Pueblo Indians and Citizenship in Territorial New Mexico

Deborah A. Rosen
There has been a continuing debate about the appropriate status of Native peoples in the European American political structure since the arrival of the first Europeans in the Americas. The question was whether Indians should be treated as wards, as citizens, or as separate nations. Disputants often formally disregarded the third option and focused on whether Indians should be regarded as equals under the law or, instead, should have a special “protected” status. Beneath such intellectual discussions lay jurisdictional disputes, conflicts over economic benefits, and battles over cultural boundaries.

This article examines the debate over the status of the Pueblo Indians of New Mexico from the beginning of New Mexico’s history as a U.S. territory in the 1850s to the Supreme Court decision in United States v. Joseph in 1877. The Treaty of Guadalupe Hidalgo, ending the Mexican-American War in 1848, provided all Mexican citizens in the territory acquired from Mexico with U.S. citizenship unless they declared their preference to remain Mexican citizens within one year of the treaty ratification. Unclear to the Americans was whether the Pueblo Indians were actually recognized and treated as Mexican citizens. Neither the Treaty of Guadalupe Hidalgo nor the Organic Law of 1850, which created the Territory of New Mexico, specifically addressed the issue of Pueblo Indian status. On the frontiers west of the Mississippi, the U.S. government was used to dealing with nomadic, hunting-oriented Indian
tribes, whom it customarily treated as entities separate from the American body politic. The United States had no ready policy for agricultural Indians—such as the Pueblos—living in towns, nor did the government act quickly to clarify the Pueblo Indians’ status. Remaining unclear for many years was whether the Pueblo Indians were to be treated the same as other U.S. Indians or were to have the rights of U.S. citizens.2

The debate over Pueblo Indian citizenship in the early territorial period focused on a handful of issues: the degree to which the Pueblo Indians were “civilized,” the potential effect of withdrawing protection from them, the history of Pueblo Indian status under previous governments, the effect of the Treaty of Guadalupe Hidalgo on Indians, and the nature of Pueblo Indian title to land. The major participants in this debate were the Indian agents and lawyers. The agents, along with superintendents of Indian affairs, argued that Pueblo Indians were not ready for U.S. citizenship and needed the protection of the federal government. In contrast, lawyers and judges argued that these Indians were legally entitled to citizenship rights. By the late 1870s, the language of debate in New Mexico had replaced the terms of culture with those of law, the decisive center of debate had shifted from the executive branch to the courts, administrative authority had given way to the predominance of judicial authority, and the form of U.S. governance of the Pueblo Indians had formally changed from “indirect rule” to “direct rule.”

Arguments of Indian Agents and Superintendents, 1850–1866

During the 1850s, the governors of New Mexico also served as the superintendents of Indian affairs. Territorial Indian policy was one of their biggest responsibilities. Consequently, they were actively involved in the debate over the status of the Pueblo Indians. James S. Calhoun, who came to the territory as an Indian agent in 1849 and also served as governor and superintendent of Indian affairs from 1851–1852, tried to bring the Pueblo Indians into a protected position as wards of the U.S. government, and his successors and colleagues in the Indian service continued those efforts. Much of the debate about the status of the Pueblo Indians focused on the collective characteristics that distinguished them from other Indians. Government officials in the 1850s and 1860s most often characterized the Pueblo Indians as “half civilized,” frequently noting that, unlike most other Indians, they lived a settled life in towns, supported themselves through agriculture rather than hunting, had a
stable political structure, lived peacefully with their neighbors, and dressed and behaved in a decorous manner. Despite the recognition of substantial differences between the Pueblo Indians and other Natives in New Mexico, government officials insisted that the Pueblo Indians still needed the special federal protections extended to other American Indians. The governors/superintendents and the agents therefore pressed the New Mexico territorial legislature and U.S. Congress to clarify the wardship status of the Pueblo Indians. They focused their efforts on three issues: the Pueblos' right to sue in U.S. courts, the apparent inapplicability of federal Indian laws to New Mexico, and legal uncertainty about the citizenship status of Pueblo Indians.

First, the governors and agents argued for the repeal of an 1847 statute that authorized Pueblo Indians to sue and defend collectively in lawsuits relating to their land. This statute was perceived at the time as establishing the Pueblos as "quasi-corporations." Indeed, the statute contained much of the language that was typically used in the mid-nineteenth century to incorporate towns, private companies, and nonprofit associations. Unlike those laws, however, the New Mexico statute relating to the Pueblo Indians extended the right to sue and be sued only to actions brought to protect their title to land; other New Mexico incorporation statutes extended the right to sue and be sued to "all actions, pleas, and matters whatsoever" without the added qualification that the actions must relate to land. Furthermore, the other statutes uniformly granted the right to purchase and sell real estate, while the Pueblo statute omitted that power.

Despite its limited scope, the governors and agents disapproved of the statute of 1847. They believed that the Pueblo Indians should not have to initiate litigation to protect their lands but should be able to depend on the federal government for the protection of their lands. In his address to members of the legislative assembly, Actg. Gov. and Supt. William W. H. Davis (1855–1857) tried to persuade them to repeal the 1847 law for the welfare of the Pueblo.
Indians. When the legislative assembly refused, Davis wrote the commissioner of Indian affairs to advocate congressional repeal as the only recourse. The act of 1847, he informed the commissioner, was “most mischievous in its tendency” and “working great wrong to this simple minded people.” Gov. and Supt. David Meriwether (1853–1857) also recommended congressional repeal, because the Pueblo Indians were “ignorant and but little removed from a savage state” and “interested persons” encouraged “litigation between the different Pueblos and between the Mexican population and the Pueblos.” If the possibility of suing the Pueblos was not eliminated through repeal of the law, he wrote, the expenses of litigation would be so high that many Pueblo villages would be “reduced to want and broken up.” Abraham G. Mayers, agent to the Pueblo Indians, made a particularly forceful plea for Congress to repeal the 1847 law. He pointed out that “petty and frivolous” lawsuits were subjecting the Pueblo Indians to unnecessary legal costs. A better and cheaper course, he said, would be granting the government’s Indian agent the power to settle the differences between the two pueblos.6

Governors and Indian agents also attempted to clarify the wardship status of the Pueblo Indians by convincing Congress to extend the federal Trade and Intercourse Act of 1834 over them. The governors believed that the statute should be applied to the Pueblo Indians as it was to other Indian tribes in the United States. The object was to protect the Pueblos from abuses and encroachments by Anglos and Hispanos. The statute made Indians wards of the U.S. government and guaranteed federal protection to them and their property. Among other things, the law prohibited Americans from trading with Natives in Indian country without a license, selling them liquor in Indian country, or settling on any lands belonging to Native Americans, or secured or granted to any Indian tribe by treaty with the United States. The statute also provided that conveyances of land from any Indian nation or tribe were invalid unless made by treaty.7

Federal policy makers and administrators doubted that the Trade and Intercourse Act of 1834 applied to land acquired by the United States from Mexico and consequently to any Indians or any Indian lands in New Mexico. While serving as an Indian agent under the U.S. military government and then as governor and Indian superintendent of the territory, Calhoun repeatedly urged Congress to amend the statute to make clear that it applied to all the Indians of New Mexico. He explained to the commissioner of Indian affairs in Washington, D.C., that the Pueblo Indians themselves had requested federal protection; he even negotiated a treaty with most of the Pueblos in
which they agreed to be covered by the Trade and Intercourse Act, but the document was never ratified by the Senate. Calhoun also pressed the federal government to send Indian agents to the Pueblos for their protection, as was the practice with other Indian tribes. Finally, in 1852 Calhoun's successor appointed interpreter John Ward as special agent to the Pueblo Indians. In the continuing debate over Pueblo Indian citizenship status, the argument that the federal government had never acted to place the Pueblos under wardship status was supported by two pieces of evidence: the fact that Indian agents to the Pueblos were appointed by the governor rather than explicitly by Congress, and that the Senate never approved the treaty placing Pueblos under the Trade and Intercourse Act.

By a federal statute of 1851, the law regulating trade and intercourse with the Indian tribes was expanded to cover the Territory of New Mexico. Because the terms of the Trade and Intercourse Act applied to "Indian country," and because judges in New Mexico ruled that no part of New Mexico had been legally designated Indian country, many New Mexicans doubted that the statute of 1851 actually had the effect of extending the provisions of the 1834 act to cover any Indians in the territory. Governor Meriwether and Indian Agent Edmund A. Graves urged Congress to clarify further the coverage by specifying which parts of New Mexico were and were not part of Indian country. Despite their repeated recommendation, applicability of the Trade and Intercourse Act in the territory remained ambiguous. Federal authorities in New Mexico did not know whether to enforce the trade and intercourse laws, e.g., to punish people selling liquor to Indians or to prevent Americans from settling on Indian lands.

New Mexico's government officials had their strongest doubts about the law's application to the Pueblo Indians. The issue remained unclear more than a decade after the Treaty of Guadalupe Hidalgo. In 1859 Supt. Ind. Affs. James Collins asked the commissioner of Indian affairs whether the government had the authority to remove illegal squatters on Pueblo lands. Collins noted that, if the lands granted to the Pueblo Indians by the Spanish were "to be considered as Indian Territory, then the authority exists in the intercourse act of 1834," but he needed the commissioner to provide instructions on the extent of Indian Territory in New Mexico. As late as 1866, the agent for the Pueblo Indians, John D. Henderson, reported to the commissioner that the Pueblos were still complaining of encroachments on their lands by "Americans and Mexicans" but observed that the ambiguity in the federal Indian laws muddied the Pueblo Indians' land rights. He asked for specific instructions
on the matter, noting that the new superintendent, A. Baldwin Norton, was unable to provide guidance.\textsuperscript{12}

To some extent the application of the 1834 act and related questions were tied up with the third issue: citizenship. The governors who also served as superintendents opposed Pueblo Indian citizenship. Calhoun argued against politically merging the Pueblo Indians with the rest of the population of New Mexico. The Mexicans and Pueblos had nothing in common and therefore could not be represented by the same elected officials and should not be subject to the same laws. In Calhoun's opinion, the Pueblo Indians should have the right to vote only for officers in their own Pueblos; they should not vote in New Mexico elections.\textsuperscript{13}

Calhoun's position—the exclusion of Pueblos from the suffrage—seemed to have the support of national legislation. Creating New Mexico Territory in 1850, the Organic Law explicitly mentioned Indians in section 5, which described the legislative assembly of the new territorial government. While providing for proportional representation of each district in the territory, the Organic Law excluded Indians from the legally counted population in each district. Furthermore, in that law Congress also specified that, for the first election, only free White male inhabitants of New Mexico over the age of twenty-one were entitled to vote. For subsequent elections the legislative assembly of the territory was to prescribe the qualifications of voters and officeholders. In statutes enacted during its first year, the legislative assembly continued the race-based restrictions on suffrage and officeholding.\textsuperscript{14}

Calhoun informed the commissioner in early 1850 that some Indians from Taos had already been induced to vote by unscrupulous New Mexicans. Traveling to Taos Pueblo, Calhoun explained to the Indians that voting in territorial elections was inconsistent with their maintaining a Native community that was distinct and independent from the rest of New Mexico. They could participate fully in the political process and be citizens only if they abandoned their separate communities, relinquished all forms of self-government, and gave up the right to the protective umbrella of the federal government enjoyed by other Indian tribes. Calhoun advised them that such a trade would not be to their advantage, and the Taos Indians apparently agreed.\textsuperscript{15}

Calhoun's successors and colleagues agreed that the Pueblo Indians were unprepared for citizenship. In 1854 Governor and Superintendent Meriwether contended that, despite the semicivilized status of the Pueblo Indians, they were still "buried in ignorance and superstition." Therefore, the Pueblo Indians should have "the protection and fostering hand of the government."
In 1859 Supt. Ind. Affs. James Collins concurred that the Pueblos were “pretty well advanced in civilization, and yet not enough to make it proper to extend to them the rights of citizenship.” In an address to the legislative assembly on 3 December 1855, Acting Governor and Superintendent Davis similarly acknowledged that the Pueblo Indians were different from other Indians but concluded that they needed government protection nevertheless. “It is true,” he said, “that the Pueblo Indians occupy a position somewhat different from that presented by the wandering tribes, being permanently settled in villages, and enjoying a higher degree of civilization, but this is not sufficient to remove them from the immediate jurisdiction of the United States.” In his 1857 memoir, Davis concluded that the Pueblo Indians shared the political status of the “wild Indians”: they were not citizens. He pointed out that, since the Republic of Mexico had treated Indians as wards rather than as citizens in practice, and since the Treaty of Guadalupe Hidalgo gave only “Mexicans” the right to become U.S. citizens, no Indians, Pueblos included, acquired U.S. citizenship through the treaty. Furthermore, he noted, it made no sense to grant to New Mexican Indians rights that other Indians in the United States did not enjoy. Gov. David Meriwether agreed that the Pueblo Indians were not citizens.

Indian agents were particularly eager for the issue of Pueblo citizenship to be firmly resolved. In 1852, 1853, and 1857, respectively, Agents Edward H. Wingfield, Edmund Graves, and Abraham G. Mayers unsuccessfully appealed to the commissioner of Indian affairs to settle the matter, noting that the Pueblo Indians’ uncertain status left them without federal protection but also without citizenship rights. Mayers expressed frustration that, when an agent tried to act on behalf of the Indians to defend their lands or other interests, he was frequently thwarted by claims that such matters could only be dealt with by the courts. Wingfield recommended that, as the Pueblos wished, they be officially categorized as “Indians.” Graves directly asked the commissioner whether the Pueblo Indians held the same political status as former Mexicans, but Comr. Ind. Affs. George W. Manypenny’s reply, issued two months later, dodged the question. Another Pueblo agent, Samuel M. Yost, believed that the Pueblo Indians had the potential to advance themselves adequately to justify making them citizens but that raising them to a sufficiently high “degree of civilization” would take attentive “fostering care of the government.”

In practice, legislation pertaining to Pueblo citizenship remained ambiguous, with some statutes suggesting citizenship and others denying it. The
The territorial legislature tried to clarify the issue during Meriwether’s administration. The *Santa Fe Weekly Gazette* reported that, on 3 January 1854, in the territorial Senate “Mr Baca y Pino offered a joint resolution, requiring the Governor to summon all Captains of the several Pueblos, to appear before this body and declare their intention in relation to their citizenship.” The implication was that Pueblo Indians could in fact become citizens of the United States. Later that winter, however, the legislature enacted a law excluding Pueblo Indians from the privilege of voting, except in elections for overseers of ditches and within their own Pueblos. This provision was to remain in place until the Pueblo Indians should “be declared, by the Congress of the United States, to have the right” to vote. Two years later the Pueblo Indians were further marginalized by a law exempting them from a requirement that all adult males in New Mexico pay a tax to support the education of youth in the territory.

Thus, by the late 1860s, Pueblo Indians were allowed to sue in U.S. courts but not to vote in U.S. elections. The federal government recognized Pueblo title to their land but withheld the power to sell it. A federal government appointee had negotiated with the Pueblos a treaty that the Senate never ratified, and the territorial governor/superintendent, not Congress, had sent the Pueblos federal agents. The territorial prohibition on selling liquor to Indians did not apply to the Pueblo Indians, but the application of the federal Trade and Intercourse Act of 1834 to the Pueblos was still uncertain. In short, after two decades of debate, the status of the Pueblo Indians remained ambiguous.

**Judicial Decision-Making, 1867–1877**

For many years after New Mexico became part of the United States, the legal status of the Pueblo Indians remained a political discussion centered particularly in the executive and legislative branches of the territorial government. The governors, superintendents of Indian affairs, and Indian agents debated the issue on a regular basis. Meanwhile, the legislature periodically passed legislation that sent conflicting messages about Pueblo status. In the late 1860s, however, the judiciary stepped in assertively to resolve the issue.

The cases prompting judicial review involved alleged violations of the Trade and Intercourse Act of 1834. The District Court of the First Judicial District of New Mexico ruled in 1867 that the statute did not apply to the Pueblo Indians. In *United States v. Ortiz*, the defendant (a non-Indian) had
occupied land belonging to the Pueblo of Cochiti and was charged with trespassing on Indian lands. The United States brought an action to collect the fine imposed by the 1834 act. In a decision written by Justice John N. Slough, the district court dismissed the suit. The issue of applicability of the Trade and Intercourse Act to the Pueblo Indians reached the Supreme Court of New Mexico in 1869. Like Ortiz, United States v. Lucero was initiated in the District Court of the First Judicial District in 1867 and was an action to collect the fine from a non-Indian man who had settled on Pueblo lands. In a decision written by Chief Justice John S. Watts, the Supreme Court of the territory agreed with Justice Slough’s reasoning in the lower court. In 1874, more challenges to the applicability of the Trade and Intercourse Act to the Pueblo Indians came to the New Mexico Supreme Court, and in 1877 the decisions by Justices Warren Bristol and Hezekiah Johnson on this issue were endorsed by the U.S. Supreme Court in United States v. Joseph.19

These judicial opinions demonstrate that when justices addressed the status of Pueblo Indians in New Mexico, they based their decisions on many of the same criteria that authorities in the other two branches had used to argue their positions on the issue, but they also expressed themselves in more distinctly legal language. Furthermore, between the cases of the 1860s and those of the 1870s, one can notice a clear shift toward a more legalistic (rather than cultural) basis for the courts’ decisions.

Like governors, superintendents of Indian affairs, and Indian agents, some justices in New Mexico assessed the cultural characteristics of Pueblos, analyzing whether they were different from or similar to other Indians to determine whether they were “civilized” enough to be U.S. citizens. Justice Slough in Ortiz and Justice Watts in Lucero both concluded that the Trade and Intercourse Act was not intended to apply to “civilized” tribes like the Pueblo Indians, who were different from the “savage and uncivilized” Indian tribes of the United States.

In addition, legal writers in New Mexico, like political writers, had room for arguments based on history. As officials in the executive branch had done for twenty years, justices took note of the Spanish and Mexican history of New Mexico and evaluated whether the Treaty of Guadalupe Hidalgo necessarily made the Pueblo Indians citizens. Such a consideration fell squarely within appropriate judicial concerns, for it involved interpreting the language of the treaty in light of the legal circumstances in 1848. Justices Slough, Watts, and Bristol argued that Pueblo Indians were not covered by the Trade and Intercourse Act because, having been citizens of Mexico, they became
citizens of the United States by the terms of the Treaty of Guadalupe Hidalgo. Justices Watts and Bristol also pointed out that the United States had not treated the Pueblo Indians like Indian tribes. Watts noted that Congress had neither appointed agents for nor made treaties with any of the Pueblo Indians as it had done with other American Indian tribes, and Justice Bristol observed that the United States had treated Pueblo land claims in the same way that it handled other Spanish land-grant claims. The justices used these historical arguments as the basis for rights-based conclusions. Watts concluded that the court “does not consider it proper to assent to the withdrawal of eight thousand citizens of New Mexico from the operation of the laws, made to secure and maintain them in their liberty and property, and consign their liberty and property to a system of laws and trade made for wandering savages and administered by the agents of the Indian department.” In Ortiz Justice Slough concluded, “The federal Constitution guarantees to all citizens the same privileges and immunities and protection to life, liberty, and property. These rights are as much guaranteed to pueblo [sic] Indians as to any other class of citizens of the United States.”

New Mexico territorial justices also raised certain legal issues that had not previously entered the political debate. In fact, the decisions made by the New Mexico Supreme Court during the 1870s incorporated a more predominantly legalistic focus than the court’s decision had in the 1860s, and the U.S. Supreme Court, which declined to tackle the citizenship issue at all, kept an even more narrow legal focus. In all of these Pueblo Indian cases, the issue was whether a non-Indian who settled on Pueblo land had violated the Trade and Intercourse Act. In Joseph and its companion cases, both the New Mexico Supreme Court and the U.S. Supreme Court kept their decisions more directly focused on that issue, declining to take on the broader issues of the Pueblo Indians’ legal status, which the justices had tried to resolve in Ortiz and Lucero. The courts in Joseph concentrated especially on the nature of Pueblo Indian title to their land. The decisive fact was that, unlike other Indian tribes (who held only the right to use the land they occupied, leaving ultimate ownership to the United States), the Pueblo Indians held full legal title to their land. The justices, therefore, gave two reasons for concluding the Trade and Intercourse Act was not applicable to Pueblo land. First, since the law by its own language prohibited non-Indian settlement only on Indian land acquired by treaty between Indians and the United States, it did not apply to Pueblo Indian land, which had been obtained by grants from the government of Spain (later confirmed by the U.S. government) rather than
by treaty. Second, since the purpose of the statutory provisions protecting land occupied by Indians was to protect the federal government's ultimate ownership of that land, that object was not advanced by applying the statute to land in which the United States had no ownership rights to protect. Based on these legal reasons, the courts decided that a non-Indian who settled on Taos Pueblo lands was not guilty of violating the Trade and Intercourse Act, and any encroachment on Pueblo Indian lands was appropriately dealt with by commencing a trespass or ejectment action in the civil courts of New Mexico.

It is notable that in *Joseph* and its companion cases, both the U.S. Supreme Court and the New Mexico Supreme Court put less weight on the degree-of-civilization criterion than earlier courts had. The issue of applicability of the trade and intercourse acts could only be resolved in the nineteenth century when the decision no longer rested upon a judgment about whether the Pueblo Indians were civilized. In fact, because the U.S. Supreme Court chose not to resolve the citizenship issue, it did not address the question of how the Treaty of Guadalupe Hidalgo should be interpreted. Since the effect of the treaty on the Pueblo Indians had been disputed for years in all three branches of New Mexico's government, the Supreme Court's lack of attention to the treaty represented a significant change in the focus of the debate. In short, the *Joseph* case marked a major shift in the official approach to the Pueblo Indians. The courts in *Joseph* were able to settle the question that had been bedeviling New Mexicans for three decades by focusing primarily on issues of law rather than on the characteristics or capacity of the Pueblo Indians.

Not surprisingly, Indian agents and the superintendent were strongly critical of the district court decisions. One of their main concerns was that the judicial decisions would lead to the loss of Pueblo lands. As one government official explained, the Pueblo Indians "occupy some of the fairest portions of this territory . . . [and t]he white man naturally covets these fertile lands." Superintendent of Indian Affairs Norton, Pueblo Agent Henderson, Special Pueblo Agent John Ward, and Indian Agent William F. M. Arny all warned of the dire consequences of the court decisions to the Pueblos: "Mexicans and Americans" would swindle the defenseless Indians out of their lands, and the previously self-supporting, civilized Pueblo Indians would become landless paupers and would return to a savage state. They argued that Pueblo Indians could not survive without the protection of the superintendent and the Indian agents.
Conflicting Views on Indian Citizenship

As a general rule, the Indian agents and superintendents of Indian affairs (including the governors who also served as superintendents) tended to advocate clearly placing the Pueblo Indians into the same wardship status as that held by other Indian tribes in the United States and making them subject to the Trade and Intercourse Act of 1834. Consistent with that broad position, they argued that the 1847 statute should be repealed, that Indian agents rather than courts should mediate disputes and controversies in the Pueblos, that the federal government should actively protect Pueblo lands and supply provisions to support Pueblo members, and that Pueblo Indians should not participate in the territory's political process or otherwise exercise the rights of U.S. citizens. In contrast, lawyers and judges tended to advocate citizenship status for the Pueblo Indians. Thus, they argued that the Pueblo Indians should have the right to sell or lease their lands and should protect their own lands against encroachment by bringing complaints to court. Because the Pueblos could govern themselves, they had no need for Indian agents in the Pueblos.

What explains the differences between positions taken by superintendents or agents and those advocated by judges? It is possible that, because the superintendents and agents worked more closely with Indians, they understood, better than others did, the realities of the Pueblo Indians' lives and the exploitation and other disadvantages that would result if they were given no special protections and were treated as citizens. It is possible that lawyers and judges reached different conclusions because their training led them to rely more than anything else on legal precedent dating to the Mexican Republic and official documents, particularly the Treaty of Guadalupe Hidalgo, to determine Pueblo Indian status. Thus, in a debate that posited reasonable, plausible arguments on both sides, the two groups could have
taken opposing views as a natural result of their different training and experience. Also conceivable, however, is that both sides acted out of narrow self-interest.

The jobs of the Indian agents and superintendents depended on the Indians' falling within the scope of the Trade and Intercourse Act and outside the boundaries of citizenship. Even those agents who did not work directly with the Pueblo Indians might have feared that exempting the Pueblos from the trade and intercourse laws would set a troubling precedent and put them out of a job. Field positions in the Bureau of Indian Affairs could be quite lucrative. The annual salary of an Indian agent was $1,500, while the superintendent of Indian affairs was given an annual salary of $2,000.23 In the early territorial period, the average full-time blacksmith worked three years to earn $1,500, and a servant, a decade or more to collect that much.24

Furthermore, there is evidence to suggest that some agents derived benefits beyond their salaries. Indian agents and superintendents in New Mexico, like their bureau colleagues throughout the West, were charged with disbursing annually tens of thousand of dollars allocated by the federal government to cover the costs of supplying and serving the Indians of the territory.25 Some people suspected that much of that money simply went into the pockets of the agents and their friends. Julius K. Graves, the special commissioner sent to evaluate Indian affairs in New Mexico in 1866, observed that “the present Agents have very many relatives and friends who hang on to the agencies and evidently appropriate a large share of the articles and food intended for the Indians.” Specifically, he questioned whether there was any continuing need for an agent to the Pueblos; he wondered whether the Indians accrued any benefit whatever from the money allocated to support the agent and his work. In fact, he wrote, “the annual salary now paid the Pueblo Agent would under their [the Pueblo Indians'] economical and judicious management be productive of much good whereas under present arrangements this expenditure results in little or no good to these Indians.”26

Attorney and Judge John Watts expressed even blunter, more negative views of government officials who dealt with the Indians in New Mexico. In a letter addressed to the secretary of the interior in 1869, Watts claimed that statutes allocating money to pay for the subsistence of New Mexico Indians were routinely exploited for private profit. Influenced by half a dozen New York and Philadelphia mercantile businesses, the Indian Department, asserted Watts, allowed such funds to be used in New Mexico not for food but for shoddy blankets. And, most notably, the Department purchased the blankets
at “over double their real value,” paying 60 percent over the going rate—nineteen rather than twelve cents per pound—for transporting the goods to New Mexico. According to Watts, profits from this misallocation of funds went into the hands of men in the “Indian ring.” He pointed out that nationwide the government had brought in millions of dollars of profit by purchasing Indians’ land at a price of two cents per acre and then reselling it at $1.25 to $2.50 per acre. Thus, as a general rule, declaring groups of Indians quasi-nations rather than citizens simply allowed the government “to monopolize the right to cheat them out of [their land].” Furthermore, the men appointed to hold office in New Mexico were typically lazy and ignorant of conditions in the territory and were there only to collect their salaries, not to serve the interests of the people of New Mexico. Watts argued that the profit to be made from contracts to supply the Indians, from the sale of Indian lands, and from placing cronies in office in New Mexico motivated unscrupulous government officials to perpetuate the subjection of New Mexico’s Indians to “the dependent vassalage of the Indian Department.”

Clearly evident was the potential for abuse of federal funds by Indian agents and superintendents, and complaints about the incompetence and corrupt practice of Indian agents were common in early territorial New Mexico. Coinciding with the territorial court decisions in the late 1860s was an effort to remove Pueblo Agents Ward and Henderson. Whether from real concern about corruption or eagerness to eliminate genuine advocates for the Indians, their enemies sought their removal by accusing them of various forms of fraud. For example, in 1868 lawyer Charles P. Clever accused Henderson of submitting false vouchers and making fictitious disbursements. Unclear in the historical record is whether Henderson was guilty, but New Mexico historian Marc Simmons has described the Indians of the territory in general as “the hapless prey of disinterested or dishonest agents, corrupt territorial officials, and thieving supply contractors.”

If Indian agents in New Mexico were corrupt, they were apparently not acting much differently from agents stationed in other parts of the country during this period. Reformers argued that many Indian agents throughout the United States were political spoilsmeen eager to serve only for the sake of anticipated financial gain. Of all the deficiencies in the Indian service, the most blatant and urgent problem lay in the process by which annuities and supplies were provided to Indians. The agents, who were responsible for distributing money and for procuring and allocating goods, often profited enormously by defrauding both the Indians and the federal government.
Lawyers, too, had a personal interest in their position on Pueblo Indian citizenship, and the interests and perspectives of judges coincided for the most part with those of practicing attorneys. Lawyers sought the inclusion of Pueblo Indians as citizens of the United States for several reasons: (1) they wanted Pueblo Indian clients; (2) they wanted access to Pueblo Indian land and water; and (3) they wanted to establish legal precedents that would help open non-Pueblo land to private ownership.

First, if the Pueblo Indians were federal wards, they had no right to bring or defend lawsuits in court, and the business of New Mexico's lawyers would decline. In 1854 lawyer Spruce Baird was paid a retainer of one thousand dollars for representing Acoma Pueblo in its various ongoing lawsuits over land, water, sheep, and other matters. At the same time he was not precluded from handling other legal business and engage in other occupations. The handsome fees lawyers received for their legal work on behalf of the Indians likely inspired many of New Mexico's attorneys to argue that the trade and intercourse acts did not apply to the Pueblo Indians and that they were free to sell land and litigate in court.

Indian agents and superintendents eagerly pointed out this conflict of interest to the commissioner. They often accused lawyers of taking advantage of Pueblo Indians and claimed that the lawyers alone benefited from Pueblo Indian litigation. In 1857 Pueblo Agent Mayers asserted that the “best reason” for repealing the 1847 act, which allowed Pueblo Indians to sue and be sued, was “the fact that the lawyers and not the Indians are benefited by it.” In 1866 Pueblo Agent Henderson explained to the commissioner of Indian affairs that “Americans and Mexicans” were dragging the Pueblo Indians into biased local courts with legal claims to their land; the government needed to act to free Pueblo Indians from the burden of such “vexatious prosecutions.” Governor and Superintendent of Indian Affairs Meriwether informed the commissioner in 1855 that lawyers were stirring up litigation among the Pueblos and were profiting immensely from doing so. “As an evidence of the extent to which the practice has obtained,” he wrote, “I would mention the fact of the Pueblos of Acoma and Laguna having over twenty suits now pending between them, and when all these are decided I fear the lawyers engaged, and the officers of the Courts, will have claims for fees sufficient to cover all that the two Pueblos are worth.”

Second, the lawyers' interest in Pueblo Indian status was that citizenship would make the tribes' land and water available for purchase. Pueblo land was particularly attractive because of the easy access to water from the Río
Grande and its tributaries. In New Mexico developers, farmers, and ranchers could use land for colonization, cultivation, or pasturage only if they also had control of water. Strategic purchases of land that had a water supply allowed the owner to determine the utilization of surrounding acres that were dependent on that source. Thus, outsiders focused on obtaining rights to portions of Pueblo lands that included water or were, at least, irrigable. The evidence suggests that non-Indians were fairly successful: by the time of the Sandoval case (1913), which nullified all Pueblo land and water sales going back to 1848, non-Indian claims on Pueblo lands included almost all of the water on those lands.

Third, lawyers knew that securing the marketability of Pueblo land might also increase the potential for private ownership of non-Pueblo lands. Lawyers wanted as much land as possible on the market both for their professional role as legal advocates of land occupants and for their personal role as land speculators. Consequently, they worked hard to persuade the New Mexico territorial surveyor general that a community land grant to a group of settlers was really a private grant to an individual. Successfully making Pueblo Indian lands alienable had the potential to open up other lands as well, if the lawyers could reinforce the parallel between the status of community grants to Hispanos and the status of collective grants to Pueblo tribes. The occupants of a community grant did not individually own and could not individually sell any part of the commons, which was used for pasturing livestock, collecting firewood, and hunting. In contrast, any part of a private grant could be sold by the owner. Thus, land lawyers litigated to undermine the concept of communally owned land in order to persuade judges that a few private individuals actually owned land occupied by many settlers. Gaining official approval of the principle that the grant of citizenship to the Pueblo Indians at the end of the Spanish colonial period had the effect of privatizing Spanish land grants to Pueblos contributed to the effort to portray Spanish and Mexican grants to non-Indians as private rather than community grants. Attacking Pueblo Indians’ collective ownership not only made Pueblo land itself alienable but also potentially reinforced the legal view that Hispanics’ land was privately owned.

Making more land available in the market meant that owners would more likely need litigators to argue for confirmation of their claims and also meant that the land would be available to lawyers as a form of payment for attorneys’ fees. As historians have pointed out, lawyers often took advantage of Indian and Hispano landowners’ ignorance of Anglo American law and the English
language. After Congress established a method for confirmation of land titles in 1854, unscrupulous lawyers exaggerated the complexity of the process in order to persuade local landowners that they needed expert legal advice. Since most landowners lacked sufficient cash to cover the attorneys' bloated fees, they commonly paid the lawyers in land. Typically, the fee for obtaining a land-grant confirmation was one-third of the acreage, and sometimes attorneys received one-half for their services on behalf of the claimant. The consequence was that lawyers increasingly gained ownership of large portions of the Spanish and Mexican land grants.

Of the seven New Mexico attorneys—Merrill Ashurst, Kirby Benedict, William Breeden, Stephen B. Elkins, Joab Houghton, Richard H. Tompkins, and Henry L. Waldo—who represented defendants in the trade and intercourse actions that led to Ortiz, Lucero, Joseph, and the companion cases, at least six were heavily involved in capital investments or legal work that depended on the marketability of land and the availability of water for their profitability.

Stephen B. Elkins, who served as Antonio Joseph's attorney before the U.S. Supreme Court in the 1870s, most clearly exemplifies lawyers' personal stake in land speculation. In the 1860s and 1870s, Elkins was one of the most active speculators in New Mexico land, holding interests in some of the largest land grants, including the Maxwell Grant, Mora Grant, and Ortiz Grant. In addition to speculating in land, Elkins was involved in other enterprises including a railroad company, a cattle company, a silver mining company, and a bank. Elkins, Breeden, and Waldo were close political and economic allies, members of the "Santa Fe Ring." According to many contemporary New Mexicans and some later historians, that infamous organization controlled land speculation, ranching, mining, railroads, politics, and the courts in territorial New Mexico. A fourth lawyer from the cases under study, Kirby Benedict, former justice and land-title expert, was thought to be a member of the ring as well. Another of the lawyers, Joab Houghton, represented twelve different land-grant claimants in efforts to secure title confirmation, and he held personal interest in several of the grants. The sixth New Mexico lawyer, Ashurst, also represented a number of land-grant claimants in the decade and a half before he died in 1869. Thus, the only one of the seven lawyers who apparently did not take an active role in land speculation or in representing land speculators was Richard Tompkins. When the Joseph case was argued before the U.S. Supreme Court on 20 April 1877, the New Mexico lawyers were assisted by William M. Evarts, an influential New York lawyer and former
attorney general of the United States who wrote the brief in support of Antonio Joseph. Evarts, an easterner, provided business and legal support for members of the Santa Fe Ring and played a continuing and important role in the capital development of New Mexico.

Even the territorial judges—Bristol, Johnson, Slough, and Watts—who wrote judicial decisions advocating that the Trade and Intercourse Act did not apply to Pueblo lands had an interest in land speculation. John Watts, a lawyer-judge, opposed application of the trade and intercourse acts to Pueblo Indians and was a strong critic of the Indian agents, but also had his own personal interest in New Mexico’s land. Watts, the judge who wrote the Lucero decision, was active in land acquisition and speculation in the 1850s and 1860s; Emlen Hall has referred to him as “one of New Mexico’s earliest land speculators.” In the late 1850s, Watts’s legal work included forty-three land-grant cases, and the payment for his legal services was often in land. Two of the other justices also had ties to land speculation or the Santa Fe Ring. When he died in late 1867, Slough was the president and business manager of a company organized to develop and sell lots of land in the proposed new mining town of Virginia City. During the violent unrest in Lincoln County in the late 1870s, Justice Bristol was accused of serving as a “tool” of the Santa Fe Ring.

At the national level, there was a good deal of support for the position that the U.S. Supreme Court took in Joseph. Proponents of Indian assimilation enjoyed a committed advocate, Justice William Strong, on the court. He was an active supporter of the Indian reform movement, which advocated Native American citizenship and the allotment of tribal lands to individual Indians. Also, in the individualistic late nineteenth century, many Americans disapproved of and were uncomfortable with communal living and property. Privatizing land ownership in New Mexico was consistent with this general national ethos. Allotment of Indian lands had long been accepted as a means to assimilate Indians into American society. In the mid-nineteenth century,
Congress was providing for the allotment of some tribes' lands; a few years prior to the Joseph decision, Congress had determined that the United States would no longer treat Indian tribes as independent nations with whom the country could make treaties; and a decade after the Joseph decision, Congress authorized the allotment of all tribal lands, along with U.S. citizenship, to individual Indians. The Supreme Court's interpretation allowed Pueblo land and water to join the American land market—a measure that was consistent with Anglo American eagerness to find profitable uses for natural resources. Parallels are seen in a number of other U.S. states and territories where Indians were incorporated, assimilated, or removed in order to give Americans access to desirable lands and resources.

The evidence thus suggests that, in the debate over the legal and political status of the Pueblo Indians, the individual self-interest of some participants affected the positions they took. Lawyers and Indian agents were accused of being rapacious and unscrupulous, and both were criticized for earning undue financial rewards from their dealings with the Indians. At the same time, it was unclear whether the Pueblo Indians themselves would actually gain or lose from U.S. citizenship. There were legitimate and objective bases for the arguments on both sides. What is of particular interest is the way in which government officials dealt with the issue, how they saw—and fought for—their own interests, and the language they used to talk about the subject.

At one level, the Pueblo Indian–citizenship debate was over which criteria would be relevant to determining their legal status: cultural judgments about whether they were "civilized" enough for citizenship or legal judgments about such issues as the form of their title to land. By the late 1870s, the latter approach dominated the decision-making process. Yet there were other developments behind the replacement of the language of culture with that of law.

Not only did the arguments presented by Indian agents and lawyers reflect their different professional backgrounds and the form of expression common
to their particular occupations, but the language used by each side also helped support the group’s own position in the jurisdictional conflict between administrative and judicial authority and advance its particular economic interests. As long as Pueblo Indians were government wards, they fell under the agents’ administrative authority, and lawyers and judges found their power, as well as their profits, diminished. On the other hand, declaring Pueblo Indians U.S. citizens removed Pueblo Indians and their lands from executive administrative control and placed them under court jurisdiction; naturally that relocation was a threat to the political power and economic interests of the Indian agents.

When the U.S. Supreme Court stepped into the Pueblo Indian status issue, it brought some new and different considerations to the discussion. Unlike the arguments by Indian agents and lawyers in New Mexico, the Supreme Court justices’ decisions were not shaped primarily by local economic and political interests in the territory; nor were objective analyses of the competing intellectual arguments the sole influences upon the high court justices’ conclusions. Rather, Joseph reflected and expressed a strong national sentiment in favor of advancing American individualism and expanding economic markets. In the nineteenth century, extending legal jurisdiction over a previously excluded group of people and their land was a common method of paving the way for including that land and its products in the larger market economy. Parallels can be seen, for example, in British, French, and Portuguese colonial actions in India and Africa. Furthermore, where such expansions of legal jurisdiction took place, they effectively marked a shift from “indirect rule,” a system that separated non-dominant colonized groups from members of the dominant, colonizing group, to “direct rule,” a regime that assimilated the nondominant group into the legal and political structure of the dominant group. Thus such jurisdictional changes had political and cultural, as well as economic, consequences.

How did such broader principles of colonization apply to the situation in territorial New Mexico? Although group economic interests prompted the positions of both Indian agents and lawyers on Pueblo Indian status, the Supreme Court’s decision in Joseph had an impact and a meaning that went beyond the economic interests of those two groups. First, because the decision had ramifications for determining definitions of property and access to property, it affected other people as well, most notably the Pueblo Indians. Second, the decision had deep cultural meaning, even though it largely eschewed cultural analysis in favor of legal reasoning. The very adjustment of
the line between insiders and outsiders, and citizens and noncitizens, was based on Anglo Americans' sense of their own cultural identity. Thus, the jurisdictional conflict between Indian agents and lawyers had ramifications for both economic opportunities, or determining who would be positioned to gain property and make money, and for cultural boundary drawing, or designating who was inside and who was outside the political community.

Although the Joseph case provided a firm resolution of the debate of the early territorial period, it was destined to be an impermanent settlement. Over time new jurisdictional conflicts emerged, especially once New Mexico became a state in 1912.46 The country would continue to grapple with issues of cultural boundaries, legal standards governing Indian title to land, and conflicting economic interests. In the twentieth century the old arguments would be debated once again in a new context and with a different resolution.

Notes

1. The Spanish colonial government had special laws for the Pueblo Indians, including statutes protecting the physical integrity of Pueblo land by prohibiting the Indians from selling their property and barring Spaniards and their livestock from encroaching on Indian territory. During most of the colonial period, the Pueblo Indians were not normally regarded as citizens, although they could give up their Pueblo affiliation and become Spanish citizens. At the end of the colonial period, liberal ideals coming out of Enlightenment thought changed the official political and legal status of Indians. In the early nineteenth century, the Spanish Cortes declared that all people of Mexico were equal under the law, the Pueblo Indians were full citizens, the protective laws were eliminated, and communal Indian lands could be converted to private ownership. After Mexico declared independence in 1821, the liberal legislation enacted at the end of the colonial period was incorporated into the law of the new Republic of Mexico. In practice, Pueblo Indians continued to be treated differently from other citizens. Lewis Hanke, The Spanish Struggle for Justice in the Conquest of America (Philadelphia: University of Pennsylvania Press, 1949); Clarence H. Haring, The Spanish Empire in America (New York: Oxford University Press, 1947); Charles R. Cutter, The Protector de Indios in Colonial New Mexico, 1659–1821 (Albuquerque: University of New Mexico Press, 1986); Woodrow Borah, Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real (Berkeley: University of California Press, 1983); and G. Emlen Hall and David J. Weber, “Mexican Liberals and the Pueblo Indians, 1821–1829,” New Mexico Historical Review 59 (January 1984): 5–32.

2. At the time of the U.S. conquest in 1846, there were between seven thousand and ten thousand Pueblo Indians living in twenty villages, and the non-Indian population


3. For example, see Gov. David Meriwether to Comr. Ind. Affs. George W. Many-penny, 31 August 1853, and David Meriwether’s Annual Report to the Commissioner of Indian Affairs, 4 September 1854; Edmund A. Graves to David Meriwether, 31 August 1853; Edward H. Wingfield to Luke Lea, 6 February 1752, in *The Official Correspondence of James S. Calhoun while Indian Agent at Santa Fé and Superintendent of Indian Affairs in New Mexico*, ed. Annie Heloise Abel (Washington, D.C.: GPO, 1915) [hereafter *Correspondence of Calhoun*], 469–71. David V. Whiting to Luke Lea, 4 August 1852; and William F. M. Arny to the Legislative Assembly of New Mexico, 16 December 1865, in microcopy 254, *Letters Received by the Office of Indian Affairs, 1824–1881: New Mexico Superintendency* (Washington, D.C.: National Archives, 1956) [hereafter LR-OIA].


6. Davis to George W. Manypenny, 29 March 1856, LR-OIA; Meriwether to George W. Manypenny, September 1855, LR-OIA; and Pueblo Agent Abraham G. Mayers to Manypenny, 3 January 1857, LR-OIA.


8. Calhoun to Orlando Brown, 8 November 1849, 16 July 1850, 12 August 1850, and 30 August 1850; and “Treaty Between the United States of America and Certain Indian Pueblos or Towns,” in Correspondence of Calhoun, 75, 227, 237-46, 249-50, 255.

9. Calhoun to William Medill, 1 October 1849, and 4 October 1849; Calhoun to Comm. Orlando Brown, 3 February 1850, 18 February 1850, and 30 March 1850; Orlando Brown to Hugh N. Smith, 27 February 1850; Hugh N. Smith to Orlando Brown, 9 March 1850; and Orlando Brown to Calhoun, 24 April 1850, in Correspondence of Calhoun, 35, 40, 139, 152-53, 176, 190-94, 223-26. The appointment of John Ward is described in Gov. William Carr Lane to Comr. of Ind. Affs. Luke Lea, 30 October 1852, LR-OIA.


11. Meriwether’s Annual Report to George W. Manypenny, 4 September 1854; Meriwether to George W. Manypenny, 30 October 1853, 1 October 1853, 31 August 1855, and September 1855; and Graves to George W. Manypenny, 29 December 1853, in LR-OIA.


13. Calhoun to Orlando Brown, 16 November 1849; Calhoun to William Medill, 15 October 1849; and Calhoun to Orlando Brown, 3 February 1850, in Correspondence of Calhoun, 79, 54, 140.


15. Calhoun to Orlando Brown, 2 February 1850, and Calhoun to the Indians of the Pueblo of Taos, 2 February 1850, in Correspondence of Calhoun, 132-35 and 136-38. It is difficult to determine the actual views of Pueblo Indians on these matters, since documents purporting to describe their opinions were most often actually written by American agents.

16. Meriwether’s Annual Report to the Commissioner of Indian Affairs, 4 September 1854, LR-OIA; Supt. Ind. Affs. James L. Collins, to Comr. Ind. Aff. James W. Denver, 26 March 1859, LR-OIA; Message of William W. H. Davis, Acting Governor of the Territory of New Mexico, Delivered to the Legislative Assembly, 3 December 1855, printed in the Santa Fe Weekly Gazette, 15 December 1855; and William W. H. Davis, El Gringo; or, New Mexico and her People (1857; reprint, New York: Arno Press, 1973), 148-52. Davis’s observation before he became acting governor can be found in the newspaper he published, Santa Fe Weekly Gazette, 22 April 1854. For
Meriwether's statements, see his Annual Report to the Commissioner of Indian Affairs, 4 September 1854, LR-OIA.


18. Santa Fe Weekly Gazette, 21 January 1854; section 3 of "An Act amending the election law," 16 February 1854, Laws, Third Assembly, 142–46; and "An Act providing and establishing means for the education of the youth in the Territory of New Mexico," 4 February 1856, Laws of the Territory of New Mexico Passed by the Legislative Assembly 1855–56 (Santa Fe, N.Mex.: Printed in the Santa Fe Weekly Gazette Office, 1856), chapter 34, pp. 74–84. Emlen Hall explains that Pueblo agent John Ward, hoping to protect the land and resources of the Pueblos, initially arranged the tax exemption. If the territory would not tax the Pueblo Indians, they would not vote in territorial elections. Hall, Four Leagues of Pecos, 84–95.

19. United States v. Benigno Ortiz. This case, heard by the U.S. District Court of the First Judicial District of New Mexico in 1867, was printed in The New Mexican (Santa Fe), 3 August 1867. See also United States v. José Juan Lucero, 1 NM 422 (1869); United States v. Anthony Joseph, 1 NM 593 (1874), 94 US 614 (1877); United States v. Juan Santistevan, 1 NM 583 (1874); United States v. Manuel Varela, 1 NM 593 (1874); and United States v. Martin Koslowski, 1 NM 593 (1874).


21. Secretary of the Territory of New Mexico Herman H. Heath to Comr. Ind. Affs. Nathaniel G. Taylor, 8 August 1867, LR-OIA.

22. Norton to Comr. Ind. Affs. Nathaniel G. Taylor, 3 August 1867; Norton to the Governors of the Pueblos of New Mexico, 6 August 1867; Pueblo Agent John D. Henderson to Commissioner Taylor, 6 March 1868, Ward to Taylor, 10 April 1868; Arny to Comr. Charles E. Mix, 11 August 1867, Arny to Sen. John B. Henderson, Chairman of the Senate Committee on Indian Affairs, 8 August 1867, Arny to Rep. William Windom, Chairman of the House Committee on Indian Affairs, 11 August 1867, and Arny to Secretary of the Interior Orville H. Browning, 10 August 1867, in LR-OIA. New Mexico's delegate to Congress, José Francisco Chávez, also expressed disagreement with the court's decisions. See Chávez to Pres. Ulysses S. Grant, 11 December 1869, LR-OIA.

The agents' concerns about Pueblo lands apparently turned out to be warranted. Marc Simmons has estimated that the cost of the courts' removal of federal protection was that "some thirty percent or more of the Pueblos' best acreage shortly passed into non-Indian hands." Simmons, New Mexico, 170.

23. On the salary of Indian agents, see U.S. Statutes at Large 9 (1851): 587 and 19 (1876): 176. For the Superintendent's salary after the position was separated from that of the governor, see U.S. Statutes at Large 11 (1857): 185.
24. According to James Calhoun, in addition to daily rations, blacksmiths earned forty dollars a month, while servants earned a monthly salary of ten to fifteen dollars. Calhoun to Orlando Brown, 17 November 1849, in Correspondence of Calhoun, 82–83.


27. John S. Watts to Secretary of the Interior Jacob D. Cox, 10 May 1869, LR-OIA.

28. Charles P. Clever to Actg. Comr. Ind. Affs. Charles E. Mix, 2 October 1868, LR-OIA.

29. Simmons, New Mexico, 155.


31. Often traveling the judicial circuit together, lawyers and judges had the opportunity to become well acquainted. Furthermore, many judges had been practicing lawyers before they were appointed to the bench and returned to legal practice when their judicial terms expired. Three of the seven New Mexico attorneys who represented defendants in the cases under study had previously served on the New Mexico Supreme Court (Kirby Benedict, Joab Houghton, and Henry Waldo). Justices of the district courts and the Supreme Court of New Mexico received an annual salary of $2,500 in 1854 and $3,000 by 1876. U.S. Statutes at Large 10 (1854): 331; U.S. Statutes at Large 19 (1876): 159.

32. Document number 12, 5 December 1854, Arthur Bibo Collection of Acoma and Laguna Documents, New Mexico State Records Center and Archives, Santa Fe.
33. Attorneys in other states and territories found ways to profit from Indian tribes that were under the jurisdiction of the federal government. For example, lawyers represented the tribes in their efforts to collect annuities. Likewise, other occupational groups that had official dealings with Indians often had personal financial interests in Native affairs. For instance, soldiers serving in the western territories often took advantage of opportunities to purchase Indian lands. See Miner and Unrau, *The End of Kansas Indians*, chaps. 3, 5.

34. Abraham G. Mayers to George W. Manypenny, 3 January 1857; John D. Henderson to Dennis N. Cooley, 7 October 1866; and Meriwether to George W. Manypenny, September 1855, LR-OIA.


It should be noted that lawyers also viewed decision making by federal courts itself as contributing to the marketability of land. As a general rule in the American West, lawyers and others who had a stake in the marketability of land favored the transfer of decision-making power from local authorities to national courts. As historian Marfa E. Montoya has observed, “Local interests and customs only interfered with investors’ interest in creating titles that were marketable anywhere and to anyone.” Land speculators were confident that transferring authority to more remote locations would be more likely to result in their property interests being interpreted in such a way that they would be recognizable in a world market. Marfa E. Montoya, *Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840–1900* (Berkeley: University of California Press, 2002), 117–18.


Some historians have even asserted that lawyers so dominated the Santa Fe Ring that it was essentially the equivalent of the New Mexico bar association. Larson, "Territorial Politics," 256; and Westphall, *Catron*, 201. It was thought that the lawsuit against Antonio Joseph, along with hundreds of other similar cases, was filed by the U.S. attorney in order to pressure the defendants into voting for Elkins for congressional delegate. Note also that the defendant in the primary Supreme Court case, Antonio Joseph, was also among the members of the Santa Fe Ring. Joseph was a major land speculator who owned substantial interests in the Maxwell Grant, Cieneguilla Grant, and Chama Grant. In addition, he helped other land grantees obtain confirmation of their titles. Brayer, *Blackmore*, 1:148, 149, 197-98, 253-61, 298; Ebright, *Land Grants*, 43; and Larson, *Quest for Statehood*, 144.


42. *U.S. Statutes at Large* 16 (1871): 566; and 24 (1887): 388-91.

43. For example, there are many books on the politics of the removal of Indians from Georgia and other southeastern states in order to permit the extension of cotton plantations. These works include Jill Norgren, *The Cherokee Cases: The Confrontation of Law and Politics* (New York: McGraw Hill, 1995). On the methods used in Kansas to gain access to Indian lands for timber and railroad rights of way, see Miner and Unrau, *The End of Kansas Indians*, chap. 2. It should be noted, however, that the lawyers' interests did not always coincide with the broader American point of view. Most notably, Americans of the mid- to late nineteenth century tended to believe in the principle of equal access to land as a means to reinforce the ideal of a democratic nation of independent, enterprising republican citizens. Such a principle required that large tracts of unimproved land be treated as public domain and made available to individual settlers. In contrast, lawyers in New Mexico most often supported the confirmation of large, private land grants from which individual

44. Although this article focuses on the views and policies of U.S. government officials, there are obviously other relevant perspectives on this issue. Historians should study further the Pueblo Indian perspective in the mid- to late nineteenth century. Such a study might possibly help clarify what the benefits and disadvantages of citizenship, wardship, or total independence were, though there were likely divisions among the Pueblos about what their relationship should be to the Spanish, Mexican, and American political systems.


46. In 1910 the New Mexico Enabling Act provided that “the terms ‘Indian’ and ‘Indian country’ shall include the pueblo Indians of New Mexico and the lands now owned and occupied by them.” That definition meant that the Pueblo Indians would be covered by federal Indian laws. See *U.S. Statutes at Large* 36 (1910): 557. The U.S. Supreme Court upheld the constitutionality of this statute in *U.S. v. Sandoval*, 231 US 28 (1913). Later, a battle would emerge as Congress tried to resolve the ambiguities of claims to Pueblo Indian lands. The Bursum Bill was brought to Congress in the early 1920s to settle the land titles in favor of the non-Indian claimants, but the proposal met strong resistance and failed to pass. Finally, in 1924 the Pueblo Lands Act established a Pueblo Lands Board to determine Pueblo Indians’ title to lands using a more equitable approach. Over two decades later, the Pueblo Indians were finally acknowledged to be citizens of the United States.