. In the fifteenth century, Valladolid had replaced Burgos as the de facto capital of Castile-León. In the sixteenth century, Madrid replaced Valladolid as the capital. Algodre and Coreses lie just east of Zamora along the Duero River. Map courtesy of James E. Dory-Garduño.



Map 2. Map by of Zamora, Algodre, and Coreses, c. 1457. Map courtesy of James E. Dory-Garduño.

After hearing these pleadings, the Audiencia ordered that Fernando Núñez's sentence be vacated and revoked.[60] It ordered the parties to file new petitions and to present witnesses and evidence to support their case.[61] It also enjoined the officials—corregidor, alcaldes, regidores, and any other ministers—in Zamora from taking any further action against Algodre. The Audiencia additionally ordered that all matters concerning the case should be suspended or returned to their status before the filing of the suit.[62] It gave Pedro López de Nájera, continuing in his representation of Algodre, sixty days to present his witnesses and evidence beginning on 13 December 1457.

Coreses would have the same amount of time. The Audiencia ordered the parties to use its reception halls for the new proceedings.[63] The village of Algodre certainly celebrated upon hearing this decision. Common land had enormous value in a pastoral economy where people used it to herd, graze, and water their livestock and collect timber to construct buildings, tools, commodities, and weapons.

López de Nájera's next filings included his arguments on what would now be the central issue in the case. Did Algodre and Coreses own the common lands between both villages jointly or did they belong exclusively to Coreses? Although Algodre had objected to framing the case around this issue, it had to be decided before damages could be awarded for the allegedly stolen and lost livestock. López de Nájera again averred that the lands in question were commons and that Algodre had peaceably held them in possession since time immemorial.[64] He argued that the only divided lands were some cotos. He then explained the multiple meanings of coto in the context of common land. In prior disputes, coto had a flexible meaning and could be a hunting reserve or some other commons fenced off similar to a dehesa. Derived from the Latin term *cautus* for "cautious," it took on the connotation of "secure or guarded" land. López de Nájera stated that it was a reserve for grazing and keeping oxen, which each council had rights to for specific periods of time through custom and use without charging fees, seizing material or animals, or hindering each other's use. He added that Algodre used these lands freely and until this incident occurred, Coreses did not oppose its use.[65]

He continued that Coreses had not proved its case and then proceeded to impeach its witnesses on grounds that they contradicted themselves and lacked credibility. Again, this served to overcome the legal presumption given to defendants when both sides presented an equal amount of credible witnesses.[66] One witness, López de Nájera argued, had never set foot in either Algodre or Coreses or any other place within the region; instead, he was a night traveler and a drunk.[67] He dismissed several other witnesses as drunks and thieves, and stated that some had been corrupted with bribes. Others, he claimed, were crazy and lacked capacity—stating that one senseless man was infamous for walking, acting, and dressing publicly as a woman. Some witnesses had been excommunicated, whom López de Nájera denounced for an array of reasons.[68] He claimed other witnesses had conflicts of interests. They had interests in property they received from the Council of Coreses or held land that would increase in value by a decision in favor of Coreses.[69] He then listed several men and women from Coreses and questioned their credibility, as they had provided money for the suit and stood to lose a great deal financially. For López de Nájera, all of these witnesses lacked credibility.

Alfonso de Bolaño submitted a response for the lugar of Coreses, in which he claimed his party had proved its propositions and thus established its case.[70] He advised the Audiencia that Coreses held the términos in question separately from Algodre and that they were delineated and marked with official monuments. He added that Coreses, not Algodre, possessed the commons since time immemorial.[71] He also explained that Coreses had rightly seized any livestock that had entered within its marked boundaries. He urged the Audiencia to forbid Algodre from entering Coreses's términos or pay rent for using them. Alfonso de Bolaño then questioned the credibility of the witnesses who testified for Algodre. He claimed that all of them were within the third and fourth familial degree of citizens of Algodre and some owned property in Algodre.[72] The *Fuero Real* generally prohibited family members from testifying on behalf of each other due to natural biases.[73] Alfonso de Bolaño attempted to disqualify the witnesses based on this principle. He subsequently accused several of them for being renegades against God, and that they were drunks and recipients of bribes.[74] Consequently, it was the witnesses for Algodre, he argued, that should not be believed.

Both attorneys continued to impeach the other's witnesses and rehabilitate their own. López de Nájera replied that his witnesses had given testimony in good faith, were credible, and had good reputations.[75] He also denied that they were related in the manner that Coreses had claimed or had interests in the outcome of the suit. Further, he argued, Algodre had also provided more witnesses. He said that the impeachments by Coreses were not proper and that Coreses's new requests for damages were malicious, since they prolonged the suit and lacked any evidentiary support. After hearing this argument, the Audiencia issued an order that allowed further testimony and evidence to be presented.[76] Coreses, should it not prove its propositions before the court, would be subject to a penalty of three thousand maravedís.[77] López de Nájera requested that the Audiencia name a *receptor*, a scribe designated to receive the evidence, which it did in the name of the Escribano Sánchez de Matabuena. It then increased the time permitted to provide evidence to an additional fifty days after which that evidence would be published.[78]

Alfonso de Bolaño, representing Coreses, then argued that Coreses had established its proofs regarding the boundary markers. He also stated that Coreses had established its propositions, but Algodre had not, nor had it submitted its evidence on time. These witnesses also presented contrary testimony, had improper interests, and testified in bad faith.[79] In contrast, he argued, Coreses presented more credible witnesses, who testified that monuments marked and divided the términos between each locale. These witnesses saw the boundary markers with their own eyes. Alfonso de Bolaño also suggested that the Audiencia should send someone to verify that the old monuments were in place and that they

demarcated the villages.[80] He added that these official markers had been recognized in the earlier proceedings.

López de Nájera responded to this new evidence by pointing out the defects in the testimony of the witnesses presented by Coreses, citing contradictions and statements given in bad faith. In contrast, his witnesses exceeded those of Coreses in number and were more trustworthy. He reiterated Algodre's claims to damages in respect to the lost sheep and the seized livestock. The case, nonetheless, still hinged on whether there was sufficient evidence to prove that the términos between the two villages had been divided prior to the assault. López de Nájera argued that the witnesses who went to inspect the monuments that marked the divisions between Algodre and Coreses agreed that the monuments were new and not old markers. The case turned on this fact.[81]

After reading the propositions and evidence presented, the Audiencia found that Algodre had proved its case. In doing so, López de Nájera established that the "términos, prados, pastos, montes, and ejidos" between Algodre and Coreses were commons owned by both places.[82] The Audiencia also accepted that these common lands had been used as such since "time immemorial." In its decision, the Audiencia declared that Algodre and Coreses jointly owned the términos, prados, pastos, montes, and ejidos.[83] The inhabitants of each place were entitled to pasture, stubble-graze, and cut wood freely and without penalty in the términos. The Audiencia also admonished each village not to seize or attempt to seize any of the inhabitants from the other village. It also ordered Coreses to restore all of the livestock that it had taken from the men and women of Algodre and to pay restitution for any other damages. Coreses was also ordered to pay the penalty of three thousand maravedís for the additional proceedings where it attempted to prove that the términos between the two villages had been divided.[84]

Alfonso de Bolaño appealed the decision on the behalf of Coreses. He stated that the Audiencia should declare its sentence void and that the decision was an injustice. He argued that the evidence showing that the términos had been divided was greater than which Algodre presented. He also claimed that an ancient land grant had been made to Coreses and that the monuments in question reflected those ancient boundaries. He urged the Audiencia to visually inspect the monuments.[85] He added that the Audiencia believed Algodre's witnesses, but it could have just as easily believed Coreses's. He also stated that Algodre at most proved that it used the términos and this established at best a usage right to the commons not ownership; the Audiencia exceeded its scope in declaring that Coreses and Algodre owned the términos jointly.[86] Here, Alfonso de Bolaño distinguished between establishing a usage right based on use and custom and outright ownership, which the Audiencia established for both villages

by declaration.[87] If the Audiencia's declaration had only given equitable rights in the form of usage rights, Alfonso de Bolaño's comment would make no sense. López de Nájera made the same distinction. Together, these arguments prove that common lands could be owned outright, jointly or individually.

The Audiencia took Alfonso de Bolaños appeal on behalf of Coreses under consideration. After deliberating in Valladolid on 8 August 1464, it issued a sentencia definitiva in the degree of a *revista* (review) affirming its decision in favor of Algodre.[88] It stated that that decision was "good, just, and lawfully given." It ordered Coreses to pay costs in the suit in the amount of 12,500 maravedís. It also ordered a carta ejecutoria to be issued to Algodre as requested, so that all would know the final judgment. The Audiencia added that the citizens and inhabitants currently living there and their offspring shall have the "prados, pastos, montes, and ejidos of the said places freely and without penalty."[89] It ordered Coreses not to seize nor consent to seize the citizens and inhabitants of Algodre nor their livestock nor any of their belongings. Algodre likewise was not to do the same to Coreses or its citizens and inhabitants. Both villages were ordered to respect the wheat fields, vineyards, fenced prados, and cotos owned by the respective councils.[90]

Algodre v. Coreses provides further evidence that reveals litigants recognized the principles contained in law 9, title 28, division 3 of the *Siete Partidas* as well as others that dealt with the ownership of common lands. Had Coreses persuaded the Audiencia that the términos between the two towns had been divided and marked with monuments or that commissioned judge Fernando Núñez had properly divided them, it would have been able to prevent Algodre from using those separated lands. It would have been the sole owner. Its actions in seizing the herds of sheep would have been justified under its rights to defend its commons and exclude outsiders from using them. In discussing the commons belonging to a village, town, or city, title 28, law 9, division 3 of the *Siete Partidas* stated that "those who might be residents elsewhere cannot make use of them against the will or prohibition of those that live therein."[91] Since Coreses could not prove that the common land belonged only to it, law 9 worked to guarantee the rights of the citizens and inhabitants of Algodre. Law 9 continued: "And these are established and granted for the advantage of all men of each city, villa, castle, or other place. Because every man who is a resident therein can make use of all of these aforementioned things: and they are communal to all, for the poor as well as the rich."[92] The Audiencia also made sure to state that municipally owned lands, such as vineyards and wheat fields, referred to in title 28, law 10, division 3 of the *Siete Partidas*, were not communal for individual use, but exclusively belonged to the municipalities to provide income for their upkeep.[93] Both villages were ordered to respect

these lands as well as the fenced cotos and other places specifically owned by the council of Coreses.

Algodre v. Coreses also demonstrated that villages owned lands designated as prados, pastos, montes, and ejidos. Alfonso de Bolaño, in representing Coreses, made this clear when he complained that the Audiencia declared the prados, pastos, montes, and ejidos to belong to both villages. He would have preferred a declaration from the court stating that Algodre simply had a right to continue using the términos based on custom and usage rather than ownership. This would have been established under a form of prescription that specifically allowed the establishment of usage rights to pastures, ejidos, and water sources. It would have amounted to no more than a servitude. The Audiencia's decision, however, provided a form of title for both villages. In the sixteenth century, when the jurist Gregorio López glossed the *Siete Partidas* in Latin, he stated in his commentary to law 9, title 28, division 3 that "it seems to be proved" (by the provisions of law 9) that the *termini* (montes, pastos, and ejidos) belonged to the cities or villages.[94] *Algodre v. Coreses* proved that they did.

That Fernando Núñez had actually marked boundaries in the early proceedings indicates that Coreses had persuaded the officials in Zamora that the two villages had distinct boundaries within the greater términos of the city of Zamora. This indicates that even small villages, such as Algodre, had potential claims to dominion over common lands in addition to the individually owned property its residents held, as mentioned in the case. At one point, Alfonso de Bolaño suggested there was an ancient grant that purportedly proved Coreses's case, but he could not produce any evidence of it.[95] In numerous adjudications, the lack of an authentic surviving charter injured a claimant's case. Still, both villages made claims to ownership applying the principles of the *Siete Partidas*, *Fuero Real*, and *Fuero Juzgo*, and other sources of written law.[96] In the end, the Audiencia declared through its final judgment that both villages owned the commons.[97] This also shows that the lands in question were not by default part of the royal domain: the crown never appears in the proceedings to defend, claim, or maintain an interest in the disputed lands. The city of Zamora, likewise, never claimed an interest.

For later disputes, such as those adjudicated in the Americas, where agents of the crown issued grants under the same principles of law, *Algodre v. Coreses* provides precedent that villages, towns, and cities owned the common lands. If villages, towns, and cities could not own common lands, and if common land always remained part of the royal domain as later American courts decreed, *Algodre v. Coreses* would make no sense. Had the principles applied by the Audiencia Real Castellana been understood by those who argued, and more importantly, those who decided land claims in New Mexico, cases such as *United*

States v. Sandoval (San Miguel del Vado Grant) and *Pueblo of Zia et al. v. U.S. et al.* (Ojo del Espíritu Santo Grant of 1766) would have turned out differently.[98] Hundreds of thousands of acres, now federal land, would have remained under the control of Hispanic settlements, Pueblo Indian villages, and individual grantees. The U.S. courts and the Congress affirmed the Castilian common land tradition unknowingly in some grants, particularly where the references to common lands or water did not create a significant issue. In other cases, justices gave deference to the actual text of the conveyance, respecting the grant for what it plainly stated and what it plainly conveyed.[99] Had federal courts in the late-nineteenth century read their earlier precedent, the concept of ownership of the commons might have more fully become a part of the New Mexican legal tradition, as did other principles from the *Siete Partidas* and the *Recopilaciones*.

The Audiencia Real Castellana's adjudication of *Consejo de Algodre v. Consejo de Coreses* shows how these principles of land tenure were applied within their natural setting. In light of this revelation, the court's assumption in *United States v. Sandoval* that common lands never left the public domain is simply inconsistent with *Algodre v. Coreses* and other cases; the *Siete Partidas*; Castilian royal decrees and grants; custom and use; and principles found throughout the *Recopilación de leyes de los reynos de las Indias* and the *Recopilación de las leyes destos Reynos*.[100] If Algodre and Coreses established title to common lands with no surviving original grant, then royal concessions that explicitly granted common lands to the grantees provide even stronger evidence that the crown granted these recipients nothing short of full legal title.

Note

1. See Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico,* 3d. ed. (Albuquerque: University of New Mexico Press, 2008), 105–23; Mark Schiller, "The San Miguel del Vado Adjudication: A Template for Injustice," *Chamisal (N.Mex.) Jicarita News* 11 (2006), viii; and James E. Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766 and the Recopilación," *New Mexico Historical Review* 87 (spring 2012): 167–208.

2. United States v. Sandoval et al., 167 U.S. 278 (1897) partially reversed the Court of Private Land Claims by declaring that the common lands associated with the San Miguel del Vado Grant belonged to the sovereign. When New Mexico came under the control of the Unites States, these lands became part of the public domain. A much criticized report, the United States General Accounting Office's "Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico," GAO-04-59 (Washington, D.C.: Government Printing Office, 2004) generally repeats the court's rationale with no critical analysis of the authority it cited or the underlying Castilian law.

The arguments that the U.S. Attorney made in *United States v. Sandoval*, even before it was decided, claimed that the grantees only had equitable rights to the commons, which provided the precedent to deny claims to common lands in the following grants known, along with San Miguel del Vado, as the "Sandoval 7": Cañón de Carnué, Cañón de Chama, Galisteo, Petaca, Don Fernando de Taos, and Villa de Santa Cruz.

3. Ebright, *Land Grants and Lawsuits in Northern New Mexico,* 113; David E. Vassberg, *Land and Society in Golden Age Castile* (New York: Cambridge University Press, 1984); David E. Vassberg, "The Tierras Baldías: Community Property and Public Lands in 16th Century Castile," *Agricultural History* 48, no. 3 (1974): 383–401; Daniel Tyler, "Ejido Lands in New Mexico," in *Spanish and Mexican Land Grants and the Law,* ed. Malcolm Ebright (Manhattan, Kans.: Sunflower University Press, 1989); Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766"; and see generally, James E. Dory-Garduño, "The Forging of Castilian Law: Land Disputes before the Royal *Audiencia* and the Transmission of a Legal Tradition" (PhD diss., University of New Mexico, 2013).

4. For the *Siete Partidas*, see *Las siete partidas del muy noble rey Don Alonso el Sabio, por el licenciado Gregorio López de Tovar*, 4 vols. (Madrid: Compañía General de Impresores y Libreros del Reino, 1844); and Robert I. Burns, *Las Siete Partidas,* ed. S. J., 5 vols. (Philadelphia: University of Pennsylvania Press, 2001) includes useful introductions along with Samuel Parsons Scott's translation, published in 1931, which omits many of the technical terms for land designations. Therefore, my citations refer to Gregorio López de Tovar's edition [hereafter *Siete Partidas*, law number, title number, division number].

5. *Espéculo de las leyes*, book 5, title 8, law 2 in *Los Códigos Españoles: Concordados y Anotados,* 12 vols. (Madrid: Imprenta de la Publicidad, 1847–1851), 6:158.

6. Benjamín González Alonso, book 5, title 3, law 13 in *El Fuero Viejo de Castilla: Consideraciones sobre la Historia del Derecho de Castilla (c. 800–1356),* trans. Ángel Barrios García and Gregorio del Sur Quijano (Salamanca: Europa Ediciones de Artes, 1996). This law prohibited the partition of an ejido by a town council to the town council or to individuals and provided the sovereign or seigniorial lord of the locale with grounds to invoke its takings powers (eminent domain) upon violation of the law.

7. For example, see, Alfredo Valmaña Vicente, ed., Chapter 1, law 1 in *El Fuero de Cuenca*, 2d. ed. (Cuenca: Editorial Tormo, 1978); and Dory-Garduño, "The Forging of Castilian Law," 85.

8. For example, see Fernando II to Guillermo de Castro (San Cristóbal Grant), León, 16 May 1164, Archivo Histórico Nacional, España, Carpeta 900, 11. Fernando II of León, in making the grant, uses the phrase "ab integro iure heriditario cu(m) pactis, pascuis, montib(us), fontib(us) et cu(m) omnib(us) directuris ad ipsa(m) hereditate(m) pertinentib(us)" (By full hereditary right with the agreed upon pasture-lands, woodlands [mountainous lands], springs, and with all rights pertaining to the same inheritance); Queen Urraca to Santa María de León and Bishop Diego (Villa of San Martín Grant), n.1, 14 July 1116, in Cristina Monterde Albiac, ed., *Diplomatario de la Reina Urraca de Castilla y León, 1109–1126* (Zaragoza: Librería General, 1996), 154–56, no. 98; Fernando III to Stephen of Belmonte and the Militia of the Order of the Templars, Toledo, 9 September 1236, in Julio González, *Reinado y Diplomas de Fernando III*, 3 vols. (Córdoba: Monte de Piedad y Caja de Ahorros, 1986), 3:93–95; and Alfonso X, Carta de Población, (Resettlement of the Villa of Requena), Atienza, 4 August 1257, in Eduardo de Hinojosa, ed., *Documentos para la historia de las instituciones de León y Castilla* (Madrid: Est. tip. de Fortanet, 1919), 166–67, no.

CII. These references all show that the tradition of fixing common lands to royal concessions was well-established prior to the *Siete Partidas,* which codified that tradition.

9. *Recopilación de las leyes destos Reynos, hecha por mandado de la Magestad Catholica del Rey don Philippe Segundo nuestro Señor*, 2 vols. (Alcalá de Henares: Juan Iñíguez de Liquerica, 1581).

10. Book 2, title 1, law 2 in *Recopilación de leyes de los reynos de las Indias*, 4 vols., preliminary study by Juan Manzano Manzano (Madrid: Julián de Paredes, 1681; facsimile repr., Madrid: Ediciones Cultura Hispánica, 1973).

11. For example, see *Testimonio* of the Santo Tomás de Abiquiú Grant, Governor Tomás Vélez Cachupín to the Congregation of Genízaro Indians, 5 May 1754, Santa Fe, Report 140, Surveyor General, Ser. 1, Spanish Archives of New Mexico, New Mexico State Records Center and Archives [hereafter, SANM, NMSRCA], and Governor Juan Bautista de Anza, Sentencia, 10 June 1786, Santa Fe, no. 1354, Ser. 1, SANM, NMSRCA.

12. Richard E. Greenleaf, "Land and Water in Mexico and New Mexico, 1700–1821," *New Mexico Historical Review* 47, no. 2 (1972): 85. Greenleaf confusingly refers to Spanish land grants as usufructs. In the technical sense of the word, "usufruct" is incorrect. Land grants generally conveyed title from the sovereign, or from his representative, a viceroy or governor, to a grantee or grantees, which distinguishes them from usufructs. Usufructs were a form of servitude, requiring contractual language to set the terms and duration of the agreement. Greenleaf within the text of the article goes on to discuss land grants in terms different than usufructs, but his use of the word is misleading. For a discussion on the distinction between a usufruct and other forms of servitude in the context of Spanish land grants, see Dory-Garduño, "The Forging of Castilian Law," 89; the *Siete Partidas*, title 31, laws 20–27, division 3; and *Corpus iuris civilis,* 3 vols., ed. Theodorus Mommsen, Paulus Kreuger, and Rudolphus Schoell (Zurich: Weidmann, 1872–1968).

13. Dory-Garduño, "The Adjudication of the Ojo del Espíritu Santo Grant of 1766."

14. *Cortes de los antiguos reinos de León y de Castilla*, ed. Manuel Colmeiro, 5 vols. (Madrid: Real academia de la historia, 1861–1903), 1:188–256; María Antonia Varona García, *La Chancillería de Valladolid en el reinado de los Reyes Católicos* (Valladolid: Universidad de Valladolid, 1981), 38–9. The Audiencia at Valladolid included the kingdom of León and the other kingdoms appended to the Castilian Crown. In 1495, the crown established a second audiencia at Ciudad Real and then moved it to Granada in 1505.

15. For the office of *corregidor*, see Agustín Bermúdez Aznar, *El Corregidor en Castilla durante la Baja Edad Media*, *1348–1474* (Murcia: Universidad de Murcia, 1974); Marvin Lunenfeld, *Keepers of the City: The Corregidores of Isabella I of Castile, 1474–1504* (Cambridge: Cambridge University Press, 1987); and Jocelyn N. Hillgarth, *The Spanish Kingdoms, 1250–1516*, 2 vols. (Oxford: Oxford University Press, 1978), 2:195, 307, 509.

16. Consejo de Algodre v. Consejo de Coreses, *Carta Ejecutoria,* Valladolid, 8 August 1464, Archivo de la Real Chancillería de Valladolid [hereafter, ARCV], Pergaminos, Caja 5, 2, ff., 3rv, 16rv, 20r [hereafter Algodre v. Coreses, folio, verso].

17. For the *Ordenanzas*, see *Ordenanzas de descubrimientos, nueva población y pacificación de las Indias* (1573) in *Teoría y leyes de la conquista*, ed. Francisco Morales Padrón (Madrid: Ediciones Cultura Hispánica del Centro Iberoamericano de Cooperación, 1979), 489–518.

18. Queen Urraca to the Order of the Hospitallers of St. John (Rio Guareña Grant), 3 June 1116, in Monterde Albiac, *Diplomatario de la Reina Urraca de Castilla y León*, 152–53,

no. 95. Both Algodre and Coreses are situated within the old kingdom of León, which Fernando III (r. 1217–1252) incorporated into the Crown of Castile in 1230. Thus, both fell under the jurisdiction of the Castilian Audiencia—an issue not disputed in the case.

19. On the history of Zamora, see Ursicino Álvarez Martínez, *Historia General Civil y Eclesiástica de la Provincia de Zamora* (Madrid: Editorial Revista de Derecho Privado, 1965); for the general history of the Iberian Peninsula in the fifteenth century, see Hillgarth, *The Spanish Kingdoms*; Angus MacKay, *Spain in the Middle Ages: From Frontier to Empire, 1000–1500* (London: Macmillan, 1977); and Roger Highfield, ed., *Spain in the Fifteenth Century, 1369–1516: Essays and Extracts by Historians of Spain*, trans. Frances M. López-Morillas (New York: Harper and Row, 1972).

20. This tradition dates at least to the laws of the Visigoths. See book 2, title 1, law 21 in *Lex Visigothorum (Liber Iudiciorum)*, ed. Karolus Zeumer, Monumenta Germaniae Historica, Leges Nationvm Germanicarvm, vol. 1: *Leges Visigothorvm* (Hannover and Leipzig: Hahn, 1902), 33–486; for an English translation, although dated, see *The Visigothic Code (Forum Judicum)*, trans. and ed. by S. P. Scott (Boston: Boston Book Company, 1910). It should also be noted that this version of the *Lex Visigothorum*, known as the *Forum Judicum*, was later translated into Castilian as the *Fuero Juzgo.*

21. *Espéculo de las leyes*, book 5, title 8, law 2 states that "Las otras cosas comunales de cada cibdat, o de cada villa, son asi como el lugar ô fazen el conceio, por que se ayuntan y los omes para tomar sus conseios e aver sus pleitos, e las plazas, e los exidos, e los montes, e los términos." (The other communal places of each city or of each villa, as well as the site where they create a council, because men come together to take council and have suits, are the plazas, ejidos, montes, and the términos.). See also, Carlé, *Del concejo medieval castellano-leonés.*

22. Algodre v. Coreses.

23. Ibid., f. 16r.

24. *Espéculo de las leyes*, book 5, title 8, law 2**;** and *Siete Partidas*, title 28, law 9, division 3. Both laws state that these lands could belong to a lugar, villa, or ciudad.

25. Algodre v. Coreses, f. 1v.

26. Ibid.

27. Carlé, *Del concejo medieval castellano-leonés*, 24, 29–30.

28. Algodre v. Coreses, f. 1v.

29. Ibid. There is no English equivalent of corregidor. A rough translation would suggest "corrector." Corregidors were royally appointed officials who "corrected" deviances from royal law in municipalities.

30. For the *Fuero Real*, see *Fuero Real*, in *Leyes de Alfonso X*, vol. 2. edición y análisis crítico por Gonzalo Martínez Díez, con la colaboración de José Manuel Ruiz Asencio y César Hernández Alonso (Ávila: Catedrático de Historia del Derecho, 1988) [hereafter, *Fuero Real*]; for the *Fuero Juzgo,* see *Fuero juzgo en latín y castellano,* ed. Real Academia Española (1815; facsimile repr., Madrid: Ibarra, 1971).

31. The Trastámara monarchs of Castile (Enrique II and his successors) appointed corregidores in the fourteenth century to curb local abuses in royal towns. Alfonso XI and Pedro I also used them. See Bermúdez Aznar, *El Corregidor en Castilla durante la Baja Edad Media*; and Hillgarth, *The Spanish Kingdoms*, 2:195, 307, 509. Their decisions and those by the judges they delegated to hear cases could be appealed to the Audiencia as discussed below. See also Compana de Albalá v. Villa de Almaraz, Valladolid,

1491–1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, Caja 1560, 1 and Caja 1564, 1. This document relates that Almaraz successfully appealed the decision of the corregidor of Plasencia.

32. Algodre v. Coreses, f. 2r.

33. Law 9, title 28, division 3 of the *Siete Partidas* reads: "Apartadamente son del comun de cada vna Cibdad, o Villa, las Fuentes, e las plaças o fazen las ferias e los mercados, e los lugares o se ayuntan a concejo, los arenales que son en las riberas de los rios, e los otros exidos, e las carreras o corren los cauallos, e los montes, e las dehesas, e todos los otros lugares semejantes destos, que son establecidos, e otorgados para pro comunal de cada Cibdad, o Villa, o Castillo, o otro lugar. Ca todo ome que fuere y morador, puede vsar de todas estas cosas sobredichas: e son comunales a todos, tambien a los pobres como a los ricos. Mas los que fuessen moradores en otro lugar, non pueden vsar dellas contra voluntad, o defendimiento de los que morassen y." (These are separately of the commons of each individual city or villa: springs, plazas, places where they hold fairs and markets, places where they hold council, sands that are on the banks of the rivers, the other ejidos, the tracks where horses run, the montes, the fenced commons, and all the other similar places as these. And these are established and granted for the advantage of all men of each city, villa, castle, or other place. Because every man who is a resident therein can make use of all of these aforementioned things: and they are communal to all, for the poor as well as the rich. Moreover, those who might be residents elsewhere cannot make use of them against the will or prohibition of those that live therein.)

34. *Espéculo de las leyes*, book 5, title 8, law 2.

35. *Siete Partidas*, title 28, law 9, division 3.

36. Algodre v. Coreses, f. 2r.

37. Ibid. Monuments were the fixed legal markers referenced in the description of the land and were set by the proper authority.

38. Ibid., f. 2v.

39. Algodre v. Coreses, ff. 2v–3r.

40. Ibid., f. 3r. The use of both forms of the Castilian past tense is an example of fifteenth-century legalese intended to cover all possible scenarios, so as to eliminate any possibility of a gap in usage of the commons by Algodre. A gap could leave open an argument that any claim to the commons was abandoned through non-use at some point.

41. Ibid.

42. For the *Lex Visigothorum*, see book 10, title 3, law 4, which states that more than fifty years (*amplius quam L annos*) would not count toward proving title if the land in question fell completely within the bounds of someone's property. The implication is that if the land is not fully within someone else's property, fifty years would count toward proving title. In this same law, title by prescription, could be claimed after a long period of time. Book 10, title 2, law 1 suggests a long period of time is fifty years: if title was to be gained through prescription, an adverse party would have to contest title within fifty years. Book 10, title 2, laws 3–5 set the limitations for bringing a suit at thirty years. Law 5 states, however, that between twenty-five and thirty years a claimant can file suit; for the *Siete Partidas*, see title 29, law 18, division 3 which states that a claim to ownership could be made to immovable property after ten, twenty, and thirty years depending on circumstances. This law also provides grounds for claims based on "color of title." Title 29, law 19, division 3 provides the same increments of time in which, depending on

circumstances, a claim to ownership could be made; Fernando III of Castile-León used twenty years in Villa of Sigüenza v. Atienza and Medina, Zamora, 24 April 1234, in González, *Reinado y Diplomas de Fernando III*, 3:29–31, to establish usage rights. These numerous possibilities, all depending on circumstantial variations, explain why López de Nájera, and other lawyers arguing before the Audiencia, enumerated so many increments of time: he had to make his point and protect his clients from various potential counter-arguments by covering all chronological possibilities.

43. *Siete Partidas*, law 7, title 29, division 3; and Compana de Albalá v. Villa de Almaraz, Valladolid, 1491–1622, ARCV, Pleitos Civiles, Escribanía Alonso Fernando, Fenecidos, p. 1, caja 1560 and p. 1, caja 1564, bundle 2, f. 107r [hereafter, Compana de Albalá v. Villa de Almaraz, folio, verso].

44. Algodre v. Coreses, f. 3r.

45. See *Fuero Real*, book 2, title 8, law 2.

46. Algodre v. Coreses, f. 3v.

47. Ibid.

48. Ibid. I intend the quotes here to indicate how the representation of specific locales was expressed, not to suggest that the men from Coreses were not good men.

49. See the *Lex Visigothorum*, book 2, title 1, law 11 (13). This principle is also found in the United States federal court system, which allows litigants to consent to a magistrate to hear their case rather than a district court judge appointed in accordance with Article 3 of the Constitution of the United States.

50. Algodre v. Coreses, f. 4r.

51. Ibid., f. 4rv.

52. Ibid. Bolaño's statement shows that villages within the términos of a villa or city could claim ownership to its own pastos, prados, montes, aguas, and ejidos.

53. Algodre v. Coreses, f. 4v.

54. Ibid., f. 5r.

55. Ibid., f. 5v.

56. Algodre v. Coreses, f. 6r. Here, a servitude, commonly known as an easement, would mean the right to use the términos, a right which could exist indefinitely.

57. *Siete Partidas*, title 31, laws 21–27, division 3; and Dory-Garduño, "The Forging of Castilian Law," 89.

58. Algodre v. Coreses, f. 4r.

59. Ibid., f. 6rv.

60. Ibid., f. 6v.

61. Algodre v. Coreses, ff. 6v–7r.

62. Ibid., f. 7r.

63. Operating at the physical locale of the Chancillería, between the Plaza Santa María and the University of Valladolid, along Calle San Martín, this site is where the Palacio de Viveros stands today.

64. Algodre v. Coreses, f. 7v.

65. Ibid., f. 8r.

66. See again the *Fuero Real*, book 2, title 8, law 2.

67. Algodre v. Coreses, f. 8v.

68. Ibid., ff. 9rv.

69. Ibid.

70. Algodre v. Coreses, ff. 9v–10r.

71. Ibid.

72. Ibid., f. 10r.

73. *Fuero Real*, book 2, title 8, law 9.

74. Algodre v. Coreses, f. 10r.

75. Ibid., f. 11v.

76. Ibid., f. 12r.

77. Algodre v. Coreses, 12r.

78. Ibid., f. 12v. Escribano is another word that meant something particular at this time. He was someone who, at times, had legal training, and likely had skills similar to an appellate court clerk.

79. Ibid., f. 13rv.

80. Algodre v. Coreses, f. 13v.

81. Ibid., f. 14rv, 16r.

82. Ibid.

83. Algodre v. Coreses, f. 16v.

84. Ibid., f. 17r.

85. Ibid., f. 17rv.

86. Algodre v. Coreses, f. 18r.

87. See Compana de Albalá v. Villa de Almaraz, f. 107r, where the same type of judicial decree later provided evidence of title.

88. Algodre v. Coreses, ff. 19v–20r.

89. Ibid., f. 19v.

90. Ibid., f. 20r.

91. *Siete Partidas*, title 28, law 9, division 3 states, "Mas los que fuessen moradores en otro lugar, non pueden vsar dellas contra voluntad, o defendimiento de los que morassen y."

92. *Siete Partidas*, title 28, law 9, division 3 continues, "que son establecidos, e otorgados para pro comunal de cada Cibdad, o Villa, o Castillo, o otro lugar. Ca todo ome que fuere y morador, puede vsar de todas estas cosas sobredichas: e son comunales a todos, tambien a los pobres como a los ricos."

93. *Siete Partidas*, title 28, law 10, division 3.

94. Ibid., *Siete Paridas*, title 28, law 9, division 3, n. 6 reads,"Videtur hìc probari, quòd montes, & termini sunt communes civitatis, vel villae, in cujus territorio sunt, & quòd in his habeat fundatam suam intentionem."

95. Algodre v. Coreses, f. 19v.

96. See Carlé, *Del concejo medieval castellano-leonés*, 164–73.

97. For example, see Compana de Albalá v. Villa de Almaraz, f. 107r.

98. United States v. Sandoval et al., 167 U.S. 278 (1897); and Pueblo of Zia et al. v. U.S. et al., 168 U.S. (1987).

99. See Justice John Marshall's comments in United States v. Clarke, 33 U.S. 436, 441–61, particularly 451 (1834).

100. United States v. Sandoval, 297–98.